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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

JUN 2 2003

IN THE MATTER OF:)
)
PROPOSED NEW AND UPDATED RULES FOR)
MEASUREMENT AND NUMERICAL SOUND)
EMISSIONS STANDARDS)
AMENDMENTS TO 35 ILL. ADM. CODE)
901 AND 910)

R03-9
(Rulemaking - Noise)

STATE OF ILLINOIS
Pollution Control Board

PC#2

NOTICE

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Comments on the Illinois Pollution Control Board's Notice of Proposed Amendments by the Office of the Attorney General - State of Illinois, a copy of which is hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the State
of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
Environmental Bureau
Assistant Attorney General

BY:



JOEL J. STERNSTEIN
Assistant Attorney General
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Chicago, IL 60601
(312) 814-6986

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STATE OF ILLINOIS
Pollution Control Board
- Noise)

COMMENTS ON THE ILLINOIS POLLUTION CONTROL BOARD'S
NOTICE OF PROPOSED AMENDMENTS
BY THE OFFICE OF THE ATTORNEY GENERAL - STATE OF ILLINOIS

The Office of the Attorney General thanks the Illinois Pollution Control Board ("Board") for taking the initiative in amending its noise regulations. The Office of the Attorney General submits the following comments regarding the Board's Notice of Proposed Amendments to 35 Ill. Adm. Code 901 and 910 set forth in the Board's Proposal for Public Comment on February 20, 2003.

The Board is in the process of much needed updating and amendments to its noise regulations. This is a most opportune time to streamline the regulations, to make them user-friendly, and to promote and facilitate their use by the regulated community as well as the regulatory agencies. This is a significant regulatory update that will provide a state-wide uniform program for noise pollution enforcement by state and local governments.

The Board's adoption of the one-hour measurement requirement was one of the most discouraging developments in Illinois noise

pollution enforcement. It has not been demonstrated that the one-hour measurement time is supported by any technical or any other rational basis. In fact, the sound level instruments common at the time the Board adopted the one-hour measurement required nine hours to make one-hour measurements for each of the nine octave bands in the noise regulations.

In many situations the duration of the noise source may be less than one hour such as a set of songs at a music concert. There is a technical, practical and reasonable basis to eliminate the one-hour requirement. This is a legally defensible position based on a 1st District Appellate Court opinion which upheld an order of the Board. See Discovery Group South Ltd et al v. Illinois Pollution Control Board et al, 275 Ill. App. 3d 547, 656 N.E.2d 51 (1st Dist 1995); Village of Matteson v. World Music Theatre et al, PCB 90-146 (February 25, 1993). In these decisions, the Board and the Appellate Court accepted the use of a five-minute measurement standard rather than one hour. *Id.* The Office of the Attorney General urges the Board to adopt the five-minute measurement standard for non-continuous noise, although this Office acknowledges that the ten-minute measurement standard proposed in docket R03-8 is a step in the right direction.

In cases involving a continuous noise source with a prominent discrete tone such as blower or a fan it is

unnecessary to specify a numerical standard for the measurement time. Experience by the Office of the Attorney General has indicated that in an industrial setting a noise source is on for many hours and in some cases the noise source is on continuously. The measurement time should be determined by the technician using his or her best judgement based on the nature and characteristics of the noise source. The measurement time should also be in substantial conformity with the applicable technical standards referenced by the Board. Furthermore, the measurements taken must be representative of the noise source. However, if the Board deems the Attorney General's proposal for continuous noise sources as too subjective, the five-minute measurement time would be the next best alternative for the sake of consistency.

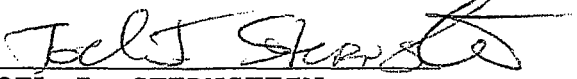
Respectfully submitted,

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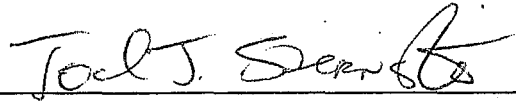
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CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General,
certify that on the 2nd day of June, 2003, I caused to be served
by First Class Mail the foregoing to the parties named on the
attached service list, by depositing same in postage prepaid
envelopes with the United States Postal Service located at 100
West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN