

ILLINOIS POLLUTION CONTROL BOARD
September 28, 1989

ANTHONY KOCHANSKI,)
)
 Complainant,)
)
 v.) PCB 88-16
) (Enforcement)
 HINSDALE GOLF CLUB,)
)
 Respondent.)

ORDER OF THE BOARD (by J. Marlin):

On August 16, 1989, the complainant filed a Motion for Reconsideration requesting that the Board reconsider its July 13, 1989 decision in this matter. The respondent filed a response to this motion on August 22, 1989. The complainant's motion is granted to the extent that the Board will reconsider its July 13th decision.

The respondent's request to strike certain documents attached to complainant's motion and those portions of the motion which present information not previously admitted into the record of this proceeding is granted insofar as the Board has only considered information or arguments based on information already contained in the record. New information presented by the complainant was not considered. However, even if such information were considered, the outcome of today's Order would not change.

Essentially, the complainant bases its motion on two points. First, the complainant argues that the Board's evaluation of the evidence presented with respect to the alleged violation of Section 900.102 was contrary to the intent and purpose of the Environmental Protection Act (Act). The complainant also states that the Board's consideration of the factors enunciated by Section 33(c) of the Act was similarly improper.

The Board is not persuaded by the complainant's arguments that it has acted in contravention to the requirements, or intent, of the Act. Therefore, the Board will not reverse its determination concerning Section 900.102.

Secondly, the complainant contends that it was improper for the Board to conclude that Leq weighting must be used for data which is submitted for the purposes of showing a violation of the impulsive sound standards of Section 901.104. In particular, the complainant states that the imposition of an Leq weighting upon impulsive sound measurements is inconsistent with standards for sound measurements as adopted by the American National Standards Institute (ANSI).

The complainant's reasoning is as follows. The Board relied on Section 900.103(b) to apply the Leq requirement to the impulsive sound standards of 901.104. Section 900.103 also refers to certain ANSI standards. The complainant cites to ANSI standards for the proposition that an Leq weighting should not be used for impulsive sound measurements. Therefore, according to the complainant, Section 900.103 if applied to Section 901.104 is internally inconsistent.

If, as alleged, the Board's rules were internally inconsistent, an ambiguity in the meaning of the rules would exist. Any such ambiguity ought to be addressed, by way of interpretation, when those rules are applied to the facts of a particular case. However, that is not the situation at hand. The words of Section 900.103 are clear, unambiguous and reflect the Board's intention that Section 900.103 be applied to Section 901.104. See In re: General Motors Corporation Proposed Amendments to 35 Ill. Adm. Code 900.103 and 901.104, R83-7, 75 PCB 106, 122 (January 22, 1987).

Some of the ANSI standards cited by the complainant in his motion are not the same as those cited within the Board's regulation itself. The Board is not persuaded that the ANSI standards expressly referred to in the regulations directly conflict with the Leq requirement. Therefore, there is not an internal inconsistency in the Board's rules and hence, no ambiguity which needs a clarifying interpretation.

The Board is not persuaded by the complainant's presentation, and the Board will not reverse its determinations concerning alleged violations of Section 901.104.

In its Opinion in R83-7, the Board explained why it rejected a proposal which would have allowed procedures, other than Leq weighting as an alternative method for sound level measurements. The Board found, in part:

Leq is the generally accepted best measurement of community response at present. If future developments and/or circumstances change this situation, such a change would require a full rulemaking proceeding, since the change would be of general applicability.

(Id. at 123).

Consequently, it is clear that absent any regulatory change Section 900.103 dictates the Leq method of sound measurement for Section 901.104.

Moreover, if the complainant is arguing, through the presentation of these ANSI standards, that the requirements of

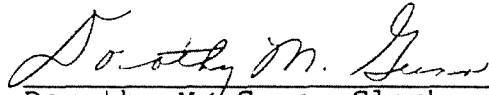
Section 900.103(b) are wrong or invalid, the outcome of this case does not change. The validity of a regulation may not be challenged in an enforcement proceeding. Section 29(b) of the Act. Also, the Board may only amend its regulations in a rulemaking proceeding which complies with the promulgation requirements of the Act. Obviously, the instant proceeding is an enforcement action, not a rulemaking.

In conclusion, the Board's decision of July 13, 1989 is re-affirmed.

IT IS SO ORDERED.

Board members J.D. Dumelle and M. Nardulli dissented.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above Order was adopted on the 28th day of September, 1989, by a vote of 4-2.



 Dorothy M. Gunn, Clerk
 Illinois Pollution Control Board