ILLINOIS POLLUTION CONTROL BOARD November 6, 1997

EDWARD J. AND JANINA E. KLICH,)
Complainants,))
v.) PCB 98-57) (Enforcement - Noise - Citizens)
WAL-MART STORES, INC. (Facility #1003),) (Emorcement - Noise - Citizens))
Respondent.))

ORDER OF THE BOARD (by J. Yi):

This matter comes before the Board on the October 17, 1997, filing of a citizen's enforcement complaint by Edward J. and Janina E. Klich. The Board has received no response from Wal-Mart Stores, Inc. (Wal-Mart), which owns and operates facility #1003 located at 6800 W. Route #34, Plano, Illinois (site).

Complainants allege that Wal-Mart caused noise pollution by operating an unloading area at the site in violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1996)). Complainants also allege that Wal-Mart caused or allowed the emission of sound beyond the boundaries of its property in violation of 35 Ill. Adm. Code 900.102 and 901.102(a) and (b) of the Board's regulations. Complainants state that the noise generated from the site has resulted in an unreasonable interference with the use and enjoyment of their property. Complainants request that the Board either order Wal-Mart to cease and desist from further violations of the applicable statutes and regulations, or order Wal-Mart to compensate complainants for the fair market value of their property as if the alleged violations had not occurred.

Section 103.124(a) of the Board's procedural rules (35 Ill. Adm. Code 103.124(a)), which implements Section 31(b) of the Act (415 ILCS 5/31(b) (1996)), provides that this matter shall be placed on the Board agenda for the Board's determination as to whether or not the complaint is duplicitous or frivolous. This section further states that if the complaint is duplicitous or frivolous, the Board shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. <u>Brandle v. Ropp</u> (June 13, 1985), PCB 85-68. An action before the Board is frivolous if it requests relief which the Board can not grant. <u>Lake County Forest Preserve District v. Neil Ostro, Janet Ostro, and Big Foot Enterprises</u> (July 30,

1992), PCB 92-80. The Board can grant relief by ordering a respondent to stop the polluting activity and by imposing a fine, but the Board cannot grant monetary compensation for damage done to health or property. Joseph Gutesha and Mildred Samardzija v. Johnson Concrete Co. and Elmer Larson, Inc., (May 20, 1993), PCB 93-75. Therefore, the Board strikes that portion of the complaint which requests a buyout of the house and property at fair market value as frivolous. The Board finds that, pursuant to Section 103.124(a), the remainder of the complaint is neither duplicitous nor frivolous and will be accepted for hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules (35 Ill. Adm. Code 103.125). The Clerk of the Board shall promptly issue appropriate directions to that assigned hearing officer.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21 day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding credibility of witnesses, and all actual exhibits to the Board within five days of the hearing.

Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date or if, after an attempt the hearing officer is unable to consult with the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 6th day of November 1997, by a vote of 7-0.

Dorothy M. Gunn, Clerk Illinois Pollution Control Board