

# **Bond Case Briefs**

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## **MUNICIPAL ORDINANCE - ILLINOIS**

### **Village of Roxana, Ill. v. Shell Oil Co.**

**United States District Court, S.D. Illinois - August 26, 2013 - Slip Copy - 2013 WL 4510164**

Roxana is a small village in Madison County, Illinois that was formed around a petroleum refinery operated by Shell. Roxana was for many years a company town so that the city park is named "Shell Park" and the high school athletic teams are known as the Roxana "Shells." The Illinois Environmental Protection Agency (IEPA) forced Shell to take measures to remediate the pollution coming from its refinery that threaten surrounding soil and groundwater.

Roxana then brought an action to enforce its own municipal nuisance ordinance against Shell.

Roxana started this action by filing 230 separate cases in state court. The complaint in each case described a separate property located within Roxana that was alleged to be contaminated by pollutants from the Shell refinery. Shell removed all 230 cases based on diversity of citizenship once they were consolidated. Roxana's claims are based on an ordinance adopted in 1932 which makes it unlawful "to place, deposit, throw, leave or permit to remain, or to cause or permit to flow, any liquid, slops, animal or vegetable matter, filth, dirt or rubbish, or substance of any kind likely to become rotten, foul, nauseous, putrid or offensive" on any property or water in Roxana.

Shell argued that the ordinance did not cover petroleum byproducts that are "valuable commodities that its owner takes precautions to safeguard." This is a question of law that the parties agree is to be decided by Illinois rules of construction, as if the ordinance were a statute. The court disagreed with Shell, finding that the ordinance applied to the facts as alleged.

Roxana is a non-home rule municipality and as such may only exercise those powers enumerated in the Illinois Constitution or by implication conferred by a state statute. If a non-home rule municipality enacts an ordinance conflicts "with the spirit and purpose of a state statute," that ordinance is preempted by the statute. So, if Roxana's ordinance conflicted with an IEPA permit or consent order entered pursuant to the Act, it must give way as preempted. The narrow question here was whether the Roxana ordinance conflicted with a 1989 IEPA permit that was renewed in 2010 or with a 1998 consent order. The court concluded that there existed no conflict.

Shell's motion for summary judgment was denied.