

ILLINOIS POLLUTION CONTROL BOARD

August 24, 2000

JAMES GLASGOW, VICKIE GLASGOW, BILL HOPPE,	)	
and PAT HOPPE,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 00-221
	)	(Enforcement, Citizens - Noise)
GRANITE CITY STEEL,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by N.J. Melas):

This matter comes before the Board on a June 19, 2000 filing of a citizen's complaint (complaint) by James Glasgow, Vickie Glasgow, Bill Hoppe, and Pat Hoppe (complainants) against Granite City Steel (respondent). Respondent did not file a motion to dismiss or a challenge to the Board's jurisdiction within the allotted 14 days, nor did respondent file any other type of response within 30 days. 35 Ill. Adm. Code 103.122, 103.140(a). Therefore, the Board makes its determination based on the allegations in the complaint.

The Board finds that the noise pollution allegation pertaining to Section 23 of the Act and the air pollution allegation are frivolous and will not accept those allegations for hearing. The Board finds that the remaining noise pollution allegations in this matter are not duplicitous or frivolous and therefore accepts those allegations for hearing.

BACKGROUND

Complainants reside on Edwardsville Road in Granite City, Madison County, Illinois, and respondent has a facility with a coke plant and coal piles nearby at Highway 162 and Alexander, also in Granite City. Complainants allege that noise and air pollution comes from dust, trucks, the movement of coal, and a "caterpillar" used to push coal to the top of stacks at the facility. Complaint at 3. Complainants also allege that the noise and air pollution adversely affect their sleep, depress their property values and generally have a negative impact on the use and enjoyment of their properties. Complaint at 4.

Complainants claim that respondent is violating Sections 23 and 24 of the Illinois Environmental Protection Act (Act), and Sections 900.102, 901.102(a), and 901.102(b) of the Board's rules. 415 ILCS 5/24 (1998); 35 Ill. Adm. Code 900.102, 901.102(a), and 901.102(b). Complaint at 2.

DUPLICITOUS / FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. If the complaint is duplicitous or frivolous, the Board shall enter an order setting forth reasons for so ruling and shall inform 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. 35 Ill. Adm. Code 103.124(a).

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or any other forum. Walsh v. Kolpas (September 23, 1999), PCB 00-35; Brandle v. Ropp (June 13, 1985), PCB 85-68. Nothing in the complaint indicates that this action has been brought before another forum. The complaint is not duplicitous.

#### Frivolous

A complaint before the Board 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. People v. State Oil (August 19, 1999), PCB 97-103, slip op. at 3; Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80.

Complainants allege that respondent has violated Section 23 of the Act. Section 23 is merely the General Assembly's statement of purpose for the Title VI of the Act, the Title which addresses noise. Section 23 contains neither a directive nor a prohibition. The Board cannot grant relief here because there can be no violation of Section 23. Brunson v. MCI Worldcom, Inc. (January 7, 1999), PCB 99-71. The alleged violation of Section 23 is frivolous, and the Board dismisses it.

With respect to the remaining noise pollution allegations, complainant correctly cites the noise pollution provisions in the Act and the Board's rules. Complainant also alleges facts which, if proved at hearing, could result in a finding of noise pollution. Complaint at 3. The Board has the authority to grant relief from the alleged noise pollution if the facts are proved at hearing.

Complainants also allege that respondent is causing air pollution at its property but do not cite to any provisions in either the Act or the Board's rules that addresses air pollution. Both the Act and the Board's rules state that the complaint must cite the provisions in the Act or the Board's rules which the respondent is allegedly violating. 415 ILCS 5/31.1(d) (1998); 35 Ill. Adm. Code 103.122(c)(1). The Board could hear the air pollution allegation if it was properly pled, but here the allegation is not properly pled. The Board finds that the air pollution allegation is frivolous. See also Snyder et al. v. Waste Management of Illinois, (May 18, 1995), PCB 95-1, slip op. at 2-3; Conway v. Johnson (August 7, 1997), PCB 97-221, slip op. at 2, 4. Complainants may file an amended complaint alleging air pollution if they plead the allegation in accordance with Section 103 of the Board's rules.

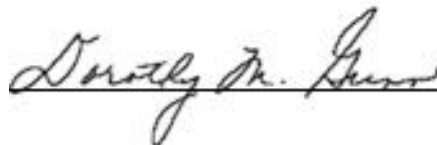
#### CONCLUSION

The Board finds that, pursuant to Section 103.124(a) of its procedural rules, the noise pollution allegations at Section 24 of the Act and Sections 900.102, 901.102(a), and 901.102(b) of the Board's rules are neither duplicitous nor frivolous. Those allegations will be accepted for hearing. The Board finds that the noise pollution allegation pertaining to Section 23 of the Act and the air pollution allegation are frivolous and will not accept those allegations for hearing.

The hearing in this matter must be scheduled and completed in a timely manner consistent with Board practices. 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 24th day of August 2000 by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board