



VILLAGE OF BRIDGEVIEW

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STATE OF ILLINOIS
Pollution Control Board

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December 21, 2004

Illinois Pollution Control Board
Suite 11-500
James R. Thomson Center
100 West Randolph Street
Chicago, Illinois 60601

Re: Amendments to 35 IL Adm. Code 901 and 910 / Docket R03-;
Proposed New and Updated Rules for Measurement
and Numerical Sound Emission Standards;
Comments of the Village of Bridgeview

R03-9
PC#12

Mr. Chairman and Members of the Board:

Please be advised that I am the attorney for the Village of Bridgeview (the "Village") which has reviewed the proposed rulemaking in the above matter and is alarmed as to its potential impact on current businesses and future developments within the Village. We are concerned that lowering the bar for evidence of noise pollution in private suits brought under the Board's numeric noise standards and in nuisance actions will encourage unwarranted legal actions before the Board on the basis of faulty noise measurements.

We have reviewed and concur with the comments and testimony provided by John Henriksen, Executive Director of the Illinois Association of Aggregate Producers (the "IAAP"), regarding Part 910 and support the alternative proposed language offered by the IAAP.

Specifically,

1. We object to the proposed amendment to Part 910 which does not require non-agency personnel who conduct sound measurements to be trained and experienced in sound measurement techniques and equipment. We note that the Illinois Environment Protection Agency (the "IEPA") rule containing the qualifications for IEPA personnel who conduct sound measurements, Section 951.101, provides:

Agency personnel conducting sound measurements shall have been trained and experienced in the current techniques and principles of sound measurement and in

the selection and operation of sound measuring instrumentation.

Although no State approved licensing or certification process exists for personnel who conduct sound measurements, Part 910 should at least incorporate the minimal requirements outlined in Section 951.101. Given that data gathered by non-agency personnel may serve as grounds for a nuisance noise action brought to the Board or for a lawsuit, such persons should possess some basic level of training and experience. We concur with the testimony provided by the IAAP and Vibra Tech, Inc. that sound measurements gathered by anyone without some basic level of training and experience are of questionable validity and should not be considered as valid evidence of noise levels by this Board or by a court of competent jurisdiction.

Therefore, we support the IAAP's proposed alternative language for Part 910.101, stating:

Personnel who conduct sound measurements in order to show compliance with the Board's noise standards in Part 900 and 901 must be trained and experienced in the current techniques and principles of sound measurement and in the selection and operation of sound measuring instrumentation.

2. We object to new Section 910.104, Measurement Techniques for 35 Ill. Adm. Code 900, which states that while sound pressure level measurements are not required to establish a violation of the Board's nuisance noise standard under 35 Ill. Adm. Code 900.102, these measurements may be used as "corroborating evidence." Although Section 910.104 requires that a person conducting sound pressure measurements comply with the instructions of the sound pressure measurement equipment manufacturer, the sound measurement techniques in Section 910.105 are considered only as "guidance" for gathering such data. As stated on page 5 of the "Proposal Overview" for this rulemaking, "the proposed approach deviates from the detailed sound measurement requirements specified in Part 951", rules that govern the IEPA's enforcement activities for nuisance noise.

We believe unwarranted nuisance actions pose a serious threat to existing businesses and may add unnecessary cost and delay to future development, not only within the Village, but elsewhere throughout the State. As such, we see no basis for allowing such actions to proceed on the basis of evidence that would not be allowed in actions brought by the IEPA. We agree with the IAAP that proposed Section 910.104 compounds the problems created by the lack of a training and experience requirement for non-agency persons who conduct sound

measurements. Sound pressure measurements taken by persons with no training and experience are inherently unreliable. Of even less value are measurements taken by persons who do not have to comply with either Section 910.105 or Section 951.104.

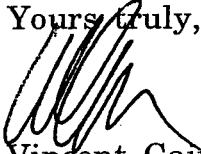
Therefore, we support the IAAP's proposal that Section 910.104 be amended to state as follows:

Sound pressure level measurements are not required to establish a violation of 35 Ill. Adm. Code 900.102 (nuisance noise). However, sound pressure level measurements may be introduced as corroborating evidence when alleging a violation of 35 Ill. Adm. Code 900.102. If sound pressure level measurements are collected, manufacturer's instructions must be followed for the equipment used ~~and 35 Ill. Adm. Code 910.105 may be used as guidance in gathering data.~~ In addition, sound measurements used to establish a violation of 35 Ill. Adm. Code 900.102 must be obtained in accordance with either:

- a) 35 Ill. Adm. Code 910.105; or
- b) 35 Ill. Adm. Code 951.104.

We thank you very much for your careful consideration these comments and ask that they be included in the record of this rulemaking.

Yours truly,



Vincent Cainkar
Village Attorney

VC:les

cc: Hon. Steven M. Landek, Mayor