

CERTIFICATE OF SERVICE

I, the undersigned, certify that I have served on the date of March 31, 2023, a true and correct copy of the Notice of Electronic Filing, Entry of Appearance and Complaint upon the persons listed on the service list by third-party commercial carrier, FedEx, signature requested, with postage thereon fully prepaid, by causing to be deposited with the third-party carrier in Waukegan, Illinois, before 5:00 p.m.:

PEOPLE OF THE STATE OF ILLINOIS

ex rel. ERIC F. RINEHART
State's Attorney of Lake County

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

Date: March 31, 2023

Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 N. County Street
Waukegan, IL 60085
847-377-3050
lstalter@lakecountyil.gov

SERVICE LIST

Omer Osman, Secretary
Office of the Secretary of Transportation
Illinois Department of Transportation
Hanley Building
2300 S. Dirksen Parkway
Springfield, IL 62764

Yangsung Kim, Chief Counsel
Office of Chief Counsel
Illinois Department of Transportation
2300 S. Dirksen Parkway
Springfield, IL 62764

4. Abutting US-41 on the west side is a commercial area with a residential area to the west of the commercial area.

5. There are a minimal number of single-story buildings between US-41 and the residential area to the west creating a generally open area. See Exhibit A.

6. In 2019, DOT undertook a road construction project a part of which included installing three new sets of Transverse Rumble Strips (“TRS”) latitudinally across the northbound lanes of US-41.

7. Each set of TRS consists of 25 strips. The grooves are ¼” deep and 4” wide, with an 8” pavement between grooves. All grooves are constructed on a pavement layer of Portland cement concrete.

8. The length of each of the three sets of TRS is 25 ft and there is 200 feet of separation between each set of TRS.

9. In October 2022, the TRS were modified, upon information and belief, by altering the construction from concrete to asphalt, shortening the length of the TRS and decreasing the depth of the TRS.

10. Since the TRS were modified in 2019 the residents have experienced a significant interference with the use and enjoyment of their property.

11. Since the modifications in 2019, property owners in the residential area west US-41 who reside on McCraren Avenue can hear traffic as it crosses the TRS. (See Exhibit A.) After the installation of the rumble strips in 2019 the neighbors were impacted by the noise of the TRS in the following ways: the noise from traffic going over the TRS was unbearably loud noise where residents are not able to enjoy using their backyard or patio, noise from traffic travelling over the TRS could be heard inside houses even with windows closed and air

conditioning on, the noise from traffic going over the TRS interrupts sleep and the noise could be heard an extensive distance away.

12. Since the October 2022 modifications to the TRS, the neighbors are still impacted by the noise of the traffic travelling over the TRS in the following ways: the noise is still very loud, traffic going over the TRS could still be heard even with all windows in the house closed, the traffic going over the TRS prevents some residents in the area from sleeping at night.

13. Upon information and belief, the purpose of TRS, with other change of traffic indicators, are to alert northbound drivers on US-41 in the area of the Site to an upcoming change in traffic control and to reduce travel speed and possibly trigger early braking.

14. When vehicles pass over TRS there is a resultant external noise. Under the conditions at the Site each vehicle that traverses the TRS causes three emittances of noise, one emittance of noise for each set of rumble strips traversed.

15. Upon information and belief, northbound US-41 has an excess of 24,000 vehicle trips per day.

16. DOT recognizes in its Bureau of Local Roads and Streets Manual that “with the sound created from transverse rumble strips, placement near residences or quiet zones should be reviewed prior to placement.” BUREAU OF LOCAL ROADS AND STREETS MANUAL, Illinois Department of Transportation, April 2005, rvsd. December 2018, at Sec. 31-1.09, p. 31-1-121.

17. In the Fall of 2021, DOT had a limited study of the area near the Site conducted to quantify the noise resulting from the installation of the TRS in 2019 (the “Study”).

18. In the Study, DOT did not have sound measurements taken at the property line of the residential property closest to the noise source from US-41.

19. Section 23 of the Act, 415 ILCS 5/23 (2022), provides as follows:

The General Assembly finds that excessive noise endangers physical and emotional health and well-being, interferes with legitimate business and recreational activities, increases construction costs, depresses property values, offends the senses, creates public nuisances, and in other respects reduces the quality of our environment.

It is the purpose of this Title to prevent noise which creates a public nuisance.

20. Section 24 of the Act, 415 ILCS 5/24 (2022), provides as follows:

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 or activity, so as to violate any regulation or standard adopted by the Board under this Act.

21. Section 3.315 of the Act, 415 ILCS 5/3.315 (2022), provides the following definition:

“Person” is any individual, partnership, co-partnership, firm, company, limited liability company, corporation, association, joint stock company, trust, estate, political subdivision, state agency, or any other legal entity, or their legal representative, agent or assigns.

22. Section 25 of the Act, 415 ILCS 5/25 (2022), provides, in pertinent part, as follows:

The Board, pursuant to the procedures prescribed in Title VII of this Act, may adopt regulations prescribing limitations on noise emissions beyond the boundaries of the property of any person...

20. The Illinois Pollution Control Board promulgated regulations regarding noise on Subtitle H of the Environmental Protection regulations. 35 Ill. Admin. Code Subtitle H, part 900 (2023) *et seq.* (the “Regulations”).

- 21 Section 900.101 of the Regulations, 35 Ill. Admin. Code 901.101 (2023), provides in pertinent part:

“Person” is any individual, corporation, partnership, firm, association, trust, estate, public or private institution, groups, agency, political subdivision of this State, any other state or political subdivision or agency of that state, or any legal successor, representative, agent or agency of the foregoing.

22. DOT is a person as that term is defined in Section 3.315 of the Act and 900.101 of the Regulations. 415 ILCS 5/3.315 (2022); 35 Ill. Admin. Code 900.101 (2023).

23. Under the Regulations, Class A land includes property used for residential purposes. 35 Ill. Admin. Code 901.101 (2023); 901 App. B – Land-Based Classification Standards and Corresponding 35 Ill Adm Code 901 Land Classes.

24. The residential property located on McCraren Road, west of US-41 is classified as Class A property under the Regulations.

25. Residential property lines are about 700 feet to the west of the US-41 in the area TRS are installed.

26. US-41 is a road and is classified as Class C property under the Regulations. 35 Ill. Admin. Code 901.101 (2023); App. B – Land-Based Classification Standards and Corresponding 35 Ill Adm Code 901 Land Classes.

27. Section 901.102 of the Regulations, 35 Ill. Admin. Code 900.102 (2023), provides that no person may cause or allow the emission of sound that exceeds the allowable octave band sound pressure levels specified when measured at any point within the receiving Class A land. Section 901.101 is attached as Exhibit B and incorporated herein as if fully set forth.

28. Section 901.102 of the Regulations, 35 Ill. Admin. Code 901.102 (2023), provides the applicable sound levels that can be emitted to Class A land during day-time and night-time hours at 25 feet from the property-line noise source. Section 901.102 is attached as Exhibit B and incorporated in whole herein.

29. Under Section 901.102 allowable day-time octave band sound pressure levels (dB) emitted to Class A land from Class C land ranges from 40 dB (at 8000 Hertz) to 75 dB (at 31.5 Hertz) and night-time (10:00 p.m. – 7:00 a.m.) ranges from 32 dB (at 8000 Hertz) to 69 dB (at 31.5 Hertz). 35 Ill. Admin Code 901.102 (2023) attached as Exhibit B; *see also* 35 Ill. Admin Code 900.101 (for definition of night-time hours).

30. According to the Study, sound readings taken at 50 feet from the TRS on November 18, 2021, between 11:48 am – 11:59 am ranged from 57.2 dBA to 102.7 dBA.

31. And, according to the Study, sound readings taken at 50 feet from the TRS on November 18, 2021, between 12:38 pm and 12:58 pm ranged from 62.3 dBA to 107.1 dBA.

32. The sound readings taken for the Study are representative of sounds resulting from all northbound traffic on US-41 that travel across the TRS.

33. Based upon the Study, the noise from the TRS exceeds that which is permissible under Section 901.102 of the Regulations.

34. Upon information and belief, the sound level at the residential property lines still exceeds the minimum allowed under Section 901.102 of the Regulations. 35 Ill. Admin. Code 901.102 (2023).

35. Residential property owners have been impacted by the noise from the TRS on US-41 in that they: cannot open windows to enjoy fresh air; cannot use property to sit outside; cannot enjoy use of patios or yards; cannot enjoy walks outside; get woken up at night or cannot sleep; and can hear noise all day and all night.

36. The impacts noted in paragraph 32 have been experienced since the installation of the TRS on US-41 in 2019 and continue after the modifications made to the TRS in October 2022.

37. By emitting noise at level greater than 75 dB (day-time) and 69 dB (night-time) Respondent has violated Section 901.102 of the Regulations. 35 Ill. Admin. Code 901.102 (2023).

38. By emitting noise in excess of levels permitted in Section 901.102 of the Regulations beyond its property lines, Respondent has violated Section 900.102 of the Regulations. 35 Ill. Admin. Code 900.102 (2023).

39. By emitting noise beyond the boundaries of its property that is unreasonably interfering with the enjoyment of the life of the residents in the area and is a violation of the Regulations, Respondent violated Section 24 of the Act. 415 ICLS 5/24 (2022); 35 Ill. Admin. Code 900.102 and 901.102 (2023).

WHEREFORE, Complainant, PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* ERIC F. RINEHART, respectfully requests that the Pollution Control Board enter an order against Respondent, ILLINOIS DEPARTMENT OF TRANSPORTATION,

1. Authorizing a hearing in this matter at which time the Respondent will be required to answer the allegations contained herein;
2. Finding that the Respondent has violated Section 5/24 of the Act, 415 ILCS 5/524 (2022), and Sections 900.102 and 901.102 of the Board Regulations, 35 Ill. Admin. Code 900.102 and 901.102 (2023);
3. Ordering Respondent to comply with the requirements of Section 24 of the Act and Sections 900.102 and 901.102 of the Regulations; 415 ILCS 5/24 (2022) and 35 Ill. Admin. Code 900.102 and 901.102 (2023);

4. Ordering Respondent to cease and desist from any further violations of Section 24 of the Act and Sections 900.102 and 901.102 of the Regulations; 415 ILCS 5/24 (2022) and 35 Ill. Admin. Code 900.102 and 901.102 (2023);
5. Ordering Respondent to pay all costs, including attorney fees, expert witness and consultant fees expended by Complainant in pursuit of this action; and
6. Granting such other relief as this Board deems appropriate and just.

PEOPLE OF THE STATE OF ILLINOIS

ex rel. ERIC F. RINEHART
State's Attorney of Lake County

By: /s/Lisle A. Stalter

ERIC F. RINEHART
State's Attorney of Lake County
Lisle A. Stalter
Assistant State's Attorney
Lake County State's Attorney's Office
18 N. County Street
Waukegan, IL 60085
847-377-3050
lstalter@lakecountyil.gov

Lake County, Illinois



	 Map Printed on 3/24/2023	Tax Parcel Information Road Labels
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Disclaimer: The selected feature may not occur anywhere in the current map extent. A Registered Land Surveyor should be consulted to determine the precise location of property boundaries on the ground. This map does not constitute a regulatory determination and is not a base for engineering design. This map is intended to be viewed and printed in color.

West's Illinois Administrative Code
 Title 35. Environmental Protection
 Subtitle H. Noise
 Part 901. Sound Emission Standards and Limitations for Property-Line-Noise-Sources (Refs & Annos)

35 Ill. Adm. Code 901.102

901.102 Sound Emitted to Class A Land

Currentness

a) Except as elsewhere provided in this Part, a person must not cause or allow the emission of sound during daytime hours 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	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

b) Except as provided elsewhere in this Part, person must not cause or allow the emission of sound during nighttime hours 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

Credits

(Source: Amended at 42 Ill. Reg. 20453, effective November 1, 2018)

Current through rules published in the Illinois Register Volume 46, Issue 25, June 17, 2022. Some sections may be more current, see credits for details.

35 ILAC § 901.102, 35 IL ADC 901.102

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