

ILLINOIS POLLUTION CONTROL BOARD  
April 3, 2003

REBECCA S. LAWRENCE, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 02-10  
 ) (Citizens Enforcement - Noise)  
 NORTH POINT GRADE SCHOOL, )  
 )  
 Respondent. )

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

This matter is before the Board on a February 20, 2003 motion to dismiss and request for sanctions filed by North Point Grade School (North Point). On March 20, 2003, the Board received a letter from Rebecca S. Lawrence (Lawrence) with two enclosed letters addressing the motion to dismiss. North Point filed a response on March 21, 2003.

For the reasons identified below, the Board partially grants North Point's motion to dismiss, and dismisses this case without prejudice.

**BACKGROUND**

In the complaint, Lawrence states that she lives at 6 Sun Pointe Court in Bloomington, McClean County. She alleges that large air conditioning units, installed on the west side of North Point in August 1999, cause constant noise pollution. Lawrence states that during the seven months of operation, the units ran twenty-four hours a day, seven days per week. Comp. at 3. Lawrence alleges that the noises range from a loud startup of a fan motor through its running cycle, to a running motor with a constant humming sound when the air conditioning fan shuts off. *Id.* The fan cycle allegedly runs for three minutes and then shuts off for three to five minutes. *Id.*

Lawrence alleges that North Point operated the air conditioning units from August to November in 1999, and from April to November in 2000. She states that North Point activated the units again in April 2001, and the noise is ongoing. Comp. at 3. Lawrence alleges that the noise from the air conditioning fan at North Point results in an unreasonable interference with the use and enjoyment of her property. Comp. at 4. She states that the noise disturbs her sleep during the day and night hours, endangers her physical and emotional health and well being, and depresses the value and resale potential of her property. *Id.*

## **PROCEDURAL BACKGROUND**

The Board accepted this matter for hearing on September 20, 2001. On September 4, 2001, Lawrence filed a letter requesting that a hearing be scheduled. Board Hearing Officer Steven C. Langhoff set a hearing date for January 30, 2002. On January 9, 2002, the hearing officer issued an order canceling the January 30, 2002 hearing in part, due to an inability to contact Lawrence.

On January 14, 2002, Lawrence requested that a new hearing officer be assigned to this case due to alleged bias towards North Point, and because she felt “bullied” by Hearing Officer Langhoff. On January 24, 2002, the Board granted Lawrence’s request and appointed Bradley Halloran. On September 11, 2002, the hearing officer received a letter from the complainant representing that she is under physician care, and that she anticipates that she will be under physician care until October 2002. On February 4, 2003, Hearing Officer Halloran issued an order noting that Lawrence has not appeared at numerous telephonic status conferences.

On February 19, 2003, Lawrence sent a letter to Hearing Officer Halloran advising him that due to medical problems, she was requesting that this matter be continued for four to five months. The letter was wrongly addressed and never received by Hearing Officer Halloran. On March 17, 2003, Lawrence sent another letter to Hearing Officer Halloran indicating that she had surgery on March 10, 2003, and was released on March 15, 2003. Once again, she recommended that this matter be “sidelined” for the next four to five months until her health problems are resolved. Both letters were filed with the Board on March 26, 2003, along with a pleading requesting information on the protocol to follow regarding a continuance of the complainant due to serious health issues.

On March 19, 2003, North Point filed a letter with the Board asserting that neither the February 19, 2003 letter nor the March 17, 2003 letter changes North Point’s position regarding its motion to dismiss this matter with prejudice.

## **MOTION TO DISMISS AND FOR SANCTIONS**

In its motion, North Point asserts that Lawrence has delayed this proceeding by requesting a new hearing officer, by failing to comply with the rules of the Board in regards to answering discovery, and by failing to keep four months of telephone status conferences. Mot. at 2. North Point requests that the Board dismiss the action for an obvious lack of prosecution. *Id.*

North Point further asserts that it has expended significant funds to defend this complaint including, but not limited to, fees and expenses of expert witnesses, and fees and expenses of attorneys. North Point requests that the Board find Lawrence guilty of failure to comply with Board rules and of delaying the proceedings, and impose sanctions in the amount of fees expended by North Point not to exceed \$5,000. *Id.*

Lawrence’s response consists of the three letters dated February 19, 2003, March 17, 2003, and March 26, 2003. Each letter asserts that Lawrence’s serious health issues have prevented her from participating in her daily routine and work, including the prosecution of this

case. Lawrence asserts that she is seeing a physician and could provide a note verifying the medical conditions resulting in a slow recovery and preventing physical activity. She indicates that if the case is dismissed due to her health situation, she will appeal or file a new complaint against North Point.

### **DISCUSSION**

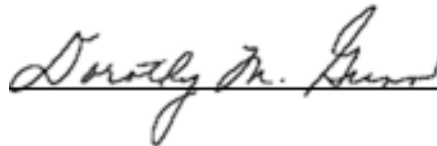
Lawrence has not appeared during at least four telephone status conferences. In addition, she has acknowledged that she will be unable to adequately prosecute this matter for at least four to five months. The Board is cognizant of Lawrence's purported health issues, but will not allow a continued delay in this matter to North Point's detriment. Accordingly, the motion to dismiss is granted in part. However, the Board finds that a dismissal with prejudice would materially prejudice Lawrence, and will dismiss the proceeding without prejudice.

North Point has also requested that the Board impose sanctions in the amount of fees expended by the respondent not to exceed \$5,000. The Board's procedural rules provide that the Board may impose sanctions where a party unreasonably fails to comply with a hearing officer or Board order. 35 Ill. Adm. Code 101.800. The Board may consider factors including the relative severity of the refusal or failure to comply, the past history of the proceeding, and the degree to which the proceeding has been delayed or prejudiced by the alleged violations.

However, Section 101.800 does not allow the Board to monetarily sanction the offending party (*see* Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20, slip op. at 7 (Dec. 21, 2000)), where the Board eliminated language allowing the Board to sanction the offending party with reasonable costs incurred by the moving party in obtaining an order for sanctions). Thus, North Point's request for monetary sanctions is denied, and the Board will not discuss whether Lawrence's actions are sanctionable.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2003, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board