

ILLINOIS POLLUTION CONTROL BOARD
April 22, 1993

IN THE MATTER OF:)
)
PUBLIC AIRPORT NOISE) R77-4
REGULATIONS, 35 ILL. ADM.) (Rulemaking)
CODE PART 904

PROPOSED RULE. DISMISSAL ORDER.

ORDER OF THE BOARD (by J. C. Marlin):

This docket was initiated by a February, 1977 petition for adoption of airport noise regulations by then-Attorney General William Scott. Based on the record of 45 transcripts of public hearings, 265 exhibits, a 4-volume economic impact study and voluminous written public comments, in April, 1986, the Board crafted a revised proposal to regulate noise emissions from public airports that are owned or operated by the State or its political subdivisions.

As explained in detail in the Board's 125-page first notice opinion of April 10, 1986, the proposal was to establish a 65 Ldn noise standard for receiving Class A land, which covers most residential uses. The proposal phased the 65 Ldn standard in gradually over seven years. A variance procedure was provided for airports which cannot meet the standard. The variance procedure included developing a plan for reducing noise at the airports. In addition, the proposal required airport proprietors to gather information on aircraft operations to be used in noise models to map the area affected by an airport's noise. This proposal was the subject of three public hearings in September-October, 1986, as well as of hundreds of public comments.

The Board now reluctantly determines that this matter should be dismissed. The Board continues to conclude that it has some legal authority to regulate airport noise and subsequent court cases have confirmed that the State is not totally preempted from addressing the issue.¹ The Board also continues to believe that

¹ The complexity of the case law governing the field of airport noise regulation is discussed in detail in the Board's Opinion of April 10, 1986 at pp. 7-31. In 1988, in Bieneman et al. v. City of Chicago, et al., 864 F.2d 463 (7th Cir. 1988), the Seventh Circuit Court of Appeals reversed its prior position that the entire field of airport noise controls was federally preempted. The court specifically admitted error in its decision in Luedtke v. County of Milwaukee, 521 F.2d 387 (7th Cir. 1975). As the court itself noted, in Bryske v. City of Chicago, 148 Ill. App.3d 556, 499 N.E.2d 162 (2d Dist. 1986), the Second District Illinois Appellate Court found a state claim preempted on the authority of Luedtke. See the Board's Resolution RES 87-1,

the 65 Ldn noise limitation it proposed is the most appropriate noise standard of those considered, a standard which was not seriously challenged for new airports at the 1986 hearings.²

As a practical matter, however, there are sound reasons for terminating this proceeding. First, this record is stale and outdated. By way of example, no "third airport" proposal to relieve the burdens of O'Hare International Airport is even mentioned in this record, let alone the results of "noise footprint" mapping performed since 1986 by O'Hare and other airports pursuant to 14 CFR Part 150. Any attempt by the Board itself to divert technical and other resources to updating this record would jeopardize its ability to timely complete federally required rulemaking in other programs e.g., rules mandated by the Clean Air Act Amendments of 1990.

However, even providing the Board with additional resources to create rules, and the Illinois Environmental Protection Agency funds to enforce such rules,³ would not cure a fundamental problem recognized by the Board in its 1986 opinion⁴ and reiterated by commenters on that proposal;⁵ any meaningful attempt at resolution or amelioration of the airport noise problem must include uniform, comprehensive, statewide authority for land use planning and zoning in the vicinity of airports. This is beyond the power of the Board to effectively address. As the Office of the then-Governor James Thompson commented while the proposed rules were "a start" the problem essentially "remains in the hands of the General Assembly" Hearing Transcript of 10-10-86, p. 120.

(January 27, 1987), and its orders of February 19, 1987 and December 3, 1987 in docket R77-4, discussing the Bryski and Bieneman cases. The Board assumes the outcome would be different if the appellate court were to decide the case today.

² The acceptability of this standard is discussed in detail in the Board's Opinion of April 10, 1986 at pp. 66-76.

³ The Agency testified in 1986 that its noise pollution division has been disbanded for "a number of years" due to lack of funding, and that it felt unable to adequately enforce the Board's proposed rule. (Exhibit 230; Hearing Transcript of 9-10-86, p. 12).

⁴ See the Board's Opinion of April 10, 1986 at p. 15.

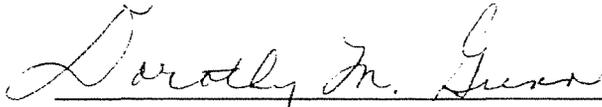
⁵ Commenters who shared this view included e.g., the Illinois Public Airports Association, Hearing Transcript of 9-16-86, p. 69, 405, 410, the Director of the University of Illinois' Institute of Aviation, Hearing Transcript of 10-20-86, p. 76-77, the Air Transport Association, Id. p. 208.

In dismissing this docket, the Board recognizes that legislative action cannot and should not be taken in haste when dealing with this complex matter. Rather, to the extent that the legislature may have deferred action due to the pendency of this proposal, the Board wishes to make clear that it lacks clear authority to adequately address all aspects of this problem. Leadership in this matter must come from the collective wisdom of state and local officials, as well as the federal regulatory agencies. The Board awaits direction as to the part that it can reasonably play in mitigating the airport noise problem.

Again, this proceeding is dismissed and the docket is closed.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, hereby certify that the above order was adopted on the 22nd day of April, 1993 by a vote of 6-0.



Dorothy M. Gunn, Clerk
Illinois Pollution Control Board