

ILLINOIS POLLUTION CONTROL BOARD
August 23, 2001

GERRY BLOHM,)
)
 Complainant,)
)
 v.) PCB 01-169
) (Enforcement - Noise, Citizens)
 DOMINICK'S FINER FOODS,)
)
 Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

This matter comes before the Board on a June 15, 2001 filing of a citizens' complaint by Gerry Blohm against Dominick's Finer Foods (Dominick's). Respondent did not file a motion alleging that the complaint was duplicitous or frivolous within the allotted 30 days nor did respondent file an answer within 60 days. See 35 Ill. Adm. Code 103.204(d), 103.212(b). Therefore, the Board makes its determination here based on the allegations in the complaint.

The Board finds that the noise pollution allegations in this matter are not duplicitous or frivolous and therefore accepts those allegations for hearing.

BACKGROUND

Blohm resides at 520 Ski Hill Road in Fox River Grove, Lake County, Illinois. Dominick's owns a nearby store. Blohm alleges that Dominick's rooftop ventilation/air conditioning / refrigeration equipment and its loading dock operations cause noise pollution. Complainants object to the "constant" noise from the rooftop equipment. With respect to loading dock operations, Blohm specifically objects to truck back-up signals, diesel engine operation, and bangs and crashes from the loading and unloading delivery trucks early in the morning and occasionally late in the evening. Blohm further alleges that the noise pollution disturbs his sleep, endangers his family's emotional health and well-being, and depresses the value of his property.

Blohm claims that Dominick's is violating Section 24 of the Environmental Protection Act (Act), and Sections 900.102, 901.102(a), and 901.102(b) of the Board's regulations. 415 ILCS 5/24 (2000); 35 Ill. Adm. Code 900.102, 901.102(a), and 901.102(b).

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 31(d) of the Act and Section 103.212(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.212(a). If the complaint is duplicitous or frivolous, the Board shall enter an order setting forth reasons for so ruling and shall inform the parties of its

decision. The parties may file motions regarding the insufficiency of the pleadings if the Board rules that the complaint is neither duplicitous nor frivolous. See 35 Ill. Adm. Code 101.506.

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or any other forum. 35 Ill. Adm. Code 101.202; Walsh v. Kolpas (September 23, 1999), PCB 00-35; Brandle v. Ropp (June 13, 1985), PCB 85-68. Nothing in the complaint indicates that this action has been brought before another forum. The complaint is not duplicitous.

Frivolous

A complaint before the Board 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. 35 Ill. Adm. Code 101.202; People v. State Oil (August 19, 1999), PCB 97-103, slip op. at 3; Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80.

Complainant alleges facts which, if proved at hearing, could result in a finding of noise pollution. The Board has the authority to grant relief from the alleged noise pollution provisions of the Act and the regulations if the facts are proved at hearing.

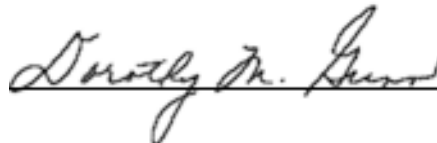
CONCLUSION

The Board finds that, pursuant to Section 31(d) of the Act and Section 103.212(a) of its procedural rules, the noise pollution allegations at Section 24 of the Act and Sections 900.102, 901.102(a), and 901.102(b) of the Board's rules are neither duplicitous nor frivolous. These allegations will be accepted for hearing.

The hearing in this matter must be scheduled and completed in a timely manner consistent with Board practices. 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 23rd day of August 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board