

ILLINOIS POLLUTION CONTROL BOARD  
November 1, 2001

ILA M. NEATHERY and DENISE C. FLECK, )  
 )  
Complainants, )  
 )  
v. )  
 ) PCB 02-14  
GREG and KAREN BOUILLON d/b/a ) (Citizens Enforcement – Noise)  
THIRSTY’S, and TERRILL L. and SARAH E. )  
LOVING, )  
 )  
Respondents. )  
 )

ORDER OF THE BOARD (by T.E. Johnson):

On September 20, 2001, the Board issued an order accepting this case for hearing and denying respondents Greg and Karen Bouillon d/b/a Thirsty’s motion to dismiss. Due to an administrative error, the order did not include respondents Terrill L. and Sarah E. Loving (Lovings). This order reflects the correct caption and determines whether the complaint against the Lovings is duplicitous or frivolous.

**DUPlicitous/FRIVOLOUS DETERMINATION**

Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2000)) allows any person to file a complaint with the Board. Section 31(d) further provides that “[u]nless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing.” *Id.*; see also 35 Ill. Adm. Code 103.212(a). A complaint is duplicitous if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint is frivolous if it requests “relief that the Board does not have the authority to grant” or “fails to state a cause of action upon which the Board can grant relief.” *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicitous or frivolous. 35 Ill. Adm. Code 103.212(b). The Lovings have filed no motion. No evidence before the Board indicates that the complaint against the Lovings is duplicitous or frivolous.

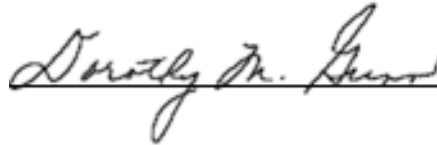
**CONCLUSION**

The Board accepts the complaint for hearing. See 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.212(a). A respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if the Lovings fail within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the Lovings to have admitted the allegation. 35 Ill. Adm. Code 103.204(d).

A hearing is currently scheduled for December 4, 2001. The Board directs the hearing officer to proceed expeditiously to hearing, and to ensure that the Lovings are in receipt of all orders and pleadings. The hearing officer is also directed to resolve any other issues resulting from the September 20, 2001 Board order.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 1, 2001, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board