

ILLINOIS POLLUTION CONTROL BOARD  
October 19, 2000

RICHARD G. COTTERMAN, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 01-54  
 ) (Enforcement - Noise, Air, Citizens)  
 JACKSON FARMS, )  
 )  
 Respondent. )

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

On September 20, 2000, Richard G. Cotterman filed a complaint against respondents, Jackson Farms and the City of Virden, concerning the Jackson Farms trucking facility in Virden, Illinois. The complaint alleges Jackson Farms and the City of Virden violated the Environmental Protection Act (Act) and 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 AGAINST JACKSON FARMS 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 Section 900.102 of the Board’s regulations. See 415 ILCS 5/9(a) and 24 (1998); 35 Ill. Adm. Code 900.102.

The complaint is not frivolous in alleging respondent, Jackson Farms, 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 Jackson Farms’ business generates diesel fumes and dust from a crushed rock yard and the road. Comp. at par. 6 and 7.<sup>1</sup> Allegations of ongoing traffic producing diesel fumes and dust

<sup>1</sup> The complaint will be cited as “Comp. at \_\_\_”.

from respondent's business demonstrate that these activities could possibly cause or tend to cause air pollution as defined by the Act. Accordingly, the Board finds that the complaint states a cause of action against Jackson Farms for which the Board can grant relief.

The complaint also alleges noise pollution in violation of Section 24 of the Act and Section 900.102 of the Board's 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 sound emissions 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). The complaint alleges that noise from air impact tools, grinders, hammering, and the constant noise generated by refrigeration units, occurs during the day and nighttime. In fact, the complaint alleges Jackson Farms operates 24 hours a day, seven days per week. Comp. at par. 6 and 7. The noise from respondent Jackson Farm'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. Since the Board can grant relief for such alleged violations the noise pollution allegations are not frivolous.

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. Neither party has identified any other actions, identical or substantially similar to this pending in this or another forum. Respondents did not alert us to any other action. Based on the information before us and our own independent search of our database, the Board finds this action is not duplicitous.

#### COMPLAINT AGAINST CITY OF VIRDEN IS FRIVOLOUS

The complaint neither demonstrates that respondent, the City of Virden violated the Act or Board regulations, nor requests relief that the Board can grant against the City of Virden for their decision not to enforce certain state or local laws. The complainant does not allege any facts that show the City of Virden caused noise or air pollution independently or in conjunction with Jackson Farms. The complaint solely requests that the City of Virden should be instructed to follow an unnamed judgment and enforce laws concerning Jackson Farms. "The Board is not empowered under the Environmental Protection Act to require that an entity enforce the noise pollution regulations of the State of Illinois." Turner v. Chicago Title & Trust Company, PCB 91-146 (February 27, 1992), slip op. at 16-17. In Turner, the Board ordered the owner of property to cease and desist from allowing noise emissions in violation of Board regulations. The respondent owned property where fraternity houses were built. The noise from the fraternity

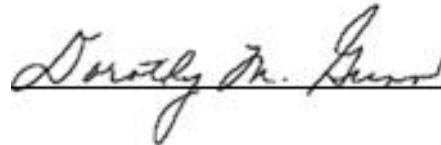
houses, including loud music and screaming, constituted noise pollution under Section 24 of the Act and 35 Ill. Adm. Code 900.102. *Id.* at 17.

The complainant in Turner separately requested the Board to serve a mandate upon the city manager, the police chief and all of their agents to enforce the noise pollution laws of the State of Illinois. *Id.* at 16-17. The Board found that it could not require an entity to enforce Board regulations. *Id.* Similarly, in the case at hand, the complainant requested the Board to order the City of Virden to enforce air and noise pollution laws concerning Jackson Farms. Since the Board cannot grant the relief requested by the complainant against the City of Virden, the Board dismisses the City from this case.

In summary, the Board finds that the complaint as to Jackson Farms is neither duplicitous nor frivolous, and accepts the case for hearing. However, the Board dismisses respondent City of Virden from this matter. The caption of this order and all future orders should reflect this change.

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 19th day of October 2000 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board