

ILLINOIS POLLUTION CONTROL BOARD
November 6, 2003

IN THE MATTER OF:)
)
PROPOSED SITE SPECIFIC REGULATION) R04-11
APPLICABLE TO AMEREN ENERGY) (Site-Specific Rulemaking – Noise)
GENERATING COMPANY, ELGIN,)
AMENDING 35 Ill. ADM. CODE PART 901)

Proposed Rule. First Notice.

OPINION AND ORDER OF THE BOARD (by T.E. Johnson):

On October 28, 2003, Ameren Energy Generating Company (Ameren) filed a rulemaking proposal under Section 28 of the Environmental Protection Act (Act) (415 ILCS 5/28 (2002)), to change regulations governing noise emission limitations found in the Board's rules at 35 Ill. Adm. Code 901. Ameren filed a motion for expedited consideration concurrently with the proposal. To date, no response to the motion has been filed. In the petition, Ameren seeks site-specific noise emission limitations with respect to the operation of Ameren's electric generating facility in Elgin, Cook County.

By today's action the Board adopts the proposed amendments for the purpose of first notice under the Illinois Administrative Procedure Act (APA) (5 ILCS 100/1-1) without commenting on the merits of the proposal, and grants the motion for expedited consideration. The proposal will be published in the *Illinois Register* whereupon a 45-day public comment period will begin during which interested persons may file additional public comments with the Board.

BACKGROUND

Ameren owns a power generating facility in Elgin (facility) consisting of four simple cycle combustion turbines capable of generating up to 540 MW of electricity. Pet. at 1. The facility is located at 1559 Gifford Road, Elgin, Cook County. *Id.* The facility is described as a peaking facility due to its intended design to start up rapidly to generate power when critically needed. The facility became fully operational in November, 2002. *Id.*

Ameren asserts that the Board's noise regulations are not currently applicable because the land uses in the immediate area are primarily Class C – industrial, agricultural, mining and excavation. Pet. at 1. Ameren asserts that the facility is in compliance with the current applicable noise regulations at 35 Ill. Adm. Code Part 901. *Id.*

The land immediately to the west of the facility is vacant, and until very recently was located within unincorporated Cook County and zoned Industrial. Pet. at 2. On June 3, 2003, the Village of Bartlett annexed and rezoned this land for residential use at the request of Realen Homes, a residential development corporation (Realen Homes). *Id.* Ameren has concluded that

the facility will not be able to meet the Class A noise limitation at 35 Ill. Adm. Code 901.102, that heretofore were not applicable. *Id.* Accordingly, Ameren is seeking a site-specific rule that establishes noise emission limitations for the facility that are applicable to Class A and B receiving lands. *Id.*

MOTION FOR EXPEDITED CONSIDERATION

In its motion, Ameren re-asserts the facts asserted in the petition, and contends that Realen Homes intends to construct and sell single-family homes and town homes on the property immediately to the west of the facility. Mot. at 1. Ameren argues that due to the proposed change in land use, the property will become a Class A receiving land and that Ameren may not be able to consistently comply with the noise limits under certain operating conditions. *Id.*

Ameren asserts that it needs the proposed site specific noise limitations adopted as soon as possible to insure compliance with state law in the event the now vacant land is converted, as intended by Realen Homes, to residential use. Mot. at 2. Ameren requests that the Board proceed to first notice by adopting the language proposed in the petition only for the purposes of first notice. *Id.* Ameren notes that Ameren filed an electronic version of the petition, including the proposed language. *Id.* Ameren requests that the requisite public hearing be scheduled as soon as possible. Although not contained within the motion, Ameren also asks that the Board waive the signature requirement applicable to the site-specific rulemaking process. Pet. at 27.

DISCUSSION

The Board finds that the petition meets the content requirements of 35 Ill. Adm. Code 102.208 and 102.210 and is accepted for hearing. As previously stated, no response to the motion for expedited review has been filed. Generally, the Board will not rule on any motion before the expiration of the 14-day response period except in deadline driven proceedings. However, in cases that would result in undue delay or material prejudice, the Board has the discretion to address a motion prior to the response time lapsing. 35 Ill. Adm. Code 101.500(d). A review of the record indicates that undue delay and material prejudice would result if the motion were not addressed at this time. Accordingly, the Board will rule on the motion for expedited review.

Requests for expedited review are governed by Section 101.512 of the Board's rules, and must contain, *inter alia*, a complete statement of the facts and reasons for the request. *See* 35 Ill. Adm. Code 101.512. In acting on a motion for expedited review, the Board must consider all statutory requirements and whether or not material prejudice will result from the motion being granted or denied. 35 Ill. Adm. Code 101.512(b).

The Board grants the motion for expedited review. Material prejudice would result were the motion denied. The proposed rulemaking will be sent to first notice without a decision being reached on the merits of the proposal. In addition, the Board directs the hearing officer to expeditiously schedule a hearing in this matter. Details concerning the date, time and place of the hearing will be provided in a notice of hearing when finalized. The Board also grants the request to waive the signature requirement applicable to site specific rulemakings.

CONCLUSION

The Board today adopts the following first-notice order under the APA (5 ILCS 100/5-5 *et seq.* (2002)) without commenting on the merits of the proposal. The proposal will be published in the *Illinois Register* whereupon a 45-day comment period will begin. The Board asks that parties interested in commenting on this proposal address any written comments to John C. Knittle, the hearing officer assigned to this matter.

Copies of this opinion, the proposed rules, and any hearing officer order may be viewed and downloaded from the Board's Web site at <http://www.ipcb.state.il.us/>. Copies may also be requested in writing from the Clerk of the Illinois Pollution Control Board, James R. Thompson Center, 100 West Randolph, Suite 11-500, Chicago, Illinois 60601 or via telephone at 312.814.3461.

ORDER

The Board directs the Clerk to cause the filing of the following with the Secretary of State for first-notice publication in the *Illinois Register*.

TITLE 35: ENVIRONMENTAL PROTECTION
SUBTITLE H: NOISE
CHAPTER I: POLLUTION CONTROL BOARD

PART 901
SOUND EMISSION STANDARDS AND LIMITATIONS FOR PROPERTY LINE-NOISE-SOURCES

Section	
901.101	Classification of Land According to Use
901.102	Sound Emitted to Class A Land
901.103	Sound Emitted to Class B Land
901.104	Impulsive Sound
901.105	Impact Forging Operations
901.106	Prominent Discrete Tones
901.107	Exceptions
901.108	Compliance Dates for Part 901
901.109	Impulsive Sound from Explosive Blasting
901.110	Amforge Operational Level
901.111	Modern Drop Forge Operational Level
901.112	Wyman-Gordon Operational Level
901.113	Wagner Casting Site-Specific Operational Level
901.114	Moline Forge Operational Level
901.115	Cornell Forge Hampshire Division Site-Specific Operational Level
901.116	Forgings and Stampings, Inc. Operational Level
901.117	Rockford Drop Forge Company Operational Level

901.118	Atlas Forgings Division of Scot Forge Operational Level
901.119	Clifford-Jacobs Operational Level
901.120	C.S. Norcross Operational Level
901.121	Vaughan & Bushnell Operational Level
<u>901.122</u>	<u>Ameren Elgin Facility Site-Specific Noise Emission Limitations</u>
APPENDIX A	Old Rule Numbers Referenced
APPENDIX B	Standard Land Use Coding System

AUTHORITY: Implementing Section 25 and authorized by Section 27 of the Environmental Protection Act (Ill. Rev. Stat. 1985, ch. 111 1/2 pars. 1025 and 1027).

SOURCE: Originally filed as Part 2 of Chapter 8: Noise Pollution, effective August 10, 1973; amended at 2 Ill. Reg. 27, p. 223, effective June 26, 1978; amended at 5 Ill. Reg. 6371, effective June 1, 1981; amended at 5 Ill. Reg. 8533, effective August 10, 1981; amended at 6 Ill. Reg. 10960, effective September 1, 1982; codified at 7 Ill. Reg. 13646; amended at 7 Ill. Reg. 14519, effective October 17, 1983; amended in R83-35 at 8 Ill. Reg. 18893, effective September 25, 1984; amended in R83-33, 26, 29, 30 and R83-34 at 9 Ill. Reg. 1405, effective January 17, 1985; Section 901.105(f)(1), (2) and (3) recodified to Sections 901.110, 901.111 and 901.112 at 9 Ill. Reg. 7147; amended in R83-25, 31 and 32 at 9 Ill. Reg. 7149, effective May 7, 1985; amended in R83-7 at 11 Ill. Reg. 3136, effective January 28, 1987; amended in R04-11, at _____ Ill. Reg. _____, effective _____.

Section 901.122 Ameren Elgin Facility Site-Specific Noise Emission Limitations

The Combustion Turbine Power Generation Facility located at 1559 Gifford Road in Elgin, Illinois shall not cause or allow the emission of sound from any property-line-noise source located on that property which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within the receiving Class A or Class B land.

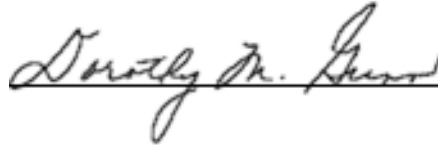
<u>Octave Band Center Frequency (Hertz)</u>	<u>Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A or Class B Land from Ameren Elgin Facility</u>	
	<u>Class A Land</u>	<u>Class B Land</u>
<u>31.5</u>	<u>80</u>	<u>80</u>
<u>63</u>	<u>74</u>	<u>79</u>
<u>125</u>	<u>69</u>	<u>74</u>
<u>250</u>	<u>64</u>	<u>69</u>
<u>500</u>	<u>58</u>	<u>63</u>
<u>1000</u>	<u>58</u>	<u>58</u>
<u>2000</u>	<u>58</u>	<u>58</u>
<u>4000</u>	<u>50</u>	<u>50</u>
<u>8000</u>	<u>40</u>	<u>45</u>

(Source: Amended at _____, effective _____)

IT IS SO ORDERED.

Board Member M.E. Tristano abstained.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 6, 2003, 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