

ILLINOIS POLLUTION CONTROL BOARD
December 29, 1983

PEOPLE OF THE STATE OF ILLINOIS)
)
) Petitioner,)
)
) v.) PCB 76-84
)
SANTA FE PARK ENTERPRISES, INC.)
)
) Respondent.)

ORDER OF THE BOARD (by J. Anderson):

On September 23, 1983, the Board, by a 3-2 vote, decided to reinstate this action, which essentially charges Santa Fe with continuing noise violations of Section 25 of the Environmental Protection Act (Act) and Rules 101(j) and 102 of the Board's Chapter 8: Noise regulations (since codified as 35 Ill. Adm. Code 900.101 & 900.102). Grounds for the reinstatement were the Board's finding that P.A. 82-654, which amends Section 25 of the Act to remove the Board's jurisdiction in this and other sporting activity noise cases, is an unconstitutional infringement of the "right to a healthful environment" guaranteed by Article XI, Section 2 of the Illinois Constitution.

On November 30, 1983, Santa Fe moved for reconsideration of the September 23 Order or, alternatively, issuance of a statement (also known as a Certificate of Importance) to allow for immediate interlocutory appellate review of the Board's Order pursuant to Supreme Court Rule (SCR) 308. On December 12 1983, the Attorney General filed a response opposing reconsideration. As to SCR 308 certification, the Attorney General objects only to the question which Santa Fe has suggested be certified. Santa Fe filed a reply to the response on December 22, 1983.

Santa Fe's motion to reconsider is denied, as appointment of new Board Members is insufficient reason to justify reconsideration.

SCR 308(a) provides, in pertinent part that

"When the trial court, in making an interlocutory order not otherwise appealable, finds that the order involves a question of law as to which there is substantial ground for difference of opinion and that an immediate appeal from the order may

materially advance the ultimate termination of the litigation, the court shall so state in writing, identifying the question of law involved. The Appellate Court may thereupon in its discretion allow an appeal from the order."


The Board has authority to issue such a statement (see Getty Synthetic Fuel v. PCB, 104 Ill. App. 3d 285 (1st Dist. 1982)).

Pursuant to SCR 308, the Board finds that certification that its September 23, 1983 Order a) "involves a question of law as to which there is substantial ground for difference of opinion", and b) immediate appeal "may materially advance the ultimate termination of [this] litigation". The question of law certified for appeal is as follows:

Whether the Board correctly determined that P.A. 82-654 is a constitutionally impermissible legislative enactment.

IT IS SO ORDERED.

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 29th day of November, 1983 by a vote of 7-0.



Christan L. Moffett, Clerk
Illinois Pollution Control Board.