

ILLINOIS POLLUTION CONTROL BOARD
December 16, 1976

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 75-471
)
 R. H. LINCOLN, INC.,)
 an Illinois corporation,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by Mr. Zeitlin):

The Complaint in this matter was filed by the Environmental Protection Agency (Agency) on December 15, 1975, charging Respondent R. H. Lincoln, Inc. (Lincoln) with violation of Section 24 of the Environmental Protection Act (Act) and Rule 202 of the Board's Noise Regulations. Ill. Rev. Stat., Ch. 111-1/2, §1024 (1975); Ill. PCB Regs., Ch. 8, Rule 202 (1973). Those violations were alleged to have occurred in Lincoln's operation of an automatic car wash at 539 Woodlawn, Lincoln, Logan County, Illinois, from August 10, 1974 through the filing of the Complaint.

A hearing was held on July 9, 1976, at which the parties announced their intent to file a Stipulation and Proposed Settlement pursuant to Rule 333 of the Board's Procedural Rules. Ill. PCB Regs., Ch. 1, Rule 333. The remainder of that hearing was used to take citizen testimony from Mr. and Mrs. James Malerich, who live adjacent to Lincoln's car wash.

The Stipulation and Proposed Settlement was filed by the parties on July 20, 1976. In the Proposed Settlement, Lincoln expressly admits violations of Rule 202 and, therefore, violation of §24 of the Act, and agrees to construct a noise barrier expected to abate those violations. Both parties reserved agreement on the issue of whether a penalty should be imposed and submitted written arguments accordingly.

To assess the effectiveness of the noise barriers which were agreed to in that Stipulation and Proposed Settlement, the Board on September 2, 1976, entered an Interim Order requesting additional noise level measurements. Those measurements were in fact made, and the parties submitted a Supplemental Stipulation based on the results. The parties did not amend their Proposed Settlement in the Supplemental Stipulation.

In determining the acceptability of the Proposed Settlement, we have examined the magnitude of the admitted violations, the nature and extent of Respondent's corrective measures, timing of such measures, and their effectiveness.

Lincoln's first abatement attempts were instituted only after the instant proceedings were initiated. The installation of a muffler was completed at the time of an Agency sound level measurement taken on March 1, 1976. The results of the muffler installation are shown in the following table, along with previous measurements made before any corrective work.

<u>OCTAVE BAND CENTER FREQUENCY (HERTZ)</u>	<u>RULE 202 LIMITS</u>	<u>FEB. 13, 1975 MEASUREMENTS</u>	<u>OCT. 21, 1975 MEASUREMENTS</u>	<u>MARCH 1, 1976 MEASUREMENTS</u>
31.5	72	64	63	63
63	71	76	68	67
125	65	62	67	66
250	57	63	65	63
500	51	69	67	66
1000	45	70	70	65
2000	39	68	68	63
4000	34	60	62	56
8000	32	48	52	46

Under the terms of the July 20, 1976, original Stipulation and Proposed Settlement, Lincoln performed the following abatement work:

1. Construction of a 16-foot extension on the car wash facility, lined with acoustical absorbing material, and with acoustical baffles protruding from the walls and ceiling; and
2. Construction of an acoustical barrier 9 feet high by 15 feet long, separating the car wash from the adjacent property.

That construction achieved the following results:

<u>Octave Band Center Frequency (Hz)</u>	<u>Rule 202 Limits (dB)</u>	<u>Ambient (dB)</u>	<u>Site 3 - 4</u>	<u>Site Ø - *</u>
31.5	72	59	64	64
63	71	68	68	65
125	65	57	63	62
250	57	53	60	55
500	51	48	52	49
1000	45	49	51	50
2000	39	48	46	47
4000	34	39	39	39
8000	32	31	43	34

It must be noted that after adjustment for ambient noise, minor possible violations remain at site "Ø - *," at three octave band center frequencies. We feel, however, that these are de minimus, particularly in light of the fact that Mr. and Mrs. Malerich indicated, at the July 9, 1976 hearing, that they would be satisfied by the abatement construction indicated above, and the Malerich's indication in the Supplemental Stipulation -- after the fact -- that Lincoln's compliance efforts have completely satisfied them. Inasmuch as the Malerich's were the only complaining witnesses, and reside on the only property which has been, or might be, adversely impacted by noise from Lincoln's car wash, we find the Proposed Settlement acceptable.

In determining whether a penalty is warranted, we note that the admitted violations were severe, and included substantial deviations from the Rule 202 standards for sound transmitted from Class B land (the car wash) to Class A land (surrounding residences). In addition, testimony indicates that the noise emitted from Lincoln's car wash seriously interfered with the enjoyment of life and property. The Malerich's were forced to forego the use of their yard, and were forced to use air conditioning when not needed, (R. 17).

Balancing those violations against the good faith shown by Lincoln since the institution of this case, and the marked abatement of noise emissions from the car wash, we find that a penalty is warranted. Inasmuch as Respondent introduced no mitigating testimony except as noted above, for our consideration under §33(c) of the Act, and has admitted violation of Rule 202 and §24 of the Act, we feel that a \$200.00 penalty is necessary to promote timely and complete compliance with the Act and our Regulations.

This Opinion constitutes the findings of fact and conclusions of law of the Board in this matter.

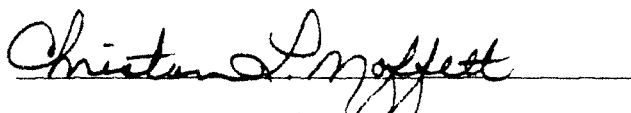
ORDER

IT IS THE ORDER OF THE POLLUTION CONTROL BOARD that:

1. Respondent R. H. Lincoln, Inc., is found to have operated its automatic car wash in Lincoln, Illinois, so as to emit excessive sound levels to receiving residential property in violation of Rule 202 of the Board's Noise Pollution Regulations and Section 24 of the Environmental Protection Act.

2. Respondent R. H. Lincoln, Inc., shall pay the sum of Two Hundred Dollars (\$200.00) as a civil penalty for past violations of the Noise Pollution Control Regulations.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 16th day of December 1976, by a vote of 5-0.

A handwritten signature in cursive script, reading "Christan L. Moffett", written over a horizontal line.

Christan L. Moffett, Clerk
Illinois Pollution Control Board