

ILLINOIS POLLUTION CONTROL BOARD  
February 21, 2008

KYLE NASH, )  
)  
Complainant, )  
)  
v. ) PCB 07-97  
) (Citizens Enforcement - Noise)  
LOUIS JIMENEZ, )  
)  
Respondent. )

ORDER OF THE BOARD (by N.J. Melas):

This matter comes before the Board on complainant Kyle Nash's (Nash) November 16, 2007 *pro se* motion for summary judgment in this citizen's noise nuisance complaint. Respondent Louis Jimenez (Jimenez) has not filed a response.

On March 26, 2007, Kyle Nash filed a complaint (Comp.) against Louis Jimenez.<sup>1</sup> Nash alleges that Jimenez violated the nuisance noise provision of Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2006)). Nash further alleges the source of the allegedly offensive noise is the wind chimes on Jimenez' front porch and back yard. The complaint concerns Nash's property located at 1630 W. 33rd Place, Chicago, Cook County. The Jimenez property is located at 1628 W. 33rd Place, Chicago, Cook County.

After review of the filings in this matter, the Board finds that it cannot consider Ms. Nash's motion for summary judgment. As a threshold matter, the Board finds that the complaint as filed fails to state a claim on which relief can be granted. As recently as December 2007, the Board granted a motion to dismiss a similar case alleging, among other sorts of violations of the Act, violations of the nuisance noise provisions. In that case, the Board remarked that:

"The appellate court has previously stated that Section 24 is not a general statutory prohibition." Rulon v. Double D Gun Club, PCB 03-7, slip op. at 4 (Aug. 22, 2002), citing Shepard v. Northbrook Sports Club and the Village of Hainesville, 272 Ill. App 3rd 764, 768, 651 N.E.2d 555, 558 (2nd Dist. 1995). Section 24 prohibits the emission of noise "*so as to violate any regulation or standard adopted by the Board under this Act.*" Shepard, 272 Ill. App. 3rd at 768, 651 N.E.2d at 558 (emphasis in original); see 415 ILCS 5/24 (2006). "Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24."

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<sup>1</sup> The Board also accepted for hearing another noisy wind chime complaint filed by Nash simultaneously with the filing of this one: Kyle Nash v. Karen Sokolowski, PCB 07-96 (July 26, 2007). The Board directed the hearing officer to coordinate the management and hearing of these cases to the extent practicable. The Board is today also issuing an order in that case.

Rulon, PCB 03-7, slip op. at 4, citing Roti, et al. v. LTD Commodities, PCB 99-19, slip op. at 2 (Nov. 5, 1998). George R. Strunk v. Williamson Energy LLC (Pond Creek Mine #1), PCB 07-135, slip op. at 9-10 (Dec. 20, 2007).

Consistent with prior case law, the Board will allow Ms. Nash an opportunity to amend her complaint. *See, e.g.*, George R. Strunk v. Williamson Energy LLC (Pond Creek Mine #1), PCB 07-135, slip op. at 9-10 (Sept. 20, 2007). The Board accordingly directs Ms. Nash to file an amended complaint complying fully with the Board's procedural rules, including but not limited to those listed at 35 Ill. Adm. Code 103.204 and those pertaining to proof of service. But, if an amended complaint curing the noted deficiency is not filed within 30 days of the date of this order, this matter will be subject to dismissal.

IT IS SO ORDERED.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on February 21, 2008, by a vote of 4-0

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal flourish extending to the right.

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John T. Therriault, Assistant Clerk  
Illinois Pollution Control Board