

ILLINOIS POLLUTION CONTROL BOARD

May 16, 1996

MR. & MRS. DON WILLIAMS, MR. &)	
MRS. THOMAS MORRIS & MR. & MRS.)	
PETER BIZIOS,)	
)	
Complainants,)	PCB 96-186
)	(Enforcement - Noise)
)	
v.)	
)	
SCHAUMBURG PARK DISTRICT,)	
)	
Respondent.)	

CONCURRING OPINION (by C.A. Manning, M. McFawn and J.Theodore Meyer):

This matter is before the Board on a citizen noise complaint filed on March 5, 1996 by Mr. & Mrs. Don Williams, Mr. & Mrs. Thomas Morris and Mr. & Mrs. Peter Bizios against the Schaumburg Park District. Complainants state that noise caused by basketball playing at Odium Park in Schaumburg, Illinois has resulted in an unreasonable interference with the use and enjoyment of complainants' properties, endangered the physical and emotional health and well-being of complainants, and caused depreciation to the value of complainants' properties. Complainants additionally allege that respondent has violated the Board's numerical standards set forth at 35 Ill. Adm. Code Part 900.102, 901.104, and Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23, 5/24 (1994).)

Complainants allege that noise caused by the dribbling of the basketball and yelling of the participants coupled with the close proximity of complainants' property instigated the filing of this matter. In the complaint, complainants state that since June 1994, "[n]oise is present twelve months out of the year . . . the noise has occurred (sic) as early as 5:30 a.m. and as late as 1:30 a.m." Though different for each complainant, complainants generally state that the basketball court ranges in varying proximity of approximately 35 feet to 50 feet from complainants' residences.

Section 31(b) of the Act states that "unless 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." An action before the Board is frivolous if it fails 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.) In determining whether a case is "frivolous" the Board ascertains if the relief requested may be granted. Presently the Board utilizes the frivolous standard as one of jurisdiction and nothing more.

We believe the legislature intended to give the Board wide discretion in determining whether a claim is frivolous. As stated in the dissenting opinion in Rodney B. Nelson v. Kane County Forest Preserve et al (October 6, 1994), PCB 94-247 (by C.A. Manning and J. Theodore Meyer), the Board has the authority to determine whether a citizen enforcement action is frivolous. We believe that the legislature intended that the Board monitor citizen enforcement actions by dismissing those actions which are frivolous in order to prevent undue harassment and expense on the part of the respondent and the State. We also believe the legislature gave the Board such authority in order to provide a mechanism for limiting the number of "nuisance" filings. Comparatively, in enforcement cases filed by the State, the Board has not been given such broad authority. The Board may cause investigation of a complaint as allowed by Section 30 of the Act by requesting the Agency to investigate the environmental harm in a specific case. Overall, we believe that the discretion granted the Board by the legislature concerning "frivolous" actions allows the Board to concentrate on matters where actual environmental harm is present.

While we agree it is appropriate that the complaint should be dismissed, we find that this matter should have been dismissed due to the frivolous nature of the case. In determining the frivolous nature of a case and prior to proceeding with a case, the Board should look to determine if the complaint is factually or legally sufficient in stating a cause of action upon which relief may be granted. In this case, the complaint remains factually and legally insufficient; therefore, we find the complaint without merit.

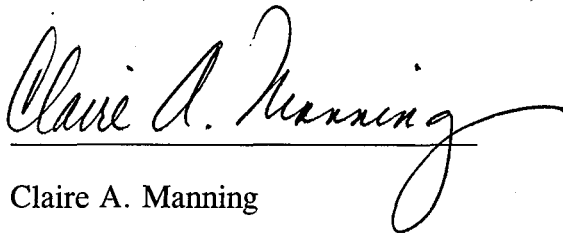
Complainants argue, among other things, that the yelling and shouting from a basketball court throughout the entire year causes excessive noise interfering with the quality of the environment and the enjoyment of life. Complainants also argue that basketball playing occurs early in the morning and late at night without a park ranger to enforce the park district's hours. A park ranger need not be on duty to enforce the park district hours since the City of Schaumburg may be called upon to enforce park district hours. (See Respondent's Brief, Ex. 1A.) Complainants also seek from the Board a cease and desist order which permanently eliminates the noise produced at the basketball court. If the Board begins issuing cease and desist orders for noise emanating from daily exercise activity occurring on park district grounds, the Board would be significantly limiting the benefits afforded by park systems to the enjoyment of life and the environment. Overall, complainants' allegations remain too general and lack specificity to sustain the proper burden of proof necessary for a nuisance case.

We find these allegations lack the appropriate sufficiency to prove actual environmental harm and, therefore, a nuisance violation under the Act. The undersigned also believe that the Board's present standard of frivolous is too narrow and does not reflect the legislature's intent to allow the Board greater discretion in determining the frivolous nature of a case. As a result, we therefore would have dismissed this complaint as frivolous.

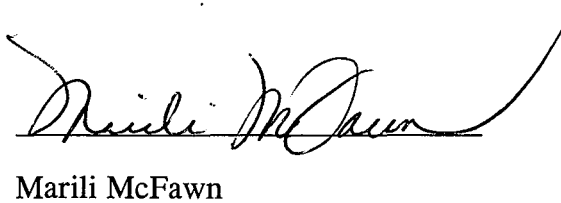
Because the Board must first make a threshold determination of frivolous or duplicitous in the filing of a citizen enforcement case and because we would have found this matter frivolous, we need not discuss whether the complained of activity is an "organized amateur or

professional sporting activity” as a restriction of the Board’s ability to hear noise violations according to Section 25 of the Act.

Therefore, for the above-stated reasons, we concur.



Claire A. Manning

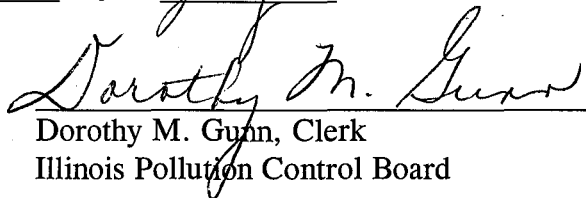


Marili McFawn



J. Theodore Meyer

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurrence was filed on the 11th day of July, 1996.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board