

ILLINOIS POLLUTION CONTROL  
March 11, 1992

MICHAEL L. CHRISTIANSON,        )  
                                  )  
    Complainant,                )  
                                  )  
v.                                )     PCB 90-59  
                                  )     (Enforcement)  
THE AMERICAN MILLING CO.,     )  
                                  )  
    Respondent.                 )

MICHAEL CHRISTIANSON APPEARED PRO SE;

MICHAEL C. O'NEIL, KECK, MAHIN & CATE ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the February 3, 1992 response to complainant's proposed remedy filed by respondent, complainant's February 24, 1992 reply and respondent's March 3, 1992 motion for leave to file reply instanter. The filings in this matter stem from the Board's November 21, 1991 opinion and order finding that respondent's operations at its milling plant have caused "noise pollution" in violation of Section 24 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1024) and 35 Ill. Adm. Code 900.102.

Initially, the Board will rule on respondent's "Motion for Leave to File Instanter and Reply to Complainant's New Factual Allegations and Requests for Relief". A reply may only be filed with leave of the Board to prevent material prejudice. (35 Ill. Adm. Code 101.241(c).) Respondent argues that it should be allowed to reply to new factual allegations and requests for relief contained in complainant's February 3, 1992 reply to respondent's abatement study. Because the Board agrees that complainant has raised new factual allegations and requests for relief, respondent is granted leave to file its reply.

In its prior opinion and order the Board found that respondent's activities of pounding and hammering on trucks and train cars, vibrators, idling of engines and banging of end loaders unreasonably interfered with complainant's use and enjoyment of his property. Due to a lack of evidence, the Board was unable to determine what abatement measures were technically practicable and economically reasonable. However, the Board did find that the primary source of interference was the pounding and hammering on the trucks and train cars and that it was economically and technically feasible to eliminate this noise source with a cease and desist order. To fashion a complete remedy, the Board directed respondent to either file a written response to testimony given by

Gregory Zak and exhibits prepared by Zak suggesting certain abatement measures or to file its own abatement study.

Zak, employed by the Illinois Environmental Protection Agency to supervise noise at Superfund sites, suggested certain remedial action to reduce noise. Zak testified that he drew up Exhibits 15 and 16 from a booklet he received from a seminar dealing with the use of acoustic materials in solving noise problems. (Tr. 503.) His suggestions are geared toward remedying the pounding and hammering and vibrator noise. (Tr. 503-04.) Zak suggested that respondent build two structures, one for trucks and one for train cars, with an overhead door on both ends that would be closed after the truck or train moved in to unload. (Tr. 505-06.) Zak listed building materials and suggested the use of 18-gauge corrugated steel for the structures. (Tr. 507; Ex. 16.) Zak estimated that the costs of the structure would be \$12,000, based upon calling various suppliers of building materials. (Tr. 506; Ex. 15.) Zak suggests that abatement take place in at least two phases with phase 1 attempting to reduce the most objectionable noise and successive phases to remedy remaining problems. (Tr. 504.) Lastly, Zak suggested that the muffler on the end loader be upgraded to a "45 dB(A) muffler" at a cost of "a few hundred dollars." (Tr. 507.)

Respondent has both replied to the Zak study and suggested its own remedy. Respondent asserts that the "Zak study" fails to demonstrate that the proposed remedy is technically feasible and economically reasonable. (See Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1033(c)(4).) Respondent contends that Zak's estimate that construction would cost \$12,000 is "unsubstantiated hearsay." Respondent also questions Zak's suggestion that respondent install a "45 dB(A) muffler".

Respondent has proposed an alternative remedy. Respondent has begun to prepare for the construction of a single steel enclosure for railcars and trucks as a result of its application to renew its air permit. Respondent suggests that this structure is designed not only to reduce sound emissions, but it will also eliminate the potential for air pollution caused by the delivery of grain by-products. Respondent contends that the main distinction between its proposed structure and the Zak structure is that respondent proposes a single 130-foot long building which would be double the width and almost twice the height of that proposed by Zak. According to respondent, because its building is larger than that proposed by complainant, it will provide more barrier space between the vehicle and the walls and, therefore, will provide greater noise abatement. Respondent anticipates that construction would begin in early spring and be completed by mid-summer. Respondent estimates the total cost to be \$120,000.

Complainant argues that the Zak proposal is preferable to respondent's proposal. In particular, complainant does not approve

of the respondent's proposal because it only indicates a plain uninsulated, ungasketed structure and fails to indicate effective design considerations such as fiberglass bats to deaden sound, gaskets, the specific gauge of steel to be used, types of doors, or a ventilation system. Complainant does not object to use of a single structure if it is properly designed and constructed. Complainant requests that respondent be required to hire an outside consultant to design and oversee construction and that complainant be allowed to review any proposed plans. The Board notes that complainant has also raised allegations of continuing violations which the Board has previously noted are properly the subject of a new hearing. To the extent that complainant has alleged irrelevant facts such as the purchase of new property by respondent, the Board need not consider such allegations in determining a remedy.

While the single structure may be acceptable, the proposal submitted by respondent fails to specify the type of material to be used in constructing the enclosure to ensure that noise will be reduced to an acceptable level. As complainant notes, it does not object to the use of a single structure if properly designed and constructed. However, the only information given by respondent is the size and location of the building. While respondent criticizes the Zak study for lacking foundation, the Zak study set forth the building materials to be used which is more than can be said for respondent's proposal. Additionally, while respondent argues that Zak's statement that a "45 dB(A) muffler" would cost approximately \$200 is unsubstantiated, respondent did not introduce any evidence as to the cost of such a muffler.

Given that respondent has failed to establish that its proposal will achieve compliance with the Act and regulations, the Board must fashion a remedy from the information in the record. The Board accepts respondent's proposal of a single structure building. However, respondent is directed to construct the interior and exterior of the building with materials equivalent to those suggested in the Zak study. (Ex. 16.) While the materials need not be identical, they should provide sufficient noise abatement such that respondent's activities of hammering and pounding on railcars and trucks and vibrator noise no longer unreasonably interfere with complainant's use and enjoyment of his property. The doors of the structure must be closed when unloading the railcars and trucks. Additionally, the Board finds that installation of a "45 dB(A) muffler" would reduce end loader noise, which the Board previously found contributes to unreasonable interference. Based upon the record, the Board finds that installation of such a muffler for approximately \$200 is economically reasonable. Construction of the enclosure should begin as planned in early spring and be completed no later than August 1, 1992. The Board's cease and desist order regarding pounding and hammering on the railcars and trucks remains in effect until construction of the new structure is completed.

The Board declines to impose any penalty at this time as requested by complainant. The Board finds that while respondent's proposed remedy is incomplete, the Board's prior order certainly contemplated that respondent could propose an alternative remedy to that suggested by Zak. The Board also declines to retain jurisdiction in this matter. Complainant is free to file a new complaint if future allegations of non-compliance arise and may move the Board for incorporation of the record from the instant docket. Complainant is also free to pursue allegations of repeated violations by filing a new complaint with the Board or by bringing an action in circuit court to enforce the Board's November 21, 1991 cease and desist order.

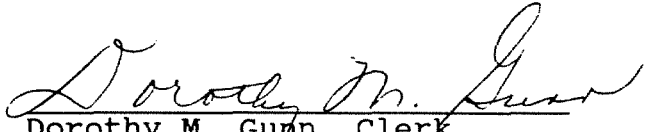
ORDER

Respondent shall construct of a single structure enclosure consistent with this opinion. Construction must begin in early spring and be completed no later than August 1, 1992. Installation of a "45 dB(A) muffler" on the end loader must also be completed no later than August 1, 1992. The doors of the structure must remain closed when unloading railcars and trucks. The Board's cease and desist order of November 21, 1991 remains in effect until the new structure is completed. This docket is closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 17<sup>th</sup> day of March, 1992 by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board