

ILLINOIS POLLUTION CONTROL BOARD  
May 27, 1982

MRS. LUCILLE WATHEN, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 81-185  
 )  
 MR. HAROLD HOGAN, )  
 )  
 Respondent. )

OPINION AND ORDER OF THE BOARD (by J.D. Dumelle):

This matter comes before the Board upon the November 18, 1981 filing of a citizen's complaint by Lucille Wathen alleging that Harold Hogan's central home air-conditioning unit located at 2442 Robincrest Lane in Glenview, Cook County emits sound beyond the boundaries of her property in violation of Rule 102 of Chapter 8: Noise Pollution. Mrs. Wathen alleged that the noise disturbs sleep and causes irritability, illness, anger and stress to her family. Hearing was held on February 23, 1982.

The Wathen and Hogan residences have adjoining back yards and the Hogan's air-conditioning unit is behind their house (R. 4 and Comp. Ex. 8). The unit was installed in 1977 and caused immediate complaints by the Wathens (R. 36). In 1978 the Hogans erected a "sound barrier" (R. 37 and Resp. Ex. 2) consisting of wooden shutters approximately the same height as the air conditioner placed in an "L" configuration on the two sides of the unit which do not face the Hogan's house (R. 43 and Resp. Ex. 2). This partially solved the problem (R. 37 and Resp. Ex. 1).

The Illinois Environmental Protection Agency (Agency) conducted noise tests on July 12, 1979, and July 8, 1981 at various sites on the Wathen's property. All tests were conducted during the day. The results showed that some frequencies exceeded the daytime limits for emissions to Class A land and most exceeded the nighttime limits (Comp. Exs. 3 and 7). While those Rule 202 limitations do not apply to sound emitted from residential property since such emissions are excepted from Rule 202 by Rule 208(a), the tests do provide some evidence that the emissions in this case are unreasonable.

Mrs. Wathen testified that the emissions unreasonably interfered with her enjoyment of her property, made her irritable and disturbed her sleep (R. 4-5). Her daughter, Grace; and her

husband suffer from similar problems with the noise (R. 5, 32, 33 and Comp. Ex. 1). The Wathen's were, in fact, disturbed enough by the noise to offer to pay the costs for the materials needed to construct a solid plywood barrier (R. 48-9).

The only evidence rebutting this testimony is Mrs. Hogan's assertion that the noise does not disturb her even though the air conditioner is directly under her bedroom window and that the noise may be coming from other air conditioners in the area (R. 42-43). However, she is protected from the noise by double windows (R. 45) and the Agency's test results clearly identify the noise source as the Hogan's air conditioner.

The Board stated in the adopting Opinion of the Noise Regulations (R. 72-2, 8 PCB 703, 25; July 31, 1973) that "although our jurisdiction would cover disputes between residential neighbors, we feel that local authorities may be better suited in terms of providing an immediate solution to the problem." However, the case is before the Board, the Board has jurisdiction, and it is the Board's duty to decide it. The weight of the evidence is that there has been an unreasonable interference and that Rule 102 has been violated. The Board finds that unreasonable interference has been proven based on the standards in Section 33(c) of the Act. First, sleeping habits were disturbed and customary uses of private property were interrupted. Second, although the pollution source has value, its worth is diminished because of its interference with the normal activities of others. Third, although the source is suitably located, emissions began after the Wathens were living in their home. Fourth, technically practical and economically reasonable means do exist to limit the noise emissions. Based on all these facts, the Board concludes that unreasonable interference under Rule 102 of Chapter 8 has been established.

In determining an appropriate remedy, the Board notes the neighborhood nature of the difficulties and the fact that the harm caused is not severe. Mr. Hogan must make reasonable efforts to reduce the emissions. There is testimony that this can be accomplished by, for example, installing a solid plywood barrier or baffle a few feet from the unit of a height at least one foot higher than the unit to deflect the emissions back towards his own property. Other procedures calculated to achieve the same result could also be carried out.

The Board further notes that if a new barrier is installed, it should extend to the house walls and some sort of sound insulation material may be necessary on the inside of the barrier. Since Mr. Hearn, an Agency employee, indicated that there may be some difficulties in structuring a barrier in this case (R. 27-31), Mr. Hogan should attempt to obtain some expert advice on barrier construction, if that is how he intends to comply.

This constitutes the findings of fact and conclusions of law of the Board.

ORDER

IT IS THE ORDER of the Pollution Control Board that:

1. Mr. Hogan is in violation of Rule 102 of Chapter 8: Noise Pollution.
2. Mr. Hogan shall cease and desist violating Rule 102 of Chapter 8 within 60 days of the date of this Order.
3. Mr. Hogan shall carry out appropriate methods to limit the noise emissions from his property. Such procedures shall be completed within 60 days of the adoption of this Order.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 27<sup>th</sup> day of May, 1982, by a vote of 5-0.

Christan L. Moffett  
Christan L. Moffett, Clerk  
Illinois Pollution Control Board