

ILLINOIS POLLUTION CONTROL BOARD
October 21, 1993

JOSEPH A. SCHRANTZ, CHARLES)
HULLIHAN, FRANK OWOC, and)
ELIZABETH STEARNS,)
)
Complainants,)
)
v.) PCB 93-161
) (Enforcement)
VILLAGE OF VILLA PARK, DUPAGE)
COUNTY DIVISION OF TRANSPORTATION,)
VILLA PARK ROTARY CLUB, VILLA PARK)
KIWANIS CLUB, and VILLA PARK MASONIC)
LODGE,)
)
Respondents.)

ORDER OF THE BOARD (by C. A. Manning):

This matter is before the Board pursuant to a formal complaint filed August 31, 1993 by Joseph A. Schrantz, Charles HULLIHAN, Frank Owoc, and Elizabeth Stearns against the Village of Villa Park, DuPage County Division of Transportation, Villa Park Rotary Club, Villa Park Kiwanis Club and the Villa Park Masonic Lodge. The gravamen of the complaint is that respondents sponsored two entertainment events, Summerfest '93¹ and the Summer Concert Series², on the Illinois Prairie Path right-of-way in Villa Park during the month of July, 1993, and these events were conducted in a manner which violated the Board's Noise Pollution Emission regulations found at 35 Ill. Adm. Code Subtitle H, Section 900 et seq. adopted pursuant to Section 24 of the Environmental Protection Act (415 ILCS 5/24).

The Village of Villa Park, the Rotary Club, the Kiwanis Club and the Masonic Lodge have filed motions to dismiss alleging the complaint to be frivolous and duplicitous, to which the complainants have submitted replies. The County of DuPage entered a special and limited appearance to contest the DuPage County Division of Transportation as a party to this proceeding. For the following reasons set forth below, the Board denies all Motions to Dismiss on Frivolous and Duplicitous Grounds and grants the County

¹Summerfest '93 is alleged to have been sponsored by the Villa Park Masonic Lodge, the Villa Park Rotary Club, the Villa Park Kiwanis Club and the Village of Villa Park. (Complaint, at 6, attachment.)

²The Summer Concert series is alleged to have been sponsored by the Village of Villa Park and the Kiwanis Club. (Complaint, at 7, attachment.)

of DuPage's motion to dismiss the County as a party.

MOTIONS TO DISMISS ON FRIVOLOUS
AND DUPLICITOUS GROUNDS

In the case of a complaint filed by a private citizen, the Board is required by procedural rule and the Act to enter a finding as to whether the complaint is frivolous or duplicitous. 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.

Four of the respondents have specifically filed motions to dismiss the complaint as both frivolous and duplicitous. (Motion to Dismiss of Village of Villa Park (September 15, 1993); Motion to Dismiss and Amended Motion to Dismiss of the Rotary Club of Villa Park (September 13, 1993 and September 17, 1993); Motion to Dismiss of the Villa Park Kiwanis Club (September 17, 1993); and Motion to Dismiss of the Villa Park Masonic Lodge (September 20, 1993).) The complainants have filed a reply to each and every motion. The motions and the replies raise substantially similar issues and therefore, the Board will rule on the motions together.

Frivolous

The Board has construed "frivolous" to mean "failure to state a cause of action upon which relief can be granted." (Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973) PCB 73-173, 8 PCB 46. The Board stated in Farmers Opposed to Extension of the Illinois Tollway v. Illinois State Toll Highway Auth., (September 16, 1971) PCB 71-159, 2 PCB 119: "The 'frivolous' provision is designed to avoid expensive and time-consuming hearings on claims that cannot prevail even if the facts alleged are true." After examining these two Board holdings, and Webster's dictionary³, the Appellate Court of Illinois, First District,

³Webster's Third New Dictionary 913 (1971) defined "frivolous" as "of little weight or importance: having no basis in law or

defined a "frivolous" pleading as "one that is either legally or factually deficient." Winnetkans Interested in Protecting the Environment (WIPE) v. Illinois Pollution Control Board, 13 Ill. Dec. 149, 153, 370 N.E.2d 1176 (1st Dist. 1977)⁴.

Accordingly, the motions to dismiss allege that the complaint is frivolous because it fails to state a cause of action upon which relief can be granted. Essentially, the Village of Villa Park, the Rotary Club, the Kiwanis Club and the Masonic Lodge all argue that because Summerfest '93 and the Summer Concert Series have ended, the complaint is moot and any relief granted by the Board is speculative.

In response, the complainants state they have reason to believe the Village of Villa Park and the other sponsors are currently planning a "Summerfest '94", and though there has been no public announcement regarding the Summer Concert Series, the complainants believe it is logical that the Summer Concert Series will be held in 1994 as well.

The Board finds the complaint is not frivolous. The complaint alleges violations of the numerical noise standards of the Board's noise emission regulations found at 35 Ill. Adm. Code Section 900 et seq. and requests that the Board find the respondents in violation of these regulations. The complaint further asks that the Board enter an order directing "respondents to take appropriate action to limit noise" ... "in accordance with the Illinois State Noise Emission Regulations." Such a prayer for relief can come in the form of a "cease and desist" order which the Board is authorized to enter in this matter in the event the complainants are successful on the merits, regardless of whether Summerfest or a Summer Concert Series takes place in 1994. (415 ILCS 5/42.) (See Mandel v. Kulpaka, (July 30, 1992) PCB 92-33, 135 PCB 157, 160, "The Environmental Protection Act confers the Board's jurisdiction. The Act authorizes the Board to hear complaints of violations of the Act and the Board regulations. [415 ILCS 5/31.] It authorizes the Board to impose a civil penalty for violations that is payable into public funds, not to private parties, and it authorizes the Board to order a person found in violation to cease

fact...."

"The Board can grant relief by ordering a Respondent to stop the polluting activity and by imposing a fine. The Board cannot grant monetary compensation for damage done to health or property and it cannot impose criminal sanctions such as a jail term. Thus, any request for monetary compensation or the imposition of criminal sanctions would be considered frivolous." (In the Matter of: Duplicitous or Frivolous Determination, (June 8, 1989), RES 89-2, Slip.Op. at 2.)

and desist from further violation. [415 ILCS 5/42.]") Cessation of the complained-of activity does not preclude an action before the Board to determine whether the activity violated the Act, although "subsequent compliance" is to be considered by the Board in issuing its orders. (415 ILCS 5/33(c).)

Duplicitous

In Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263, the Board held:

Duplicitous is not defined in the Act but has been interpreted to apply to complaints which duplicate allegations identical or substantially similar to matters previously brought before the Board. (Citation omitted.) A complaint is also duplicitous if it is identical or substantially similar to one brought in another forum.

In League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970) PCB 70-1,1 PCB 35, the Board held "that the reason for the prohibition of duplicitous complaints is the apprehension that private citizens' complaints 'might flood the Board with too many cases raising the same issue and [might] unduly harass a respondent.'" WIPE v. IPCB, 13 Ill.Dec. at 153, citing, League of Women Voters, at 36.

The motions to dismiss brought by the Rotary Club, the Masonic Lodge and the Kiwanis Club allege the complaint is duplicitous because three other actions have already been filed regarding excessive noise stemming from the Villa Park Summerfest '93 and Summer Concert Series: one before the Summerfest Commission, an ad hoc body of Villa Park residents; a second with the Village Board of Villa Park; and a third in the Circuit Court of the Eighteenth Judicial Circuit. These three motions argue that "[e]ven though technically there is at the present time, no other proceeding, because of their past efforts, we believe complainants' complaint is in substance duplicitous and should be dismissed." (Rotary Club Motion to Dismiss, at 2; Masonic Lodge Motion to Dismiss, at 2; and Kiwanis Club Motion to Dismiss, at 2.) The Village of Villa Park Motion to Dismiss simply alleges that because there was an action filed in Circuit Court which was voluntarily dismissed by the complainants, this matter is duplicitous. (Village of Villa Park Motion to Dismiss, at 2-3.)

The Board finds the complaint is not duplicitous. First, the motions are devoid of any allegation that there is another matter substantially identical to that of the instant case currently pending before the Board or in another forum. Second, the complaint presents facts that are matters of first impression for the Board and are not duplicitous in the context of League of Women Voters which pertained to the Board itself being flooded with the same type of case. Third, the Motions to Dismiss do not allege

sufficient information about the proceedings before the Circuit Court, the Summerfest Commission or the Village Board so that a determination made in those forums could arguably make this complaint moot. There are no explanations of the issues, the timeframes, the parties or the relief sought in the other proceedings. Moreover, even if separate actions on this matter have been brought in other jurisdictions, the Board is the appropriate jurisdiction in which to seek the enforcement of violations of the numerical noise emission standards contained in the 35 Ill. Adm. Code Section 900 et seq. As is raised in the complainants' replies to the motions to dismiss, none of the other actions considered the evidence of noise emission standard violations set forth in the instant complaint.⁵

The Board hereby denies all four motions to dismiss filed by the Village of Villa Park, the Rotary Club, the Kiwanis Club and the Masonic Lodge. At this time, the Board finds that, pursuant to Section 103.124(a), the complaint is neither frivolous or duplicitous. Accordingly, this matter shall proceed to hearing. The Chief Hearing Officer shall assign a hearing officer to conduct hearings. Hearing must be scheduled and completed as directed by the Chief hearing Officer. The Chief Hearing Officer 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 regarding the time and location of the hearing at least 40 days in advance of hearing so that public notice may be published. After hearing, the hearing office shall submit an exhibit list, a statement regarding credibility of witnesses and all actual exhibits to the Board within five (5) days of the hearing. The hearing officer and the parties are encouraged to expedite this proceeding to the extent possible.

MOTION TO DISMISS DUPAGE COUNTY
DIVISION OF TRANSPORTATION

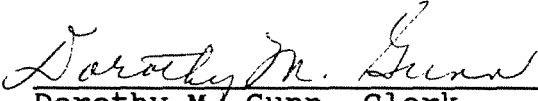
Additionally, on October 4, 1993, the County of DuPage filed a special and limited appearance contesting the jurisdiction of the Board to decide the case as to the County of DuPage. Via a motion to dismiss based on the complainants' improper service on an employee of the DuPage County Division of Transportation, DuPage alleges that DuPage County Division of Transportation cannot be a named party to the complaint and that the proper party, the DuPage

⁵The complainants attached to the formal complaint, a compilation of sound level measurements conducted on July 16, 1993 by Triodyne Environmental Engineering, Inc. Based upon the unrefuted statement by the complainants, it appears as though this data has never been considered by any other forum until now.

County Board, was never properly served. The complainants filed a reply on October 6, 1993 indicating their agreement with the dismissal from this action of the "DuPage County Division of Transportation", and thus DuPage County. The Board hereby grants DuPage County's Motion to Dismiss and directs the Clerk of the Board to delete DuPage County Division of Transportation from the caption. The County of DuPage also filed a Motion to Vacate Technical Defaults accompanied by a Motion to File Instanter. As the County of DuPage has been dismissed as a party, the Board need not reach the merits of this motion. The Motion to Vacate Technical Defaults is hereby 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 21st day of October, 1993, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board