

ILLINOIS POLLUTION CONTROL BOARD
November 5, 1998

ANTHONY AND KAREN ROTI, PAUL)
ROSENSTROCK, AND LESLIE WEBER,)
)
Complainants,)
)
v.) PCB 99-19
) (Enforcement - Noise, Citizens)
LTD COMMODITIES,)
)
Respondent.)

ORDER OF THE BOARD (by N.J. Melas):

This matter is before the Board on “Respondent’s Motion to Dismiss Portions of Complaint or for Partial Summary Judgment” filed on October 1, 1998 (motion) and “Complainant’s Objection to Motion to Dismiss” filed on October 19, 1998 (objection). In the motion, LTD Commodities (respondent) seeks to dismiss portions of the citizens’ enforcement complaint (complaint) filed on July 22, 1998 by Anthony and Karen Roti, Paul Rosenstock, and Leslie Weber (complainants). The Board grants the motion in part and denies the motion in part.

Complainants allege that respondent has violated sections of the Environmental Protection Act (Act) and the Board’s noise regulations. 415 ILCS 5/23 and 5/24 (1996); 35 IAC 900.102, 901.102(a), 901.102(b), and 901.104.¹ Respondent seeks to dismiss those portions of the complaint which it claims do not state a cause of action. Motion at 2-4. Those portions of the complaint include allegations that respondent violated Sections 23 and 24 of the Act and Section 900.102 of the Board’s regulations. *Id.*

Section 23 of the Act states:

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment. It is the purpose of this title to prevent noise which creates a public nuisance. 415 ILCS 5/23 (1996).

¹ Sections 901.102(a) and (b) regulate sound emitted to Class A land, and Section 901.104 regulates impulsive sound. These Sections are not at issue in the motion.

Respondent claims that Section 23 of the Act is “merely a legislative declaration that provides no substantive rights to complainants.” Motion at 3. The Board grants this part of the motion and dismisses the alleged Section 23 violation from the complaint.

Section 24 of the Act states “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.” Section 900.102 of the Board’s noise regulations states “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 Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter.”

Respondent claims that Section 24 of the Act and Section 900.102 of the Board’s noise regulations provide the complainants no cause of action. Motion at 2-3. As authority for its assertion, respondent cites Shepard v. Illinois Pollution Control Board, 272 Ill. App. 3d 764, 768-769, 651 N.E.2d 555, 558-559 (2nd Dist. 1995). Respondent misapplies the reasoning from Shepard to the instant case.

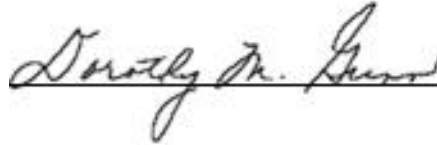
The Shepard court held that gunfire from a skeet and trap range fell under an exemption from noise provisions at Sections 3.25 and 25 of the Act. 415 ILCS 5/3.25 and 5/25 (1996); Shepard, 272 Ill. App. 3d at 769, 651 N.E.2d at 559. The exemption provides that organized amateur sporting activities such as skeet and trap ranges do not have to abide by the Board’s noise regulations. *Id.* As a result, the gunfire was also exempt from Section 900.102 of the Board’s regulations. Shepard, 272 Ill. App. 3d at 769, 651 N.E.2d at 559; citing Hinsdale Golf Club v. Kochanski, 197 Ill. App. 3d 634, 555 N.E.2d 31 (2nd Dist. 1990). The noise pollution from loading dock operations in the instant case does not fall under the exemption at Sections 3.25 and 25 of the Act. As a result, respondent could be held liable under Section 900.102 of the Board’s regulations.

The Shepard court also held that Section 24 of the Act is not a general statutory prohibition. 415 ILCS 5/24 (1996); Shepard, 272 Ill. App. 3d at 768, 651 N.E.2d at 558. Instead, Section 24 provides that no one may emit noise “so as to violate any regulation or standard adopted by the Board.” *Id.* Section 24 is not a stand-alone provision, but a violation of certain Board noise regulations could result in a violation of Section 24. If respondent is later found liable under Section 900.102, respondent could also be held liable under Section 24 of the Act.

The Board grants the motion in part and denies it in part. The Board dismisses the alleged violation of Section 23 of the Act from the complaint. The Board directs the remaining alleged violations in the complaint to hearing, namely Section 24 of the Act and Sections 900.102, 901.102(a), 901.102(b), and 901.104 of the Board’s noise regulations.

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 5th day of November 1998 by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board