

ILLINOIS POLLUTION CONTROL BOARD

August 8, 2002

JANET WAGNER,)
)
 Complainant,)
)
 v.) PCB 02-225
) (Citizens Enforcement - Noise)
 LISA PERENCHIO and JIM)
 WEIHSMANTEL,)
)
 Respondents.)

ORDER OF THE BOARD (by W.A. Marovitz):

On June 28, 2002, Janet Wagner (complainant) filed a complaint against Lisa Perenchio and "Jim Weihsarantel" [sic] (respondents). See 415 ILCS 5/31.1(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.204. The complainant alleges that the respondents violated Sections 9 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/9 and 24 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002), as well as 35 Ill. Adm. Code 900.102 and 201.141. The complainant further alleges that the respondents violated these provisions by emitting noise from a laundry facility that unreasonably interferes with the use and enjoyment of the complainants' property and health. The complaint concerns the respondents' laundry facility located in the basement of their home at 5049 North Lowell Avenue, Chicago, Cook County, and located to the north of complainant's home.

On July 16, 2002, the respondents filed a motion to dismiss the complaint. Respondents allege the complaint is frivolous and fails to state a cause of action. Complainant did not file a response to the motion.

For the reasons stated below, the Board finds the complaint is neither duplicative nor frivolous. The Board therefore denies respondents' motion to dismiss and accepts the complaint for hearing.

PRELIMINARY MATTER

The complaint spells one of the respondent's last names as "Weihsarantel." In the respondents' motion to dismiss, the signature reads "Weihsmantel." The caption above reflects this correction.

CITIZENS ENFORCEMENT ACTIONS

In addition to providing that the Illinois Attorney General and the State's Attorneys may file complaints with the Board, the Act authorizes *citizens* to bring enforcement actions before

the Board, alleging violations of the Act or Board regulations. Section 31(d) of the Act provides:

Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder *** Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing (415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002).¹

Section 31(c), referred to in the quoted passage, in turn states that the complaint “shall specify the provision of the Act or the rule or regulation . . . under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation” 415 ILCS 5/31(c) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002. The Board’s procedural rules codify the requirements for the contents of a complaint, including the “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations” and a “concise statement of the relief that the complainant seeks.” 35 Ill. Adm. Code 103.204(c).

Within 30 days after being served with a complaint, a respondent may file a motion with the Board to dismiss the complaint on the grounds that the complaint is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). The Board’s procedural rules define “frivolous” and “duplicative” as follows:

“Frivolous” means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

“Duplicitous” or “Duplicative” means the matter is identical or substantially similar to one brought before the Board or another forum. 35 Ill. Adm. Code 101.202.

Air Pollution

Section 9(a) of the Act provides that 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) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

¹ Public Act 92-0574 amended Section 31(d) by substituting the word “duplicative” for “duplicitous.” The Board and the courts had consistently interpreted “duplicitous” to mean “duplicative.” *See, e.g., Winnetkans Interested in Protecting the Environment v. PCB*, 55 Ill. App. 3d 475, 478, 370 N.E.2d 1176, 1179 (1st Dist. 1977); *People v. State Oil Co.*, PCB 97-103, slip op. at 3, n.2 (August 19, 1999).

Section 201.141 of the Board's regulations likewise provides:

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 35 Ill. Adm. Code 201.141.

Section 3.02 of the Act defines "air pollution" as:

[T]he presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property. 415 ILCS 5/3.02 (2000) *amended by P.A. 92-0574, eff. June 26, 2002.*

"Contaminant" is defined in the Act as "any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source." 415 ILCS 5/3.06 (2000) *amended by P.A. 92-0574, eff. June 26, 2002.*

Noise Pollution

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 this Act. 415 ILCS 5/24 (2000) *amended by P.A. 92-0574, eff. June 26, 2002.*

Section 900.102 of the Board's regulations provides:

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

Complaint

The complaint alleges that respondents operate the laundry facilities in the basement of their home with "abnormal frequency". Comp. at 2. The complaint alleges that the dryer, or a part related to the dryer, vents directly into a gangway that complainant shares with respondents. Comp. at 2. Complainant alleges that something is wrong with the dryer because it generates a noise that is very shrill and continuous, measured at 59 decibels by the Chicago Department of Environment. Comp. at 2-3. Additionally, the dryer emits a strong and noxious odor that permeates complainant's home. Comp. at 2.

The complainant alleges the activity occurs from two to four evenings a week for one to three hours. Comp. at 3. The activity also occurs from one to two days per weekend and last for three to ten hours a day. Comp. at 3. Complainant asserts she has documented dates and times of the activity. Comp. at 3.

The noise allegedly causes mental and physical stress, restricts the use of space in the home and enjoyment of the outdoors and yard, and causes headaches, ear ringing, and difficulty concentrating. Comp. at 4. The odor causes itching, burning eyes, nausea, scratchy throat, coughing and sneezing. Comp. at 3.

Complainant requests that the Board order respondents to stop the air and noise pollution by either requiring repairs or adjustments to the equipment or curtailment of the problematic activity. Comp. at 4. Complainant also requests the collection of fines or penalties appropriate to the alleged offense. Comp. at 4. Complainant also asks for compensation for the loss of rent from a roommate. Comp. at 4. Lastly, complainant asks the Board to consider the frequency and the decibel levels “as further investigation into a technical violation.” [sic] Comp. at 4.

Motion to Dismiss

Respondents assert that the complaint fails to reference the provision of the Act and regulations that respondents are alleged to have violated, as required by 35 Ill. Adm. Code 103.204(c)(1). Mot. at 1. Respondents also argue that the complaint fails to state “the date, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations of the Act and regulations.” Mot. at 1. Because of the complaint’s deficiencies, respondents argue they are deprived of their right to defend against accusations. Mot. at 1.

Air Violations

Respondents further argue that the complaint fails to state which contaminants respondents have caused to be emitted or in what quantities the contaminants were emitted so as to cause air pollution as defined in the Act. Mot. at 2. Respondents argue that the contamination complained of is vague. Mot. at 2. Respondents allege that the complaint has unsubstantiated subjective allegations that the “odor” causes “itching, burning eyes, nausea, scratchy throat, coughing and sneezing.” Mot. at 2. Respondents believe this description is insufficient under 35 Ill. Adm. Code 103.204(c)(1) and (2), and the complaint should be dismissed as frivolous. Mot. at 2.

Respondents explain that they use commercially available fabric softener sheets. Mot. at 2. Respondents do not understand how the odor could rise to the level of air pollution and assert they cannot adequately defend against the allegations. Mot. at 2. Therefore, the complaint should be dismissed as frivolous.

Noise Violations

Respondents argue that the complaint fails to state what noise standards or regulations respondents have violated. Mot. at 3. The noise allegations include that a “whistling noise” occurs two to four times per week from one to three hours and one to two days per weekend from three to ten hours a day. Mot. at 3 citing Comp. at para. 7. The only specific noise allegation references operation of the dryer on June 9 (no year specified, but assumed to be 2002) from noon until 9:05 p.m. Respondents assert they cannot defend against the vague allegations. Mot. at 3.

Lastly, respondents allege complainant offers unsupported subjective statements regarding the noise pollution such as “mental and physical stress” and “confines the use of space in home, restricts enjoyment of the outdoors and yard.” Mot. at 3. Respondents assert they cannot defend against such subjective allegations. Mot. at 3.

Respondents assert that on July 2, 2002, the dryer was inspected by A-Besto Appliance Company for noise and odor problems. Mot. at 3. The technician concluded the dryer had no problems. Mot. at 3.

Requested Relief

Respondents allege the Board is not authorized to grant the requested relief. Mot. at 3. First, respondents argue that the Board does not have the authority to grant the requested relief because there is no specific violation of the Act or regulations alleged. Mot. at 4. Next, respondents further allege that granting compensation for the loss of rent is beyond the scope of the Board’s authority. Mot. at 4. Finally, respondents also allege that it is beyond the Board’s authority to consider the frequency and the decibel levels “as further investigation into a technical violation.” Mot. at 4.

Frivolous Determination

The Board finds that the complaint properly identifies the provisions of the Act allegedly violated, requests relief the Board can grant, and sufficiently advises respondents of the extent and nature of the alleged violations to reasonably allow respondents to prepare a defense. A complainant can allege air pollution without having to identify and quantify the contaminants emitted. Additionally, the complaint properly names the noise regulations respondents are alleged to have violated, 35 Ill. Adm. Code 900.102.

Section 33(b) of the Act specifically allows the Board to order that a respondent “cease and desist” from violations of the Act. Therefore, if a violation is found, the Board may order the respondents to cease and desist violations and such order may necessitate limited hours of operation. Additionally, Section 33 allows the Board to impose civil penalties in accord with Section 42 of the Act. Therefore, those elements of the requested relief are within the Board’s authority to grant. However, under Section 42 of the Act, the Board does not have authority to order one person to pay money damages to another person. Decatur Auto Auction v. Macon County Farm Bureau, Inc. et al., PCB 93-192 (Dec. 16 1993). The Board strikes

complainant's request for rent compensation, as the Board is without authority to provide such relief. Additionally, the Board strikes complainant's request to consider the frequency and the decibel levels "as further investigation into a technical violation" as the relief complainant seeks is unclear. Complainant may address this request at hearing to clarify its meaning.

The Board therefore holds that the complaint is not frivolous. Accordingly, the Board will not dismiss the complaint as respondents request.

Duplicative Determination

An action before the Board is duplicative (duplicitous) if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp, PCB 85-68 (June 13, 1985). The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicative.

Conclusion

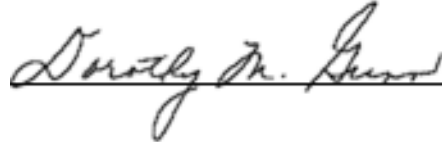
The Board accepts the complaint for hearing. *See* 415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002; 35 Ill. Adm. Code 103.212(a). The motion to dismiss is denied. The Board directs the hearing officer to proceed expeditiously to hearing.

The hearing must be scheduled and completed in a timely manner consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and Section 103.125 of the Board's rules. 35 Ill. Adm. Code 103.125.

The Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer. The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 30 days in advance of hearing so that a 21-day public notice of hearing may be published. After hearing, the hearing officer shall submit an exhibit list, a statement regarding the credibility of witnesses, and all actual exhibits to the Board with in five days of hearing. Any briefing schedule shall provide for final filings as expeditiously as possible. If, after appropriate consultation with the parties, the parties fail to provide an acceptable hearing date, or if, after an attempt, the hearing officer is unable to consult with all of the parties, the hearing officer shall unilaterally set a hearing date. The hearing officer and the parties are encourage to expedite this proceeding as much as possible.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 8, 2002, by a vote of 7-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control
Board