

ILLINOIS POLLUTION CONTROL BOARD

June 3, 1999

ROBERT SMITH, JODI LEEPER, TIM	)	
LEEPER, CASSANDRA VAUGHN,	)	
CHERYL VAUGHN, HOBART JONES,	)	
KAREN JONES, ANITA RICE, PEGGY	)	
EBERHARDT, MATTHEW ANDRIOLA,	)	
MATT MILLER, LYNN DEVLIN,	)	
EDWARD STOLINSKI, and PETE	)	
CALZAVARA,	)	
	)	
Complainants,	)	
	)	
v.	)	PCB 99-145
	)	(Enforcement - Noise, Citizens)
HERITAGE TOOL & DIE	)	
MANUFACTURING, INC.,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by M. McFawn):

On April 13, 1999, complainants Robert Smith, Jodi and Tim Leeper, Cassandra and Cheryl Vaughn, Hobart and Karen Jones, Anita Rice, Peggy Eberhardt, Matthew Andriola, Matt Miller, Lynn Devlin, Edward Stolinski, and Pete Calzavara filed a formal complaint charging respondent Heritage Tool & Die Manufacturing, Inc. (HTD) with violating Sections 23 and 24 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/23, 24 (1996), and 35 Ill. Adm. Code 900.102 and 901.102. The alleged violations are based on noise from HTD's facility in Tinley Park, Illinois. HTD has moved to dismiss the complaint as duplicitous and frivolous. No response to HTD's motion has been filed.

The Board dismisses the alleged violation of Section 23 of the Illinois Environmental Protection Act (Act) (415 ILCS 5/23) as frivolous, but accepts the case for hearing on the remaining alleged violations. The Board finds that this action is not duplicitous. The Board grants complainants who did not sign the complaint until June 25, 1999, to file an amended complaint signed by them or their attorney(s). Also, on its own motion, the Board amends the caption to correctly state respondent's corporate name.

FRIVOLOUS

An action before the Board is frivolous if it requests relief which the Board could not grant. Lake County Forest Preserve District v. Ostro (July 30, 1992), PCB 92-80. The complaint alleges violations of Sections 23 and 24 of the Act and 35 Ill. Adm. Code 900.102 and 901.102. Section 23 of the Act sets forth the General Assembly's findings and the purpose of Title VI of the Act, concerning noise pollution. There can be no violation of

Section 23. Thus, to the extent the complaint seeks relief for an alleged violation of Section 23, that claim is frivolous. Section 24 of the Act and Sections 900.102 and 901.102 of the Administrative Code, however, contain prohibitions of various activities. Section 24 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.

Section 900.102 prohibits emitting noise beyond the boundaries of property so as to cause noise pollution, *i.e.*, noise that unreasonably interferes with enjoyment of life or any lawful business or activity. See 35 Ill. Adm. Code 900.101. Section 901.102 prohibits emitting sound above specific decibel levels at different times of the day. These provisions could be violated by HTD's activities, as alleged in the complaint. These claims are therefore not frivolous on their face.

HTD argues that the complaint is frivolous because the requested relief is beyond the Board's authority. Motion at 3. The request for relief in the complaint states:

Complainants request that the Board enter an Order directing the Respondents to cease and desist [sic] from further violations of applicable statutes and regulations and, more specifically, order the Respondents to permanently discontinue operations from 10:00 p.m. [to] 7:00 a.m.

A direction to cease and desist from violations is specifically authorized as an element of a final order in an enforcement case. See 415 ILCS 5/33(b) (1996). The Board is more generally authorized to enter such a final order as it deems appropriate under the circumstances. 415 ILCS 5/33(a). This broad grant of authority could, where justified, support imposing a restriction on hours of operation. Accordingly, complainants' claim for this relief is not frivolous.

### DUPlicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68. HTD has filed an affidavit of William Kretzer, establishing that there is a case currently pending before the Circuit Court of Cook County involving the same subject matter as the complaint. HTD asserts that this case is duplicative of that proceeding, Motion at 2, and should therefore be dismissed.

A proceeding before the Board is not duplicitous of a circuit court case where complaints are based on different theories (*e.g.*, nuisance vs. violation of the Act). Behrmann v. Okawville Farmers Elevator—St. Libory (November 19, 1998), PCB 98-84. Nor is a court case duplicitous of a case before the Board where different relief is sought in each case. Buri v. Batavia Concrete, Inc. (October 19, 1995), PCB 95-165. The Circuit Court case cited by

HTD is based on a citation issued to HTD for violation of the village of Tinley Park's nuisance noise ordinance. It appears from the copy of the citation appended to HTD's motion that the citation is brought under a nuisance theory, rather than for violations of the Act or its implementing regulations. It is furthermore not apparent to the Board from the information provided by HTD that the relief sought in this case is also sought, or even available, in the circuit court proceeding. The Board therefore cannot find that this case is duplicative of the circuit court case.

Having found this complaint neither frivolous nor duplicitous, the Board accepts the case for 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 35 Ill. Adm. Code 103.125. The Clerk of the Board shall promptly issue appropriate directions to that 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 credibility of witnesses, and all actual exhibits to the Board within five days after the hearing transcript is filed.

#### AMENDMENT OF COMPLAINT

This case is brought on behalf of fourteen complainants: Robert Smith, Jodi and Tim Leeper, Cassandra and Cheryl Vaughn, Hobart and Karen Jones, Anita Rice, Peggy Eberhardt, Matthew Andriola, Matt Miller, Lynn Devlin, Edward Stolinski, and Pete Calzavara. Of this group, however, only Karen Jones signed the complaint. Under the Board's procedural rules, the original of each document filed with the Board must be signed by the party or the party's attorney. 35 Ill. Adm. Code 101.104(g);<sup>1</sup> see also Graf v. Valiquet, Inc. (April 15, 1999), PCB 99-125. As far as we have been able to determine, Karen Jones is not an attorney, and therefore could not have signed the complaint on behalf of the other complainants.

The Board grants complainants until June 25, 1999, to file an amended complaint signed by each complainant or his or her attorney. After that date complainants who have not signed the complaint, either personally or through an attorney, will be dismissed.

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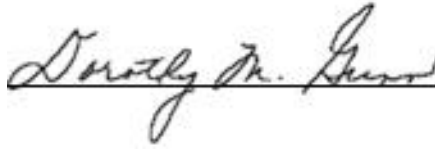
<sup>1</sup> Section 101.104(g) permits filing of documents signed by a party's "authorized representative;" since that rule was promulgated, however, the Board has determined that representation of other parties in proceedings before the Board constitutes the practice of law, and consequently only an attorney may represent another party before the Board. See In re Petition of Recycle Technologies, Inc. (July 10, 1997), AS 97-9, and the cases cited therein.

AMENDMENT OF CAPTION

In the appearance filed on behalf of HDT by attorney James V. Ferolo, Mr. Ferolo notes that the correct corporate name of the respondent is Heritage Tool and Die Manufacturing, Inc., rather than Heritage Tool and Die Mold, as it is named in the complaint. The Board on its own motion amends the caption to reflect respondent's correct corporate name.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 3rd day of June 1999 by a vote of 7-0.

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

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board