

ILLINOIS POLLUTION CONTROL BOARD
February 25, 1988

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

ORDER OF THE BOARD (by J. D. Dumelle):

On January 15, 1988, Anthony W. Kochanski filed a complaint against the Hinsdale Golf Club ("Hinsdale") asserting that the discharging of shotguns at the facility violates 35 Ill. Adm. Code 900.102 and 901.104* governing noise pollution. In an order dated January 21, 1988, the Board noted that Section 25 of the Environmental Protection Act ("Act") places certain restrictions on the Board's ability to hear noise violation proceedings 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 then required the parties to file written documents discussing whether the complained of activity is an "organized amateur or professional sporting activity."

The statutory definition of "organized amateur or professional sporting activity" is contained in Section 3.25 of the Act:

* The Board notes that the published Noise regulations include amendments through May 1, 1984. On January 22, 1987, the Board adopted a final order amending Section 900.103 and 901.104 (IN THE MATTER OF: General Motors Corp. Proposed Amendments to 35 Ill. Adm. Code 900.103 and 901.104, R83-7). All filings shall be consistent with this Order and the published Noise regulations.

"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.

On February 1, 1988, Respondent filed a Motion to Dismiss and Affidavit In Support Thereof, alleging that the skeet shooting activity is organized within the meaning of the statute because it has been carried on since 1943, is administered by a six person committee and is supported by three of Respondent's employees. On February 2, 1988, Complainant filed his response to the Board's Order of January 21, 1988, arguing that the skeet shooting is not performed as an "organized amateur or professional sporting activity" because it is a privilege available only to members of Hinsdale, and not to the general public. Complainant further asserts that the complained of activity is not conducted by a bona fide skeet, trap or shooting sport club as a business or for education, charity or entertainment for the general public, but is private recreation which does not fall within the definition of organized amateur or professional sporting activity. To this assertion, Respondent argues that the statutory exemption is not limited to public activities or dependent upon any perception of Respondent's primary activity.

On February 4, 1988 the Board heard arguments from the parties regarding their filings of February 1, 1988 and February 2, 1988 and issued a written order requesting the parties to file a verified statement of facts, describing what degree of involvement the general public has with the activity in controversy, and whether such activity offers exhibitions to the public. The Board found that the additional factual information was necessary to determine if the complained of activity meets the statutory definition of "organized amateur or professional sporting activity".

On February 17, 1988, Respondent filed a Memorandum in Response to Illinois Pollution Control Board Inquiries ("Memorandum") in which it states that Hinsdale is a private club whose members are drawn from that portion of the general public who chose to apply for membership and pay the initiation fee. Respondent further asserts that it is a skeet shooting club and because the statutory definition includes such clubs, Respondent is not subject to the Board's regulations and that this action should be dismissed. On February 18, 1988, Complainant filed his

response to the February 4 Board Order stating that he and Respondent have agreed that, (1) Hinsdale Golf Club is a private club offering skeet shooting as a privilege to its members, and that (2) Hinsdale Golf Club does not offer participation by, or exhibitions for the general public. No mention of this agreement was made in Respondent's Memorandum.

The Board finds that the skeet shooting activity in question does not fall within the statutory definition of organized amateur or professional sporting activity. The activity is not "carried out at a facility by persons as a business or for education, charity or entertainment for the general public." Although the public may be able to apply for membership to the club, the shooting activities are carried out privately among members of the Hinsdale Golf Club. Nor does the Board find that the activity falls within the "skeet, trap, or shooting sports clubs in existence prior to January 1, 1975" exception.

Because the Board finds that the complained of activity does not fall within the statutory definition of organized amateur or professional sporting activity, the Hinsdale Golf Club is not exempted from Board regulation under Section 25 of the Act. The Board therefore denies the motion to dismiss and will direct its Hearing Officer to confer with the parties for the purposes of scheduling a hearing on the complaint in this matter.

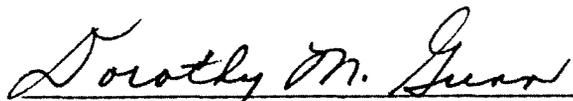
As a final matter, the Board would like to note the Appellate Court case of Ferndale Heights Utilities Company v. Illinois Pollution Control Board and Illinois Environmental Protection Agency, 44 Ill. App. 3d 962, 358 N.E. 2d 1224 (First District, 1976). The Board notes the Ferndale case as the judicial standards provided therein may be applicable to this proceeding.

IT IS SO ORDERED.

Board Members R.C. Flermal and J. Theodore Meyer dissented.

Board Member J. Marlin concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 25th day of February, 1988, by a vote of 5-2.


Dorothy M. Gunn, Clerk
Illinois Pollution Control Board