

ILLINOIS POLLUTION CONTROL BOARD
September 1, 1977

ENVIRONMENTAL PROTECTION AGENCY,)
)
 Complainant,)
)
 v.) PCB 76-311
)
 ED WILLING,)
 d/b/a LONE PINE GUN CLUB,)
)
 Respondent.)

MR. PATRICK J. CHESLEY and MR. RUSSELL EGGERT, ASSISTANT ATTORNEYS
GENERAL, APPEARED ON BEHALF OF COMPLAINANT;
MR. ANTHONY B. CAMERON, ATTORNEY, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by Mr. Goodman):

This matter is before the Board upon a Complaint filed December 6, 1976 by the Illinois Environmental Protection Agency (Agency) against Ed Willing d/b/a the Lone Pine Gun Club (Willing) alleging violation of Rules 102 and 206 of the Pollution Control Board's Rules and Regulations, Chapter 8: Noise Regulations (Regulations). Hearing was held in this matter on March 29 and 30, 1977, and considerable public comment has been received by the Board.

Willing owns and operates a gun club known as the Lone Pine Gun Club located on St. Anthony Road, Quincy, Adams County, Illinois. Willing purchased the property and developed the gun club in early 1976, subsequent to the forced sale of a previously owned gun club under condemnation proceedings conducted by the City of Quincy under its power of eminent domain. Quincy required the original property for expansion of its sanitary sewage treatment facilities (R.464). The Agency alleges that, since the gun club commenced operation on April 14, 1976, Willing has been in violation of Rule 102 of the Board's Noise Regulations in that the discharge of firearms at the Lone Pine Gun Club unreasonably interferes with the

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enjoyment of life or with any lawful business activity. In addition, the Agency alleges that Willing is in violation of Rule 206 of the Noise Regulations in that the emission of impulsive sound from his gun club exceeded the allowable dB(A) sound levels specified in the Regulations.

With respect to the allegation of violation of Rule 206, at the March 29, 1977 hearing Willing's attorney stated, "The Complaint says there has been a violation of the impulsive noise standards of the Pollution Control Board. Well there has. We know that now." (R.24). In addition to the foregoing admission by Willing of violation of Rule 206, the evidence presented at the hearing included a Stipulation of Fact by both parties which verified the existence of the violation of Rule 206 (R.307-309). The Board therefore finds Willing in violation of Rule 206 of the Board's Noise Regulations.

Twenty-one citizens testified at the hearing indicating that the noise from the gun club caused them to forego use of their yards, and caused embarrassment before friends, loss of sleep, irritation, etc. In addition a priest from a nearby church indicated the noise interfered with the normal conduct of church services, including the conduct of the church school. Willing made no serious effort to contradict these citizen witnesses but rather produced testimony as to other sources of noise in the area including the construction of a nearby highway, an automobile racing facility, and the tolling of bells by the nearby church.

During the hearing Willing made an offer of proof concerning the Agency record in the conduct of investigation of other gun clubs. The Hearing Officer herein rejected this evidence and the Board hereby affirms the Hearing Officer's decision. The Board finds that investigations made by the Agency are too dependent upon diverse facts to be considered relevant in another case, notwithstanding the fact that the same type of pollution has precipitated the investigation.

Willing alleges that he had no knowledge of the violations found herein. To underscore this allegation, Willing's cross examination of the impacted witnesses and the Agency technical people indeed indicated that no one had complained directly to Willing concerning the interference that the gun club caused and that at no time did the Agency specifically inform Mr. Willing that he was in violation of the impulse noise rule, Rule 206. On the other hand, the Agency sent Willing copies of their noise surveys and indicated that there may be a violation of the Board's Regulations. In addition Willing offered un rebutted evidence concerning his present financial condition which appears to be tight.

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Considering Section 33(c) of the Act, there is no question that the health, general welfare and physical property of the residents surrounding Willing's gun club were interfered with to a significant degree. The social and economic value of the gun club was underscored by testimony at the hearings with respect to the use of the facilities by people in the general area and the apparent good faith efforts by Willing to voluntarily provide the use of his facilities and his expertise in the training of young people in the correct use of firearms (R.438-458). However, it is apparent that, notwithstanding the social and economic value of this source, it is unquestionably unsuitable to the area in which it is located and cannot invoke the principle of priority location in this case. Certainly the relocation of the facility is a technically practical and economically reasonable solution to the elimination of the pollution source. Considering the testimony of the twenty-one impacted individuals and the general lack of rebuttal by Willing, the Board finds Willing in violation of Rule 102 of the Board's Rules and Regulations, Chapter 8, in that the noise caused by the discharge of firearms at Willing's Lone Pine Gun Club unreasonably interfered with normal conversation, use of radio, television and record players, sleep, relaxation, the use of nearby residential property for social activities and the operation of a nearby church.

The Board has received considerable public comment concerning the gun club with respect to its social value and the manner in which Willing has conducted its operation. It is perhaps significant that the comments in favor of the gun club were made by people who utilize its services, but were not within the range of its impact. It appears obvious to the Board that the resolution of this problem entails the relocation of the Lone Pine Gun Club to an area where its emissions will not significantly impact the citizens of the State of Illinois. On the other hand, Willing's apparent good faith in the operation of the gun club, the question as to whether he was aware of the adverse impact of his operation, and his financial position all call for mitigation with regard to a possible penalty and the time frame in which Willing is ordered to cease and desist. The Board will therefore assess a penalty of \$250.00 and will order Willing to cease and desist his violations of the Board's Regulations no later than October 31, 1977. In addition the Board shall restrict the hours of operation of the gun club.

This Opinion constitutes the findings of facts and conclusions of law of the Board in this matter.

ORDER

It is the Order of the Pollution Control Board that:

1. Ed Willing d/b/a Lone Pine Gun Club is in violation of Rules 102 and 206 of Chapter 8: Noise Pollution of the Board's Regulations.

2. For the violations found in (1) above Willing is assessed a penalty of \$250.00. Penalty payment by certified check or money order payable to the State of Illinois shall be made within 35 days of the date of this Order to:

Fiscal Services Division
Illinois Environmental Protection
Agency
2200 Churchill Road
Springfield, Illinois 62706

3. Willing shall cease and desist violation of the Board's Regulations at the Lone Pine Gun Club no later than October 31, 1977.

4. Until such time as Willing shall cease and desist, the operation of the Lone Pine Gun Club shall be restricted as follows:

Saturdays	12:30 P.M. - 5:30 P.M.
Sundays	1:00 P.M. - 5:30 P.M.
School Days	5:00 P.M. - 9:00 P.M.
School Vacation Days	10:00 A.M. - 9:00 P.M.
Fridays	Closed

I, Christan L. Moffett, Clerk of the Illinois Pollution Control Board, hereby certify the above Opinion and Order were adopted on the 15th day of September, 1977 by a vote of 5-0.

Christan L. Moffett
Christan L. Moffett, Clerk
Illinois Pollution Control Board