

ILLINOIS POLLUTION CONTROL BOARD

March 4, 2004

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

ORDER OF THE BOARD (by G.T. Girard):

On, February 20, 2003, the Board offered this proposed rulemaking for public comment. The proposal updated regulations governing noise found in 35 Ill. Adm. Code Subtitle H, pursuant to Sections 27 and 28 of the Illinois Environmental Protection Act, (415 ILCS 5/27-5/28 (2002) and 35 Ill. Adm. Code Part 102 Subpart B. After two hearings the Board proceeded to first notice with this rulemaking on July 10, 2003. First notice was published on July 25, 2002. 27 Ill. Reg. 11908.

On October 16, 2003, the Board issued an order addressing five public comments. Those comments were from Scot Forge (PC 3), Vaughn and Bushnell Manufacturing (PC 4), Internet Decatur Foundry (PC 7), Boughton Trucking and Materials Inc. (PC 6) (Boughton), and the Illinois Association of Aggregate Producers (Association) (PC 5). Boughton and the Association requested a third hearing and the Board agreed to hold a third hearing.

The remaining three commenters sought changes in site-specific regulations governing the respective companies. The Board acknowledged comments, however the Board noted that most of the relevant sections had not been noticed as a part of the first-notice required under the Illinois Administrative Procedure Act (5 ILCS 100/1-1 *et. seq.* (2002)) (APA). Therefore, the newly suggested changes to relevant sections would require first-notice publication before the Board could proceed. To avoid undue delay in this proceeding, the Board encouraged the companies to petition the Board for site-specific changes in future rulemaking dockets.

On February 9, 2004, the Board held a third hearing. Scot Forge presented testimony in support of a change in the site-specific rule currently applicable to Scot Forge. Tr3 at 5-10. Scot Forge also agreed to examine the opinion and order (Atlas Forging Division of Scot Forge R83-34 (Dec. 30, 1984)) that granted the site-specific rule and to provide additional comment on the applicability and need for a site-specific change.

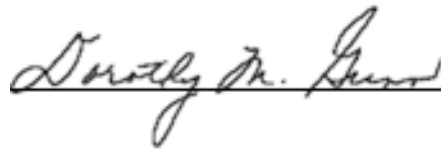
The hearing officer noted at hearing, that prior to the hearing, the Association notified the hearing officer that the Association did not receive notice of the hearing and would be unable to attend. Tr.3 at 30-31. The hearing officer stated that a review of the Board's records indicated that notice had not been sent to the Association. *Id.* Instead of seeking a postponement of the third hearing, the Association was willing to accommodate the Board and supply only written comments if sufficient time could be given. *Id.*

Under the APA a rule cannot be adopted or filed more than one year after the first-notice period begins. 5 ILCS 100/5-40(e). (2002). If the Board gives the Association sufficient time to prepare written comments, the Board is unlikely to be able to complete this rulemaking under the APA timeframes. Therefore, the Board will need to restart the APA procedures for this proposal.

The Board finds that administrative economy supports including the site-specific changes in the new first notice. Prior to publishing the proposal for a second first notice, the Board will hold two additional hearings, to ensure that a complete record is developed. The additional hearings and the second first notice will allow companies seeking a site-specific change to fully participate and to allow the Association the opportunity to testify. The hearing officer is directed to set those hearings.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on March 4, 2004, by a vote of 5-0.

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

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board