

ILLINOIS POLLUTION CONTROL BOARD
December 14, 1994

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

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

On September 9, 1994, Rodney B. Nelson, M.D., filed a complaint against Kane County Forest Preserve, Bradley Sauer, Chairman and the Kane County Cougars, William Larsen, General Manager¹. The complaint alleges that fireworks displays at the Kane County Cougar's baseball games emit noise in violation of Section 23 of the Environmental Protection Act (Act) (415 ILCS 5/23 (1994)).

Motion to Strike

On November 14, 1994, complainant filed a motion for summary judgment with supporting affidavit. On December 1, 1994, the Kane County Forest Preserve (Forest Preserve) filed a motion to strike affidavit/response to motion for summary judgment. The Board today will rule on the Forest Preserve's motion to strike affidavit. The Board will reserve ruling on the pending motion for summary judgment until the issue of the sporting activity exemption (discussed below) has been briefed.

The Forest Preserve claims that complainant's affidavit should be stricken for three reasons: because it contains hearsay, contains ultimate conclusions of fact, and does not provide any measurement for the "explosions" other than the fact they were "loud". The Board's procedural rules allow any evidence which is material, relevant, and would be relied upon by reasonably prudent persons in the conduct of serious affairs. (35 Ill. Adm. Code 103.204(a).) Therefore the Board finds the entire affidavit to be relevant and admissible into evidence.

¹ Respondent Kane County Board, Warren Kammerer, Chairman was dismissed by Board order dated October 6, 1994.

The amount of weight given to each of the alleged facts in the affidavit will be determined by the Board.

Sporting Activities Exemption

The Board notes that Section 25 of the Act places restrictions 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 activity except as otherwise provided for in this Section.

415 ILCS 5/25 (1994)

In addition, the Board notes that Section 3.25 of the Act, as amended in P.A. 84-1308, defines "Organized Amateur or Professional Sporting Activity" as:

[a]n activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public, including all necessary actions and activities associated with such an activity. This definition includes, but is not limited to, (i) rifle and pistol ranges, licensed shooting preserves, and skeet, trap or shooting sports clubs in existence prior to January 1, 1994, (ii) public hunting areas operated by a governmental entity, (iii) organized motor sports, and (iv) sporting events organized or controlled by school districts, units of local government, state agencies, colleges, universities, or professional sports clubs offering exhibitions to the public.

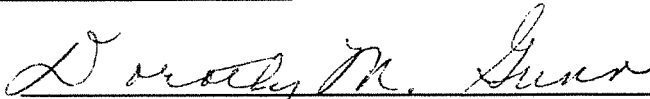
415 ILCS 5/3.25 (1994)

The Board directs the parties in this proceeding to file a brief with the Board by February 1, 1995, addressing whether the complained of activity is an "organized amateur or professional sporting activity" and whether the claim alleges violations of the Act which fall within the Board's purview. The Board directs the parties' attention to the rulings in Anne Shepard, James Verhein, and Jerold Leckman v. Northbrook Sports Club and Village of Hainesville, PCB 94-2 (May 5, 1994); Hinsdale Golf Club v. Kochanski (2d Dist. 1990), 197 Ill.App.3d 634, 555 N.E.2d 31; Fore v. Midstate Kart Club, PCB 93-171 (December 16, 1993) and Pecka v. Skylarks Remote Control Airplane Club, PCB 92-27 (May 7, 1992).

IT IS SO ORDERED.

C. A. Manning concurred.

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



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board