

ILLINOIS POLLUTION CONTROL BOARD

October 6, 1994

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

ORDER OF THE BOARD (by E. Dunham):

This matter is before the Board on a complaint filed on September 6, 1994, by Rodney B. Nelson III, M.D. against Kane County Forest Preserve, Bradley Sauer, Chairman and Kane County Board, Warren Kammerer, Chairman. The complaint alleges that the Kane County Forest Preserve and Kane County Board have violated Section 12 of the Environmental Protection Act (415 ILCS 5/12 (1992) in the operation of Settlers' Hill Golf Course (previously Midway Landfill) and Settlers' Hill Landfill.

Section 103.124(a) of the Board's procedural rules, which implements Section 31(b) of the Environmental Protection Act (415 ILCS 5/31(b)), provides:

... If a complaint is filed by a person other than the Agency, the Clerk shall also send a copy to the Agency; the Chairman shall place the matter on the Board agenda for Board determination whether the complaint is duplicitous or frivolous. If the Board rules that the complaint is duplicitous or frivolous, it shall enter an order setting forth its reasons for so ruling and shall notify the parties of its decision. If the Board rules that the complaint is not duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124.

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in another forum. (Brandle v. Ropp, PCB 85-68, 64 PCB 263 (1985).) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted by the Board. (Citizens for a Better Environment v. Reynolds Metals Co., PCB 73-173, 8 PCB 46 (1973).)

There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum, nor is there any evidence that the

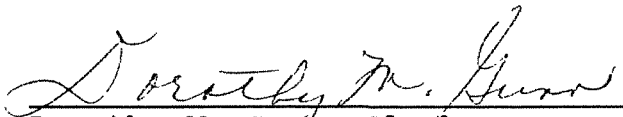
Board cannot grant the relief requested. At this time, therefore, the Board finds that, pursuant to Section 103.124(a), the complaint is neither duplicitous nor frivolous. Accordingly, this matter shall proceed to hearing.

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 the Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with this order.

The assigned hearing officer shall inform the Clerk of the Board of the time and location of the hearing at least 40 days in advance of hearing so that 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 of the hearing. The hearing officer and the parties are encouraged to expedite this proceeding as much as possible.

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 6th day of October, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board