

ILLINOIS POLLUTION CONTROL BOARD
December 14, 1994

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

FRANK P. TIGHE, III APPEARED ON BEHALF OF THE COMPLAINANT JOSEPH A. SCHRANTZ, AND CHARLES HULLIHAN AND ELIZABETH STEARNS APPEARED *PRO SE*;

JOHN N. PIEPER APPEARED ON BEHALF OF THE RESPONDENT, THE VILLAGE OF VILLA PARK; LEWIS JOHN CRAFT AND DONNA CRAFT CAIN APPEARED ON BEHALF OF THE RESPONDENTS, THE KIWANIS CLUB AND THE MASONIC LODGE; AND RICHARD C. ERNST APPEARED ON BEHALF OF THE RESPONDENT, THE ROTARY CLUB.

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

This matter is before the Illinois Pollution Control Board (Board) pursuant to a formal complaint filed August 31, 1993 by Joseph A. Schrantz, Charles Hullihan, and Elizabeth Stearns against respondents, the Village of Villa Park, Villa Park Rotary Club, Villa Park Kiwanis Club, and the Villa Park Masonic Lodge.¹ Respondents were the sponsors of Summerfest '93, a community entertainment event which complainants allege was conducted in a manner that violated the Environmental Protection Act (Act) and the Board's noise pollution regulations, 35 Ill. Adm. Code Subtitle H, Section 900 et seq.² A public hearing was held on

¹In this opinion and order, the complainants will be referred to hereinafter, either as "Schrantz", "Hullihan", "Stearns" or "complainants." The respondents will be referred to as the "Village", "Rotary Club", "Kiwanis Club", "Masonic Lodge" or the "respondents."

²The complaint, as filed by Schrantz, Hullihan and Stearns alleges violations of the Act and regulations concerning both Summerfest, 1993 and a second entertainment event called the "Summer Concert Series." (Complaint, at 7, attachment.) At hearing, Schrantz and Hullihan agreed not to present any evidence regarding the concert series. Therefore, as the Summer Concert Series is no longer at issue, it will not be considered in this matter and all allegations concerning this event are stricken from the complaint. (Tr. at 15.)

January 19 and January 20, 1994 before then-Board Hearing Officer Phillip R. Van Ness in Wheaton, Illinois.³ Each of the parties filed a post-hearing brief. In addition, at the January 20th hearing, Schrantz filed a motion to bar the expert testimony of Mr. Robert C. Brandys. The Village of Villa Park filed a response to the motion to bar with the Board on April 8, 1994.

For reasons more fully explained below, the Board does not find the respondents in violation of the Act or the Board's noise regulations, and accordingly, dismisses this action.

PROCEDURAL AND FACTUAL BACKGROUND

This case involves an outdoor music festival and carnival called "Summerfest '93" which was held in Villa Park on the Illinois Prairie Path from July 15 through 18, in 1993. Summerfest was sponsored by the Village of Villa Park and three other organizations: Villa Park Rotary Club, Villa Park Kiwanis Club and the Villa Park Masonic Lodge. According to the respondents, the event is held each year for the purpose of fundraising for, among other things, the organizations' charities. (Tr. at 547.)

The Summerfest '93 events included live entertainment such as puppet shows, demonstrations by the local police K-9 unit, dance groups, rock bands, country and western bands and the Salvation Army Band, a daily beer tent, nightly bingo, food, and crafts. Each evening of Summerfest '93 featured live performances of different music groups, dance groups and storytelling. Some of the performers featured during Summerfest '93 were: Tony Deleo & Sidekicks Square Dance Club, Middle Earth, the Salvation Army Band and the official Band of the Chicago Bears, Ben & The Gentleman. (Complainants' Exh. #6.)

The location of the event itself was at the junction of the DuPage County Parkway, which is also known as the "Prairie Path", and Ardmore Avenue in Villa Park. The "Gazebo" where the entertainers performed and where the complainants alleged the noise pollution originated, was located on property owned by the Village. The Prairie Path itself, is a 10-foot wide nature path made of crushed limestone that is used for walking and bicycling. The Prairie Path originates in Villa Park on the boundary line of Cook County and DuPage County and runs to Wheaton, Aurora and Elgin. (Tr. at 26-27.) According to the Village, the County of DuPage issued a permit for the event and the "use" of the property for a festival comports with Villa Park's zoning ordinance which allows festivals and carnivals. The land uses in the vicinity of the Summerfest '93 site are not merely

³Mr. Van Ness left the Board's employ in May, 1994.

residential. There are many non-residential properties such as the Villa Park Chamber of Commerce offices and an old historical train station.⁴

Complainant's Testimony

At the January 19 and 20 hearings, Frank P. Tighe III appeared on behalf of one of the complainants, Joseph Schrantz. Hullihan also attended and represented himself *pro se*; although subpoenaed to appear, Elizabeth Stearns failed to attend the hearing. Schrantz and Hullihan testified on their own behalf on the issues of how the noise emissions from the festival unreasonably interfered with their enjoyment of life. Complainants also called Richard Gullickson, an industrial hygienist and environmental health and safety specialist to testify regarding noise monitoring that he performed on July 16, 1993.

Joseph Schrantz testified that while he was visiting Mrs. Elizabeth Stearns in her home, which is 100 feet from Summerfest '93, the noise from the festival was so loud that it interrupted his ability to carry on a conversation. According to Schrantz, the noise level was so intense, it would almost make his head "rattle." (Tr. at 52 and 68.) Again, Mrs. Stearns, a co-complainant in this action, did not appear and did not testify regarding any impact from the noise on her enjoyment of life, or her home. Schrantz also testified that the "aggressive noise level" of Summerfest played a "very important part" in "contributing to his view" that the Prairie Path nature trail had been "desecrated." (Tr. 212-213.) Schrantz lives two blocks from the site of Summerfest '93 at 532 S. Princeton and when he was in his home during the festival, he was able to watch T. V., read or sleep without interruption. (Tr. at 236-237.)

Co-complainant Charles Hullihan lives at 37 West Park Boulevard, which is approximately 60 feet from the Summerfest '93 site. (Tr. at 250.) According to Mr. Hullihan, his wife, who was not a complainant in this case and who did not testify at the hearing before the Pollution Control Board, spent two nights of the festival in her home (Tr. at 243) and the other two nights she stayed with her mother in order to "get to sleep at a decent

⁴During the January 19 hearing, Mr. Tighe made an oral motion that the Pollution Control Board Members "view" the Summerfest '93 site sometime between the hearing and the decision. (Tr. at 261.) While our procedural rules at 35 Ill. Adm. Code 101.241(a) allow motions to be made at hearing, the hearing officer instructed that the motion be made in writing and transmitted to the Board. (Tr. at 262-63.) No written motion has been filed with the Board; therefore, we assume that parties do not wish the Board to rule on the request. We note there is sufficient detail in the record to show the location of the Summerfest '93 site in the Village of Villa Park, and the proximity of the site to the Hullihan and Stearns residences.

hour." (Tr. at 245.) During Summerfest '93 and at the time of hearing, Mrs. Hullihan was diagnosed with chronic fatigue syndrome. (Tr. at 244.) There is however, no evidence or argument in this case that the noise from Summerfest '93 is either the cause or is in any way related to her illness. There is also no evidence that while Mrs. Hullihan was at home, she could not sleep. It was Mr. Hullihan's testimony that when he and his wife were at home together the first night of the festival, they had to speak at higher levels and to increase the volume of the television. (Tr. at 245.) The other two evenings of the festival, Mr. Hullihan stayed up "a little later" than he normally would have and waited until the music and the festival ended before going to bed, but otherwise, he did not recall having to do anything more to compensate for the noise than increase the volume of his television. (Tr. at 245-46.) Mr. Hullihan filed no complaints with the Villa Park police department during Summerfest '93 (Tr. at 253), but he did complain during Summerfest '92 to the Villa Park police and before the Summerfest '93 Commission prior to the event taking place. (Tr. at 255-56.)

Regarding numerical violations of the Board's noise emission standards, the complainants called Mr. Gullickson to testify. He performed a sound analysis of the Summerfest '93 noise levels on Friday, July 16, 1993 and took sound level recordings from 7:15 p.m. to 11:15 p.m. from Mrs. Stearns' residence. He measured the noise levels in 10 second samples using a one minute and 50 second reference period. (Tr. at 197 and 239.)⁵ Gullickson made the recording using the one minute and 50 second reference period because "it seemed reasonable" to take the measurement while the songs were being performed and not before or after. (Tr. at 156-158 and 188.) Except for one recording, all were taken while a band was playing. (Tr. at 197.)

Respondent's Testimony

On behalf of the respondents, John Pieper appeared for the for the Village, Lewis John Craft and Donna Craft Cain for the Kiwanis Club and the Masonic Lodge, Richard C. Ernst for the Rotary Club. The respondents called eight witnesses: Lee

⁵At hearing, the complainants offered Gullickson's written report of the evening's measurements which showed different time intervals than that testified to by Mr. Gullickson. In the case of measurements taken before 10:00 p.m., the chart shows that readings were taken for five minutes intervals (Exh. 9) and in the case of measurements after 10:00 p.m., the report indicates that the measurements were taken in three minute intervals (Exh. 10). On cross-examination, Gullickson explained that the correct time interval is one minute 50 seconds, and the other times in the written report account for activation of the equipment, having the equipment record the data in 10 second intervals, running through the octave band and manually recording the information. (Tr. at 149.)

Ohlman, James McNamara, Daniel S. Hixon, Deborah A. Kuramitsu, Walter Alen, Robert C. Brandys, Carl F. Roth, and David S. Cain.

Respondents called Lt. Lee Ohlman and Officer James McNamara of the Villa Park Police to show that the Village received only one anonymous complaint about the noise levels coming from the Prairie Path during Summerfest '93. Officer McNamara investigated the complaint, determined that the complaint had no merit, and investigated it no further. (Tr.at 294-302.)

Regarding technical practicability and economic reasonableness of the noise emission controls, respondents called Daniel S. Hixon of Prism Enterprises who was hired by the Rotary Club to control the sound levels. In particular, Mr. Hixon explained that Prism Enterprises used a sound control board to control noise levels and that the board was manned by a sound technician. (Tr. at 307-331.) The company also used a sound system that was one-half or one-third the size it would have normally used for an area the size of the Summerfest '93 site. Mr. Hixon testified that his company used the small system due to the concerns of some of the area residents and to attempt to minimize the sound levels. (Tr. at 307-308.) He was specifically directed by the Summerfest '93 sound committee, to make sure his company kept as much sound as possible on the festival grounds, and to minimize sound on adjacent areas. (Tr. at 322.)

Regarding other measures employed by the Summerfest '93 Commission to mitigate sound emanating from Summerfest '93, Deborah A. Kuramitsu, member of the Rotary Club and the Village Summerfest Commission, personally checked the sound levels during the performances. She stood in front of the Hulliham and Stearns residences and tried to hold conversations at normal levels. Several times she asked the sound technician to turn down the sound levels. (Tr. at 505; see also Hixon Test. Tr. at 312.) When the sound control board could turn the sound levels down no further, she requested one of the bands to turn down its amplifiers. (Tr. at 511.) Walter Alen of Alen Engineering Company, member of the Rotary Club and Summerfest sound committee, testified that he accompanied Ms. Kuramitsu to the Hulliham and Stearns residences to determine whether they could have conversations at normal levels during the concert. (Tr. at 528-30.) The sponsors also put the right to control the sound levels of the bands into the actual entertainment contracts and (Tr. at 501) changed the hours of the Summerfest from prior years, and decreased the number of rides in the carnival. (See Hulliham Test. Tr. at 255-57.)

Mr. Robert C. Brandys, from Occupational & Environmental Health Consulting Services, Inc., testified about the monitoring procedures employed by the complainants' consultant when measuring the sound emissions and how the procedures failed to meet the standards of the Board's noise emission testing

requirements.⁶ (Tr. at 361-376.) Mr. Brandys suggested that the minimum time-averaging period that should be utilized in monitoring noise is at least a five minute L_{eq} , and that any shorter period does not meet the Board's noise monitoring requirements. (Tr. at 361.) Gullickson used only 10 second sampling periods during isolated portions of songs and a one minute and 50 second L_{eq} . (Tr. at 361.) Mr. Brandys testified that taking peak readings does not characterize the noise problem over a large amount of time, and that continuous monitoring needs to be performed. (Tr. at 370.) He believes the data collected by Gullickson should be interpreted as "instantaneous sound level readings" rather than L_{eq} readings (Tr. at 373), and when interpreted as such, the data lies in the range of normal conversation levels. (Tr. 373-376 and Res. Exh. #2.)

Respondents also called various members of the sponsoring organizations who were also active in the planning of Summerfest '93 to testify regarding the social and economic value of the festival and the suitability of the location for the festival: Carl F. Roth, former President and Trustee of the Village of Villa Park, former County Board member and member of the Summerfest '93 Commission, testified that the Summerfest offered an "opportunity for social togetherness for families to get out and enjoy and experience in the outdoors." (Tr. at 476.) He also indicated that the Kiwanis Club anticipated using the profits from Summerfest '93 to help build a handicapped-accessible park for the Village of Villa Park. (Tr. at 479.) David Cain, president of the Rotary Club and treasurer of Summerfest, also testified that the net profits received from the festival were used to help charitable organizations and the community. (Tr. at 547.)

ISSUES PRESENTED FOR REVIEW

The complaint, as filed by Joseph Schrantz, Charles Hulihan and Elizabeth Stearns, presents the following issues for our review: One, whether the noise levels of Summerfest '93 violated the Board's noise emission standards found at 35 Ill. Adm. Code 901.102; and two, whether the noise levels of Summerfest '93 created a nuisance which unreasonably interfered with the

⁶Pursuant to 35 Ill. Adm. Code Secs. 101.220 and 103.220, Schrantz filed a written motion to bar the testimony of Mr. Robert Brandys at the January 20 hearing. Schrantz argued that his case is prejudiced by the "unfair surprise" of Mr. Brandys appearing as a witness with no advance warning and after the closure of discovery. The hearing officer allowed the testimony subject to the Board's final ruling on the motion to bar. (See Tr. at 289 and 345.) Having reviewed the motion and the written response, we agree with the Village of Villa Park that Mr. Brandys being called to testify does not prejudice the complainants' case. None of the parties engaged in discovery in this matter, in part due to the complainants' assurances this case would settle. The motion to bar is denied.

complainants' enjoyment of life, violating Section 24 of the Act and our regulations at 35 Ill. Adm. Code 900.102.

APPLICABLE LAW

The following is a recitation of the applicable statutory provisions and regulations that are at issued in this case and analyzed herein:

The Environmental Protection Act:

Section 23

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increase construction costs, depresses property values, offends the senses, creates public nuisances, and other respects reduces the quality of our environment. (415 ILCS 5/23.)

Section 24

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. (415 ILCS 5/24.)

Section 25

The Board, pursuant to the procedures prescribed in Title VII of this Act, may adopt regulations prescribing limitation on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.

* * *

For purposes of this Section and Section 24, "beyond the boundaries of his property" or "beyond the boundaries of the property of any person" includes personal property as well as real property. (415 ILCS 5/25.)

Section 33(c)

In making its orders and determinations, the Board shall take into consideration all the facts and

circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

ii. the social and economic value of the pollution source;

iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and

v. any subsequent compliance. (415 ILCS 5/33(c).)

The Illinois Administrative Code - 35 Ill. Adm. Code Section 900 et seq.

Section 900.101 Definitions

Noise Pollution: the emission of sound that unreasonably interferes with enjoyment of life or with any lawful business or activity.

Section 900.102 Prohibition of Noise Pollution

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

Section 900.103(b) Measurement Procedures

b) All measurements and all measurement procedures to determine whether emissions of sound comply with 35 Ill. Adm. Code 901 shall be in substantial conformity with ANSI S1.6-1967, ANSI S1.4-1971 -- Type I Precision, ANSI S1.11-1966 and ANSI S1.13-1971 Field Method, and shall, with the exception of measurements to determine whether emissions of sound comply with 35 Ill. Adm. Code 901.109, be based on L_{eq} averaging, as

defined in 35 Ill. Adm. Code 900.101, using a reference time of one hour. All such measurements and measurement procedures shall correct or provide for the correction of such emissions for the presence of ambient noise as defined in ANSI S1.13-1971.

ARGUMENTS OF THE PARTIES

Turning to the first issue, whether Summerfest '93 violated the Board's numerical standards found in Section 901.102, the complainants allege in their complaint that monitoring reports made of the sound levels emitted from Summerfest '93 demonstrate exceedences of the Board's numerical standards. (Petition at 2.) At hearing, the complainants offered the testimony of Gullickson that he took approximately 300 measurements monitoring the sound levels from 7:15 to 11:10 p.m. on Friday, July 16, 1993 all in one minute and 50 second intervals. (Tr. at 117, 119, 127 and Complainants' Exhibits 11-21.) He measured the sound levels from the Stearns residence at 326 South Princeton (Tr. at 119) and from the HULLIHAN residence at 37 West Park Boulevard (Tr. at 121). According to the complainants, except for the lowest frequency measured, the majority of the measured levels exceeded the maximum allowable levels for noise emissions from Class B lands to Class A lands in violation of Section 901.102.⁷ (Gullickson Test. Tr. at 134.) The complainants offered Gullickson's testimony that the exceedences varied between 15 and 40 decibels higher than the allowable standard.⁸ (Tr. at 136-142.)

In response, the respondents argue that no violation of the numerical standards has been proven in this case. They contend that despite Gullickson's direct testimony regarding exceedences of the Board's noise emission standards, the measurements were not made in compliance with the Board's noise monitoring requirements. Relying on Dettlaff v. Boado (July 1, 1993), PCB 92-26, a case in which the Board refused to consider noise monitoring using improper measuring techniques, respondents argue that the Board should also disregard the noise monitoring reports

⁷Gullickson testified that the land on which the Prairie Pathway is located is most likely considered to be Class A land; however, when it was used for Summerfest '93, it should be considered "Class B." (Tr. at 108.) He also testified that there is no regulatory significance because the standards for Class A and Class B are the same. (Id.)

⁸Gullickson did not measure the background sound at the carnival, though he did take at least one reading of the carnival itself when no band was playing (Tr. at 197) and one reading inside of Mrs. Stearns home. In his professional opinion, Gullickson testified that the probable ambient noise level at the carnival was in the range of 40 to 45 decibels. (Tr. at 195.) Gullickson also testified that a quiet office had a noise level of 55 decibels. (Tr. at 193.)

offered as proof of a violation in this case. They assert that, under the Board regulations found at 35 Ill. Adm. Code 900.103(b) and Dettlaff, in order to prove a violation of Section 901.102, the complainants would need to have monitored the sound emissions using a reference time of one hour rather than 10 second samples in a one minute 50 seconds averaging period as was used here.

Respondents also cite to Village of Matteson v. World Music Theater (February 25, 1993), PCB 90-146, for the proposition that if anything less than a one hour L_{eq} measurement period is used, compelling testimony or evidence must be shown to demonstrate why the lesser sampling period is justified. In World Music Theater, the Board determined that a five minute averaging period would be appropriate for determining future compliance because between the music sets, no substantial sound was generated. Unlike World Music Theater, respondents point to the complete lack of testimony in this case as to why anything less than one hour was appropriate. Respondents point out that the simple testimony of complainant's expert witness was that one minute 50 seconds was selected because it seemed "reasonable."⁹ (Tr. at 156-158 and 188.)

Regarding the second issue presented for our review, whether the noise levels emitted from Summerfest '93 resulted in a nuisance violation of Section 24 of the Act and Section 900.102, complainants argue that the undisputed testimony of Charles Hulihan and Joseph Schrantz proved that each suffered unreasonable interference with his enjoyment of life. (Complainant's Reply Brief at 3.) Complainant's also offer the noise measurements taken by Gullickson as evidence that the respondents violated Section 900.102. According to the complainants, the exceedance information may be used to prove a Section 900.102 violation and the measurements need not conform to the same rigid measurement requirement set forth for proving a violation of Section 901.102. (Reply Brief. at 6-7.)

Complainants urge a finding in this case that the record demonstrates "unreasonable interference" for four of the five statutory factors guiding the Board's consideration of "reasonableness." The Section 33(c) factors are: "character and degree of interference," "social and economic value," "unsuitability of the site" and "practicability of eliminating emissions." The last factor, "subsequent compliance," both parties agree is inapplicable to these proceedings.

⁹At hearing, complainant's expert witness, Gullickson testified that the monitoring reports admitted into the record as complainant's Exhibits 11-21, show averaging periods of five minutes. Gullickson testified that in fact, the averaging time was one minute 50 seconds, and that the five minute time represents the time in which it took Gullickson to collect the data and manually record it. (Tr. at 149.)

On the other hand, respondents argue that a violation of the Act or the regulations can only occur if the noise pollution is more than just "interference." The noise emissions must result in "unreasonable" interference, i.e., the sounds emitted from Summerfest '93 must objectively affect the complainants' life or business activity. (Villa Park Br. at 12, citing Dettlaff v. Boado (July 1, 1993) PCB 92-26.) Respondents believe that the Board must apply a balancing test here, as it has in the past and that in this case, the benefit of holding Summerfest far outweighed any inconvenience the complainants may have experienced.

Character and Degree of Injury

As to the "character and degree of injury" of Summerfest, the complainants argue that this four-evening "rock" concert clearly interfered with the health of the Hullihan family, the Stearns' physical property, and Schrantz' enjoyment of life. (Reply Brief at 9.) Mrs. Hullihan had to leave the house in order to go to bed early. Mrs. Stearns could not enjoy company in her home because of the noise levels. Mr. Schrantz could not enjoy the Illinois Prairie Path because of the sound level of the music emitted from Summerfest '93.

Respondents argue that the testimony fails to establish any significant injury either to health, general welfare or physical property. Schrantz was able to watch television, read and sleep without interference, and ultimately his real concern with Summerfest '93 was that he was concerned and upset at seeing the Illinois Prairie Path "desecrated" rather than upset with any interference the noise levels may have caused. (Villa Park Brief at 13.) Mr. Hullihan was able to watch T.V. when he increased the volume. The Kiwanis Club and the Masonic Lodge point out that Mrs. Hullihan left the house in order to get some sleep, but there is no testimony of how the noise affected her while she was at home, other than that she and her husband had to raise their voices to have a conversation and turn the television volume up. Respondents finally argue that the Board should not consider any evidence about how Summerfest '93 affected Mrs. Stearns because she failed to appear at hearing.

Social and Economic Value

Regarding the second factor, complainants do not deny that the Summerfest had "certain social and economic value," but argue that the "real economic winners" were vendors, and not necessarily the charities. Complainants also point out that the noise was created by the free rock concerts, and not the vendors or other activities which were a source of revenue, and no testimony was offered that the loud music contributed to the revenue generated by Summerfest.

Respondents argue that the festival is sponsored by not-for-profit corporations who were seeking to provide the community with an opportunity for "social togetherness." (Villa Park Brief at 14.) The respondents also argue that there is high social value because some of the net proceeds were to be returned to the community.

Suitability of the Site

As to the suitability of the site, complainants essentially argue that it is axiomatic that the site is unsuitable. Complainants argue that the site is approximately 100 feet from residences, and is therefore inappropriate for a live, electronically amplified music festival and carnival. (Reply Brief at 11.)

Respondents believe that the site is suitable mainly because the land on which Summerfest '93 was held is zoned by Villa Park for festivals and carnivals. In addition, the respondents argue the location was ideal for the community because there are non-residential properties in close proximity and because it was in the heart of Villa Park.

Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions

Complainants cite the lack of testimony altogether regarding this factor. According to the complainants, no one testified that noise pollution could not have been eliminated entirely from the Summerfest. No one testified as to why a different location was not selected. No one testified as to why the concerts had to extend past 10:00 or 11:00 p.m. in the evening. (Reply Brief at 11.)

The respondents on the other hand, argue that they had made great effort to control, to the extent possible, the noise levels emanating from Summerfest '93. These efforts included using a sound control board, shortening the hours from prior Summerfest festivals, placing the sound control clause in the contracts, making rounds to check sound levels and asking the bands to turn the amplifiers down. (Villa Park Brief at 16.)

ANALYSIS

In Section 23 of the Environmental Protection Act, the legislature declared that

"excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increase construction costs, depresses property values, offends the senses, creates public nuisances, and other respects reduces the quality of our environment."

In so doing, the legislature prohibited noise emissions which unreasonably interferes with the enjoyment of life, or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under the Act. (415 ILCS 5/24.) The Board has adopted a two-part regulatory scheme for the control of noise pollution which includes specific monitoring techniques for measuring noise emissions. The first part is a specific set of numerical limitations on the characteristics of sound that may be transmitted from source to receiver. These regulations are found in 35 Ill. Adm. Code Part 901, of which Section 901.102 is at issue in this case.

The second method of implementing the noise provisions of the Act is the general prohibition on noise pollution found in Section 900.102. Section 900.102 provides:

No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.

Additionally, Section 900.101 defines noise pollution as the emission of sound that unreasonably interfere with the enjoyment of life or with any lawful business or activity. (35 Ill. Adm. Code 900.101.) These two provisions, Sections 900.101 and 900.102 read together with Section 23 of the Act, constitute a public nuisance standard for noise pollution control. (Kvatsak v. St. Michael's Lutheran Church (August 30, 1990) PCB 89-182, 114 PCB 765, 768.)

Pending before us today are alleged violations of the Act and the Board's regulations on both numerical and the public nuisance theory. When we examine whether there has been a violation of the numerical standards, we are concerned with whether the measurement procedures comply with the Board's regulations. (Curtis, et al. v. Village of Lake in the Hills et al. (April 8, 1993) PCB 91-30, slip. op. at 16; Dettlaff, slip op at 7-8.) When we consider alleged violations of the public

nuisance regulations, we are concerned with whether the objective evidence demonstrates an unreasonable interference with life, business or other lawful activities. (Kvatsak, 114 PCB at 772 and Dettlaff slip op. at 12.)

A. Numerical Violations

We find that in this case, there is no violation of Section 901.102 of the Board's regulations. While it may be that Gullickson used a measuring instrument in conformance with the Board's regulations, that he may have calibrated the noise monitoring machine correctly, or that he may have made the measurements from the proper distance of the noise emission source of 25 feet, Mr. Gullickson's own reports and testimony confirm that he did not make the measurements using the regulatory-required reference time of one hour intervals.

The noise level measuring requirements of Section 900.103(b) are specific and designed to provide sufficient evidence of excessive noise emission which have lasting duration, and the Board has adopted a one hour L_{eq} reference period. (See e.g. In the Matter of: General Motors Co. Proposed Amendments to 35 Ill. Adm. code 900.103 and 901.104 (January 22, 1987), R83-7.) The noise monitoring in this case does not comport with the Board's own regulations at Section 900.103(b) and therefore the sound data offered in this case is invalid. Without valid sound data, complainants have not shown a violation of Section 901.102. (See Dettlaff, slip. op. at 7.)

Even if the Board were inclined to allow a shorter reference period of less than one hour, there is no evidence in the record for doing so. For instance, in World Music Theater, we allowed a five minute reference period for monitoring future compliance, but did so after requiring the use of one hour reference periods to ascertain whether there was a violation of the Board's noise standards. (World Music Theater, slip op. at 45-46.) In this case, Gullickson merely testified that he made the noise emission measurement using a one minute and 50 second reference period because "it seemed reasonable" to take the measurement while the songs were being performed and not before or after. (Tr. at 156-158 and 188.)

The Board accordingly dismisses the allegation of the compliant.

B. Nuisance Violations

With regard to whether the respondents have violated Section 24 of the Act and Section 900.102, the Board finds no violation. In the past, the Board has considered the reasonableness of noise emissions by reviewing the testimony presented by complainants

and weighing the severity, frequency and duration of the interference. (See e.g. Citizens of Burbank v. Overnite Trucking (1985) PCB 84-124, 65 PCB 131, 136 and 138 and Turner v. Mark Edmiston (February 27, 1992) PCB 91-147, 130 PCB 262-63.) In weighing the severity of the alleged noise pollution, the Board has balanced the interests of the person or persons alleging harm against the value of the noise source, utilizing the criteria set forth by the legislature. (See e.g. Ferndale Heights Utilities Co. v. IPCB and IEPA (1st Dist. 1976), 41 Ill. App.3d 962, 358 N.E.2d 1224.) To reiterate, the Section 33(c) factors are:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance. (415 ILCS 5/33(c).)

In this case, when we weigh the complaints of interference, which are having to turn up the television or raising voices during conversation, against the evidence offered by the respondents regarding the Section 33(c) factors, in our opinion, the balance weighs in favor of the respondents. Summerfest '93 was a public, family-oriented event that was designed not only to provide an opportunity for "social togetherness," but to raise money for various not-for-profit concerns that would mean returning some of the proceeds to the community for special projects. (Villa Park Brief at 15.) The event lasted four days and evenings during the year, and there is no evidence in this record of any excessive duration of noise emissions that would unreasonably interfere with complainants' enjoyment of life or use of property.

When considering the complainants' alleged "unreasonable interference" we are persuaded that Mr. Schrantz suffered no interference while in his home; his complaints stemmed from his visits to Mrs. Stearns' home during the festival. Mrs. Stearns did not appear and any testimony regarding the effect of the noise on her is hearsay, and therefore there is no evidence whatsoever in this case regarding interference with her life, business or lawful activity. Finally, while Mr. Hullihan may be the only complainant to have offered any proof of interference

with his life or home, we find that any degree of discomfort he may have experienced during the four days of the festival, such as raising the T.V. volume or going to bed at a later time, does not rise to a level of unreasonable interference so as to constitute a noise violation as contemplate in Section 900.102;¹⁰ neither do the noise levels rise to the level of "noise pollution" as defined in Section 900.101.

The clear evidence in this case is that Summerfest '93 festival was sponsored by the Village of Villa Park and several service organizations for the citizens of Villa Park and for purpose of raising funds for the benefit of the community and charitable purposes. The sponsors gave great weight to complaints voiced during the planning stages of the Summerfest '93 by citizens such as Mr. Hullihan, who is also a complainant in this action. The sponsors used a sound control board and set the sound levels so that conversations could be heard from the neighboring residences. Provisions were placed in the entertainment contracts to give control over sound to the Summerfest '93 sound committee and that authority was exercised by respondents. The Summerfest '93 sound committee made rounds during the concerts checking to see if normal conversations could take place while the bands were playing. When the noise reached a level that the sound board could not control, a band, on one occasion was requested to turn down its amplifiers.

While one of the complainants, Mr. Charles Hullihan did live close to the Summerfest, and obviously did not consider the location or the noise levels ideal, the parcel of land on which the concerts occurred was zoned by the Village for carnival use. The area in which Summerfest '93 was located was not a strictly residential neighborhood. Summerfest '93 was located next to Ardmore Avenue, which is a major arterial street, near the Chamber of Commerce and also near an historic railroad station.

The Board has historically found that, for there to be a finding of a nuisance noise violation, the interference must be beyond "trifling interference, petty annoyance, or minor discomfort." (Turner, 130 PCB at 269.) There must be some evidence of frequent occurrence that is of a continuous nature so as to cause interruption of normal enjoyment of life. (Id.) Ultimately, while there is evidence in this case of some interruption of normal activity during the four-day period, such as turning up the television or Mr. Hullihan waiting to go to sleep on Friday and Saturday night until after the festival was over at 11:30, we find that this degree of interference does not rise to a level of unreasonable interference with his enjoyment

¹⁰We note that it was Mrs. Hullihan who allegedly left her home because of the noise, however she is not a complainant in this action and accordingly we cannot consider any effect the festival may have had on her life.

of life, any lawful business or activity, so as to constitute a nuisance violation.

We accordingly find that the complainants have failed to provide proof to support the noise nuisance portion of their complaint, which is hereby dismissed.

This opinion constitutes the Board's findings of fact and conclusions of law in this matter.

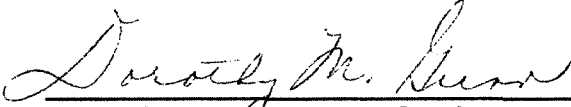
ORDER

For the reasons stated in the foregoing opinion, the Board hereby finds that respondents have not violated the Act or the Board's regulations. Accordingly, all relief sought by the complainants is denied. The complaint is dismissed and the docket in this matter is hereby closed.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act (415 ILCS 5/40.1) provides for the appeal of final Board orders within 35 days of service of this decision. The Rules of the Supreme Court of Illinois establish filing requirements. (See also, 35 Ill. Adm. Code 101.246, Motions for Reconsideration.)

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above opinion and order was adopted on the 14th day of December, 1994, by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board