

ILLINOIS POLLUTION CONTROL BOARD
November 19, 2015

IN THE MATTER OF:)
)
PROPOSAL OF CLIFFORD-JACOBS) R14-22
FORGING CO. FOR AN AMENDMENT TO) (Rulemaking - Noise)
THE SITE-SPECIFIC RULE AT 35 ILL.)
ADM. CODE 901.119)

Adopted Rule. Final Order.

OPINION AND ORDER OF THE BOARD (by D. Glosser):

Today the Board adopts amendments to the site-specific rule at 35 Ill. Adm. Code 901.119, which applies to operations at Clifford-Jacobs Forging Company's (Clifford-Jacobs) forging facility. The facility, located in unincorporated Champaign County, currently is allowed to operate up to all 14 of its forging hammers at any one time from 6:00 a.m. to 11:00 p.m., Monday through Saturday. The amendments allow the facility to operate up to 14 hammers at any one time 24 hours a day, Monday through Saturday, subject to a limit of 65 dB (A-weighted Leq) on sound emissions from 11 p.m. to 6 a.m.

Below, the Board first provides the procedural history of this rulemaking, followed by a summary of the Board's first- and second-notice decisions. These sections are abbreviated; the Board recommends that the reader interested in more detail on the procedural history or the Board's prior decisions consult those decisions, which can be viewed through the Clerk's Office On-Line (COOL) on the Board's website (www.ipcb.state.il.us). Following these sections, the Board discusses Joint Committee on Administrative Rule's (JCAR) proposed changes to the amended rule, and addresses the adopted rule's technical feasibility and economic reasonableness. Finally, the Board issues its order submitting the amended rule for publication in the *Illinois Register*.

PROCEDURAL HISTORY

This section focuses on developments following the Board's issuance of its first-notice opinion and order. The Board's first-notice opinion provides the procedural history up to that stage of the proceeding. See Proposal of Clifford-Jacobs Forging Co. for an Amendment to the Site-Specific Rule at 35 Ill. Adm. Code 901.119, R14-22 (Apr. 16, 2015).

On April 16, 2015, the Board adopted a first-notice opinion and order and invited public comment. Clifford-Jacobs, R14-22 (Apr. 16, 2015). The proposed amendments appeared in the *Illinois Register* on May 6, 2015. See 39 Ill. Reg. 6179. The Board set June 30, 2015—55 days following *Illinois Register* publication—as the deadline for the filing of public comments. The Board received comments from Wilber Heights resident Ms. Helen Pheris (PC 3), Clifford-Jacobs (PC 4), and Wilber Heights residents Mr. Mark Kates and Mrs. Linda Kates (PC 5), which was also signed by 24 other area residents (collectively, the residents).

The Board had previously received comments from Representative Chad Hays, 104th District (PC 1), and Clifford-Jacobs (PC 2).

On July 13, 2015, the hearing officer issued an order directing Clifford-Jacobs to file a comment responding to Ms. Pheris' and Mr. and Mrs. Kates' comments and addressing Board questions based on them on or before August 12, 2015. At Clifford-Jacobs' request, the hearing officer extended to September 14, 2015, the deadline for Clifford-Jacobs to file its responsive comment. On September 14, 2015, the Board received Clifford-Jacobs' responsive comment (PC 6).

On October 15, 2015, the Board adopted a second-notice opinion and order and submitted its proposed rule to review by JCAR. *See Clifford-Jacobs*, R14-22 (Oct. 15, 2015).

On November 16, 2015, outside the public comment period, the Board received a copy of a letter to JCAR from an attorney on behalf of Mr. and Mrs. Kates. The Board added the letter to the docket for this proceeding as PC 7.

JCAR issued a certificate of no objection at its meeting on November 17, 2015. The order following this opinion therefore directs the Clerk of the Board to provide for publication of the adopted rule in the *Illinois Register*.

SUMMARY OF PRIOR BOARD DECISIONS

First-Notice Opinion and Order

As noted above, Clifford-Jacobs requests that its site-specific operational level be amended to allow the facility to operate up to all 14 of its forging hammers—including the four currently not in service—up to 24 hours per day, 6 days a week. *See Clifford-Jacobs*, R14-22, slip op. at 1 (Apr. 16, 2015). The forging process generates impulsive sounds that are released through the open doors of Clifford-Jacobs' forging building and into the surrounding area, including the residential community of Wilber Heights. *Id.* at 5-6.

At first notice, the Board evaluated the applicable statutory factors (*see* 415 ILCS 5/27(a) (2014)). *See* 415 ILCS 5/27(a) (2014). The Board found that the character of the affected area, including surrounding zoning classifications, generally supported the requested relief, and that there is no technically and economically feasible means of controlling noise from the forging operation. *See Clifford-Jacobs*, R14-22, slip op. at 20-22 (Apr. 16, 2015). However, because Clifford-Jacobs' last attempts to install noise abatement devices (*i.e.*, exhaust silencers) dated to the 1980s, the Board proposed at first notice to add provisions to the site-specific rule requiring Clifford-Jacobs to: (1) investigate new sound abatement measures to mitigate sound emissions from the facility; and (2) file a report on the findings of this investigation with the Clerk of the Board every ten years after the effective date of the amended rule. *Id.* at 22.

The Board then examined the merits of Clifford-Jacobs' proposed amendments. Dr. Paul Schomer, a noise expert retained by Clifford-Jacobs, predicted that in the "the worst case"

operational scenario, forging operations would produce sound emissions of 65 dB (A-weighted Leq) at a specified control site—the southwest corner of the facility’s perimeter. *See Clifford-Jacobs*, R14-22, slip op. at 25 (Apr. 16, 2015). *Id.* At first notice, the Board found it appropriate to hold the facility to that worst case scenario as described by Dr. Schomer. *Id.* at 26. Therefore, at first notice, the Board imposed, as a new subsection (c) in Section 901.119, a condition limiting noise emissions from the facility to 65 dB (A-weighted Leq) from 11 p.m. to 6 a.m. *Id.* at 27.

At first notice, the Board also expressed concern that affected homeowners might not have adequate notice of Clifford-Jacobs’ proposal. Accordingly, the Board added potentially affected property owners to the notice list for this proceeding and explained that any person could comment or request a hearing on the proposed amended rule during the first-notice comment period. *See Clifford-Jacobs*, R14-22, slip op. at 23.

Second-Notice Opinion and Order

As noted above, the residents filed a first-notice comment, which, like Ms. Pheris’ comment, objected on various grounds to Clifford-Jacobs’ proposal. *See* PC 3, 5. At the Board’s direction, Clifford-Jacobs responded to those comments and answered Board questions based on them. *See* PCB 6. The Board’s second-notice opinion and order focused on these comments and also addressed whether the proposed amendments are technically feasible and economically reasonable.

The Board first concluded that the residents had the required notice of Clifford-Jacobs’ proposal. *See Clifford-Jacobs*, R14-22, slip op. at 17 (Oct. 15, 2015). The Board explained that the residents’ filing of a comment on the Board’s first-notice proposal demonstrated this and that the residents fully availed themselves of the opportunity for comment. *Id.*

The Board next addressed the residents’ allegations that Clifford-Jacobs’ forging operations generate a “boom” sound that in turn produces vibrations that shake the foundation of nearby homes. The Board found that this noise, and the residents’ anticipation that a nuisance would result if the adjusted standard was granted, were not a basis to deny the relief sought. *Id.* at 17-18. The Board was simply not in a position in this rulemaking proceeding to adjudicate the factual disputes raised by the residents’ concerns that overnight operations would unreasonably interfere with their sleep or other nighttime activities. The Board emphasized, however, that the residents are free to seek relief through an enforcement action if expanded forging operations do cause an unreasonable interference with such activities. *Id.* at 18-19. And the Board concluded that ground vibrations, which the Board’s regulations on noise from impact forging do not address, also were not an obstacle to the requested relief by Clifford-Jacobs. *Id.* at 19-20.

The Board next reviewed recent amendments to the Champaign County zoning ordinance, under which Wilber Heights is zoned for industrial use and structures used as residences are nonconforming uses. *See Clifford-Jacobs*, slip op. at 21 (Oct. 15, 2015). The Board noted that the amendments do allow owners of single family dwellings that are nonconforming uses to make limited modifications and to make repairs and replacements of any value. *Id.* But, the Board noted that under the amended ordinance, nonconforming uses like the

Wilber Heights residences remain nonconforming uses, and Champaign County’s declared policy continues to be not to encourage nonconforming uses to survive. *Id.*

In addition, the Board rejected the residents’ argument that Clifford-Jacobs has not shown the requisite “economic need” for the proposed amendments. Clifford-Jacobs, R14-22, slip op. at 22 (Oct. 15, 2015). The Board disagreed that a petitioner like Clifford-Jacobs that does not currently have but seeks to position itself for additional business is ineligible for a site-specific rule or an amendment to an existing one. *Id.* at 22-23.

Finally, the Board addressed the amendments’ technical feasibility and economic reasonableness. Based upon the record, the Board found that the amendments, including the decibel limit on overnight forging operations and the investigation and reporting requirements, are technically feasible and economically reasonable. *See Clifford-Jacobs*, R14-22, slip op. at 23-24 (Oct. 15, 2015).

Based on these findings, the Board at second notice maintained the substance of its first-notice proposal and made only technical changes suggested by JCAR. *See Clifford-Jacobs*, R14-22, slip op. at 24 (Oct. 15, 2015).

BOARD DISCUSSION

JCAR generally proposes stylistic, non-substantive amendments that do not merit discussion. JCAR also proposes to replace “10 years after the effective date of this amended Section” in subsection (e) of the amended rule with “10 years after December 15, 2015.” The Board accepts and includes JCAR’s proposals in the adopted amendments.

Technical Feasibility and Economic Reasonableness

As stated above, the Board at second notice found the amendments to Clifford-Jacobs’ site-specific rule, including the Board-imposed noise limit and investigation and reporting requirements, technically feasible and economically reasonable. Nothing has emerged since then calling these findings into question, and the Board maintains them in adopting the amended rule.

ORDER

The Board directs the Clerk to submit the following adopted amendments to the Secretary of State for publication in the *Illinois Register*. Additions are underlined, and deletions appear stricken.

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 | Highly - Impulsive Sound |
| 901.105 | Impact Forging Operations |
| 901.106 | Prominent Discrete Tones |
| 901.107 | Exceptions |
| 901.108 | Compliance Dates for Part 901 |
| 901.109 | Highly - 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 (Repealed) |
| 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 | Scot Forge Company – Franklin Park Division Operational Level |
| 901.119 | Clifford-Jacobs Operational Level |
| 901.120 | C.S. Norcross Operational Level |
| 901.121 | Vaughan & Bushnell Operational Level |
| 901.122 | Ameren Elgin Facility Site-Specific Noise Emission Limitations |

901.APPENDIX A Old Rule Numbers Referenced

901.APPENDIX B Land-Based Classification Standards and Corresponding 35 Ill. Adm. Code

901 Land Classes

AUTHORITY: Implementing Section 25 and authorized by Section 27 of the Environmental Protection Act [415 ILCS 5/25 and 27].

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 28 Ill. Reg. 11910, effective July 30, 2004; amended in R03-9 at 30 Ill. Reg. 5533, effective March 10, 2006; amended in R06-11 at 31 Ill. Reg. 1984, effective January 12, 2007; and amended in R14-22 at 39 Ill. Reg. _____, effective _____.

Section 901.119 Clifford-Jacobs Operational Level

Clifford-Jacobs Forging Company and future owners of the forging facility located at 2410 North Fifth Street~~North Market Street~~, Champaign, Illinois, ~~must shall~~ comply with the following site-specific operational level and sound limitations:

- a) Operate no more than fourteen hammers at any one time; ~~and~~
- b) Operate its forging hammers up to 24 hours per day, ~~only between the hours of 6:00 a.m. and 11:00 p.m.~~ Monday through Saturday;
- c) Must not cause or allow the emission of sound from the facility to exceed 65 dB (A-weighted Leq) at the far southwest corner of the facility's property line adjacent to Wallace Avenue between the hours of 11 p.m. to 6:00 a.m., Monday through Saturday;
- d) Must investigate new technologies, sound abatement measures, and possible operational changes to mitigate the sound emissions from its forging operations; and
- e) Must submit to the Board a report on the findings of the investigation pursuant to subsection (d) of this Section, once every ~~ten~~10 years after December 15, 2015 ~~the effective date of this amended Section~~. The report must be filed with the Clerk of the Board at the following address:

Office of the Clerk
Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

(Source: Amended at 39 Ill. Reg. _____, effective _____).

IT IS SO ORDERED.

I, Don A. Brown, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on November 19, 2015, by a vote of 5 to 0.

A handwritten signature in black ink that reads "Don A. Brown". The signature is written in a cursive style with a large, looped initial "D".

Don A. Brown, Assistant Clerk
Illinois Pollution Control Board