

ILLINOIS POLLUTION CONTROL BOARD
September 6, 2001

ROGER L. YOUNG and ROMANA K. YOUNG,)
Complainants,)
v.) PCB 00-90
GILSTER-MARY LEE CORPORATION,) (Citizens Enforcement - Noise)
Respondent.)

W. JEFFREY MUSKOPF OF FREEARK, HARVEY, MENDILLO, DENNIS. WULLER, CAIN & MURPHY, P.C. APPEARED ON BEHALF OF COMPLAINANTS; and

THOMAS G. SAFLEY OF HODGE DWYER ZEMAN APPEARED ON BEHALF OF RESPONENT.

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

On November 29, 1999, Roger and Romana Young (complainants) filed a complaint against Gilster-Mary Lee Corporation (respondent). In that complaint, the complainants allege that the respondent violated Sections 9 (a) and 24 of the Environmental Protection Act (Act) (415 ILCS 5/9(a) and 24 (2000)) and 35 Ill. Adm. Code 900.102, 901.102, 901.104, and 901.106 (the Board's noise regulations). Complainants did not proceed with the allegations under Section 9(a) of the Act and 35 Ill. Adm. Code 901.102, 901.104, and 901.106. Complainants charge that noise generated in the respondent's food manufacturing plant in Chester, Randolph County, Illinois, has unreasonably interfered with complainants in their home adjacent to the plant.

Hearing was held on April 10, 2001, in Chester, Illinois, before Board Hearing Officer Steven Langhoff. Complainants filed a post-hearing brief on May 18, 2001. Respondent filed their post-hearing brief on June 20, 2001.

Based on the evidence presented in this proceeding, the Board finds that the noise emanating from Gilster-Mary Lee Corporation's plant in Chester, Illinois unreasonably interferes with the enjoyment of the complainants' property. The Board directs respondent to file a report within 180 days detailing how respondent will reduce the noise levels.

STATUTORY BACKGROUND

Section 24 of the Act 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 the Act. 415 ILCS 5/24.

Section 33(c) of the Act provides that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

- i. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. The social and economic value of the pollution source;
- iii. The suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. Any subsequent compliance. 415 ILCS 5/33(c).

Section 900.101 Definitions

Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity. 35 Ill. Adm. Code 900.101.

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. 35 Ill. Adm. Code 900.102.

BACKGROUND

The following discussion will be divided by the historical use of the property, the plant operations, the testimony regarding noise emissions, zoning, and finally the public comments received.

Historical Use of the Property

In 1997, the Youngs moved to the property at 1009 Swanwick Street in Chester, Randolph County, Illinois. Tr. at 169. Mr. Young had inherited the property from his mother in 1995. *Id.* Prior to Mr. Young's inheritance of the property, his parents had lived there since 1953. Tr. at 109. Mr. Young's parents purchased the property from Mrs. Young's parents who lived in the house during Mrs. Young's teenage years. Tr. at 171. Mrs. Young's parents purchased the home in 1948. Tr. at 108.

The Youngs' residence borders Gilster-Mary Lee property on three sides. Exh. C8. On two sides are parking lots and the third is an alley which is also used for parking by Gilster-Mary Lee. Tr. at 178, Exh. C8. The fourth side of the Youngs' residence faces Swanwick Street. Exh. C8.

Prior to moving into the home in 1997, the Youngs remodeled the home. Tr. at 158-59. This included installing a new furnace and air-conditioning unit. *Id.* The remodeling also included the installation of carpet in "the whole house" to "sound deaden everything." Tr. at 184. And Mrs. Young made draperies using heavy material to "deaden all sound as best we could." *Id.*

In approximately 1929 a shoe factory was located on a part of the property currently owned by Gilster-Mary Lee. Tr. at 300-01. Additionally during that time, a hosiery factory was also located on a part of the property currently owned by Gilster-Mary Lee. *Id.* Sometime in the early 1960s, Gilster Company moved to Chester taking over the shoe factory. Tr. at 299. At some point the company became Gilster Martha White and then in the 1970s there was "a split between Martha White and Don Welge." Tr. at 299. Mr. Welge is the president and chief executive officer of Gilster-Mary Lee. Tr. at 289. Mr. Welge started the "Mary Lee Packaging Corporation" in Perryville, Missouri. *Id.* In about two years Mr. Welge bought the "Gilster portion back from Martha White" and the facility became known as "Gilster-Mary Lee". *Id.*

Gilster-Mary Lee Plant Operations

The Gilster-Mary Lee plant typically operates six days a week twenty-four hours a day, 230 days a year. Tr. at 18-19. The number of operational days is driven by customer orders and sometimes the facility operates on Sundays. *Id.* The plant produces food products, plant including: stuffing mixes, cake mixes, chicken coating mixes, and cookie mixes. Tr. at 17. The plant employs 283 workers and uses 25,000,000 pounds of flour per year. Tr. at 313, 314. In addition to the flour used at the plant, the plant also receives sugar and corn sugar. Tr. at 345-46. In all, approximately four to seven trucks a day are unloaded at the plant. Tr. at 346. The unloading of one truck can take two to three hours. Tr. at 191.

Until mid-way through the year 2000, Gilster-Mary Lee unloaded trucks whenever the trucks arrived during the 24-hour day. Tr. at 347. Gilster-Mary Lee has adopted a policy "that if we catch them [the trucks] and they are going past 10:00 [p.m.] we shut them off and make them wait until morning". Tr. at 348. However, some unloading still does occur after ten at night. *Id.* Also in 2000, Gilster-Mary Lee completed planned plant improvements that moved the

unloading station further from the Youngs' property. Tr. 320-21. In response to the noise complaint, Gilster-Mary Lee did include in the improvements additional piping to allow for all unloading to occur at the new location. *Id.*

Noise Emissions Testimony

Mr. Roger Young

Mr. Roger Young testified that he knew that the plant was located next to the house when he and his wife moved there in 1997. Tr. at 113. He testified that there was some noise but it was acceptable. *Id.* Mr. Young testified that the noise was "much louder" and of a different kind since moving in. *Id.* Mr. Young's testimony was that the noise was even louder after the installation of the new tanks in 2000. Tr. at 114-15. Mr. Young testified that he cannot always identify the noise source (Tr. at 128); however there are two distinct noise sources which can be identified. Those two noise sources are the unloading of the trucks, including banging on the side of the trucks, and second, the changing of the dumpster. Tr. at 129, 130.

Mr. Young indicated that he has been awakened by noise from the Gilster-Mary Lee plant early in the morning and in the middle of the night. Tr. at 118-19. Mr. Young testified that the bedroom was relocated to a point further away from the plant because of the noise from the plant. Tr. at 118. Mr. Young stated that the noise causes him to lose sleep and have trouble concentrating. Tr. at 129. He indicated that the noise upsets him by getting on his nerves and making him angry. *Id.* Mr. Young testified that "you can't sit on the front porch and communicate with anybody." Tr. at 131.

Mr. Young stated that he and his wife have left their home to get away from the noise. Tr. at 125. Mr. Young also testified that after knee replacement surgery he recovered at their second home because he "could rest, sleep" instead of being "aggravated by the boom, boom, booming on the tankers and the roaring and so forth." Tr. at 136-37.

The noise from the employee parking lot has also disturbed Mr. Young. Tr. at 138. The noises that come from the parking lot include people driving on the gravel lot, the noise from automatic locks, and the slamming of doors as the employees get in and out of cars. *Id.* Mr. Young testified that at three in the morning there are "a lot of them that are noisy." *Id.*

Mr. Young purchased a Radio Shack noise meter and used it according to the directions. Tr. at 141. He had also previously spoken to Mr. Greg Zak of the Illinois Environmental Protection Agency and Mr. Zak instructed Mr. Young on the proper use of the noise meter. He set the meter on slow and A for response. *Id.* Mr. Young used the meter to take noise measurements from the property line on the northeast corner towards the Gilster-Mary Lee plant. Tr. at 142. He also took measurements from the front porch of his home and the upstairs window. *Id.* Mr. Young then videotaped the noise meter while taking the measurements. Tr. at 144. At hearing nine videotapes were admitted into the record.¹

¹ The video tapes were admitted over the objection of respondent, who then raised the objection again with the Board. The Board declined to overturn the hearing officer's ruling in a Board

Mrs. Romana Young

Mrs. Young testified that as a teenager she lived in the house at 1009 Swanwick Street with her parents. Tr. at 171. She remembers that during that time the noise from the shoe factory, which did not operate at night, was a “little hum” buffered by the houses that were up the street. Tr. at 172. In contrast, she testified that now she can hear noise from the Gilster-Mary Lee plant in every room in her house. Tr. at 176. Mrs. Young corroborates her husband’s testimony that sometime they just leave to “escape” the noise. Tr. at 173. Mrs. Young also agreed with her husband that his recuperation from knee surgery was faster at their second home. Tr. at 188.

Mrs. Young testified that Gilster-Mary Lee does unload at night including unloading the night before the hearing after ten at night. Tr. at 173, 175. Also, the noise from the parking lot in the middle of the night disturbs Mrs. Young. Tr. at 177. Other noises from the plant also disturb Mrs. Young during the night. Tr. at 182. Mrs. Young described the loading and unloading of the trash dumpster as like “fingernails on a chalkboard.” Tr. at 179-80. However, Mrs. Young does concede there has been some change in the procedure of loading and unloading the trash dumpster. *Id.*

Mrs. Young stated that the noise from the plant also interfered with her use of her home. Specifically Mrs. Young indicated that she was supposed to have an office and sewing room on the second floor, but she is unable to work there because of the noise. Tr. at 185. She further indicated the they do not entertain people when the plant is operating because of the noise. *Id.* Mrs. Young asserted that this is different than when Mr. Young’s mother still lived in the house. *Id.* At that time, Mrs. Young stated that she could sit on the porch and visit with people as they came by. *Id.*

Mrs. Young describes the noise as “continual, constant noise level from dumpsters, from trucks, from trucks sitting in front of the house.” Tr. at 189. She has called the police to complain about the noise “several” times. Tr. at 187. Mrs. Young also testified that the noise is louder since the completion of the planned plant improvements. Tr. at 192.

Mr. Gregory Zak

Mr. Zak testified on behalf of the complainants in this proceeding. Mr. Zak was employed by the Illinois Environmental Protection Agency as a noise advisor. Tr. at 201. Mr. Zak testified that he “tested the calibration” on the noise meter used by Mr. Young and that the calibration was exactly correct and that the calibration of these types of noise meters does not drift in his experience. Tr. at 205, 207. Mr. Zak also indicated that he reviewed eight of the nine videotapes introduced into evidence. Mr. Zak stated that some of the videotapes showed a “C-weighted measurement” however, there were enough of the appropriate A-weighted measurements to allow Mr. Zak to form an opinion regarding the noise. Tr. at 207. Mr. Zak also

commented on the testimony of Jack Hutchinson, an employee of Gilster-Mary Lee who also took noise measurements. Mr. Zak stated that, based on the equipment used by Mr. Hutchinson and Mr. Hutchinson testimony on the use of the equipment, Mr. Hutchinson's measurements were also "substantially accurate" in Mr. Zak's opinion. Tr. at 210-11.

Mr. Zak further testified that based on the measurements taken by Mr. Young, Mr. Hutchinson and the respondent's noise expert the noise emanating from the Gilster-Mary Lee plant could unreasonably interfere with the Youngs' use of their property and impact their sleep. Tr. at 213. Mr. Zak testified that Mr. and Mrs. Young's sleep being disturbed was consistent with Mr. Zak's experience with this type of noise source. *Id.* Mr. Zak also agreed that normal conversation may be difficult based on the measurements and the testimony. *Id.* Mr. Zak also testified that the noise could affect the ability to concentrate, the entertainment of guests outdoors and add to the stress of the inhabitants. Tr. at 214-15.

Mr. Zak's testimony was based on listening to the testimony at hearing, reviewing the videotapes, exhibits and other materials produced in discovery. Tr. at 204. Mr. Zak did visit the site after his deposition was taken; however the site visit was done without the knowledge of the complainants or their lawyer. Tr. at 218. The site visit also did not alter the opinions of Mr. Zak. Tr. at 205, 217-18. Mr. Zak also offered extensive testimony concerning possible remedies to the noise emanating from the Gilster-Mary Lee plant.

Mr. Jack Hutchinson

Mr. Hutchinson, an employee of Gilster-Mary Lee in the position of engineering and compliance testified for both parties. Mr. Hutchinson testified to many matters including the procedures he followed while taking noise measurements with two separate types of noise meters. Tr. at 25, 45. The two types of noise measurement devices were a Quest Technologies device which is a noise level meter and a Simpson 897 Dosimeter. Tr. at 25-26. Mr. Hutchinson followed the directions when using both devices; however, he was not familiar with the Pollution Control Board regulations regarding noise measurements. Tr. at 26-27, 55. Mr. Hutchinson did not have a concern regarding the calibration of the Quest device, but he did send the Simpson device back for maintenance after the first set of readings. Tr. at 29.

The readings, which Mr. Hutchinson measured using the Quest device, are included at Exhibit C1 and reflect a range of measurements 54dB to 92dB. Tr. at 31, Exh. C1. The measurements using the Simpson device are found at Exhibits C5, C6, and 7. Tr. at 45. Exhibit C5 was Mr. Hutchinson's first use of the device and he believed the readings were suspect. Tr. at 45. Mr. Hutchinson concedes that some of the measurements taken would demonstrate a potential violation of the numeric noise standards adopted by the Board even during the quietest times. Tr. at 47, 85.

Mr. Hutchinson also testified to the improvements made at the plant including some improvements made in an attempt to reduce the noise emissions from the plant. Tr. at 56-74. Mr. Hutchinson testified that since the movement of the flour unloading station the noise level in his opinion is much less. Tr. at 62. He also testified that the addition of some improvements

helped to reduce the noise level. Tr. at 63. Mr. Hutchinson testified that he witnessed Mrs. Young on the phone on her front porch on one occasion. Tr. at 83.

Mr. Ronald Tretter

Mr. Ronald Tretter, general superintendent and vice-president of operations for Gilster-Mary Lee testified. Mr. Tretter is also a lifelong resident of Chester and he too remembers the shoe factory that operated where Gilster-Mary Lee now is located. Tr. at 303-04. Mr. Tretter remembers the noise from the shoe factory as a loud clapping noise that could be heard for some distance. Tr. at 305.

Regarding Gilster-Mary Lee's operations, Mr. Tretter also testified concerning the planned plant improvements as well as adjustments made in response to the noise complaint. Tr. 320, 321, 322. Mr. Tretter testified that when Gilster-Mary Lee "outgrew" the current system for unloading of tanks, Gilster-Mary Lee searched for a new unloading area and relocated those tanks as a part of a planned renovation. Tr. at 311, 320. Mr. Tretter further testified that there had been a "slight" growth in the institutional department. Tr. at 351. Mr. Tretter also commented on the suggestions made by Mr. Zak to lower noise emissions.

Dr. Jason Weissenburger

Dr. Jason Weissenburger, president and founder of Engineering Dynamics International testified on behalf of respondent. Dr. Weissenburger reviewed the eight of the nine videotapes introduced into evidence in this proceeding. Tr. at Tr. at 359. He also reviewed the depositions of Mr. and Mrs. Young, Mr. Zak and Mr. Hutchinson. Tr. at 358-59. Dr. Weissenburger admitted that in viewing the videotapes that he did not think "that the levels that showed up there are particularly invalid by any means." Tr. at 361. Dr. Weissenburger does believe that there are numerous sources of noise on the videotapes which do not come from the Gilster-Mary Lee plant. Tr. at 361-62. Dr. Weissenburger also noted that the sound quality when tapes are transferred can be distorted; however the visual image is fine. Tr. at 364-65.

Dr. Weissenburger testified that in his opinion, nothing from his site visit, or "the documents and other evidence in the case" would "let" him say that the noise emissions unreasonably interferes with the Youngs' use of their property. Tr. at 366. Dr. Weissenburger does concede that it is a subjective matter and it is difficult to place himself in the Youngs' position; however, nothing in the record "jumps out and says, yes, this is unbearable." *Id.* Dr. Weissenburger opines that based on the noise measurements of 70dB there should be nothing higher than a 40dB to 45dB in the back bedroom. Tr. at 366-67. Dr. Weissenburger also testified that after the flour unloading station was moved he performed noise measurements that showed a 9-decibel reduction and that is a significant reduction in his opinion. Tr. at 374-75. Dr. Weissenburger also indicated that he was able to hold a normal conversation during unloading at the property line. Tr. at 370.

Zoning

Mr. Edward Fisher testified for respondent regarding the zoning of the area around the Gilster-Mary Lee plant. Mr. Fisher is city attorney for the City of Chester. Tr. at 281. In 1978, Chester adopted a zoning ordinance. Tr. at 282. There are three residential zones in Chester: R1 which is single family residences; R2, which is duplexes, single family residences, condominiums; and R3 which is mobile homes. In addition, Chester has zones for industrial and commercial. The Gilster-Mary Lee plant is located in an area zoned for commercial use. Tr. at 287. In 1978, if an industrial use was occurring in an area zoned commercial or residential that use could continue as a nonconforming use. Tr. at 285. Gilster-Mary Lee was such an industrial facility in 1978. Tr. at 287.

Public Comments

Under the Board's rules, public comments may be filed after a hearing subject to the hearing officer's scheduling order. 35 Ill. Adm. Code 101.628(c). Further, the Board's rules indicate that such public comments are given less weight than evidence subject to cross-examination. 35 Ill. Adm. Code 101.628(b). The Board received a total of seven public comments in this proceeding.² The comments all corroborate the testimony of complainants.

DISCUSSION

Complainants have alleged that respondent violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. These two provisions constitute a prohibition against "nuisance noise" pollution. Charter Hall Homeowner's Association and Jeff Cohen v. Overland Transportation System, Inc., and D. P. Cartage, Inc., PCB 98-81 (October 1, 1998) (Charter Hall), citing to Zivoli v. Prospect Dive and Sport Shop, Ltd., PCB 89-205 (March 14, 1991) (Zivoli) slip op. at 8. In determining whether noise emissions rise to the level of a nuisance noise pollution violation, the Board performs a two-step inquiry. First, the Board determines whether or not the noise constitutes an interference in the enjoyment of complainants' lives and second, considering the factors enunciated in Section 33(c) of the Act, the Board determines whether or not the interference is unreasonable. Charter Hall slip op. at 19-21. The following discussion will address first whether complainants have established that the noise emanating from Gilster-Mary Lee's plant constitutes an interference with the enjoyment of life and second whether the noise emissions from Gilster-Mary Lee's plant constitutes an unreasonable interference in their lives.

Interference With Enjoyment of Life

The Board has stated that if there is no interference there can be no nuisance noise violation. Zivoli slip op. at 9. Accordingly the Board must first determine whether the sounds have interfered with the enjoyment of life. Furlan v. University of Illinois School of Medicine, PCB 93-15 (October 3, 1996), (Furlan) slip op. at 4. The Board has held that the following disturbances constitute interference: sleeplessness from nightclub noise (Manarchy v. JJJ Associates, Inc., PCB 95-73, (July 18, 1996) slip op. at 10); noise interfering with sleep and use

² Respondent objected to the public comments and asked that the comments be stricken. The Board denied the motion on June 21, 2001.

of yard (Hoffman v. Columbia, PCB 94-146, (October 17, 1996) (Hoffman) slip op. at 5-6, 17); and, trucking operation noise impacting sleep, watching television and conversing (Thomas v. Carry Companies of Illinois, PCB 91-195 (August 5, 1993), slip op. at 13-15). The Board will now summarize each parties' arguments regarding the interference with the enjoyment of life and then discuss the Board's finding.

Complainants' Arguments

The complainants' delineate in their brief five specific noise sources and one general category. The complainants point to the unloading of trucks as one source. Comp. Br. at 9-11. Secondly, complaints assert that the garbage container unloading and loading is a source of noise that is problematic. Comp. Br. at 11-12. Third, the complainants maintain that trucks idling outside their home disturb them. Comp. Br. at 12. Complainants also allege noise from the employee parking lot interferes with their use of the property. Comp. Br. at 12. And finally, the complainants assert that there are "undifferentiated and miscellaneous" noises from the plant. Comp. Br. at 13. The complaints argue that there is "overwhelming" evidence in the record to support their assertion that the noise emissions from the Gilster-Mary Lee plant interfere with their enjoyment of life. Comp. Br. at 16.

Respondent's Arguments

Respondent sets forth a lengthy argument that the record does not support a finding that the noise emissions from the Gilster-Mary Lee plant interfere with the complainants' enjoyment of life. In sum, respondent asserts that complainants' brief "(1) mischaracterize the evidence, (2) is not supported by competent evidence, (3) is not credible and/or (4) does not set forth facts sufficient to constitute 'interference'." Resp. Br. at 13. Specifically respondent maintains that Mr. Young testified that "at times" the noise from the plant interferes with conversation on the front porch. Resp. Br. at 14. Also respondent asserts that the complainants' testimony is not credible on the issue of the use of the front porch because Mr. Hutchinson saw Mrs. Young speaking on the telephone on the front porch. *Id.* Respondent also argues that Mr. Young only had "some trouble concentrating" when reading. *Id.* Respondent also challenged Mr. and Mrs. Young's testimony concerning their ability to sleep and being awakened in the night. Resp. Br. at 15.

Discussion

As previously stated the Board has found that if there is no interference there can be no nuisance noise violation. Zivoli slip op. at 9. Therefore, the first step in the Board's inquiry about a nuisance noise violation is whether or not the sounds have interfered with the enjoyment of life. Furlan slip op. at 4. Only if there has been an interference does the Board proceed to the second inquiry of whether the noise unreasonably interferes with the enjoyment of life.

The Board has determined that noise interfering with sleep and use of yard (Hoffman) and trucking operation noise impacting sleep, watching television and conversing (Thomas v. Carry Companies of Illinois) does constitute an interference. And although the Board appreciates the arguments of respondent and the nuances in the testimony pointed out by

respondent, the Board is convinced that the record supports a finding that the noise emissions from Gilster-Mary Lee's plant interfere with complainants' enjoyment of life. The Youngs both testified that they had trouble getting to sleep and being awakened. Mrs. Young does not use a room in the house because of the noise. Mr. Young has testified that he does have trouble concentrating. These facts are sufficient and the Board finds that the noise emissions from the Gilster-Mary Lee plant interfere with complainant's use of their property and thus the enjoyment of the property.

Having found that the noise emissions from the plant do interfere with the complainants' enjoyment of life, the Board must consider if the emissions unreasonably interfere with complainants' enjoyment of life.

Unreasonable Interference, Section 33(c) Factors

The remaining issue is whether the noise from Gilster-Mary Lee's plant has unreasonably interfered with the complainants' enjoyment of life. Whether an interference is unreasonable is determined by examining the factors set forth in Section 33(c) of the Act. The Board need not find against respondent on each factor to find a violation. *See Wells Manufacturing Company v. Pollution Control Board*, 73 Ill. 2d 226, 233, 383 N.E.2d 148, 151 (1978) (*Wells Manufacturing*); *Processing and Books, Inc. v. Pollution Control Board*, 64 Ill. 2d 68, 75-77, 351 N.E.2d 865, 869 (1976); *Incinerator, Inc. v. Pollution Control Board*, 59 Ill. 2d 290, 296, 319 N.E.2d 794, 797 (1974). The Board will now consider each of the Section 33(c) factors.

The Character and Degree of Injury to, or Interference With the Protection of the Health, General Welfare and Physical Property of the People

In assessing the character and degree of interference that the noise emissions from the Gilster-Mary Lee plant caused, the standard applied by the Board is whether the noise "substantially and frequently interferes" with the enjoyment of life, "beyond minor or trifling annoyance or discomfort." *Charter Hall*, slip op. at 21, citing *Kvatsak v. St. Michael's Lutheran Church*, PCB 89-182 (August 30, 1990), slip op. at 9.

Complainants Arguments. Mr. Young testified that the noise emissions disturb him in a number of ways; although when the Youngs moved to the property in 1997, the noise was acceptable. Comp. Br. at 16, citing Tr. at 112. However, since the move, Mr. Young testified that the noise is louder and he has been awakened by the noise emissions. Comp. Br. at 17, citing Tr. at 133-34. He also testified that he has trouble concentrating when reading and carrying on conversations. Comp. Br. at 17, citing Tr. at 129, 131.

Mrs. Young also testified to being disturbed during her sleep, although she cannot positively identify the sounds that awaken her. Comp. Br. at 17, citing Tr. at 173-74, 182. Mrs. Young testified that sometimes they just leave their home because of the noise and she does not use a room that was supposed to be her office because of the noise. Comp. Br. at 17, citing Tr. at 173, 185. Mrs. Young also testified that they do not entertain because of the noise. Comp. Br. at 17, citing Tr. at 185-86.

Complainants maintain that Mr. Zak's testimony supports the complainants claim that the noise emissions cause substantial interference. Comp. Br. at 18. Mr. Zak testified that in his opinion the noise emissions could impact sleep and interferes with normal conversation in an otherwise quiet room. Comp. Br. at 18, citing Tr. at 213, 214.

The complainants also argue that the public comments received in this proceeding also corroborate the Youngs allegations regarding noise emissions. Comp. Br. at 18. The Board received seven comments describing the noise emissions from the facility. The complainants also introduced nine videotapes taken throughout 2000 and up to the time of the hearing. Exh. C22-C30. Those videotapes include a pictorial depiction of a noise meter taking readings at several different times of the day and night including early morning (before 7 a.m.) and late evening (after 10 p.m.). The complainants assert that the videotapes are indicative of the noise they have "to live with on a daily basis." Comp. Br. at 17.

Respondent's Arguments. Respondent maintains that the complainants assert eight ways in which the noise emissions interfere with their lives. Resp. Br. at 21. Those eight ways are: (1) interference with the use of the front porch (Resp. Br. at 14); (2) that the garbage loading and unloading makes it hard to concentrate in their home (Resp. Br. at 14); (3) the noise gets on Mr. Young's nerves, making him mad, putting him in a bad mood and making him unhappy (Resp. Br. at 14); (4) Interference with watching television (Resp. Br. at 15); (5) interference with sleep (Resp. Br. at 15); (6) Mr. Young is taking Valium to help cope with the noise problem (Resp. Br. at 16); (7) noise emissions interfere with Mrs. Young's ability to entertain and sew in her home (Resp. Br. at 16); and (8) Mr. Young's recuperation from knee surgery was hindered by the noise emissions (Resp. Br. at 17). Of these eight assertions, the respondent argues that the Board must disregard three of the assertions as improper lay medical opinions. Resp. Br. at 21. Respondent relies on Johnson v. ADM-Demeter, Hoopeston Division, PCB 98-31 (January 7, 1999) (Johnson) to support this assertion.

Regarding the non-medical assertions, respondent maintains that Mr. Hutchinson witnessed Mrs. Young using the phone on the front porch. Resp. Br. at 22. Respondent argues that if Mrs. Young can use the phone on the front porch while flour is unloading then the interference must not be substantial. *Id.* Respondent also asserts that the unloading and loading of trash only takes five to ten minutes and occurs only between the hours of 9:30 a.m. and noon. Resp. Br. at 22. Respondent argues that "some trouble concentrating" for five to ten minutes, if Mr. Young is reading, does not constitute substantial interference. *Id.* Similarly, respondent argues that turning up the television because of noise emissions from the plant is not sufficient to establish a substantial interference. *Id.*

Respondent asserts that the record does not support the Youngs' assertion that their sleep is disturbed. Resp. Br. at 22. Respondent argues that the testimony of the complainants indicates that Mr. Young could only recall one instance where noise from the plant actually woke him up and trouble falling to sleep could be because of his age. Resp. Br. at 22. Further, respondent alleges that Mrs. Young does not know whether the noise from the plant wakes her up or not and her trouble falling asleep after being awakened is not related to the noise at the plant. *Id.* Respondent also argues that Mrs. Young testified that she does a lot of sewing and

craft work and that she never testified that noise from the plant has interfered with any attempt by complainants to entertain people in their house. Resp. Br. at 22-23.

Respondent maintains that the testimony of Dr. Weissenburger supports the respondent's arguments. Resp. Br. at 23. According to respondent, Dr. Weissenburger testified that in his opinion there was no evidence that noise from the plant unreasonably interferes with complainants' lives. Resp. Br. at 23. Respondent summarizes Dr. Weissenburger's testimony stating that he testified that the noise levels experienced by complaints are not remarkable or "terribly different than anything else we are going to find any place." Resp. Br. at 23.

Respondent argues that complainants have testified that they do use their home as further evidence that the interference is not substantial. Resp. Br. at 23-24. Respondent points out that the Youngs use their second home as a weekend getaway, thus they are not at home to hear noise emissions on Saturdays or Sundays. Resp. Br. at 24. Finally respondent argues that the substantial improvements made in the home also are evidence that the interference is not substantial. Resp. Br. at 23-24.

Respondent also argued that the complainant did not establish that the interference was frequent. In fact respondent asserts that the complainants brief does not even address the issue of frequent interference. Resp. Br. at 24-25. Respondent points to Mr. Young's testimony when he stated that he had no idea how often noise woke him. Resp. Br. at 25.

Discussion. In determining the character and degree of injury caused by the noise emissions from the plant the Board must examine whether the interference was substantial and frequent. The Board will look to each of the four specific noise sources delineated by the complainants as well as looking to the testimony that goes to all the noise sources. The four noise sources delineated by the complainants are: the unloading of trucks (Comp. Br. at 9-11); the garbage container unloading and loading (Comp. Br. at 11-12); trucks idling outside their home (Comp. Br. at 12); and noise from the employee parking lot (Comp. Br. at 12).

Unloading of Trucks. Respondent's own witnesses testified that the trucks were being unloaded twenty-four hours a day until mid 2000. Tr. at 347. Mr. Young has stated that he cannot communicate on his front porch during unloading (Tr. at 113), he has trouble watching television especially when the tankers are pounded on (Tr. at 129-30), and he has trouble sleeping (Tr. at 132.) Mrs. Young testified that she has trouble sleeping because of unloading (Tr. at 174), she has heard trucks unloading several nights a week at sometime during the night (Tr. at 175), and as recently as the night before the hearing a truck was unloading after ten at night (*Id.*).

Because of the noise from the unloading of trucks including the banging on the side of the trucks, complainants are unable to use their home to entertain. Complainants cannot sleep and have been awakened by the sound of unloading. Respondent's witness testified that four to seven trucks a day are unloaded at the facility. Therefore, the Board finds that the unloading of trucks substantially and frequently interferes with complainants' enjoyment of life.

Garbage Dumpster Loading and Unloading. Respondent's testimony is that the dumpster is changed once a day between 9:30 a.m. and noon. Mrs. Young describes the sound of the garbage dumpster being changed as similar to "fingernails on a blackboard," a screeching sound. Tr. at 179. However, she does concede that respondent has changed the manner in which the dumpster is changed. Tr. at 180-81. Mr. Young testified that he has trouble concentrating and watching television because of the dumpster noise. Tr. at 129. He also testified that when alone he tries to ignore the noise, but if he has a guest at his home they cannot communicate when the dumpster is being changed. Tr. at 131.

As a result of the noise from the changing of dumpsters, complainants are unable to communicate with persons while the dumpsters are changed. The sound itself is irritating and the change occurs once a day. Therefore, the Board finds that the noise emitted from the changing of the dumpster substantially and frequently interferes with complainants' enjoyment of life.

Trucks Idling. Mrs. Young testified that they have had trucks lined up on Maple Street. Tr. at 189-90. Mrs. Young also testified that the noise emissions from Gilster Mary-Lee are a constant noise level "from dumpsters, from trucks, from trucks sitting in front of the house." Tr. at 189.

Based on the record before the Board, the Board finds that the noise from the trucks idling substantially and frequently interferes with complainants' enjoyment of life.

Parking Lot. Mr. Young testified that he hears noise from the parking lot at break time and during shift changes. The noises include automatic locking systems, slamming doors and driving on the gravel. Tr. at 139. Mr. Young testified that he notices more activity between six and eight in the morning and there is a lot of noise at three in the morning. Tr. at 139. Mrs. Young testified that her sleep has been disturbed by the sounds in the parking lot. Tr. at 174. Mrs. Young testified that noises from the parking lot in the middle of the night include yelling, loud stereos and spinning tires on the gravel. Tr. at 177.

The noise from the parking lot disturbs complainants in many ways including the inability to sleep. Therefore, the Board finds that the noise emitted from the parking lot substantially and frequently interferes with complainants' enjoyment of life.

Noise Emissions in General. The Youngs' testimony was credible and they testified to many disturbances. Mrs. Young specifically stated that they do not entertain when the plant is in operation. Tr. at 185. She stated they leave to escape the noise. Tr. at 173. Although she can't be sure what wakens her, she has been wakened by the noise. She does not use a room in her house as a study because of noise emissions and the location of their bedroom was changed because of noise. Mrs. Young also stated she has called the police but not filed complaints regarding the noise emissions. Tr. at 187. Mr. Young also testified to many disturbances and although not one of them may be sufficient to find a substantial interference, the totality certainly is.

Further, the record substantiates the Youngs' assertions. Although there is no alleged numerical violation, the noise measurements may be used to substantiate or refute a nuisance noise claim. See Discovery South Group v. Pollution Control Board, 275 Ill. App. 3d 547, 549, 656 N.E.2d 51, 59 (1st Dist. 1995), Charter Hall at 21, Pawlowski v. Benchwarmers Pub, PCB 99-82 (April 6, 2000) slip. op. 8. Respondent asserts in its brief that the proper procedures were not followed in taking the noise measurements and therefore the measurements cannot be relied upon to substantiate the nuisance claim. Resp. Br. at 17. The Board agrees that in Charter Hall the Board indicated that the measurement procedures must be technically justified, and in this case the measurements are justified. Both noise experts agreed that measurements taken by all parties were accurate with the exception of some C weighted measurements shown on the videotapes. Those exceptions are obvious on the videotape. Therefore, the Board will allow the noise measurements taken by Hutchinson, Weissenburger and the videotapes of measurements taken by complainants to be used to substantiate a noise problem. The noise measurements taken by Gilster-Mary Lee's own employee show that at the property line noise measurements range from 54dB to 65dB with spikes as high as 69.8dB. Exh. C1. The videotapes also show a wide range of levels occurring throughout the day and night (from readings in the 50dB to readings of 80dB). See Exh. C22-C39. Finally, Dr. Weissenburger did testify that his measurements showed a 9dB drop in noise levels at the property line after the unloading station was moved. However, if the noise measurement was 70dB, the level would still be 61dB.³ Thus, the noise measurements support a finding of substantial interference.

Furthermore the actual testimony of Dr. Weissenburger is enlightening. Although he testified that he could not say the noise emissions were unreasonable, he did testify that it is a subjective matter. Tr. at 366. When asked about the noise measurements detailed on the videotapes, Dr. Weissenburger stated:

They are numbers. The thing that concerns me about this is the fact that those were taken outside through a window on a second floor. And we are talking about - - as I hear it from both the depositions, we are talking about what occurs in a bedroom on the first floor that is on the opposite side of the building and towards the back. Now, it is very difficult for me to see that if there is a level of high 70[dB]s or something that has showed upon that microphone at times that they are going to get anything higher than, lets say, 40 to 45, at the worst, back in the bedroom. Normally one - - if one is making guesses at the sound transmission lost through more or less modern day buildings which are framed with a brick veneer on it or something, but usually with windows closed, if they get a 25dB loss though there that is something. But if we look at 80dB and take off 25, we are getting down to pretty low levels in there. Then they go on throughout the rest of the house to get to the back room there, that strikes me as not terribly realistic. Now, if they have their window open, that, of course, would change all of that. But, I assume, since the noise is so objectionable to them, that they keep their windows closed and keep their air-conditioners on. Tr. at 366-67.

³ The level of 61dB is the numeric daytime level set on Exh. C4.

Thus, the respondent's expert opines that if the windows remain closed and the air-conditioner running, there is no unreasonable interference in the lives of complainants. However, Section 24 of the Act provides that "no person shall emit beyond the boundaries of his property [emphasis added] any noise that unreasonably interferes with the enjoyment of life." Complainants are not required to keep all windows closed, run the air-conditioner, and stay in one room.

Respondent also argues in its brief that the complainants have not established that the noise emissions "frequently" interfere with their lives. Resp. Br. at 24-25. The Board disagrees. The testimony at the hearing establishes that at least four trucks a day and as many as seven trucks a day unload at the facility. The unloading process takes at a minimum almost two hours. Exh. C1. The dumpster is loaded and unloaded once a day. Three shifts of workers enter and leave the premises and take breaks daily. Thus, the record shows frequent noise emissions from sources complained of by the Youngs.

Gilster-Mary Lee in its brief and at hearing stated that they had not received any other noise complaints from the neighbors. However the Board received seven public comments that further corroborate the complainant's testimony.

Gilster-Mary Lee also argues in its brief that the complainants are not properly qualified to comment on medical conditions caused by noise emissions and cites to Johnson to support its position. The Board agrees that complainants are not qualified to offer medical opinions and such medical opinions have been disregarded by the Board. Johnson slip. op. 6.

The Board notes that Gilster-Mary Lee in its brief cites to several Board cases respondent argues support its position that the noise emissions do not unreasonably interfere with complainants enjoyment of life. Those cases include Zivoli, Metivier v. Kenyon, PCB 92-74 (December 16, 1993), Scarpino v. Henry Pratt Company, PCB 96-110 (April 3, 1997), Schranz et al v. Village of Villa Park et al, PCB 93-161 (December 14, 1994), Dettlaff v Boado, PCB 92-26 (July 1, 1993), and Oltman v. Cowan, PCB 96-185 (November 21, 1996). However, a review of those cases indicates factual situations quite different than in this case. For example, in some instances the noise source has been either moved or removed and replaced (Metivier and Oltman). Also, in two of the cases, the noise emissions were of a limited duration (Schranz and Zivoli). And although some respondents had moved one noise source, the record indicates that movement did not alleviate the problem. Further, only one source of noise emissions is of limited duration in this case. Thus, the facts in this case are easily distinguished from the cases relied upon by respondent.

Based on all the evidence, the Board finds that noise emissions from Gilster-Mary Lee substantially and frequently interfere with the complainants' enjoyment of life.

The Social and Economic Value of the Pollution Source

In assessing this factor, the Illinois Supreme Court has looked to the number of persons that the respondent employed and whether respondent is an important supplier to a particular market. Wells Manufacturing, 73 Ill. 2d at 235-36. The Board has similarly looked to such

factors as the number of employees at a facility and the total wages and taxes that a respondent paid. Charter Hall at slip. op. 23-24.

Complainants' Arguments. Complainants assert that while evidence of the monetary contributions of Gilster-Mary Lee were introduced, a facility should not be allowed to disrupt the lives of its neighbors. Comp. Br. at 19. Complainants maintain that the economic and social value of Gilster-Mary Lee would be increased if the noise generated by the facility was lessened. *Id.*

Respondent's Arguments. Gilster-Mary Lee employs 283 factory workers and additional employees in an office and a central lab. Resp. Br. at 27. It is the largest private employer in Chester. *Id.* Gilster-Mary Lee supports community projects, donates food products to charities in the area, and pays property taxes of \$35,000-\$40,000 each year. *Id.* Gilster-Mary Lee also purchases raw materials and other products from businesses in the area. *Id.* Respondent argues that all of these factors establish that Gilster-Mary Lee has a "high social and economic value." Resp. Br. at 27.

Discussion. The Board finds that Gilster-Mary Lee does have significant social and economic value in the community. The record shows that Gilster-Mary Lee is the largest private employer in Chester and pays \$35,000-\$40,000 in property taxes each year. In addition, Gilster-Mary Lee donates to local charitable events and supports other businesses in the area.

The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved

Suitability of location is not the only factor the Board examines under this factor. Roti v. LTD Commodities, PCB 99-19 (February 15, 2001) (Roti) slip. op. 26. The Board also looks to priority of location; however industry cannot rely on priority of location as a mitigating factor if emissions are substantially increased. Roti slip op 27 citing Wells Manufacturing 73 Ill.2d 237. Thus, the Board examines suitability of the location of the source, priority of location and whether emissions have increased when weighing this factor.

Complainants' Arguments. Complainants assert that the use by Gilster-Mary Lee is an industrial use, which is not compatible with the area. Comp. Br. at 19. Furthermore, complainants argue that Gilster-Mary Lee is operating an industrial use in a commercially zoned area where no other industrial use is found. *Id.*

Complainants concede that the Gilster-Mary Lee facility was utilized as a manufacturing facility prior to the Mr. Young's inheritance of the home. Comp. Br. at 19. However, complainants argue that the operations and noise emissions increased after the Youngs moved into their home. Comp. Br. at 19-20.

Respondent's Arguments. Respondent argues that the plant was in operation when complainants moved into their home and that there has been no substantial increase in the operations at the plant. Resp. Br. at 28. Respondent asserts that the testimony establishes that the one major improvement (moving the unloading station) actually decreased emissions. Resp.

Br. at 31. Further, respondent argues that Mr. Tretter admitted to only a slight growth in the institutional department. Resp. Br. at 32.

Respondent also asserts that the zoning of Gilster-Mary Lee's facility is in compliance with Chester's zoning code and that the prior use of some of the buildings still used by Gilster-Mary Lee was also for manufacturing. Resp. Br. at 28-29. Respondent argues that the area around the complainants' home is not all residential and the home sits on a major thoroughfare. Resp. Br. at 29. Finally, respondent argues that complainants have made improvements to their property despite the noise from the plant and no one other than complainants has ever contacted Gilster-Mary Lee. Resp. Br. at 30.

Discussion. The record shows that Gilster-Mary Lee's plant is located in a non-industrial zoned area; however, Gilster-Mary Lee was in that location when the zoning ordinance was enacted. Therefore, Gilster-Mary Lee is in compliance with the zoning regulations. The record is clear that the complainants knew they were moving next to a manufacturing plant; however, the record also shows that the house has been owned by the complainants' family since 1948, prior to Gilster-Mary Lee's operations. The record is not as clear on whether the Gilster-Mary Lee plant has substantially increased its operations. The Board finds that there has been an increase in operations. Mr. Tretter, himself, testified that there has been some growth in the industrial division, with an increased number of loads of flour, and noted that Gilster-Mary Lee had "outgrown" its old flour tanks. Tr. at 311, 351. The Board finds that this is an increase in operations, which is sufficient to disallow reliance on priority of location as a mitigating factor by respondent.

The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source

In considering this factor, the Board must determine whether technically practicable and economically reasonable means of reducing or elimination noise emissions from Gilster-Mary Lee's facility are readily available to respondent. See Charter Hall slip op. at 24.

Complainants' Arguments. Complainants point to the testimony of Greg Zak to suggest control measures complainants believe are technically feasible and economically reasonable. Mr. Zak suggested that a building could be constructed around the unloading station at a cost of approximately \$50,000. Comp. Br. at 22. Mr. Zak suggested that a solution to the noise emissions from diesel truck idling would be to require by contract that the truck not idle. Comp. Br. at 22. As a solution to some of the noise from the parking lot, Mr. Zak suggested paving the parking lot and constructing an acoustical barrier on the sides of the complainants' home. Comp. Br. at 22-23. Finally, Mr. Zak suggested that a continuous noise monitoring system be installed. Comp. Br. at 23.

Respondent's Arguments. Respondent asserts that the control measures suggested by Mr. Zak are not technically feasible or economically reasonable. Specifically, respondent argues that the construction of a building around the unloading station is not feasible. Resp. Br. at 34-35. First, Respondent maintains that the Food and Drug Administration rules prohibit having birds, insects or other pests in or around Gilster-Mary Lee's facilities and the construction of

building could threaten food safety. Resp. Br. at 34-35. Secondly, respondent argues that there is not enough space to construct the type of building necessary. Resp. Br. at 35. Third, the type of structure necessary might not be safe; it could interfere with the vision of drivers and would be near power lines. Resp. Br. at 35. Finally, respondent argues that the cost of the building would be closer to \$100,000 and that is not economically reasonable. Resp. Br. at 36.

Respondent argues that the proposed solution to truck idling noise is already being done in that Gilster-Mary Lee already prohibits trucks from idling near complainants' property. Resp. Br. at 40. Respondent also indicates that it interprets the complainants' concerns as concerns about truck idling on the street and Gilster-Mary Lee is not legally responsible for those trucks. Resp. Br. at 41. Respondent also asserts that complainants have not proven that it is technically practicable for Gilster-Mary Lee to establish a contractual duty to refrain from idling. *Id.*

As to constructing an acoustical barrier, respondent asserts that the cost of such a barrier would be \$60,000 to alleviate parking lot noise. Resp. Br. at 43. Respondent argues this is not technically practicable or economically reasonable. *Id.*

Respondent argues that continuous noise monitoring equipment could cost up to \$25,000. Resp. Br. at 43. Further complainants want the device maintained by Gilster-Mary Lee but have it located on their property; respondent argues that complainant cannot want employees of Gilster-Mary Lee entering their property. Resp. Br. at 43. Respondent argues that continuous noise monitoring is also not necessary in this instance. Resp. Br. at 44.

Discussion. Complainants identify four specific noise sources. First, the noise emissions from the unloading station could be controlled by constructing an enclosure, according to Mr. Zak. However, the Board finds that the record is insufficient to determine if construction of a building is a technically practicable and economically reasonable solution. The record is also insufficient to determine whether there is technically practicable and economically reasonable method for reducing the noise emissions from the loading and unloading of the garbage dumpster. In regards to the noise from trucks idling, Gilster-Mary Lee already prohibits trucks from idling on its property, so simply enforcing that prohibition may be sufficient. As to the parking lot noise, Mr. Hutchinson indicated that when Gilster-Mary Lee is made aware that there is a problem with an employee making noise in the parking lot Gilster-Mary Lee will speak to them. Tr. at 67. However, there seems to be no set policy on controlling employee noise. Thus, the Board finds that the record does indicate there may be technically practicable and economically reasonable solutions to the noise emission problems.

Any Subsequent Compliance

The complainants assert that there has been no subsequent compliance. Comp. Br. at 20. Respondent disagrees and point to several "good faith efforts" made to reduce the noise emissions. Resp. Br. at 45-46. The Board agrees that Gilster-Mary Lee has made some attempts to reduce noise emissions. For example, Gilster-Mary Lee has initiated a policy to only unload trucks between seven in the morning and ten at night. Gilster-Mary Lee has also instituted a policy that trucks should not idle while waiting to unload. However, the testimony of respondent's witnesses indicates that the policies instituted are not always enforced.

Furthermore, the testimony of the complainants indicates that the night before the hearing the unloading station was being used after ten at night. The Board also notes that the planned move of the unloading station may have reduced the noise emissions. However, the Youngs testified that it was louder, Mr. Zak talked about a tunnel effect, and the videotape shows that unloading still registers above 61dB. This contrasts the testimony of the respondent's expert who does not believe a tunnel effect exists.

Gilster-Mary Lee has also instituted a new way of changing the trash dumpsters. However, the record is not clear that this new policy has helped.

Gilster-Mary Lee has taken some steps to alleviate noise emissions from its facility. However, the sporadic enforcement of policies in place and the continued level of noise emissions from the unloading station support a finding that there has not been subsequent compliance.

Summary of Findings on Unreasonable Interference

The Board finds that the noise from Gilster-Mary Lee's plant has unreasonably interfered with the complainants' lives'. Although Gilster-Mary Lee is suitably located and has social and economic value, the noise substantially interferes with complainants' lives. Finally, there are practical solutions which are economically reasonable to alleviate the interference. Having found that there was an unreasonable interference, the Board finds that respondent violated Section 24 of the Act and 35 Ill. Adm. Code 900.102.

Having found a violation of the Act and Board regulations, the Board now must determine the appropriate remedy.

Remedy

Complainants do not seek a civil penalty in this proceeding. Rather, they ask the Board to require respondent "to take substantive, effective steps to address the excess noise emanating from the" facility. Comp. Br. at 23. Complainants request an order directing respondent to undertake the control measures discussed by Mr. Zak in his testimony. Comp. Br. at 23-24.

The Board is not convinced that the record supports adoption of all of the control measures discussed by Mr. Zak. For example, the practicality of building a structure over the unloading station is in question. Furthermore, some of the steps already taken by Gilster-Mary Lee if fully enforced could also alleviate noise emissions. Therefore, the Board finds that the record in this proceeding is not sufficient for the Board to determine what steps are reasonable to reduce the noise emissions. The Board will direct that the respondent file a report, within 180 days of the date of this order, detailing a plan for reducing the noise emissions reaching the complainants' residence. After the respondent files such a report, the complainants will have 60 days to respond. The Board will then either direct this matter to hearing, if necessary, or issue a final order detailing how the noise reduction shall take place.

CONCLUSION

Based on the record before the Board, the Board finds that Gilster-Mary Lee Corporation violated Section 24 of the Act and 35 Ill. Adm. Code 900.102. The Board finds that sound emanating from Gilster-Mary Lee's plant unreasonably interfered with the complainants' enjoyment of their lives and property at 1009 Swanwick Street in Chester, Randolph County Illinois. Therefore, the Board directs the respondent to file a report within 180 days detailing how respondent will reduce the noise levels. The complainants will have 60 days after the filing of the report to respond.

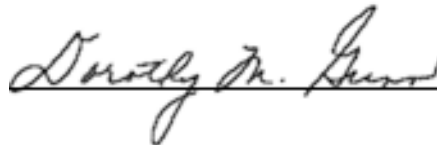
ORDER

1. The Board finds that Gilster-Mary Lee Corporation has violated Section 24 of the Act (415 ILCS 5/24) and 35 Ill. Adm. Code 900.102.
2. The Board orders Gilster-Mary Lee to cease and desist from further violation of the Environmental Protection Act.
2. Gilster-Mary Lee Corporation is hereby ordered to prepare a report detailing what steps can be taken to alleviate the noise emissions reaching complainants' residence. Such report to be filed with the Board and served on complainants by March 6, 2002. Complainants may file a response to such report by May 6, 2002.

IT IS SO ORDERED.

Board Members R.C. Flemal and T.E. Johnson dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on September 6, 2001, by a vote of 5-2.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board