ILLINOIS POLLUTION CONTROL BOARD
July 13, 1989

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

MR. ANTHONY W. KOCHANSKI, APPEARED PRO SE; AND

MR. JOSEPH S. WRIGHT, JR., ATTORNEY-AT-LAW, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J. Marlin):

This matter is before the Board on the January 15, 1988 formal complaint of Anthony W. Kochanski against the Hinsdale Golf Club ("Golf Club"). Mr. Kochanski alleged violations of Board rules at 35 Ill. Adm. Code 900.102 & 901.104, in that the Golf Club conducts skeet shooting on its premises, and the impulsive noise from the shotgun blasts emanates onto neighboring residential properties. Mr. Kochanski later alleged at hearing that this activity violated Sections 23 and 24 of the Environmental Protection Act ("Act"), Ill. Rev. Stat. ch. 111 1/2, pars. 1023 & 1024. R. 77. The Golf Club filed a motion to dismiss on February 2, 1988, and the Board denied this motion on February 25, 1988.

The public hearing occurred on May 23, 1988. Members of the public and press attended. Mr. Kochanski filed his post-hearing brief on July 11, 1988. The Golf Club filed its response brief on August 8, 1988. Mr. Kochanski filed his reply brief on September 20, 1988. The Golf Club filed a September 27, 1988 motion to strike the reply. The hearing officer denied this motion in part and granted it in part on October 4, 1988. The hearing officer struck the parts of Mr. Kochanski's response brief that referenced matters not contained in the record.

FACTS

The Golf Club has conducted skeet shooting on its property since 1943. The current schedule, revised about five or six years ago, restricts the shooting to between the hours of 11:00 a.m. and 3:00 p.m. on Saturdays and Sundays between the beginning of November and the end of February. R. 17-18 & 25-27. The shooting includes 12 gauge, 20 gauge, 28 gauge, and .410 shotguns. R. 38. About 20 to 50 shooters participate. R. 40. The activity is restricted to Golf Club members. R. 16 & 33-

34. Some competitions against other skeet clubs occur. R. 40-41.

The shooting occurs behind the clubhouse in the approximate center of the Golf Club grounds. Residential properties abut the grounds on the northeast and east. Illinois Route 83, a major highway carrying significant truck traffic, lies a short distance to the east of the residential area. Mr. Kochanski and his family and Mr. John Diamond, a neighbor, reside in this area between the Golf Club and the highway. Although the general area is flat, the Golf Club grounds roll. The shooting occurs in a depression between two greens. Between the shooting and the residential area is about 400 yards of Golf Club grounds, along which is a 10 to 12 foot high berm then two or three extensive rows of deciduous trees. R. 26-40; Ex. 1. Across the street from the Golf Club is the Americana nursing home. R. 23.

PENDING MOTIONS

The Board Order of February 25, 1988 held that the Golf Club's skeet shooting is not excepted under Section 25 of the Act as an "organized amateur or professional sporting event" within the meaning of Section 3.25 of the Act. The Board found that "although the public may be able to apply for membership to the club, the shooting activities are carried out privately among members of the Hinsdale Golf Club." The Board concluded that the shooting activity was therefore not "carried out ... for the general public" and that the Golf Club was not a "skeet, trap, or shooting sports club[]" within the statutory exception. Thus, the Board denied the Golf Club's February 1, 1988 motion to dismiss.

At hearing and in its post-hearing brief, the Golf Club has continued to contend that the statutory exception applies because it is a "skeet, trap or shooting sports club in existence prior to January 1, 1975." Response Brief at 3. The Golf Club presents no new argument in favor of its position and highlights no new evidence adduced at hearing. Therefore, the Board denies reconsideration of its February 25, 1988 determination that the skeet shooting does not fall within the definition of Section 3.25 and is therefore not excepted by Section 25.

Mr. Kochanski submitted a letter for the record at hearing from a professional engineer that attributes numerical values to the shotgun sounds. R. 44-45. However, the hearing officer did not admit it into the record because no one was present at the hearing to lay a foundation for its admission. Instead, he accepted it as an offer of proof. R. 51-55.

The Board construes those portions of Mr. Kochanski's post-hearing brief that relate to this tendered exhibit as a request to overturn the hearing officer's order excluding it. Mr. Kochanski's July 11, 1988 post-hearing brief requests that the Board consider the sound study in its deliberations.

A copy of the study and a letter from the engineer who conducted the study accompanied this request. In the letter the engineer describes his qualifications. Since this letter represents new information not previously submitted to the Board, the Board has not considered the letter's contents. A post-hearing brief is a vehicle to argue one's position based upon the evidentiary record properly before the Board. New information which was not presented to the Board before or at hearing may not be presented via a post-hearing brief. Similarly, the Board has not considered the petition (bearing signatures) which is also attached to Mr. Kochanski's July 11, 1989 brief. Notwithstanding these matters, the Board must decide whether it was proper for the hearing officer to exclude the sound study.

Section 103.204 of the Board's procedural rules describe evidence which may be admitted at a Board enforcement hearing. Subsection (a) of that Section states:

> The Hearing Officer shall receive evidence which is admissible under the rules of evidence as applied in the Courts of Illinois pertaining to civil actions except as these rules otherwise provide. The Hearing Officer may receive evidence which is material, relevant, and would be relied upon by reasonably prudent persons in the conduct of serious affairs provided that the rules relating to privileged communications and privileged topics shall be observed. (emphasis added)
>
> 35 Ill. Adm. code 103.204(a).

The wording of this provision parallels Section 12 of the Illinois Administrative Procedure Act (APA). That Section describes what material may be admitted at a contested case hearing before a State agency. Section 12(a) provides in part:

> Irrelevant, immaterial or unduly repetitious evidence shall be excluded. The rules of evidence and provilege as applied in civil cases in the Circuit Courts of this State shall be followed. However, evidence not admissible under such rules of evidence may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. (emphasis added)
>
> Ill. Rev. Stat. 1987, ch. 127, par. 1012(a).

The Golf Club objected to the sound study's admission due to a "lack of foundation". (R.45). In ruling on the Golf Club's objection the hearing officer stated:

> I think Mr. Wright's [counsel for the Golf Club] objection is at this point overpowering the validity, in that there is no foundation for this document, and there is no way, absent a live witness here for the representatives of the Golf Club, to test the assertions made and the validity of those assertions.
>
> So in the absence of either an expert who has in fact made these tests or the presence of an expert who is competent to testify as to these tests, I would have to rule that this would not be admissible in this proceeding.

(R.47-48).

The hearing officer then called a recess to allow Mr. Kochanski to determine if the person who conducted the sound study could come to the hearing and testify as to the study. Evidently during recess, Mr. Kochanski discovered that that person, W. Robert Hannen, would not be able to testify at hearing. (R.49-50). After asking a few questions of Mr. Kochanski concerning his firsthand knowledge of the sound tests, the hearing officer stated:

> I am denying the admissibility of Complainant's Exhibit 1 [the sound study] into the record as evidence. I am submitting it to the Pollution Control Board pursuant to Mr. Kochanski's statement, which I am construing as an offer of proof.
>
> If the Board overrules me and states that I was incorrect in overruling the admissibility of this, it will save the requirement and necessity of a hearing to allow this document into evidence.

(R.52).

The hearing officer further explained his ruling to the parties.

> What I have done is I have sustained Mr. Wright's objection. I have made my ruling that Complainant's Exhibit 1, the Wiss, Janney letter to you, is not admissible evidence.

> However the law provides that when a person offering a document or other piece of evidence is told that it is not admissible that person may do what is called make an offer of proof, and I am construing your comments in support of the document as your offer of proof, and if the Board agrees with me they will not consider it.
>
> If they disagree with me they will overrule my ruling and they will sustain your offer of proof and they will consider the document. They will have to overrule my ruling to do so.
>
> (R.54).

Neither party objected to the aspect of the hearing officer's ruling which provided that if the Board found the sound study to be admissible it would not have to hold another hearing.[1] That is, the Board would merely consider the document with the rest of the record.

Evidently, Mr. Kochanski hired the engineering firm of Wiss, Janney, Elstner and Associate's to conduct sound level measurements surrounding the golf course. (R.40). The sound measurements were taken on Sunday, January 3, 1988. Mr. Kochanski was present at four of the five test locations. (R.51). The challenged study purports to present the results of the sound measurements taken on that date. The sound study at issue is actually a letter, dated January 5, 1988, from W. Robert Hannen of Wiss, Janney, Elstner Associates, Inc., to Mr. Kochanski. The letter is stamped as to indicate that Mr. Hannen is a registered professional engineer in Illinois.

Mr. Kochanski asserts in his brief, in essence, that the engineer is qualified to perform a sound study and that his letter relating the study results contains sufficient internal indicia of reliability as to make it the type of document on which persons of reasonable prudence would rely in the conduct of their affairs. In its brief, the Golf Club does not present any further arguments against admitting the sound study.

Given the circumstances, the Board finds that the sound study is "material, relevant and would be relied upon by reasonably prudent persons in the conduct of serious affairs".

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[1] Although Mr. Kochanski inquired as to whether the hearing could be continued until Mr. Hannen was able to testify, moments later Mr. Kochanski agreed that the hearing should be concluded and not continued. (R.55-58).

Moreover, the Golf Club has not objected to the study based on "privileged communications and privileged topics". Consequently, the Board hereby reverses the hearing officer and admits the study which was marked as Complainant's Exhibit #1.

The Board notes that the sound study was previously submitted to the Board as an attachment to Mr. Kochanski's February 2, 1988 filing which was filed in response to the Board's Order of January 21, 1988. That Order had requested the parties to address the issue of whether the complained of activity was an "organized amateur or professional sporting activity" under the Act. While the sound study might be considered beyond the scope of the Board's January 21, 1988 request, the Golf Club, through Mr. Kochanski's filing, obviously became aware of the study and never moved to strike it at that time. Consequently, it can not be argued that the Golf Club was surprised by the sound study when Mr. Kochanski introduced it at hearing. Also, it could be argued that the study was already in the record prior to hearing, as a part of the February 2nd filing.

ALLEGATIONS OF VIOLATION

Although the sound study is admitted, the absence from the hearing of the person who conducted the sound measurements negatively impacts upon the weight that the Board can give the study in its deliberations. A report can be given greater weight when it withstands scrutiny through the cross-examination of the report's author. In other words, when the author is present to answer questions concerning the results of his or her report, those results can be explored in detail; the limitations and strengths of the report can be readily tested.

The engineer's sound study letter indicates a range of sound levels for each of the five area locations. These are given on the dB(A) scale. The study indicates the date of the measurements, the weather conditions, the approximate monitoring locations, the approximate distances to the sound source, the minimum number of measurements at each location, the type of instrument used, and how the instrument was calibrated. It does not indicate the individual measurements, the test methodology, whether these measurements correlate with the Board standards, nor whether these are one-hour Leq-averaged values. It does indicate that the engineer performed the study consistently with a prior shotgun noise study, but does not indicate that that study related in any way to Board noise regulations.

The Board's rules specify that the numerical sound emissions limitations in Section 901.104 are on an Leq-weighted basis. 35

Ill. Adm. Code 900.103(b).[2] Neither this sound study nor Mr. Kochanski's post-hearing brief contains any indication that the sound levels given are set forth on this basis. Without such an indication, it is impossible to establish a violation of the rule using these study results.

Section 24 of the Act prohibits certain noise emissions as follows:

> No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act.
>
> Ill. Rev. Stat. ch. 111 1/2, par. 1024

Section 25 authorizes the Board to adopt regulations limiting noise emissions, and the Board has done so. Section 900.101 defines "noise pollution," and Section 900.102 prohibits such pollution as follows:

> Noise pollution: the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity.
>
> 35 Ill. Adm. Code 900.101.

> No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.
>
> 35 Ill. Adm. Code 900.102

Mr. Kochanski presented two witnesses at hearing: Mrs. Cynthia Kochanski, his wife and an area resident since 1981, and Mr. John Diamond, a 17-year area resident whose backyard abuts the Golf Club land. Both testified about their concerns over the sounds at issue and as to the disturbance they perceive from the

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[2]The Board notes that in its Order of February 25, 1988, it informed the parties that all filings concerning noise measurements had to be consistent with Board noise regulations as amended by the Board on January 22, 1987. That amendment imposed the Leq requirement.

shotgun sounds from the Golf Club. The Golf Club presented one witness, Mr. James G. Love, one of its members who has engaged in the shooting. Mr. Love testified concerning the shooting and its physical setting. He also testified about the sounds generated by traffic on Route 83. Mr. Kochanski then examined Mr. Love and Mr. David S. Brown, the Secretary of the Golf Club, as adverse witnesses.

Mr. Diamond testified about the sounds as follows:

> Yes, I find it quite disturbing. I have had a number of incidents where members of my family have been alarmed by it. Most recently my grandchildren were at the home ..., and on this Saturday morning when the noise started the children became frightened, ran to their grandparents and said, "What is that noise? What's going on? What is happening?"
>
> We live -- incidentally, our backyard and the golf course share a common property line. As I have said, I have had lived there for 17 and a half years. This has been a constant disturbance to me.
>
> * * * *
>
> There is one other incident that I would like to relate. During the course of this last season, one Sunday morning the noise was exceptionally loud. I called the Clarendon Hills village Police Department....

R. 13-15.

Mrs. Cynthia Kochanski testified that the sounds bother her, her children, and others:

> For our own children, I feel that the noise level that is generated by the skeet shooting activity is at a point where it does bother them.
>
> We have tried our best to create an environment for our children that does not include violence of any kind, and we feel that the gun noise that comes from this golf club every weekend when they are normally playing outside frightens them and they have often asked us why are people shooting.
>
> When they hear a gun, they don't understand that it's not something that is being shot at

a person, that's what they think it is.

And trying to explain that to them, doesn't make any sense. I feel it has a very negative impact on their life and I don't think it is an appropriate type of activity for a residential area.

* * * *

I have had my children visit the residence at the Americana Nursing Home, which is in proximity to the golf course. I have been disturbed by the noise over there and the patients have also questioned me as to what that noise is.

R. 20-21 & 23.

Mr. Kochanski similarly testified as to the disturbance he feels arises from the sounds:

[T]here have been many people make comparisons as has been done of noise generation from Route 83 and skeet shooting.

For the record, I would just like to make it clear that having endured the problem for six and a half years and all that time having basically put up with it, it is my feeling that the activity is not acceptable in a residential community.

I don't think it is fair to make any kind of comparison between controllable noise source, which would be skeet shooting and an uncontrollable noise source, which would be Route 83, or airplanes passing overhead, or trains passing through the community.

When I purchased my home back in 1981, I knew Route 83 was there. I knew of the airplanes passing overhead and all the other uncontrollable noise sources there are.

There are certain sacrifices that must be made if one chooses to live in an urban community. There was no indication at that point in time, sir, that skeet shooting existed in Hinsdale Golf Club.

Nor is there any indication today, based upon what is presented at the driveway [of the Golf Club], that skeet shooting occurs

here, or there.

> Had I had any knowledge of that occurring at that point in time, I would not have purchased my home. I just wish to have my right to peace and quiet acknowledged, and at this point it is not only being infringed upon, it is being trampled over.

R. 75-77

The record includes no further testimony as to the impact of the Golf Club's shotgun sounds.

There are two bases on which the Board may conclude that sound emissions constitute noise pollution in contravention of the Act and Board rules. First, there is a numerical sound emissions standard of 35 Ill. Adm. Code 901.104. Second, there is a narrative sound emissions standard of 35 Ill. Adm. Code 900.102. The Board concludes that this record does not support a finding of violation on either basis.

First, given the short comings of the sound study (as discussed above) the record does not demonstrate numerical emissions levels in excess of those prescribed by the applicable rule of Section 901.104. The maximum allowable emissions rate from the Golf Club, which is SLUCM 7412 Class B Land, and the neighboring residential properties, which are SLUCM 1100 Class A Land, see 35 Ill. Adm. Code 901.App. B, is 50dB(A) on a one-hour Leq-weighted basis during the times at which the shooting occurs. See 35 Ill. Adm. Code 900.103(b) & 901.104. There is no indication in the record that Leq noise data has been recorded, nor is there any indication that the shotgun sounds exceed 50 dB(A) on this basis.

Second, although it is clear that the shooting causes some neighbors considerable annoyance for limited periods of time, the record does not indicate that the shotgun sounds 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.

The record before the Board is different from that in Ferndale Heights Utilities Co. v. PCB, 44 Ill. App. 3d 962, 358 N.E.2d 1224 (1st Dist. 1976) (involving mechanical noise), where the court affirmed the Board's finding of noise pollution in violation of the Act and Board rules. In Ferndale Heights the witnesses for the complainant essentially "described the noise as 'a source of great irritation'" and testified that it "disturbs" them. Similar testimony was presented in the case at hand. However, in Ferndale Heights witnesses also testified that the shotgun sound "has forced them to shut windows and forego the use of their backyard for relaxation and entertainment," that it "has awakened them from sleep on occasion," "resulted in their

inability to use their patio," "caused [them] to go inside and close [their] windows," or given them "difficulty in using the telephone." The complaining witnesses here, though, do not testify that the skeet shooting has forced them to curtail some activities or to undertake others as a result of the sounds. See Ferndale Heights, 44 Ill. App. 3d at 965, 358 N.E.2d at 1226-27.

Some evidence of disruption of normal activities is vital to a conclusion that annoying sounds unreasonably interfere with the enjoyment of life, or with any lawful business or activity. The Ferndale Heights evidence clearly showed an unreasonable interference. The evidence in the present case does not go so far. It does not show that the skeet skooting unreasonably interferes with the witnesses' enjoyment of life, or any lawful business or activity.

33(c) FACTORS

Section 33(c) of the Act states:

> In making its orders and determination, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:
>
> 1. the character and degree of injury to , or interference with the protection of the health, general welfare and physical property of the people;
>
> 2. the social and economic value of the pollution source;
>
> 3. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
>
> 4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
>
> 5. any economic benefits accrued by a noncomplying pollution source because of its delay in compliance with pollutuion control requirements; and
>
> 6. any subsequent compliance.

> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

In an enforcement action the complainant carries the burden to show the essential elements of the offense charged. However, the respondent, not the complainant, carries the burden to introduce evidence relating to the reasonableness of the respondent's conduct in terms of the Board's evaluation pursuant to 33(c). Processing and Books, Inc., v. Pollution Control Board, 64 Ill. 2d 68, 351 N.E. 2d 865, 869 (1976); Slager v. Pollution Control Board, 96 Ill. App. 3d 332, 338, 421 N.E. 2d 929 (1st Dist. 1981). Consequently, 33(c) operates as an opportunity for the respondent to establish a defense to the complainant's allegations. In the case at hand the Board has considered Section 33(c) factors to the extent that the applicable information is in the record.

> 1. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
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> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

Skeet shooting takes place during the months of November, December, January and February. During that time period it is only allowed on weekends between the hours of 11:00 a.m. and 3:00 p.m. Given those months and hours, it is apparent that the skeet shooting is limited to those times when most people are awake, spend more time indoors and keep their doors and windows closed. Although gun shots are heard during those times, the record does not suggest that the noise levels constitute an interference with the protection of one's health, general welfare and physical property.

> 2. the social and economic value of the pollution source;
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> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

The record inicates that the skeet shoot has social value as a recreational activity. Approximately 20 to 50 people shoot skeet at the Golf Club each weekend, during the four month season. Also, there are competitions with other shooting clubs which are sometimes hosted by the Golf Club. (R.40). In addition sport shooting in its various forms is recognized worldwide as a competitive and recreational activity. However, the record does not indicate whether there is any economic value associated with the skeet shooting.

> 3. the suitability or unsuitability of the pollution source to the area in which it

> is located, including the question of priority of location in the area involved;
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> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

Skeet shooting has been taking place at the Golf Club since 1943. (R.27). The Kochanski's moved to the area and purchased their home in 1981. The other witness complaining of the noise testified that he had lived in the area for 17½ years. Evidently, the skeet shooting is located near the center of the Golf Club in a depression between two greens. However, the record does not show that the shooting, to the extent that it is currently practiced, is unsuitable for its present location.

> 4. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source;
>
> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

The record does not indicate any means of controlling the amount or volume of the shotgun sounds other than a total cessation of this activity, although the record implies that it is possible that restricting the number of rounds discharged and the types of weapon used might diminish the sounds.

> 5. any economic benefits accrued by a noncomplying pollution source because of its delay in compliance with pollution control requirements;
>
> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

The record does not indicate that the skeet shooting is out of compliance with the Act or Board rules, and it does not indicate any economic benefits accrued to the Golf Club as a result of this activity.

> 6. any subsequent compliance.
>
> Ill. Rev. Stat. 1987, ch. 111½, par. 1033(c).

Since the record does not indicate past non-compliance with the Act and Board rules, subsequent compliance is not shown.

In summary, the Board finds that skeet shooting at the Golf Club, to the extent that it is currently limited and practiced,

is a reasonable activity in terms of causing noise.

This case can generally be characterized by a statement made by the complainant at hearing. Mr. Kochanski said that "[t]here are certain sacrifices that must be made if one chooses to live in an urban community". In regulating noise, Illinois law appears to recognize such a concept. While this does not mean that a person has to endure all types of noise at all times, the law does not protect a person from noise which is merely a source of aggravation. The law only prohibits noise which constitutes an unreasonable interference with one's life or which exceeds specified numerical standards (unless found reasonable due to Section 33(c) considerations). It must be remembered that if the skeet shooting were open to the public, and not a part of a private club, it would be completely exempt from regulations which prescribe standards or limitations for monitoring or emitting noise. Ill. Rev. Stat. 1987, ch. 111½, par. 1025.

Mr. Kochanski has not proven that the Golf Club's skeet shooting activity violates the Act or Board regulations. Furthermore, given the record and the factors set forth by Section 33(c) of the Act, the Board finds that the Golf Club's skeet shooting, as currently limited and practiced, is a reasonable activity in terms of producing noise.

The Board notes that the above findings are based on the facts presented in this record. Nothing in today's Opinion should be construed as precluding some individual in a future proceeding from demonstrating that a similar or increased level of activity at the Golf Club constitutes unreasonable interference or violation of existing Board regulations.

With this in mind, the Golf Club might be well advised to consider finding a means of notifying the community of the shooting activity. Skeet shooting is not an activity which would generally be considered associated with the operating of most golf clubs. Perhaps a sign at the Golf Club's entrance would help aid the community's awareness, or some form of notice to surrounding homes of the skeet shooting schedule, thus, reducing the startle effect, particularly to new residents. Additionally, it may be possible to mitigate the noise by using some fixed or movable barrier, changing the direction of shooting, regulating the frequency of shooting, or restricting the guage of shotguns used.

This Opinion constitutes the Board's findings of fact and conclusions of law in this matter.

ORDER

The Board hereby dismisses the January 15, 1988 complaint against the Hinsdale Golf Club.

Section 41 of the Environmental Protection Act, Ill. Rev.

Stat. 1987 ch. 111 ½ par. 1041, provides for appeal of final Orders of the Board within 35 days. The Rules of the Supreme Court of Illinois establish filing requirements.

IT IS SO ORDERED.

J.D. Dumelle and M. Nardulli dissented. R. Flemal concurred.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Opinion and Order was adopted on the 13th day of July, 1989, by a vote of 5-2.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board