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8 FOR MEASUREMENT AND NUMERICAL) (Rulemaking-Noise)

10 AMENDMENTS TO 35 ILL. ADM.)

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16 taken before the HEARING OFFICER WILLIAM F. MURPHY

17 by LORI ANN ASAUSKAS, CSR, RPR, a notary public

18 within and for the County of Cook and State of

19 Illinois, at Room 9-040 of the James R. Thompson

20 Center, 100 West Randolph Street, Chicago, Illinois,

21 on the 15th day of May, A.D., at 1:30 p.m.

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1 A P P E A R A N C E S:

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ILLINOIS POLLUTION CONTROL BOARD

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James R. Thompson Center
100 West Randolph Street - Suite 11-500
Chicago, Illinois 60601
(312) 814-3665

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MR. WILLIAM F. MURPHY, HEARING OFFICER

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ILLINOIS POLLUTION CONTROL BOARD MEMBERS

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Mr. Nicholas Melas
Mr. Michael Tristano
Dr. G. Tanner Girard
Mr. William A. Marovitz
Ms. Lynne P. Padovan

11

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OFFICE OF THE ATTORNEY GENERAL

13

Mr. Joel J. Sternstein

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15

ALSO PRESENT

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Mr. Anand Rao, IPCB, Technical Unit
Mr. Howard Chinn, Attorney General, Chief Engineer
Ms. Marie Tipsord, IPCB, Attorney
Ms. Catherine Glenn Joelson

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I N D E X

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NO EXHIBITS MARKED

1 HEARING OFFICER MURPHY: Good
2 afternoon my name is William Murphy and I am the
3 hearing officer at this proceeding. I would like
4 to welcome you to this hearing being held by the
5 Illinois Pollution Control Board entitled, IN THE
6 MATTER OF: PROPOSED NEW AND UPDATED RULES FOR
7 MEASUREMENT AND NUMERICAL SOUND EMISSIONS STANDARDS
8 AMENDMENTS TO 35 ILL. ADM. CODES 901 AND 910.

9 Present today on behalf of
10 the Illinois Pollution Control Board is Michael
11 Tristano, who is to my immediate right. To his
12 right is G. Tanner Girard. To his right is
13 William Marovitz and to his right is Lynne Padovan.

14 Mr. Tristano, would you like to
15 make any comment at this time?

16 MR. TRISTANO: Welcome to the public.
17 I hope that you have some comments at our hearing
18 today.

19 HEARING OFFICER MURPHY: Would any
20 other board members care to make any other comments
21 at this time?

22 This is the second hearing in this
23 matter. The first one was held in Springfield on
24 May 1, 2003. Pursuant to **Sections 27 and 28** of the

1 Illinois Environmental Protection Act, the Illinois
2 Pollution Control Board opened this rulemaking to
3 amend and update the Board's current noise rules.
4 Many of the following measurement definitions and
5 techniques in the Board's current rules do not
6 reflect present scientific standards.

7 This proposal revises
8 outdated numerical sound emission standards for
9 property-line-noise-sources found at **35 Illinois**
10 **Administrative Code, Part 901.** In addition, the
11 proposal, at **Part 910** to the Board's rules, it
12 incorporates noise measurement techniques currently
13 contained in the Illinois Environmental Protection
14 Agency rules currently found at **Illinois**
15 **Administrative Code 901.**

16 I would also like to add that
17 we do have some members of the board staff present.
18 We have Anad Rao from the board technical unit.
19 We have Marie Tipsord and Catherine Glenn Joelson
20 present.

21 The purpose of today's hearing
22 is twofold. First, this rulemaking is subject
23 to **Section 27(b)** of the Environmental Protection
24 Act. **Section 27(b)** of the act requires the Board

1 to request that the Department of Commerce and
2 Economic Opportunities conduct an economic impact
3 study in certain proposed rules prior to the
4 adoption of those rules.

5 In accordance with **Section 27(b)**
6 of the act, the Board requested by letter dated
7 April 3, 2003, that DCEO conduct an economic impact
8 study for the above-referenced rulemaking. DCEO
9 notified the Board in a letter dated April 17, 2003,
10 that it would not be conducting an economic impact
11 study on rules pending before the Board because it
12 lacks, among other things, the financial resources
13 to conduct such studies.

14 Second, the Board would like to
15 receive any questions or comments from the public.
16 I do ask that any members of the public state your
17 name for the record and who you represent before you
18 be sworn in by the court reporter.

19 Mr. Sternstein, would you like to
20 make any comments?

21 MR. STERNSTEIN: Sure. Thanks,
22 Hearing Officer Murphy. My name is Joel Sternstein.
23 I am an assistant attorney general with the Illinois
24 Attorney General's Office in the Northern

1 Environmental Bureau here in Chicago. I would just
2 like to say, first of all, good afternoon to the
3 members of the Board. Also, I very much wanted to
4 thank the Board for giving the Attorney General's
5 Office the opportunity to comment on this docket,
6 R03-9.

7 At this point, I would like to
8 introduce Howard Chinn, who is our chief engineer
9 for the environmental bureau of the Attorney
10 General's Office. He has some testimony on the
11 proposed regulations. I guess we should have him
12 sworn in now.

13 THE COURT REPORTER: Would you raise
14 your right hand, please?

15 MR. CHINN: Yes.

16 THE COURT REPORTER: Do you swear the
17 testimony you are about to give will be the truth,
18 the whole truth, and nothing but the truth, so help
19 you God, and you'll keep your voice up?

20 MR. CHINN: Yes, ma'am.

21 (Witness sworn.)

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1 WHEREUPON:

2 H O W A R D O. C H I N N, P. E.

3 called as a witness herein, having been first duly
4 sworn, depose and saith as follows:

5 MR. CHINN: My name is Howard Chinn,
6 as Joel has stated. I have been with the --
7 employed with the Illinois Attorney General's Office
8 since April of 1971. I have been working on and off
9 with these noise regulations for a number of years.

10 Until the noise regulations were
11 changed in 1987, any measurement procedure to the
12 one hour requirement, it kind of made obsolete the
13 noise measurement instruments that we had to monitor
14 the nine octave band, one hour each that required
15 nine hours. We didn't -- we did not and we do not
16 have an integrating meter.

17 So what we are interested in
18 is that in measurements, in order to determine
19 compliance with **Section 901.102** of the noise
20 regulations, that applies to prominent discrete
21 tones and that the regulations do not explicitly
22 specify the use of the Leq averaging to determine
23 compliance with numerical standards, which, in my
24 opinion, in turn, obviates the need to use an

1 innovative sound meter and the need for the one hour
2 measurement time.

3 We think -- I think that the
4 regulation needs to be explicit in that it would
5 not require the measurement for one hour and the
6 use of an integrating meter, which under **910**, the
7 integrating meter is required. We had, through
8 Joel, submitted written comments on this particular
9 issue under R03-8.

10 The second comment I have is
11 that I have noticed that there has been, like,
12 proliferation in the use of lawn care contractor
13 and commercial and residential loans in the
14 suburban areas where I live and that this equipment
15 used by the contractors are larger and noisier.
16 There seems to be a need to limit the hours of
17 operations for all types of lawn care equipment
18 and set the limits on the emission of sound level
19 for the equipment, which would be effective sometime
20 in the future, such as 2006.

21 So this is -- would require
22 some study to determine the practicality of doing
23 this. I know that lawn equipment has been getting
24 some attention from the air pollution standpoint.

1 So these are my brief comments.

2 I'll accept questions.

3 HEARING OFFICER MURPHY: Thank you.

4 Do any members of the Board or any
5 board staff have any questions or comments at this
6 time?

7 MR. RAO: Good afternoon, Mr. Chinn.

8 I just have a couple of clarification questions.

9 Regarding your suggestion for
10 including in the **900.102** rules itself, are you
11 suggesting that such language should be included
12 under **900.102** itself or in section -- I mean,
13 **900.102** or under **900.103**?

14 MR. CHINN: **900.102.**

15 MR. RAO: **900.102?**

16 MR. CHINN: Right.

17 MR. RAO: Because right now, the
18 way the management procedures are set up under
19 **Section 900.103** in the proposed rules under
20 Docket R03-8, the rules say that all measurement
21 and measurements -- under **900.103(b)(1)**, it says,
22 and I'll read this to you, all measurements and
23 all measurement procedures to determine whether
24 emissions of sound comply with **35 Ill. Adm. Code 901**

1 shall with the exception of measurements determine
2 whether emissions of sound comply with **35 Ill. Adm.**
3 **Code 901.109** be based on Leq averaging.

4 Does that address your concerns?

5 MR. CHINN: Looking at the numerical
6 limits for **901.102**, it doesn't say that you need
7 to determine it on the basis of Leq averaging.

8 MR. RAO: Because the way the rules
9 are set up right now, the measurement procedures
10 are in **900.103** where we say all measurement from
11 **901.102** should be taken in accordance with the
12 Leq averaging.

13 MR. CHINN: Taken in...

14 MR. RAO: Yes.

15 MR. CHINN: Yes.

16 MR. RAO: Does that address your
17 concern?

18 MR. CHINN: Yes.

19 MR. TRISTANO: We'll look at
20 that. That clearly is a concern. We think that
21 is covered. We'll make absolutely sure.

22 MR. CHINN: Pardon?

23 MR. TRISTANO: We think we did cover
24 your concern, but we will make absolutely sure.

1 MR. CHINN: Okay.

2 MR. TRISTANO: We appreciate that.

3 MR. GIRARD: I have one question.

4 Getting back to your comment about the lawn
5 equipment getting noisier up here in the suburbs,
6 are you suggesting that we should have a statewide
7 requirement of operating hours for equipment of
8 that type?

9 MR. CHINN: I do.

10 MR. GIRARD: Well, I just wonder
11 if you think it might be better to have local
12 government make that sort of decision. I mean,
13 for instance, down in the part of the state where
14 I am, you know, when farmers need to get their
15 crops out of the field, they are sometimes working
16 until 2:00 or 3:00 in the morning and their
17 equipment is much louder than the kind of lawn mower
18 you have operating up here in the suburbs. You
19 know, it seems to me that that is a decision that
20 needs to be made at the local level rather than a
21 regulation made statewide with -- you know, where
22 one size fits all.

23 MR. CHINN: I think the regulation
24 makes a distinction between farm equipment and lawn

1 care equipment according to the definition. I have
2 been working on a case involving Lisle and the
3 village engineer tells me that they don't have the
4 expertise to development and enforce noise
5 regulations. So she was asking me questions about
6 the state rules and regulations.

7 There are probably other
8 communities that would be interested in enforcing
9 these regulations if they were familiar with them.

10 (Whereupon, Lynne Padovan
11 exited the proceedings.)

12 MR. CHINN: Otherwise, they would
13 have to retain an outside expert to do noise
14 measurements. I think these regulations are pretty
15 complicated and not all communities are familiar
16 enough with these regulations and know what to do
17 with them. They sometimes would have to call the
18 police and the police have no idea what to do with
19 it. I think we need regulations statewide and it
20 certainly would be based upon your land use. If you
21 have from A to A, that's one thing. If you have
22 different classifications for farmers, I think there
23 would be an exemption for the farmers. So there are
24 ways of drafting this so that it would not restrict

1 the farmers' activities.

2 MR. GIRARD: Wouldn't it be possible,
3 though, for a municipality to prohibit use of lawn
4 equipment, whether it be lawn mowers or leaf blowers
5 or something like that, before a certain hour in the
6 morning?

7 MR. CHINN: I would think it would
8 not be uniform standards to a community. Presently,
9 Lisle uses just the A-weighted average -- A-weighted
10 scale. They have no idea what the aqua bands are or
11 how to enforce it. This one site that I am working
12 on out in Lisle, they are putting up air pollution
13 control equipment with blowers and fans and in
14 reviewing their work plan, they said they shall
15 comply with the local noise regulations. I said,
16 no, you have to comply with the state noise
17 regulations.

18 So going from working in various
19 communities, which is what I do, there is some
20 desire by the communities to enforce their
21 regulation, which may be different and inconsistent
22 with the state regulations.

23 I found that with -- out in Lisle
24 where they were putting in new connections for

1 water. They said we will follow the local plumbing
2 rules. I said, no, you've got to follow state
3 rules. I said I don't want to be changing from each
4 locality to each locality. I have to learn and make
5 sure that they are in compliance with those local
6 ordinances.

7 So we have a statewide plumbing
8 code. I said this is what you people have to
9 follow. I am working in Naperville, Lisle and
10 Downers Grove in these new water cases. I said
11 I don't want to -- I need to learn what these
12 different local regulations are and how to apply
13 it. So I think there is a need for uniform
14 statewide regulations on this lawn care equipment.

15 MR. GIRARD: Thank you.

16 HEARING OFFICER MURPHY: Any further
17 questions or comments?

18 MR. GIRARD: No thanks.

19 HEARING OFFICER MURPHY: Any further
20 comments, Mr. Chinn?

21 MR. CHINN: No.

22 HEARING OFFICER MURPHY: Well, on
23 behalf of the Board, I would like to thank you
24 for your comments. I know the Board greatly

1 appreciates it.

2 Seeing that there are no members
3 of the public who came in addition, we will wrap
4 things up. The comment period will close on June
5 16, 2003, which is approximately 30 days after
6 this hearing. Are there any objections to that?

7 All right. If any persons would
8 like a copy of the transcript of today's hearing,
9 please speak to the court reporter directly. To
10 order a copy of the transcript from the Board, it
11 will cost 75 cents a page. You also have the option
12 of downloading the transcript from the Board's web
13 site at no charge.

14 Does anyone have any further
15 questions or comments? Are there any objections to
16 adjourning this hearing? Seeing none, this hearing
17 is adjourned. Thank you.

18 (Whereupon, no further
19 proceedings were had
20 in the above-entitled
21 cause.)

22

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24

1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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4 I, LORI ANN ASAUSKAS, a notary public
5 within and for the County of Cook and State of
6 Illinois, do hereby certify that heretofore,
7 to-wit, on the 15th day of May, A.D., 2003,
8 personally appeared before me at Room 2-025 of
9 the James R. Thompson Center, in the City of
10 Chicago, County of Cook and State of Illinois,
11 a certain cause now pending and undetermined
12 before the Illinois Pollution Control Board in
13 the above-entitled cause.

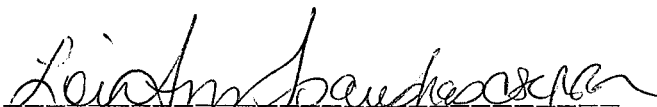
14 I further certify that any said
15 witnesses were by me first duly sworn to testify
16 the truth, the whole truth and nothing but the truth
17 in the cause aforesaid; that the testimony then
18 given by them were by me reduced to writing by means
19 of shorthand in the presence of said witness and
20 afterwards transcribed upon a computer, and the
21 foregoing is a true and correct transcript of the
22 testimony so given by them as aforesaid.

23 I further certify that the taking of
24 this hearing was pursuant to notice, and that there

1 were present at the taking of the hearing of the
2 aforementioned parties.

3 I further certify that I am not
4 counsel for nor in any way related to any of the
5 parties to this hearing, nor am I in any way
6 interested in the outcome thereof.

7 In testimony whereof I have hereunto
8 set my hand and affixed my notarial seal this
9 22nd day of May, A.D., 2003.

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11 
12 LORI ANN ASAUSKAS, CSR, RPR.
13 Notary Public, Cook County, IL
14 Illinois License No. 084-002890
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