

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MAREK KRUK )  
 )  
 ) Plaintiff, )  
 )  
 ) v. ) PCB 2020-010  
 )  
 ) NEW TRIER HIGH SCHOOL )  
 ) DISTRICT NO. 203, )  
 )  
 ) Defendants. )

**NOTICE OF ELECTRONIC FILING**

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the **Respondent's Motion to Extend Discovery and Respondent's Motion *In Limine*** on behalf of the Defendant, New Trier High School District No. 203, copies of which are herewith served upon you.

Respectfully Submitted,

NEW TRIER HIGH SCHOOL  
DISTRICT NO. 203,

By:                     /s/ Kenneth M. Florey                      
                    One of Its Attorneys

Kenneth M. Florey ([kflorey@robbins-schwartz.com](mailto:kflorey@robbins-schwartz.com))  
Katie DiPiero ([KDiPiero@robbins-schwartz.com](mailto:KDiPiero@robbins-schwartz.com))  
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Cook County No. 91219

**CERTIFICATE OF SERVICE**

I, **Kenneth M. Florey**, an attorney, certify that I caused a copy of this Notice of Filing and the documents referenced therein to be served upon the below named individuals by electronic mail, this 9<sup>th</sup> day of December, 2022.

By:                   /s/ Kenneth M. Florey                  

**Service List**

Marek Kruk  
124 Woodland Ave  
Winnetka, IL 60093  
[MarekKruk@hotmail.com](mailto:MarekKruk@hotmail.com)

Illinois Pollution Control Board  
Attn: Don Brown – Clerk of the Board  
100 W. Randolph Street, Suite 11-500  
Chicago, IL 60601  
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**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MAREK KRUK	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 2020-010
	)	
NEW TRIER HIGH SCHOOL	)	
DISTRICT NO. 203,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S MOTION TO EXTEND DISCOVERY**

NOW COMES, Respondent, New Trier High School District No. 203 (the “District”), by and through its attorneys, Robbins Schwartz, Nicholas, Lifton and Taylor, Ltd, for its Motion to Extend Discovery states as follows:

1. On August 4, 2022, Hearing Officer Bradley Halloran entered an order in the instant case requiring that responses to written interrogatories and document production are due to be filed and exchanged on or before December 16, 2022. See attached at Exhibit A.

2. The Parties timely filed and exchanged written interrogatories and document production on or before October 21, 2022, pursuant with the August 4<sup>th</sup> Order, but Respondent is still finalizing its responses and is still determining whether to take additional property-line-noise-source sound measurements. See Exhibit A.

3. The nature of the instant case requires strict adherence to intricate sound measurement procedures, and renders acquisition of admissible evidence pursuant to 35 Ill. Adm. Code 900.103(b) and 910.105 time consuming, costly, and complex. The District has simultaneously filed a Motion to Bar certain evidence, a ruling on which will partially determine whether additional noise testing is necessary.

4. An extension of time to file responses to written discovery is in the interest of justice and will not adversely affect the Parties in this matter.

WHEREFORE, the parties respectfully request that this Court enter an Order extending the close of fact written discovery to January 16, 2023.

Respectfully Submitted,

NEW TRIER HIGH SCHOOL  
DISTRICT NO. 203

By:           /s/ Kenneth M. Florey            
          One of its Attorneys

Dated: December 9, 2022

Kenneth M. Florey ([kflorey@robbins-schwartz.com](mailto:kflorey@robbins-schwartz.com))  
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Cook County No. 91219

# **Exhibit A**

ILLINOIS POLLUTION CONTROL BOARD

August 4, 2022

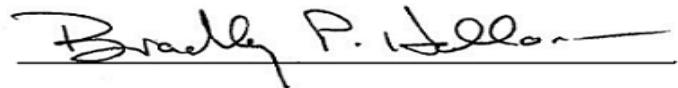
MAREK KRUK,	)	
	)	
Complainant,	)	
	)	
v.	)	
	)	PCB 20-10
NEW TRIER HIGH SCHOOL	)	(Citizens Enforcement - Noise)
	)	
Respondent.	)	

**HEARING OFFICER ORDER**

On August 4, 2022, all parties participated in a telephonic status conference with the hearing officer. The discussion centered on setting a discovery schedule in this matter. It was agreed that written interrogatories and document production are due to be filed and exchanged on or before October 21, 2022. Responses due to be filed and exchanged on or before December 16, 2022. The deposition schedule will be discussed at the next status conference.

The parties or their legal representatives are directed to participate in a telephonic status conference with the hearing officer on January 12, 2023, at 10:30 a.m. The telephonic status conference must be initiated by the complainant, including a call-in number, but each party is nonetheless responsible for its own appearance. At the status conference, the parties must be prepared to discuss the status of the above-captioned matter and their readiness for hearing.

IT IS SO ORDERED.



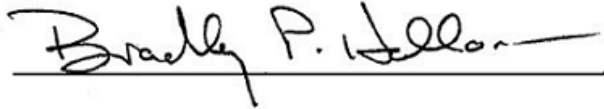
Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren St. Suite 630  
Chicago, Illinois 60605  
312.814.8917  
[Brad.Halloran@illinois.gov](mailto:Brad.Halloran@illinois.gov)

CERTIFICATE OF SERVICE

It is hereby certified that true copies of the foregoing order were e-mailed on August 4, 2022, to each of the persons on the service list below.

It is hereby certified that a true copy of the foregoing order was e-mailed to the following on August 4, 2022:

Don Brown  
Illinois Pollution Control Board  
60 E. Van Buren Street  
Suite 630  
Chicago, Illinois 60605



Bradley P. Halloran  
Hearing Officer  
Illinois Pollution Control Board  
60 E. Van Buren Street, Suite 630  
Chicago, Illinois 60601  
(312) 814-8917

@ Consents to electronic service

SERVICE LIST

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PCB 2020-010@  
Heather Walsh  
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Winnetka, IL 60093

PCB 2020-010@  
Cris Downey  
138 Woodland Avenue  
Winnetka, IL 60093



**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

MAREK KRUK	)	
	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 2020-010
	)	
NEW TRIER HIGH SCHOOL	)	
DISTRICT NO. 203,	)	
	)	
Respondent.	)	
	)	

**RESPONDENT’S MOTION IN LIMINE**

NOW COMES, Respondent, New Trier High School District No. 203 (the “District”), by and through its attorneys, Robbins Schwartz, Nicholas, Lifton and Taylor, Ltd, for its Motion *In Limine* states as follows:

**1. Motion to bar any and all expert reports, from the Complainant or Respondent, relying upon sound measurements which do not comply with Illinois Pollution Control Board sound measurement procedures.**

Marek Kruk first filed his Complaint with this Illinois Pollution Control Board (the “Board”) on August 23, 2019, alleging violations of the Board’s noise regulations at Section 901.102(a) and (b). See 35 Ill. Adm. Code 901.102(a), (b). As was affirmed in this case by this Board’s Opinion and Order rendered by the Honorable Judge Van Wie on April 7, 2022, the complainant in an enforcement action has the burden of proof. See Opinion and Order attached hereto as Exhibit A at p. 5; see also 415 ILCS 5/31(e) (2020). Therefore, in order for Kruk to prove this alleged violation of Section 901, “a *numeric* noise standard, sound measurements of the alleged property-line-noise-source are required and must be taken with ‘strict adherence to applicable measurement procedures.’” *Matt Gill v. CHS Inc. – Carrollton Farmers Elevator*, PCB

16-68, slip. op. at 4 (Jan. 21, 2016), quoting *Kasella v. TNT Logistics N. Am.*, PCB 06-1, slip op. at 2 (Sept. 1, 2005) (emphasis in original), quoting *Charter Hall Homeowner's Ass'n. v. Overland Transp. Sys.*, PCB 98-81, slip op. at 19 (Oct. 1, 1998); see also 35 Ill. Adm. Code 900.103(b), 910.105. Specifically, Judge Van Wie reiterated that “[s]ound measurements of the alleged property-line-noise-source must be taken with ‘strict adherence to applicable measurement procedures’ pursuant to Sections 900.103(b) and 910.105 of the Board’s rules. See Exhibit A at p. 10, citing *Charter Hall*, PCB 98-81, slip op. at 19; 35 Ill. Adm. Code 900.103(b), 910.105. Therefore, arguments or evidence in reliance on any sound measurements which were not conducted in adherence with the procedures set forth in Sections 900.103(b) and 910.105 should be barred, specifically including but not limited to the Shiner reports from August 15, 2018, July 15, 2019, and December 20, 2019, attached hereto respectively as Exhibits B, C, and D.

Respectfully Submitted,

NEW TRIER HIGH SCHOOL  
DISTRICT NO. 203

By:           /s/ Kenneth M. Florey            
One of its Attorneys

Dated: December 9, 2022

Kenneth M. Florey ([kflorey@robbins-schwartz.com](mailto:kflorey@robbins-schwartz.com))  
Katie DiPiero ([kdipiero@robbins-schwartz.com](mailto:kdipiero@robbins-schwartz.com))  
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Cook County No. 91219

# **Exhibit A**

ILLINOIS POLLUTION CONTROL BOARD

April 7, 2022

MAREK KRUK,	)	
	)	
Complainant,	)	
	)	
v.	)	PCB 20-10
	)	(Citizens Enforcement - Noise)
NEW TRIER HIGH SCHOOL DISTRICT	)	
NO. 203,	)	
	)	
Respondent.	)	

OPINION AND ORDER OF THE BOARD (by J. Van Wie)

On August 23, 2019, Marek Kruk (Kruk) filed a *pro se* citizens complaint against New Trier High School District No. 203 (New Trier or the District), located at 385 Winnetka Avenue in Winnetka, Cook County (New Trier Site). The complaint alleges that New Trier violated the Board's numeric noise regulations by emitting excessive sounds—from a dust collector used for its wood shop and other equipment—to Kruk's home located at 124 Woodland Avenue, Winnetka, Cook County.

On October 12, 2021, New Trier filed a motion for summary judgment.

Also on October 12, 2021, Kruk filed a one-page document seeking to amend the complaint by adding two complainants and specifying additional sources of noise emissions at the New Trier Site.

On February 16, 2022, Kruk filed a motion for leave to file a sur-reply and for oral argument.

In this opinion and order, the Board denies New Trier's motion for summary judgment as genuine issues of material fact remain concerning the noise emissions alleged in Kruk's complaint. Construing Kruk's sur-reply and oral argument motion as a request to establish a discovery schedule, the Board grants it. Lastly, the Board denies Kruk's motion to amend the complaint but grants Kruk—as well as his two neighbors if they seek to be added as co-complainants—until May 23, 2022, to file an amended complaint.

The opinion first provides the procedural history of this case. The Board then sets forth the uncontested facts of the case. Next, the Board provides the relevant legal background and the standards for considering motions for summary judgment. That is followed by the Board's analysis and order.

## **PROCEDURAL HISTORY**

### **Kruk's Complaint and New Trier's Answer**

On August 23, 2019, Kruk filed a *pro se* citizens complaint (Compl.) against New Trier. The complaint alleges that New Trier violated the Board's noise regulations at Section 901.102(a) and (b) (35 Ill. Adm. Code 901.102(a), (b)) by emitting excessive sounds from the dust collector and other equipment at the New Trier Site, which is located near a residential area. Compl. at ¶¶ 4, 5.

On October 18, 2019, New Trier filed its answer to the complaint, including three affirmative defenses asserting governmental immunity under the Local Governmental and Governmental Employees Tort Immunity Act, 745 ILCS 10/1 et seq. (Resp.) and "den[ying] any violations of any standards set by the Pollution Control Board, the Illinois Administrative Code, or any other Illinois or Federal law or regulation." Resp. at ¶ 5.

### **Kruk's Motion to Amend Complaint**

On October 12, 2021, Kruk filed a one-page document seeking to amend his complaint to add two additional complainants – Heather Walsh and Cristian "Cris" Downey, both residents of Winnetka. The document also lists additional equipment as sources of noise from the New Trier Site. On October 19, 2021, Kruk filed the affidavits of Heather Walsh and Cristian Downey with the Board.

On November 18, 2021, New Trier filed its response in opposition to Kruk's motion to amend the complaint. New Trier stated that the motion to amend is both materially deficient on its face and makes no claim upon which relief may be granted.

### **New Trier's Motion for Summary Judgement**

On October 12, 2021, New Trier filed a motion for summary judgment with supporting affidavits and exhibits (New Trier MSJ). New Trier argues that Kruk has not met his burden of proving a violation of Section 901.102(a) and (b), Kruk has not presented any evidence to support his allegations, and that New Trier's most recent testing indicates that the noise level of the dust collector was below Illinois numeric noise limits. New Trier MSJ at 5-6. One exhibit with several sub-exhibits was attached to New Trier's motion:

- 1) Affidavit of David Conway, Director of Physical Plant Services at New Trier, dated October 12, 2021 (Conway Affidavit), which included the following sub-exhibits:
  - a. Exhibit A – Affidavit of Brian Homans, previously employed by Shiner Acoustics, LLC (Shiner Acoustics) as a Managing Partner, dated September 14, 2021 (Homans Affidavit)
    - i. Exhibit 1 - a December 20, 2019 report from Shiner Acoustics (December 2019 report)

- b. Exhibit B - Affidavit of Cameron Baillie, Professional Engineer licensed in Alberta, Canada and employed by Shiner Acoustics, dated September 14, 2021 (Baillie Affidavit)
  - i. Exhibit 1 - a March 1, 2021 report from Shiner Acoustics (March 2021 report).

On December 9, 2021, Kruk filed his response to the New Trier's summary judgment motion (Kruk MSJ Response), arguing that "[i]t is the burden of the District to prove that the dust collector operates below allowable limits." The Kruk MSJ Response included nine exhibits:

- 1) August 15, 2018 report from Shiner Acoustics (Exhibit 1R);
- 2) December 20, 2019 report from Shiner Acoustics (Exhibit 2R);
- 3) June 24, 2020 report from Shiner Acoustics (Exhibit 3R);
- 4) Kruk's Motion to Amend Complaint in PCB 2020-10 (Exhibit 4R);
- 5) November 18, 2019 report from Shiner Acoustic (Exhibit 11R);
- 6) Video clip of trash compactors at New Trier (Exhibit V1)
- 7) Video clip of trash compactors at New Trier at 2:19 a.m. (Exhibit V2)
- 8) Video clip of back-up generator (Exhibit V3)
- 9) Video clip of ground-level grate basement fans at 5:20 a.m. (Exhibit V4)

On January 10, 2022, New Trier filed its reply in support of its motion for summary judgment (New Trier Reply), arguing that "it is Kruk's burden, as the Complainant alleging violation of a numeric noise standard, to prove by an accurate measurement of sound emissions pursuant to the procedures outlined in Section 910.105, that there has been a violation of noise limits." New Trier Reply at 4 (emphasis in original).

#### **Kruk's Motion for Leave to File Sur-reply and for Oral Argument**

Kruk filed this motion on February 16, 2022 (Kruk Sur-reply Request). New Trier did not file a response.

#### **UNCONTESTED FACTS**

In the Fall of 2017, the New Trier Site underwent a renovation including a newly built service dock. Compl. at ¶ 4; Resp. at ¶ 4. The service dock includes a dust collector used for the New Trier wood shop, which was installed and is operated by New Trier. Resp. at ¶ 4. The service dock also includes two trash compactors, an emergency generator, and a condenser/compressor. Compl. at ¶ 4; Resp. at ¶ 4. New Trier installed this equipment. Resp. at ¶ 4.

The dust collector emits a noise. . Resp. at ¶¶ 5, 6, 7.

Kruk resides at 124 Woodland Avenue in Winnetka. Comp. at ¶ 1; Resp. at ¶ 1; Conway Affidavit at ¶ 4. On behalf of New Trier, Shiner Acoustics took sound measurements at the west edge of the public sidewalk at the north property line of 124 Woodland Avenue on Friday, December 13, 2019, between 4:20 a.m. and 5:20 a.m. Homans Affidavit at ¶¶ 2, 3. And again, on behalf of New Trier, Shiner Acoustics took sound measurements on the public sidewalk at the northeast corner of the property line of 124 Woodland Avenue on Thursday, June 18, 2020, starting at approximately 4:00 p.m. Baillie Affidavit at ¶¶ 2, 3.

**LEGAL BACKGROUND**

**Noise Regulations**

Section 901.102(a) and (b) of the Board’s noise regulations, 35 Ill. Adm. Code 901.102(a) and (b), establish daytime and nighttime numeric sound limits:

a) Except as elsewhere provided in this Part, a person must not cause or allow the emission of sound during daytime hours<sup>1</sup> from any property-line noise source located on any Class A, B or C land to any receiving Class A<sup>2</sup> land that exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within the receiving Class A land. Sound pressure levels must be measured at least 25 feet from the property-line noise source.

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A Land from		
	Class C Land	Class B Land	Class A Land
31.5	75	72	72
63	74	71	71
125	69	65	65
250	64	57	57
500	58	51	51
1000	52	45	45
2000	47	39	39
4000	43	34	34
8000	40	32	32

<sup>1</sup> “Daytime hours” mean “7:00 am to 10:00 pm, local time.” 35 Ill. Adm. Code 900.101.

<sup>2</sup> The land use classification system for applying the Board’s Part 901 numeric sound standards is based on the Land-Based Classification Standards. 35 Ill. Adm. Code 901.101(a). Class A land includes residences. 35 Ill. Adm. Code 901.101(b), 901.Appendix B.

b) Except as provided elsewhere in this Part, person must not cause or allow the emission of sound during nighttime hours<sup>3</sup> from any property-line noise source located on any Class A, B or C land to any receiving Class A land that exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within the receiving Class A land. Sound pressure levels must be measured at least 25 feet from the property-line noise source.

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A Land from		
	Class C Land	Class B Land	Class A Land
31.5	69	63	63
63	67	61	61
125	62	55	55
250	54	47	47
500	47	40	40
1000	41	35	35
2000	36	30	30
4000	32	25	25
8000	32	25	25

Under the Board's noise regulations, "sound measurement procedures for 35 Ill. Adm. Code . . . 901 must conform to 35 Ill. Adm. Code 910" and 35 Ill. Adm. Code 900.103(b). 35 Ill. Adm. Code 900.103(a), (b), 910.

### **Enforcement**

The complainant in an enforcement action has the burden of proof. 415 ILCS 5/31(e) (2020). The Board "has held that with alleged violations of a *numeric* noise standard, sound measurements of the alleged property-line-noise-source are required and must be taken with 'strict adherence to applicable measurement procedures.'" Matt Gill v. CHS Inc. – Carrollton Farmers Elevator, PCB 16-68, slip. op. at 4 (Jan. 21, 2016), *quoting* Kasella v. TNT Logistics N. Am., PCB 06-1, slip op. at 2 (Sept. 1, 2005) (emphasis in original), *quoting* Charter Hall Homeowner's Ass'n. v. Overland Transp. Sys., PCB 98-81, slip op. at 19 (Oct. 1, 1998); *see also* 35 Ill. Adm. Code 900.103(b), 910.105. "It is therefore the complainant, or more typically its noise consultant, who must accurately measure sound emissions in a case of alleged numeric noise violations." Kasella, PCB 06-1, slip op. at 3; *see also* Brill v. Latoria, PCB 00-219, slip op. at 26-28 (June 6, 2002) (complainant may use respondent's sound measurements to prove numeric violation).

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<sup>3</sup> "Nighttime hours" mean "10:00 pm to 7:00 am, local time." 35 Ill. Adm. Code 900.101.



## Summary Judgment

### Standards

“The purpose of summary judgment is not to try a question of fact, but rather to determine whether a genuine question of material fact exists.” Illinois Environmental Protection Agency v. Illinois Pollution Control Bd., 386 Ill. App. 3d 375, 391 (3rd Dist. 2008). Summary judgment is appropriate when the pleadings, depositions, admissions, affidavits, and other items in the record show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Adames v. Sheahan, 233 Ill. 2d 276, 295 (2009); Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483 (1998); 35 Ill. Adm. Code 101.516(b). When determining whether a genuine issue of material fact exists, the record “must be construed strictly against the movant and liberally in favor of the opponent.” Adames, 233 Ill. 2d at 295-96; Purtill v. Hess, 111 Ill. 2d 229, 240 (1986). Summary judgment “is a drastic means of disposing of litigation, and therefore, should be granted only when the right of the moving party is clear and free from doubt.” Adames, 233 Ill. 2d at 296.

### Burdens of Proof and Production

In summary judgment proceedings, the burden of proof is “always on the moving party to establish that there are no genuine issues of material fact and that moving party is entitled to judgment as a matter of law.” Performance Food Group Co., LLC v. ARBA Care Center of Bloomington, LLC, 2017 IL App (3d) 160348, ¶ 18 (burden of “proof” or “persuasion”). “The burden of production, however, may shift during the course of the proceedings.” *Id.* “The burden of proof and the initial burden of production in a motion for summary judgment lie with the movant.” Pecora v. County of Cook, 323 Ill. App. 3d 917, 933 (1st Dist. 2001); Williams v. Covenant Medical Center, 316 Ill. App. 3d 682, 689 (4th Dist. 2000). A defendant (here, respondent) who moves for summary judgment “may meet its initial burden of production in at least two ways”:

(1) by affirmatively disproving the plaintiff’s case [here, complainant’s case] by introducing evidence that, if uncontroverted, would entitle the movant to judgment as a matter of law (traditional test) (*see* Purtill v. Hess, 111 Ill. 2d 229, 240-41, 489 N.E.2d 867, 871, 95 Ill. Dec. 305 (1986)); or (2) by establishing that the nonmovant lacks sufficient evidence to prove an essential element of the cause of action (Celotex test) (*see* Rice v. AAA Aerostar, Inc., 294 Ill. App. 3d 801, 805 ([4th Dist.] 1998), *citing* Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986); *see also* Fooden v. Board of Governors of State Colleges & Universities, 48 Ill. 2d 580, 587 (1971) (summary judgment is appropriate if what is contained in the pleadings and affidavits would have constituted all of the evidence before the court and the trial court would have directed a verdict on that evidence)). Williams, 316 Ill. App. 3d at 688-89.

If the respondent-movant fails to meet its initial burden of production under either of these tests, the nonmovant-complainant may rely solely upon the pleadings to create a question of material fact defeating the summary judgment motion. Kleiss Produce Farms v. Bozdech, 349 Ill. App. 3d 336, 350 (4th Dist. 2004), *citing* Williams, 316 Ill. App. 3d at 689. “Only if the movant satisfies its initial burden of production does the burden shift” to the non-movant complainant and then not to “prove his

case” but rather to “present some factual basis that would arguably entitle him to a judgment under the applicable law.” *Id.*

## **PLEADINGS**

### **Kruk’s Complaint**

Kruk’s one-count complaint alleges that noise levels coming from New Trier’s equipment and reaching his residence are above allowable limits found in Section 901.102(a) and (b) of the Board’s noise regulations, 35 Ill. Adm. Code 901.102(a) and (b). Compl. at ¶ 5. Kruk does not allege any other violations. Kruk alleges that “[t]he dust collector emits a loud buzzing noise that creates strong vibrations felt in and around [his] home” and “... disturbs [his] family even when the windows and doors are closed.” Compl. at ¶ 6. New Trier added the dust collector to a new west service dock in the Fall of 2017. Compl. at ¶ 4. The complaint also alleges noise from other equipment located at the New Trier Site, including: a backup generator, two trash compactors, a condenser/compressor, electrical cabinets, rooftop units, ventilation fans, and O<sup>2</sup> tank overpressure discharges, stating “[t]he additional equipment adds banging, humming, and whirring noises to the already incessant buzzing from the dust collector.” Compl. at ¶¶ 4, 6.

Kruk states that the noise has negatively affected his family by leaving him “mentally and physically exhausted,” caused his wife “headaches, anxiety and chest pains,” and that “[t]he noise causes frustration, aggravation, and stress for [his] entire family.” Compl. at ¶ 8. Furthermore, Kruk alleges that his “enjoyment of life and property has diminished” and “[t]he value of [his] home has significantly diminished as well.” Compl. at ¶ 8.

Kruk alleges in the complaint that noise emissions measured by New Trier through its noise consultant, Shiner Acoustics, demonstrate that New Trier was in violation of the Section 901.102(a) and (b) noise limits in May and July 2018.<sup>4</sup> Compl. at ¶ 4. Kruk attached a Shiner Acoustics report dated August 15, 2018 to the complaint.

In response to New Trier’s motion for summary judgement, Kruk cites the August 15, 2018 report as proof of the dust collector’s non-compliance with noise standards, and the December 20, 2019 report for continuing non-compliance. Kruk MSJ Response at ¶ 6; Exhibit 2R. Kruk also argues that the methodology that Shiner Acoustics used to collect data for the December 20, 2019 report was incorrect. Kruk MSJ Response at 5-9. Kruk concludes that “[i]t is the burden of [New Trier] to prove that the dust collector operates below allowable limits,” and requests the Board direct New Trier “to take whatever steps are necessary to bring the noise levels below the limits at relevant elevation and in front of all affected Woodland Avenue residents” and “be required to test noise levels periodically to ensure compliance moving forward.” Kruk MSJ Response at 9, 17.

### **New Trier’s Motion for Summary Judgment**

New Trier argues that Kruk has not met his burden of proof, Kruk has not presented any evidence to support his allegations, and New Trier’s most recent testing indicates that the noise level of the dust collector is below Illinois numeric noise limits. New Trier MSJ at ¶ 8, pg. 5-6.

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<sup>4</sup> The Shiner Acoustics report dated August 15, 2018.

Specifically, New Trier states that it hired Shiner Acoustics to conduct environmental noise measurements beginning in May 2018. New Trier MSJ at ¶ 2; Conway Affidavit at ¶ 5. According to New Trier, Shiner Acoustics provided reports on December 20, 2019 and March 1, 2021 to demonstrate New Trier's compliance with the Board's noise regulations. New Trier MSJ at ¶¶ 2, 3 and 8; Conway Affidavit at ¶¶ 5, 6 and 14; Homans Affidavit at ¶ 4; Baillie Affidavit at ¶¶ 2 and 4. The December 20, 2019 Shiner Acoustics report "explained that the rooftop ventilation equipment does not exceed the nighttime or daytime Illinois standards," ... "[h]owever, the operation of the dust collector could exceed daytime Illinois standards in the 2000 and 4000 hertz (Hz) bands." New Trier MSJ at ¶ 3; Conway Affidavit at ¶ 6; Homans Affidavit at ¶ 4. New Trier states that it had already treated the dust collector motor with a one and one-half inch thick insulated sheet metal enclosure. New Trier MSJ at ¶ at 4; Conway Affidavit at ¶ 7.

New Trier notes that after Kruk filed his complaint, "the District moved the compressor indoors and installed noise deflectors," and ... "continued to treat the dust collector with noise reduction barriers and completed additional testing to ensure compliance." New Trier MSJ at ¶ 7; Conway Affidavit at ¶¶ 11, 14, and 15. New Trier also states, "the District has expended approximately \$200,000 on noise reduction measures." New Trier MSJ at ¶ 10.

New Trier asserts that additional testing on March 16, 2020 and June 18, 2020 "indicated that the noise level of the dust collector was acceptable and below Illinois standard limits." New Trier MSJ at ¶ 8; Conway Affidavit at ¶¶ 12 and 14; Baillie Affidavit, Exhibit 1. New Trier further claims that it "remains in compliance with Illinois law since at least June 18, 2020." New Trier MSJ at ¶ 11; Conway Affidavit at ¶¶ 14 and 15. Additionally, New Trier asserts that "Kruk has made various generalized claims regarding noise, including unspecified claims regarding the backup generator and trash compactors, but has presented no evidence in support of any of these allegations." New Trier MSJ at pg. 6.

However, New Trier notes that it is Kruk's burden "to prove, by an accurate measurement of sound emissions pursuant to the procedures outlined in Section 910.105, that there has been a violation of noise limits." New Trier Reply at 2 (emphasis in original). So, New Trier concludes "[w]ith no evidence of a current sound violation after the School District's mitigation efforts, the Complaint must fail; there is no question of material fact because the Complainant has presented no evidence compliant with the requirements of 415 ILCS 5/31 or 35 Ill. Adm. Code 910.105." New Trier Reply at 5. Additionally, New Trier states that Kruk's requests for "testing in front of 'all affected Woodland Avenue residents' and that the School District 'be required to test noise levels periodically to ensure compliance' ... would improperly shift the burden to the School District, requiring significant efforts to continually prove that it is not violating a law which it has not been shown to be violating." New Trier Reply at 5.

## **DISCUSSION**

### **New Trier's Motion for Summary Judgment**

To address this motion, the Board must determine whether there is a genuine issue of material fact, and if not, whether New Trier is entitled to judgment as a matter of law. Kruk asserts that the facts presented by the parties demonstrate non-compliance with the noise standards in Section 901.102(a) and (b). Kruk also argues that the burden is on New Trier to prove that its equipment complies with these noise standards. Kruk argues that the December 13, 2019 test did not use the correct protocol and so did not prove compliance. Kruk MSJ Resp. at 9.

New Trier argues that Kruk has the burden of proof, and that Kruk has not presented any accurate measurement of sound emissions to demonstrate a current violation of the Section 901.102(a) and (b) noise standards. New Trier asserts that, without evidence of a current violation, there is no issue of material fact and Kruk's complaint fails as a matter of law. Further, New Trier states that its most current noise reports do not show any potential violation of the Section 901.102(a) and (b) standards.

### **Burden of Proof and Initial Burden of Production at Summary Judgement**

While Kruk has the ultimate burden of proving the alleged violations of Section 901.102(a) and (b) in this enforcement proceeding, New Trier, as the movant, has the burden of proof and initial burden of production at summary judgment. *See Williams*, 316 Ill. App. 3d at 689. As discussed above, New Trier may meet its initial burden of production: (1) by affirmatively disproving Kruk's case by introducing evidence that, if uncontroverted, would entitle New Trier to judgment as a matter of law under the traditional test, or (2) by establishing that Kruk lacks sufficient evidence to prove an essential element of the cause of action under the Celotex test. *See Williams*, 316 Ill. App. 3d at 688-89. New Trier's motion appears to make arguments that could fit into both tests. So, each is addressed below.

**Traditional Test.** If the respondent-movant elects to affirmatively show that some element of the complainant-nonmovant's case must be resolved in its favor, respondent is "required to prove something it would not be required to prove at trial; at [hearing] the burden would be on [complainant] to prove the element, not on [respondent] to disprove it." *Hutchcraft v. Independent Mechanical Industries, Inc.*, 312 Ill. App. 3d 351, 355 (XX Dist. 2000).

New Trier argues that "[t]he rooftop ventilation equipment components were never in violation of Illinois noise limits and [New Trier's] noise mitigation efforts with the dust collector have resulted in sound levels that are below the limits set by section 901.102." New Trier MSJ at 3. In support of this, New Trier attached affidavits and two reports by Shriner Acoustics dated December 20, 2019 and March 1, 2021.<sup>5</sup> New Trier MSJ, Conway Affidavit, December 2019 report, Baillie Affidavit, March 2021 report.

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<sup>5</sup> Several reports dated August 15, 2018, November 18, 2019, December 20, 2019, June 24, 2020, and March 1, 2021 have been submitted with the pleadings.

The December 2019 report states that sound levels from the dust collector exceeded the Board's daytime limits in Section 901.102(a) at octave band frequencies of 2000 Hz and 4000 Hz even after correction for ambient sound. Conway Aff. at ¶4. The March 2021 report, which addresses noise emissions testing performed on June 18, 2020, evaluates the sound levels emanating from the same equipment assessed in the December 2019 report, but after the implementation of sound mitigation measures by New Trier. March 2021 report at 1. The report indicates that the noise level in all nine octave bands from equipment operating during daytime hours was below the Board's daytime standards under Section 901.102(a) before and after correction for the ambient sound and concludes that the "[p]roperty line sound levels complied with the Illinois daytime limits in all frequency bands." *Id.* at 2., 35 Ill. Adm. Code 901.102(a). Kruk alleges that the measurements described in the March 2021 report were incorrectly conducted. Kruk Resp. at 4-5, 8.

Sound measurements of the alleged property-line-noise-source must be taken with "strict adherence to applicable measurement procedures" pursuant to Sections 900.103(b) and 910.105 of the Board's rules. Charter Hall, PCB 98-81, slip op. at 19; 35 Ill. Adm. Code 900.103(b), 910.105. New Trier acknowledges that the procedures outlined in Section 910.105 must be followed to prove a violation of the Illinois noise limits. New Trier MSJ Rep. at 2. These requirements, however, also apply to New Trier's claims of compliance in its motion. 35 Ill. Adm. Code 910.100 (Part 910 provides the required specifications and techniques "to determine whether a noise source is compliant").

Neither the Shiner Acoustics' reports nor the corresponding affidavits of Homans or Baillie represent that Shiner Acoustics' sound measurements were conducted in strict adherence to Section 900.103(b) or 910.105. Nor do these materials describe the specifications and techniques used in sufficient detail for the Board to find that Shiner Acoustics met all the required sound measurement procedures. Moreover, the December 2019 report states that the microphone used to measure sound was 15 feet above ground level, but Board regulations require that the microphone be on top of tripod "extended to a height between 3 feet 8 inches (1.12 m) and 4 feet 10 inches (1.47 m) above ground." 35 Ill. Adm. Code 910.105(b)(1)-(2). Further, it is unclear whether Shiner Acoustics measured for all the noise sources alleged in Kruk's complaint. Therefore, New Trier has not met its burden of production under the traditional test.

**Celotex Test.** If the respondent-movant elects to establish that the complainant-nonmovant lacks sufficient evidence to prove an essential element of the cause of action, the movant does not meet its initial burden of production by "merely asserting that the [complainant] lacks evidence." Kleiss, 349 Ill. App. 3d at 350. Rather, the movant must show that the nonmovant cannot acquire sufficient evidence to make its case. Pecora, 323 Ill. App. 3d at 934. Accordingly, summary judgment should be granted on a Celotex-type motion "only when the record indicates that a [complainant] has had extensive opportunities to establish her case but has failed in any way to demonstrate that she could [do so]." Williams, 316 Ill. App. 3d at 694.

New Trier argues that "Kruk alleged that [New Trier] was in violation of Sections 901.102(a) and (b) but cannot meet his burden to prove the alleged violation of the noise regulations." New Trier MSJ at 3. New Trier further argues that Kruk "has provided no measurements of sound emissions whatsoever and has therefore failed to meet this burden" and his allegations regarding

sound levels at different locations are “unsupported by any facts in the record.” New Trier MSJ Rep. at 2-3.

New Trier cannot meet its burden of production under the Celotex test by merely asserting that Kruk lacks evidence. *See Kleiss*, 349 Ill. App. 3d at 350. Rather, the movant must show that the nonmovant cannot acquire sufficient evidence to make its case. *See Pecora*, 323 Ill. App. 3d at 934-35. “A Celotex-type motion is appropriate only when the nonmovant has had an adequate opportunity to conduct discovery.” *Willett v. Cessna Aircraft*, 366 Ill. App. 3d 360, 369 (1st Dist. 2006). No formal discovery has been conducted in this case. Further, Kruk has outstanding requests that New Trier disclose all sound measurements performed for it, as well as “all procedures and measurements of all equipment tested (including rooftop units/cafeteria fans).” Kruk Sur-Reply Request at 1. And as recently as June 2021, New Trier reported, during a telephonic status conference with the hearing officer and Kruk, that New Trier’s “noise consultant is still attempting to alleviate some of the base sound around the site.” PCB 20-10 Hearing Officer Order at 1 (June 4, 2021). Given the stage of the case, it is premature to find that Kruk cannot acquire sufficient evidence to make his case. Therefore, New Trier has not met its burden of production under the Celotex test.

### **Ruling on New Trier’s Motion**

To prove a violation of Section 901.102(a) or (b), Kruk must provide evidence of a numeric noise exceedance through measurement procedures that strictly adhere to the applicable requirements of Section 900.103 and Part 910, whether Kruk uses sound measurements taken by a noise consultant on his behalf or New Trier’s behalf. At the summary judgment stage, however, New Trier has not met its burden of production under either the traditional or Celotex test. Therefore, the burden of production does not shift to Kruk to present some factual basis that would arguably entitle him to judgment under the applicable law. Instead, Kruk may rely upon the pleadings to create a question of material fact. Construing the record “strictly against the movant and liberally in favor of the opponent,” the Board finds that genuine issues of material fact preclude summary judgment. *See Adames*, 233 Ill. 2d at 295-96. Accordingly, the Board denies New Trier’s motion for summary judgment.

### **Kruk’s Motion for Leave to File Sur-reply and for Oral Argument**

Nothing in Kruk’s motion identifies a novel legal question warranting oral argument. He also seeks to present facts to the Board, but that is not permissible through oral argument. *See* 35 Ill. Adm. Code 101.700(a), (b). And, as noted above, by sur-reply, Kruk asks that New Trier disclose additional information about sound measurements performed.

Despite the terminology (“oral argument” and “sur-reply”) used by Kruk, who is not an attorney, the substance of Kruk’s motion consists of a request for information from New Trier and an opportunity to be heard. The Board construes this motion as a request for discovery before proceeding to hearing. So construed, the Board grants the motion and directs the hearing officer to require the parties to participate in a discovery conference. *See* 35 Ill. Adm. Code 101.616.

### **Kruk’s Motion to Amend Complaint**

Kruk's motion to amend his complaint seeks to add Heather Walsh and Cristian Downey as co-complainants in this proceeding. Any individual may file a complaint with the Board *pro se*—that is, representing represent himself or herself as complainant—regardless of whether he or she is a licensed attorney. 35 Ill. Adm. Code 101.400(a)(1)-(2). However, an individual who is not a licensed attorney is prohibited from representing another person in an adjudicatory proceeding before the Board, like this enforcement action. *Id.* Kruk is not an attorney but the motion to amend purports to be filed by him on behalf of his two neighbors. For this reason, the Board denies Kruk's motion to amend the complaint.

However, the Board may exercise its discretion to allow amendment and does so when it “furthers the ends of justice.” People v. Town of Cortland, PCB 11-67, slip op. at 7 (Nov. 3, 2011). Allegedly, Walsh and Downey live closer to the noise sources than does Kruk. If Walsh and Downey wish to be added as co-complainants in this proceeding and neither is a licensed attorney, then either all three neighbors will have to sign an amended complaint and represent himself or herself, or the neighbors will need to arrange for a licensed attorney to represent them and file an amended complaint on their behalf, along with an appearance. Of course, one or more of the neighbors may choose to retain legal counsel while one or more of them proceeds *pro se*. The Board grants the neighbors permission to file an amended complaint by May 23, 2022, which is the first business day following the 45th day after the date of this order.

Kruk's motion to amend also seeks to allege additional noise sources and require New Trier to take more sound measurements. Any amended complaint may include such allegations and requested relief. But to be clear, the Board lacks authority to require that New Trier conduct additional sound measurements absent a finding of violation.

### **CONCLUSION**

The Board finds that New Trier has failed to meet its burden to obtain judgment as a matter of law and therefore denies New Trier's motion for summary judgment. The Board construes Kruk's motion for leave to file a sur-reply and for oral argument as a motion for discovery and, so construed, grants it. Finally, the Board denies Kruk's motion to amend the complaint but grants Kruk, Walsh, and Downey until May 23, 2022, to file an amended complaint.

This opinion constitutes the Board's findings of fact and conclusion of law.


### **ORDER**

1. The Board denies New Trier's motion for summary judgment.
2. The Board construes Marek Kruk's motion for leave to file a sur-reply and for oral argument as a motion to establish a discovery schedule. So construed, the Board grants Marek Kruk's motion.
3. Consistent with paragraph 2 of this order, the Board directs the hearing officer to require the parties to participate in a discovery conference.

4. The Board denies Marek Kruk's motion to amend the complaint, but grants Marek Kruk, Heather Walsh, and Cristian Downey until May 23, 2022, to file an amended complaint.

IT IS SO ORDERED.

I, Don A. Brown, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on April 7, 2022, by a vote of 5-0.

A handwritten signature in cursive script that reads "Don A. Brown". The signature is written in black ink and is positioned above a horizontal line.

Don A. Brown, Clerk  
Illinois Pollution Control Board



# **Exhibit B**

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New Trier High School  
385 Winnetka Avenue  
Winnetka, IL 60093

August 15, 2018

Attn: Mr. Steve Linke

Re: Measurement of Environmental Noise  
New Building Rooftop Mechanical Equipment and Dock Dust Collector

Dear Steve:

We conducted environmental noise measurements on the early mornings of Thursday, May 31 and July 25, 2018. The purpose of these measurements was to quantify sound levels due to operation of mechanical equipment located on the roof and loading dock of the new building.

A new building was constructed on Winnetka Avenue that replaced the Music/Performing Arts Building, Cafeteria and Tech Arts Building. Demolition of the previous buildings started in June 2015 and the new building was completed in late 2017. Mechanical equipment installed on the roof of the four story building provides building ventilation and exhaust for kitchen, science, art, tech and other services. Additionally, dust collection equipment located in the loading dock area is used for a few hours each day.

Complaints have been received from a resident along Woodland Avenue regarding excessive noise. Winnetka addresses noise from mechanical equipment in the village code in section 15.44.050 (Freestanding Heating or Cooling Devices) and refers to the standards administered by the Pollution Control Board as set forth in the Illinois Administrative Code, Title 35, Subtitle H, Chapter I, Sections 901.102(a) and (b).

### **Acoustical Criteria**

For commercial and residential land uses, Illinois permits the equivalent of 55 dBA during the day (7:00 a.m. to 10:00 p.m.) and 44 dBA at night (10:00 p.m. to 7:00 a.m.) The regulations apply at the residential property line, require readings energy-averaged over a one hour time period and call for sound level readings in each of nine octave (frequency) bands. The ambient (or background) sound level must be established, through measurement at the site. In the case where the Illinois limits are exceeded by the ambient environment, the limits do not have to be met.

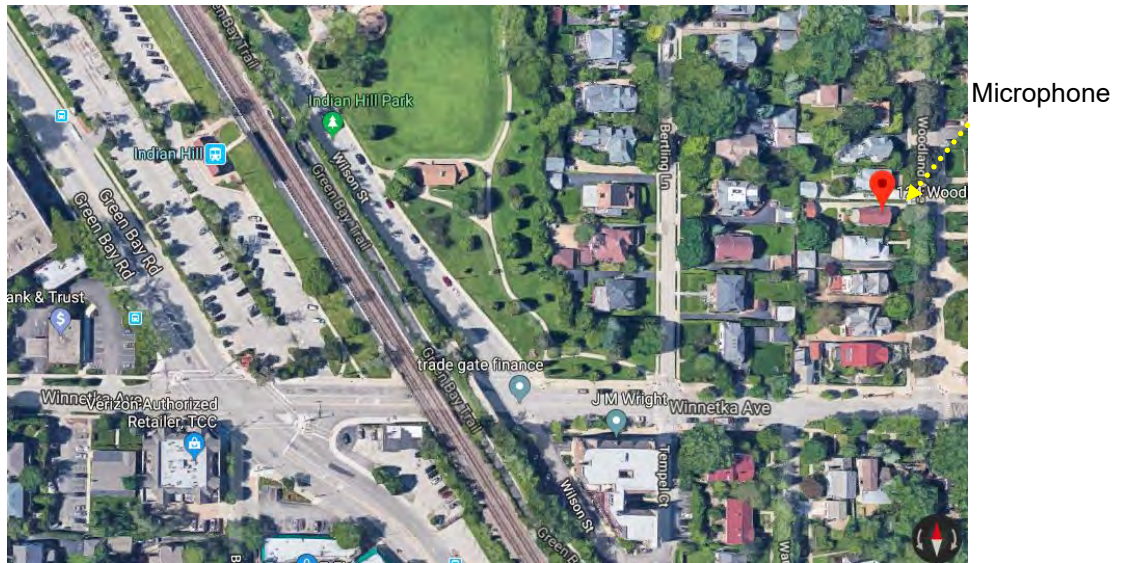
The Illinois limits are stated in terms of octave band sound levels. Thus, for daytime and nighttime, the limits must be met in each of nine frequency bands. Octave band sound level measurements were conducted by Shiner in one-third octave bands which were converted to octave bands and A-weighted sound levels.

### **Acoustical Measurements**

We conducted sound level readings at the west edge of the public sidewalk at the north property line of 124 Woodland Ave. on Thursday, May 31, 2018 between 4:20 a.m. and 4:36 a.m. These hours were chosen since noise from environmental sources (cars, trains, planes, etc.) is minimized and the Illinois Noise Regulations are most restrictive before 7:00 a.m.

We returned to the same location on Wednesday July 25, 2018 between 6:29 a.m. and approximately 7:00 a.m. to repeat dust collector measurements.

Figure 1 is an aerial photograph showing the microphone location. The photo has been cropped at the east edge since a current aerial photograph showing the new school building is not yet available.



**Figure 1. Aerial Photo of Measurement Location – 124 Woodland Ave., Winnetka, IL**

The following instrumentation was used on both dates:

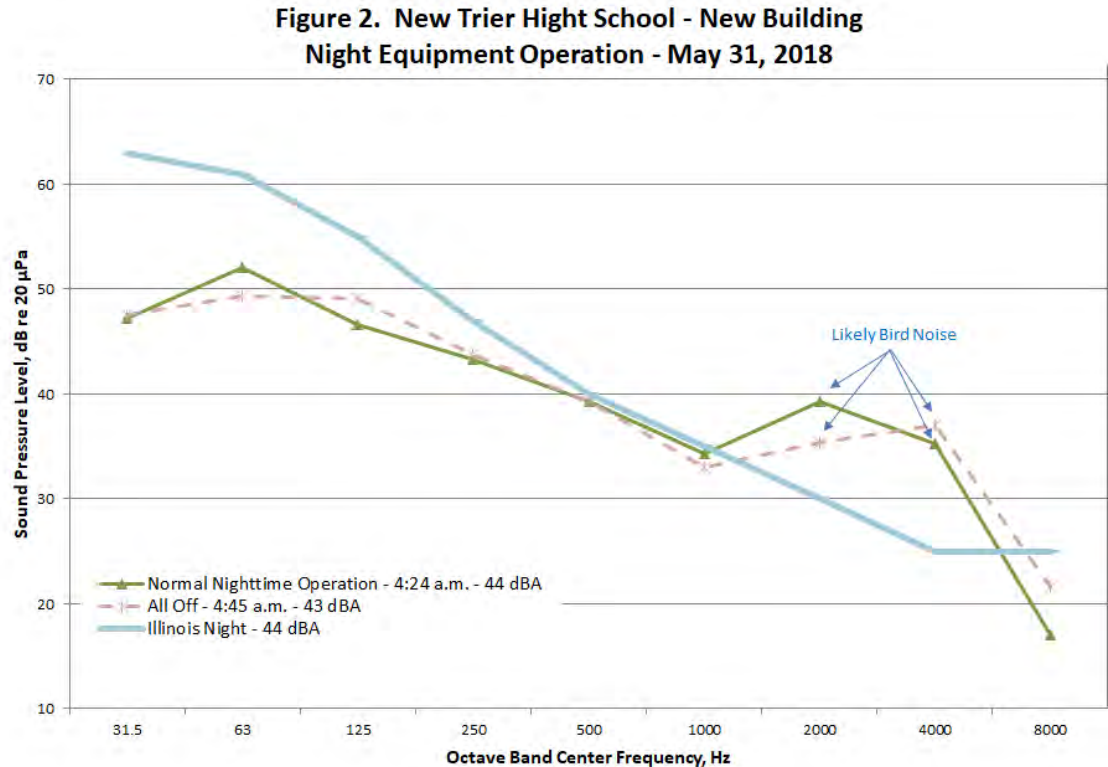
- Norsonic 140 integrating sound level meter/real time analyzer
- Nor 1225 1/2 inch condenser microphone
- Nor preamplifier 1209/13239
- Nor 1251 Sound Calibrator
- Tripod, extension cable, windscreen

#### Rooftop Mechanical Equipment

On May 31, 2018, we used a fiberglass mast attached to a heavy duty tripod to elevate the microphone to a height of 18 feet above ground level in order to simulate noise heard at the second floor of residences. Conditions were dry on the night of Thursday, May 31, 2018 with no precipitation. Roadways were dry. The temperature remained constant at 71° F and the wind was calm. As the study progressed, noise from traffic and birds increased.

Since noise from fans and other rooftop mechanical sources is steady-state (does not vary with time), we conducted a series of 20 second-long readings under various equipment operating conditions in order to determine the energy average sound level (Leq). We conducted measurements when transportation noise was at its lowest. Readings were initially taken with equipment in normal nighttime operation and then then with all equipment briefly shut off. For reporting purposes, we chose the 20 second reading with the lowest overall sound level. In this way, the chosen reading was least influenced by transportation noise. It should be noted that readings taken with New Trier equipment operating also include contribution from transportation noise sources.

Figure 2 shows the results of our readings taken with equipment that normally operates during nighttime hours (ERU units 1, 3 and 4), the ambient or background (all equipment off) and the Illinois nighttime standards. The graph is plotted in terms of octave band sound level versus sound level. With equipment operating, the graph shows compliance with the Illinois standards except in the 2000 and 4000 Hz frequency bands. We believe that energy in these frequency bands is due to awakening birds. It should also be noted that noise from the ambient environment also exceeds the Illinois standards in these frequency bands. In fact in the 4000 Hz frequency band, measured environmental noise exceeds that taken with New Trier equipment on. We have found that this is a common occurrence when source sound levels are low.

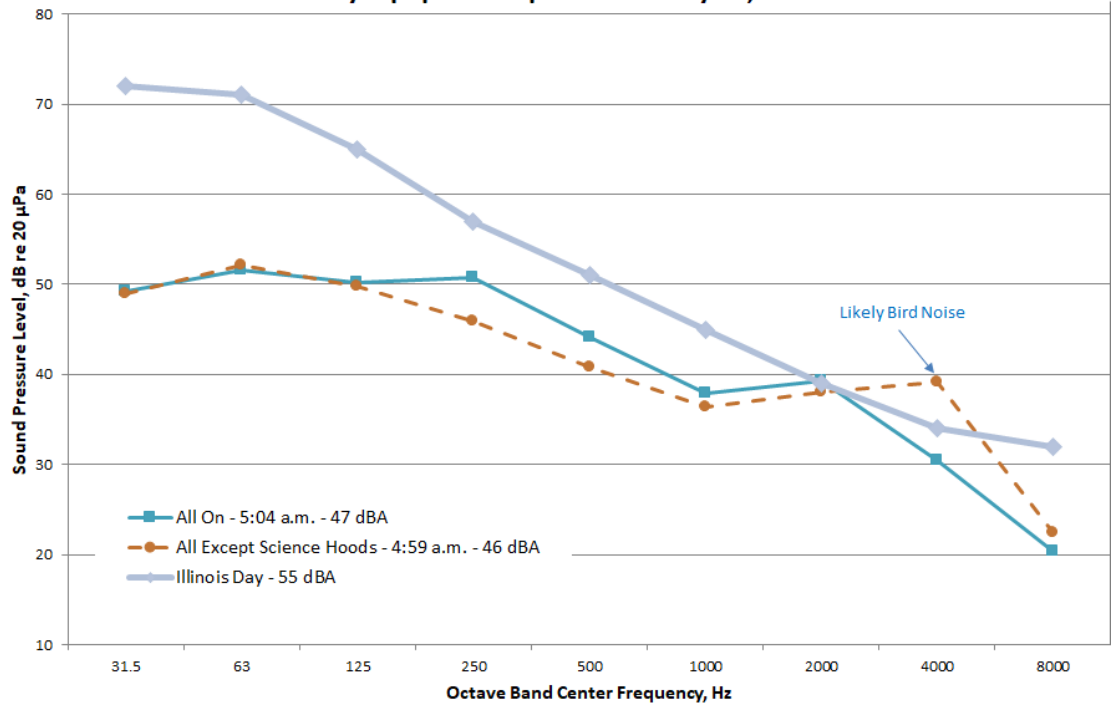


In order to investigate noise from equipment operating during the day, building personnel manually started rooftop mechanical equipment. Readings were taken during the early morning hours in order to minimize transportation noise, which would have made assessment of mechanical noise difficult or impossible during daytime hours.

Because the science fume exhaust fans (EF-FH1, FH2 and FH3) are located near the west edge of the building, separate readings were taken with all equipment operating (except these fans) and all equipment operating (including the science hoods). Figure 3 shows this comparison plotted against the daytime Illinois limits. Note that Illinois permits greater levels of noise during daytime hours.

Figure 3 shows substantial compliance with the Illinois standards when all equipment was operating. In the 2000 Hz band, noise with all equipment operating (including the science fans) is equal to the Illinois limit. Noise with all equipment except the science exhaust fans was lower than the standards in the 2000 Hz band and higher in the 4000 Hz band. Again, we believe that energy in this band is due to birds and is a common occurrence in environmental noise measurements when mechanical equipment level are low. Results of the studies are summarized in Table 1.

**Figure 3. New Trier High School - New Building  
Day Equipment Operation - May 31, 2018**

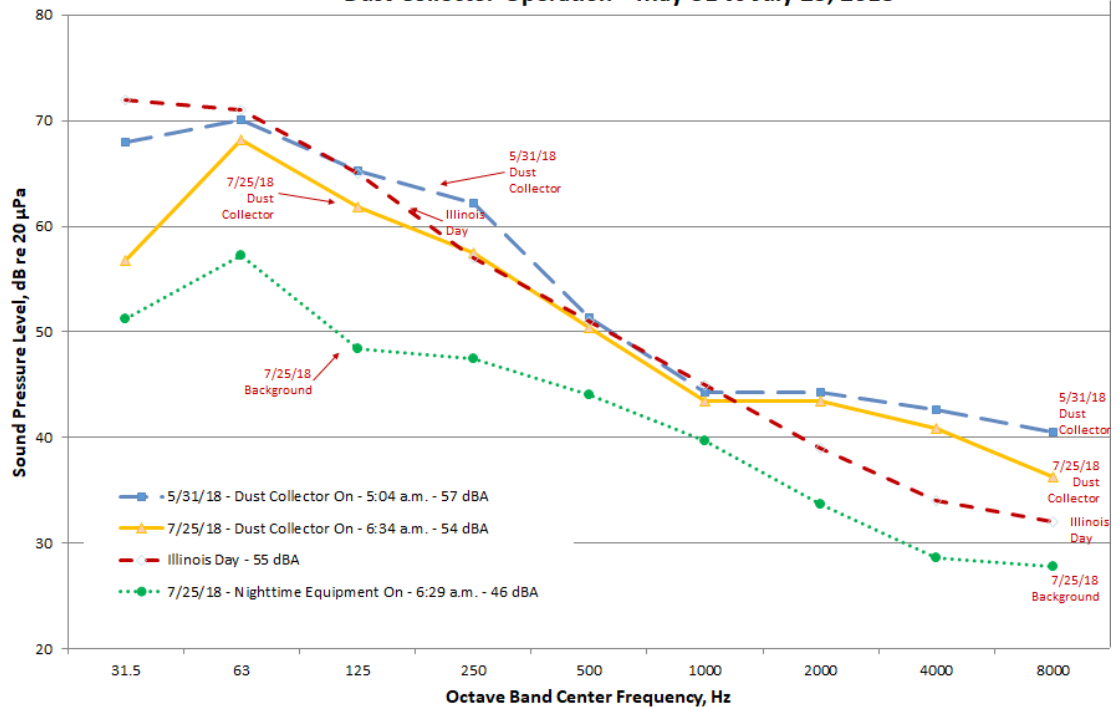


Dock Dust Collector

The dust collector is presently operated on an as-needed basis, three to four times per day for periods up to 40 minutes. Following our rooftop mechanical equipment noise testing at 124 Woodland Ave. on May 31, 2018, the microphone was positioned at a height of 4-1/2 ft above ground level and the dust collector was operated for a short period of time at 5:08 a.m. Figure 4 below is a plot of the measured 30 second average sound level versus octave band frequency. The figure indicates that Illinois daytime limits are exceeded in the 250 Hz and upper frequency bands. Results are summarized in Table 2.

On July 25, 2018, we returned to the school specifically to measure dust collector noise following installation of additional inlet ductwork inside the school. Readings were conducted at the same location as on May 31, 2018 but at 6:29 a.m. Results show a decrease noise at the blade pass frequency (250 Hz), upper frequency bands (4000 and 8000 Hz) and in the low frequencies. When compared to the Illinois standards, compliance was reached at 250 Hz, however noise in the 2000, 4000 and 8000 Hz bands is still in exceedance by several decibels.

**Figure 4. New Trier High School - New Building  
Dust Collector Operation - May 31 vs July 25, 2018**



**Table 1. Results of Study – New Trier High School New Building – Rooftop Equipment  
124 Woodland Ave. – May 31, 2018**

	Octave Band Sound Pressure Level, dB re 20 µPa									
	31.5	63	125	250	500	1000	2000	4000	8000	Awt
Normal Nighttime Operation	47	52	47	43	39	34	39*	35*	17	44
All Off	48	49	49	44	39	33	35*	37*	22	43
Illinois Nighttime Limit	63	61	55	47	40	35	30	25	25	44
<b>Rooftop Equipment</b>										
All Daytime Except Fume Exh	49	52	50	46	41	36	38	39*	22	46
Normal Daytime Operation	49	52	50	51	44	38	39	30	20	47
Illinois Daytime Limit	72	71	65	57	51	45	39	34	32	55

\* Includes noise from birds

**Table 2. Results of Study – New Trier High School New Building – Dust Collector  
124 Woodland Ave. – May 31 and July 25, 2018**

	Octave Band Sound Pressure Level, dB re 20 µPa									
	31.5	63	125	250	500	1000	2000	4000	8000	Awt
5/31/18 Dust Collector	68	70	65	62	51	44	44	43	41	57
7/25/18 Dust Collector	57	68	62	57	50	44	44	41	36	54
7/25/18 Nighttime Operation	51	57	49	48	44	40	34	29	28	46
Illinois Daytime Limit	72	71	65	57	51	45	39	34	32	55

### Conclusions

Figure 2 shows that noise from rooftop ventilating equipment normally operating during nighttime hours likely does not exceed the nighttime Illinois standards which are administered by the Illinois Pollution Control Board. Since readings taken with equipment running also include noise from transportation noise sources, we expect that noise generated by the school's mechanical equipment is lower than was measured.

In the same fashion, Figure 3 shows that rooftop equipment operating during the daytime likely does not exceed the daytime Illinois limits. Based on near field sound level measurements later taken on the building roof, we expect that noise from the science exhaust fans may be identifiable from time to time during the day because of the character and frequency content of this noise.

Operation of the dust collector can exceed the daytime Illinois noise standards in the 2000, 4000 and 8000 Hz bands.

### Recommendations

The school has already treated the dust collector motor with a 1-1/2" thick insulated sheet metal enclosure. Since only high frequency attenuation is now required, lagging of the motor enclosure and inlet/discharge may yield compliance. However, it should be realized that 7 dB of attenuation in the 4000 Hz band is required.

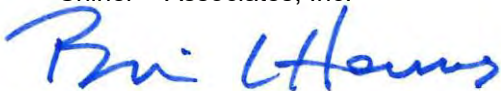
To address radiated noise from the motor and associated ductwork, we recommend lagging inlet and discharge round and rectangular ducts for a distance of 15-20 ft on each side of the motor enclosure. Wrap duct with 2" thick 5 pcf fiberglass and lag with 2 psf mass loaded vinyl (e.g., Kinetics KNM-200AL). Follow the manufacturer's instructions and tape or band all seams. The baghouse should also be treated in a similar manner.

Should lagging not provide the required reduction, then an L-shaped barrier wall should be constructed that shields Woodland Ave. from the dust collector and associated ductwork. At the west end of the generator, the barrier wall should extend south from the brick wall and then east to a point 3 ft beyond the dust collector motor housing and baghouse. The wall should exceed the highest point by 2 feet. The barrier wall should have a minimum sound transmission class of STC 30 and be sound absorptive on the inner face meeting NRC 0.85.

If you have questions concerning this report, please do not hesitate to contact us.

Respectfully submitted,

Shiner + Associates, Inc.



Brian L. Homans

BLH/mo/07  
1180514

New Trier High School

August 15, 2018

**Metal Noise Barrier and Lagging Manufacturers**

Koch Acoustical Barriers  
The Imbert Corporation  
7030 N. Austin Av.  
Niles, IL 60714  
John Grzeskowski  
johng@imbortcorp.com  
847-647-2393  
[www.kochllc.com/acoustical/barriers1/](http://www.kochllc.com/acoustical/barriers1/)

Semco, Inc.  
Hatchell & Associates, Inc.  
414 Fullerton Av.  
Elmhurst, IL 60126  
Attn: Rob  
630-833-3838  
[www.semcohvac.com/products/dap/acoustic/barriers/index.php](http://www.semcohvac.com/products/dap/acoustic/barriers/index.php)

Noise Barriers, LLC  
2845 Ashley Circle – Suite 103  
Libertyville, IL 60048  
847-362-7440  
Todd Mitchell  
tmitchell@soundcontrol.com  
[www.noisebarriers.com/barriersystems/](http://www.noisebarriers.com/barriersystems/)

Kinetics Noise Control  
Ketchum & Walton  
37 Sherwood Terrace, Suite 102  
Lake Bluff, IL 60044  
847-362-7440  
tmichchell@soundcontrol.com  
<http://kineticsnoise.com/industrial/pdf/knm-100al.pdf>



# **Exhibit C**

---

New Trier High School  
385 Winnetka Avenue  
Winnetka, IL 60093

July 15, 2019

Attn: Mr. Steve Linke

Re: Measurement of Dust Collector Noise

Dear Steve:

On the morning of July 12, 2019, we returned to the school to conduct additional acoustical testing. The purpose of this testing was to document any change in property line sound levels due to insulation of dust collector ductwork.

#### **Acoustical Measurements**

We conducted sound level readings at the west edge of the public sidewalk at the north property line of 124 Woodland Ave. on Friday, Jul 12, 2019 between 8:14 a.m. and 8:27 a.m. This time was chosen to be within normal school hours.

We used the following instrumentation for these measurements:

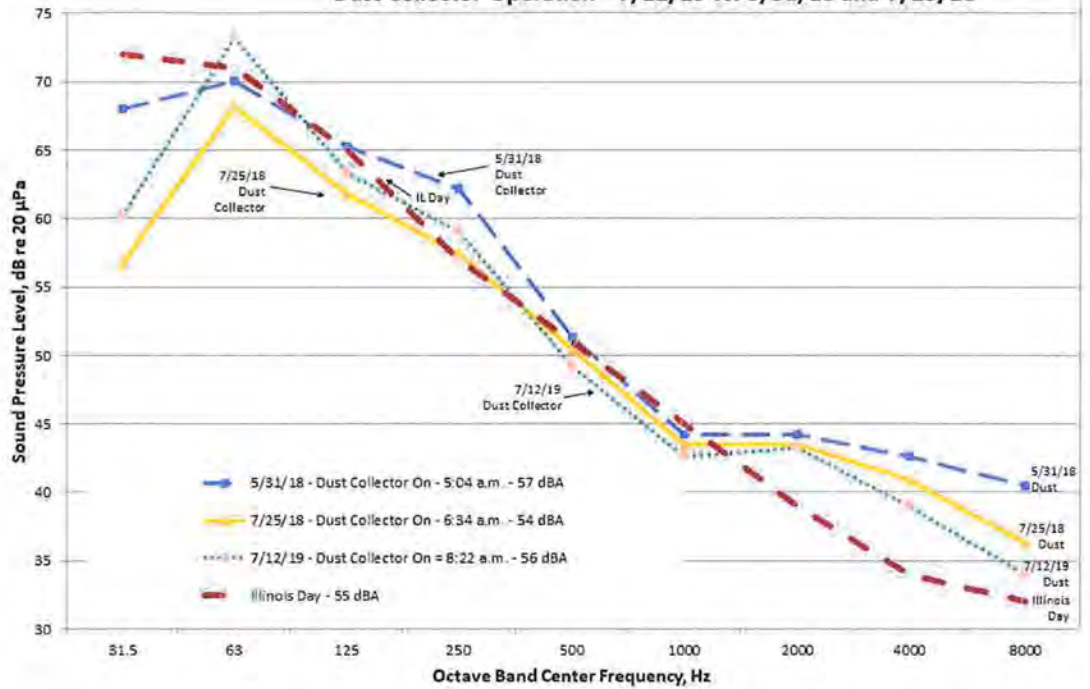
- Bruel & Kjaer 2270 integrating sound level meter/real time analyzer
- B&K 2541 1/2 inch condenser microphone
- B&K Z0032 preamplifier
- Nor 1251 Sound Calibrator
- Windscreen

The meter and measurement microphone were hand held at an approximate height of 4-1/2 ft above ground level. Pavement was dry, the temperature was 81° F and wind was calm.

Because of transportation noise in the area, 10 second readings were taken with the dust collector operating and with it off. We corrected data with the dust collector operating for ambient conditions. Although Illinois requires a measurement duration of one hour, we feel that the short measurement period represents a worst case situation, since the dust collector is typically operated on an as-needed basis, three to four times per day for periods up to 40 minutes.

When compared to the Illinois property line noise standards [Illinois Administrative Code, Title 35, Subtitle H, Chapter I, Sections 901.102(a)], Figure 1 and Table 1 below show that compliance is nearly met at 63 Hz (motor noise) and the blower blade pass frequency (250 Hz). Sound levels in the 4000 to 8000 Hz octave bands have been reduced by 2 dB, although the Illinois standards are still exceeded in the 2000 to 8000 Hz bands.

**Figure 1. New Trier High School - New Building  
Dust Collector Operation - 7/12/19 vs. 5/31/18 and 7/25/18**



**Table 1. Results of Study – New Trier High School New Building – Dust Collector  
124 Woodland Ave. – May 31, 2018, July 25, 2018 and July 12, 2019**

	Octave Band Sound Pressure Level, dB re 20 µPa									
	31.5	63	125	250	500	1000	2000	4000	8000	Awt
5/31/18 Dust Collector	68	70	65	62	51	44	44	43	41	57
7/25/18 Dust Collector	57	68	62	57	50	44	44	41	36	54
7/12/19 Dust Collector	60	73	63	59	49	43	43	39	34	56
Illinois Daytime Limit	72	71	65	57	51	45	39	34	32	55

New Trier High School

July 15, 2019

**Conclusion**

The most recent measurements show that the insulated ductwork resulted in a minor reduction in higher frequency sound levels. For full compliance, we recommend erection of an L-shaped barrier wall that shields Woodland Ave. from the dust collector as described in our August 15, 2018 report.

If you have questions concerning this report, please do not hesitate to contact us.

Respectfully submitted,

Shiner Acoustics, LLC



Brian L. Homans

BLH/mt/13

# **Exhibit D**

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Robbins Schwartz  
55 W. Monroe Street, Suite 800  
Chicago, IL 60603

December 20, 2019

Attn: Mr. Kenneth Florey

Re: New Trier High School December 13, 2019 Environmental Noise Measurements

Dear Ken:

On the early morning of Friday, December 13, 2019, we returned to the school to conduct additional acoustical testing. The purpose of this testing was to reduce interference due to traffic noise and document property line sound levels due to New Trier rooftop and loading dock mechanical equipment operated during the nighttime and daytime hours. Previous dust collector readings were conducted on November 15, 2019, July 12, 2019, July 25, 2015 and May 31, 2018.

### **Acoustical Measurements**

We again conducted sound level readings at the west edge of the public sidewalk at the north property line of 124 Woodland Ave. on Friday, December 13, 2019 between 4:20 a.m. and 5:20 a.m. This time was chosen to be a period when car traffic would be at a minimum.

We used the following instrumentation for these measurements:

- Norsonic 140 integrating sound level meter/real time analyzer
- Norr 1225 1/2 inch condenser microphone
- Norr 1209 preamplifier
- Nor 1251 Sound Calibrator
- Windscreen

A fiberglass mast was used to elevate the microphone to a height of 15 feet above ground level in order to simulate noise heard at the second floor of the 124 Woodland Avenue residence. Conditions were dry with no precipitation. Roadways were dry. The temperature decreased from 37° F to 36° F during the measurements. The wind was WSW at 6-7 mph. Traffic noise from the Edens Expressway, 2 miles to the west was audible. As the study progressed, noise from local and expressway traffic increased.

Because of experience with previous interference due to transportation noise in the area, 15 second readings were taken with various pieces of mechanical equipment operating. Ambient sound level readings were conducted at the beginning and end of the study (early morning and late morning ambient readings). Reported sound level data were corrected for ambient conditions. Although Illinois requires a measurement duration of one hour, noise from fans and blowers is steady state and does not vary with time.

The following mechanical equipment was measured:

- dock condensing unit,
  - rooftop energy recovery units (ERU's),
  - rooftop cafeteria fans (with normally operating nighttime equipment),
  - normally operating daytime equipment,
  - fume hoods (with normally operating daytime equipment) and
  - dust collector (with normally operating daytime equipment).
1. Dock Condensing Unit – This condensing unit periodically cycles on during the day and night. Although audible, we found the condensing unit to be in substantial compliance with the Illinois nighttime regulation limits. Sound levels in the 500 and 1000 Hz bands exceeded the Illinois limits but were at or below the early morning measured ambient.
  2. Energy Recovery Units (ERU's) – Energy recovery units operate continuously during the night. Sound levels in the 500 and 1000 Hz bands exceeded the Illinois limits but were at or below the early morning measured ambient. We believe that these units are in compliance with the Illinois limits.
  3. Cafeteria Fans (with ERU's operating) – Cafeteria fans run from approximately 4:30 a.m. to 9:30 a.m. when there is cooking in the kitchen. Sound levels measured at 4:40 a.m. in the 500 and 1000 Hz bands exceeded the Illinois nighttime limits but were below the late morning ambient.
  4. Fume Hoods and Normal Daytime Equipment - When measured at 4:59 a.m., fume hood equipment that operates normally during the daytime was below the Illinois limits in all frequency bands. We believe that fume hoods are in compliance with Illinois daytime limits.
  5. Normal Daytime Equipment – When measured at 4:55 a.m., corrected equipment that operates normally during the daytime was below the Illinois limits in all frequency bands.
  6. Dust Collector and Normal Daytime Equipment – With all normally operating daytime equipment running, dust collector noise exceeded the Illinois daytime limits by 3 dB and 2 dB in the 2000 and 4000 Hz octave bands.

Results of our study are shown in the table below and graphed in Figures 1-6.

## Conclusion

The December 13, 2019 dust collector measurements (test 6) were conducted during early morning hours when ambient sound levels were low. Property line sound level emissions exceeded the Illinois daytime limits in the 2000 and 4000 Hz frequency bands. As previous testing has shown, daytime operation of the dust collector will likely be at or below ambient sound levels in those frequencies due to increased transportation noise in the area.

The dust collector and associated duct work are partially enclosed by a barrier wall. There are minimal areas of sound absorptive treatment behind the barrier wall and on the east dock wall. In order to reduce the 2000 and 4000 Hz emissions further, we recommend increasing the area of sound absorptive treatment in the dock area to approximately 70% of available wall surface area on the east, north (behind the dust collector) and south walls.

Robbins Schwartz

December 20, 2019

Should sound absorptive treatment not result in the desired attenuation, we recommend treating radiated noise from the motor and associated ductwork. Lag the inlet and discharge round and rectangular ducts for a distance of 15-20 ft on each side of the motor enclosure. Wrap duct with 2" thick 5 pcf fiberglass and lag with 2 psf mass loaded vinyl (e.g., Kinetics KNM-200AL). Follow the manufacturer's instructions and tape or band all seams. The baghouse should also be treated in a similar manner.

If you have questions concerning this report, please do not hesitate to contact us.

Respectfully submitted,

Shiner Acoustics, LLC



Brian L. Homans

BLH/mt/13

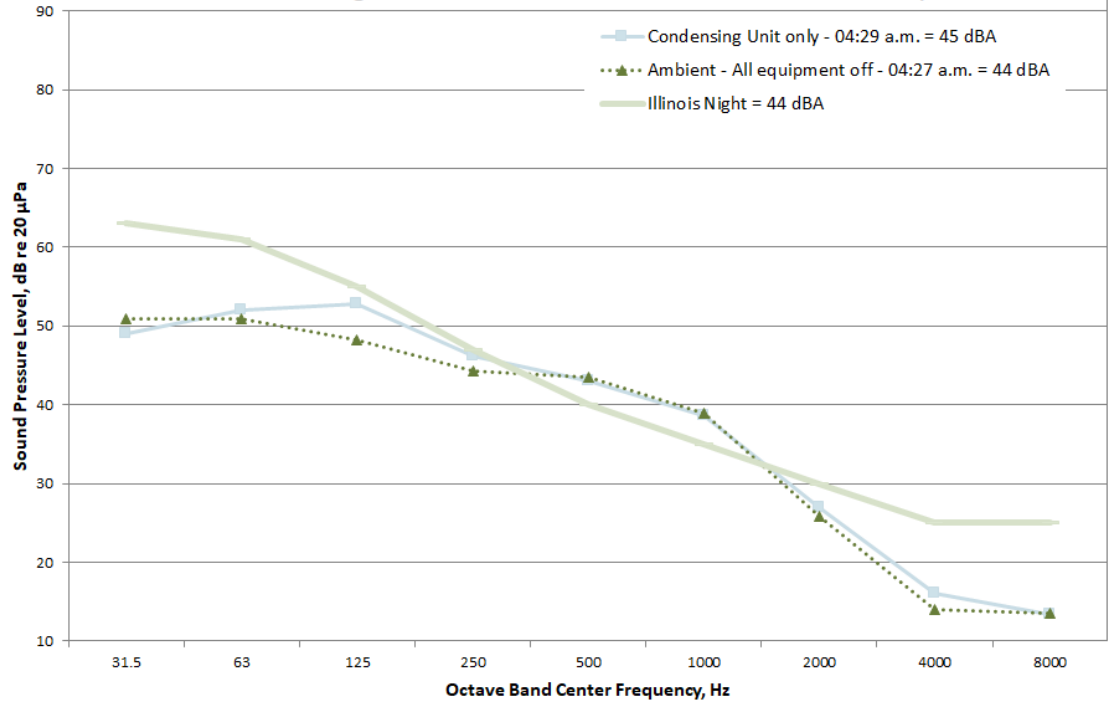


**Table 1. Results of December 13, 2019 Environmental Noise Measurements  
(4:20 a.m. to 5:20 a.m.)**

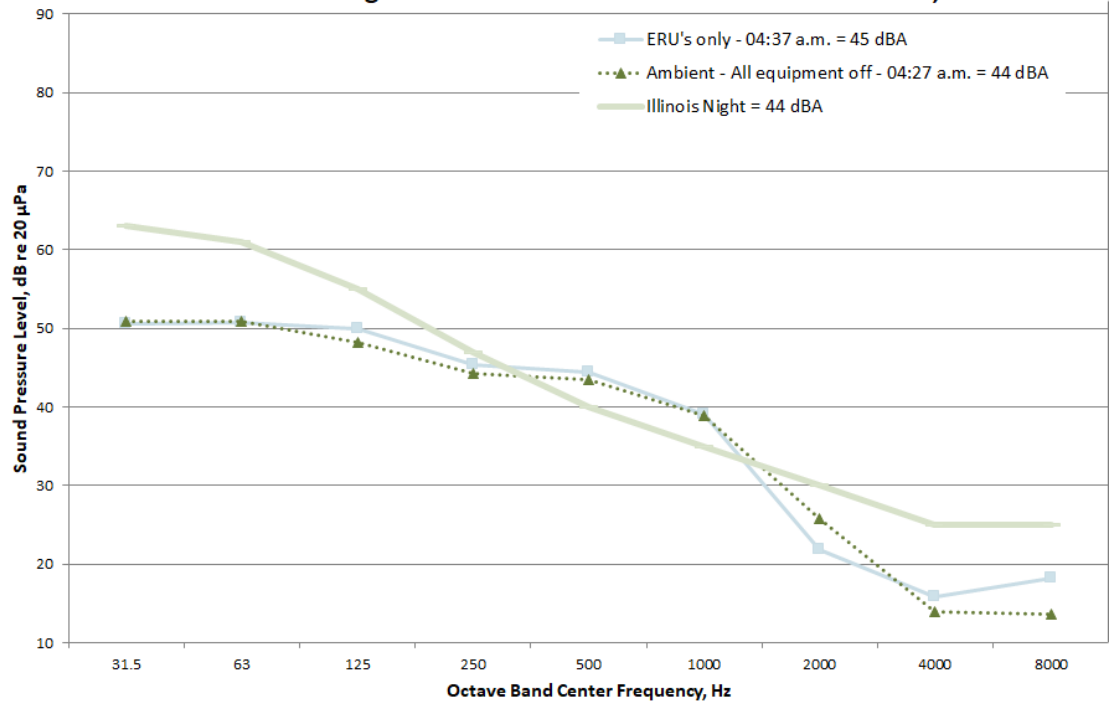
Octave Band Sound Pressure Level, dB re 20  $\mu$ Pa

	<b>31.5</b>	<b>63</b>	<b>125</b>	<b>250</b>	<b>500</b>	<b>1000</b>	<b>2000</b>	<b>4000</b>	<b>8000</b>	<b>Awt</b>
All Off 4:27 a.m. (early ambient)	51	51	48	44	44	39	26	14	14	43
1. Condensing Unit 4:29 a.m.	49	52	53	46	43	39	27	16	14	45
2. Energy Recovery Units 4:37 a.m.	51	51	50	45	44	39	22	16	18	45
3. Cafeteria Fans 4:40 a.m.	54	43	53	48	45	41	26	17	17	46
Illinois Nighttime Limit	63	61	55	47	40	35	30	25	25	44
4. Normal day equipment 4:55 a.m.	51	53	53	48	45	41	27	16	13	46
5. Fume Hoods 4:59 a.m.	50	51	53	48	44	41	27	18	18	46
6. Dust Collector 5:04 a.m.	58	65	56	56	49	44	42	36	27	52
All Off 5:16 a.m. (late ambient)	51	54	53	48	46	43	34	25	15	47
Illinois Daytime Limit	72	71	65	57	51	45	39	34	32	55

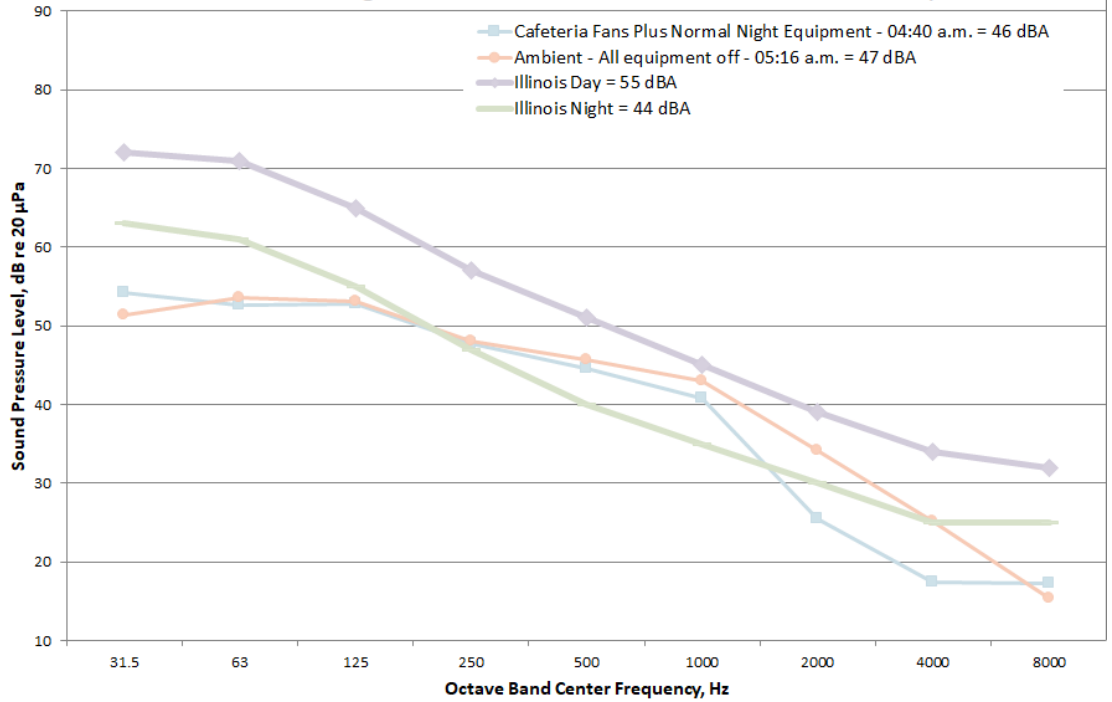
**Figure 1. Condensing Unit**  
**New Trier High School - 124 Woodland Ave. - December 13, 2019**



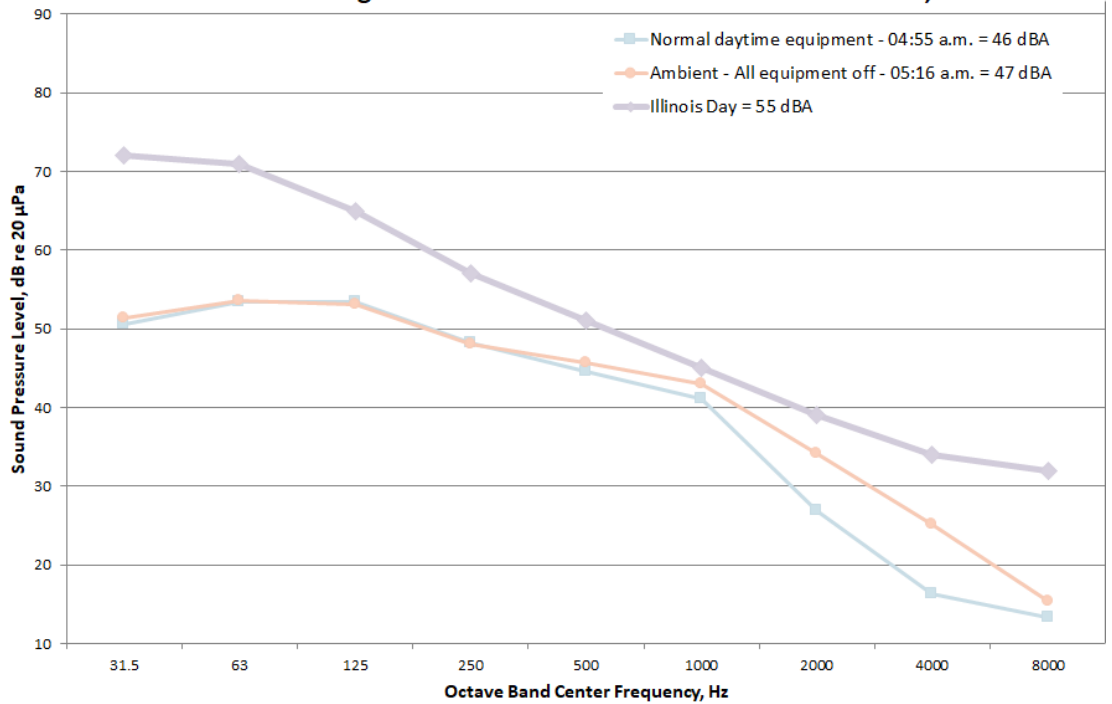
**Figure 2. Energy Recovery Unitss**  
**New Trier High School - 124 Woodland Ave. - December 13, 2019**



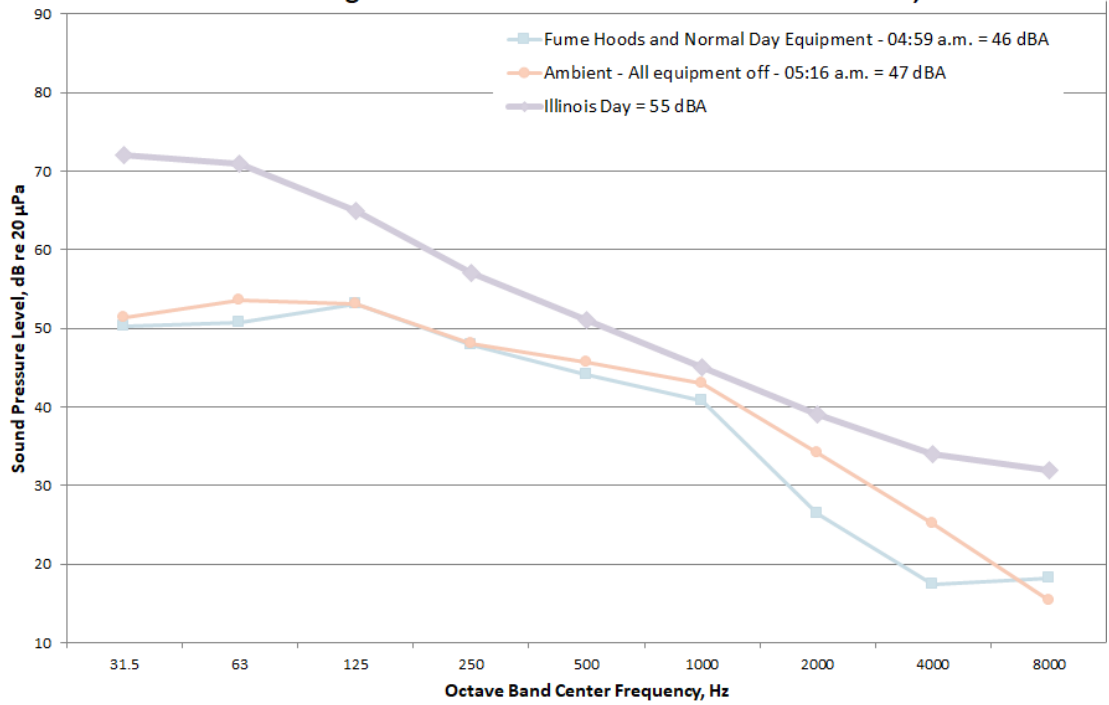
**Figure 3. Cafeteria Fans and Night Equipment**  
**New Trier High School - 124 Woodland Ave. - December 13, 2019**



**Figure 4. All Daytime Equipment**  
**New Trier High School - 124 Woodland Ave. - December 13, 2019**



**Figure 5. Fume Hoods and Daytime Equipment  
New Trier High School - 124 Woodland Ave. - December 13, 2019**



**Figure 6. Dust Collector and Daytime Equipment  
New Trier High School - 124 Woodland Ave. - December 13, 2019**

