

ILLINOIS POLLUTION CONTROL BOARD

March 7, 1996

GILBERT & LENDA MARSHALL,	)	
	)	
Complainants,	)	
v.	)	PCB 96-179
	)	(Enforcement Air-Noise)
	)	
DANNY LINGENFELTER,	)	
INDIVIDUALLY & AS PRESIDENT	)	
OF CENTRAL ILLINOIS DIRT RIDERS	)	
ASSOCIATION,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by E. Dunham):

On February 13, 1996 Gilbert and Lenda Marshall filed a complaint against Danny Lingenfelter, individually and as president of Central Illinois Dirt Riders Association.<sup>1</sup> The complaint alleges that dust, dirt and noise are caused by vehicles using the motorcycle shop and track. The complaint alleges that these activities result in a violation of Sections 23 and 24 of the Environmental Protection Act (Act) (415 ILCS 5/23 and 24 (1994)) and 35 Ill. Adm. Code 901.102.

Section 31(b) of the Act states that when a citizen's enforcement complaint is filed "[u]nless the Board determines that such complaint is duplicitous or frivolous, it shall schedule a hearing." (415 ILCS 5/31(b) (1994).)

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.

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<sup>1</sup> In a cover letter to the complaint, the complainants asked the Board to advise if the complainants could file for damages in the Fulton County Circuit Court concurrently with filing before the Board. The Board cannot provide advice to parties on how to advocate their claims. Accordingly, the Board will not further respond to complainants' request for advice.

35 Ill. Adm. Code 103.124

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. (Brandle v. Ropp, (June 13, 1985), PCB 85-68, 64 PCB 263; League of Women Voters v. North Shore Sanitary Dist., (October 8, 1970), PCB 70-1, 1 PCB 35.) An action before the Board is frivolous if it fails to state a cause of action upon which relief can be granted. (Citizens for a Better Environment v. Reynolds Metals Co., (May 17, 1973), PCB 73-173, 8 PCB 46.) To date, the respondent in this matter has not filed a motion with the Board asserting that this matter should be dismissed as either frivolous or duplicitous.

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

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 for in this Section.

415 ILCS 5/25 (1994).

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.

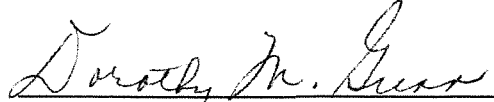
415 ILCS 5/3.25 (1994).

The Board directs each party in this proceeding to file a brief 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 Courts rulings in Anne Shephard v. Northbrook Sports Club (2d Dist, May 4, 1995), 272 Ill. App.3d 764, 651 N.E. 2d 555, Hinsdale Golf Club v. Kochanski (2d Dist. 1990), 197 Ill.App.3d 634, 555 N.E.2d 31; and to this Board's decision in Rodney B. Nelson, M.D. v. Kane County Forest Preserve (February 16, 1995), PCB 94-247, Fore v. Midstate Kart Club (December 16, 1993), PCB 93-171 and Pecka v. Skylarks Remote

Control Airplane Club ( May 7, 1992), PCB 92-27. The parties' briefs on the above issue shall be filed with the Board and served on the opposing parties and hearing officer on or before May 3, 1996.

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 7<sup>th</sup> day of March, 1996, by a vote of 7-0.

  
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Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

4

