

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
by Eric F. Rinehart, State’s Attorney)	
for Lake County, Illinois,)	
Complainant,)	
)	PCB No. 2023-108
vs.)	(Enforcement - Noise)
)	
DEPARTMENT OF TRANSPORTATION of)	
the State of Illinois,)	
Respondent.)	

NOTICE OF FILING

PLEASE TAKE NOTICE that today, July 18, 2023, Complainant PEOPLE OF THE STATE OF ILLINOIS filed with the Office of the Illinois Pollution Control Board, via electronic filing, the following People of the State of Illinois’ Response to Partial Motion to Dismiss, a true and correct copy is attached hereto and served upon you.

PEOPLE OF THE STATE OF ILLINOIS

by ERIC F. RINEHART
State’s Attorney of Lake County

By: /s/ Lisle A. Stalter
LISLE A. STALTER

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CERTIFICATE OF SERVICE

I, Lisle A. Stalter, an attorney, certify that I caused to be served this 18th day of July 2023, a true and correct copy of this Notice of Filing and attached People of the State of Illinois' Response to Partial Motion to Dismiss to the persons listed below via email.

By: /s/ Lisle A. Stalter
Lisle A. Stalter

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS,)	
ex rel. Eric Rinehart, State’s Attorney)	
for Lake County Illinois,)	
)	
Complainant,)	
)	
v.)	PCB No. 2023-108
)	(Enforcement Notice)
)	
ILLINOIS DEPARTMENT OF)	
TRANSPORTATION,)	
)	
Respondent.)	

**PEOPLE OF THE STATE OF ILLINOIS’
RESPONSE TO PARTIAL MOTION TO DISMISS**

Complainant, PEOPLE OF THE STATE OF ILLINOIS, through Lake County State’s Attorney, Eric Rinehart, and his assistant Lisle A. Stalter, respond to the Respondent, ILLINOIS DEPARTMENT OF TRANSPORTATION’s, partial motion to dismiss under 35 Ill. Admin. Code. § 103.212(b).

INTRODUCTION

The case centers on noise pollution caused by transverse rumble strips (“TRS”) which were installed on US Route 41 in Highland Park, Illinois, and adversely affect nearby residential property owners. Respondent seeks partial dismissal pursuant to Section 103.212(b) of the Pollution Control Board Regulations. 35 Ill. Admin. Code 103.212(b).

ARGUMENT

A. Dismissal under Section 103.212(b) is not applicable to an action brought by the State’s Attorney on behalf of the People of the State of Illinois.

Respondent seeks dismissal of the complaint, in part, pursuant to Section 103.212(b) of the Board’s Rules asserting that “A complaint before the Board is frivolous if it requests relief that the Board does not have the authority to grant or fails to state a cause of action upon which

the Board can grant relief.” *Mellon v. Ill. Dep’t of Transp.*, PCB No. 01-21, 2000 Ill. ENV LEXIS 636. However, Respondent fails to read Section §103.212 to its entirety.

The subsection relied upon to support dismissal only applies to citizen complaints. Specifically, 103.212(b) provides: “Motions under this subsection may be made *only* with respect to citizen’s enforcement proceedings.” 35 Ill. Admin. Code 103.212(b) (emphasis added). The Board Rules define “citizen’s enforcement proceeding”

“means an enforcement action brought before the Pollution Control Board under Section 31(d) of the Act by any person who is not authorized to bring an action on behalf of the People of the State of Illinois.”

35 Ill. Admin. Code 103.104 (which refers to Section 101 Subpart B).

The State’s Attorney has authority to bring actions to enforce the Illinois Environmental Protection Act and Board Regulations on behalf of the People of the State of Illinois. *See* 35 Ill. Admin. Code 103.106; 415 ILCS 5/31(c)(1). The Board decisions Respondent cites to support its Motion for Partial Dismissal are actions brought by private citizens and as such provide no legal support for its argument that dismissal of the Complaint under Section 103.212(b) is warranted here.

Further of note, the Board Rules provide under subparagraph (c) of this Section, “The Board will automatically set for hearing all complaints filed by the Attorney General or a State’s Attorney on behalf of the People of the State of Illinois.” 35 Ill. Adm. Code 103.212(c). The Complaint in this matter is not a citizen suit; the complaint was filed by the Lake County State’s Attorney on behalf of the People of the State of Illinois. Under subsection (c), the Board is to set the complaint for a hearing. 35 Ill. Admin. Code 103.212(c).

Therefore, the Respondent’s motion is inappropriate and should be denied.

B. The Complaint is sufficient and the Motion for Partial Dismissal should be denied.

Respondent's argument in support of partial dismissal is based on the interpretation of the Board's procedural rules, alleging that the noise studies done in 2021 and 2022 are non-compliant. The Respondent points out the Section 900.103(a) requirements of the Board's regulations for sound measurement procedures to conform to 35 Ill. Adm. Code 910. The Respondent alleges that the measurements did not have a reference time of at least one hour, did not correct for sound emissions from background noise, and were not conducted within the boundaries of the receiving land. There are several issues with these assertions.

It's crucial to acknowledge that it was the Respondent, IDOT, who initiated the noise studies in question, and, as such, IDOT is responsible for any non-compliance with the procedures for sound measurement. This fact is relevant because the Respondent initially requested the noise studies to review the potential noise impact from the TRS on nearby residential areas. Yet, as pointed out by Respondent, neither study succeeded at effectively measuring the noise impact on nearby residents. It is now disingenuous for Respondent to assert that neither the 2021 study nor the 2022 study are adequate to determine whether the TRS are in compliance with the Board's Regulations on noise.

Regardless, the Complaint sufficiently alleges that even under all parameters of the Board's Noise Regulations the studies demonstrate that the sound resulting from the TRS remains outside the permissible range set forth in Section 901.102. Complaint at ¶¶45-49. It is interesting that Respondent emphasizes that the 2022 study was only done to show there was improvement in the noise levels from the TRS ... it was not done to demonstrate that the TRS were in compliance with the Board's noise emission limitations. (See Response at page 6.) There are sufficient facts alleged in the Complaint to demonstrate that there are violations of the Board's Noise Regulations from the sounds emitted from traffic crossing the TRS on US 41. At

a minimum, a hearing is necessary to allow this Board to make a determination of the extent of the noise pollution.

As a final matter, the complaints from residents in the area should not be ignored. The persistent and detrimental impact on the nearby residents' quality of life emphasizes the urgency of this issue. The sound measurements from the 2022 study indicate noise levels from the TRS continue to exceed the allowable dB requirements in 901.102. As such, the Partial Motion to Dismiss should be denied.

CONCLUSION

The Partial Motion to Dismiss must be denied as the Complaint is brought on behalf of the People of the State of Illinois and dismissal under Section 103.212(b) is not warranted. In addition, the Complainant sufficiently states a cause of action for which the Board can grant relief.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

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