

ILLINOIS POLLUTION CONTROL BOARD
November 6, 2003

MICHAEL A. PETROSIUS and DARLA G. PETROSIUS,	)	
	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 04-36
	)	(Enforcement – Noise)
THE ILLINOIS STATE TOLL HIGHWAY AUTHORITY,	)	
	)	
	)	
Respondent.	)	

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

On September 25, 2003, Michael A. Petrosius and Darla G. Petrosius (complainants) filed a complaint against the Illinois State Toll Highway Authority (respondent). See 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.204. The complainants allege that the noise from the traffic using a toll collection/entrance ramp on the northbound side of the 294 tollway in LaGrange has resulted in a violation of 35 Ill. Adm. Code 900.102 due to the unreasonable interference with the use and enjoyment of the complainants' property. The complainants further allege that the noise during the night interferes with their sleep, endangers the physical and emotional health and well-being of their children and decreases their property value. The complainants reside at 7335 Maridon Road, LaGrange, Cook County.

MOTION TO DISMISS

The respondent filed an appearance and a motion to dismiss the complaint as frivolous on October 7, 2003. In the motion, the respondent asserts that the tollway and the sound wall adjacent to the tollway each pre-existed the complainants moving into their house. Mot. at 1. The respondent asserts that section 901.102 of the noise regulations prohibits emission of sound that exceeds specified levels from any Class A, B or C land, but that the tollway is a Class U property and not regulated. Mot. at 2. The respondent also argues that the vehicles, not the tollway, are regulated by the sound levels. Mot. at 2.

The respondent acknowledges that the Board has the authority to order the respondent to meet the sound level regulations for sounds emitted from Class U to Class A properties, but argues that since no standard exists, the respondent concludes that the tollway has not violated any provisions of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (2002)) or of the noise regulations. Mot. at 2-3.

The respondent maintains that the complainant fails to state a cause of action, and requests that the Board dismiss the complaint. Mot. at 3.

In response, the complainants assert simply that the respondents are subject to 35 Ill. Adm. Code 900.102 as set forth in the complaint. Resp. at 1.

DISCUSSION

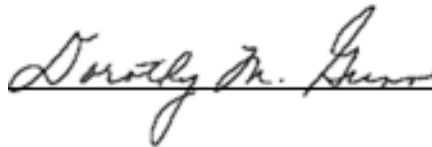
The Board denies the respondent's motion to dismiss. The respondent has made extensive arguments regarding the classification of the tollway. However, the complaint does not allege any numerical violations, and instead alleges that the noise from the tollway constitutes an unreasonable interference. The Board considers this to be a well-pled noise nuisance complaint under Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2002)) and Section 900.102(a) of the Board regulations. 35 Ill. Adm. Code 900.102(a). This allegation may lie regardless of the classification of the property in question.

The Board finds that the complaint meets the content requirements of the Board's procedural rules. See 35 Ill. Adm. Code 103.204(c), (f). Section 31(d) of the Act 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.* No evidence before the Board indicates that the complaint is duplicative or frivolous.

The Board accepts the complaint for hearing. See 415 ILCS 5/31(d) (2002); 35 Ill. Adm. Code 103.212(a). 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). The Board directs the hearing officer to proceed expeditiously to hearing.

IT IS SO ORDERED.

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

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written in dark ink.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board