

ILLINOIS POLLUTION CONTROL BOARD
March 6, 2003

DAVID HAWORTH,)
)
 Complainant,)
)
 v.) PCB 03-115
) (Citizens Enforcement – Air, Noise)
 CORESAW LOG & LUMBER, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by L.P. Padovan):

On January 28, 2003, David Haworth (Haworth) filed a complaint against Coresaw Log & Lumber, Inc. (Coresaw). The complaint concerns Coresaw’s sawmill at 863 State Route 26 in Lacon, Marshall County. Haworth alleges that Coresaw has caused air pollution in violation of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) and emitted noise in violation of the Act and Board regulations. For the reasons below, the Board accepts the complaint for hearing. The Board also directs the parties to address, during the course of this proceeding, the issue of remedy for any violation. Lastly, the Board discusses attorney representation and gives Coresaw 60 days to file an answer to the complaint.

COMPLAINT

Section 31(d) of the Act (415 ILCS 5/31(d) (2002)) allows any person to file a complaint with the Board. In his complaint, Haworth alleges that Coresaw violated Section 9(a) of the Act (415 ILCS 5/9(a) (2002)) by emitting dust, sawdust, and smoke from its sawmill operations, resulting in air pollution. Haworth further alleges that Coresaw emitted noise from trucks, tractors, and equipment, including a saw, chipper, and debarker, resulting in violations of the nuisance noise prohibition (415 ILCS 5/24 (2002); 35 Ill. Adm. Code 900.102) and the Board’s daytime and nighttime numeric noise standards (35 Ill. Adm. Code 901.102(a), (b)). Haworth requests that the Board order Coresaw to cease and desist from further violations and “sound proof structures to stop noise polluting and reduce air polluting emissions beyond the boundaries of [Coresaw’s] property.” Complaint at 4. The complaint meets the content requirements of 35 Ill. Adm. Code 103.204(c).

Section 31(d) of the Act further provides that “[u]nless the Board determines that [the] complaint is duplicative or frivolous, it shall schedule a hearing.” 415 ILCS 5/31(d) (2002); *see also* 35 Ill. Adm. Code 103.212(a). A complaint is duplicative if it is “identical or substantially similar to one brought before the Board or another forum.” 35 Ill. Adm. Code 101.202. A complaint 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.” *Id.* Within 30 days after being served with a complaint, a respondent may file a motion alleging that the complaint is duplicative or frivolous. 35 Ill. Adm. Code 103.212(b). Coresaw has filed no motion. No

evidence before the Board indicates that Haworth's complaint is duplicative or frivolous. The Board accepts the complaint and directs the hearing officer to proceed expeditiously to hearing. *See* 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.212(a).

REMEDY FOR ANY VIOLATION

Among the hearing officer's responsibilities is the "duty . . . to ensure development of a clear, complete, and concise record for timely transmission to the Board." 35 Ill. Adm. Code 101.610. A complete record in an enforcement case thoroughly addresses, among other things, the appropriate remedy, if any, for the alleged violations, including any civil penalty.

Initially, if the Board finds that a respondent's air contaminant or sound emissions have interfered with the enjoyment of life, the Board then considers the factors set forth in Section 33(c) of the Act (415 ILCS 5/33(c) (2002)) to decide whether the interference is unreasonable, so as to constitute an air pollution or nuisance noise violation, both of which are alleged by Haworth. Additionally, if a complainant proves *any* alleged violation, the Board considers the factors set forth in Sections 33(c) and 42(h) of the Act to fashion an appropriate remedy for the violation. *See* 415 ILCS 5/33(c), 42(h) (2002). Specifically, the Board considers the Section 33(c) factors in determining, first, what to order the respondent to do to correct an on-going violation, if any, and, second, whether to order the respondent to pay a civil penalty. The factors provided in Section 33(c) bear on the reasonableness of the circumstances surrounding the violation, such as the character and degree of any resulting interference with protecting public health, the technical practicability and economic reasonableness of compliance, and whether the respondent has subsequently eliminated the violation. *See* 415 ILCS 5/33(c) (2002).

If, after considering the Section 33(c) factors, the Board decides to impose a civil penalty on the respondent, only then does the Board consider the Act's Section 42(h) factors in determining the appropriate amount of the civil penalty. Section 42(h) sets forth factors that may mitigate or aggravate the civil penalty amount, such as the duration and gravity of the violation, whether the respondent showed due diligence in attempting to comply, any economic benefit that the respondent accrued from delaying compliance, and the need to deter further violations by the respondent and others similarly situated. *See* 415 ILCS 5/42(h) (2002).

Accordingly, the Board further directs the hearing officer to advise the parties that in summary judgment motions and responses, at hearing, and in briefs, each party should consider: (1) proposing a remedy for a violation, if any, including whether to impose a civil penalty, and supporting its position with facts and arguments that address any or all of the Section 33(c) factors; and (2) proposing a civil penalty, if any, including a specific dollar amount, and supporting its position with facts and arguments that address any or all of the Section 42(h) factors.

ATTORNEY REPRESENTATION

The Board notes that Haworth's complaint refers at times to "complainants." Complaint at 4. There is no indication in the complaint that Haworth is an attorney and no attorney has filed an appearance to represent Haworth. An individual may represent himself or herself before the

Board in an enforcement proceeding. Accordingly, Haworth may represent himself. However, a non-attorney cannot represent others (*e.g.*, individuals, corporations) in this type of proceeding. *See* 35 Ill. Adm. Code 101.400(a). For example, Coresaw, as a corporation, will have to be represented by an attorney.

Despite its references to “complainants,” the complaint was signed only by Haworth and names only Haworth as complainant. Therefore, the only parties to this proceeding at this time are Coresaw and Haworth. Non-parties, however, may participate in enforcement proceedings in many ways, including testifying under oath at hearing as a witness of a party or providing written public comment. *See, e.g.*, 35 Ill. Adm. Code 101.110, 101.628.

ANSWER TO COMPLAINT

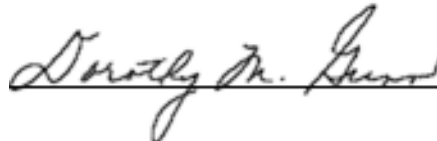
Under the Board’s procedural rules, a respondent’s failure to file an answer to a complaint within 60 days after receiving the complaint may have severe consequences. Generally, if a respondent fails within that timeframe to file an answer specifically denying, or asserting insufficient knowledge to form a belief of, a material allegation in the complaint, the Board will consider the respondent to have admitted the allegation. *See* 35 Ill. Adm. Code 103.204(d). In this case, however, Haworth’s complaint failed to include the required notice to Coresaw of the consequences of failing to timely file an answer. Section 103.204(f) of the Board procedural rules provides:

Any party serving a complaint upon another party must include the following language in the notice: “Failure to file an answer to this complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk’s Office or an attorney.” 35 Ill. Adm. Code 103.204(f).

The Board therefore gives Coresaw 60 days from its receipt of this order to file an answer to Haworth’s complaint.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 6, 2003, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board