

ILLINOIS POLLUTION CONTROL BOARD

July 13, 2000

STEPHEN G. BRILL,)
)
Complainant,)
)
v.) PCB 00-219
) (Enforcement - Noise, Citizens)
HENRY LATORIA, individually and)
d/b/a TL TRUCKING FOODLINER,)
)
Respondent.)

ORDER OF THE BOARD (by S. T. Lawton, Jr.):

On June 12, 2000, Stephen G. Brill filed a complaint on behalf of himself and 20 other parties who live near respondent's facility in Franklin Park, Cook County, Illinois, alleging respondent violated the Environmental Protection Act (Act) and several Board regulations regarding air and noise pollution. This matter is before the Board pursuant to 35 Ill. Adm. Code 103.124. Under this Section, enforcement cases filed by citizens are placed on the Board's agenda to determine whether the case is frivolous or duplicitous.

COMPLAINT IS NOT DUPLICITIOUS OR FRIVOLOUS

A complaint is frivolous if the Board cannot grant the requested relief, or fails to state a cause of action for which the Board can grant relief. Colony of Longmeadow HOA v. Dominick's (January 6, 2000), PCB 00-92, slip op. at 1; People v. State Oil (August 19, 1999), PCB 97-103, slip op. at 3. The complaint alleges air pollution and noise pollution in violation of sections 9(a) and 24 of the Act and the following Board regulations: 35 Ill. Adm. Code 900.102, 901.102(a), 901.102(b), and 901.104.

The complaint is not frivolous in alleging respondent caused air pollution in violation of Section 9(a) of the Act, which states:

No person shall . . . cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois 415 ILCS 5/9(a) (1998).

The Act defines air pollution as "the presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to . . . unreasonably interfere with the enjoyment of life or property." 415 ILCS 5/3.02 (1998). The complaint alleges truck traffic from

respondent's business generates constant dust in the air, which unreasonably interferes with the use and enjoyment of nearby properties. Comp. at par. 6 and 7.¹ Allegations of continual dust from respondent's business, which interferes with neighbors' use and enjoyment of their property, could possibly cause or tend to cause air pollution as defined by the Act. The complaint clearly states a cause of action for which the Board can grant relief.

The complaint is also not frivolous in alleging noise pollution in violation of Section 24 of the Act and several Board regulations. Section 24 provides:

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. 415 ILCS 5/24 (1998).

Section 900.102 of the Board's regulations prohibits someone from causing or allowing noise pollution, such as noise that unreasonably interferes with the enjoyment of another's life or property. 35 Ill. Adm. Code 900.102; see also 415 ILCS 5/3.02 (1998).

Sections 901.102(a) and (b) of the Board's regulations prohibit emitting sound above regulatory limits during daytime or nighttime hours from a source on Class A, B or C land to any receiving Class A land. 35 Ill. Adm. Code 901.102(a) and (b). Section 901.104 similarly prohibits emitting impulsive sound, which is a single pressure peak or burst of noise, exceeding maximum allowable limits of sound for the type of land and time of day involved in each matter. The alleged violations are not frivolous in that the complaint stated noise from air horns, air breaks, metallic crashing and other sound, occurs during the day and nighttime. In fact, the complaint alleges TL Trucking Foodliner operates 24 hours a day, seven days per week. The noise from respondent's site could possibly exceed the maximum levels of sound permitted by 35 Ill. Adm. Code 901.102(a) and (b) of the Board's regulations. Comp. at par. 6 and 7. The Board can grant relief for such alleged violations.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or another forum. Colony of Longmeadow HOA v. Dominick's (January 6, 2000), PCB 00-92, slip op. at 1. In paragraph 10 of the certified complaint, Stephen G. Brill states he did not know of any other action against respondent for the same alleged pollution discharge or emission. Comp. at par. 10. Respondent did not alert us to any other action. Based on this information and our own independent search of our database, we cannot find this action is duplicitous.

¹ The complaint will be cited as "Comp. at ___".

NON-ATTORNEY CANNOT REPRESENT OTHER COMPLAINANTS
ADDITIONAL PARTIES MUST FILE PROPER COMPLAINTS.

The Board must address another issue before accepting this case for hearing. Brill was the only individual named as a complainant in the complaint filed with the Board. Brill separately lists 20 additional names on a letter attached to the complaint, namely:

Oleta Brill; Drema, Manuel and Calvin Harrah; Sharon and Crystal Cook; Bernice Raple; Nancy Gibas; Richard Eckert; Teresa Farlow; Silvia Lackajs; Randall and Daniel Hester; Gertrude Miklase; Kathy and Joe Koval; Robert and Joann Rasmussen; and Agnienle and Konraot Kance.

Although Brill properly provided his name, address and signature, the other residents were merely listed with abbreviated street addresses on the letter submitted by Brill to the Board. The Board's procedural rules require the party to sign the original of each document filed with the Board. 35 Ill. Adm. Code 101.104(g). None of the additional residents on the list signed the complaint.

An attorney can also sign a complaint on behalf of a complainant. *Id.* However, the complaint does not identify Brill as an attorney. The Board rules do not allow a non-attorney to represent a natural person as a complainant. 35 Ill. Adm. Code 101.107(a)(1); see also Graf, et al. v. Emerald Landscaping and CPK Landscaping (hereinafter "Graf") (April 15, 1999), PCB 99-125, slip op. at 3. Section 1 of the Attorney Act prohibits persons from acting as an attorney without first obtaining a license to do so. 705 ILCS 205/1(1996); Graf (April 15, 1999), PCB 99-125, slip op. at 3. Since Brill, a non-attorney, was the only individual to file and sign a complaint that complies with the Board's procedural rules, the Board recognizes him as the sole complainant in this matter.

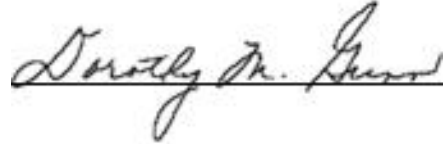
Accordingly, the caption reflects that Brill is the sole complainant. Other interested individuals may still become involved in the case by exercising one of several options. People may represent themselves and refile an individual or joint complaint. Each person must provide his or her signature and business address, and properly serve a complaint in accordance with the Board's procedural rules.

Individuals may also retain an attorney to represent them in a suit against respondents. Anyone who is not identified as a complainant may petition to intervene in accordance with 35 Ill. Adm. Code 103.142. Graf (April 15, 1999), PCB 99-125, slip op. at 3. Interested individuals may also participate in this case by submitting written statements, by giving comment at hearing, or by testifying as witnesses if called at hearing. See 35 Ill. Adm. Code 103.203(a); Giertych, et al v. 4T's Management, L.L.C. (April 20, 2000), PCB 00-133, slip op. at 4.

In summary, since this complaint is neither frivolous nor duplicitous, the Board accepts this case for hearing, with Stephen C. Brill as sole complainant. The additional 20 people listed by Brill can either refile individual or joint complaints, petition to intervene, or participate as witnesses in this case.

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 13th of July 2000 by a vote of 7-0.

A handwritten signature in cursive script that reads "Dorothy M. Gunn". The signature is written in black ink and is positioned above a solid horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board