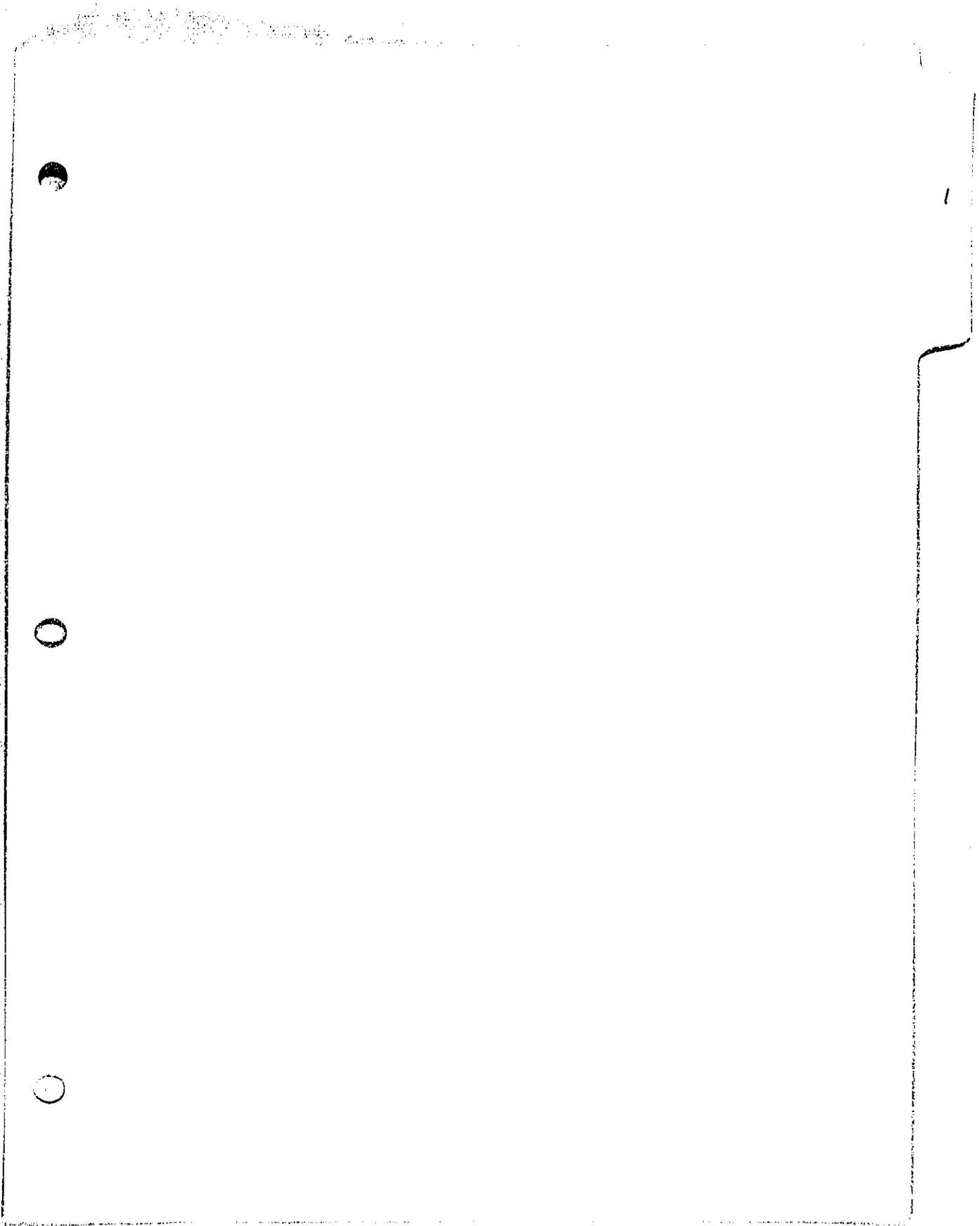


N-96-01
II-A-641

NOISE BRIEFING MATERIALS

1. Functions and Activities of noise Staff: OEA / OFA.
2. Note to Don Franklin from M & O relative to FTE.
3. New "Green Border" delegations for noise program from OEA to OAR maintaining agreed split in responsibility (ie: regulatory delegations to OAR and information and education to OEA).
4. Memo from Gus Edwards, dated Mar 87, to Don Clay outlining agreements on noise responsibilities from earlier meeting.
5. Memo from Ken Feith to Don Clay, dated Feb 87, outlining agreements on noise responsibilities.
6. Notes used by OEA in Feb 87 meeting with OAR (relative to OAR picking up responsibility for possible regulations).
7. Re-delegation of noise program from OAR to OEA dated Aug 1986.
8. Sample technical response to noise inquiry from Australia.



FUNCTIONS AND ACTIVITIES OF NOISE STAFF: OEA / OFA

- ° **Public Information and Education**
Develop and disseminate informational material on public health & welfare effects of noise and means of controlling noise.
- ° Respond to several hundred telephone and correspondence requests for information on Health and Welfare effects of noise and methods of controlling noise. Send out copies of relevant EPA printed materials
- ° Review Federal Agency Environmental Impact Statements(EISs)relative to environmental noise factors
- ° Respond to Congressional inquiries (usually constituent initiated) regarding environmental problems and noise regulations
- ° Assist EPA Regional offices in reviewing noise aspects of Federal Agency activities
- ° Coordinate with FAA with regard to aircraft and airport noise regulations under Section 7 of NCA
- ° Review all FAA noise regulations under NEPA, and Section 309, Section 611 of FAA Act and Section 7, NCA
- ° Respond to questions from the public and industry on existing noise regulations - clarify intent and procedures
- ° Work with State and local governments on approaches to environmental noise abatement, including planning and regulatory activity
- ° Work with public interest groups (such as American Speech, Language and Hearing Association, Better Hearing Institute, etc.) on noise related matters of common interest.
- ° Review compliance of all other Federal Agencies with relevant noise control requirements
- ° Work with professional and government groups interested in noise abatement and control (eg, National League of Cities, Acoustical Society of America, etc.)
- ° Participate in formulating U. S. position on aviation noise For ICAO through our membership on The Interagency Group on International Aviation (IGIA)
- ° Under Section 8 of NCA, encourage and assist trade associations in developing voluntary noise labeling

ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOTE TO DON FRANKLIN

FROM: Kristin McNamara

I talked with Ken Feith and he agreed that your FTE is not tied to the noise delegations, and that OAR will not pursue having an FTE transferred back from OEA.

Attached is a draft of the green border M&O will send out. I understand you and Ken are meeting on October 22 to discuss it. I will wait to hear from you after that meeting.

Please call me at 382-5000 if you have any questions.



Office of Administration

Management and Organization Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 3 1987

OFFICE OF
EXTERNAL AFFAIRS

MEMORANDUM

SUBJECT: Possible Noise Regulation

FROM: R. A. Edwards
Deputy Assistant Administrator
for External Affairs

TO: Don Clay
Deputy Assistant Administrator
for Air and Radiation

In keeping with our January 1987 agreement, relative to your office handling the development of any additional regulatory measures required under the Noise Control Act of 1972, as amended, I believe it is appropriate to pass on to you several items we have received that may possibly require the issuance of new Federal regulations in the noise arena.

First, a request was made to the Administrator on August 12, 1986, by the City of Seattle, for a "special local determination" under 40 CFR 201 to permit them to regulate a railyard located in the City of Seattle. Although this type regulation is permitted under the Noise Control Act, the agency has not issued any guidance in the Federal Register as to exactly how it is to be accomplished. Our contact with Seattle leads us to the conclusion that this regulatory problem now needs to be addressed. A copy of the request and the interim response from EPA is attached for your information.

Second, during the October 1986 term of the Supreme Court, the State of Delaware appealed a Third Circuit decision in a railyard case to the court. The case was accepted by the Supreme Court and subsequently they vacated the Third Circuit decision and remanded the case back to them for further consideration. During November 1986, the firm of Verner, Lippert, Barnhard, McPherson and Hand, representing Norfolk Southern Corporation, contacted the Solicitor General and indicated that if Delaware were given the right by the courts to regulate railyards by the issuance of state regulations, the stage would " . . . be set for a return to court to compel EPA to issue the missing [noise] regulations." This obviously will require a great deal of regulatory activity in the very near future. A copy of the appropriate documents related to this matter are attached for your information.

If I can provide you with additional information or assistance, please do not hesitate to contact me on 382-5053.

Attachments





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

27 FEB 1987

MEMORANDUM

OFFICE OF
AIR AND RADIATION

SUBJECT: Railroad Noise Litigation
FROM: K.E. Feith
TO: D.R. Clay

Following our meeting with OFA and OGC re. the railroad litigation, you requested that I prepare a paper that presents the probable course of events that the Agency might anticipate from the remand by the U.S. Supreme Court of the Third Circuits decision in the case involving the State of Delaware. Please find attached the subject paper that contains my assessment and recommendations; OGC has reviewed the paper, provided comment, which I have incorporated, and is in agreement.

I have had further discussions with Dick Sanderson of OFA concerning our relative roles with respect to noise matters and I believe we are in total understanding and agreement. In keeping with your commitment to OFA, we (OAR) will restrict our activities to noise rulemaking matters. OFA will continue to serve as the Agency point of contact for all other noise-related matters. They retain responsibility for responding to noise correspondence and the conduct of reviews, mandated by the Noise Control Act, of other Federal organizations noise related activities.

The availability of extramural funding for expert consultant services and other activities that may be required as an indirect result of the subject litigation, was discussed by me with Dick Sanderson and Georgia Callahan of the Comptroller's Office. OFA has no money now or budgeted for this activity. The Comptroller's position is that the anticipated required funds should be available from OAR's FY 87 budget in light of the increased funding it received for CRC's; I gave an initial estimate of between \$150,000 and 200,000 for near term rail activities, depending on the Agency's selected course(s) of action. Callahan did concede that if the "worse case" scenario were to play out, the front office would have to dig deep for the necessary funds.

The attached paper lays out several possible outcomes of the litigation and those contingent activities that the Agency (OAR) may want to consider, along with an estimate of their associated costs.

cc: P. Stolpman, OPAR
N. Ketcham-Colwill, OGC
G. EDWARDS, OFA
D. SANDERSON, OFA

CONTINGENT ACTIVITIES

Resources

The Agency should anticipate that the impending decision of the Third Circuit will necessitate the development of strategy options, to respond to the assured follow-on actions of the AAR and its member carriers, and by state and local governments.

Recognizing that the Agency does not intend to reestablish the noise program that was administratively abolished in 1982, and further the very limited inhouse technical expertise available to bring to bear on these matters in an efficient and timely manner, it is recommended that funds be set aside in FY87 for expert consultants/contracts to provide for quick-reaction services and support to meet the anticipated Agency requirements.

Recommendations:

1. Expert Consultant(s):

Immediately execute a purchase order(s) in the amount not-to-exceed \$20k (each), for one to two consultants who are intimate with the federal regulatory policy and technical issues involved.

This action will assure the Agency of the on-call availability of key skills to assist in laying out any required strategy/options, as well as to provide expert advice on the issues which will be presented to the Agency as a result of the unfolding litigation.

2. Contractor(s):

It can be reasonably anticipated that relatively substantial quick-reaction technical work will be required should regulatory action be mandated. It is projected that a minimum two-person year effort may be required in the remainder of FY87, or approximately \$150k. A significantly larger effort in FY88 could be called for, probably on the order of \$600-750k.

However, it would be premature to obligate funds to a contractor(s) in the absence of definitive tasks that can only be clearly identified following the decision of the Third Circuit, and the parties response thereto. Therefore, it is recommended that "no-year" funds be set aside in FY87 which can be obligated on relatively short notice, likely in early FY88.



Don Frankler

Notes for Meeting Relative to Noise
Regulatory Responsibility

- Residual noise functions transferred from OAR to OEA/OFA by Administrator on 18 August 1986.
- OEA/OFA understood that all ongoing functions would continue to be performed at a maintenance level.
- OFA continued the maintenance level operations throughout the summer and fall of 1986.
- The noise program was fully integrated into ongoing agency activities under NEPA and Section 309, so that long-term compliance activities associated with noise act requirements were conducted in conjunction with the EPA environmental review process.
- During the October 1986 term of the Supreme Court, the State of Delaware appealed a ruling by the 3rd Circuit Court involving their attempt to regulate the noise from a railyard. The Supreme Court remanded the case back to the 3rd Circuit for further consideration.
- During late fall of 1986 the City of Seattle petitioned the Administrator for "special local condition" status, to permit them to issue State regulations covering the noise made by a railyard already regulated by the Federal Government.
- Both the Delaware and Seattle cases will probably result in the requirement for further Federal regulation.
- The A/A OEA does not feel that OEA should become involved in issuing regulations.
- The responsibility for issuance of noise regulations under Sections 5, 6, 8, 10, 15, 17, 18 should be assumed by OAR.
- One way this responsibility can be formally agreed to is by a Memorandum of Understanding (MOU) between OEA and OAR.
- The EIS and non-regulatory functions of the noise program should remain with OFA and continue to be integrated into the NEPA, 309 review process. This effort has been an ongoing function and has been one of our most active areas.

- OFA should retain the Section 7, aircraft functions of the Act, since the person performing the non-regulatory noise functions for OFA was the former branch chief of the EPA Aviation Assistance Branch in the Noise Office and is a graduate of the Air University of the U.S. Air Force. His assistant is a reemployed retiree who has 15 years' experience in civil aviation noise work.
- A very large amount of agency EIS work involves noise effects from Air Force bases and civil aviation airports and the expertise in this area resides in OFA.
- If this division of labor can be worked out satisfactorily, OFA can commit the services of qualified staff members to any duly constituted noise regulatory work group.
- In this way, they can assist in any proposed regulatory development, while at the same time, continue their non-regulatory work as members of OFA.
- Greater detail of breakdown of responsibilities indicated in enclosed "Noise Discussion Paper."

NOISE DISCUSSION PAPER

I. Background

The EPA noise program has been integrated into ongoing agency activities under NEPA and Section 309, so that long-term compliance activities associated with noise act requirements can be conducted in conjunction with the EPA environmental review process. The objective of the environmental review process is to foster the goals of the NEPA process by ensuring that the EPA's environmental expertise, including noise, as expressed in its comments in Federal actions and other interagency liaison activity, is considered by agency decisionmakers.

II. Activities Requiring Mainly Contact with other Agencies or the Public

o Interagency Activities

Authority

1. Under our responsibilities pursuant to the National Environmental Policy Act (NEPA), and Section 309 of the Clean Air Act, as amended, we review on a continuing basis, Federal activities that can create noise impacts throughout the nation. This effort has been an ongoing function and has been one of the our most active areas.

- Section 4 NCA
- NEPA
- 309 of Air Act

2. EPA participates in the development of, and comments on, all FAA aircraft noise standards. We are also consulted by FAA on the granting of any exemptions from any FAA standards. We also consult on special noise situations. This is an area where we are also involved by virtue of our Section 309 and NEPA responsibilities as well as the Noise Control Act.

- Section 7 NCA
- 309 CAA

3. The Agency is a member of the Interagency Group on International Aviation (IGIA) which formulates the U.S. position on aviation noise for presentation to the International Civil Aviation Organization (ICAO) Committee on Aviation Environmental Protection.

- Section 7 NCA
- Section 611 FAA

◦ Interagency Activities

Authority

4. We work with State and local governments in the development of noise abatement plans. We recently completed assisting the State of Maryland with the noise portion of their State Environmental Plan.

- Section 14 NCA

5. Under the provisions of the Noise Control Act, each Federal agency is required to comply with Federal, State, and local noise control requirements. We are continuing our work to ensure such compliance on the part of Federal agencies by incorporation this into our Federal facilities compliance program. This will include such things as project reporting by agencies, inspection and monitoring of Federal facilities, and approval of appropriate exemptions of Federal facilities.

- Section 4 NCA

◦ Congressional and Public Information Activities:

1. We presently respond to a very large number of written and telephone requests from Congress, industry and the public for information or assistance. Additionally, EPA provides a large number of noise related publications to the public.

- Section 14 NCA

2. We work with public interest groups such as the American Speech and Hearing Association, Better Hearing Institute, Alexander Graham Bell Association, etc. in areas of common interest.

- Section 14 NCA

3. Along the same lines, we work with professional and governmental groups interested in noise abatement and control, such as the National Association of Counties, the National League of Cities, the National Governors Conference, etc. Also work with several major universities.

- Section 14 NCA

III. Activities Requiring Mainly Regulatory Oversight or Development

◦ Interagency Activities

Authority

1. We exercise regulatory oversight for 11 noise regulations in effect. When EPA was recently petitioned by industry for a change in the medium and heavy truck regulation, we responded to these petitions with changes. - Sections (NCA) 5, 6, 17, 15, 18
2. If a State or local government wishes to issue regulations in an area considered preempted by the Federal Government, we are responsible for deciding whether a "special local determination" can be issued permitting such regulation. - Sections (NCA) 17, 18
3. There are a wide number of regulatory-related responsibilities that are handled on a case-by-case basis as they occur.
 - Granting of model specific codes for labels on all imported motorcycles and mopeds covered by EPA regulations. - Section 8 NCA
 - Research, studies, demonstrations or exemptions for manufactured products distributed in commerce that do not meet specified criteria. - Section 10 NCA
 - Hearing Protector regulation oversight. - Section 8 NCA
 - Under the general provisions regulation for product noise labeling, we assist product manufacturers or trade associations in developing voluntary noise labeling programs. - Section 8 NCA

SUMMARY

Noise Control Act
(By Section)

Recommended Office within EPA
Responsible for Activities

Section

Section

1. Title
2. Policy
3. Definitions
4. Federal Programs
5. Criteria
6. Regulations
7. Aircraft
8. Labeling
9. Imports
10. Prohibited Acts
11. Enforcement
12. Citizen Suits
13. Records
14. Quiet Communities
15. Low-Noise Products
16. Witnesses
17. Railroads
18. Motor Carriers
19. Appropriations

OFA — OK
OAR ✓
OAR ✓
OFA — OK
OAR ✓
OFA — OK?
OAR ✓

OFA ?
OAR ✓

OAR ✓
OAR ✓

7

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

JUL 16 1986

MEMORANDUM

SUBJECT: Approval of Revision to "Noise Control Act" Delegations--DECISION MEMORANDUM

FROM: Howard M. Messner /s/ Howard M. Messner
Assistant Administrator

TO: The Administrator

THRU: AX
The Deputy Administrator

Attached for your approval are proposed revisions to twelve "Noise Control Act" Delegations contained in the Agency Delegations Manual.

These revisions would transfer the delegated authorities from the Assistant Administrator for Air and Radiation to the Assistant Administrator for External Affairs who currently has primary responsibility for monitoring the Agency's Noise program. (Since the "criminal enforcement" delegation only involves the Office of Enforcement and Compliance Monitoring and does not pertain to the Office of Air and Radiation/External Affairs responsibilities, it has not been revised.)

The revised delegations were circulated for review to the Assistant Administrator for External Affairs, the Assistant Administrator for Air and Radiation, the General Counsel, and the Office of the Comptroller. All have concurred.

I recommend you approve these delegations of authority by signing below.

Approved: Leo M. Thomas

Date: AUG 18 1986

Attachments
 MOD:PM-213:J.Gallahan:W/329:382-5000:7/2/86:DISK-JIM
 bcc: Jim Gallahan Howard Messner
 John Chamberlin (2) AX (3)
 Seymour Greenstone Deputy Administrator
 The Administrator

*Lead on #1
7*

CONCURRENCES					
SYMBOL	M+O	M+O	M+O	O A	
SURNAME	J. Gallahan	M. Chamberlin	F. Greenstone	D. Messner	
DATE	7-2-86	7/2/86	7/2	7/8	7/10/86



8

Mr. A. C. Stewart
State Pollution Control Commission
157 Liverpool Street
Sidney 2000
Australia

Dear Mr. Stewart:

We were pleased to learn from your letter (Reference 701350 RA/ACS:FS) of 18 August that the information we provided to you on 20 March was useful. We also found your report and the copy of your paper to be of considerable interest; and we concur that Level Weighted Population (LWP) is a more meaningful measure of noise impact than number of persons exposed above 65 dB Leq.

With respect to the noise test procedure stipulated in our regulation for medium and heavy trucks: it is indeed adapted from, and almost identical to, the SAE J366 Test procedure. The regulatory procedure incorporates a slight modification aimed at assuring that a vehicle equipped with automatic transmission generates maximum engine noise during the test. We believe this minor modification has no appreciable effect on the test results except to place the automatic transmission vehicles on the same footing as the manual transmission vehicles.

As regards the comparison between the current ADR 28A limit of 89 decibels and the US regulatory limit of 83 decibels we suggest a slightly different interpretation than that discussed in your letter. Details are provided in the attached Technical Memorandum.

The analysis presented in the Technical memorandum suggests that the ADR 23A noise limit of 89 dB corresponds to a noise limit of about 86 dB as measured by the slightly modified SAE J366b test procedure prescribed in the new truck noise regulation promulgated by the USEPA. This limit is 3 dB higher (less stringent) than the current US standard of 83 dB, and 6dB higher than the post-1987 US standard of 80 dB. Obviously, a lower noise limit would reduce the noise impact due to trucks.

-2-

I trust that you will find the information provided herein both interesting and useful. If you have any further questions or comments, we shall be glad to respond. Technical matters may be discussed with Fred Mintz of my staff. He can be reached at our mailing address here at EPA or by phone at (202) 382-5088.

Sincerely,

Richard E. Sanderson
Director
Office of Federal Activities

TECHNICAL MEMORANDUM

COMPARISON OF RESULTS OF TRUCK DRIVE-BY NOISE TEST:

AUSTRALIAN ADR 28A AND USEPA/SAE J366b PROCEDURES

Reference: Report No. MV-N-1, revised January 1984,
A Comparison of Methods for Measuring the Noise of Individual
Motor Vehicles, NSW State Pollution Control Commission (Australian)

The referenced report provides noise test results on truck drive-bys for several different procedures, including the ADR 28A and the SAE J366b procedures (the latter procedure is essentially identical to that prescribed in the U. S. noise regulation for new trucks promulgated by the Environmental Protection Agency (EPA)). This memo deals specifically with the statistical correlation (and difference) between the results of the ADR 28A and the SAE J366 procedures presented in the report.

Consider that the ADR 28A test results averaged 5.2 dB higher than the SAE J366b results, but that the former were observed at 7.5 meters, whereas the latter were at 15 meters. From the data in Table 3.1 of reference report, the mean difference between SAE J366 measurement at 7.5 and 15 meters was 7.4 dB, rather than the 6 dB one would expect theoretically with a point source. This indicates an excess attenuation of about 1.4 dB, presumably due to the presence of relatively soft ground surface between source and microphone.

If one subtracted this "Excess attenuation" from the 5.2 dB difference between ADR 28A (at 7.5) and the J366 measurements (at 15m) the difference between ADR 28A and J366 data theoretically would be 3.8 dB over a hard surface. Consequently the ADR 28A limit of 89 dB would correspond to a J366 limit of 85.2 dB.

Another way of looking at the data is to compare the ADR 28A data (at 7.5m) with the J366 data at 7.5m. We find a mean increment of 1.8 dB (with a of about 2 (!)) from the ADR 28A values (at 7.5m) to the J366 values at 7.5 meters. Subtracting the theoretical 6 dB increment (for a hard surface and point source) to adjust the 7.5 meter data to 15 meters, yields a calculated difference of 4.2 dB between

the ADR 28A data (at 7.5m) and the J366 data (at 15m). Consequently the ADR 28A limit of 89 dB would correspond to a J366 limit of 84.8 dB.

On average, the foregoing two approaches suggest that the ADR28A limit, adjusted to a 15 meter measuring distance, corresponds to 85 dB by the SAE J366 procedure, 2 dB less stringent than U.S.noise standard adopted by EPA - and 5 dB less stringent than the post-1987 U. S. standard of 80 dB.

If one accepts the Hillquist conclusion (reference 7.2 of the report) that the attenuation between 7.5 meters and 15 meters should be 5.1 dB rather than 6 dB, then the foregoing results would be modified as shown below:

1.) Adjusting the J366 data at 7.5 meters to 15 meters by 5.1 dB, and subtracting from this value the mean 1.8 dB difference between ADR 28A data (at 7.5m) and the J366 data (at 7.5m) we obtain a theoretical adjusted factor of 3.3 dB; this suggests that the ADR 28A limit (at 7.5m) of the 89 dB corresponds to a J366 limit (at 15m) of 85.7 dB.

2) We can conclude from the 7.4 dB mean difference between J366 test data at 7.5m and at 15m, that the excess attenuation averaged $(7.4 - 5.1 =) 2.3$ dB. Subtracting this figure from the observed 5.2 dB difference between ADR 28A results (at 7.5m) and the J366 results (at 15 m), we obtain a theoretical adjustment factor of (for a hard test surface) of $(5.2 - 2.3 =) 2.9$ dB. Consequently the theoretical J366 limit corresponding to the ADR 28A limit of 89 dB would be 86.1 dB.

3.) From 1) and 2) above, the average value of the ADR 28A limit corresponding to the J366 limit would be 85.9 dB; this is practically 3 dB higher (less stringent) than the current EPA standard of 83 dB, and 6 dB higher than the post-1987 U. S. standard of 80 dB.