

ILLINOIS POLLUTION CONTROL BOARD  
January 11, 1995

RODNEY B. NELSON, M.D., )  
 )  
 Complainant, )  
 )  
 v. ) PCB 94-244  
 ) (Enforcement)  
 KANE COUNTY FOREST PRESERVE, )  
 BRADLEY SAUER, CHAIRMAN )  
 )  
 KANE COUNTY BOARD, )  
 WARREN KAMMERER, CHAIRMAN )  
 )  
 Respondents. )

ORDER OF THE BOARD (by E. Dunham):

This matter comes before the Board on a "Motion for Summary Judgment" filed on November 4, 1994, by complainant, Rodney B. Nelson, M.D. The Kane County Forest Preserve District (District) filed a response to the motion for summary judgment on December 1, 1994. The Kane County Board's (County) response to the motion for summary judgment was received by the Board on December 19, 1994. Also before the Board are motions to strike the affidavit attached to the motion for summary judgment filed on December 1 and December 19, 1994 by the District and the County respectively. On December 20, 1994, Dr. Nelson filed a motion to strike the response of the County to request for admission of genuineness of documents, the County's motion to strike affidavit and the County's response. The County filed a reply to the motion to strike on January 5, 1995.

Summary judgment will be granted where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. (Sherex Chemical v. IEPA (July 30, 1992), PCB 91-202; Williams Adhesives, Inc. v. IEPA (August 22, 1991), PCB 91-112.)

In the motion for summary judgment, complainant sets forth facts and a series of assumptions, most or all of which must be true to validate the conclusion reached by complainant. Since several of the facts, and the conclusion of law, reached by complainant are disputed, summary judgment cannot be granted. The motion for summary judgment is therefore denied.

The motions to strike affidavits and motions to strike the response of the County are moot, as these motions relate only to the motion for summary judgment which has been denied.

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 11<sup>th</sup> day of January, 1995 by a vote of 6-0.

Dorothy M. Gunn  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board