

ILLINOIS POLLUTION CONTROL BOARD
October 18, 1979

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-193
)
VALLEY VIEW PUBLIC SCHOOLS,)
COMMUNITY UNIT DISTRICT NO. 365U,)
)
and)
)
CAPITAL DEVELOPMENT BOARD OF THE)
STATE OF ILLINOIS,)
)
Respondents.)

MR. WILLIAM E. BLAKNEY, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

MR. GEORGE A. MARCHETTI, APPEARED ON BEHALF OF RESPONDENT VALLEY VIEW PUBLIC SCHOOLS, COMMUNITY UNIT DISTRICT NO. 365U.

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

This matter comes before the Board on the July 24, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency"). On October 3, 1978, Respondent Valley View Public Schools, Community Unit District No. 365U ("School District") filed a Motion to Join an Additional Party which requested that the Illinois Capital Development Board be joined as a party-respondent on the ground that, under state law, the Capital Development Board alone has the power to correct any defects in the construction of the air conditioning compressor at the elementary school (which allegedly emitted sounds above allowable levels), since the Capital Development Board prepared the plans, supervised the construction, and constructed the Independence School ("facility"). See: Capital Development Board Act, Ill. Rev. Stat., Ch. 127, Sections 771 et seq. (1977). In essence, the School District indicated that it had no authority to correct the problem, because the physical plant of the facility is beyond the School District's jurisdiction (i.e., jurisdiction by statute has been vested in another State agency - the Illinois Capital Development Board). On October 5, 1978, the Hearing Officer in this case filed a Report on the Pre-Hearing Conference between representatives of the School District, the Illinois Attorney General's office, and the Illinois Capital Development Board.

On November 3, 1978, the Agency filed its Motion for Leave to File an Amended Complaint, Instantly and the Amended Complaint (which named the Illinois Capital Development Board as a Respondent). Count I of the Amended Complaint alleged that, from May 5, 1977 until the date of filing of the Amended Complaint, the Respondents allowed the operation of an air conditioning unit to emit sounds beyond the boundaries of the Independence School onto nearby residential property in violation of Rule 202 of Chapter 8: Noise Regulations. Count II of the Amended Complaint alleged that the noise emitted from the air conditioning unit unreasonably interfered with the enjoyment of life and with the lawful activities of neighboring residents thereby causing noise pollution in violation of Rule 102 of Chapter 8: Noise Regulations. On November 16, 1978, the Board granted the Agency leave to file the Amended Complaint. Concurrently, on November 16, 1978, the School District filed a Motion to Dismiss the Amended Complaint as to party-respondent Valley View Community Unit District No. 365U. On November 28, 1978, the Agency filed an Objection to the Motion to Dismiss the Amended Complaint as to party-respondent Valley View. On November 30, 1978, the Board denied the School District's Motion to Dismiss the Amended Complaint.

After various motions for continuances were granted, a hearing was held on June 7, 1979. At the hearing, the parties indicated that more time was needed to secure the approval of public funds to correct the defect in the original design of the air conditioning unit and requested that the hearing be recessed for a period not to exceed 45 days. On July 24, 1979, another hearing was held in which the parties indicated that a Stipulation of Facts and Proposal for Settlement had been reached. However, no court reporter attended or transcribed this hearing. On July 31, 1979, the Hearing Officer filed a Report of Proceedings in lieu of a court reporter's transcript pertaining to the July hearing. On August 23, 1979, the Board entered an Interim Order which remanded this case to the Hearing Officer for the scheduling of another hearing to take place within the presence of a court reporter. On September 27, 1979, a hearing was held which was duly transcribed by a court reporter. The parties filed the Stipulation and Proposal for Settlement on October 2, 1979.

Valley View Public Schools, Community Unit District No. 365U, operates the Independence School which is located at 230 Orchard Drive in Bolingbrook, Will County, Illinois. The Capital Development Board of the State of Illinois was added as a Respondent in this case because, pursuant to state law, it possesses the statutory responsibility for construction and repair (or supervision thereof) at the Independence School.

The elementary school is located in a primarily residential neighborhood on land that is classified as Class A under Rule 201(a) of Chapter 8: Noise Regulations. (See: Exhibit A of the Stipulation

of Facts and Proposal for Settlement). The air conditioning unit generally operates five days a week, during the summer period between May 1 and September 30, from 7:30 A.M. to 4:00 P.M. daily. This air conditioning unit is located at the northwest corner of the school at ground level and constitutes a property-line-noise source which is capable of emitting sounds beyond the boundaries of the property. (See: Exhibit A).

The Agency was contacted during mid-September of 1976 by nearby residents who complained of being disturbed by noise emanating from the school's air conditioning unit. (Stip. 3). On May 5, 1977, the Agency conducted a noise survey to measure the level of noise emissions from the air conditioning unit to adjacent residential property. This noise survey revealed that the noise emissions from the air conditioning unit were in excess of the limits prescribed of the Board's Noise Regulations. (See: Exhibit B). On September 8, 1978, the Respondent Capital Development Board completed its noise control insulation work on the school's air conditioning unit. (See: Exhibit C). However, a noise survey conducted by Agency inspectors on September 13, 1978 indicated that this installation did not lower the noise emitted by the school's air conditioning unit to acceptable levels. (See: Exhibit D).

The proposed settlement agreement provides that the Respondents agree to: (1) promptly construct an acoustic barrier structure, with silencer, which will enclose the school's air conditioning unit; (2) install sound panels to the facility's masonry wall within the area enclosed by the acoustic structure, if noise measurements conducted by the Agency indicate that such additional steps are necessary to reduce noise to acceptable levels, and (3) to accomplish further sound reductions, if necessary, to meet the requirements of Rule 202 of the Board's Noise Regulations. The Agency has agreed to promptly conduct the requisite noise measurements after being notified by the Respondents that the necessary construction has been completed. The parties believe that no penalty should be imposed in the present case. (Stip. 8).

In evaluating this enforcement action and proposed settlement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of Illinois Environmental Protection Act. The Board finds the stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondents have violated Rules 102 and 202 of Chapter 8: Noise Regulations. The Respondents are hereby directed to follow the compliance program and schedule set forth in the Stipulation and Proposal for Settlement. No penalty shall be assessed against the Respondents.

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

ORDER

It is the Order of the Illinois Pollution Control Board that:

1. The Respondents have violated Rules 102 and 202 of Chapter 8: Noise Regulations.
2. The Respondents shall comply with all the terms and conditions of the Stipulation and Proposal for Settlement filed October 2, 1979, which is incorporated by reference as if fully set forth herein.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order were adopted on the 18th day of October, 1979 by a vote of 4-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board