

ILLINOIS POLLUTION CONTROL BOARD
December 16, 1993

DECATUR AUTO AUCTION,)
)
 Petitioner,)
)
 v.) PCB 93-192
) (Enforcement)
)
 MACON COUNTY FARM BUREAU, INC.,)
 an Illinois Corporation, MACON)
 COUNTY FAIR ASSOCIATION, and)
 MACON COUNTY HORSEMAN'S)
 ASSOCIATION,)
)
 Respondents.)

ORDER OF THE BOARD (by M. Nardulli):

On October 14, 1993, Decatur Auto Auction (Decatur Auto) filed a complaint with the Board against Macon County Farm Bureau, Macon County Fair Association, and Macon County Horseman's Association (Macon) alleging that Macon emits dust in violation of 35 Ill. Adm. Code 212.301 of the Board's regulations.

Section 31(b) of the Environmental Protection Act (415 ILCS 5/31(b) (1992)) (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

Decatur Auto included in its petition before the Board a

copy of a petition for a temporary restraining order and preliminary injunction filed in circuit court. (Decatur Auto Auction v. Macon County Farm Bureau (6th Ill. Cir.) 93 MR 114) On November 18, 1993, the Board directed Decatur Auto to file a document addressing whether the complaint before the Board is identical or substantially similar to the matter before the Circuit Court.

On December 8, 1993, Decatur Auto filed with the Board a copy of the circuit court's September 17, 1993, judgment and order denying Decatur Auto's petition for temporary restraining order and preliminary injunction. In addition, Decatur Auto filed a copy of the circuit court's October 1, 1993, order dismissing Decatur Auto's complaint, holding that Decatur Auto must first exhaust its administrative remedies before the Board. Decatur Auto argues that should the Board dismiss this matter as duplicitous, there will be no forum to consider the complaint.

In general, the Board will dismiss a citizen's complaint as duplicitous where an identical or substantially similar matter has been brought before another forum. (Fore v. Midstate Kart Club (October 7, 1993) PCB 93-171; Mandel v. Kulpaka (August 26, 1993) PCB 92-33; In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2, 100 PCB 53.) The record before us indicates that Decatur Auto brought a substantially similar matter before the circuit court. However, the matter before the circuit court was dismissed, prior to full adjudication, due to petitioner's failure to exhaust its remedies before the Board. The Board agrees with Decatur Auto's contention that should the Board dismiss this matter as duplicitous, petitioner will be left without a forum to hear its complaint. The Board bases this conclusion on the circuit court's holding that Decatur Auto must first exhaust its remedies before us. Therefore, the Board will not dismiss Decatur Auto's complaint as duplicitous.

As the Board noted in its order of November 18, 1993, Decatur has requested the Board to "order and direct (respondents) *** to pay any and all damages to Complainant." Under Section 42 of the Act, the Board is without authority to order one person to pay money damages to another person. Penalties ordered by the Board are to be paid into the Environmental Trust Fund. We further note that Decatur has requested other relief which is within the Board's authority to order. Therefore, the Board hereby strikes that portion of petitioner's complaint requesting the Board to direct Macon to pay any and all damages to complainant.

The Board finds that the complaint is not frivolous. A complaint is frivolous if it fails to state a cause of action upon relief can be granted. (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.) The claim alleges violations of a specific section of the Board regulations and seeks relief which may be granted by the Board. Therefore, the Board finds that the claim is not frivolous within the meaning of Section 31(b) of the Act.

Lastly, we direct Decatur Auto to keep the Board apprised of any matter concerning the complained of activity, in which Decatur Auto is a party.

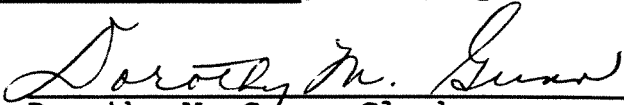
For the reasons discussed above, the Board hereby finds that Decatur Auto's complaint is not duplicitous or frivolous within the meaning of Section 31(b) of the Act. In so finding, the Board makes no ruling on the merits of the case; the Board finds only that this case is properly before it pursuant to Section 31(b). A finding that the matter is not duplicitous or frivolous, does not preclude the filing of motions regarding the sufficiency of the pleadings. Accordingly, this matter shall proceed to hearing.

The hearing must be scheduled and completed in a timely manner, consistent with Board practices. The Chief Hearing Officer shall assign a hearing officer to conduct hearings. 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.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 16th day of December, 1993, by a vote of 7-0.


 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board