

ILLINOIS POLLUTION CONTROL BOARD

July 27, 2000

MICHAEL D. LOGSDON, DARRELL E.)
MANN, KATHY MANN, RUSSELL)
SPILLMAN, MARILYN SPILLMAN, RITA)
MARTIN, ALVIN W. ABBOTT, KATHY)
ABBOTT, DIANA COLLINS, and DAVE)
COLLINS,)
)
Complainants,)
)
v.) PCB 00-177
) (Enforcement - Noise, Citizens)
SOUTH FORK GUN CLUB,)
)
Respondent.)

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

This case is before the Board on the April 25, 2000 filing of a citizens enforcement complaint (comp.). Michael D. Logsdon, Darrell E. Mann, Kathy Mann, Russell Spillman, Marilyn Spillman, Rita Martin, Alvin W. Abbott, Kathy Abbott, Diana Collins, and Dave Collins (complainants) alleged that respondent South Fork Gun Club violated Section 24 of the Environmental Protection Act in addition to Sections 900.102 and 901.104 of the Board's rules. 415 ILCS 5/24 (1998); 35 Ill. Adm. Code 900.102 and 901.104. Complainants also allege that respondent violated Section 5 of the Illinois Premises Liability Act. 740 ILCS 130/5 (1998).

Also on April 25, 2000, respondent filed a motion to dismiss, alleging that the Board lacks subject matter jurisdiction over the complaint under the Premises Liability Act. On May 8, 2000, Logsdon requested an extension of time to respond to the motion to dismiss until May 15, 2000. On May 10, 2000, Logsdon filed an amended request for time extension to respond to the motion to dismiss until May 30, 2000. On June 5 and 12, 2000, attorney Phillip R. Van Ness filed appearances on behalf of all complainants except Russell Spillman, Marilyn Spillman, and Rita Martin. On June 8, 2000, Van Ness filed a memorandum in opposition to respondent's motion to dismiss.

For the reasons below, the Board finds that the alleged violations of the Environmental Protection Act and the Board's noise rules are neither duplicitous nor frivolous and accepts those allegations for hearing. The alleged violations of the Premises Liability Act are frivolous, and the Board dismisses them.

BACKGROUND

Respondent's trap shooting and rifle club is located in Kincaid, Christian County, Illinois. Complainants state that noise from the firing of shotguns at respondent's club has caused an unreasonable interference with the use and enjoyment of their properties. Comp. at 2-4. Complainants request that the Board order respondent to cease and desist further violations of several laws and regulations and discontinue use of the site where the club is now located. Comp. at 4.

DUPLICITOUS/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules implements Section 31(b) of the Environmental Protection Act. 415 ILCS 5/31(b) (1998). This section directs the Board to determine whether or not a citizens enforcement complaint is duplicitous or frivolous. This section further states that if the complaint is duplicitous or frivolous, the Board 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 duplicitous or frivolous, this does not preclude the filing of motions regarding the insufficiency of the pleadings. 35 Ill. Adm. Code 103.124(a).

Duplicitous

An action before the Board is "duplicitous" if the matter is identical or substantially similar to the one brought in from another forum. Brandle v. Ropp (June 13, 1985), PCB 85-68; Pattermann v. Boughton (September 23, 1999), PCB 99-187. The Board has not identified any other cases, either substantially similar or identical to this matter, pending in other forums. Additionally, neither the motion to dismiss nor the response has brought any potentially duplicitous matters to the Board's attention. Based on the record before the Board, none of the allegations in the complaint are duplicitous.

Frivolous

An action before the Board is frivolous if it requests relief which the Board cannot grant. Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80; Pattermann v. Boughton (September 23, 1999), PCB 99-187.

Premises Liability Act

Although the Premises Liability Act addresses noise from firearm ranges, it is not an environmental control standard. An administrative Agency such as the Board is a "creature of statute" and, therefore, the statute which created the Board provides it with its authority. Granite City Div. of National Steel Co. v. Illinois Pollution Control Board, 155 Ill. 2d 149, 171, 613 N.E. 2d 719, 729 (1993). Section 5 of the Environmental Protection Act created the Board. 415 ILCS 5/5 (1998). Section 5(b) of the Environmental Protection Act states that the Board shall determine, define, and implement the environmental control standards applicable in the State of Illinois. 415 ILCS 5/5(b) (1998). Thus, the Board does not have the authority to review the Premises Liability Act. The alleged violations of the Premises Liability Act are frivolous. See also Shephard v. Northbrook Sports Club (September 5, 1996), PCB 96-206, slip op. at 5.

Noise Regulations

Section 24 of the Environmental Protection Act prohibits a person from emitting noise beyond her property 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 (1998). Section 900.102 of the Board’s rules is a similar noise pollution prohibition. Section 901.104 of the Board’s rules sets decibel standards for the emission of impulsive sounds. 35 Ill. Adm. Code 900.102 and 901.104.

However, Section 25 of the Environmental Protection Act provides, in pertinent part, that “[n]o Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity except as otherwise provided in this Section.” 415 ILCS 5/25 (1998).

“Organized amateur or professional sporting activity” is defined, in pertinent part, at Section 3.25 of the Environmental Protection Act:

an 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. 415 ILCS 5/3.25 (1998).

Respondent made factual assertions and attached exhibits to its motion. Complainants did likewise in their memorandum. The Board could consider these assertions and exhibits in determining if activities at the South Fork Gun Club are “organized amateur or professional sporting activities” as defined at Section 3.25 of the Environmental Protection Act. If it is proven that organized amateur or professional sporting activities took place at the South Fork Gun Club and that the Club existed prior to January 1, 1994, then the alleged violations of the noise provisions in the Environmental Protection Act and the Board’s rules would be frivolous.

However, neither respondent nor complainants included affidavits to lay the requisite foundation for the Board’s consideration of the factual assertions and exhibits in the motion and memorandum. Hearing Officer Steven Langhoff contacted both respondent’s and complainants’ attorneys to request that they submit affidavits, but neither attorney complied with the request. Section 101.242(a) of the Board’s rules governs the contents of motions and states that “[f]acts asserted which are not of record in the proceeding shall be supported by affidavit.” The Board will consider the information in the motion or the memorandum only when it has received supporting affidavits or at hearing.

As the Board cannot consider the factual assertions and exhibits in the respondent’s motion and complainants’ memorandum, it will base its frivolous determination on the allegations in the complaint, which are properly verified. As alleged in the complaint, the Board may grant relief from violations of Section 24 of the Environmental Protection Act and Sections

900.102 and 901.104 of the Board's rules. Those alleged violations in the complaint are not frivolous.

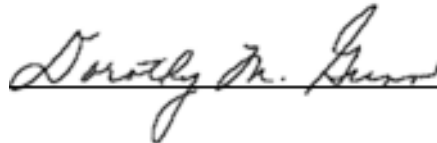
CONCLUSION

The Board finds that the alleged violations of Section 24 of the Environmental Protection Act and Sections 900.102 and 901.104 of the Board's noise rules are neither duplicitous nor frivolous. The Board accepts those allegations for hearing. The alleged violations of Section 5 of the Premises Liability Act are frivolous, and the Board dismisses them.

The hearing in this matter must be scheduled and completed in a timely manner consistent with Board practices. 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 27th day of July 2000 by a vote of 6-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board