

ILLINOIS POLLUTION CONTROL BOARD  
January 6, 2000

ROGER L. YOUNG and ROMANA K. )  
YOUNG, )  
 )  
Complainants, )  
 )  
v. ) PCB 00-90  
 ) (Enforcement - Citizens, Noise)  
GILSTER-MARY LEE CORPORATION, )  
 )  
Respondent. )

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

On November 29, 1999, Roger L. Young and Romana K. Young (complainants) filed a complaint against Gilster-Mary Lee Corporation (respondent). The complaint alleges that the respondent violated specified provisions of the Environmental Protection Act (Act) (415 ILCS 5/1 *et seq.* (1998)) and the Board's regulations pertaining to past operations of a food manufacturing plant on property located in Chester, Randolph County, Illinois.

As evidenced by the certificate of service filed on November 29, 1999, respondent was served with the complaint and notice of filing on November 16, 1999. On December 13, 1999, an entry of appearance was filed on behalf of respondent. No responsive pleadings have been filed.

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. The Board finds that the complaint is not duplicitous or frivolous, and therefore accepts it for hearing.

DUPLICITIOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules implements Section 31(d) of the Act. It provides:

The Clerk shall assign a docket number to each complaint filed  
\*\*\* the Chairman shall place the matter on the agenda for Board  
determination whether the complaint is duplicitous or frivolous. If  
the Board rules that the complaint is duplicitous or frivolous, it  
shall enter an order setting forth its reasons for so ruling and shall  
notify the parties of the 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 another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68..

The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicitous.

### Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80. The Board finds that the complaint is not frivolous.

### CONCLUSION

The Board finds that, pursuant to Section 103.124(a), the complaint, is neither duplicitous nor frivolous and is accepted for hearing.

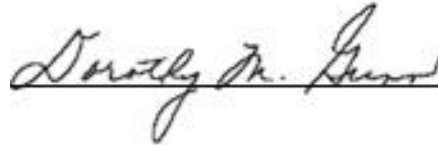
The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules. 35 Ill. Adm. Code 103.125. The Clerk of the Board shall promptly issue appropriate directions to the 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 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 all of 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 January 2000 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