

emissions and consequences alleged to constitute violations of the Act and regulations.” 35 Ill. Adm. Code 103.204(c)(2). The rules state a complaint must also contain “[a] concise statement of the relief that the complainant seeks.” 35 Ill. Adm. Code 103.204(c)(3).

MOTION TO DISMISS

The Board determines that Mr. Grelyak’s motion is actually a motion to dismiss the complaint as frivolous. The Board defines a complaint as frivolous if “fails to state a claim upon which the Board can grant relief.” 35 Ill. Adm. Code 101.202. Mr. Grelyak argues in the motion that “Complainants have not alleged sufficient facts to support a finding of impermissible air or noise pollution.” Mot. at 1.

Board procedural rules provide that a respondent may file a motion to dismiss a complaint as frivolous within 30 days after being served with a complaint. 35 Ill. Adm. Code 103.212(b). The Fredricksons filed proof of service indicating that Mr. Grelyak was served a copy of the formal complaint in this matter on August 21, 2003. Mr. Grelyak filed the motion to dismiss by fax *instanter*, with approval from Board Hearing Officer Bradley Halloran, on September 17, 2003. The Board finds that the motion to dismiss is timely filed. Therefore, the Board dismisses Mr. Grelyak’s motion to file *instanter* as moot.

Board procedural rules further provide that timely filing of such a motion effectively stays the 60-day period for filing an answer to the complaint. 35 Ill. Adm. Code 103.212(b). The Board accepted this matter for hearing on September 18, 2003. The motion to dismiss stayed the 60-day time period in which Mr. Grelyak must answer the complaint until the Board disposes of the motion.

Specifically, Mr. Grelyak moves the Board to dismiss this proceeding for three reasons. First, the complaint does not indicate the precise time or dates on which the alleged violations occurred. Second, the complaint does not specify the regulations or sections of the Act under which the complainants allege violations. Mr. Grelyak contends that although the complaint refers to “Title 35, Subtitle II, Chapter, J, Part 900.102/ Title 35, Subtitle H, Chapter I, Part 900.102(a),” this citation is incomplete because it does not indicate whether the alleged provisions are statutory or regulatory. Mr. Grelyak further argues that even though the complaint refers to Section 9(a) of the Act, this citation is incomplete because it does not allege violations of specific regulations or standards.

Third, Mr. Grelyak contends that complainants have not alleged sufficient facts to support a finding of air or noise pollution. Mr. Grelyak concludes that the Fredricksons’ complaint “should be considered frivolous and without merit.” For these reasons, Mr. Grelyak moves the Board to dismiss this matter and close the docket.

RESPONSE TO MOTION TO DISMISS

The Fredricksons respond by denying that the complaint is vague or lacks specificity. The Fredricksons maintain that they have “sufficiently stated facts and occurrences so as to warrant a hearing” before the Board and to request relief, which the Board has the power and

authority to grant. The Fredricksons request that the Board deny Mr. Grelyak's motion to dismiss and proceed to hearing on the merits.

BOARD ANALYSIS

The Board finds Mr. Grelyak's first and third reasons asserted arguments for dismissal amount to allegations of factual insufficiency. Further the Board finds that Mr. Grelyak's second argument alleges legal insufficiency.

The Board finds the complaint alleges facts in sufficient detail. Mr. Grelyak contends the complaint does not allege the exact time or dates the violations occurred. However, the complaint alleges the violations concern Mr. Grelyak's continuous operation and "revving" of ATVs and motorcycles that causes noise, dust, and fumes to travel directly onto the Fredricksons' property. The complaint states the Grelyaks have been operating the motorcycles and ATVs for several years, from March through November, on weekends and some weekdays, during daylight hours. The complaint describes the noise as so excessive that the Fredricksons are forced to close all windows and doors while the Grelyaks ride and even then the noise disrupts normal conversation, phone calls, watching television, and other everyday activities. The complaint alleges that dust travels from the Grelyaks' property to the Fredricksons' property the entire time the motorcycles and ATVs are in use. The complaint elaborates that the noise and air pollutants cause the Fredricksons great mental anguish and emotional stress. Finally, the complaint alleges that the Fredricksons are unable to entertain guests or enjoy outdoor activities while the Grelyaks operate their motorcycles and ATVs.

In a previous air pollution citizen's enforcement proceeding the Board has held "a complainant can allege air pollution . . . and be heard by the Board without having to identify the name of the chemical emitted, the specific operation in a plant that emitted the chemical on a specific day, and the precise quantity of the chemical emitted." Brian Finley, et al. v. IFCO ICS-Chicago, Inc., PCB 02-208 slip op. at 12 (Aug. 8, 2002). Similarly, the Board finds that in this proceeding the complaint pleads facts sufficiently detailed to determine what activities and conditions were taking place on or near the Fredricksons' property. The Board finds the facts plead are sufficient to state claims of noise and air pollution.

With regard to legal sufficiency, the Board finds that the Fredricksons' complaint adequately specifies the provision of the Act it alleges Mr. Grelyak has violated. Section 9(a) of the Act provides:

No person shall: (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;" 415 ILCS 5/9(a) (2002).

The complaint states the complainants have violated and are in violation of Section 9(a) of the Act. Comp. at 2. The complaint also alleges violations of Sections 900.102 and 901.102 of Title 35, which it alleges in paragraph five of the complaint as a

specific section of the Act and/or Board regulations. *Id.* In the way of relief, the complaint requests that the Board order the Grelyaks to cease and desist from violating “the applicable statutes and regulations.” Comp. at 3.

The Board finds the Fredricksons’ complaint legally sufficient. The complaint alleges that Mr. Grelyak violated Section 9(a) of the Act. The Board also finds that the complaint adequately notifies Mr. Grelyak that the Fredricksons allege violations of Sections 900.102 and Section 901.102(a) of the Board’s noise regulations. Furthermore, the complaint sets forth where and when the activity takes place and how long the alleged violations have been occurring. Finally, the complaint requests relief that the Board has authority to grant. The Board finds the complaint is legally sufficient.

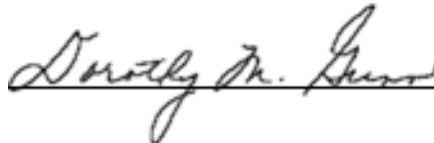
CONCLUSION

In this order the Board finds the Fredricksons’ complaint factually and legally sufficient to reasonably allow Mr. Grelyak to prepare a defense. Accordingly, the Board denies Mr. Grelyak’s motion to dismiss this proceeding as frivolous. The Board accepted this matter for hearing on September 18, 2003. Mr. Grelyak’s motion to dismiss the complaint as frivolous stayed the 60-day period to file an answer to the complaint. 35 Ill. Adm. Code 103.212(b). The stay ends today with the Board disposing of the motion to dismiss. *See* 35 Ill. Adm. Code 103.204(e). Mr. Grelyak’s answer to the complaint is therefore due 60 days from receipt of this order.

As stated in the Board’s order accepting this matter for hearing, if Mr. Grelyak 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 Mr. Grelyak to have admitted the allegation. 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 October 16, 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