

ILLINOIS POLLUTION CONTROL BOARD
January 7, 1982

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,)
)
 v.) PCB 80-114
)
 FRED A. KRAEMER, d/b/a)
 CAROL'S SPEAKEASY,)
)
 Respondent.)

MR. WILLIAM J. BARZANO, JR., ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. ALLEN S. GABE, ATTORNEY AT LAW, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by N.E. Werner):

This matter comes before the Board on the June 2, 1980 Complaint brought by the People of the State of Illinois.

Count I of the Complaint alleged that, from April 17, 1979 until June 2, 1980, the Respondent, Fred A. Kraemer, d/b/a Carol's Speakeasy ("Kraemer"), allowed the emission of sound beyond the boundaries of his property continuously causing noise pollution which unreasonably interfered with the use and enjoyment of neighboring property in violation of Rule 102 of Chapter 8: Noise Regulations ("Chapter 8") and Section 24 of the Illinois Environmental Protection Act ("Act").

Count II alleged that, from April 17, 1979 until June 2, 1980 (including, but not limited to, April 17, 1979, August 23, 1979, November 17, 1979, and May 3, 1980), Kraemer allowed impulse sound in excess of allowable sound levels to be emitted from a property-line-noise source located on the Respondent's property (Class B) to different points measured within residential property (Class A) in the vicinity of Kraemer's property during the nighttime hours in violation of Rule 206 of Chapter 8 and Section 24 of the Act.

A hearing was held on July 20, 1981 at which an unsigned Stipulation and Proposal for Settlement, which was substantially identical to the subsequently signed Stipulation (except that the amount of the proposed monetary penalty was left open), was initialed by counsel for the Respondent and by the Assistant Attorney General, examined by interested members of the public, and incorporated into the hearing record. (R. 3-4). Nine members of the public testified at this hearing. The parties filed a signed Stipulation and Proposal for Settlement on December 2, 1981.

The Respondent operates a disco bar known as Carol's Speakeasy which is located at 1355 N. Wells Street in Chicago, Illinois. At this establishment, music is "broadcast over speakers at various sound levels", and the "Respondent controls the sound levels at which the music is broadcasted by the use of an amplification system". (Stip. 2).

In response to numerous complaints by neighboring residents, the Illinois Environmental Protection Agency conducted noise surveys on April 17, 1979, August 23, 1979, November 17, 1979, May 3, 1980, October 15, 1980, November 1, 1980, and February 7, 1981 which indicated that Kraemer's bar was emitting excessive levels of noise. (See: Exhibits A through G).

At the hearing, nine witnesses testified to the effect that: (1) the loud, raucous music from Carol's Speakeasy has been extremely disturbing and extensive in duration (i.e., from about 10:00 P.M. in the evening until 5:00 A.M. in the morning, seven days a week, for the last 4 years); (2) the use and enjoyment of nearby property has been severely restricted by the continuous, repetitive thumping beat of loud disco music; (3) the health of individuals has been adversely affected (including loss of sleep, depression, anxiety, insomnia, necessity for tranquilizers, etc.); (4) the noise problems have rendered neighboring properties almost unmarketable; (5) their attempts to have the Respondent eliminate the noise pollution have been futile; and (6) they feel that the Respondent has not acted in "good faith" to rectify matters. (R. 5-63).

The parties have stipulated that the homeowners who have been disturbed by excessive noise from the Respondent's bar have priority of location (i.e., they have lived in their homes long before Kraemer began his operations at 1355 N. Wells Street). (Stip. 3). Additionally, it is stipulated that Kraemer now "has taken various measures in an attempt to reduce the noise emitted from his facilities." (Stip. 3).

The proposed settlement agreement provides that the Respondent: (1) neither admits nor denies the allegations contained in the Complaint; (2) agrees to cease and desist from further violations; (3) agrees to "limit the noise emissions from his establishment to a maximum level of 5 dB(A) below the maximum levels established by Noise Pollution Rules 203 and 206"; (4) agrees to develop and implement an effective program to control noise emissions; and (5) agrees to pay a stipulated penalty of \$3,000.00 in specified installments. (Stip. 3-5).

In evaluating this enforcement action and proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Act. The Board finds the settlement agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act.

Accordingly, the Board finds that the Respondent, Fred A. Kraemer, d/b/a Carol's Speakeasy, has violated Rules 102 and 206 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act. The Respondent will be ordered to cease and desist from further violations, follow the requisite compliance program, and pay the stipulated penalty of \$3,000.00 in specified installments.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondent, Fred A. Kraemer, d/b/a Carol's Speakeasy, has violated Rules 102 and 206 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act.

2. The Respondent shall cease and desist from further violations.

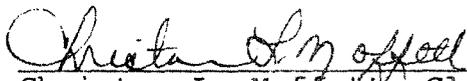
3. Within 30 days of the date of this Order, the Respondent shall, by certified check or money order payable to the State of Illinois, pay the first installment of \$1,000.00 on the stipulated penalty of \$3,000.00 (and subsequently make payments of \$500.00 every 30 days thereafter until the entire penalty of \$3,000.00 has been paid in full, with the first \$500.00 installment being due and payable no later than 30 days after the payment of the initial \$1,000.00), which is to be sent to:

Illinois Environmental Protection Agency
Fiscal Services Division
2200 Churchill Road
Springfield, Illinois 62706

4. The Respondent shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed on December 2, 1981, which is incorporated by reference as if fully set forth herein.

5. The Board retains jurisdiction of this matter.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 4th day of January, 1982 by a vote of 4-0.


Christan L. Moffett, Clerk
Illinois Pollution Control Board