

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1994

RODNEY B. NELSON, M.D.,)
)
Complainant,)
)
v.) PCB 94-247
) (Enforcement)
KANE COUNTY FOREST PRESERVE,)
)
BRADLEY SAUER, CHAIRMAN,)
)
KANE COUNTY COUGARS)
)
WILLIAM LARSEN, GENERAL MANAGER,)
)
and KANE COUNTY BOARD,)
)
WARREN KAMMERER, CHAIRMAN,)
)
Respondents.)

DISSENTING OPINION (by C.A. Manning and J. Theodore Meyer):

This matter is before the Board on a citizen noise complaint filed on September 9, 1994 by Rodney B. Nelson III, M.D. (Nelson) against the Kane County Forest Preserve, Kane County Cougars (Cougars) and the Kane County Board. The complainant states that the firework displays at Elfstrom Stadium cause excessive noise and that noise is not a necessary part of a professional sporting activity and therefore not exempt pursuant to Section 25 of the Environmental Protection Act (Act). (415 ILCS 5/25 (1992).) Pursuant to Section 31(a) of the Act (415 ILCS 5/31(b) (1992)) and previous Board precedent, the majority of the Board found that the complaint was neither frivolous nor duplicitous and set this matter for hearing. We disagree and would dismiss this matter as frivolous.

Here the complainant alleges that "...firework displays seem to occur to some extent during each and every home game played by the Cougars" but does not state how many home games there are and how many had firework displays. The complainant alleges only three specific dates, times and durations of when there were displays; August 20, 1994 at 10:25 p.m. that lasted twenty (20) minutes, September 1, 1994 at 9:30 p.m. for a brief duration and September 2, 1992 at 10:00 p.m. for ten (10) minutes. The complainant fails to describe the location of the stadium in relation to his residence and only makes the statement that on August 20, 1994 the "...explosions were forceful enough to create audible rattling of the windows and contents of my home." There is no discussion that there is any regularity to the firework displays or interference with the use of his property. In addition to minimally alleging that he and his family were disturbed by the firework displays, the complainant has not alleged that the firework displays violated the Board's numerical standards set forth at 35 Ill. Adm. Code Part 901 or the nuisance standard of Section 24 of the Act. (415 ILCS 5/24 (1992).) Instead, the complaint merely states agreement with the statutory

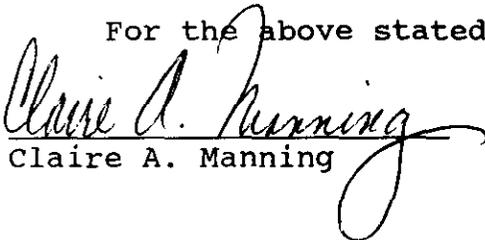
policy found in Section 23 of the Act, that "excessive noise endangers physical and emotional health." (415 ILCS 5/25 (1992).)

Section 31(b) of the Act states that "[u]nless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing and serve written notice thereof upon the person or persons named therein, in accord with subsection (a) of this Section." The Board's current standard for the determination of "frivolous" is to ascertain whether the relief requested can be granted. We believe that this standard is nothing more than a jurisdictional standard and that the legislature intended a broader definition for the Board when it requested us to determine whether a matter is frivolous.

We believe that this is a frivolous complaint, and a deficient pleading that should have been dismissed. The legislature gave the Board the direction to determine whether claims are frivolous so that alleged violations are not just filed as a means to aggravate or pester the respondents. The legislature did not give the Board the same authority for enforcement actions brought by the State or by the individual State's Attorneys. By doing so, we believe the legislature's intent was to give the Board the ability to screen out nuisance filings versus those filings from citizens that present actual environmental harms being perpetrated. In addition, the legislature in Section 30 of the Act gave the Board the ability to cause the Agency to investigate those complaints that do present environmental harm. We believe that the legislature's clear intent was for the Board to monitor citizen enforcement actions, to dismiss those that are frivolous to prevent undue harassment and expense on the part of the respondent and the State. We believe that the Board's current standard of frivolous is too narrow and not reflective of the legislature's intent. Thus, we would have found that this complaint was frivolous and dismissed the matter.

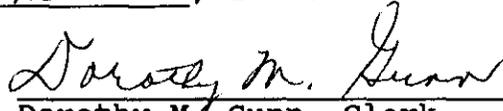
Additionally we believe that the complaint is deficient in that it did not plead a violation of the Act or the Board's rules. The complainant does discuss the statutory policy behind the prohibition of noise but does not allege a violation of the Act or of the Board's numerical standards. Therefore we also would have dismissed this matter as being deficient.

For the above stated reasons we dissent.


 Claire A. Manning


 J. Theodore Meyer

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above dissenting opinion was filed on the 1st day of December, 1994.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board