

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:)	
CASEYVILLE SPORT CHOICE, LLC,)	
an Illinois Limited Liability Company)	
)	
Complainant,)	
)	PCB 2008-030
v.)	
)	
ERMA I. SEIBER, ADMINISTRATRIX OF THE)	
ESTATE OF JAMES A. SEIBER, DECEASED,)	
and ERMA I. SEIBER, IN HER INDIVIDUAL)	
CAPACITY and FAIRMOUNT PARK, INC.,)	
a DELAWARE CORPORATION,)	
)	
Respondents)	

MOTION TO DISMISS COUNT II AGAINST FAIRMOUNT PARK, INC.

Now comes Fairmount Park, Inc., a Delaware corporation licensed to do business in the State of Illinois, by its attorney, Charles E. Hamilton, and moves this Board to be dismissed from this action and, in support thereof, states:

1. This is an action brought by a private entity, Caseyville Sport Choice, LLC, an Illinois limited liability company, against a private entity, Fairmount Park, Inc., a Delaware corporation licensed to do business in the State of Illinois.

2. The complaint, in Paragraph 5, alleges that Respondent Fairmount Park, Inc. caused or allowed the open dumping of waste, in violation of Section 21(a) of the Illinois Environmental Protection Act (415 ILCS 5/21(a)).

3. The action complained of occurred, as described in Paragraph 7 of the complaint, from approximately 1981 until 1993.

4. The complaint fails to allege any actionable conduct by Fairmount Park, Inc. since 1993, a period of fourteen (14) or fifteen (15) years prior to the filing of this action against

Fairmount Park, Inc. on or about August 22, 2008.

5. This action against Fairmount Park, Inc. is barred by the provisions of Section 13-205 of the Code of Civil Procedure (735 ILCS 5/12-205 (2006)) which establishes the statute of limitations applicable to actions between private parties as five years. Union Oil Co. of Cal. d/b/a Unocal v. Barge-Way Oil Co., Inc., et al, PCB No.98-169, 1999 Ill. ENV LEXIS 9 at**11-12, n.1 (Ill. Pol. Control Bd. Jan. 7, 1999).

WHEREFORE, for the reasons stated, this action against Respondent Fairmount Park, Inc. is barred and should be dismissed.

Respectfully submitted this 12th day of September, 2008

FAIRMOUNT PARK, INC., Respondent

By: /s/ Charles E. Hamilton
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CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I caused to be mailed on the 12th day of September, 2008, the foregoing Motion to Dismiss Count II against Fairmount Park, Inc. to the attorneys of record by depositing the same with the Fairview Heights, Illinois branch of the United States Postal Service with first class postage in place.

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