

ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

ANTHONY W. KOCHANSKI,)
)
 Complainant,)
)
 v.) PCB 88-16
)
 HINSDALE GOLF CLUB,)
)
 Respondent.)

CONCURRING OPINION (by R. C. Flemal):

I today join in the decision of the majority to dismiss this matter. However, I do so for reasons different from those expressed in the Opinion supporting the dismissal. The proper reason for dismissing this matter is that the Board is not empowered to grant the relief requested.

Initially, it is to be recognized that the Board is entirely a creation of Illinois statute, principally the Illinois Environmental Protection Act ("Act"; Ill. Rev. Stat. 1987, ch. 111^{1/2}, para. 1001 et seq.). Thus, the Board has no powers other than those derived from statute, and it has no powers which are not expressly identified in statute.

Among the powers which the Act does bestow upon the Board is the hearing of complaints of violation of the Act or regulations which have been promulgated by the Board pursuant to the Act (Act at Title VIII). It is thus a necessary condition to the hearing of such complaints that there be a prohibition in the Act or a valid Board regulation to which an allegation of violation may be addressed. In the matter at hand, there is no such prohibition or regulation.

To the contrary, the Act not only does not prohibit the complained-of activity, the Act affirmatively restricts the Board from promulgating or applying noise regulations to the circumstances at hand. This restriction is clearly spelled out in Sections 25 and 3.25 of the Act, to wit:

No Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized amateur or professional sporting activity... (Section 25, emphasis added)

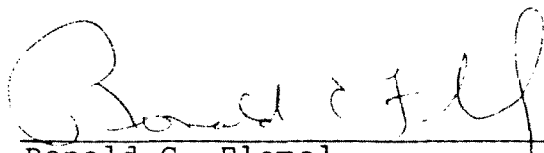
"ORGANIZED AMATEUR OR PROFESSIONAL SPORTING ACTIVITY" means an activity or event carried out at a facility by persons who engaged in that activity as a business

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, skeet, trap or shooting sports clubs in existence prior to January 1, 1975 ... (Section 3.25 of the Act, emphasis added).

All evidence at hand shows that the complained-of activity is the activity identified in the emphasized portion of Section 3.25, supra: the activity is skeet shooting; the skeet shooting occurs at a sporting club; the skeet shooting has been in existence since 1943. Moreover, Section 3.25 unambiguously includes such activity within the definition of "organized amateur or professional sporting activity". It must therefore be concluded that the complained-of activity is by definition an "organized amateur or professional sporting activity", as this term is used in the Act.

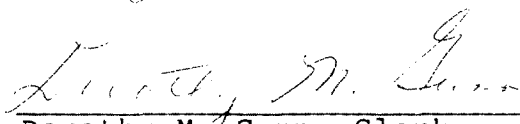
With equal lack of ambiguity, Section 25 of the Act specifies that no Board regulation prescribing limitations on noise emissions shall apply to any "organized amateur or professional sporting activity". Thus, no reading of these two sections in possible other than that, in combination, they exclude the applicability of any Board noise regulations to the circumstances faced in the instant case. Further, if there are no Board regulations to which violation may be alleged, the Board has no authority to hear the matter. The matter must be dismissed.

On this basis I concur.



Ronald C. Flemal
Board Member

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Concurring Opinion was submitted on the 13th day of July, 1989.



Dorothy M. Gunn, Clerk
Illinois Pollution Control