

ILLINOIS POLLUTION CONTROL BOARD
December 13, 1979

PETER ZAJAC,)
)
 Complainant,)
)
 v.) PCB 79-10
)
 CHICAGO TRANSIT AUTHORITY,)
 a municipal corporation,)
)
 Respondent.)

ORDER OF THE BOARD (by Mr. Goodman):

To the extent Respondent's December 6, 1979 motion seeks reconsideration of the Board's November 29, 1979 Order regarding jurisdiction over vibrations as a source of pollution, it is denied.

To the extent Respondent's motion seeks clarification of that Order, it is granted. The phrase "nuisance claim" refers to allegations that Respondent's activity constituted a common law and/or statutory nuisance offense and does not refer to allegations that Respondent's activity causing vibrations constituted a presence in the atmosphere of one or more contaminants. Whether or not vibrations constitute pollution is a different basis for jurisdiction than whether or not vibrations constitutes a common law and/or statutory nuisance offense.

Petitioner's December 11, 1979 filing of a "History" in this enforcement matter is ordered construed as an appendix to the complaint. It shall be labeled "Appendix 1 to Complaint" by the Clerk.

The appendix is not subject to motions to dismiss or strike pursuant to Procedural Rule 308(a) because it consists of factual allegations and not legal arguments. To the extent, however, the appendix pleads the Board's jurisdiction over statutory and/or common law nuisance offenses, it is stricken. Zajac v. CTA, PCB 79-10, Board Order entered November 29, 1979.

IT IS SO ORDERED.

Mr. Werner dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Order was adopted on the 13th day of December, 1979 by a vote of 3-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board