

ILLINOIS POLLUTION CONTROL BOARD
April 10, 1986

KENNETH and LIBBY MC NEIL,)
)
 Complainants,)
)
 v.)
)
CONTINENTAL GRAIN COMPANY,)
)
 Respondent.)

PCB 86-44

ORDER OF THE BOARD (by B. Forcade):

On March 21, 1986, Kenneth and Libby McNeil ("the McNeils") filed a complaint against Continental Grain Company ("Continental"), claiming violations of the Environmental Protection Act ("Act") and Board regulations relating to air pollution. On April 2, 1986, Continental responded by filing a motion to dismiss, claiming the complaint is frivolous and duplicitous.

Continental argues the complaint is frivolous in that it is factually deficient. The Board disagrees. The complaint states that Continental is operating without a permit and that Continental emits dust which covers the McNeil's home and causes them health problems. Such factual claims, if proven, are sufficient to support violations of Section 9(a) and (b) of the Act. These factual claims may also support violations of Section 212.461(1), (2), (3), (4) and (5), depending on the source of the dust emissions proven at hearing.

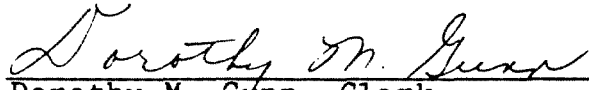
Continental also argues the complaint is duplicitous in light of the pending action, Kenneth G. McNeil and Libby J. McNeil v. Continental Grain Company and Wabash Valley Service Company, No. 85-L-5, Second Judicial Circuit, Gallatin County. That action-at-law prays judgment of not less than \$100,000 in compensatory damages. The court complaint does not request any civil penalty or a cease and desist order. By contrast, the complaint before the Board seeks a cease and desist order but does not seek compensatory damages. Consequently, the Board finds that the present complaint before the board is not duplicitous.

Continental's Motion to Dismiss is denied.

IT IS SO ORDERED.

Board Member J. Theodore Meyer dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certifies that the above Order was adopted on the 10th day of April, 1986, by a vote of 3-1.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board