

ILLINOIS POLLUTION CONTROL BOARD  
July 27, 1989

KATHY WESTERN AND )  
JEFFREY WESTERN, )  
 )  
Complainants, )  
 )  
v. ) PCB 89-44  
 )  
MOLINE CORPORATION, )  
 )  
Respondent. )

---

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Complainant, )  
 )  
v. ) PCB 89-87  
 )  
MOLINE CORPORATION, )  
 )  
Respondent. )

ORDER OF THE BOARD (by J. Marlin):

This matter comes before the Board upon a Joint Motion to Consolidate filed by Illinois Environmental Protection Agency (Agency) and Kathy and Jeffrey Western on June 26, 1989 and a Motion for Judgement on the Pleadings filed on July 7, 1989 by Moline Corporation (Moline) in PCB 89-87.

In PCB 89-87, the Agency filed a four count complaint against Moline. Counts I-III allege that Moline caused air pollution in violation of section 9(a) of the Illinois Environmental Protection Act (Act) and failed to obtain the required construction and operating permits in violation of section 9(b) of the Act. Count IV alleges a violation of section 23 of the Act relating to excessive noise.

While the Board does not usually accept Replies to Response Motions, given the complexity of the instant issues, Moline's Reply to Complainants' Response to Motion for Judgement on the Pleadings is hereby accepted.

Moline asserts that the Board does not have subject matter jurisdiction over Count IV because the Agency failed to issue a Compliance Inquiry Letter concerning noise pollution pursuant to section 31(d) of the Act. Therefore, Moline contends that Count IV must be dismissed for failure to state a cause of action.

The Agency does not dispute that the noise pollution violation was not specifically referenced in its Compliance Inquiry Letters. However, the Agency discussed the alleged noise violation with Moline at a conference on December 15, 1988 held pursuant to section 31(d) of the Act. A letter from Moline to the Agency dated January 3, 1989 states that "although the compliance inquiry letter did not mention any allegations of excessive noise, we discussed this matter during our meeting." Lastly, correspondence from the Attorney General's Office dated April 3, 1989 notifies Moline of the possible initiation of an enforcement action noting the level of noise emitted from Moline's plant.

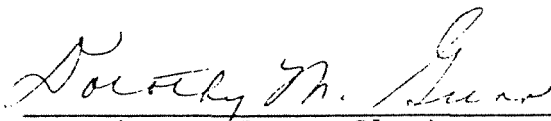
Based on the foregoing, the Board concludes that Moline received notice of the allegations of Count IV and that it is not appropriate to grant Moline's Motion for Judgement on the Pleadings as to Count IV. (See, IEPA v. Mervis Industries, Inc., PCB 88-36 (May 5, 1989).)

In PCB 89-44 the Westerns alleges that Moline has caused or allowed noise pollution. Therefore, PCB 89-44 and PCB 89-87 involve the common issue of noise pollution. In the interest of administrative economy, PCB 89-44 and PCB 89-87 are consolidated so that only one hearing need to be held. However, the Board notes that the Westerns, as complainants in PCB 89-44, must prove the alleged noise violations as set forth in their complaint but not as complainants in PCB 89-87. The Agency retains the burden of proving Counts I-IV of its complaint. The Hearing Officer is directed to take necessary action consistent with this opinion.

IT IS SO ORDERED.

Board Members J. Anderson and J.T. Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 27<sup>th</sup> day of July, 1989, by a vote of 4-2.

  
\_\_\_\_\_  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board