

ILLINOIS POLLUTION CONTROL BOARD
April 2, 1981

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Complainant,)
)
v.) PCB 78-299
)
QUINCY FOODS, INC.,)
an Illinois corporation,)
)
Respondent.)

BRIAN E. REYNOLDS, ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF THE COMPLAINANT.

AWERKAMP AND McCLAIN, ATTORNEYS AT LAW (LUCINA AWERKAMP, OF COUNSEL), APPEARED ON BEHALF OF THE RESPONDENT.

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

This matter comes before the Board on the December 4, 1978 Complaint brought by the Illinois Environmental Protection Agency ("Agency").

Count I of the Complaint alleged that, from April 20, 1978 until the date of filing of the Complaint (including, but not limited to, May 8, 1978; May 23, 1978; and August 14, 1978), the Respondent operated its grocery store in such a manner as to cause or allow the emission of sound beyond the boundaries of its property so as to unreasonably interfere with the enjoyment of life and lawful activities of persons in proximity to the Respondent's property in violation of Rule 102 of Chapter 8: Noise Regulations ("Chapter 8") and Section 24 of the Illinois Environmental Protection Act ("Act").

Count II of the Complaint alleged that, from May 8, 1978 until the date of the filing of the Complaint (including, but not limited to, May 8, 1978; May 23, 1978; and August 14, 1978), the Respondent caused or allowed the emission of sound to receiving Class A land (i.e., private residences to the east of the grocery store) in excess of the allowable octave band sound pressure levels (dB) in violation of Rule 202 of Chapter 8 and Section 24 of the Act.

Count III of the Complaint alleged that, from May 8, 1978 until the date of filing of the Complaint (including, but not limited to May 8, 1978; May 23, 1978; and August 14, 1978), the Respondent caused or allowed the emission of impulsive sound which exceeds the

allowable dB(A) levels in violation of Rule 206 of Chapter 8 and Section 24 of the Act.

Count IV of the Complaint alleged that, from May 23, 1978 until August 14, 1978, the Respondent caused or allowed the emission of prominent discrete tones from its rooftop compressor unit which exceeded allowable octave band sound pressure levels in violation of Rule 207 of Chapter 8 and Section 24 of the Act.

On May 18, 1979, the Agency filed a Motion for Continuance. On May 24, 1979, the Board granted the Agency's motion. On July 25, 1979, the Agency filed another Motion for Continuance. On August 9, 1979, the Board granted a continuance of 60 days to allow the parties to further negotiate and/or prepare for a hearing. The first hearing in this case was held on October 5, 1979. The parties filed their first Stipulation and Proposal for Settlement on October 11, 1979.

On November 15, 1979, the Board entered an Interim Order which rejected the proposed settlement agreement because of a questionable requirement in the Stipulation that the Respondent buy the house of the complaining neighbor. In its Interim Order, it was noted that "the Board, as a matter of general policy, is reluctant to be placed in a position where it is called upon to ratify such a sale of a residential property." A second hearing was held on February 20, 1981. The parties filed a second Stipulation and Proposal for Settlement on March 5, 1981.

The Respondent, Quincy Foods, Inc., is an Illinois corporation which owns and operates a grocery store known as Niemann Foods located at 2400 Oak Street in Quincy, Adams County, Illinois. The grocery store, which has been in the neighborhood for a long time, is located on a busy street near a residential area. (1st R. 10).* Noise problems first arose when the Respondent built a new store, adjacent to its existing store, which has one large loading dock which is located about 20 feet from the house next door. (1st R. 10). The north end of the loading dock, which is close to Oak Street, is used by smaller trucks making deliveries to the store (such as milk trucks and bread trucks). The south end of the loading dock is across from the bedroom and garage areas of a house which was, at that time, owned by Mr. and Mrs. Harry J. Sullivan. (1st R. 12; 14).

*The record of the original hearing of October 5, 1979 is designated as the first record ("1st R."), while the transcript of the second hearing of February 20, 1981 is referred to as the second record ("2nd R."). Similarly, the current Stipulation which was filed on March 5, 1981 is called the second Stipulation ("2nd Stip.").

On November 14, 1977, the Agency received a complaint from Mr. Harry J. Sullivan (who resided at 2420 Oak Street, in Quincy, Illinois) indicating that noise from the loading dock (which is within 20 feet of his house) would interfere with the enjoyment and use of his property. (1st R. 5-6). On January 26, 1978 and March 7, 1978, the Agency sent notices of a potential noise pollution problem at the grocery store to Mr. Richard Niemann, President of Quincy Foods, Inc. After the new grocery store opened in March of 1978, Mr. Niemann informed the Agency on March 9, 1978 that he would order his store employees to request that all truck drivers turn off their truck engines and refrigeration units as soon as the trucks pull up to the loading dock.

On April 20, 1978, an Agency employee, Mr. John Paulauskis, met with Mr. Niemann and Mr. Sullivan to discuss the noise problem at Niemann Foods. Mr. Niemann agreed to modify the rooftop compressor unit; issue stricter instructions to truck drivers to turn off engines and refrigeration units; to only operate the parking lot sweeper after 6 A.M.; and to build an acoustic barrier along the east property line to eliminate noise (unless Mr. Sullivan objected to this barrier). On May 8, 1978, Mr. Sullivan objected to the construction of this acoustic barrier.

On May 8, 1978 and May 23, 1978, Agency noise surveys revealed that the Respondent had exceeded allowable noise levels. Additionally, on April 20, 1978 and June 2, 1978, the Agency received complaints from two other residents that noise from the rooftop compressor unit and the early morning idling of truck engines at the loading dock of the grocery store bothered them. (1st R. 6). However, Mr. Niemann has reported that he has received similar complaints when no trucks were being unloaded and once following a sonic boom.

On August 14, 1978, an Agency noise survey revealed that the construction of an acoustic barrier around the rooftop compressor eliminated the violation of Rule 207 of the Board's Noise Regulations, but that violations of Rules 202 and 206 still existed.

Originally, it was thought that the building of an acoustic barrier wall between the loading dock at Niemann Foods and the Sullivan residence would eliminate the remaining noise problems. (1st R. 6-7). However, the parties subsequently ascertained that no such barrier wall could be built in the area they had desired because of the existence of a sewer line which was exactly under the property line between Niemann Foods and the Sullivan property. There also existed a 16 foot sewer easement by the City of Quincy stating that no permanent structure could be built on the easement. (1st. R. 7). Thus, it was not feasible to build this acoustic barrier wall between the two properties. (1st R. 7-8).

At the north end of the loading dock, which is near the street, there is now a sign posted that reads, "All truck drivers must turn off their engines while unloading." Agency inspectors have observed

that the truck drivers do turn off their engines at the north end of the loading dock, and the parties have agreed to insure that the truck drivers will continue this practice, especially in the late evening or early morning hours. Additionally, employees of Niemann Foods, during all hours of the day and night, at the north end of the loading dock, have been instructed not to aid in the unloading of trucks unless the engines are turned off. In the case of the small vans, bread trucks, and other delivery vehicles, delivery people have to be admitted through a locked door and they are not given admission until their truck engines have been turned off. (1st R. 14-15). Another potential noise problem has been averted in that the use of the parking lot sweeper has currently been discontinued. (1st R. 13).

At the second hearing, Mr. Richard H. Niemann testified that his Company voluntarily purchased the Sullivan property during late October or early November of 1979. (2nd R. 8-9). Mr. Niemann also stated that a barrier wall along the full length of the rooftop compressor unit has already been constructed, and he indicated that he understood that another noise test will be conducted by the Agency at some future date (perhaps during the summer months when the compressors are operating at their maximum levels). (2nd R. 6-7).

Additionally, Mr. Niemann testified that the Company policy is to discourage unloading of trucks at the north dock between the hours of 10.00 P.M. and 7:00 A.M. to avoid undue noise. (2nd R. 7). Although they will try to have as many trucks as possible unload their cargos at the south dock, Mr. Niemann pointed out that "there are different dock heights for different size trucks and that does create a problem" because "the south dock is geared for the taller, the bigger trucks". (2nd R. 7).

Moreover, Mr. Niemann stated that there are signs at both docks, and "signs posted in all areas" that trucks turn off their engines when deliveries are being made. (2nd R. 7-8). Verbal instructions to the drivers when they come to the docks are also given pertaining to the necessity of turning off truck engines. (2nd R. 8).

The proposed settlement agreement provides that the Respondent admits the allegations charged in the Complaint and agrees to: (1) cease and desist from further violations; (2) construct an extension to the present barrier around the rooftop compressor unit which will extend along the entire north side of the north compressor unit and be of a surface density sufficient to eliminate any violation of Rule 202 of Chapter 8; (3) cooperate with the Agency in determining the adequacy of the barrier extension; (4) "make all reasonable efforts to schedule trucks to unload at the north loading dock only between the hours of 7:00 A.M. and 10:00 P.M., and to make all reasonable efforts to schedule those trucks unloading between the hours of 10:00 P.M. and 7:00 A.M. to use the south loading dock when that is available" and (5) "require that those trucks arriving at the north loading dock between the hours of 10:00 P.M. and 7:00 A.M. to (sic) continue turning off their engines

while unloading and to reduce noise occurring during unloading." (2nd Stip. 6-7). Additionally, the parties believe that no penalty should be imposed in the present case. (2nd Stip. 7).

In evaluating this enforcement action and the second proposed settlement agreement, the Board has taken into consideration all the facts and circumstances in light of the specific criteria delineated in Section 33(c) of the Illinois Environmental Protection Act. The Board finds the second stipulated agreement acceptable under Procedural Rule 331 and Section 33(c) of the Act. The Board finds that the Respondent, Quincy Foods, Inc., has violated Rules 102, 202, 206 and 207 of Chapter 8: Noise Regulations and Section 24 of the Act and will order the Respondent to cease and desist from further violations. No penalty shall be assessed against the Respondent.


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 Respondent, Quincy Foods, Inc., has violated Rules 102, 202, 206 and 207 of Chapter 8: Noise Regulations and Section 24 of the Illinois Environmental Protection Act.
2. The Respondent shall cease and desist from further violations.
3. The Respondent shall comply with all the terms and conditions of the Second Stipulation and Proposal for Settlement filed on March 5, 1981, 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 2ND day of April, 1981 by a vote of 5-1.



Christan L. Moffett, Clerk
Illinois Pollution Control Board