

ILLINOIS POLLUTION CONTROL BOARD
August 13, 1992

CLYDE R. DACE)
)
 Complainant,)
)
 v.) PCB 91-153
) (Enforcement)
 D. KOHLHASE and FOX)
 RIVER GROVE FIRE)
 PROTECTION DISTRICT,)
)
 Respondents.)

CLYDE R. DACE APPEARED PRO SE, AND

RICHARD J. CURRAN, JR. APPEARED ON BEHALF OF RESPONDENTS.

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

On August 30, 1991, Clyde R. Dace (Mr. Dace) filed a formal noise complaint with the Board. The complaint named the Fox River Grove Fire Protection District and Mr. Donald Kohlhase, the Fire Chief of the District, as respondents. A hearing was held on December 20, 1991, in Woodstock, Illinois. Mr. Dace and the respondents filed their closing arguments on February 18, 1992, and on March 6, 1992, respectively. There were no members of the public present at the hearing.

In his complaint, Mr. Dace alleges that respondents' siren emits excessive noise beyond the boundaries of the fire station in violation of Section 23 of the Environmental Protection Act (Act), Ill. Rev. Stat. 1991, ch. 111½, par. 1023, and 35 Ill. Adm. Code 900.102. Mr. Dace requests the Board to order respondents to use pagers only, rather than using the pagers in conjunction with the siren for emergencies.

BACKGROUND

The Fox River Grove Fire Protection District (District) has two fire stations. The main station is on Algonquin Road and the second station is on Lucille and Illinois Avenue. One station is located north of Route 14 and the other is located south of Route 14. Both stations are approximately half a block off of Route 14 and the intersections off of Route 14 for each station are approximately half a block apart. (Tr. 59, 82.) Route 14 is a five lane highway that runs on a northwest/southeast angle and splits the Village of fox River Grove in half. (Tr. 81, 82.) During the day there is moderate to heavy traffic on Route 14. (Tr. 82.)

The District provides emergency ambulance service and fire fighting capabilities for structures, car accidents, etc. (Tr.

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57, 87, 88.) The District services approximately six thousand people in six to nine square miles in McHenry County, parts of Barrington Hills, parts of unincorporated McHenry County, and the Village of Fox River Grove. (Tr. 74, 88.) Although there are no personnel at the fire stations on a regular basis during the daytime hours, the District has 24 paid-on-call members including the Fire Chief, eight paramedics, nine EMTS (first aid personnel), and six fire fighters. (Tr. 56, 58, 73, 87.) The paid-on-call personnel are volunteers who are reimbursed from the District for their labor and services in responding to emergency calls. (Tr. 21, 23, 57.) During daytime hours approximately two to six firemen and one to two paramedics are available. (Tr. 63-64.) Fifteen people are available during the night. (Tr. 72.)

From April through November of 1991, there were approximately 130 calls, 80 of which were daytime calls. (Tr. 62.) Between April of 1990 and April of 1991, there were 226 calls, 130 of which were daytime calls. (Tr. 62-63.) Approximately 80 percent of all calls are medical emergency calls. (Tr. 63.)

The siren at issue is located at the main fire station and is mounted on an elevated pole at the back of the station. (Tr. 59, 60.) It is used as a tornado warning device and as an emergency warning device for firemen. (Tr. 59-60.) Prior to 1978, the siren was used 24 hours a day. (Tr. 72.) However, when the District purchased non-vibrating pagers for its personnel in 1978, the siren was used only 12 hours a day and did not sound during the night. (Tr. 64, 72, 78.)¹ The siren is currently being used from 6 am to 6 pm, on an average of three times a week for two minutes at a time. (Tr. 60, 89.) The siren is not used at night because the firemen carry pagers at night and thus, hear calls when they are not at home, and because more District personnel are available at night. (Tr. 84.) During an emergency, District personnel are first notified of the nature and the location of an emergency via the pagers by the Cary Police Department. (Tr. 75, 76.) The siren is sounded after the District's personnel have been dispatched via the pagers. (Tr. 77.) The firemen typically go to the fire station first to obtain equipment and then go to the scene unless the emergency happens to be near or on the way for someone. (Tr. 76-77, 83.)

In June of 1990, Mr. Dace called the mayor of Fox River Grove regarding the siren but was told that the Village had no jurisdiction over the District and that Mr. Dace would have to contact the District himself. (Tr. 34-35.) In September of

¹Although fire department personnel are not required to carry their pagers at all times, most do. (Tr. 21, 65, 93, 96.)

1990, Mr. Dace called the District to find out when their public meetings were held so that he and his neighbors could discuss the noise being emitted from the siren. (Tr. 35.) In October and November of 1990, Mr. Dace and several of his neighbors attended two District meetings. (Tr. 35.) At the second meeting in November, the use of pagers was discussed. (Tr. 35.) At that same meeting, the District stated that an unsuccessful attempt had been made to baffle the siren. (Tr. 15, 19, 20, 32, 35.)

APPLICABLE LAW

As previously stated, Mr. Dace alleges that respondents have violated Section 23 of the Act and 35 Ill. Adm. Code 900.102. Mr. Dace does not rely on numerical quantification of the noise emissions to prove a violation. Therefore, this is a "nuisance" case and such quantification is immaterial in determining whether such a violation has occurred. (Ferndale Height Utilities Co. v. Illinois Pollution Control Board (1st Dist. 1976), 44 Ill.App.3d 967, 358 N.E.2d 1224, 1228.)

With regard to "nuisance noise", the prohibitions in the Act and Board regulations turn on the degree to which the noise interferes with a complainant's normal activities. Section 900.102 of the Board's regulations provides:

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

The regulations define "noise pollution" as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." 35 Ill. Adm. Code 900.101. Section 24 of the Act prohibits noise pollution in almost identical terms:

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.

Thus, under the Act and Board regulations, a noise violation has occurred if the complainant has proven that the complained of noise has unreasonably interfered with the complainant's enjoyment of life or with his pursuit of any lawful business or activity.

The Board has previously determined in "nuisance noise" proceedings that unreasonable interference is more than an ability to distinguish sounds attributable to a particular source. Rather, the sounds must objectively affect the complainant's life or business activities. See Kvatsak v. St. Michael's Lutheran Church (August 30, 1990), PCB 89-182, 114 PCB 765, 773; Kochanski v. Hinsdale Golf Club (July 13, 1989), PCB 88-16, 101 PCB 11, 20-21, rev'd on other grounds (2d Dist. 1990), 197 Ill.App.3d 634, 555 N.E.2d 31.

The Illinois Supreme Court has directed that the Board must consider the facts of the case in light of the factors outlined by 33(c) of the Act in determining whether unreasonable interference has occurred under the Act and Board regulations. Wells Manufacturing Co. v. PCB (1978), 73 Ill.2d 226, 232-33, 383 N.E.2d 148, 150-51 ("nuisance" air pollution; first four factors only); Ferndale Heights Utilities, 44 Ill.App.3rd at 967-68, 358 N.E.2d at 1228. Those factors as set forth in Section 33(c) of the Act are as follows:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
5. any economic benefits accrued by a non-complying pollution source because of its delay in compliance with pollution control requirements;
6. any subsequent compliance.

ANALYSIS

At the outset, the Board notes that respondents, in their opening and closing statements, present the argument that the siren is an emergency warning device that is exempt from the Board's noise regulations. More specifically, respondents argue that the exception for emergency warning devices that is found in

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35 Ill. Adm. Code 901.107(b) is applicable to the nuisance standards of 35 Ill. Adm. Code 900.102 as well as the numerical standards of 35 Ill. Adm. Code 901.102 et seq. Respondents add that to find that the exception does not apply to 35 Ill. Adm. Code 900.102 defeats the purpose of having the exception. Respondents also contend that if the exception is not applicable, Mr. Dace could argue that ambulance, fire truck, and police car sirens cause noise pollution. Finally, respondents note that 35 Ill. Adm. Code 900.104 places the burden of persuasion regarding an exception on respondent. Respondents argues that if the exceptions of 35 Ill. Adm. Cod 901.107 are not applicable to 35 Ill. Adm. Code 900.102, 35 Ill. Adm. Code 900.104 should be placed in 35 Ill. Adm. Code 901.

The Board notes that the numerical standards are based on community response. In a nuisance complaint brought by individuals, data showing the respondent does or does not exceed the numerical standards may be a consideration but is not dispositive (See Kaji v. R. Olson Manufacturing (April 16, 1981), PCB 80-46, 41 PCB 245, aff'd (July 19, 1982), 109 Ill.App.3d 1168, 441 N.E.2d 185, and Zivoli v. Somebody's Bar and Restaurant (May 21, 1992), PCB 90-200). The Board recognizes that one might argue that an anomaly exists where the numerical standards do not apply at all; a person can be found to be causing noise pollution even though the Board specifically exempts them from violation of the noise standards. However, neither the Act nor Board regulations specifically exempt emergency warning devices from being subject to a nuisance complaint; whether such an amendment should be made is not before us in this case. In so saying, however, we note that, where emergency warning devices are involved, the Board would weigh the Section 33(c) factors with considerable care before making a finding of unreasonable interference. For example, the social and economic value of a siren that is used solely as an emergency warning device is likely to outweigh the other 33(c) factors. (See Vickers v. Village of Milstadt (September 12, 1991), PCB 91-42.)

Character and Degree of the Injury or Interference²

Mr. Michael Ireland has lived at 430 Concord Avenue in Fox River Grove, Illinois, for the past four years. (Tr. 17, 24.) The back of his home faces and is southwest of the fire station and is about 50 to 60 yards from the siren. (Tr. 11, 12, 16-17.) He testified that the siren is definitely "different" and that it is very annoying. (Tr. 12, 13.) He characterized the noise as being screeching and piercing even when all the windows of his

²In a letter dated December 24, 1991, the hearing officer forwarded two letters to the Board as part of the public comment portion of the record. Mr. Dace submitted the letters at hearing in support of his complaint. (Tr. 54-55.)

home were closed. (Tr. 15.) He also testified that the noise was worse than turning up a stereo to its maximum level. (Tr. 15.) Mr. Ireland testified that the siren has eight different pitches and that it blows from one and one half to two minutes at a time. (Tr. 16.) Although Mr. Ireland testified that he could not give an accurate number of times that the siren sounds in a given week because he is at work, he knows that the siren sounds during the week and that the siren sounds more on the weekends. (Tr. 15.)

Ms. Julie Tasic has lived at 421 Concord Avenue, and across from Mr. Dace, for the past four years. (Tr. 25, 29.) Ms. Tasic testified that she has three children, ages 4, 3, and 1½ years, and that there are eleven children, ages 7 years or younger, who live in the first eight houses on Concord Avenue. (Tr. 25, 26.) Ms. Tasic testified that the siren hurts the childrens' ears and that they run when it sounds. (Tr. 25, 26.) She testified that the siren sounds for two minutes and that it sounds once every three days and sometimes twice a day. (Tr. 31.) Finally, Ms. Tasic testified that the siren became louder after the District attempted to baffle it and that there has been an increase in the number of times that the siren has sounded because of new development in the area (Tr. 27.)

Mr. Dace has lived at 432 Concord Avenue since August 30, 1989. (Tr. 33, 38-39, 41.) Mr. Dace testified that when he is outside gardening he has to go inside the house because the siren noise is extremely piercing. (Tr. 37.) Mr. Dace added that he has to discontinue telephone conversations when the siren sounds because he cannot hear the conversation. (Tr. 40.) He stated that the siren noise has increased since August of 1991, and that, from his back door, he can hear the air coming out of the siren. (Tr. 39.) Mr. Dace testified that although there are times that the siren does not sound for one week, on average it goes off every third day for approximately two minutes at a time. (Tr. 40, 43, 50.)³

³At hearing, Mr. Dace presented a tape into evidence that contained two sound recordings of the siren. (Tr. 36-37, 44-45; Compl. Ex. 2.) Mr. Dace first recorded the siren at 9:30 am on November 20, 1991, from the family room at the back of his house when the windows and doors were closed. Mr. Dace's second recording was taken at 5:20 pm on November 20, 1991, in the same location with the windows and doors open.

The Board has previously held that a key issue in admitting audio tapes is "the accuracy of the homemade tape's representation of actual noise levels at relevant locations on complainant's property". Kvastak v. St. Michael's Lutheran Church (August 30, 1991), PCB 89-182, 114 PCB 772. The record contains no evidence regarding the quality of the tape recorder that Mr. Dace used. The

Social and Economic Value of Pollution Source

As previously stated, the record indicates that the siren is used as a tornado warning device and as an emergency warning device for firemen (Tr. 59-60.) Mr. Kohlhasse testified that the siren is used because of the frequency of the daytime traffic on Route 14, especially during the rush hours in the morning and afternoon. More specifically, Mr. Kohlhasse testified that there has been an increase in traffic on Route 14 in the last several years and that the siren helps in notifying motorists and pedestrians that there will be emergency vehicle traffic in the area in a short time. (Tr. 60-61, 74-75, see also 89, 90.) Mr. Kohlhasse added that the notification of motorists and pedestrians, in turn, helps to reduce the District's response time because the motorists and pedestrians are on the look out for firemen driving to the fire station. (Tr. 67.)

Mr. Kohlhasse added that the siren is also used to notify any volunteer firemen who might have missed their pager calls of an emergency. (Tr. 61, 71.) In fact, Mr. Kohlhasse testified that, in the two weeks prior to the hearing in this matter, there were two instances where firemen did not receive a page from the District but called in on their radios asking the location and nature of the call because they heard the siren. (Tr. 65.) Finally, Mr. Kohlhasse testified that because the siren notifies all available personnel, the District does not have to call for assistance from a nearby community and thus, has a reduced response time. (Tr. 70.) More specifically, Mr. Kohlhasse testified that District personnel generally arrive at the fire station within three minutes of a call and that, in an ambulance situation, District personnel have only four to six minutes to get to a scene before irreversible brain damage occurs. (Tr. 66-67.) If District personnel do not respond in three minutes, Mr. Kohlhasse testified that the District would call for mutual aid and that it would take an additional five minutes to for the aid to respond and another five to ten minutes to for such aid to arrive on the scene. (Tr. 70.)

In addition to the above testimony, Mr. Richard Stiller, current president of the trustees and former Fire Chief for the District, testified that there have been instances that the pagers have not worked. (Tr. 90-91, 96.) In addition, Mr. Stiller testified that because many of the District personnel are carpenters, electricians, and sheet metal men who work with

Board is therefore unable to determine the "accuracy" of the tape's representation of the noise levels. Accordingly, the Board will not admit the tape for the purpose of determining noise levels on Mr. Dace's property. The Board, however, will admit the tape recordings for the purpose of indicating what sounds are being
omitted

concrete, compressors, and other noisy machinery, they either do not wear the pagers or do not hear the pagers even when the pagers are operational. (Tr. 90-91.) Finally, Mr. Stiller testified that many of the District's personnel were adamant about keeping the siren and that, as a result, he was concerned of possible repercussions if the siren would no longer be used. (Tr. 90.)

In economic terms, Mr. Stiller testified that the District's current budget is \$226,000 and that it would cost \$25,000 plus benefits to hire a full-time paramedic. (Tr. 96.) Mr. Stiller added that, as a result, the hiring of full-time personnel would significantly impact the District's budget. (Tr. 96.) Mr. Stiller also testified that the District's board is examining the possibility of hiring full-time employees in the future as the area grows. (Tr. 92, 97.)

Suitability of the Pollution Source to the Location

Although the record indicates the siren is located within 50 to 75 feet of a residential area (i.e., the distance between the first three residences on Concord Avenue and the siren), the record also indicates that all of the daytime District personnel live within five blocks of the main fire station, and that the siren is an additional warning mechanism for them. (Tr. 37, 65, 77; compl. Ex. 1.) In addition, the record indicates that the District's fire stations are only half a block off of a five lane highway that splits the Village of Fox River Grove in half and carries moderate to heavy traffic during the day. (Tr. 59, 81, 82.)

As to priority of location, the record indicates that the siren has been located at the fire station for 25 years and that Mr. Dace, Mr. Ireland, and Ms. Tasic have lived in the area for no more than four years. (Tr. 17, 24, 25, 29, 33, 38-39, 41, 60, 88.) Although both Mr. Ireland and Mr. Dace testified that they were aware of the fire station and siren when they moved to the area, they had never lived in areas where sirens were used for emergency situations. (Tr. 17, 42.)

Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions

Although there are no specific details in the record, the record does indicate the District unsuccessfully attempted to baffle the siren. (Tr. 15, 19, 20, 32, 35.) In fact, both Mr. Dace and Ms. Tasic testified that the sound from the siren increased after the District attempted to baffle the siren. (Tr. 27, 39.)

33(c)(5)-Subsequent Compliance

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As previously stated, the record does indicate that respondents unsuccessfully attempted to reduce the noise prior to the filing of the complaint. (Tr. 15, 19, 20, 32, 35.)

CONCLUSION

Although the testimony and evidence show that sound is being emitted from the District's siren, the Board finds that the sound does not constitute an unreasonable interference. The very nature of the sound is to assist in the protection of the health, general welfare, and physical property of the people within the boundaries of the District. In other words, the sound from the siren is not incidental to the siren being used for another purpose. Rather, the sound itself serves a public function and thus, has a great social and economic value. In fact, Mr. Ireland and Ms. Tasic testified that they would not want the District to discontinue its use of the siren if it would have a detrimental effect. (Tr. 12, 13-14, 23, 26, 28, 33.)

Although we recognize that the siren is located near a residential area, we do not find that the siren's location is unsuitable. The siren has been located at its current site for 25 years and is near a five lane highway that divides the Village of Fox River Grove and carries medium to heavy traffic during the day. Moreover, we have no evidence before us to demonstrate that it is technical feasible or economically reasonable to lower the intensity of the siren. There is also no evidence in the record that indicates that any lowering of the intensity of the siren would allow the siren to function in a manner sufficient to warn pedestrians, motorists, and District personnel of impending emergencies.

As a practical matter, District officials are in the best position to balance the need for a specific siren with the rights of nearby citizens. Sirens should be sized and located with the safety and welfare of all citizens in mind. The evidence in the record does not support a finding that the intensity and duration of the noise is harmful to hearing. The District has taken steps, albeit unsuccessful, to mitigate the interference caused by the siren. We will not "second guess" the District's desire to notify motorists and pedestrians of impending emergency traffic, ensure notification all available district personnel, or to reduce response time.

Based on an evaluation of all the evidence and the factors enumerated in Section 33(c) of the Act, as discussed above, the Board finds that the noise emissions from the District's siren have not violated the Environmental Protection Act or 35 Ill. Adm. Code 900.102.

The above opinion constitutes the Board's findings of fact and conclusions of law in this matter.

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ORDER

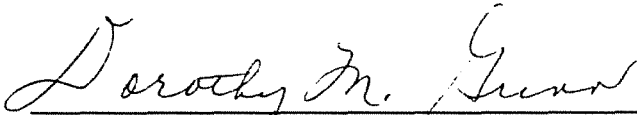
Based on an evaluation of the evidence and the factors enumerated in Section 33(c) of the Environmental Protection Act, Ill. Rev. Stat. 1991, 111½, par. 1033(c), the Board finds that Donald Kohlhase and the Fox River Grove Fire Protection District have not violated Section 23 of the Environmental Protection Act, Ill. Rev. Stat. 1991, ch. 111½, par. 1023, and 35 Ill. Adm. Code 900.102. This case is dismissed.

IT IS SO ORDERED.

Board Member J. Theodore Meyer concurred.

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 opinion and order was adopted on the 13th day of August, 1992, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board