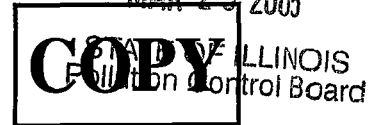


RECEIVED
CLERK'S OFFICE

MAR 23 2005



BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

PAUL AND DONNA FREDRICKSON,)	
husband and wife,)	
)	
Complainants)	
)	
v.)	PCB 04-19
)	
JEFF GRELYAK,)	
)	
Respondent.)	

**RESPONSE TO RESPONDENT'S MOTION
FOR SUMMARY JUDGMENT**

Complainant, DONNA FREDRICKSON, by and through her attorneys, MILITELLO, ZANCK & COEN, and in response to Complainant's Motion for Summary Judgment, hereby states as follows.

1. Complainant admits the allegations in paragraph 1.
2. Complainant admits the allegations in paragraph 2.
3. Complainant denies the allegations of paragraph 3. Complainant, in Complainant's Response to Second Request to Admit, admitted that Respondent's property consisted of a closed course, designed for use of off-highway vehicles in events such as, but not limited to, dirt track or other contests of a side-by-side nature in sporting event for practice, instruction, testing, or competition of off-highway vehicles; or a thoroughfare or track across land or snow used for off-highway motorcycles or all-terrain vehicles.
4. Complainant admits the allegations in paragraph 4.
5. Complainant states that she lacks sufficient knowledge to know exactly when the activity began on Respondent's premises.
6. Complainant denies the allegations in paragraph 6. It is clear by the legislative intent of 740 ILCS 130/4.1(b), as documented in Illinois Senate transcripts, that this law was enacted to prohibit civil claims against parks, State parks, and recreation facilities, which, at the time of enactment, were growing in popularity with the State of Illinois. In addition, the law was enacted to prevent encroaching developments from necessarily closing down existing riding facilities. This law should not be construed to give free license to property owners to openly violate the Environmental Protection Act and Title 35 of the Illinois Administrative Code.

Illinois Senate discussion on May 5, 2002 states that "riding facilities" were contemplated to mean those areas granted State funds under the Recreational Trails Act of Illinois and further changed the original language from "those areas licensed under the Illinois Department of Natural Resources." To Complainant's knowledge, Respondent has not been granted funds under the Recreational Trails Act of Illinois and has not been licensed to operate an off-road facility by the Illinois Department of Natural Resources. Therefore, Respondent's argument that 740 ILCS 130/4.1(b) applies to any area where motorcycles and all-terrain vehicles operated prior to January 2002, is overbroad and fallacious and this private property does not qualify as an off-road riding facility.

The Illinois Pollution Control Board (IPCB), as a quasi-judicial body, is not bound by 740 ILCS 130/4.1(b). The IPCB, having adopted Title 35 of the Illinois Administrative Code, is authorized to conduct hearing on any complaints charging violations of the Act or of regulations thereunder. Therefore, irrespective of 740 ILCS 130/4.1(b), the IPCB has a right and a duty to hear this case and decide on the merits of the matter.

Furthermore, Complainants alleged in their Formal Complaint that Respondent is in violation of Section 9 of the Illinois Environmental Protection Act (415 ILCS 5/9), which states in relevant part that no person shall:

- (a) Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Board under this Act;
- (b) Construct, install, or operate any equipment, facility, vehicle, vessel, or aircraft capable of causing or contributing to air pollution or designed to prevent air pollution, of any type designated by Board regulations, without a permit granted by the Agency, or in violation of any conditions imposed by such permit.

This Act was in full force and effect at the time Respondent claims to have initiated use of his property as a "riding facility." Therefore, by constructing and operating a "facility" capable of causing or contributing to air pollution without a permit issued by the Illinois Environmental Protection Agency, Respondent had no right to use his property in such a way and has no right to continue to operate said "facility" which causes or threatens the discharge of contaminants into the environment and further, has no right to any protections afforded such facility under Illinois statute.

Complainants also state that the IPCB, in Kamholz v. Sporleder, 2002 041, rendered a cease and desist order against the Sporleders under circumstances which are nearly identical to this case. In coming to that decision, the IPCB considered the following factors in their decision of the case:

- i. The character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. The social and economic value of the pollution source;

- iii. The suitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. The technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. Any subsequent compliance. 415 ILCS 5/33(c) (2002).

Granting of the Respondent's Motion for Summary Judgment would arbitrarily deny Complainants the right to be heard and the right to seek relief for multiple violations of the Environmental Protection Act and Illinois Administrative Law, based in part, upon those factors listed above.

WHEREFORE, Complainants respectfully request that the Motion for Summary Judgment be denied and that the Board sets this case for trial.

Dated this 22nd day of March, 2005.

Respectfully submitted,

MILITELLO, ZANCK & COEN, P.C.,
Attorneys for Complainant

By: _____


Jeremy W. Shaw

Jeremy W. Shaw
MILITELLO, ZANCK & COEN, P.C.
40 Brink St.
Crystal Lake, IL 60014
(815)459-8800

RECEIVED
CLERK'S OFFICE

STATE OF ILLINOIS
POLLUTION CONTROL BOARD
100 W. RANDOLPH STREET, SUITE 11-500
CHICAGO, ILLINOIS 60601

MAR 23 2005
COPY
STATE OF ILLINOIS
Pollution Control Board

NOTE: All items must be completed. If there is insufficient space to complete any item, additional sheets may be attached, specifying the number of the item you are completing. Once completed, you must file the original and nine copies with the Board.

BEFORE THE
ILLINOIS POLLUTION CONTROL BOARD

PAUL AND DONNA FREDRICKSON,)	
husband and wife)	
)	
Complainants)	
)	
v.)	PCB 4-19
)	
JEFF GRELYAK,)	
)	
Respondent.)	

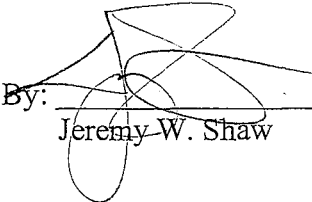
PROOF OF SERVICE

TO: Bradley P. Halloran	George W. Tinkham
Hearing Officer	Attorney for Respondent
Illinois Pollution Control Bd.	423 W. Vine Street
James R. Thompson Center	Springfield, IL 62704
Suite 11-500	Fax: 217-744-1711
100 W. Randolph Street	
Chicago, IL 60601	

Attached is a Response to Respondent's Motion for Summary Judgment.

Respectfully submitted,

MILITELLO, ZANCK & COEN, P.C.
Attorneys for Complainants

By: 
Jeremy W. Shaw

Jeremy W. Shaw
MILITELLO, ZANCK & COEN, P.C.
40 Brink Street
Crystal Lake, IL 60014
(815) 459-8800

PROOF OF SERVICE

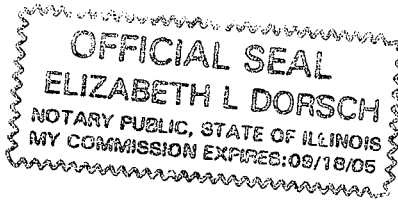
STATE OF ILLINOIS)
) SS
COUNTY OF McHENRY)

The undersigned states, under oath, that she served the above Notice, together with the documents referred to therein, via facsimile transmittal s noted at approximately 3:45 p.m. and by mailing copies of the same to the service list above by depositing the same in the U.S. mail at Crystal Lake, Illinois, with proper postage fully prepaid, at approximately 5:00 p.m. on the 22nd day of March, 2005.

Sherry M. Jacobson

SUBSCRIBED and SWORN to before
me this 22nd day of March, 2005.

Elizabeth L. Dorsch
Notary Public



MODE = MEMORY TRANSMISSION

START=MAR-22 15:54

END=MAR-22 15:57

FILE NO.=175

STN NO.	COMM.	ONE-TOUCH/ ABBR NO.	STATION NAME/TEL NO.	PAGES	DURATION
001	OK	2	12177441711	006/006	00:01:42

-MILITELLO ZANCK & COEN -

***** - ***** 815 459 8429- *****

MILITELLO, ZANCK & COEN, P.C.
ATTORNEYS AT LAW

James G. Militello
Thomas C. Zanck*
Patrick D. Coen
James L. Wright
Mark S. Saladin
James G. Militello III

40 Brink Street
Crystal Lake, Illinois 60014
815-459-8800
Fax 815-459-8429

Nancy Stingle Perkoski
David G. Phoenix
Jill J. Struck
Catherine Keating-Howard
Jeremy W. Shaw
Adrian M. Gosh

*Also licensed in Wisconsin
3Also licensed in Missouri

FAX COVER SHEET

DATE: March 22, 2005 No. of Pages: 6

TO: George W. Tinkham

FROM: Jeremy W. Shaw

RE: Fredrickson v. Grelyak

Attached please find a Proof of Service and Response to Respondent's Motion for Summary Judgment regarding the above-referenced matter.

PLEASE NOTE:

THE FACSIMILE COMMUNICATION ACCOMPANYING THIS COVER SHEET IS INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY TO WHOM IT IS ADDRESSED AND MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL. ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THE ATTACHED COMMUNICATION IS STRICTLY PROHIBITED. IF YOU ARE NOT THE INTENDED RECIPIENT, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE DOCUMENTS TO US BY UNITED STATES MAIL. THANK YOU.

Transmitted to Fax No.: 217-744-1711