

ILLINOIS POLLUTION CONTROL BOARD  
July 22, 2004

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 )

Adopted Rule. Final 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. In the petition, Ameren seeks site-specific noise emission limitations with respect to the operation of the Ameren's electric generating facility in Elgin, Cook County. A hearing was held on January 22, 2004, at 100 West Randolph Street, Chicago, Cook County. The hearing was held, in part, on the economic impact of the proposal.

By today's action the Board adopts the proposed amendments. The rules adopted here are substantively unchanged from those adopted in the Board's first-notice and second-notice opinion and order. On June 3, 2004, the Board proposed the rulemaking for second notice. The Board directed that the rule be submitted to the Joint Committee on Administrative Rules (JCAR) for second-notice review. On July 13, 2004, JCAR issued a certification of no objection to the rule. The following opinion will explain the proposal background, summarize the procedural history, and discuss the economic reasonableness and technical feasibility of the rule.

**BACKGROUND**

Ameren owns a power generating facility in Elgin (EEC) consisting of four simple cycle combustion turbines capable of generating up to 540 MW of electricity. Pet. at 1. The EEC is located at 1559 Gifford Road, Elgin, Cook County. *Id.* The EEC is described as a peaking facility due to its intended design to start up rapidly to generate power when critically needed. The EEC 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 EEC 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 EEC 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 EEC 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 EEC that are applicable to Class A and B receiving lands. *Id.*

### **PROCEDURAL HISTORY**

On October 28, 2003, Ameren filed a petition for a site-specific rulemaking, accompanied by a motion for expedited consideration. On November 6, 2003, the Board opened regulatory docket R04-11 without commenting on the merits of the proposal. The Board also granted the motion for expedited review.

A hearing in this matter was held on January 22, 2004, at 100 West Randolph Street, Chicago, Cook County. Ameren and the Attorney General's Office (AGO) appeared and presented testimony at the hearing. No members of the public attended the hearing. Ameren and the AGO each filed public comments after the hearing. The January 22, 2004 hearing was held, in part, on the requested economic impact study of this rulemaking, in order to fulfill the requirements of Section 27(b) of the Act. 415 ILCS 5/27(b) (2002). Section 27(b) of the Act requires the Board to request the Illinois Department of Commerce and Economic Opportunity (DCEO) to conduct an economic impact study (EcIS) on certain proposed rules prior to adoption of those rules.

On May 6, 2004, the Board issued an order that granted Ameren's motion for leave to file a response and its motion to supplement the record. The Board also granted the AGO leave until May 14, 2004, to submit any additional information regarding the response and supplementation of the record. On May 19, 2004, the AGO filed a motion for leave to file *instanter* additional comments by its witness and employee Howard Chin.

In its second-notice opinion and order issued on June 3, 2004, the Board found that adoption of Ameren's proposed site-specific rule was warranted, and proposed the rulemaking for second-notice review by the JCAR. The Board incorporated the non-substantive first-notice changes suggested by JCAR into the proposal.

JCAR considered the second-notice proposal at its July 13, 2004 meeting and determined that no objection would be made. JCAR suggested two non-substantive changes, and issued a formal certification of no objection to the proposed rulemaking on July 13, 2004.

The second-notice period commenced on June 18, 2004 and ended on July 13, 2004, when the Board received notification from JCAR that no objection will be issued. *See* 5 ILCS 100/5-40(c) (2002); 35 Ill. Adm. Code 102.606. Other than the non-substantive comments suggested by JCAR, the Board received no comments during the second-notice period.

### **DISCUSSION**

At first notice, the Board adopted the proposed rule for first notice, but did not make any decisions regarding the proposal itself. At second notice, the Board found that Ameren presented information demonstrating that compliance with 35 Ill. Adm. Code Part 901 is not economically reasonable or technically feasible, and proceeded with the language for a site-specific rule as proposed by Ameren. To date, the Board has received no additional comments discussing economic reasonableness and technical feasibility of the proposed rule.

As discussed in the second-notice order, the Board requested that the DCEO conduct an economic impact study on the proposed rule in a letter dated November 19, 2003. The letter referenced an April 17, 2003 letter in which DCEO stated they did not have the funds to perform any EcIS and that no studies will be performed. DCEO has offered the April 17, 2003 letter as its formal response to all current and future Board requests for an EcIS. At the hearing, the Board made available copies of its November 19, 2003 letter and DCEO's April 17, 2003 response. The Board received no comments on the letters.

As noted, the Board did receive two non-substantive comments from JCAR. The Board has incorporated the suggested changes into the adopted proposal.

### CONCLUSION

Based on the record before it, the Board finds that adoption of Ameren's proposed site-specific rule is warranted.

### ORDER

The Board directs the Clerk to file the following adopted rule with the Secretary of State for publication in the *Illinois Register* for final notice and adoption in the *Illinois Administrative Code*.

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

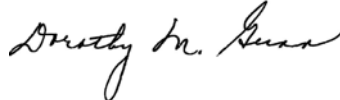
The Combustion Turbine Power Generation Facility located at 1559 Gifford Road in Elgin, Illinois shall not cause or allow the emission of sound from any property-line-noise source located on that property which exceeds any allowable octave band sound pressure level specified in the following table, when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

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 22, 2004, by a vote of 5-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board