

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2002

STEPHEN G. BRILL,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 00-219
	)	(Citizens Enforcement - Noise, Air)
HENRY LATORIA, individually and d/b/a	)	
TL TRUCKING FOODLINER,	)	
	)	
Respondent.	)	

CONCURRING OPINION (by T.E. Johnson):

I respectfully concur with the majority opinion. Although I agree with the ultimate result, I do not agree with the majority's analysis used to reach that decision. Specifically, I do not agree that TL Trucking, as a pollution source, is unsuitable to the area in which it is located, as was decided by the majority in conducting the Section 33(c) balancing test.

As was discussed in the majority opinion, the Board performs a two-step test to determine whether noise emissions rise to the level of a nuisance noise pollution violation. First, the Board determines if the noise constitutes an interference in the enjoyment of complainants' lives, and second, the Board considers Section 33(c) in determining whether the interference is unreasonable. The portion of the majority's opinion that I disagree with concerns the suitability or unsuitability of the pollution source to the area in which it is located. As the majority states, the industrial area predates Brill and the other residents, and affords facilities in the area a general priority of location. The majority finds that TL Trucking "greatly increased the level of noise emissions on Brill's property," and notes that "a business properly zoned in an industrial area does not have a carte-blanche license to emit substantially louder and more intense noise." I agree that this undermines the respondent's priority of location argument. However, that is not the entirety of the Board's consideration under Section 33(c)iii.

Section 33(c)iii directs the Board to consider the suitability of the pollution source to its location, including priority of location. Although increased operations may impact whether or not a facility can claim priority of location, it does not mandate a finding that the facility is unsuitable to its location. The majority finds that TL Trucking, as operated, is not currently suitable to the area in which it is located. I respectfully disagree. It is difficult for me to find that an industry located in an industrial-zoned area is not suited to its location.

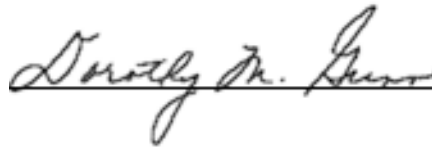
TL Trucking is suitable to its location, regardless of how it is operated, and I would weigh this Section 33(c) factor in favor of TL Trucking. However, a balancing of all the

Section 33(c) factors still results in a finding that TL Trucking was emitting noise that created an unreasonable interference. Accordingly, I am in agreement with the Board's decision today, and respectfully concur.

A handwritten signature in black ink, consisting of a large, stylized 'T' and 'J' followed by a horizontal line extending to the right.

Thomas E. Johnson  
Board Member

I, Dorothy M. Gunn, hereby certify that the above concurring opinion was submitted on June 10, 2002.

A handwritten signature in black ink, written in a cursive style, reading 'Dorothy M. Gunn'.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board