

ILLINOIS POLLUTION CONTROL BOARD
June 23, 1994

ANGELA M. WHITE,)
)
 Complainant,)
)
 v.) PCB 94-150
) (Enforcement)
 TERRY & BILLIE VAN TINE &)
 SCHNEIDER TRANSPORT INC.,)
)
 Respondents.)

ORDER OF THE BOARD (by E. Dunham):

The complaint in this matter was filed on May 13, 1994. The complaint alleges that the respondents have violated Section 9(a) of the Environmental Protection Act (415 ILCS 5/9(a) (1992)) and 35 Ill. Adm. 900.102. The complainant alleges that the operation of a semi-tractor on neighboring property creates noise and air pollution resulting in an unreasonable interference with the use and enjoyment of her property. The complaint seeks an order from the Board ordering respondents to cease and desist from such violations. Unless the Board determines that the complaint is duplicitous or frivolous it shall accept the matter for hearing. (415 ILCS 5/31(b) (1992).)

Also before the Board are two motions to dismiss filed by the respondents. On May 20, 1994, Schneider Transport Inc. filed a motion to dismiss. On June 1, 1994, Angela White filed a response to the motion along with a motion to file instanter. The Board grants Ms. White's motion to file a response instanter. The Van Tines filed a motion to dismiss on June 10, 1994. Angela White filed a response to the Van Tines' motion on June 13, 1994.

Schneider Transport seeks dismissal of this matter because it is frivolous, duplicitous and insufficient in law. The Van Tines also argue that this matter should be dismissed on the grounds that the complaint is duplicitous and frivolous. Initially, Schneider Transport notes that it was improperly identified in the complaint as "Schneider National Trans. Inc." The Board directs the Clerk of the Board to correct the caption in this matter to correctly identify the respondent as Schneider Transport, Inc.

Schneider Transport claims that the complaint is frivolous because it seeks relief beyond the Board's authority to grant. The motion states that the complaint alleges, at best, the elements of a nuisance complaint rather than a violation of any regulation. Schneider contends that this matter would be more appropriate in a civil court. The Van Tines argue that the allegations represent a private nuisance action and is beyond the jurisdiction of the Board.

Ms. White argues that the respondents have ignored the fact that the Board and civil court have concurrent jurisdiction over such claims. She also contends that respondents' argument that the relief sought is beyond the Board's authority is contrary to both law and statute.

An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co. (May 17, 1973, PCB 73-173, 8 PCB 46.) The Board finds that the complaint is not frivolous in that it states a cause of action upon which the Board can grant relief. The alleged violations of the Act are within the Board's jurisdiction.

Schneider Transport and the Van Tines claim that the complaint is duplicitous because the matter was investigated by the Illinois Environmental Protection Agency (Agency) and the Agency did not issue a citation or report a violation. In addition, Schneider Transport argues that numerous complaints have been filed with the City Council and police department but no citations were issued. The Van Tines assert that a resolution to the complaints of the Van Tines was reached by the city police and the City Council. Ms. White states that the respondents' argument is contrary to case law and statute.

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, 64 PCB 263.) The Board finds that the complaint is not duplicitous. While the complaints to the Agency, the police and city council appear to be substantially similar to the complaint, these are not the types of actions that support a finding of duplicitous. An investigation by the Agency or a municipality does not preclude the matter from being brought before the Board.

Schneider Transport argues that the complaint is insufficient in law because Schneider Transport has no control over Mr. Van Tine's residential property or the activities on his property. Further Schneider Transport argues that the complaint is insufficient in law because it is vague and ambiguous. The Van Tines contend that the complaint fails to state a cause of action. The Van Tines argue that the complaint is deficient in that it does not allege any fact which, if proven, would constitute a violation of the Act. The Van Tines also claim that the complaint merely recites conclusory allegations.

The Board finds that the relationship between Schneider Transport and the alleged violations pertains to a factual matter relating to the merits of the case. The motions before the Board request dismissal of the case as frivolous, duplicitous or otherwise insufficient in law. While a motion for summary judgment would allow the Board to consider the facts alleged in

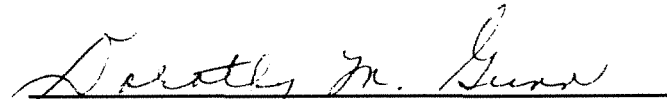
the complaint, no such motion is before the Board. The motions before the Board are insufficient to make a finding based on the merits of the case. The Board finds that the complaint is specific enough to provide notice of the alleged violations and that more specifics of the allegations can be achieved through discovery.

For the proceeding reasons, the Board denies the motions to dismiss. The Board finds that the complaint is neither frivolous or duplicitous for the purpose of Section 31(b). This matter is accepted for hearing.

IT IS SO ORDERED.

M. McFawn dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 23rd day of June, 1994, by a vote of 5-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board