

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.)
))
ILLINOIS DEPARTMENT OF)
TRANSPORTATION,)
))
Respondent.)

PCB No. 2023-108
(Enforcement Noise)

NOTICE OF FILING

To: 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

Please take notice that on the 26th day of June, 2023, Respondent, Illinois Department of Transportation’s Partial Motion to Dismiss was filed with the Clerk of the Pollution Control Board, via electronic filing.

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTION,
Respondent,

By: /s/Matthew Dougherty
Matthew D. Dougherty
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Assistant Chief Counsel
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By: /s/Erin Walsh_____

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CERTIFICATE OF SERVICE

Lisle A. Stalter
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The undersigned, being first duly sworn upon oath, deposes and states that a copy of the Illinois Department of Transportation's Partial Motion to Dismiss was served upon the above named at the above address via email on June 26, 2023.

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTION,
Respondent,

By: /s/Erin Walsh
Erin Walsh
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Illinois Department of Transportation
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Date: June 26, 2023

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**ILLINOIS DEPARTMENT OF TRANSPORTATION’S
PARTIAL MOTION TO DISMISS**

Respondent, Illinois Department of Transportation, (“IDOT” or the “Respondent,”), by and through its attorneys, moves the Pollution Control Board to partially dismiss the Complaint in this matter pursuant to 35 Ill. Admin. Code. § 103.212(b).

INTRODUCTION

Purporting to assert a numerical violation of Illinois Pollution Control Board regulations regarding noise pollution, Complainant alleges that a traffic control mechanism aimed at providing a physical warning to motorists that the roadway is ending is responsible for impermissible noise pollution to residential land along McCraren Avenue in Highland Park, Illinois. In support of the claimed noise violation, Complainant points to two noise studies commissioned by IDOT that purportedly establish a violation of Section 901.102 of the Board’s noise pollution regulations. But, as is evident from the allegations in the First Amended Complaint, neither study conformed to the Board’s required procedures for sound measurement, and therefore neither study can be relied upon to establish a numerical violation. Thus, to the extent the

Complainant alleges that the referenced noise studies establish a violation of Section 901.102, the complaint must be dismissed.

BACKGROUND

Following the *sua sponte* dismissal of its initial complaint, the Complainant filed a first amended complaint against the Illinois Department of Transportation again alleging that the Department was responsible for noise pollution from transverse rumble strips (“TRS”) placed latitudinally on the northbound lanes of US-41 in Highland Park, Illinois. Amended Complaint, ¶¶ 3, 6. The TRS at issue were installed in 2019, but were subsequently modified in October 2022. *Id.* ¶¶ 6, 9. As part of those modifications, the TRS were changed from concrete to asphalt, were shortened, and made shallower. *Id.* ¶ 9.

The TRS are not located adjacent to any residential area, but next to a commercial area along US-41. *Id.* ¶¶ 4-5. In fact, residential property lines are about 700 to 1,000 feet away from the TRS installed on US-41. *Id.* ¶ 4. Nonetheless, Complainant alleges that property owners in the residential area over 500 feet from the TRS have been impacted from the noise since the installation of the TRS in 2019 as part of US-41 roadway repairs. *Id.* ¶¶ 6,11. According to Complainant, subsequent modifications of the TRS in 2022 have not alleviated these alleged impacts: the noise is still allegedly very loud, traffic travelling over the TRS can be heard inside home on McCraren Avenue even with closed windows, and the noise supposedly prevents some residents in the area from sleeping at night. *Id.* ¶ 12. Complainant only acknowledges in passing the critically important traffic safety control function that the TRS serves: to alert drivers on northbound US-41 to an upcoming change in traffic control so that drivers reduce travel speed and trigger early braking. *Id.* ¶ 13.

Without specifying any individuals who have allegedly been impacted by the noise from the TRS, Complainant generally alleges that some residents are unable to open their windows; are unable to enjoy use of outdoor space or go on walks outside; are unable to sleep or have sleep interrupted; and can hear noise from the TRS all day and all night. *Id.* ¶ 51. According to Complainant, these ill effects have allegedly gone on since the installation of the TRS in 2019, and persist despite the modifications made in October 2022. *Id.* ¶ 52.

The bulk of Complainant's allegations pertain to two limited noise studies performed near the TRS in order to attempt to quantify the noise resulting from the installation of the TRS in 2019. *Id.* ¶ 17. Complainant admits that none of the sound measurements in this study were taken at the property lines of residential properties along McCraren Avenue. *Id.* ¶ 18. Rather, sound readings were taken 50 feet from the TRS on the side of the roadway, over 700 feet from any McCraren Avenue residence—not within the property boundaries of any residential area allegedly impacted by the noise, as required. *Id.* ¶¶ 35-36. A second limited noise study was performed near the TRS in fall 2022 attempting to determine whether the modification to the TRS had resulted in any changes to noise level. *Id.* ¶ 41. Again, no measurements were taken on or at any residential property line along McCraren Avenue in accord with Board procedures: just as in 2021, measurements were taken on the side of the road 50 feet from the TRS—nowhere near the residential properties at least 700 feet away from US-41. *Id.* ¶ 43-44.

ARGUMENT

Under the Board's procedural rules, a respondent may bring a motion alleging that a complaint is duplicative or frivolous and should be dismissed. 35 Ill. Admin. Code. § 103.212(b). A complaint 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, at *3.

Here, Complainant has failed to allege a cause of action under Section 901.102 of the Board’s regulations. As made clear by Section 900.103, the “sound measurement procedures of 35 Ill. Adm. Code 900 and 901 *must* conform to 35 Ill. Adm. Code 910.” 35 Ill. Admin. Code § 900.103(a) [emphasis added]. Moreover, measurements to establish violations of Section 901 have additional requirements, including that they have a reference time of at least one hour, and that they correct or provide for the correction of sound emissions caused by the presence of ambient or background noise. 35 Ill. Admin. Code § 900.103(b). Thus, it is obvious from the face of Complainant’s amended complaint that the sound study measurements relied upon to ostensibly establish a violation of Section 901.102 can do no such thing.

As an initial matter, there is no allegation that either noise study referenced by Complainant contained a one-hour reference time or that either performed the required correction for the presence of ambient or background noise. Indeed, Complainant alleged that the reference times for sound measurements were a mere 10 to 20 minutes. Am. Comp. ¶¶ 35-36, 44. In addition, Complainant appears to insist that the study measurements can be used to establish a violation of the Board’s regulations despite the fact that the numbers gathered in both the 2021 and the 2022 studies did not comply with the applicable site selection requirements. The regulations clearly necessitate that measurements be taken from *within the boundaries of the receiving land*, as long as the positions are at least 25 feet from the property line. 35 Ill. Admin. Code § 910.105(a) (emphasis added). Measurements taken within 50 feet of the TRS alongside the roadway and away from residential land cannot be in accordance with the requirements of Section 910.

Despite Complainant's admission that the measurements did not comply with the relevant measurement provisions, Complainant nonetheless asserts a violation of Section 901.102. But Complainant cannot base a numerical violation claim upon noncompliant measurements. *Shelton v. Crown*, PCB No. 96-53, 1997 Ill. ENV LEXIS 562, at *30 (noncompliant measurements were not sufficient to find a numeric noise violation). Accordingly, to the extent Complainant's noise pollution claim asserts a numerical violation of Section 901.102 but relies on noise studies with noncompliant measurements, the claim must be dismissed for failure to state a claim upon which the Board can grant relief.

WHEREFORE, Respondent respectfully moves this HONORABLE BOARD to grant its partial motion to dismiss for failure to state a claim pursuant to 35 Ill. Admin. Code. § 103.212(b).

Respectfully submitted,

ILLINOIS DEPARTMENT OF TRANSPORTION,
Respondent,

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