

ILLINOIS POLLUTION CONTROL BOARD
December 20, 1990

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

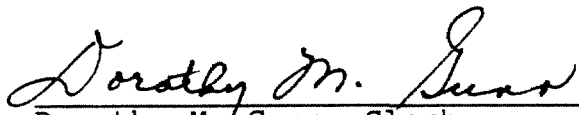
ORDER OF THE BOARD (by B. Forcade):

On December 6, 1990, S. Scott Coggeshall filed a Motion for Reconsideration of the Board's November 29, 1990 Order denying his motion to dismiss. The Motion for Reconsideration is denied. The complaint, as amended by the November 28, 1990 filing, claims the respondent is violating Section 9(a) of the Environmental Protection Act by causing or allowing air pollution, and violating Section 24 regarding emitting noise beyond "the boundaries of his property". The individual Respondent admits to being the owner of the real estate in question and is claimed to have ownership of the company. In such a circumstance this Board cannot conclude as a matter of law that complainants could not prove the individual respondent "caused or allowed" pollution or was responsible for the emission of sound from "his property."

In addition, the public/private nuisance arguments are misplaced. The Tex's have not filed a case sounding in the common law tort of nuisance (either public or private). The case they filed claims violations of specific statutory language found in the Environmental Protection Act, which grants citizens the authority to enforce, and grants this Board jurisdiction to hear the enforcement action.

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 20th day of December, 1990, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board