

ILLINOIS POLLUTION CONTROL BOARD
January 7, 1999

JEAN S. DIXON,)
)
Complainant,)
)
v.) PCB 99-64
) (Enforcement - Noise, Citizens)
JOSEPH BEHR & SONS, INC.,)
)
Respondent.)

ORDER OF THE BOARD (by M. McFawn):

On November 12, 1998, complainant Jean S. Dixon filed a complaint with the Board alleging a violation of 35 Ill. Adm. Code 900.102 against respondent Joseph Behr & Sons, Inc. The basis of the complaint is noise from operation of a scrap processing facility near complainant's home. On November 13, 1998, respondent filed a letter in response to the complaint asking that the complaint be dismissed as frivolous.

Section 103.124(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80.

Nothing before the Board indicates that there is an identical or similar matter pending in another forum. The Board cannot find that the complaint is duplicitous.

The allegations in the complaint, if proven, could support a finding of a violation of Section 900.102 by respondent. Complainant asks the Board to order respondent to cease operations in close proximity to residents. This relief is within the Board's broad grant of authority to fashion a remedy for a violation. See 415 ILCS 5/33(a) (1996). Respondent in its response identifies several facts which, if proven, could impact the determination of whether a violation has occurred, but these are factual matters which can only be resolved based on evidence. In its current analysis, the Board considers only the complaint and its legal sufficiency. Respondent has not identified any legal defect in the complaint. The Board concludes that the complaint is not frivolous.

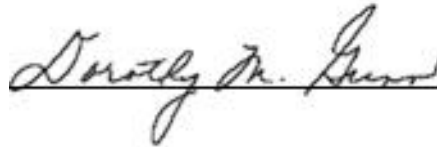
The Board accordingly accepts this matter for hearing. The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's procedural rules. The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and the location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. 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 all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing 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 7th day of January 1999 by a vote of 5-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", is written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board