

ILLINOIS POLLUTION CONTROL
February 27, 1992

MICHAEL L. CHRISTIANSON,)
)
 Complainant,)
)
 v.) PCB 90-59
) (Enforcement)
 THE AMERICAN MILLING CO.,)
)
 Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

This matter is before the Board on the January 31, 1992 filing of complainant's motion to supplement the record. On February 11, 1992, respondent filed its objection to the motion.¹ On February 24, 1992, complainant filed an additional motion to supplement the record. Although respondent's response time for responding to the second motion to supplement has not yet expired, the Board will address both motions to supplement because they are very similar and the Board has the benefit of respondent's initial objection.

On November 21, 1991, the Board found that noise emitted from respondent's property unreasonably interfered with complainant's use and enjoyment of his property. (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1024; 35 Ill. Adm. Code 900.102.) The Board ordered respondent to enforce its policy of prohibiting employees and independent drivers from "beating, pounding and hammering on trucks and train cars to loosen gluten" and directed respondent to "cease and desist from such conduct at all times, day and night." The Board also directed respondent to respond to the testimony at hearing suggesting certain abatement measures or submit its own abatement study. On February 3, 1992, respondent filed its response and suggested abatement measures. On February 24, 1992, complainant filed its response.

Complainant now seeks to supplement the record to establish respondent's repeated violation of the Board's order. The January 31, 1992 motion to supplement contains copies of several Tazewell County complaint forms alleging that respondent has continued to

¹ On February 24, 1992, the Board received complainant's reply to respondent's response objecting to the motion to supplement. Section 101.241(c) provides that "[t]he moving person shall not have the right of reply, except as permitted by the Board" (35 Ill. Adm. Code 101.241(c).) The Board finds no reason to deviate from the general rule that replies are not allowed. Consequently, the Board will not consider complainant's reply.

beat and pound on trucks and train cars in violation of the Board's order and an official report of the Tazewell County Sheriff's Department which states that "[c]omplainant requested that a report be on file with the Sheriff's Office in reference to" respondent's violation of the Board's order. Complainant's February 24, 1992 motion to supplement contains another complaint form and numerous signed statements alleging repeated violations of the Board's order prohibiting beating and pounding on the trucks and train cars.

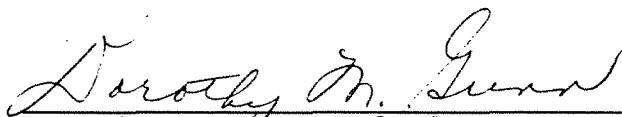
Respondent notes that the complaint forms are not accompanied by any indication that the forms were ever filed with the Tazewell County State's Attorney's Office nor do these "self-serving" documents reflect the independent observation or investigation of the sheriff's department. Respondent contends that it would be prejudiced by the introduction of such evidence without first being able to cross examine the complainant. Respondent also asserts that such information is irrelevant to the remaining issue before the Board (i.e., what abatement measures should be taken to remedy the noise pollution).

Complainant seeks to supplement the record to establish respondent's repeated violation of the Board's January 21, 1991 interim opinion and order. If the Board found that respondent was in violation of the Board's order, the Board would have the authority to impose a penalty against respondent. (Ill. Rev. Stat. 1991, ch. 111 1/2, par. 1042.) However, the Board cannot reach such a determination solely on the basis of the information supplied by complainant; respondent must be given the opportunity to cross-examine complainant and others who have alleged respondent's repeated violations. Therefore, the complainant's motions to supplement the record are denied.

Should complainant wish to pursue the allegations of repeated violations, he should notify the Clerk's office by letter and a hearing will be scheduled consistent with Board resources. The issue at hearing is limited to the alleged repeated violations of the Board's November 21, 1991 order. The question of appropriate abatement measures will be addressed by opinion and order after the Board has reviewed respondent's proposal and complainant's response.

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 27th day of February, 1992 by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board