

ILLINOIS POLLUTION CONTROL BOARD
September 7, 1995

MR. LEW D' SOUZA and)
MRS. PATRICIA D' SOUZA,)
)
Complainants,)
)
v.) PCB 96-22
) (Enforcement - Noise)
MR. RICHARD MARRACCINI and)
MRS. JOANNE MARRACCINI,)
)
Respondents.)

ORDER OF THE BOARD (by J. Yi):

This matter is before the Board pursuant to a complaint filed August 1, 1995 by Mr. and Mrs. D'Souza, the complainants, against Mr. and Mrs. Marraccini, the respondents. The complaint alleges that the respondents violated Section 23 and 24 of the of the Environmental Protection Act (Act) and the Board's noise emission level regulations set forth at 35 Ill. Adm Code 900.102, in the operation of their central air conditioning unit (unit) located at the side of the their house at 552 Delmar Court, Elk Grove Village, Illinois. (415 ILCS 5/23 and 5/24 (1994).) On August 10, 1995 the respondents filed a motion to dismiss the complaint as being frivolous. Pursuant to Section 31(b) of the Act the Board must make a determination as to whether the complaint filed is frivolous or duplicitous. (415 ILCS 5/31(b) (1994).)

The bases for the respondents' motion to dismiss are: a previous unit was replaced in 1994 by the current unit; the Village of Elk Grove "...verified that there were no violations in relation to the unit's location"; a decibel reading that was taken by respondent did not exceed 55; and, that the respondents have done everything to find a solution to the complainants' complaints. (Mot. at 1-2.)¹

On August 28, 1995, the complainants filed a response to the motion to dismiss. The complainants state that the relief requested is well within the Board's authority to grant and therefore is not frivolous pursuant to the Board's own definition. In addition the complainants state that they were not served by the motion to dismiss.

The Board, on numerous occasions, has in its opinions discussed the meaning of frivolous and duplicitous in the context of citizen enforcement actions. In Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973) PCB 73-173, 8 PCB 46, we held that "frivolous" is the "failure to state a cause of action upon which relief can be granted." In Farmers Opposed to Extension of the Illinois Tollway v. Illinois State Toll Highway Auth., (September 16, 1971) PCB 71-159, 2 PCB 119, we held that the "frivolous" provision is designed to avoid expensive and time-consuming hearings on claims that cannot prevail even if the facts alleged are true." After examining our holdings in Citizens for a Better Environment and Farmers, and additionally, Webster's dictionary², the appellate court determined in

¹The respondents motion to dismiss will be referenced as "Mot. at ".

² Webster's Third New Dictionary 913 (1971) defined "frivolous" as "of little weight or importance: having no

Winnetkans Interested in Protecting the Environment (WPE) v. Illinois Pollution Control Board, 13 Ill. Dec. 149, 153, 370 N. E. 2d 1176 (1st Dist. 1977), that a "frivolous" pleading is "one that is either legally or factually deficient."

The instant complaint requests that the Board issue an order directing respondents to cease and desist from the alleged violations, and to reduce the noise by relocating the unit to a more suitable location. The Board has the authority to grant such relief if the alleged facts are proven at hearing. Therefore the Board finds that the complaint is not frivolous and denies the respondent's motion to dismiss. Although the Board is finding that the complaint is not frivolous, we are not making a finding as to the merits of the complaint. The Board will make its determination based on the evidence presented at the hearing. It should be noted that even if there is no violation of the Board's numerical noise emission standards established in 35 Ill. Adm. Code 900.102, a nuisance violation of Section 24 of the Act may still be found.

On the issue of "duplicitous", in the case of Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263, we held:

Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate allegations identical or substantially similar to matters previously brought before the Board. (Citation omitted.) A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum

In League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970) PCB 70-1,1 PCB 35, the Board held "that the reason for the prohibition of duplicitous complaints is the apprehension that private citizens' complaints might flood the Board with too many cases raising the same issue and [might] unduly harass a respondent.'" WPE v. IPCB, 13 Ill. Dec. at 153, citing League of Women Voters, at 36.

The complainant states that there are no other cases arising from the same issue in another forum or court. The Board is unaware of any other cases arising from the same issue therefore the Board finds the complaint is not duplicitous and this matter is directed to hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding the credibility of witnesses and all actual exhibits to the Board within five days of the hearing.

If after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date in conformance with the schedule above. The hearing

basis in law or fact...."

officer and the parties are encouraged to expedite this proceeding as much as possible.

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 ____ day of _____, 1995, by a vote of _____.

Dorothy M Gunn, Clerk
Illinois Pollution Control Board