

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
September 12, 1991

FRANKLIN D. VICKERS and)
RUTH JEAN VICKERS,)
)
Complainants,)
)
v.)
)
VILLAGE OF MILLSTADT,) PCB 91-42
) (Enforcement)
)
Respondent.)

FRANKLIN D. VICKERS AND RUTH JEAN VICKERS APPEARED
PRO SE.

MR. PATRICK M. FLYNN, FLYNN & GUYMON, APPEARED
ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. C. Marlin):

This matter comes before the Board upon a complaint filed March 11, 1991 by Franklin D. Vickers and Ruth Jean Vickers ("Vickers") against the Village of Millstadt ("Millstadt") alleging violation of Section 24 of the Illinois Environmental Protection Act ("Act") and the Board's prohibition against noise pollution found at 35 Ill. Adm. Code 900.102 by the Village's emissions from a newly installed emergency warning siren.

Hearing was held June 28, 1991 at the St. Clair County Courthouse Belleville, Illinois. Mr. and Mrs. Vickers testified in their own behalf. Marjorie Galle, Debbie (Vickers) Steppig and Eulalia Kohlenberger also testified for the complainants. Kevin Noerper, the Union Fire Chief, and Village Mayor Ray Hohet testified on behalf of the Respondent.

PROCEDURAL HISTORY

The Village filed a motion to dismiss this matter on April 19, 1991 alleging that the use of its emergency warning siren was exempted from the Board's noise regulations by the provisions of 35 Ill. Adm. Code 901.107. The Village also contended that it was "unable to move the siren to another location without offending someone". The Board construed this statement as questioning whether the Board had the ability to fashion relief for Complainants. The Village confessed, however, that the siren's use as a noon whistle was "open to question".

The Board denied the Village's motions for two reasons. First, the Board held that statutory exemption mentioned did not give "blanket protection" to all uses of emergency sirens. In

fact, by its terms the exemption is limited to the Board's numerical standards, not the nuisance provisions found in Section 24 of the Act. Finally, the Board also found that the speculation as to the difficulty in formulating a remedy did not deprive the Board of its ability to fashion relief. Therefore, the Board found the Village's motion deficient.

REGULATORY FRAMEWORK

Title VI of the Illinois Environmental Protection Act ("Act"), Ill. Rev. Stat. 1990 Supp., ch. 111 1/2, par. 1023 et seq., provides procedures and standards for noise control. Sections 23 and 24 of that Title provide:

Section 23

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

Section 24

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.

These statutory sections are implemented in administrative law in two ways. First, the Board has adopted at 35 Ill. Adm. Code 900.102 a general, "narrative" standard:

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

Noise pollution is defined at 35 Ill. Adm. Code 900.101 as:

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or

with any lawful business or activity.

In effect, Section 900.102 thereby establishes a regulatory public nuisance standard for noise control using the statutory phrase "unreasonable interference with the enjoyment of life or with any lawful business or activity". The other manner in which these laws are implemented, the Board's numerical emissions standards found at 35 Ill. Adm. Code 901.102 et seq., are not at issue in this proceeding. See Ferndale Heights Utilities Co. v. PCB 44 Ill. App. 3d 367-8, 358 N.E. 2d 1228 (1st Dist. 1978).

Various noise enforcement cases, which the Board has previously decided, include: James Kaji, Dorothy Kaji v. R. Olson Manufacturing Co., Inc., PCB 80-46, 41 PCB 245 (1981), aff'd 109 Ill. App. 3d 1168, 441 N.E. 2d 185; Citizens of Burbank v. Overnite Transportation Company, PCB 84-124, 65 PCB 131 (1985), 88 PCB 285 (1988); Citizens of Burbank and People of the State of Illinois ex. rel., Richard M. Daley v. Clairmont Transfer Company, PCB 84-125, 74 PCB 255 (1986); John W. Eilrich v. James Smith, d/b/a Maywood Shell Car Wash, PCB 85-4, 77 PCB 245 (1987); Thomas & Lisa Annino v. Browning-Ferris Industries of Illinois, PCB 87-139, 91 PCB 349 (1988); Anthony W. Kochanski v. Hinsdale Golf Club, PCB 88-16, 101 PCB 11 (1989); rev'd 197 Ill. App. 3d 634, 555 N. E. 2d 31; William E. Brainerd v. Donna Hagan, David Bromaghim and Phil Robbins d/b/a The Gables Restaurant, PCB 88-171, 98 PCB 247 (1989); and Brian J. Peter v. Geneva Meat and Fish Market and Gary Pikulski, PCB 89-151, 109 PCB 531 (1990); Will County Environmental Network v. Gallagher Asphalt, PCB 89-64, 113 PCB 291 (1990); Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, 114 PCB 765 (1990); Zivoli v. Prospect Dive and Sport Shop, Ltd., PCB 89-205, _____ PCB _____, March 14, 1991.

BACKGROUND

The Vickers reside at 215 West White Street, Millstadt, Illinois. (R.5) The Vickers residence is located approximately 400 feet from an emergency warning siren installed around June of 1990 by Millstadt. (R.8) The siren is installed on top of a pole in a residential neighborhood and is located adjacent to the Village Hall on Village property between White and Laurel Streets. The siren is tested daily at noon. (R. 41)

ALLEGATIONS

The Vickers allege in their complaint that the noises emitted from the emergency warning siren are in violation of the

nuisance provision of 35 Ill. Adm. Code 900.102.¹ The Complaint also alleges that the siren is mounted on a 50 foot telephone pole, "weighs 700 pounds and is capable of hitting the 124 decibel range". The filing avers that the siren is blown every noon and to signify fires. The complaint concludes that the siren has "destroyed the peace and tranquility of our house, inside and out . . . [and] is endangering our mental and physical well-being". The Vickers allege that they would like to see the pollution "stopped" or the siren relocated. Complaint, p.3.

In support of the allegation of violation of the nuisance provision, Mr. Vickers testified as to various experiences, as follows:

Q. Now, tell the Board in your own words why you have filed this complaint and what conduct you feel violated the provisions of the Environmental Protection Agency and the regulations of the Board?

A. All right.... [W]e feel like they went a little overboard with the type of siren whistle that they bought and installed. And we feel like it was installed in the wrong area. It is installed in a residential area on a very short pole, which trees and other stuff all around that is much taller than it. The sound cannot get out of the neighborhood, therefore, the neighborhood gets the whole blunt of it. And the reason for installing this new system was supposed to alert more people further away, which it does not do. And so consequently the loudness of it is very distracting to us in our way of life. I mean you can't really plan on doing anything outside the house, essentially during the hours when they have the-- like at noontime when they blow, at that time, noontime, most people in the neighborhood will go-- most of us have to plan on possibly curtailing anything that we are doing outside to go inside to get away from some of the noise. Although, it's still noisy in the house, it does help.

And then at night we are sleeping at night and

¹ The Vickers attempted to introduce the results of noise tests conducted with a Radio Shack sound meter in support of their allegations. These were objected to by the Village. The Hearing Officer accepted an offer of proof at to their contents and the foundation for them. The testimony revealed that the tests were not made in accordance with Board procedures found at 35 Ill. Adm. Code 901.102. The Hearing Officer's denial of admission is therefore affirmed. The Board affirms all other rulings of the Hearing Officer as well.

this thing goes off. Well, it literally knocks your socks off. It wakes you up. And so we have just complaints against the noise. We feel like it could have been installed in a more proper place, installed more properly than it has been. And that is what we are mainly are interested in. We are not trying to say that they didn't need to update their emergency system. Quite possibly they did. But it seemed like they could have done it a little better and differently. (R. 6-7)

* * *

EXAMINATION
BY MR. FLYNN:

Q. Where do you propose to move the emergency warning device?

A. Well, I feel like that should be up to the Village itself.

* * *

(R. 11)

Q. Where it is located right now is really a central location geographically in terms of the Village limits; isn't it?

A. Not really.

Q. Where would you say it is?

A. I would say that where it is now, especially since the new subdivisions just went out, if you look at the map it's more one-sided than the other.

Q. Well, which side would you say it is sided toward?

A. It's sided toward the south.

Q. Where would you propose to move this emergency warning device?

A. Well, in our study, not studies, in our own mind we feel like if it were put down in the City Park near the tennis court, the closest neighbor or resident would be, as I recall, about two and-a-half blocks away; and if it were put on a taller pole, as I have said before, it wouldn't bother them, and the sound would get out around the town and the rest of the surrounding areas of the town, which is another thing it was originally supposed to do. (R. 14)

Mrs. Vickers also testified as to the effect the noise had on her. She believed the siren sounded "for a minute" every noon. (R. 22) She continued:

MRS. VICKERS: Well, I know that I more or less plan my day-- if I'm going to be outside to work in the yard or something, I keep an eye on the time because I don't want to be outside when the siren blows. Because you have to cover your ears, because it actually hurts your ears. And I go inside until it is over with, and then I come back out again and finish what I'm doing.

HEARING OFFICER: Now, do you know what type of siren this is?

A. Yes, here it is. WPS 2,700 electronic civil defense siren, manufactured by Wayland Engineering Company, Chester, Connecticut. (R. 21)

Q. ... Go ahead and tell us more.

A. Well, when you wake up at night, it doesn't sound like an ordinary siren. It is blasted out and kind of blasts you up and wakes you up, you know, your heart starts beating and adrenaline starts flowing. It's very annoying and very piercing. (R. 25)

She stated that people farther away hear it much differently than she does. (R. 55) Mrs. Vickers would like to see the siren moved to an area less residential. (R. 30)

Marjorie Galle, who lives at 116 West Laurel in Millstadt, approximately 200 feet from the siren's location, described its noise as "ear-piercing". She continued:

At night I will sit bolt upright in bed. It frightens me. When I'm on the telephone, I have to close my conversation until it is over with. It is so loud that the people at the other end can hear it. And the grandchildren when they are over, is - you have to cover their ears. We all have to cover our ears it is so loud. (R. 32-34)

Debra Steppig, of 215 East Goedig in Millstadt owns rental property located approximately 400 feet from the siren. She testified that when she is at the rental property she also has to cover her ears when the siren sounds. (R. 36) She believes the siren should be relocated. (R. 37)

Eulalia Kohlenberger lives at 210 West White Street in Millstadt. Her house sits approximately 200 feet from the siren. She testified that the siren hurts her ears and rattles the windows of her home. She positions herself to be indoors when it goes off. (R. 38) She also believes it should be relocated so that it is not disturbing to Millstadt residents.

Kevin Noerper, Fire Chief for Union Fire Company, the fire company that services Millstadt, testified for the village. He stated that the siren is tested for approximately 20 seconds at noon daily. The siren hits an audible peak for a split second, he testified. The location selected was based upon the recommendation of the siren factory representatives. He believes the siren to be centrally located. (R. 42) In his opinion, if the siren were to be located in the city park area, it would not be heard by all city residents. (R. 43)

The emergency warning sirens are the only available method to alert the all-volunteer fire department consisting of about 35 men. When the siren is activated, it is done so simultaneously with two others. (R. 44) Mr. Noerper does not find any of the three sirens offensive. (R. 48)

Ray Hohlt, the village mayor, also testified on the village's behalf. He stated that the siren was centrally located. He also testified that the Millstadt received a petition, signed by 200 people, in support of the siren's location. He also corroborated the testimony that the siren's placement followed the manufacturer's recommendation. (R. 52)

FINDINGS

The Board finds that its review of the testimony and exhibits in this case establishes an interference with Complainants' enjoyment of life, and that such interference is caused by the noise emissions from the Village of Millstadt's emergency warning siren located next to the Village Hall. The Complainants must curtail outdoor activities when the siren sounds. Phone conversations are disrupted by the sound. The sound hurts the ears of the Complainants and in the words of a neighbor is "ear-piercing". This testimony establishes an interference with Complainants' enjoyment of life. The Board must now evaluate the factors in Section 33(c) of the Act to determine if such interference is unreasonable. Wells Manufacturing Co. v. PCB, 73 Ill. 2d 232-3, 383 N.E. 2d 150-1 (1978).

Section 33(c) Factors

The Board is charged under Section 33(c) of the Act (Ill. Rev. Stat. 1990 Supp., ch. 111 1/2, par. 1033 (c)) to take into consideration all the facts and circumstances bearing on the

reasonableness of the emissions. Such consideration includes:

1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
2. the social and economic value of the pollution source;
3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
4. the technical practicability and economic reasonableness or reducing or eliminating the emissions, discharges or deposits resulting from such pollution source;
5. any subsequent compliance.

(Section 33(c) of the Act)

The Board considers these factors as follows:

As regards Section 33(c)(1), the Board finds interference with the general welfare of Mr. and Mrs. Vickers. According to the Vickers, outside activities are disturbed because of the intensity of the noise. Mrs. Vickers must cover her ears when it blows. Marjorie Galle, a neighbor, also described it as "ear-piercing". Another neighbor testified she must also cover her ears when it sounds. We therefore find that the intensity of the siren's emission cause substantial discomfort during the periods it operates.

This finding is mitigated by the social and economic value of the pollution source, Section 33(c)(2). The source is an emergency warning siren. Its very nature is to assist in the protection of the health, general welfare and physical property of the people of Millstadt. We find, therefore, that the siren has great social and economic value.

The Vickers were living in the residential area at the time of installation of the warning siren and so enjoy priority of location, Section 33(c)(3). However, the remaining issue under this criteria is whether the pollution source is suitable to the area in which it is located. The warning siren is stationed in a residential area next to the Village Hall. The siren sounds every day at noon as a test. The test lasts between twenty seconds and one minute and peaks only a fraction of that time. The immediate location was described as being surrounded by large

trees. Apparently, the height of the siren does not exceed that of the trees. Seventy people live within the same radius of the siren as do the Vickers. The Complainants argue that, because of these facts, the location of the siren must be changed or that its intensity must be moderated.

The Board finds that, regarding suitability of location, an emergency warning siren must be located so as to be heard by the citizenry of Millstadt. We do not find the siren's location here unsuitable. Rather, placement of the siren in position where it can be heard is suited to its purpose. The testimony is un rebutted that the siren was placed next to the Village Hall according to manufacturer's recommendation.

We next turn to the question of whether moderating the siren's intensity is technically practicable or economically reasonable. (Section 33(c)(4)). We have already concluded that the siren's emissions cause the complainants substantial discomfort. However, we have no evidence before us to demonstrate that the intensity can be further lowered or that lowering its intensity would allow the siren to function in a manner sufficient to warn the citizenry. The siren's intensity, by all accounts, does adequately warn the citizenry. We therefore are unable to conclude that the siren's intensity is unsuitable to its location. We note, however, that the Village claims it is voluntarily taking steps to lower the siren's intensity and is considering relocation. (See Motion to Dismiss filed April 19, 1991, p.1.)

As a final matter, the record presents a question as to whether the siren must be tested every day at noon and whether it might better be positioned at such a height so as to not "trap" the sound within the immediate neighborhood. Fire protection is an element of public safety that is best handled at the local level. This record does not support a finding that a daily test of the siren is unreasonable. The siren is the only means currently available to quickly notify the volunteer firemen of a fire. Thus it is imperative that the village know that it is functioning properly. Sounding the siren at a specified time allows people to prepare for the occurrence, thus reducing the "startle effect" associated with unexpected noise. See In the Matter of Proposed Amendment to the Noise Regulations R80-9, R80-10 (May 14, 1981) The Board notes that no evidence was submitted to show that any other means of testing is available.

Additionally the use of an emergency siren as a "noon whistle" is not in and of itself unreasonable.

The record is insufficient to support a finding that it is technically practicable or economically reasonable to adjust the position of the siren or change its intensity. The statements that the siren was placed where recommended by factory

representatives is un rebutted, yet supported by no documentation. The siren could be moved to another site or placed at a higher elevation, but the impacts of such actions are not presented with sufficient particularity or specificity for the Board to judge their merit.

We do not find the factor set forth in Section 33(c)(5) to be at issue in this proceeding.

After reviewing the factors set forth in Section 33(c) of the Act, the Board finds these noise emissions reasonable.

As a practical matter Millstadt officials are in the best position to balance the need for a specific siren with the rights of nearby citizens. Sirens should be sized and located with the safety and welfare of all citizens in mind. The evidence in the record does not support a finding that the intensity and duration of the noise is harmful to hearing. Millstadt has taken steps to mitigate the interference caused by the siren and indicates a willingness to further investigate the matter.

Based on a evaluation of all the evidence and the factors enumerated in Section 33(c) of the Act as discussed above, the Board finds that the noise emissions from the Village of Millstadt's emergency warning siren located next to the Village Hall do not violate the Environmental Protection Act or 35 Ill. Adm. Code 900.102.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

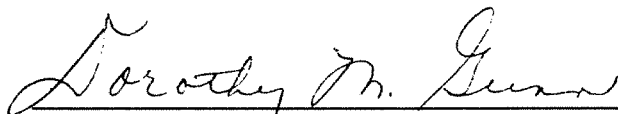
ORDER

The Board finds that the Village of Millstadt has not violated Section 24 of the Act and 35 Ill. Adm. Code 900.102 through its noise emissions from its emergency warning siren located next to the Village Hall.

IT IS SO ORDERED.

J. Dumelle and R. Flemal dissented. J. T. Meyer concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 18th day of September, 1991 by a vote of 5-2.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board