

ILLINOIS POLLUTION CONTROL BOARD
October 16, 2003

IN THE MATTER OF:)
)
PROPOSED NEW AND UPDATED RULES)
FOR MEASUREMENT AND NUMERICAL)
SOUND EMISSIONS STANDARDS) R03-9
AMENDMENTS TO 35 ILL. ADM.) (Rulemaking - Noise)
CODE 901 and 910)

Proposed Rule. Additional Hearing.

ORDER OF THE BOARD (by M.E. Tristano, G.T. Girard, W.A. Marovitz):

Pursuant to 35 Ill. Adm. Code Part 102 Subpart B and Sections 27 and 28 of the Illinois Environmental Protection Act (Act), 415 ILCS 5/27-5/28(2002), the Illinois Pollution Control Board opened this rulemaking to propose updated regulations governing noise found in 35 Ill. Adm. Code Subtitle H, pursuant to Sections 27 and 28 of the Act, (415 ILCS 5/27-5/28 (2002) and 35 Ill. Adm. Code Part 102 Subpart B. Many of the sound measurement definitions and techniques in the Board's current rules do not reflect present scientific standards. The instant proposal revises outdated numerical sound emission standards for property line noise sources found at 35 Ill. Adm. Code Parts 901. In addition, the proposal adds Part 910 to the Board's rules that incorporates noise measurement techniques currently contained only in Illinois Environmental Protection Agency (Agency) rules at 35 Ill. Adm. Code 951.

By today's action the Board responds to comments made during the first-notice period and authorizes an additional hearing prior to second-notice pursuant to Section 5-40 of the Administrative Procedure Act (5 ILCS 100/5-40 (2002)).

BACKGROUND

The Board's noise rules have not been updated since 1983 and 1987. In 1990, the Department of Energy and Natural Resource¹ (DENR) contracted Dr. Paul Schomer of the University of Illinois to examine the adequacy of Illinois noise regulations, and, particularly whether the existing rules were adequate to regulate discontinuous noise. Dr. Schomer's report, "Impulse Noise Study," (ILENR/RE-EA-90-16, printed November 1990, Springfield, IL) suggested some adjustments in the Board's noise regulations. In 1991, DENR contracted for an additional report by Dr. Schomer, entitled, "Proposed Revisions to Property Line Noise Source: Measurement Procedures," (ILENR/RE-EA-91/10, printed June 1991, Springfield, IL), describing and developing a systematic set of procedures for noise measurements.

During the summer of 1991, the Board prepared a proposal that attempted to translate the Schomer reports into regulatory language (Amendments to 35 Ill. Adm. Code Subtitle H Noise-

¹ In 1995, P.A. 89-50 (eff. July 1, 1995) (20 ILCS 5/801 *et seq.* (2002)) merged DENR into the Department of Natural Resources.

Pertaining to Definitions, Measurement Procedures, and Sound Emission Standards Relating to Certain Noise Sources, R91-25 (Oct. 24, 1991)). An inquiry hearing based on the document was held on November 25, 1991, in Chicago, Illinois, in which testimony was presented. The Board's proposal was based on revising the noise measurement procedures at Section 900.103(b) and the impulsive sound standards at Section 901.104. In addition, the Board proposed incorporating Agency noise measurement procedures found at 35 Ill. Adm. Code 951 into Board regulations at 35 Ill. Adm. Code Part 910, by modifying the Part 951 language to incorporate the recommendations contained within the Schomer reports. In 1992, the Board closed the R91-25 docket before proceeding to first notice with proposed changes to the Board's noise rules.

The need to update the Board's noise rules to conform to current scientific procedures has become more apparent during the past ten years. The Board has identified necessary improvements in several areas. In the instant rulemaking, the Board proposes changes in Parts 901 and 910. In Part 901, the Board proposes to revise the impulse noise standards and replace the references to the Standard Land Use Coding System (SLUCM) codes with the more appropriate Land-Use Based Classification System. New rules in Part 910 are proposed to incorporate Agency noise measurement procedures found at 35 Ill. Adm. Code 951.

PROCEDURAL HISTORY

The Board opened this rulemaking through issuing a draft for public comment on February 20, 2003. The Board elicited comments on the draft prior to first-notice publication from the public and those involved in prior rulemakings involving noise regulation. Individuals who were on the notice list were sent drafts and the hearing dates. In addition, the proposed rule was posted on the Board's website. The Board held two hearings in this matter. The first was held in Springfield, Illinois on May 1, 2003, and the second in Chicago on May 15, 2003. There were no members of the public in attendance at the Springfield hearing and one person testified on behalf of the Illinois Attorney General in Chicago. During the pre-first notice phase of the proceeding, the Board has received two public comments. One from the Illinois Attorney General (PC 2) and one from Dr. Paul Schomer (PC 1).

Dr. Paul Schomer filed a comment questioning the Board's language in Sections 910.106 and 910.107. Dr. Schomer indicated that the language was nearly identical to the language contained in ANSI S12.9 Part 3-1998 (R2003) (ANSI standard). Dr. Schomer stated that the material in ANSI standard was copyrighted material and asked that the language be removed. In response to the comment, the Chairman of the Board (by a letter dated March 21, 2003 and included in the record of this proceeding) notified Dr. Schomer that the language as used in Section 910.106 and 910.107 was based on language included in an Illinois Department of Energy and Natural Resource's study *Proposed Revisions to Property Line Noise Source: Measurement Procedures* (ILENR/RE-ES-91/10). The Chairman's letter pointed out that the study was published in 1991 and that the materials were included in a prior public record. The Board therefore declined to remove the language.

The Illinois Attorney General filed a comment and provided testimony. In the comment, the Illinois Attorney General applauded the Board's decision to update the amendments to the noise rules. PC 1 at 1. The Illinois Attorney General indicated that the updating of the noise

rules is a significant regulatory update that will provide a state-wide uniform program for noise pollution enforcement by state and local governments. *Id.* The Illinois Attorney General suggests adopting a five-minute measurement period rather than the current one-hour measurement period. PC 1 at 2.

The Board held two hearings in this matter. The first was held in Springfield on May 1, 2003, and the second in Chicago on May 15, 2003. No members of the public attended the Springfield hearing. Two members of the public attended the Chicago hearing: Joel Sternstein and Howard Chinn of the Illinois Attorney General's Office.

Mr. Chinn, chief engineer for the Environmental Bureau of the Illinois Attorney General's Office, testified at the Chicago hearing. During his testimony Mr. Chinn made two points. First, he testified that the regulations should explicitly state that neither one-hour averaging nor an integrating meter is required. Tr. at 9. Second, Mr. Chinn suggested that the Board set statewide regulations to limit the hours of operations for all types of lawn care equipment and set limits on the sound levels for the equipment. Tr. at 9, 13.

FIRST NOTICE

On July 25, 2003 pursuant to the Board's order of July 10, 2003, the Secretary of State published the required first notice of the proposed updated regulations governing noise found in 35 Ill. Adm. Code Subtitle H. The Board received five public comments from Scot Forge (PC 3), Vaughan and Bushnell Manufacturing (Vaughan) (PC 4), Illinois Association of Aggregate Producers (PC 5), Boughton Trucking and Materials Inc. (PC 6), and Internet Decatur Foundry (Internet) (PC 7). These comments can be dichotomized as either requesting a site specific rule modification or requesting another hearing to discuss concerns with the proposed rule.

First, Scot Forge, Vaughan and Internet request modifications to previous site specific rules. Specifically, Scot Forge requests an increase of forging hammer use, modification of operating hours and change in name from the Hellstrom Corporation. Vaughan wishes to include the ability to add one forging hammer and expand hours of operation by twelve. Internet notes that they are no longer forging and that Section 901.113 is not needed and should be eliminated. Each of these requests for site-specific modifications can not be incorporated in this instant rulemaking because the effected sections were not addressed within the proposal. Each company is urged to proceed expeditiously to seek the site-specific modifications necessary by formally asking that the Board open proceedings to address their concerns.

Second, Illinois Association of Aggregate Producers (Producers) and Boughton Trucking (Boughton) note substantive problems with the first notice draft and requests an additional hearing. Producers question that Part 910 "does not require that non-agency personnel who conduct sound measurements be trained and experienced in sound measurement technique and equipment." They argue that previously agency personnel (IEPA) who measured sound were trained and experienced. Producers propose adding a Section requiring training and experience.

Producers believe that Section 910.104 compounds the reliability problem by allowing the complainant to merely follow the instructions of the sound pressure measurement equipment

manufacturer when conducting sound pressure measurements and offering Section 910.105 as guidance. They argue that sound pressure measurements taken by personnel who do not have to comply with either Sections 910.105 or 951.104 will be unreliable. Boughton agrees with the arguments outlined by Producers. The Board notes that the proposed modifications are a codification of current discussions which allow the public to measure noise to corroborate other evidence and that Part 910 merely provides guidance and standards for the measurement of noise.

Both Producers and Boughton request pursuant to Section 5-40 of the Administrative Procedure Act (5 ILCS 100/5-40) an additional public hearing regarding 35 Ill. Adm. Code Part 910. The Board notes that it has held hearings on the potential economic impact and technical reasonableness of the proposed rules and has requested a study from DCEO. However, the Board will schedule and conduct another hearing to both consider substantive changes and economic impact.

CONCLUSION

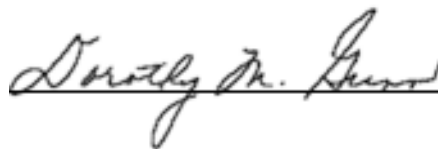
Based on the record developed to date in this matter, the Board finds that holding this proposal and scheduling an additional hearing to consider both substantive changes and economic impact is warranted under Section 5-40 of the Administrative Procedure Act. Therefore, the Board will hold at least one additional hearing in this matter

ORDER

The Board directs the hearing officer to proceed expeditiously to notify the public and hold another hearing prior to second notice.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on October 16, 2003, 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