

ILLINOIS POLLUTION CONTROL BOARD
July 24, 1980

ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
)
Complainant,)
)
v.) PCB 77-286
)
BURLINGTON NORTHERN, INC., a)
Delaware Corporation,)
)
Respondent.)

ORDER OF THE BOARD (by I. Goodman):

The Agency's June 2, 1980 motion to file amended complaint which, it alleges, "merely restates the original complaint with the addition of further violation dates which occurred subsequent to the filing of the original complaint," is denied. This amendment alleges violations subsequent to November of 1977 to and including June 2, 1980, a span of close to three years' time.

The Agency states that promulgation of federal noise regulations "and their potential effect upon State property-line standards has delayed the hearing in this matter." The Board finds that nonexistent, future federal regulations, even if made applicable to Illinois and to Respondent herein, is an inadequate reason either to delay proceeding with hearings on 1976-1977 violations of then-effective Rule 202 of the Board's noise pollution control regulations and Section 24 of the Illinois Environmental Protection Act or to justify filing allegations of additional violations of the same rule and the same statute in the same manner as alleged in the prior complaint.

Insofar as Respondent's June 12, 1980 motion to dismiss argues preemption of state regulations applicable to railroad equipment and railroad facilities (see 41 Fed.Reg. 2187; 42 Fed.Reg. 42349; 44 Fed.Reg. 22960; and 45 Fed.Reg. 1258), the Board finds that no federal regulations existed either as of the filing of the original complaint or as of the date of this Order, which would preempt the Board from applying either Rule 202 or Section 24 in this enforcement proceeding. This finding is identical to the one made in the Board's December 8, 1977 Order in this matter.

The Board orders that this proceeding, which has been inactive for a long time, progress expeditiously to conclusion.

The Hearing Officer is ordered to set a discovery schedule to end no later than October 31, 1980 and to set and hold any and all hearings no later than December 15, 1980.

IT IS SO ORDERED.

Mr. Dumelle dissents.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 24th day of July, 1980 by a vote of 4-1.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board