

ILLINOIS POLLUTION CONTROL BOARD
November 29, 1990

RONALD E. TEX and SUSAN D. TEX,)
)
 Complainants,)
)
 v.) PCB 90-182
) (Enforcement)
)
 S. SCOTT COGGESHALL and)
 COGGESHALL CONSTRUCTION COMPANY,)
)
 Respondents.)

ORDER OF THE BOARD (by J. C. Marlin):

This matter is before the Board on a Motion to Dismiss by S. Scott Coggeshall filed October 31, 1990. On November 28, 1990 the complainants Ronald E. Tex and Susan Tex filed a Motion to Continue which asked, essentially, that the matter continue to hearing.

S. Scott Coggeshall is not a party to this noise enforcement proceeding. However, he has filed a motion to dismiss it on grounds that the named party respondent Samuel Scott Coggeshall is his deceased father. The motion is supported by affidavit. The complainants' response merely states that they served their notices and complaint on Samuel Scott Coggeshall, as listed in real estate tax records as owner of Coggeshall Construction Company. However, our examination of their response and the attached records shows that the tax rolls list Samuel Scott Coggeshall, Jr. as owner. The difference appears to be important. As S. Scott Coggeshall's motion suggests, the former is deceased; the latter appears to be his son. The Board cannot determine whether S. Scott Coggeshall is Samuel Scott Coggeshall, Jr. However, S. Scott Coggeshall does admit to being the owner of the property. The Board therefore will dismiss the case as against Samuel Scott Coggeshall and will allow the substitution of S. Scott Coggeshall as the proper respondent.

S. Scott Coggeshall also asks the Board to dismiss the case "as to all individual defendants" as no notice was served upon them. The difference, again, appears to be the missing word "Jr." from the notice. The Board believes, however, that little will be gained by dismissing the case due to this imperfection. S. Scott Coggeshall does not dispute that a notice was not received by him. In fact, a letter of July 22, 1990 from complainants to him and advising him that the complainants were consulting with the Illinois Environmental Protection Agency

contains his correct name. Under these circumstances, we believe the requirement was met.

S. Scott Coggeshall also requests that the Board dismiss this case because the complaint fails to plead the act of any individual owner which would give rise to liability. The activity complained of is noise and dust pollution. The complaint states that this pollution emanates from the operations of Coggeshall Construction Company.

Respondent's motion also asks the Board to dismiss this matter because it is a "public nuisance" for which no cognizable right of action exists for complainants. We believe, however, that the Act is clear that complainants have a right to relief should they prove their statutory claim.

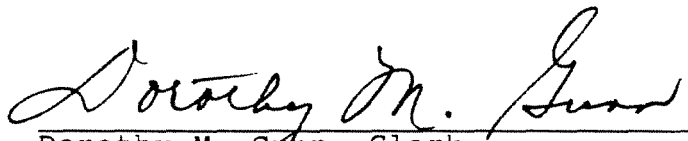
S. Scott Coggeshall, however, admits that he is the sole owner of the company. We are not convinced, that, under the facts as shown, that S. Scott Coggeshall should be dismissed from this case.

Finally, the complainants' response to motion to dismiss raises questions as to whether the allegations regarding dust pollution have been properly raised. The Board construes the filing as a request to amend the complaint to add an alleged violation of Section 9(a). That request is granted.

The Board concludes that no matters have been raised which call for the dismissal of this case and finds the complaint neither duplicitous or frivolous. Therefore, the matter is accepted for hearing.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 29th day of November, 1990, by a vote of 7-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board