

ILLINOIS POLLUTION CONTROL BOARD
January 10, 2002

DAVID P. HOUGHTALING,)
)
 Complainant,)
)
 v.) PCB 01-154
) (Citizens Enforcement – Noise)
 TIRE MANAGEMENT, INC.,)
)
 Respondent.)

ORDER OF THE BOARD (by G.T. Girard):

On November 19, 2001, Tire Management, Inc., (respondent) filed a motion to dismiss this citizens noise enforcement action. The Board has not received a response to the motion to dismiss from David P. Houghtaling (complainant). Pursuant to the Board's procedural rules at Section 101.500(d) the complainant is deemed to have waived objection to the granting of the motion. 35 Ill. Adm. Code 101.500(d).

On May 11, 2001 complainant filed a complaint alleging that the respondent violated Section 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (2000)) and 35 Ill. Adm. Code 900.102, "900.102, a & b," and 901.104 on real property located at 725 Aurora Avenue, Aurora. On June 21, 2001 the Board struck the allegations as to violations of Section 23 of the Act and Section 900.102 (a) and (b) of the Act and directed that the remaining counts proceed to hearing. The complaint states that the "relief sought is to require the respondent to cease and desist the noise pollution caused from the operation of the Automotive Tire & Service Center in any manner that is necessary and appropriate to bring about compliance with the regulations of the Pollution Control Board." Comp. at 3.

In the motion to dismiss, respondent maintains that it no longer operates the business adjacent to complainant's property and has moved the business one half mile from the previous address. Respondent maintains that because it no longer operates any business at that address respondent "cannot possibly be in violation of the Act."

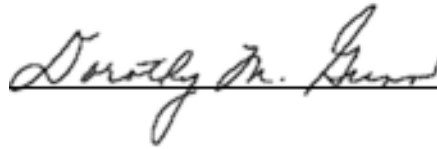
The Board will grant the motion to dismiss. The Board notes that relocation of the business does not alleviate any potential liability for potential past violations. However, the complainant, in the complaint, is simply seeking an order from the Board that the respondent cease and desist from any noise pollution. The relocation of the business would appear to be sufficient relief for the complainant. Therefore, the Board will grant the motion to dismiss.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the

order. 415 ILCS 5/41(a) (2000); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the Board adopted the above order on January 10, 2002, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board