

ILLINOIS POLLUTION CONTROL BOARD
February 3, 2000

MORTON COLLEGE BOARD OF TRUSTEES OF ILLINOIS COMMUNITY COLLEGE DISTRICT NO. 527,)	
Complainant,)	
v.)	PCB 98-59
TOWN OF CICERO,)	(Enforcement - Land)
Respondent.)	
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TOWN OF CICERO,)	
Third-party Complainant,)	
v.)	PCB 98-59
NATIONAL JOCKEY CLUB,)	(Enforcement - Land)
Third-party Respondent.)	

ORDER OF THE BOARD (by G.T. Girard):

On December 28, 1999, the Town of Cicero (Cicero) filed a third-party complaint against National Jockey Club. The third-party complaint is seeking recovery from the National Jockey Club for any response costs Cicero may incur in connection with the site subject to this proceeding. Cicero filed proof of service of the third-party complaint on January 6, 2000. The proof of service indicates that service was had on December 28, 1999. As evidenced by the certificate of service filed on January 6, 2000, National Jockey Club was served with the third-party complaint and notice of filing on December 28, 1999. No responsive pleadings have been filed.

Section 103.124(a) of the Board's procedural rules directs the Board to determine whether or not a citizen's complaint is duplicitous or frivolous. The Board finds that the third-party complaint is not duplicitous or frivolous, and therefore accepts it for hearing.

DUPlicitious/FRIVOLOUS DETERMINATION

Section 103.124(a) of the Board's procedural rules implements Section 31(d) of the Act. It provides:

The Clerk shall assign a docket number to each complaint filed *** the Chairman shall place the matter on the 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 the 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. 35 Ill. Adm. Code 103.124 (a).

Duplicitous

An action before the Board is duplicitous if the matter is identical or substantially similar to one brought in this or another forum. See, *e.g.*, Walsh v. Kolpas (September 23, 1999), PCB 00-35, slip op at 2; Brandle v. Ropp (June 13, 1985), PCB 85-68.

The Board has not identified any other cases, identical or substantially similar to this, pending in this or other forums. Therefore, based on the record before us, this matter is not duplicitous.

Frivolous

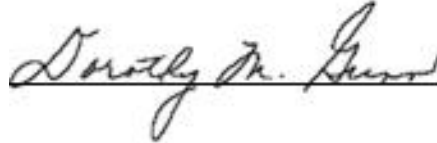
A complaint before the Board is frivolous if it requests relief that the Board cannot grant or fails to state a cause of action upon which the Board can grant relief. See, *e.g.*, People v. State Oil Company (August 19, 1999), PCB 97-103, slip op at 3; Lake County Forest Preserve Dist. v. Ostro (July 30, 1992), PCB 92-80. The Board finds that the third-party complaint is not frivolous.

CONCLUSION

The Board finds that, pursuant to Section 103.124(a), the third-party complaint, is neither duplicitous nor frivolous and is accepted for hearing. As this matter has already been set for hearing, the hearing officer is instructed to contact National Jockey Club in all future status calls.

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 3rd day of February 2000 by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board