

ILLINOIS POLLUTION CONTROL BOARD
October 7, 1993

LEO G. FORE,)
)
 Petitioner,)
)
 v.) PCB 93-171
) (Enforcement)
)
 MIDSTATE KART,)
)
 Respondent.)

ORDER OF THE BOARD (by M. Nardulli):

On September 9, 1993, Leo G. Fore filed a complaint against Midstate Kart Club. Mr. Fore alleges that Midstate's Go-Kart club emits noise in violation of Sections 23 and 24 of the Environmental Protection Act (Act).

Section 31(b) of the Act states that when a citizen's enforcement complaint is filed:

Unless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing.

415 ILCS 5/31(b) (1992)

Also, the Board regulations in part provide:

If a complaint is filed by a person other than 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

A complaint is frivolous if it fails to state a cause of action upon relief can be granted. (See, Mandel v. Kulpaka PCB 92-33 (August 26, 1993); Section 31(b) of the Act.) For instance, a complaint is frivolous if it alleges violations of sections of the Act which do not fall within the Board's purview. In such a case, the complaint fails to state a cause of action upon which the Board may grant relief.

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 (1992).

In addition, the Board notes that Section 3.25 of the Act defines "Organized Amateur or Professional Sporting Activity" as:

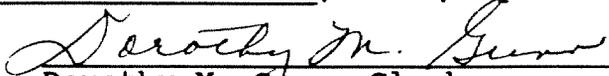
[a]n activity or event carried out at a facility by persons who engaged in that activity as a business or for education, charity or entertainment for the general public, including all necessary actions and activities associated with such an activity. This definition includes, but is not limited to, skeet, trap or shooting sports clubs in existence prior to January 1, 1975, organized motor sports, and 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 (1992).

The Board directs each party in this proceeding to file a written document with the Board 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 Appellate Court ruling in Hinsdale Golf Club v. Kochanski (2d Dist. 1990), 197 Ill.App.3d 634, 555 N.E.2d 31; and to this Board's decision in Pecka v. Skylarks Remote Control Airplane Club, PCB 92-27 (May 7, 1992). The Board notes the Hinsdale and Pecka cases contain interpretations of the "organized amateur or professional sporting activity" exemption that may be applicable to this proceeding. The Board reminds the parties that they must follow Board's procedural rules governing filing and service requirements. The documents must be received by the Board on or before November 7, 1993.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 7th day of October, 1993, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board