

ILLINOIS POLLUTION CONTROL BOARD
October 6, 1994

RODNEY B. NELSON, M.D.,)
)
Petitioner,)
)
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.)

ORDER OF THE BOARD (by R.C. Flemal):

This matter is before the Board on a complaint filed on September 9, 1994 by Rodney B. Nelson III, M.D. The complaint alleges that respondents have violated Title VI of the Environmental Protection Act (415 ILCS 5 (1992)) by their use of fireworks displays before, during and after Kane County Cougar baseball games at Elfstrom Stadium.

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. (See, Fore v. Midstate Kart Club (October 7, 1993) PCB 93-171; Mandel v. Kulpaka PCB 92-33 (August 26, 1993); In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2, 100 PCB 53.) There is no evidence before the Board to indicate this matter is identical or substantially similar to any matter brought in another forum. At this time, therefore, the Board finds that, pursuant to Section 103.124(a), the complaint is not duplicitous.

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 that the Board cannot grant the relief requested with reference to Kane County Forest Preserve, Bradley Sauer, Chairman and Kane County Cougars, William Larsen, General Manager. At this time, therefore, the Board finds that, pursuant to Section 103.124(a), the complaint is not frivolous with regards to Kane County Forest Preserve, Bradley Sauer, Chairman and Kane County Cougars, William Larsen, General Manager.

With respect to the third named respondent, Kane County Board, Warren Kammerer, Chairman (Kammerer), the Board observes that petitioner has not listed Kammerer in the caption of the complaint as filed. However Kammerer is clearly named as a respondent on page 2 of the complaint. In addition, the Certificate of Service attached to the complaint indicates Kammerer was served with process. For the purposes of recognizing this involvement of Kammerer's, the Board today includes Kane County Board, Warren Kammerer, Chairman, as a respondent in the caption of this case.

However, the Board finds that the complaint is frivolous concerning Kammerer. Petitioner has failed to request or describe any relief which the Board could grant with respect to Kammerer. Accordingly, Kammerer is dismissed as a party to this matter, and this matter shall proceed to hearing with only two respondents, Kane County Forest Preserve, Bradley Sauer, Chairman and Kane County Cougars, William Larsen, General Manager. The caption hereafter shall so identify the parties.

The Board notes that petitioner has argued that the complained of activity is not part of the "organized amateur or professional sporting activity" exemption found at Section 25 of the Environmental Protection Act.¹ (415 ILCS 5/25 (1994).) Section 25 of the Act places restriction on the Board's ability to hear noise violations proceedings involving certain sporting activities:

No Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized or amateur or professional sporting

¹ This proceeding is distinguished from Anne Shepard, James Verhein, and Jerold Leckman v. Northbrook Sports Club, and Village of Hainesville, (January 20, 1994) PCB 94-2, where petitioners did not argue the "organized amateur or professional sporting activity" exemption in their original complaint.

activity except as otherwise provided for in this Section. (415 ILCS 5/25 (1994))

No response has been filed by any of the respondents. The Board makes no findings regarding this exemption at this time.

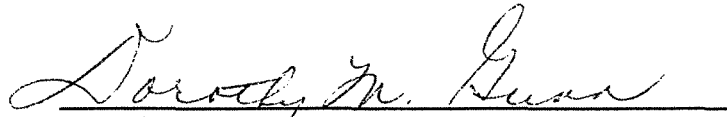
The hearing must be scheduled and completed in a timely manner, consistent with Board practices. The Board will assign a hearing officer to conduct hearings consistent with this order and the Clerk of the Board shall promptly issue appropriate directions to the assigned hearing officer consistent with 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.

C. A. Manning and J. Theodore Meyer dissent.

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 4-2.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board