

BEFORE POLLUTION CONTROL BOARD

OF THE STATE IF ILLINOIS

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STATE OF ILLINOIS  
Pollution Control Board

ORIGINAL

PETER ARENOVICH )  
Complainant )

v )

Illinois STATE TOLL HIGHWAY )  
AUTHORITY )  
Respondent. )

PCB 2009-102

NOTICE OF FILING

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PLEASE TAKE NOTICE that on January 4 2012 Peter Arendovich filed electronically 18 pages attached Brief with the Office of the Clerk of the Illinois Pollution Control Board. Pursuant to 35 Ill Admin. Code 101.103.

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**BEFORE THE POLLUTION CONTRIL BOARD  
OF THE STATE OF ILLINOIS**

PETER AREDOVOCH	)	
Complainant	)	PCB 2009-102
v.	)	
	)	
ILLINOIS STATE TOLL HIGHWAY AUTHORITY	)	
Respondent	)	

**COMPLAINANTS BRIEF**

Peter Arendovich, files this brief in support of his Complaint against the Illinois State Toll Highway Authority (hereinafter referred to as the "Tollway") . Complainants seek an order from the Illinois Pollution Control Board (hereinafter referred to as the "Board") finding that the noise emanating from Interstate 1-355 extension in Lemont, Illinois is in violation of the numerical noise emissions promulgated by the Board and creates an unreasonable interference with the Complainants lives, and also those of other nearby residents. Complainants further seek an order commanding that the Tollway

take remedial actions to mitigate the noise as soon as foreseeable.

#### BACKGROUND

On, April 4 2009, Complainants filed a complaint against the Tollway seeking an order that the Tollway cease violating the provisions of the Illinois Environmental Act. This action was taken following unsuccessful attempts BEFORE THE TOLLWAY, to complete building an abatement wall over the 135 street bridge. The Tollway recognized their misjudgment in planning to comply with noise pollution numerical values.

Complainants also requested that the Tollway be ordered to undertake specific remedial actions, including the installation of additional noise abatement wall in the area to alleviate the excessive noise from the I-355 extension.

Commencing on December 5, 2011 the Board conducted a one-day hearing on this matter, during which testimony was presented from the Complainants, as well as, from a sound expert David Larsen retained by Complainants, and two local residents, who presented public comment in person, and others by letter signed at the first filing, (Since then, tree complainant deceased who are residents sense 1959) regarding the effects of the roadway noise on their daily living conditions. Testimony from one Tollway official was presented at the Hearing by R. Zucchero.

#### FACTS

The Illinois State Toll Highway Authority owns and operates a system of toll roads in Illinois under the provisions of the Toll Highway Act 605 ILCS 10/1-35. Toll revenues generated from motorists accessing the tollway

system are then used to finance, operate, and IMPROVE the toll road network. The specific interstate in question in this matter, the I-355 extension, is one of these toll roads. The I-355 extension ties in I-55 and I-80 .

Peter Arendovich purchased a lot in 1988 and build his residence and moved in the summer if 1990. The adjacent neighbor Pytlowski (deceased in 2008 , his widow is 84 years old )lives in their house since 1960. The widow of Pytliwskis brother live next to Complainent and lives at her residence since 1965 Adjecent to the back of our property lived some older lady, who the Tollway Authority forced her to a nursing home and acquired her property.

The initial study on the road I-355 extension were initiated by IDOT. The residents in the are become aware of IDOTS proposal when a public hearing was called for the proposed I-355 extension called ( FAP 340). Exhibits # 1 & 2 shows the Preliminary plans for center line were shown to the public on the fall of 1991. We the residents along Gordon lane undersigned a petition to IDOT asking to move the road 1800 feet west, were less residents will be affected, then parallel to Gordon lane (presently the proposed location continue having low density population after 22 years ) In 1996 an Environmental impact statement ( EIS )was issued. The head of the Tollway was Governor Edgar. The Governor assured us that we will not have any problem with Noise pollution nor water pollution. The letter was presented at the hearing as exhibit # 13. The noise abetment by the Complainent and Pytlowski back wall was supposed to be 25 feet high and a wall beyond the 135 street bridge toward Archer Avenue ( preliminary print were available given to the Complainent by Tollway officers then). The proposed road build was stopped by the court, the EIS had to include

alternate roads. A new EIS was issued were it was called FEIS ( Final Environmental Statement ) The Tollway have taken the advantage in the name change, and modified the noise abatement. Under the FEIS questionable environmental study were performed, if any study was done, but the alternate road study was done on paper. In the FEIS the noise barrier were altered in height from 25 feet to 14 feet in height and reduced length of walls, and other walls were added in different location, like one mile for IDOT project located at I-55 , between I-355 extension and Lemont road.

During the construction phase the Complainant was in contact with Mr Rocco Zuccherro planning engineer, A letter was given to the Senator Rodogno directed to Rocco Zuccherro to see if an noise wall can be build on 135 street bridge: it was a failure. After some complains on wall height, Zuccherro added 2 feet more in height on the wall to make 16 feet tall instead the EIS proposal 25 feet.

Finally on November 11 2007 hell broke loose when they opened the road and my peaceful heaven went down to hell ever since.

The Complainants and the Tollway share a common property line. Complainants assert that the excessive noise generated by vehicles traveling on the I-355 extension. The excessive roadway noise is reaching his property and others residents. The I-355 extension is disrupting and interfered with the lives of the Complainants, and his family, and nearby residents on a continuing basis. The complainant made contact with Illinois Tollway at the Board meating in December 2007. The Board assigned the chief engineer Kovacs to lock into the noise

problem. We ( Arendovich and the Nitchkoff father and son 2 residences ) had several meetings. During the meetings a proposal by Nichkeff was for an additional wall for 600 feet to Archer Av. from 135 street bridge ,while Mr.Zuccheros position was to put a wall over the 135 street bridge, which is 540 feet long. The Complainant continued investigating into literature from FHA about noise study. The Complainant included in his investigation, purchasing a noise meter in order to determine the specific noise level reaching his property. Then the Complainant contracted an Acoustic engineer to evaluate the noise numerical value using FHA methods and IPCB. The data was provided to the Tollway Authority Board meeting, were the Chairman of the board Mr. Mytola have shown interest in the graph from FHA, noise projection by heavy vehicles speed vs distance from the center lane and the equation of noise dissipation with distance from the center line.

At our last meeting Mr.Zucchero come with a final proposal for a wall, only 240 long an 10 feet in height. " If the Complainant did not like, then there will be no wall" ( Note a 4 feet wall is already in existence, the concrete wall, railing ) in other words he, the Tollway was going to erect additional 6 feet of wooden wall, which does not cover the exhaust tail pipe of a trailer truck. The meetings were discontinued because refused do any more work on noise abatement.

Due to the Tollway's refusal to comply in reducing the noise at request, Complainers as seen failure in negotiate with the Tollway to get a relieve from noise ,The complainer filed a formal complain at IPCB on April 28 2009. Requesting that noise barrier wall be installed in the area over the bridge over 135 street to reduce highway noise reaching the property of the Complainer and that of his neighbors.

At the Hearing, Arendovich' presented testimony of how the noise from the Tollway effects their daily lives. The Complainant presented a the hearing the expenditure he made in order to get some relief in one bedroom. The complainant installed 2 sets of additional glass on the windows in his bedroom which faces the Tollway from 2 directions. There were installed double sets of sliding doors, The western wall was covered with 3 inch of Styrofoam and underneath  $\frac{3}{4}$  inch of soft foam, On the southern balcony of the bedroom balcony a glass enclosure was build, The ceiling was covered with addition of 29 R insulation to make a total 56 R see exhibit #5. There is more work to do to prevent the noise from the road coming into the bedrooms. So far, The Complainer have spent money on uncalled expenditure over \$17000.00 see exhibit# 4. At the hearing the acoustic engineer made a statement with data in hand stating that the sound levels measured from the I-355 extension reaching Complainants property violated the Illinois numerical noise emission standards.

Complainants' see exhibit #6. In Addition, the noise expert David Larsen testified that the noise levels constituted an unreasonable interference to the Complainants daily lives.

The noise emission standards for a C class and a ( A ) class are established at Title 35 part 901 sect. 102

A letter from governor Pat Quinn directed to the Tollway Authority with regard to my complain to look into the matter of noise pollution. The Tollway Authority ignored it.

Apparently other community have had similar experience as to how the Tollway ignore complains to reduce noise pollution, this is shown in exhibit 10 & 11

The testimony of Complainants, and his expert witness, was not discredited on cross-examination, nor did the Tollway present any rebuttal testimony as to the noise effects upon the Complainants and their neighbors.

#### ARGUMENT

Question: Why does the Complainants neighbors have to endure physical punishment from a governmental agency? What evil have we done? A government is chosen by the people to protect them, yet in this case we have a government who does not protect, but oppresses.

The Complainer does not disagree the road is be beneficial for a larger population. The Complainer is not asking to move the road the Complainer is asking for help to make his life more bearable



The Complainer is asking to build a wall so it will alleviate the noise stress that I-355 extension causes on his and his family and the neighbors life. Does the law have any meaning?

The evidence presented at the Hearing clearly illustrates that the noise emanating from I-355 extension violates the numerical sound emission standards set forth in 35 III .Admin . Code § 901 .102, and constitutes a nuisance which is prohibited by 35 III .Admin. Code § 900 .102. No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act, so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter. Also, Section 24 of the Environmental Protection Act provides that : "No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business activity, so as to violate any regulation or standard adopted by the Board under this Act ." 415 ILCS 5/24 (2002)The Board's Land Based Classification Standards (LBCS) describe several types of land use types. The land classification of a site depends on the use of the property . Residential property is classified as Class A land . 35 III . Admin . Code Subtitle H,

The Complainers residence is a single family home, located at 1388 Gordon Ln in Lemont can clearly be classified as, Class A land. The Complainants noise expert testified that his

interpretation of the IBCS would classify the I-355 extension with a designation of Class C under 35 IAC 901 land class.

Expert testimony at the Hearing demonstrated that the noise level is above decibels the Board regulations for C class land to A class land .

The Complaint also alleges that the noise from the Tollway constitutes a nuisance violation of 35 III.Admin. Code § 900 .102. A primary issue in this allegation is whether the noise causes interference with the Complainants' enjoyment of life. For 17 years The Complainer enjoyed his balcony by the bedroom, now he even cannot open the slighting door to the outside, the Complainer had to put an additional slighting door to prevent noise coming from I-355 extension. the Complainer cannot open any window in their bedroom to get fresh air because the horrible noise from heavy trucks. The noise from the I-355 extension is taxing on the complainers budget by using more electricity.

D'Souza v . Marraccini, 1996 III . ENV LEXIS 510 !2 (PCB 96-22, May 2, 1996). In order to constitute a interference, the noise must objectively affect the complainants' life, so it does.

Specifically, testimony was presented at the Hearing that the noise from the Tollway interfered with the lives of the Complainants in the following manner :

Peter Arendovich testified that the I-355 extension Tollway noise effects the use of his outdoor property and adversely effects his sleep. The Complainant have to take sleeping medicine at least two night per week to be able to sleep. Mr. Arendovich also stress as to how the noise limits his ability to entertain guests at the property, and that the excessive noise affects Complainants in that they seem to live a different way of life than other people.

Public comment at the Hearing was presented by C. Nitchkoff who lives adjacent to the House of his father which is less the 300 feet from the center line of I-355 extension, spoke on how the noise impacts her everyday life, "you cannot have the windows open because of the noise and so you have to have the AC."The constant usage create an unnecessary economical burden in the homeowner. Mrs. Palma lives adjacent to the Complainants. Mrs. Palma spoke as to her inability to open her windows due to the noise, and how the use of her outdoor property has been adversely affected. The noise from the Tollway clearly interferes with the lives of the Complainants and his neighbors.

The Board has prescribed a list of factors which need to be considered in determining whether a noise causes an unreasonable interference. These factors are :

- 1 .Character and degree of injury or interference;
- 2 .Social or economic value of the source;
- 3.Suitability or unsuitability of the source ;

4 .Technical printability and reasonableness of control,  
And.

5 .Subsequent compliance.415 ILCS 5/33(c) . The following addresses each  
factor 1 .

#### Character and Degree of Injury or Interference

The Board is required to consider the character and degree of  
interference caused by noise originating from the I-355 extension Tollway  
The Board must consider whether the noise substantially and frequently  
interferes with a lawful activity, beyond minor trifling annoyance or  
value of the adjacent residential communities. Clearly, the  
negative noise impacts endured by the Complainants and their  
neighbors, effecting their property values. The Complainant  
definitively believe the potential buyers for his property have  
been reduced and the conduct of their daily lives in the yard  
have been lessened.

There should be a commitment from the Respondent to  
substantially reduce the noise that reaches adjacent residential  
areas.

Suitability or Unsuitability of the I-355 extension area.

Buses and trucks driving on the tollway system are the  
primary source of the excessive noise experienced by  
Complainants. Traffic on the I-355 extension tollway system is  
increasing and larger traffic volumes tend to generate additional traffic  
noise.

Complainants do not seek the elimination of I-355 extension operations in these proceedings. Instead, they seek a reduction in the roadway noise reaching the residential area. This reduction can be accomplished through the installation of additional noise mitigation, in the form of higher and longer noise barrier walls. The specific solution is further discussed in the proceeding Remedy section. It is important to note that Complainants have attempted numerous noise mediation efforts since building the residence. These remedies included: seeking medical assistance in the form of prescription sleeping aids; adding more noise insulation to the home where possible, adding 3/8 glass into windows on the bedroom, double sliding doors enclosing the balcony, covering the second floor with 3 inch Styrofoam plus ¼ inch soft foam, ( reason for the second floor because the bridge and Complainer bedroom are at the same level) adding additional 10 inch of blown in cellulose material to insulate possible sound coming from the roof.

All of these efforts were intended to reduce, or reflect, the noise impacts upon the lives of the Complainants. These efforts have not reduced the noise penetration to an acceptable level in our second floor level. Now the question is why is the Tollway Authority resisting to solve the problem which they created to us. We were here in the area before the Tollway was build.

This was an area, were houses were build on 5 acres or 1.5 acre of land it was an area were according to the EIS ( Environmental Impact Statement) data indicate the noise level was 41 dB(A). The later FEIS data shows when the road is build the noise level would be 64 dB(A). When the wall height in the area by the Complainant would be 25 feet, according to EIS. But in the FEIS the wall height was reduced to 14 feet. According to

engineering data , "the higher wall is more effective in noise reduction " Why did the Tollway Planners reduced the wall height? According to the testimony of Rocco Zuccherro it was " a new software from FHA " The Tollway did not care to comply that os a fact ! (According IDOT. " A noise wall that breaks the line of sight between the traffic noise source and noise receiver reduces traffic noise up to 5 dBA. Each additional two feet of noise wall improves the traffic noise reduction by approximately 1 dBA;"

With numerical sound emission standards set" forth in 35 III .Admin. Code § 901 .102, and constitutes a nuisance which is prohibited by 35 III .Admin. Code § 900.102. No person shall cause or allow the emission of sound beyond the boundaries of his property, as property is defined in Section 25 of the Illinois Environmental Protection Act," The Tollway planer intention was to reduce cost of the project. At the cross examination during the hearing, the Complainer asked Mr. Zuccherro why was the change in height made Mr. Zuccharo said " they obtained a new software from FHA. ( Does that means that lowering the wall height is a more effective sound barrier?( Perhaps they discovered new law in physics). There is no other way to explain that, but that it was a malicious act. FEIS was only a formality for the Tplllway. The FHA did not verify the noise data after I-355 extension was open. The Complainant last meeting during discussion held at the Tollway officer expressed that "FHA approved the project FHA did not verify the data, this is there problem" see exhibit # 9. The Tollway Authority have taken the

position of "cost effective" Is the Tollway Authority above The law, because they are a government agency?

" Why should the citizens be harmed or his well been sacrificed by the government asks the Complainer "

The Complainer understand the road provides a convenience for the greater public. The I-355 extension is used by a variety of vehicles of those, over 10% of the users are heavy trucks. Heavy trucks generate the loudest noise shown at a chart from FHA. The noise a speed of 60mph is 84 dB (A) Complainant property is at about 350 feet from the bridge and Mr. Nitchkoff, is about 300 feet from the road Mary Pytlowski about 150 from the road, Garb family 300 feet from the road From the chart it can be calculated the noise level at our property will be about 73 dB(A) and higher see exhibit #8. #6 and the data shown in the formal complaint. The noise data presented at the hearing by the respondent exhibit # 4, One of his data points collection was at the north side of my lot, 150 feet farther from the bride, The second collected from behind Mary Pytlowski house, she is affected by the noise of the bridge. Other point obtained in the south side of the bridge shows the extend of the noise by the residence of Boris Nitchkoff. The data obtained by respondent the position were the data was obtained the photograph is from Google (Internet)but the marks are artificially posted: meaning the distances. This indicate again a malicious act from the Tollway Authority.

The original proposal for I-355 was for 4 lanes but while in the process of change from EIS to FEIS, FHA signed off for 6 lanes, and the road is build as a 6 line road without making an environmental

study for six lane. Because the increase road lines, with time, there will be an increase in traffic, subsequently the noise level will be higher in decibels. The Tollway Authority also is giving incentives to truck operators to use the road, I-355 extension at night, such incentive will produce more disturbance at slipping hours,

#### Remedy

Complainants request that the Tollway be ordered to cease and desist violating numerical emissions standards set forth at 35 III. Admin Code § 901 .102, and from violating the nuisance noise standards of 35 III Admin . Code § 900 .102 .

Since the evidence clearly demonstrates a violation of IPCB nuisance noise standards, the Complainants request the Tollway to undertake substantive steps to address the excessive noise originating from the I-355 extension. These changes would allow for the continued unregulated operation of the Tollway system, while easing the impact to nearby residents. Finish constructing the barrier on the 135 street bridge of 14 feet high. Complainant. Garb family and Nitchhoff seek the installation of additional noise barriers from the south of the 135 street bridge to Archer Av. in order to reduce the noise levels on their side. The Board has previously ordered the installation of noise barriers in order to guarantee compliance with noise regulations . See Zarlenqa v .Partnership Concepts (PCB No. 89-169,)), and Thomas v. Carry Companies (PCB 91-195). Complainants' noise expert, David Larson testified that the installation of additional noise wall at the site would



significantly reduce the noise impacts originating from the I-355 extension.

Residents either gave public comment at the Hearing or provided Signed written complain as to the noise affects on their lives. The Existing Noise Barrier is Insufficient and inadequate on 135 street bridge for several reasons.

First, The portion of the bridge without barrier, the Complainer can see the truck tires , and the tire are a significant source of noise generated by vehicles traveling on the on cement.( The cement road generate more intense noise level then the asphalt according to FHA road construction manual ).

A direct line of sight from I-355 extension allows for an unrestricted stream of noise to the Complainants' bedrooms on the second floor. The unrestricted noise consists of tire noise, engine noise, jack brakes, exhaust tail pipe from heavy trucks and trucks hitting holes in the road surface. All of these specific sounds create noise levels exceeding Board criteria.

Second, the current 240 feet wall 10 feet high on the bridge existing noise barrier wall is not of sufficient length nor height to achieve noise reduction. Currently the noise barrier wall ends, at 240 feet from the north 135 street bridge to the middle. The house of Boris Nitchkoff and Garb family are exposed without any wall barrier, They signet letter on the formal complain.

It is Complainants belief that additional noise barrier wall is a necessity, which is technically feasible, and economically reasonable, to build a sound barrier considering. The rate for heavy trucks pay for

usage, ( Recently 2011 there was a toll rate increase.) gives over \$3,000,000.0 per year, above what is generated by regular automobile. See the first amended complain. Keeping in mind the Tollway short changed our area in Lemont by 135 street bridge, Because change from EIS to FEIS by \$ 542,000.00 from( 2440 feet x 25 feet) to (24500feet x 14 feet see (I-355 South extension (FAP 340) Traffic noise Analysis Reevaluation Tech report from the Tollway ) Note: During the exchange of information Mr. Zuccherro posted the cost of the 240 feet long and 10 feet high wall cost \$60,000.00 which is about \$ 25.00 per square foot. If there would be constructed additional 740 feet wall with a height of 15 feet, The cost would be around \$250,000.00 at \$ 25 per square foot

Complainants do not ask for a continuous noise monitoring program following any changes made to the existing noise barrier wall at this time.

The Complainant is sure there is a larger number of residents that will be positively impacted by the reduction in noise level which we unnecessary bear.

#### CONCLUSION

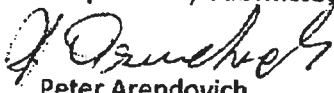
Testimony presented at the Hearing and on this brief clearly depicts that the sound generated by the I-355 extension Tollway reaching Complainants violates the Board's numerical noise emission standards in violation of 35 III . Admin .Code §901 .102 . Furthermore, the oppressive noise creates an unreasonable interference with the Complainants lives, and those of their neighbors, in violation of 35 III . Admin . Code § 900 .102 . Evidence presented noise experts establishes that the area is receiving noise nuisance levels exceeding Board criteria.

Arendovich Peter was too angry and frustrated in his presentation. He presented documents which based on technicality might not be admitted. The problem presented to the Board by the Complainant seeking JUSTICE, not technicality. There was a technical and economically viable solution to reduce the noise originating from the I-355 extension reaching the adjacent residents. Specifically, Complainants request the installation of noise barrier wall 14 feet high and finish all across the bridge of 135 street bridge and add a wall between the Nitchoff and Garb residence in place of the current no wall.

Further, the Tollway has previously spent millions of dollars to install noise barrier wall along their road network, including wall augmentations when necessary. Based upon this previous investment, and the large revenues obtained from the tollway system, additional noise barrier wall requested by Complainants is considered economically feasible.

Complainants do not ask for a continuous noise monitoring program following any changes made to the existing noise barrier wall at this time. However, they reserve the right to assert that requirement if necessary. Further, since Respondent is a government agency, Complainants refrain from seeking civil penalties, or requiring a performance bond, at this time. Complainants strongly believe that any moneys expended in this matter should be directed towards financing their reasonable request'

Respectfully submitted



Peter Arendovich

Affected by noise Pollution

On 1388 GordiLemont