

ILLINOIS POLLUTION CONTROL BOARD
October 17, 1996

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| DOROTHY HOFFMAN, |) | |
| |) | |
| Petitioner, |) | |
| |) | |
| v. |) | PCB 94-146 |
| |) | (Enforcement-Noise) |
| |) | |
| CITY OF COLUMBIA, ILLINOIS, |) | |
| |) | |
| Respondent. |) | |

CONCURRING OPINION (by J. Theodore Meyer):

I concur in this matter because the majority opinion found that back-up warning devices on earth-moving machines are not emergency warning devices as contemplated by Section 910.107(b), and therefore are not exempt from the Board's numerical noise regulations. The Board then included the noise created by back-up warning devices as evidence to support the nuisance violation in this case.

As the Board stated in adopting the noise regulations:

Rule 208(b) (901.107(b)) exempts warning and safety devices from the numerical limitations. This was done because the social benefits far out-weigh any annoyance and because the noise emissions occur infrequently and usually for short durations. It should be noted that the exception would also cover the periodic maintenance and testing of these devices. Not covered by the exception would be devices which may in some ways be similar but which are use routinely in the course of operation such as circuit breakers used for switching electrical power.

(35 Ill. Adm. Code 901.107(b) (emphasis added).) A back-up beeper, as regulated by the Occupational Safety and Health Administration (OSHA), is referred to as a "warning device". (29 CFR 1926.601(b)(3).) OSHA regulations further state that equipment with an obstructed view shall be equipped with "a reverse signal alarm audible above the surrounding noise level" or shall be backed up only when an observer signals that it is safe to do so. (29 CFR 1926.601(b)(4) (emphasis added).) OSHA regulations clearly contemplate that back-up beepers, as warning devices, must be loud enough to be heard over the existing noise level of that area. Therefore, back-up beepers should be exempted from the Board's regulations, as contemplated by Section 901.107(b). The Board's contrary finding seems to be an infringement upon an area controlled by OSHA regulations.

Although I disagree that the noise created from back-up beepers should have been included as evidence of a nuisance violation, I agree that the other evidence presented provides sufficient justification for a finding of a nuisance violation in this matter. Therefore, I respectfully concur.

J. Theodore Meyer

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above concurring opinion was filed on the _____ day of _____, 1996.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board