

ILLINOIS POLLUTION CONTROL BOARD

August 22, 2002

HURLEY RULON, CAROL RULON, )  
FRANK EWEN, JANICE EWEN, JEROME )  
HAYN, BETTY HAYN, JOHN O. )  
SCHUMANN, ALICE SCHUMANN, )  
BRENDA NORD, CAROL NORD, APRIL )  
SWAN, ANTHONY SWAN, CAROL )  
ADKINS, PAUL ADKINS, and PAUL )  
NIEBRUEGGE, )  
)  
Complainants, )  
)  
v. ) PCB 03-7  
) (Citizens Enforcement - Noise)  
DOUBLE D GUN CLUB, )  
)  
Respondent. )

ORDER OF THE BOARD (by W.A. Marovitz):

On July 17, 2002, complainants filed a complaint against the Double D Gun Club (club). The complainant alleges that the respondent violated various noise and water pollution prohibitions in Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002), as well as the Resource Conservation and Recovery Act (RCRA)(42 U.S.C. Sections 7002 and 7003), the Clean Water Act (33 U.S. C. Section 1.2.2), and 740 ILCS 130/5(1) of the Premises Liability Act. The complainants further allege that the respondent violated these provisions by operating a sporting clay range that unreasonably interferes with the use and enjoyment of the complainants' property and health. The complaint concerns the respondent's facility located in Kampsville, Calhoun County.

On July 22, 2002, the respondent filed a motion to dismiss the complaint. Respondent alleges the complaint is frivolous and fails to state a cause of action. Complainants did not file a response to the motion.

For the reasons stated below, the Board finds the complaint is not duplicative, but is frivolous. The Board therefore grants respondent's motion to dismiss.

**CITIZEN ENFORCEMENT ACTIONS**

In addition to providing that the Illinois Attorney General and the State's Attorneys may file complaints with the Board, the Act authorizes *citizens* to bring enforcement actions before

the Board, alleging violations of the Act or Board regulations. Section 31(d) of the Act provides:

Any person may file with the Board a complaint, meeting the requirements of subsection (c) of this Section, against any person allegedly violating this Act or any rule or regulation thereunder . . . . \*\*\* Unless the Board determines that such complaint is duplicative or frivolous, it shall schedule a hearing . . . . 415 ILCS 5/31(d) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.<sup>1</sup>

Section 31(c), referred to in the quoted passage, in turn states that the complaint “shall specify the provision of the Act or the rule or regulation . . . under which such person is said to be in violation, and a statement of the manner in, and the extent to which such person is said to violate the Act or such rule or regulation . . . .” 415 ILCS 5/31(c) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002. The Board’s procedural rules codify the requirements for the contents of a complaint, including the “dates, location, events, nature, extent, duration, and strength of discharges or emissions and consequences alleged to constitute violations” and a “concise statement of the relief that the complainant seeks.” 35 Ill. Adm. Code 103.204(c).

Within 30 days after being served with a complaint, a respondent may file a motion with the Board to dismiss the complaint on the grounds that the complaint is frivolous or duplicative. 35 Ill. Adm. Code 103.212(b). The Board’s procedural rules define “frivolous” and “duplicative” as follows:

“Frivolous” means a request for relief that the Board does not have the authority to grant, or a complaint that fails to state a cause of action upon which the Board can grant relief.

“Duplicitous” or “Duplicative” means the matter is identical or substantially similar to one brought before the Board or another forum. 35 Ill. Adm. Code 101.202.

### **RELEVANT PROVISIONS**

Section 23 of the Act states:

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values,

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<sup>1</sup> Public Act 92-0574 amended Section 31(d) by substituting the word “duplicative” for “duplicitous.” The Board and the courts had consistently interpreted “duplicitous” to mean “duplicative.” *See, e.g., Winnetkans Interested in Protecting the Environment v. IPCB*, 55 Ill. App. 3d 475, 478, 370 N.E.2d 1176, 1179 (1st Dist. 1977); *People v. State Oil Co.*, PCB 97-103, slip op. at 3, n.2 (Aug. 19, 1999).

offends the senses, creates public nuisances, and in other respects reduces the quality of our environment. It is the purpose of this title to prevent noise which creates a public nuisance. 415 ILCS 5/23 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

Section 24 of the Act states:

No person shall emit beyond the boundaries of his property an noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002.

### **Complaint**

The complaint alleges that respondent operates a shooting range less than 350 yards from two of the complainants' homes. Comp. at 4. The complaint alleges that noise and echo from the shotguns can be heard four miles away. Comp. at 4. The complainants assert that sometimes the noise from the range sounds like cannon shots and can be ear piercing. Comp. at 4.

The complainants allege the activity occurs during the week from approximately 5 p.m. to 8 p.m.. Comp. at 4. On weekends the noise begins at 8 a.m. and have continued until 9 p.m.. Comp. at 4.

The noise allegedly causes some of the complainants to leave their homes. Comp. at 6. Complainants have experienced high blood pressure, hives, bleeding ulcers, pain associated with fibromyalgia, headaches, heart and nerve problems. Comp. at 6. Complainants argue the noise has unreasonably interfered with the use and enjoyment of their properties. Comp. at 6. Complainants also state that the cattle pasture of complainant Hurley Rulon is adjacent to the range. Comp. at 7. Complainants allege lead shot comes onto the property and goes into the cattle's water supply. Comp. at 7. Complainants are concerned that the lead will adversely affect the water supply and the cattle. Comp. at 7.

Complainants request the Board order the Club to cease and desist from violating the Act. Comp. at 6. Complainants also request the Board order the Club to stop the noise and lead pollution and relocate the facility to a more suitable location. Comp. at 6

### **Motion to Dismiss**

Respondent asserts that the complaint fails to allege violations of the Illinois Administrative Code, and therefore the Board does not have the authority to grant the requested relief. Mot. at 1. Although the complaint alleges violations of the Act, respondent asserts the sections of the Act require that violations of the Code be alleged. Mot. at 1.

Respondent further argues that the citations to alleged violations of RCRA are either invalid or are to sections that have been repealed. Mot. at 1. Respondent asserts the citation to the CWA is incomplete, and the Board does not have the authority to enforce the CWA, because it is not part of the Act or Board regulations. Mot. at 1-2. Finally, respondent argues that the allegation regarding the Premises Liability Act (740 ILCS 130/5(1) (2000)) is not a Board regulation and the requested relief is beyond the Board's authority.

### **Frivolous Determination**

The Board dismisses complainants' allegation that the Club violated Section 23 of the Act. The Board has previously found that Section 23 only contains legislative objectives as opposed to prohibitions on activities. *See Barbara and Ronald Stuart v. Franklin Fisher, PCB 02-164* (May 16, 2002). An alleged violation of Section 23 is not a proper cause of action upon which the Board can grant relief.

The Board also dismisses complainants' claim that the Club violated Section 24 of the Act. 415 ILCS 5/24 (2000) *amended by* P.A. 92-0574, eff. June 26, 2002. The appellate court has previously stated that Section 24 is not a general statutory prohibition. Anne Shepard, et al. v. PCB, Northbrook Sports Club, and the Village of Hainesville, 272 Ill. App. 3d at 768, 651 N.E.2d at 558 (2nd Dist. 1995). Instead, Section 24 provides that no one may emit noise "so as to violate any regulation or standard adopted by the Board." *Id.* Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24. Anthony and Karen Roti et al., v. LTD Commodities, PCB 99-19 (Nov. 5, 1998). Because complainants did not allege violations of the Board's noise regulations, the allegation of violating Section 24 is not a proper cause of action upon which the Board can grant relief. This finding does not preclude complainants from filing a new complaint alleging violations of particular provisions of the Board's noise regulations. *e.g. Ila M. Neathery and Denise C. Fleck v. Greg and Karen Bouillon d/b/a Thirsty's*, PCB 02-14 (Sept. 20, 2001).

The Board must also dismiss as frivolous complainants' allegations regarding violations of both RCRA and the CWA. Pursuant to Section 5(b) of the Act, the Board shall "determine, define, and implement the environmental control standards applicable in the State of Illinois." 415 ILCS 5/5(b) (2000) *amended by* P.A. 92-0574, eff. June 26, 2002. The Board's authority under the Act does not extend to allegations of violations of federal statutes. To the extent that complainant seeks to allege water pollution violations, any proper complaint must allege violations of the Act or the Board's water rules.

Similarly, the Board dismisses as frivolous complainants' allegation regarding the Premises Liability Act. As the Board has previously stated, although the Premises Liability Act addresses noise from firearm ranges, it is not an environmental control standard. Michael D. Logsdon et al. v. South Fork Gun Club, PCB 00-177 (July 27, 2000). Thus, the Board does not have the authority to review the Premises Liability Act. The alleged violation of the Premises Liability Act is frivolous.

### Duplicative Determination

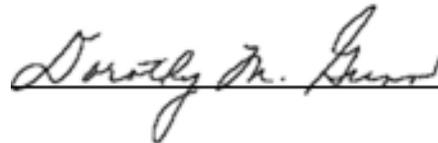
An action before the Board is duplicative (duplicitous) if the matter is identical or substantially similar to one brought in another forum. Brandle v. Ropp, PCB 85-68 (June 13, 1985). The Board has not identified any other cases, identical or substantially similar to this, pending in other forums. Therefore, based on the record before us, this matter is not duplicative.

### Conclusion

The Board grants the motion to dismiss, as the allegations in the complaint are frivolous. Nothing in this order prohibits complainants from filing a new complaint that properly alleges violations of the Act and Board regulations.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on August 22, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control  
Board