

ILLINOIS POLLUTION CONTROL BOARD
August 30, 1990

DANIEL LORDEN AND HELEN LORDEN,)
)
 Complainants,)
)
 v.) PCB 89-19
) (Enforcement)
)
 SHERIDAN SOUTH CONDOMINIUM)
 ASSOCIATION, JAMES A. HANSEN,)
 CHARLES J. LEBRUN, ANDREA J.)
 HROVATIN, JOAN LEE, IVAN and)
 CATALINA HORAK and SANDRA L.)
 SCHUG-HANSEN,)
)
 Respondents.)

ORDER OF THE BOARD (by J. Anderson):


On August 14, 1990, Respondents Charles J. Lebrun, Andrea J. Hrovatin, Joan Lee, and Ivan and Catalina Horak (Respondents) filed a Motion Preliminary to Hearing. The motion seeks to have the Hearing Officer determine the threshold question of the applicability of 35 Ill. Adm. Code 900.102 to these Respondents and, if determined inapplicable, to have the Amended Complaint against them dismissed. This matter was raised by these Respondents as a common affirmative defense. Complainants Daniel Lorden and Helen Lorden (Complainants) filed their Reply to Affirmative Defenses on August 17, 1990.

Respondents assert in part that residential property is exempt from the noise pollution rule at 35 Ill. Adm. Code 900.102. The Complainants' reply neither admits nor denies the allegation, but demands strict proof of its applicability. Complainants also reply that the respondents may be referring to 35 Ill. Adm. Code 901.102 through 901.106, to which the exceptions in 901.107(a) apply. As read, that latter rule does exempt certain classes of land from the numerical limitations on noise emissions.

We first note that the Hearing Officer cannot resolve the issues raised in the Respondents' motion. Because the hearing is scheduled for September 7, 1990, the Board will take the motion with the case. The Complainants and Respondents are advised to address this matter at hearing and in their briefs. This ruling does not preclude a party from advancing the same contentions regarding jurisdiction or adequacy of the complaint after completion of the hearing (see 35 Ill. Adm. Code 103.140(e)). Moreover, today's ruling should in no way be construed as a ruling on Complainants' Motion to Recuse that was filed on August 29, 1990.

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 30th day of August, 1990 by a vote of 7-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board