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STATE OF ILLINOIS  
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

IN THE MATTER OF:

MICHAEL A. PETROSIUS and DARLA )  
G. PETROSIUS )

Complainants, )

v. )

ILLINOIS STATE TOLL HIGHWAY )  
AUTHORITY )

Respondent. )

No. PCB 04-36  
(Citizen's Enforcement  
Noise)

NOTICE OF FILING

TO: Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 N. Grand Avenue  
Springfield, Illinois 62794

Victor Azar  
Special Ass't Attorney General  
Illinois Tollway  
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PLEASE TAKE NOTICE that on April 6, 2006, Mike and Darla Petrosius, through their attorney Scott Dworschak, filed with the Office of the Clerk of the Illinois Pollution Control Board, an original and ten copies of the attached Brief, a copy of which is served upon you. Pursuant to 35 Ill. Admin. Code 101.103(d) this filing is submitted on recycled paper.

Mike and Darla PETROSIUS

  
By their Attorney

Scott Dworschak  
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THIS FILING SUBMITTED ON RECYCLED PAPER

**BEFORE THE POLLUTION CONTROL BOARD  
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**COMPLAINANTS BRIEF**

Complainants, Michael and Darla Petrosius, files this brief in support of their 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 I-294 in LaGrange, 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.

**I. BACKGROUND**

On September 9, 2003, 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

by Complainants requesting the Tollway take steps to mitigate the noise from the Tri-State Tollway, Interstate 294 (hereinafter "Tri-State Tollway") reaching the adjacent residential area. 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 Tri-State Tollway.

Commencing on December 5, 2005 the Board conducted a two-day hearing on this matter during which testimony was presented from the Complainants, as well as, from a sound expert retained by Complainants. Several local residents also presented public comment either in person, or by letter, regarding the effects of the roadway noise on their daily living conditions. Testimony from an expert retained by the Tollway, and other Tollway officials, was also presented at the Hearing.

## **II. FACTS**

The Illinois State Toll Highway Authority owns and operates a system of tollroads 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 Tri-State Tollway, is one of these toll roads. The Tri-State Tollway was originally constructed in the late 1950's, adjacent to the residential property in question. Since the initial construction, the Tri-State Tollway has been expended from four to eight traffic lanes in the area.

In 1993, a new traffic interchange was constructed on the Tri-State Tollway at 75<sup>th</sup> Street near the Petrosius residence.

The Complainants purchased the property in 1995 (Transcript Volume I at 15, hereinafter "Tr. Vol. I, at \_\_\_\_"). In fact, the Complainants and the Tollway share a common property line. (Tr. Vol. I at 15). Complainants assert that the excessive noise generated by vehicles traveling on the Tri-State Tollway has disrupted and interfered with the lives of the Complainants, their family, and nearby residents on a continuing basis. (Tr. Vol. I at 30-4, 43, 80-81, 83-86, 89)

As a result of the excessive roadway noise reaching his property, Mike Petrosius made contact with Illinois Tollway representatives in order to seek some type of relief. (Tr. Vol. I at 38-42) Specifically, Petrosius requested that additional noise barrier wall be installed in the area in order to reduce highway noise reaching the property, and that of his neighbors. (Tr. Vol. I at 44)

Unfortunately, despite numerous meetings with Tollway officials, the Tollway refused Complainants' request to install additional noisewall in the area. (Tr. at 43) Petrosius continued to investigate the matter, including purchasing a noise meter in order to determine the specific level of noise reaching his property. (Tr. Vol. I at 36) Due to the Tollway's refusal to comply with Petrosius' request, the Complaint was filed.

At the Hearing, the Petrosius' presented testimony of how the noise from the Tollway effects their daily lives. (Tr. Vol. I at 31-4, 43, 80-6, 89) Testimony was also given from a noise expert stating that the sound levels measured from the Tri-State Tollway reaching Complainants property violated the Illinois

numerical noise emission standards. (Tr. Vol. II at 100; Complainants' Exhibit 18) Additionally, the noise expert testified that the noise levels constituted an unreasonable interference to the Complainants daily lives. (Tr. Vol. II at 106; Complainant's Exhibit 18) Importantly, testimony presented by a noise expert retained by the Tollway *also* depicted noise levels exceeding Illinois numerical noise emission standards. (Tr. Vol. II at 198-201; Respondent's Exhibit 18).

The testimony of Complainants, and their expert witness, was not reasonably discredited on cross-examination, nor did the Tollway present any rebuttal testimony as to the noise effects upon the Complainants and their neighbors, beyond that given by their own expert witness. Further, the Hearing Officer found all the testimony to be credible, and thus, the Board must accept their testimony.

### **III. ARGUMENT**

The excessive and unreasonable noise generating from the Tri-State Tollway violates the numerical standards set forth at 35 Ill.Admin. Code § 901.102, and constitutes a nuisance which is prohibited by 35 Ill. Admin. Code § 900.102.

#### **A. Numerical Violations**

The evidence presented at the Hearing clearly illustrates that the noise emanating from the Tri-State Tollway violates the numerical sound emission standards set forth in 35 Ill.Admin. Code § 901.102, and constitutes a nuisance which is prohibited by 35 Ill.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 Ill. Admin. Code Subtitle H, Appendix B. As a single family residence, the home at 7335 Maridon Road can clearly be classified as Class A land. The Complainants noise expert testified that his interpretation of the LBCS would classify the Tri-State Tollway as Code 4130, with a designation of Class C under 35 IAC 901 land class. (Tr. Vol II at 125; Complainants Exhibit 18, page 2)

Expert testimony at the Hearing demonstrated that the noise level is 19 decibels above the Board regulations for C class land to A class land. (Tr. Vol. II at 125; Complainants Exhibit 18, page 7). Importantly, testimony from Respondent’s noise expert also depicted noise levels above Board regulations extending past Respondent’s. (Tr. Vol. II at 198-201; Respondents Exhibit 18, page 8).

Therefore, evidence provided by both parties noise experts demonstrates that the Tollway property emits noise exceeding levels established by the Board.

**B. Nuisance Violations**

The Complaint also alleges that the noise from the Tollway constitutes a nuisance violation of 35 Ill.Admin. Code § 900.102. A primary issue in this allegation is whether the noise causes interference with the Complainants' enjoyment of life. D'Souza v. Marraccini, 1996 Ill. ENV LEXIS 510 !2 (PCB 96-22, May 2, 1996). In order to constitute a interference, the noise must objectively affect the complainants' life. Id.

At the Hearing, substantial evidence was presented depicting how the noise from the Tollway interferes, and adversely affects, the Complainants lives. Complainants testified as to the constant loud noises emanating from the Tollway (Tr. Vol. I at. 29-30, 32, 80) Testimony was presented at the Hearing demonstrating how the noise from the Tollway limited Complainants use of their yard, continuously disrupted their sleep, precluded them from keeping their windows open and increased their reliance upon their air conditioner. (Tr. Vol. I at 31-5, 43, 80-6, 89) Specifically, testimony was presented at the Hearing that the noise from the Tollway interfered with the lives of the Complainants in the following manner:

1. Mike Petrosius testified that the Tollway noise effects the use of his outdoor property (Tr. Vol. I at 31,33), and adversely effects his sleep. (Tr. Vol. I at 32) The sleep disturbance induced Petrosius to

seek professional medical assistance. His physician prescribed multiple sleep assistance medications as treatment. (Tr. Vol. I at 32) Mr. Petrosius also testified 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." (Tr. Vol. I at 43)

2. Darla Petrosius provided testimony depicting that the Tollway noise limited her use of the property (Tr. Vol. I at 83) and continuously and adversely affected her sleep "most nights"; and "It's a very rare night that I'm not awakened by some sort of significant noise (Tr. Vol. I at 85); and induced her to spend time in portions of the home farthest from the Tollway (Tr. Vol. I at 84). Mrs. Petrosius also testified as to her belief that the Tolway noise has adversely affected her quality of life (Tr. Vol. I at 89).
3. The Complainants also have two minor children. Testimony was provided that the noise also adversely affects their lives as well by limiting their use of the property. (Tr. Vol. I at 86-7).
4. Public comment at the Hearing was presented by Krista Dolgner, who lives adjacent to the Complainants. Dolgner spoke how the noise impacts her everyday life (Tr. Vol. I at 11).



5. Public comment at the Hearing was presented by Pat Biegel, who also lives adjacent to the Complainants. Biegel 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. (Tr. Vol. I at 13-4).

The noise from the Tollway clearly interferes with the lives of the Complainants. The Petrosius also believe that the noise causes an unreasonable interference with their lives. 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 practicability 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 Tri-State Tollway. The Board must consider whether the noise substantially and frequently interferes with a lawful activity, beyond minor trifling annoyance or

discomfort. See Furlan v. University of Illinois School of Medicine, 1996 Ill. ENV. LEXIS 713, 10 (PCB 93-15, Oct 3, 1996).

Testimony at Hearing from the Complainants clearly establishes that noise from the Tollway continuously disrupts their lives. (Tr. Vol. I at 43, 89 ) Complainants testimony also reveals the extent to which the noise interferes with their lives (Tr. Vol. I at 31-5, 81-9)

Testimony was also presented from the Complainants' qualified noise expert, Greg Zak, concerning the nuisance level of the noise generated by Respondents toll road. (Tr. Vol. II at 95-6, 100-07) Zak has performed over 60 noise studies, (Tr. Vol. II at 103), and testified that the noise readings were the highest he had measured in since becoming a private consultant. (Tr. Vol. II at 97)

A detailed noise study prepared by Zak was also presented at Hearing (Complainants Exhibit 18). In D'Souza v. Marraccini, 1996 Ill. ENV.LEXIS 510, at 15 (PCB96-22, May 2, 1996), the Board ruled that it can look to measurements as guidance concerning the character and degree of the noise from the site.

Noise readings taken at the site pursuant to Board regulations depicted that noise levels experienced at the residential property exceeded Board criteria from 2 to 19 decibels depending on frequency. (Tr. Vol. II at 100, Complainant Exhibit 18, pg. 7) Zak testified that noise impacts at this level would adversely affect the Complainants quality of life

due to sleep disruption and reduction in the use of their yard. (Tr. Vol. II at 106, Complainant Exhibit 18, pg. 8)

It appears that one of the Tollway's principal defenses is that the Board rules do not apply to them. (Tr. Vol. II at 247). Nonetheless, there can be little doubt that the noise levels reaching Complainants property cause significant and frequent interruptions.

## **2. Social or Economic Value of the Source**

Uncontroverted evidence, and testimony, was introduced at the Hearing depicting the economic value of the entire Tollway system, and the annual revenue derived from the Tri-State Tollway. (Tr. Vol. I at 160-63; Complainants Exhibit 13). There is no dispute that the Tollway system, and the Tri-State Tollway in particular, provides economic value to the area.

However, this value should not run roughshod over the economic value of the adjacent residential communities. Clearly, the negative noise impacts endured by the Complainants and their neighbors, effecting their property values and the conduct of their daily lives, could be lessened. Specifically, a commitment from the Respondent to substantially reduce the noise that reaches adjacent residential areas.

## **3. Suitability or Unsuitability of the Tri-State Tollway to the area.**

Automobiles and trucks driving on the tollway system are the primary source of the excessive noise experienced by Complainants. (Tr.

Vol. II at 21). Traffic on the tollway system is increasing and larger traffic volumes tend to generate additional traffic noise. (Tr. Vol. II. at 77)

Additional traffic lanes have been subsequently added to the Tri-State Tollway since its initial construction, most recently in the early 1990's (Tr. Vol. II. at 4-5) The additional pavement has contributed to a fifty percent increase in traffic on the tollroad adjacent to the property in question since 1988. (Tr. Vol. II at 77; Complainants Exhibit 11)

The Respondent also constructed a new interchange at 75<sup>th</sup> Street on the Tri-State Tollway in 1993, nearly adjacent to Complainants home. (Tr. Vol. II at 10-11) The new interchange is a contributing factor towards additional traffic on the Tri-State Tollway in the area. The interchange also contributes to a higher proportion of truck traffic experienced in the area as compared to the entire tollway system. (Tr. Vol. I at 192-93)

Respondent's ability to promote increased traffic volumes on the Tollway have stretched the suitability of the adjacent residential area to co-exist with the Tri-State tollroad operations and negatively impacted the area residents.

#### **4. The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Noise Emissions From the Tri-State Tollway.**

Complainants do not seek the elimination of Tri-State Tollway operations in these proceedings. (Tr. Vol. I at 46-7). 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 purchasing the residence. These remedies included: seeking medical assistance in the form of prescription sleeping aids; adding more weather insulation to the home where possible; the purchase of a sound machine to assist with their efforts to sleep; and the planting of 30 trees adjacent to the tollroad. All of these efforts were intended to reduce, or reflect, the noise impacts upon the lives of the Complainants. (Tr. Vol. I at 32, 34-5) These efforts have not reduced the noise penetration to an acceptable level.

### **C. Remedy**

Complainants request that the Tollway be ordered to cease and desist violating numerical emissions standards set forth at 35 Ill. Admin. Code § 901.102, and from violating the nuisance noise standards of 35 Ill. 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 Tri-State Tollway. These changes would allow for the continued unregulated operation of the Tollway system, while easing the impact to nearby residents.

#### **1. Construct Additional Noise Barriers.**

Complainants seek the installation of additional noise barriers in the area in order to reduce the noise levels. (Tr. Vol. I at 44-7) The Board has previously ordered the installation of noise barriers in order to guarantee compliance with noise regulations. See Zarlenga v. Partnership Concepts (PCB No. 89-169,) and Thomas v. Carry Companies (PCB 91-195).

Complainants' noise expert, Greg Zak, testified that the installation of additional noisewall at the site would significantly reduce the noise impacts originating from the Tri-State Tollway. (Tr. Vol. II at 107-10). Specifically, it was recommended that a noise barrier wall of approximately 18 feet in height, extending a quarter mile adjacent to the property, be installed. (Tr. Vol. II at 112-3). Zak also stated that the noise barrier would also reduce noise reaching other residents in the area (Tr. Vol. II at 116-18)

Respondents noise expert also agreed that additional noise barrier wall would effect other homes in the area. (Tr. Vol. II at 218) Many of these residents either gave public comment at the Hearing or provided subsequent written comment as to the noise affects on their lives.

## **2. The Existing Noise Barrier is Insufficient.**

In the early 1990's, the Tollway installed noisewall barriers along portions of the Tri-State Tollway. (Tr. Vol. II at 18-20) Partial noisewall barriers were also installed adjacent to Complainants property at this time. (Complainants' Exhibit 14) Unfortunately, this noise barrier wall has

been shown to be ineffective at reducing noise to Board criteria levels by both parties noise experts. (Complainants Exhibit 18, Respondents Exhibit 18)

The existing noise barrier is inadequate for several reasons. First, uncontroverted evidence was presented depicting that sections of the noisewall are of insufficient height to block line of sight of traffic operating on the Tollway. (Tr. Vol. II at 111, 216; Complainants Exhibit 5) Restricting the line of sight from noise generator to receptor is critical to achieving effective noise reduction. (Tr. Vol. II 109, 124-5) Line of sight also effects how the noise affects those individuals receiving it. (Tr. Vol. II at 217)

Tire noise generated by vehicles traveling on the on the Tollway are a significant source of noise. (Tr.Vol. II at 21, 96) Specifically, the current noise barrier wall directly adjacent to Complainants home, allows for a direct sight line to the Tri-State Tollway pavement. (Tr. Vol. II at 111) This direct line of sight allows for an unrestricted stream of noise from the Tollway to Complainants property. The unrestricted noise consists of tire noise, engine noise, jake brakes, and trucks hitting holes in the road surface. (Tr. Vol. II at 96) All of these specific sounds create noise levels exceeding Board criteria. (Complainants Exhibit 18, Respondents Exhibit 18)

Second, the existing noise barrier wall is not of sufficient length to achieve adequate noise reduction. Currently the noise barrier wall ends at

the end of Complainants property. (Complainants Exhibit 16) However, the Tri-State Tollway and the traffic noise generate on it, continues well past this point. Thus, an avenue for noise penetration has been left open. Zak testified that an additional quarter mile of noise barrier wall installed in this area would reduce noise levels reaching the residential area. (Tr. Vol. II at 114)

Thus, providing additional height and length to the existing noisewall would substantially reduce the noise levels reaching residential areas adjacent to the Tollway.

### **3. The Current Noise Barrier Wall was Incorrectly Installed**

The Tollway hired a consultant (Versar, Inc.) to assist them in determining the height and location of noise barriers along the Tri-State Tollway. (Tr. Vol. II at 29) At the Hearing, evidence was presented demonstrating that the existing noise barrier wall was not installed pursuant to the recommendations provided by Respondent's consultant. (Tr. Vol. II at 43-56; Complainants Exhibit 17). Specifically, the Tollway consultant recommended that an 18 foot high noise barrier wall be placed adjacent to the Complainants residence. (Tr. Vol. II at 45) However, the Tollway did not install an 18 foot high wall in this location (Tr. Vol. II at 52) Instead, a barrier wall varying between 14 and 8 feet was constructed. (Tr. Vol. I at 21, Complainants Exhibit 4). At Hearing, the Respondent offered no uncontroverted evidence as to why the existing noise barrier wall was constructed lower than recommended. In fact, the Tollway's



consultant recommended a wall height matching that recommended by Mr. Zak at the Hearing. (Tr. Vol. II at 113, Complainants Exhibit 17)

Constructing a higher wall is feasible. Testimony was presented by Respondent's own engineer, Mr. Wagner, that noise barrier wall heights up to 25 feet are feasible. (Tr. Vol. II at 71-73) Further, he testified that the Tollway has previously installed noise barrier walls exceeding 18 feet. (Tr. Id). Therefore, it is unknown as to why the noisewall installed in this area did not match the previously recommended height.

#### **4. The Tollway Has Previously Augmented Existing Noise Barrier Walls**

At the Hearing, evidence was presented depicting areas in which the Respondent has augmented existing noise barrier walls. (Tr. Vol. II at 56-64; Complainants Exhibit 14) At least two other areas along the Tri-State Tollway received additional noisewall *after* the initial wall construction. Respondent's actions demonstrate that they are capable of adjusting existing noise barriers in order to reduce roadway noise, and that such actions are feasible.

It is Complainants belief that additional noise barrier wall is necessary, technically feasible, and economically reasonable considering the number of residents that will be positively impacted by the reduction in roadway noise.

## CONCLUSION

Testimony presented at the Hearing clearly depicts that the sound generated by the Tri-State Tollway reaching Complainants violates the Board's numerical noise emission standards in violation of 35 Ill. 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 Ill. Admin. Code § 900.102. Evidence presented by both party's noise experts establishes that the area is receiving noise nuisance levels exceeding Board criteria.

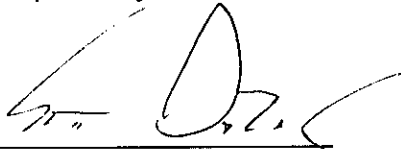
Greg Zak testified that there was a technical and economically viable solution to reduce the noise originating from the Tri-State Tollway reaching the adjacent residents. Specifically, Complainants request the installation of noise barrier wall 18 feet high in place of the current substandard wall, and, installing an additional one-quarter mile section of noisewall adjacent to the subject area as per their noise experts recommendations. Based upon testimony received from Tollway engineers, additional noisewall heights are technically feasible.

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 can be 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 at mitigating the existing roadway noise pollution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'S. Dworschak', written over a horizontal line.

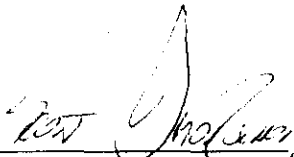
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## CERTIFICATE OF SERVICE

I, Scott Dworschak, an attorney, hereby certify that on Thursday, April 6, 2006, I caused a copy of the attached Complainant's Brief to be served by U.S. Mail, properly addressed and postage affixed, on the following parties:

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Scott Dworschak