ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

ANTHONY W. KOCHANSKI,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 88-16
	)	
HINSDALE GOLF CLUB,	)	
	)	
Respondent,	)	

DISSENTING OPINION (by J. Dumelle and M. Nardulli):

We respectfully dissent from the majority Opinion and Order of the Board in this case dated July 13, 1989. We believe the facts presented do evidence a violation of Section 24 of the Environmental Protection Act and would have found so accordingly. Moreover, we are troubled by the rationale the majority uses to support its position.

We believe the majority wrongly concluded that "the shotgun sounds do not unreasonably interfere with any person's enjoyment of life, or with any lawful business or activity, in contravention of the Section 900.102 narrative standard."

First, we believe that the Complainant has submitted sufficient evidence for this Board to find unreasonable interference with the lifestyles of at least the residents who testified at hearing. In its opinion, the majority recites the testimony of witnesses that addresses the interference caused by the shotgun blasts. A thorough analysis of this testimony indicates that children were frightened and adults disturbed by the shotgun blasts. One of the witnesses testified that one day the noise was exceptionally loud and he called the police department. There is no evidence to suggest that this individual is inordinately sensitive to noise or that this individual, in the normal course of his affairs, calls the police to complain. This evidence is sufficient for us to find unreasonable interference.

Second, we believe that the majority's reliance on Ferndale Heights Utilities Co. v. PCB, 44 Ill. App. 3d 962, 358 N.E. 2d 1224 (1st Dist. 1976), is misplaced. We do not believe that Ferndale Heights stands for the proposition that this Board is precluded from finding a violation simply because a complainant does not articulate specific examples of the manner in which his lifestyle has been disturbed. Yes, such examples provide more support for the finding of a violation. However, we can easily

envision situations in which nearby residents have ill family members or infants or aged parents who desperately require rest, but that rest is denied them because of the shotgun blasts. We can also envision situations in which nearby residents work during the night shifts and sleep during the day, but are unable to because of the shooting. We believe that justice is better served where this Board reviews and analyzes the record as a whole, not where this Board summarily dismisses all the evidence simply because a pro se complainant does not move his lips in a certain way. We believe that a thorough analysis of this record supports the finding of unreasonable interference.

We also believe that the majority wrongly applied Section 33(c) of the Environmental Protection Act (Act) in its opinion. As the majority itself states, Section 33(c) operates as an opportunity for the respondent to establish a defense to the complainant's allegations. (Emphasis added). We agree with this statement and believe that 33(c) factors are properly addressed after the Board finds that the Complainant has made his prima facie case and before a sanction is imposed. In other words, 33(c) factors relate to the mitigation of a violation. However, by the time the majority even addresses Section 33(c), it has already found that the Complainant has not made his prima facie case. To our knowledge, Section 33(c) has not been used in this manner since passage of the Act in 1970. There is, thus, no reason for the majority to invoke Section 33(c) in its Opinion. The majority's usage of Section 33(c) is, therefore, erroneous.

So, too, is that which flows from it. The majority uses Section 33(c) to support its finding that "the Golf Club's skeet shooting, as currently limited and practiced, is a reasonable activity in terms of producing noise." We must note that the Board was not asked here to determine whether or not the noise levels from the skeet shooting were reasonable; the Board was asked to determine whether or not there was a violation of the Act or Board regulation. It is not the province of this Board to determine whether a given activity is or is not reasonable. It is the limited function of this Board to determine, in this context, whether or not a violation has occurred. Once it makes such a determination and orders the appropriate relief (e.g., dismissal or sanction, if any), the Board's business is concluded. Thus, that portion of the majority opinion that finds the noise levels to be reasonable is of no merit and of no consequence.

In sum, we believe that the majority's ultimate decision is wrong, and we believe that its reasoning is flawed. For all of the reasons discussed above, we believe that the holdings set forth in the majority's Opinion and Order must be strictly limited to the facts presented in this case. They cannot and must not serve as precedent to guide the decisions in future actions.

For these reasons, we respectfully dissent.

Jacob D. Dumelle

Michael L. Nardulli

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Dissenting Opinion was submitted on the 24th day of July, 1989.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board