

ILLINOIS POLLUTION CONTROL BOARD  
April 15, 1999

TERRENCE G. GRAF, JOE GRAF,	)	
MARCELLA GRAF, LOUISE	)	
GROTHPIETZ, MARJORIE OLSZEOSKI,	)	
LEONARD OLSZEOSKI, MIKE	)	
CZEBOKOWSKI, LOIS CZEBOKOWSKI,	)	
MILDRED OWEN, KATHERINE	)	
WASHBURN, ROBERT WASHBURN,	)	
GEORGE ARULEAF, ANNA	)	
KOZARZEWSKI, and LUCY CATLOW,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 99-125
	)	(Enforcement - Citizens, Noise)
VALIQUIET, INC., EMERALD	)	
LANDSCAPING, and CPK	)	
LANDSCAPING,	)	
	)	
Respondents.	)	

DISSENTING OPINION (by G.T. Girard, R.C. Flemal, and N.J. Melas):

We respectfully dissent from the majority order on April 15, 1999, because we believe that it is premature for the Board to find that this complaint is not duplicitous or frivolous. We base this dissent on the clear language of Section 31(d) of the Environmental Protection Act (Act). 415 ILCS 5/31(d). Section 31(d) forms the basis for the Board's procedural rules at 35 Ill. Adm. Code 103.120, 103.121, 103.122, 103.123, and 103.124. The majority order is predicated on a narrow reading of Section 103.124(a) which ignores the clear language of Section 31(d) of the Act.

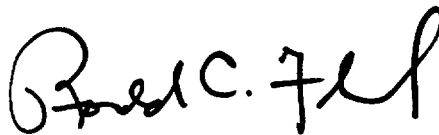
Section 31(d) of the Act provides that any person may file with the Board a complaint against any person alleging violations of the Act and Board regulations. Section 31(d) further requires that the "complainant shall immediately serve a copy of such complaint" upon the named respondents. 415 ILCS 5/31(d). Section 31(d) then provides that "unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing. . ." and serve notice of the hearing upon the parties. 415 ILCS 5/31(d). Thus, the Act clearly requires service of a complaint without delay, which establishes a primary action. The Board's procedural rules at Section 103.122 also mirror this statutory intent by providing that "an enforcement action shall be commenced by the service of a notice and formal complaint upon all respondents and the filing of 10 copies of the notice and formal complaint with the Clerk [of the Board]." Thus, the Board's rules indicate that an action has not commenced prior to service of the complaint.

The majority order adopted today is making a determination on the complaint prior to proof that the respondents have been served with the complaint. Based on the clear language of the Act and a contextual reading of the Board's procedural rules, we believe that a finding that the complaint is not duplicitous or frivolous is premature.

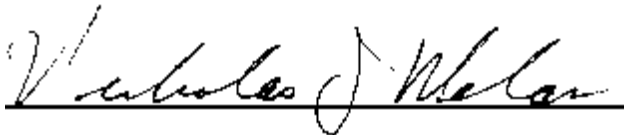
For these reasons, we respectfully dissent.



G. Tanner Girard, Board Member

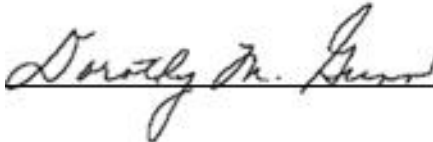


Ronald C. Flemal, Board Member



Nicholas J. Melas

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was submitted on the 26th day of April 1999.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board