

ILLINOIS POLLUTION CONTROL BOARD
May 7, 1992

RICHARD J. PECKA,)
JANICE M. PECKA,)
)
Complainants,)
)
v.) PCB 92-27
) (Enforcement)
)
SKYLARKS REMOTE CONTROL)
AIRPLANE CLUB,)
)
and)
)
JOHN CROWN)
GOLDEN OAKS FARM,)
)
Respondents.)

ORDER OF THE BOARD (by J. C. Marlin):

This matter comes before the Board on a February 28, 1992 motion to strike and dismiss filed on behalf of respondent John Crown, Golden Oaks Farm, and an April 20, 1992 motion to dismiss filed on behalf of respondent Skylarks Remote Control Airplane Club (Skylarks). In an order dated March 26, 1992, the Board noted the threshold issue that Section 25 of the Environmental Protection Act (Act) (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1025) places certain restrictions on the Board's ability to hear noise complaints involving certain sporting activities. The Board quoted the pertinent language as follows:

No 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. Baseball, football or soccer sporting events played during nighttime hours, by professional athletes, in a city with more than 1,000,000 inhabitants, in a stadium at which such nighttime events were not played prior to July 1, 1982, shall be subject to nighttime noise emission regulations promulgated by the Illinois Pollution Control Board.

The Board also directed 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. The Board then required the parties to file written documents discussing whether the complained of activity is an "organized amateur or professional sporting activity" with the Board by April 16, 1992. On April 16, 1992, respondents filed a motion to extend until April 20, 1992, the time in which to file the respondents' written documents

discussing whether the complained of activity falls within the "organized amateur or professional sporting activity" exception. The motion for the extension in which to file the written documents is hereby granted.

On April 9, 1992, complainants filed their response to the Board's order of March 26, 1992, alleging that Skylarks is not an "organized amateur or professional sporting activity" within the meaning of the statute. The statutory definition of "organized amateur or professional sporting activity" is contained in Section 3.25 of the Act:

"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, 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.

Complainants assert that Golden Oaks Farm is private property that is being rented to a private club, that the access road leading to the flying area is private farm property, and that no signs mark the access roads indicating that the flying area exists. Additionally, complainants argue that because the flying club is a private club located on private land, and is not open to or for the benefit of the general public, it falls within the jurisdiction of the Illinois Pollution Control Board.

On April 20, 1992, respondent Skylarks filed a motion to dismiss and an affidavit in support thereof, alleging that the club is an "organized amateur or professional sporting activity" within the meaning of the statute. Respondent asserts that Skylarks has been in existence for over twenty years and has been located at the Golden Oaks Farm since 1986. Respondent also asserts that Skylarks obtained a permit from Lake County in 1987 granting it a right to operate at the Golden Oaks Farm. Respondent explains that Skylarks has designated hours of operation, and members are drawn from the general public who choose to apply and pay the initiation fee. Respondents also state that Skylarks serves to provide entertainment for the general public and serves in an educational capacity for the general public. Finally, respondent asserts that the general public is invited to attend Skylarks' monthly meetings and has the ability to join once having attended these meetings. Respondent submitted the affidavit of Clement Germanier, former president and treasurer of Skylarks and current member of the club,

to support its factual assertions.

On April 22, 1992, respondent John Crown (Golden Oaks Farm) filed a memorandum in response to the order of the Board from March 26, 1992. Respondent asserts that Skylarks conducts activities which are "organized motor sports" per Section 3.25 of the Act because the club draws members from the general public who choose to apply and pay the initiation fee.¹

The Board notes that, technically, the time for respondent to reply to Skylarks' April 20, 1992 motion to dismiss has not run. However, Skylarks' motion is premised on the same statutory issue which complainant has addressed in response to the Board's March 26, 1992 order. The Board sees no reason to delay decision under these circumstances.

The Board finds that Skylarks falls within the statutory definition of an "organized amateur or professional sporting activity." The activity is "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," and the general public has the ability to apply for membership.

Because the Board finds that the complained of activity falls within the statutory definition of an "organized amateur or professional sporting activity", the Skylarks Remote Control Airplane Club is exempted from Board regulation under Section 25 of the Act. The Board accordingly grants the motions to dismiss.

IT IS SO ORDERED.

J. Theodore Meyer concurred.

Section 41 of the Environmental Protection Act (Ill. Rev. Stat. 1989, ch. 111 1/2, par. 1041) provides for the appeal of final Board orders. The Rules of the Supreme Court of Illinois establish filing requirements.

¹ Respondent requested that the Board allow its filing to be on non-recycled paper because of the flooding of the Loop and the consequential relocation of respondent's office. The motion to allow filing on non-recycled paper is hereby granted.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, do hereby certify that the above order was adopted on the 7th day of Friday, 1992, by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board