

ILLINOIS POLLUTION CONTROL BOARD
August 11, 2016

MATT GILL,)
)
Complainant,)
)
v.) PCB 16-68
) (Citizens Enforcement - Noise)
CHS INC. – CARROLLTON FARMERS)
ELEVATOR,)
)
Respondent.)

ORDER OF THE BOARD (by J.D. O’Leary):

Matt Gill alleged in a citizen’s complaint that CHS Inc. – Carrollton Farmers Elevator (CHS) violated the numeric noise provisions of the Board’s rules at 35 Ill. Adm. Code 901.102(a) and 901.102(b) (Comp.). The complaint concerns noise allegedly emitted to Mr. Gill’s residence from CHS’s temporary flat grain storage facility and new grain storage bin, all of which are located in Carrollton, Greene County. On January 21, 2016, the Board struck as frivolous a request for stipulated penalties but otherwise accepted the complaint for hearing. CHS filed its answer on February 10, 2016.

On July 19, 2016, Mr. Gill filed a motion to join Jake Varble as complainant (Mot.). While Mr. Gill’s residence is approximately 1/2 mile east of respondent’s facility (Comp. at 2), Mr. Varble’s residence adjoins the facility, and “is one of the closest residences to the Respondent” (Mot. at 1). The motion asserts that “[a]ny noise abatement undertaken by the Respondent to lower noise levels to legal levels approximately 1/2 mile away may not result in acceptable noise levels at property directly adjacent to the Respondent, *e.g.*, Jake Varble’s residence.” Mot. at 1. The motion states that Mr. Varble’s signature on the motion shows that he agrees to be joined as a complainant. *Id.* at 2. CHS responded on August 2, 2016 (Resp.), opposing the motion.

On its own motion or the motion of a party, the Board may add a person as a party to an adjudicatory proceeding if:

- 1) A complete determination of a controversy cannot be had without the presence of the person who is not already a party to the proceeding;
- 2) The person who is not already a party to the proceeding has an interest that the Board’s order may affect; or
- 3) It may be necessary for the Board to impose a condition on the person who is not already a party to the proceeding. 35 Ill. Adm. Code 101.403(a).

Mr. Gill asserts that “the presence of Jake Varble would certainly result in a ‘complete determination’ of lawful sound levels.” Mot. at 2, citing 35 Ill. Adm. Code 101.403(a)(1). However, CHS disagrees and states that “there are no apparent sound level measurements at Mr. Varble’s property.” Resp. at 6. CHS argues that, even if Mr. Gill and Mr. Varble both have noise claims against it, those claims “are independent of each other.” Resp. at 7.

Although the complaint refers to property closer to CHS than Mr. Gill’s, the complaint describes effects of alleged noise pollution in terms of Mr. Gill’s home, his property, and his family’s quality of life. Comp. at 3. The complaint does not allege these effects on other sites or persons. *See id.* Numeric noise violations must be proved at each location alleged to have received the noise. Resp. at 6-7, citing Kasella v. TNT Logistics North America, Inc., PCB 06-1, slip op. at 3 (Sept. 1, 2005). Demonstrating a numeric noise violation requires sound measurements taken on the receiving land. 35 Ill. Adm. Code 901.102(a), 901.102(b).

The standard for joinder under Section 101.403(a)(1) is that “[a] complete determination of a controversy cannot be had without joinder.” 35 Ill. Adm. Code 101.403(a)(1) (emphasis added). However, the motion does not clarify how Mr. Varble’s participation is necessary for a complete determination of the numeric noise violations alleged in Mr. Gill’s complaint. *See* Mot. at 3. The Board finds that Section 101.403(a)(1) does not support granting the motion to join Mr. Varble. If Mr. Varble can provide evidence relevant to the alleged numeric noise violations, Mr. Gill may subpoena him to testify at hearing. *See* 35 Ill. Adm. Code 101.622; People v. Atkinson Landfill Co., PCB 13-18, slip op. at 6 (June 6, 2013).

Mr. Gill’s motion also cites Section 101.403(a)(2) and argues that Mr. Varble has “an interest that the Board’s order may affect.” Mot. at 2; *see* 35 Ill. Adm. Code 101.403(a)(2). The motion does not describe any interest of Mr. Varble’s that may be affected. *See* Mot. at 2. Although the motion states that Mr. Varble resides closer to CHS than Mr. Gill, neither the complaint nor the motion alleges a violation of the numeric noise standards at Mr. Varble’s property. The Board is not persuaded that Mr. Varble has an interest that a Board order in this proceeding may affect. *See* Doris Glave and Glenn Glave v. Brent Harris, Patty Harris, and Winds Chant Kennel, Inc. and Village of Grayslake v. Winds Chant Kennel, Inc., PCB 02-11, 02-32 (cons.), slip op. at 1 (May 2, 2003) (joining spouse and joint tenant in ownership of residence). The Board finds that Section 101.403(a)(2) does not support joining Mr. Varble. If the Board accepted a complaint filed by Mr. Varble alleging numeric noise violations, the Board and its hearing officer could then manage the cases “so as to allow for the most efficient use of the resources of the Board and the parties.” Kasella v. TNT Logistics North America, Inc., PCB 06-1, slip op. at 3 (Sept. 1, 2005).

Mr. Gill’s motion does not argue that “[i]t may be necessary for the Board to impose a condition” on Mr. Varble. The Board does not now expect that it would be necessary to impose a condition on him in this proceeding and finds that Section 101.403(a)(3) does not support joining him.

For the reasons above, the Board denies Mr. Gill’s motion for joinder.

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 11, 2016, by a vote of 4-0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, circular initial "D".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board