

ILLINOIS POLLUTION CONTROL BOARD
November 18, 1993

DECATUR AUTO AUCTION,)
)
 Complainant,)
)
 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 against Macon County Farm Bureau, Macon County Fair Association and Macon County Horseman's Association (Macon) alleging that Macon emits dust in violation of Section 9 of the Environmental Protection Act (Act) and 35 Ill. Adm. Code 212.301 of the Board's regulations.

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

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought before the

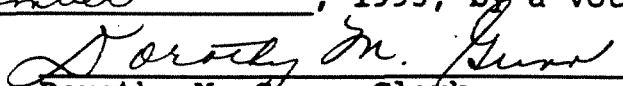
Board or in another forum. (Fore v. Midstate Kart Club (October 7, 1993) PCB 93-171; Mandel v. Kulpaka PCB 92-33 (August 26, 1993); See also, In re Duplicitous or Frivolous Determination (June 8, 1989), RES 89-2, 100 PCB 53.) Attached to Decatur Auto's petition is a document which appears to be a copy of a motion for a temporary restraining order filed in Circuit Court. The motion asserts on-going violations of Section 9 of the Act and 35 Ill. Adm. Code 212.301. Likewise, the petition before the Board concerns "continuing" discharges in violation of Section 9 of the Act and 35 Ill. Adm. Code 212.301.¹ Thus, it appears the matter before the Circuit Court and the petition before the Board involve substantially similar events, and concern the same period of time.

Where a matter before the Board involves substantially similar events and concerns the same period of time as a complaint brought before the Circuit Court, the Board may dismiss the matter before it as duplicitous. (See, Winnetkans Interested in Protecting the Environment v. IPCB, 55 Ill. App. 3d 475, 370 N.E.2d 1176 (1977)). However, in the instant case there remains some uncertainty as to the status of the matter before the Circuit Court and to the particulars of the underlying complaint. Therefore, the Board directs Decatur Auto to file a document with the Board addressing whether this matter is duplicitous. In addition, Macon County Farm Bureau, Macon County Fair Association and Macon County Horseman's Association are hereby given leave to file a document with the Board addressing whether this matter is duplicitous. Any documents filed in response to this order must be received by the Board no later than December 9, 1993.

IT IS SO ORDERED.

Section 41 of the Environmental Protection Act, 415 ILCS 5/1 et. seq. provides for appeal of final orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 18th day of November, 1993, by a vote of 5-0.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board

¹ The Board also notes that Decatur Auto 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 Protection Trust Fund.