

**Illinois Association of  
Aggregate Producers**

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STATE OF ILLINOIS  
Pollution Control Board

Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph, Suite 11-500  
Chicago, IL 60601

*PC#15*

Re: Proposed Amendments to 35 Ill. Adm. Code 901  
Proposed New 35 Ill. Adm. Code 910  
Illinois Register Volume 29, Issue 16 (April 15, 2005)  
Docket R03-009

Dear Ms. Gunn:

The following comments are submitted by the Illinois Association of Aggregate Producers (IAAP) regarding the above-referenced rulemaking. The Illinois Association of Aggregate Producers (IAAP) represents companies that produce crushed stone, sand, gravel, silica sand and agricultural lime -- materials used for building and maintaining roads, bridges, homes, hospitals, schools and commercial buildings, for manufacturing glass and as soil additives.

The IAAP's 115 producing members range in size from "mom and pop" operations that manufacture less than 100,000 tons of these products each year to companies that produce well over 20,000,000 tons annually. Illinois aggregate producers employ about 5,000 workers and support personnel at over 400 surface and underground mines and currently operate in 80 out of 102 Illinois counties. In 2004, this industry produced over 111 million tons of crushed stone, sand and gravel.

Since 1995, blasting operations at aggregate mines have been regulated by the Illinois Department of Natural Resources, Office of Mines and Minerals (IDNR) in accordance with the Section 6.5 of the Surface Mined-Land Conservation and Reclamation Act (215 ILCS 715/6.5). Since 1982, blasting operations at surface coal mining operations have been regulated by this agency in accordance with Section 3.13 of the Surface Coal Mining Land Conservation and Reclamation Act. (225 ILCS 720/3.13).

IDNR has promulgated a comprehensive set of regulations that subject these blasting operations to air blast or ground vibration monitoring, or both, as necessary to prevent property damage and protect public safety. IDNR regulations protect the general public from the impacts of air over pressure resulting from blasting operations at mines. Both the aggregate mining and coal mining blasting regulations are enforced by a highly trained, technologically proficient inspection staff using state-of-the-art monitoring equipment.

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As outlined in Section 25 of the Illinois Environmental Protection Act (415 ILCS 5/25), the Illinois Pollution Control Board (Board) . . . “**may adopt** regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person and prescribing requirements and standards for equipment and procedures for monitoring noise and the collection, reporting and retention of data resulting from such monitoring.” Pursuant to this grant of rulemaking authority, the Board has elected to regulate highly impulsive sound from blasting operations at mines. Although blasting operations at aggregate and coal mines are currently regulated by IDNR, the Board is seeking to maintain an essentially duplicative and overlapping regulatory program for these operations, pursuant to 35 Ill. Adm. Code 901.109.

Moreover, the Board has elected not to regulate other sources of noise even though these sources of noise are currently unregulated by the State. For example, the Board has elected not to regulate sound emitted from:

- Emergency warning devices and unregulated safety relief valves.
- Lawn care maintenance equipment and agricultural field machinery used during the day.
- Equipment being used for construction.
- Land used for automobile and motorcycle racing; and, any land used for contests, rallies, time trials, test runs or similar operations of any self-propelled device during the day.

Although the IAAP acknowledges the Board’s authority to decide what activities are subject to limits on noise emissions, this authority is not unlimited. Specifically, the IAAP contends that it is unreasonable to regulate sound generated by blasting operations, operations already subject to a comprehensive State regulatory program, while electing not to regulate other sources of noise. Therefore, the IAAP respectfully submits that Section 901.107 of the Board’s rules, the regulations identifying those activities not subject to Board noise regulations, be amended to state as follow:

h) Section 901.104 shall not apply to impulsive sound produced by explosive blasting activities conducted on any Class C land used as specified by LBCS Codes 8300 and 8500 ~~SLUCM codes 852 and 854, but such operations shall be governed by Section 901.109.~~

LBCS Code 8300 refers to coal mines; LBCS Code 8500 refers to aggregate mines. As outlined previously, blasting operations at coal and aggregate mines are currently regulated by IDNR’s comprehensive regulatory programs. Amending Section 901.107(h) as outlined above allows the Board to regulate non-mining blasting activities, pursuant to Section 901.109, and leaves the regulation of blasting operations at mines to IDNR. Given the flexibility of the Board’s rulemaking authority, pursuant to Section 25 of Illinois Environmental Protection Act, the Board should amend Section 901.107 in order to defer to IDNR’s comprehensive regulatory scheme.

In the event that the Board elects to continue regulating blasting operations associated with the Illinois mining industry, the IAAP submits that Section 901.109 must be amended to bring the Board's regulatory program in harmony with the program enforced by IDNR.

In response to the IAAP's previous comments in this rulemaking, the Board amended Section 901.109(b) to eliminate the references to 0.1 Hertz (Hz) instruments (laboratory-grade monitoring devices not used in the field) and 6.0 Hertz (Hz) instruments (monitoring devices no longer manufactured). (See Board's March 15, 2005, Opinion and Order). In addition, the Board amended Section 901.109(b) to bring the air blast levels at both Class A and Class B land to 133 dB, the limit employed nationwide to limit air over pressure from the detonation of explosives. Although these changes helped to bring Section 901.109 closer to the regulatory standards enforced by IDNR, a further review of the proposed rulemaking has revealed other changes that must be made in the Board's rules.

First, Section 901.109 (c) provides that allowable sound limits of blasting operations prior to 7:00 am must be reduced by 10 dB. Given that decibel limits are logarithmic, a 123 dB limit represents approximately only 30% of 133 dB. In order to address concerns about night blasting operations, Section 901.109 (c) should be amended to read as follow:

All blasting shall be conducted between sunrise and sunset except in emergency situations where unscheduled blasting is required to ensure operator or public safety.

This change reflects the fact that sunrise is often well before 7:00 am during the summer, the time that aggregate mining operations are most active, and establishes a ban on night blasting in the absence of a true emergency.

Second, the regulatory focus in Section 901.109 must be shifted from property lines to protected structures. Regulating noise levels at the property line is irrelevant to ensuring public health and safety. Thus, Section 901.109 should be amended by replacing all references to "receiving Class A or B land" with "protected structure" and then further amended by adding a definition of "protected structure" as follows:

"Protected Structure" means any dwelling, public building, school, church or commercial or institutional building. Protected structures do not include:

Structures owned by the operator; and

Structures subject to a waiver from airblast and ground vibration requirements granted to the operator.

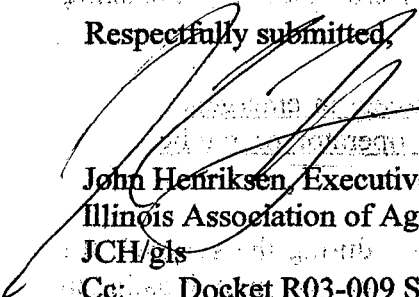
These changes will ensure that Section 901.109 focuses on protecting public health and safety.

Third, new Part 910 (35 Ill. Code 910) purports to establish measurement procedures for the enforcement of 35 Ill. Adm. Code 900 and 901, procedures that would include monitoring to enforce the limits specified 901.109. However, none of the methods described in Part 910 will monitor highly impulsive sound from blasting.

In essence, Part 910 must flatly state that monitoring undertaken to ensure compliance with Section 901.109 requires the use of a blasting seismograph with a low frequency response of 2.0 Hertz. Highly impulsive sound from blasting can only be accurately monitored by using this type of flat response, sound pressure level microphone and recording device. Absent the use of such device, any Board measurement procedures purporting to show compliance, or non-compliance, with the performance standards established by Section 901.109 are meaningless.

In addition to submitting these comments, the IAAP hereby requests a public hearing for the above-captioned rulemaking, pursuant to Section 5-40 of the Illinois Administrative Procedure Act (5 ILCS 100/5-40). Given the importance of the concerns outlined above, a public hearing is warranted for the above-captioned rulemaking.

Respectfully submitted,

  
John Henriksen, Executive Director  
Illinois Association of Aggregate Producers  
JCH/gls

Cc: Docket R03-009 Service List