

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

BRIAN J. PETER,)
)
 Complainant,)
)
 v.) PCB 89-151
) (Enforcement)
 GENEVA MEAT AND FISH MARKET and)
 GARY PIKULSKI,)
)
 Respondent.)

ORDER OF THE BOARD (by R. C. Flemal):

This matter comes before the Board upon the July 30, 1990 Motion to Dismiss filed by Respondent. No response has been filed by Complainant. Today, the Board denies Respondent's motion to dismiss for the reasons set forth below.

Pertinent parts of the history of this proceeding are necessary to reiterate here. On March 22, 1990 the Board found, *inter alia*, that Respondent had violated 35 Ill. Adm. Code 900.102 and 901.102 of the Board's noise regulations and ordered Respondent to cease and desist from violations of the Board's regulations. Paragraph 2 of that order required Respondent to submit a report describing noise abatement alternatives not later than April 30, 1990, and to demonstrate compliance not later than June 15, 1990. Paragraph 2 of that Order further required Respondent to send Complainant a copy of the report.

On April 27, 1990, Respondent submitted a report indicating that it has installed a three-sided plywood enclosure with a roof around the rooftop condensers. Respondent also had ninety-degree elbows fitted to the exhausts of the heat pumps, and disconnected three rooftop air-cooled condensers. Respondent also submitted results of noise measurements taken since installation of the abatement devices which show substantial noise reductions.

After receipt of a letter from Complainant* contesting the information contained in Respondent's April 27 report, on May 24, 1990, the Board ordered Respondent to respond to the letter and certain questions. Such responses were also to be received by the Board not later than June 15, 1990. On June 14, 1990,

* Complainant's May 19, 1990 letter was later supported by affidavit filed June 15, 1990.

Respondent filed a motion, stating that it believes that it has complied with the requirements of the March 22, 1990 Board Order, but asked for additional time until July 31, 1990 to demonstrate compliance to the Board, and to respond to the letter and questions. The Board granted the motion for additional time by Board Order of May 24, 1990.

In its present motion, Respondent elects to stand on the March 23, 1990 Shriner & Associates report which Respondent submitted to the Board on April 27, 1990, as evidence of compliance with the Board's noise regulations. The Respondent states that the "report indicates substantial compliance with the Illinois Nighttime Regulations"**. .

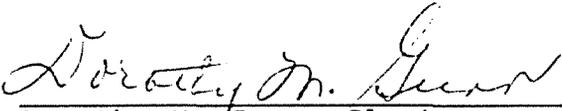
The March 23, 1990 report indicates that noise levels in excess of the Illinois Nighttime Regulations were recorded on January 13, 1990 at Octave Band Center Frequency, Hz Levels 63, 125, 250, 500, 1000, 2000, 4000, 8000, and A. The report further indicates that certain devices were installed and the structure was altered prior to a March 19, 1990 recording. The report indicates that on March 19, 1990 noise levels in excess of the Illinois Nighttime Regulations were recorded at Octave Band Center Frequency, Hz Levels 63, 125, 500, and A. In his letter, Complainant notes these March 19 levels and argues that that Section 900.102 does not allow any sound emission to cross his property lines which exceeds any allowable octave band pressure level as specified in the tables.

Respondent and Shriner & Associates characterize the March 19 measurements as indicating "substantial compliance" with the Board regulations. Rather, the Board finds that the March 19 measurements show reductions have been achieved, but non-compliance with the regulations is still indicated. Respondent's motion to dismiss is accordingly denied. Respondent is ordered to cease and desist from violations of 35 Ill. Adm. Code 900.102 and 901.102 and is further ordered to submit a report to the Board and Complainant which demonstrates compliance with all applicable Board regulations not later than September 15, 1990.

IT IS SO ORDERED.

** In response to additional Board queries, an affidavit was submitted with the motion in which the affiant states that one additional exhaust fan was installed which will only be operated during daylight hours. The Respondent in its motion further states that no additional equipment is operated during applicable nighttime hours.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above and Order was adopted on the 30th day of August, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board