

ILLINOIS POLLUTION CONTROL BOARD  
January 20, 1994

ANNE SHEPARD, JAMES VERHEIN, )  
and JEROLD LECKMAN, )  
 )  
Complainants, )  
 )  
v. ) PCB 94-2  
 ) (Enforcement)  
 )  
NORTHBROOK SPORTS CLUB, )  
and VILLAGE OF HAINESVILLE, )  
 )  
Respondents. )

ORDER OF THE BOARD (by M. Nardulli):

On January 3, 1994, Anne Shepard, James Verhein, and Jerold Leckman (Shepard or complainants) filed a complaint against Northbrook Sports Club and the Village of Hainesville (Northbrook or respondents) alleging that Northbrook emits noise in violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24). On January 19, 1994, respondents filed a motion for extension of time until January 26, 1994, to move to dismiss complaint as frivolous. The Board grants the motion subject to the conditions stated below.

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.

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. (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.) A complaint is frivolous if it fails to state a cause of action upon relief can be granted. (Id.) For instance, a complaint is frivolous if it alleges violations of sections of the Act which do not fall within the Board's purview or if the Act places certain activities outside of regulation by the Board.

The Board notes that Section 25 of the Act places restrictions on the Board's ability to hear noise violations proceedings involving certain sporting activities:

No Board standards for monitoring noise or regulations prescribing limitations on noise emissions shall apply to any organized or amateur or professional sporting activity except as otherwise provided for in this Section.

415 ILCS 5/25 (1992)

In addition, the Board notes that Section 3.25 of the Act defines "Organized Amateur or Professional Sporting Activity" as:

[a]n 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, organized motor sports, and sporting events organized or controlled by school districts, units of local government, state agencies, colleges, universities or professional sports clubs offering exhibitions to the public.

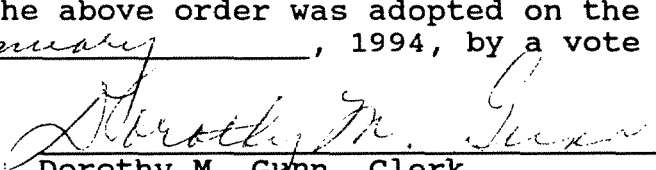
415 ILCS 5/3.25 (1992)

The Board directs each party in this proceeding to file a written document with the Board addressing whether the complained of activity is an "organized amateur or professional sporting activity" and whether the claim alleges violations of the Act which fall within the Board's purview. The Board directs the parties' attention to the Appellate Court ruling in Hinsdale Golf Club v. Kochanski (2d Dist. 1990), 197 Ill.App.3d 634, 555 N.E.2d 31; and to this Board's decisions in Fore v. Midstate Kart Club, PCB 93-171 (December 16, 1993) and Pecka v. Skylarks Remote Control Airplane Club, PCB 92-27 (May 7, 1992). The Board notes

the Hinsdale, Fore and Pecka cases contain interpretations of the "organized amateur or professional sporting activity" exemption that may be applicable to this proceeding. We remind the parties that they must follow Board's procedural rules governing filing and service requirements. Respondents' document must be received by the Board on or before January 26, 1994. Complainants' document must be received by the Board on or before February 9, 1994.

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 20th day of January, 1994, by a vote of 7-0.

  
Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board