

ILLINOIS POLLUTION CONTROL BOARD

April 20, 2000

JOHN M. GIERTYCH, GERI GIERTYCH,	)	
WALLY STOKLOSA, EARL DALIEGE,	)	
EVERETT JOHNSON, MEDARD SOWONIK,	)	
MAX PRINDLE, CHUCK POLIZZI, MARGE	)	
POLIZZI, GEORGE BRASSEA, GLADYS	)	
BRASSEA, NANCY PITCHER, GERALDINE	)	
HUGHES, BERNARD NAGEL, JOE	)	
RINGBAUER, DEE RINGBAUER, CAROLYN	)	
MEYER, JOE DAMPF, SALLY DAMPF, PAT	)	
HENRY, GABRIELE DALZELL, CLIFTON	)	
COOKE, BETTY JANE COOKE, PAM	)	
SAYNER, CAROL BUMP, HELEN BYTNAR,	)	
and LESLIE KOENIG,	)	
	)	
Complainants,	)	
	)	
v.	)	
	)	
4T'S MANAGEMENT, L.L.C.,	)	PCB 00-133
	)	(Enforcement - Noise, Citizens)
	)	
Respondent.	)	
	)	

ORDER OF THE BOARD (by M. McFawn):

On April 3, 2000, respondent filed a "Motion to Dismiss Frivolous Complaint." Complainant John M. Giertych filed a "Motion to Object to a Dismissal of a Frivolous Complaint" on April 10, 2000, contesting several assertions in respondent's motion. The Board denies respondent's motion, because the representations on which respondent bases its arguments are not supported by affidavit as required by the Board's procedural rules. The Board further finds that the alleged violation of Section 23 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/23 (1998), is frivolous, but the remaining alleged violations are not frivolous. The Board finds that the complaint is not duplicitous.

In its motion, respondent indicates that its correct corporate name is 4T's Management, L.L.C., and that there is no "Tyson Corporation," the named respondent in the complaint, doing business at the location specified in the complaint. On this representation by respondent, the Board on its own motion amends the caption to reflect respondent's correct corporate name.

This case was commenced on February 7, 2000, by the filing of a formal complaint by 27 individuals who live near respondent's facility. The complaint alleges violations of Sections 23 and 24 of

the Illinois Environmental Protection Act (Act), 415 ILCS 5/23, 24 (1998), and 35 Ill. Adm. Code 900.102 and 901.102. The allegations are based on noise from respondent's facility in Manteno, Illinois. Respondent argues that the complaint is frivolous. Essentially, respondent argues that the complainants should be estopped from bringing this action because the developer under whom they are lessees represented that the residential development in which the complainants live would not interfere with industrial development of the surrounding properties (including respondent's).

Respondent sets forth a number of facts in support of its motion. The Board, however, cannot consider respondent's representations. The Board's procedural rules require facts asserted which are not of record to be supported by affidavit. 35 Ill. Adm. Code 101.242. The statements in respondent's motion are not evidence upon which the Board could base dismissal of the complaint, nor has respondent supplied an affidavit laying the requisite foundation for the Board's consideration of the documents appended to the motion. Respondent has not identified any other defect in the complaint that would warrant dismissal. Accordingly, respondent's motion is denied.

In addition to considering any motions by the parties, the Board undertakes its own review of each newly-filed citizens' enforcement action to consider whether the action is frivolous or duplicitous. See 35 Ill. Adm. Code 103.124. An action before the Board is frivolous if it requests relief which the Board could not grant. Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80. As noted above, the complaint alleges violations of Sections 23 and 24 of the Act and 35 Ill. Adm. Code 900.102 and 901.102. Section 23 of the Act sets forth the General Assembly's findings and the purpose of Title VI of the Act, concerning noise pollution. There can be no violation of Section 23. Thus, to the extent the complaint seeks relief for an alleged violation of Section 23, that claim is frivolous. The other provisions allegedly violated, however, contain prohibitions of various activities. Section 24 of the Act provides:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (1998).

Section 900.102 prohibits emitting noise beyond the boundaries of property so as to cause noise pollution, *i.e.*, noise that unreasonably interferes with enjoyment of life or any lawful business or activity. See 35 Ill. Adm. Code 900.101. Section 901.102 prohibits emitting sound above specific decibel levels at different times of the day. These provisions could be violated by respondent's activities, as alleged in the complaint. These claims are therefore not frivolous on their face.

The relief sought by complainants, *i.e.*, an order to cease and desist from violations, is specifically authorized by Section 33(b) of the Act, 415 ILCS 5/33(b) (1998). The specific measures requested would be within the Board's authority to impose, if such measures were found appropriate. See 415 ILCS 5/33(a) (1998). Thus, except for the alleged violation of Section 23, the Board concludes that the complaint is not frivolous.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or another forum. Walsh v. Kolpas (September 23, 1999), PCB 00-35, slip op. at 2. Paragraph 10 of the complaint, which was certified by complainant John Giertych, states that no other action is known to complainants. Respondent has not brought any other action to our attention. We cannot, therefore, find that this action is duplicitous.

Having found this complaint neither frivolous nor duplicitous, the Board accepts the case for hearing. The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and 35 Ill. Adm. Code 103.125. The Clerk of the Board will promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer is to inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer is to submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days after the hearing transcript is filed.

One other matter remains to be addressed. In an order adopted on March 16, 2000, the Board noted that 27 individuals had signed Attachment A to the complaint identifying themselves as complainants, but that the signatures were not clearly legible. The Board directed the complainants to submit a clearly printed or typewritten list of all complainants, with their addresses and telephone numbers, within 14 days. By a letter dated March 21, 2000, complainant John Giertych submitted a list of complainants. Upon review of the list we have identified 26 other persons besides John Giertych who have provided all information necessary to be party complainants in this action. They are: Geri Giertych, Wally Stoklosa, Earl Daliege, Everett Johnson, Medard Sowonik, Max Prindle, Chuck Polizzi, Marge Polizzi, George Brassea, Gladys Brassea, Nancy Pitcher, Geraldine Hughes, Bernard Nagel, Joe Ringbauer, Dee Ringbauer, Carolyn Meyer, Joe Dampf, Sally Dampf, Pat Henry, Gabriele Dalzell, Clifton Cooke, Betty Jane Cooke, Pam Sayner, Carol Bump, Helen Bytnar, and Leslie Koenig. The caption is hereby amended to reflect these persons' status as complainants.

Not every person listed on the list filed by John Giertych is included as a complainant. This is due to the operation of the Board's procedural rules. As the Board noted in its order of March 16, 2000, 35 Ill. Adm. Code 101.103(g) applies to this case. That regulation provides:

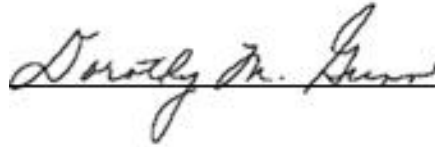
The original of each document filed shall be signed by the party . . . . All documents shall bear the business address and telephone number . . . of the party who appears on his or her own behalf.

Thus, to be a party complainant, a person must have both signed the complaint, and provided his or her address and phone number. Some of the persons listed in John Giertych's letter did not sign the complaint. There is no signature of Gordon Pitcher on Attachment A to the complaint. It appears that in some instances one spouse signed for both husband and wife; specifically, Wally and Lorraine Stoklosa, Earl and Dorothy Daliege, Everett and Lois Johnson, Medard and Wanda Sowonik, and Max and Denise Prindle. A non-attorney, even a spouse, cannot represent another person in a case

before the Board. See Colony of Longmeadow HOA v. Dominick's (January 6, 2000), PCB 00-92, slip op. at 2. So, for both to be parties, each spouse would have had to sign the complaint individually, as some of the complainants here did. In the instances identified, we have assumed that the first person listed signed the complaint, and included that person as a party complainant. The Board notes that any of the persons not identified as complainants may still participate in this case as witnesses if called at hearing, or by submitting written statements. See 35 Ill. Adm. Code 103.203(a). Also, any of these persons who want to participate as parties may petition to intervene as complainants in accordance with 35 Ill. Adm. Code 103.142.

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 20th day of April 2000 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board