

ILLINOIS POLLUTION CONTROL BOARD  
December 18, 2003

BONITA SAXBURY and RICHARD )  
SAXBURY, )  
 )  
Complainants, )  
 )  
v. ) PCB 04-79  
 ) (Citizens Enforcement - Noise)  
ARCHER DANIELS MIDLAND )  
(HULL, ILLINOIS DIVISION), )  
 )  
Respondent. )

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

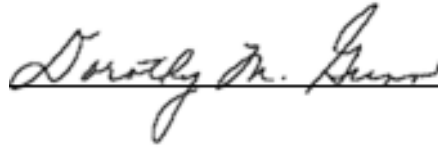
On November 6, 2003, Bonita Saxbury and Richard Saxbury (Saxburys) filed a complaint against Archer Daniels Midland (Hull, Illinois Division) (ADM). *See* 415 ILCS 5/31(d) (2000); 35 Ill. Adm. Code 103.204. The Saxburys allege that ADM violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 24 (2002) as well as 35 Ill. Adm. Code 900.102. The Saxburys further allege that ADM violated these provisions by emitting a loud shrill, high-pitched, constant noise at a grain elevator located in Hull, Pike County.

Section 31(d) of the Environmental Protection Act (415 ILCS 5/31(d) (2002)) allows any person to file a complaint with the Board. Section 31(d) further provides that “[u]nless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing.” *Id.*; *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). ADM has filed no motion. There is no evidence before the Board that indicates that the allegations of the complaint are 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 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 respondent 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 December 18, 2003, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board