

ILLINOIS POLLUTION CONTROL BOARD

November 21, 2002

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

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

This citizens' noise enforcement action concerns a trucking operation in Bannockburn, Lake County. Complainants, Anthony and Karen Roti, Paul Rosenstock, and Leslie Weber, filed a complaint alleging that respondent LTD Commodities' (LTD) trucking operation exceeds Illinois' numeric nighttime sound limits, impulse noise limits, and nuisance noise standards. Complainants contended that LTD therefore violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2000)) and the Board regulations at 35 Ill. Adm. Code 900.102, 901.102(a), 901.102(b), and 901.104.

On February 15, 2001, the Board entered an interim opinion and order (Int. Op.), which it incorporates here by reference, finding that LTD violated the Board's nuisance noise provisions. 415 ILCS 5/24 (2000); 35 Ill. Adm. Code 900.102. However, the Board also found that the record lacked sufficient information regarding remedies and directed the parties to further address appropriate remedies at another hearing.

On October 25, 2002, LTD filed a motion asking the Board's hearing officer and technical staff to view LTD's premises (Rsp. Mot.). Complainants have not responded to the motion to view.

For the reasons set forth below, the Board denies LTD's motion to view the premises. Hearings on the remedy have been continued until December 9, 2002, at which time complainants will cross-examine LTD's noise expert, Mr. Tom Thunder.

MOTION TO VIEW LTD'S PREMISES

LTD requests that the Board's hearing officer and technical staff, pursuant to 35 Ill. Adm. Code 103.207, view the premises of LTD in order to gain a better perspective of the area. Rsp. Mot. However, Section 103.207 of the Board's procedural rules no longer exists. The Board repealed this section and replaced it with Section 101.632 regarding site visits. 35 Ill. Adm. Code 101.632; *See Revision of the Board's Procedural Rules: 35 Ill. Adm. Code 101-130, R00-20, (Dec. 21, 2000).* Section 101.632, effective January 1, 2001, reads as follows:

Upon the request of any party or the Board's own motion, the Board may conduct a site visit to establish a more comprehensive record. If the site visit is part of an adjudicatory proceeding, the Board will notify all parties in advance.

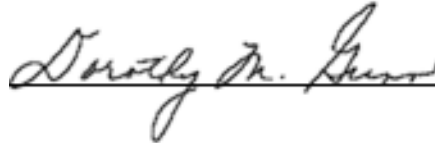
Even though LTD requested a viewing of the premises under a repealed section, the Board will rule on this motion today both in the interest of administrative economy and because additional hearings on the remedy will resume in short order, on December 9, 2002. See 35 Ill. Adm. Code 101.500(d). Visiting a site is an extraordinary procedure used only when the situation is novel or unique or where the Board finds a visit is necessary to decide the case. Citizens for a Better Environment v. Woodruff and Edwards Co., PCB 74-245, slip op. at 1 (Nov. 7, 1974). Here, the Board has already found that LTD violated the Board's nuisance noise provisions. Furthermore, the Board finds that the situation is not novel or unique and that a view is not necessary to properly decide the case. The Board denies LTD's motion to view the premises.

CONCLUSION

For the above reasons, the Board denies LTD's motion to view the premises.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on November 21, 2002, by a vote of 6-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board