BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

In the Matter of:	)	
	)	
WEGLARZ HOTEL III, L.L.C.	)	
WEGLARZ HOTEL IV, L.L.C.	)	
WEGLARZ HOTEL V, L.L.C.	)	
Complainants,	)	PCB 20 -
	)	
v.	)	
	)	
THE BELT RAILWAY COMPANY OF CHICAGO,	)	
Respondent	)	

NOTICE OF FILING

Please take notice that today we filed with the Clerk of the Illinois Pollution Control Board ("Board") a Formal Complaint, a copy of which is served on you along with this Notice of Filing. You may be required to attend a hearing on a date set by the Board.

Failure to file an answer to this Complaint within 60 days may have severe consequences. Failure to answer will mean that all allegations in the Complaint will be taken as if admitted for purposes of this proceeding. If you have any questions about this procedure, you should contact the hearing officer assigned to this proceeding, the Clerk's Office or an attorney. 35 Ill. Adm. Code 103.204(f).

Respectfully submitted,

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Attorneys for Weglarz Hotel III, L.L.C., Weglarz Hotel IV, L.L.C., and Weglarz Hotel V, L.L.C.

October 2, 2018

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Complainants,	)	PCB 20 -
	)	
v.	)	
	)	
	)	
THE BELT RAILWAY COMPANY OF CHICAGO,	)	
Respondent		

ENTRY OF APPEARANCE

Richard J. Skrodzki and Donald S. Rothschild, both partners at Goldstine, Skrodzki, Russian, Nemec and Hoff, Ltd., hereby enter their appearance on behalf of WEGLARZ HOTEL III, L.L.C., WEGLARZ HOTEL IV, L.L.C., and WEGLARZ HOTEL V, L.L.C., in the above-captioned enforcement action.

Respectfully submitted,

Richard J. Skrodzki
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Donald S. Rothschild
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Respondent	)	

ENTRY OF APPEARANCE

Charles A. Spitulnik, partner at Kaplan Kirsch & Rockwell hereby enters his appearance on behalf of WEGLARZ HOTEL III, L.L.C., WEGLARZ HOTEL IV, L.L.C., and WEGLARZ HOTEL V, L.L.C., in the above-captioned enforcement action. I represent that I am in compliance with Illinois Supreme Court Rule 707 and will maintain compliance throughout this proceeding. I am associated with Richard J. Skrodzki and Donald S. Rothschild, who are simultaneously entering their appearance in this proceeding.

Respectfully submitted,

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Not admitted in IL

October 2, 2018

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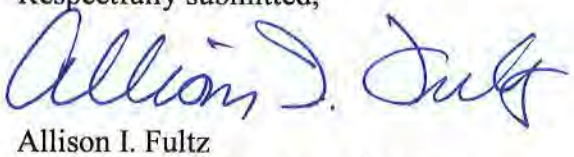
	)	
v.	)	
	)	
THE BELT RAILWAY COMPANY OF CHICAGO,	)	
	)	
Respondent		

ENTRY OF APPEARANCE

Allison I. Fultz, partner at Kaplan Kirsch & Rockwell hereby enters her appearance on behalf of WEGLARZ HOTEL III, L.L.C., WEGLARZ HOTEL IV, L.L.C., and WEGLARZ HOTEL V, L.L.C., in the above-captioned enforcement action. I represent that I am in compliance with Illinois Supreme Court Rule 707 and will maintain compliance throughout this proceeding. I am associated with Richard J. Skrodzki and Donald S. Rothschild, who are simultaneously entering their appearance in this proceeding.

Respectfully submitted,



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Complainants,	)	PCB 20 -
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v.	)	
	)	
THE BELT RAILWAY COMPANY OF CHICAGO,	)	
	)	
Respondent		

COMPLAINT

Complainants Weglarz Hotel III, L.L.C. ("Weglarz III"), Weglarz Hotel IV, L.L.C. ("Weglarz IV"), and Weglarz Hotel V, L.L.C. ("Weglarz V"), each being an Illinois Limited Liability Company (collectively, "Weglarz Hotels"), hereby initiate this formal enforcement action before the Illinois Pollution Control Board ("Board") pursuant to Title VIII, Section 31(d) of the Illinois Environmental Protection Act (codified at 415 ILCS 5/31) and Title 35, Part 103 of the Illinois Administrative Code ("Code") to halt Respondent The Belt Railway Company of Chicago ("BRC") from emitting noise caused by inert retarders from its East Classification Yard in the Village of Bedford Park, Cook County, Illinois ("Bedford Park"), on the basis that such excessive noise unreasonably interferes with the Weglarz Hotels' nearby hotel business activity, including the impacts to their employees and the quiet enjoyment of their guests in violation of 415 ILCS 5, and 35 Ill. Admin. Code Parts 900 and 901. Weglarz Hotels also seek civil penalties and other such relief that the Board deems just and proper.

I. PARTIES

1. Weglarz Hotels are affiliated with the Weglarz Company, a real estate development and investment company located at 15255 South 94th Avenue #305, Orland Park, Illinois 60462 (telephone: (708) 403-3399). Founded in 1963, Weglarz Company has investments and projects throughout the Chicagoland area, as well as partnership investments in other states. Since the late 1980s, the Weglarz Company and its affiliates developed ten hotels, a four-story office building and a TGIF restaurant on properties encompassing two square city blocks located two blocks directly south of Chicago Midway International Airport ("Midway Airport"), between West 65th and West 67th Streets and South Cicero Avenue and Lavergne Avenues in Bedford Park (the "Midway Hotel Complex"). The Weglarz Hotels currently own, respectively, three properties at the Midway Hotel Complex: (a) Holiday Inn Chicago – Midway Airport ("Holiday Inn"), 6624 S. Cicero Ave., Bedford Park, IL 60638, owned by Weglarz III; (b) Residence Inn by Marriott/Chicago Midway Airport by Marriott ("Residence Inn"), 6638 S. Cicero Ave, Bedford Park, IL 60638, owned by Weglarz IV; and (c) Hyatt Place Chicago/Midway Airport ("Hyatt Place"), 6550 South Cicero Avenue, Bedford Park, IL 60638, owned by Weglarz V.

2. Respondent The Belt Railway Company of Chicago is a private intermediate switching terminal railroad company located at 6900 South Central Avenue, Bedford Park, Illinois 60638 (telephone: (708) 496-4000)). BRC's principal business is the switching, interchanging, classification, and re-blocking of rail cars passing through the Chicago metropolitan area on the mainline, siding, and yard trackage, and associated rail facilities that BRC owns within the metropolitan area.

II. FACTS

A. BRC and Its Bedford Park Railyard Operations

3. BRC operates a 786-acre rail yard at 6900 South Central Avenue in Bedford Park, Illinois 60638 (the "Yard"). The Yard has been operating as a freight rail switching and clearing yard for over 100 years. The subject of this complaint is the East Classification Yard, which is located directly south and southwest of the Midway Hotel Complex. The map attached at **Exhibit A** depicts the East Classification Yard's location with respect to the Midway Hotel Complex.

4. Bedford Park's zoning indicates that the Yard is classified for freight rail and industrial use. See Village of Bedford Park Zoning Map available at: http://villageofbedfordpark.com/wp-content/uploads/2016/03/B.P.-Zoning-Map-1.12.17.pdf ("Bedford Park Zoning Map") (attached as **Exhibit B**).

5. Within the Yard, BRC moves, switches, handles, and stores rail cars. As part of these activities, BRC utilizes what are known in the rail industry as retarders. A retarder is a device used to decelerate rolling rail cars at rail yards. U.S. Environmental Protection Agency ("EPA"), *Noise Emission Standards for Transportation Equipment - Interstate Rail Carriers*, 44 Fed. Reg. 22960, 22964 (Apr. 17, 1979). "Retarders operate by having a movable brake shoe press each wheel against a stationary shoe. The resulting frictional forces serve to slow down the rolling car." Federal Railroad Administration ("FRA"), Handbook of Railroad Noise Measurement and Analysis, 40 (2009). Two categories of retarders, "active" and "inert" retarders, are in use in the rail industry. This complaint addresses excessive noise emissions from inert retarders at the East Classification Yard.

6. As a result of their operation, retarders may "emit high frequency squeals due to a stick-slip process between the car wheel, the rail, and the retarder brake shoes." *Id.* With "active" retarders, of which there are six located just off the top of the "hump" in the East Classification Yard to the southwest of the hotels, pressure is normally applied to the wheels through pneumatic or hydraulic cylinders that are controlled either manually or automatically by a computer. *Id*. In contrast, with "inert" retarders, which are near the ends of the classification tracks and much closer to the hotels than the active retarders, "the brake shoes are spring-activated by the weight of the railroad car as it passes over the retarder." *Id.* The spring-activated nature of the inert retarders in the East Classification Yard can cause them to emit louder, substantially longer-duration and more disturbing noise at the hotels than the active retarders. In addition, inert retarders cannot be released when a locomotive pulls a consist of rail cars through them. As a result, the squealing can last for several minutes at a time, depending on the number of cars being pulled through the devices.

7. It is Weglarz Hotels' understanding, based on information and belief, that in 2014 BRC made adjustments to the configuration of its inert retarders at the East Classification Yard, and for the first time since the inception of the Midway Hotel Center, guests and staff at the Weglarz Hotels' properties began to report the excessive noise described in Paragraph 6. Weglarz Hotels believe that these adjustments included the addition of a second inert retarder contiguous to then-existing inert retarders (i.e., "doubling up") on over 20 of the nearly 60 tracks with inert retarders at the East Classification Yard, on the tracks that are closest to the Weglarz Hotels' properties.

B. Weglarz Hotels and their Bedford Park Hotel Businesses

8. The Midway Hotel Complex and Bedford Park are located within the greater Chicago metropolitan area. The map attached as **Exhibit A** depicts the location of the Midway Hotel Complex in relation to its surroundings.

9. The Midway Hotel Complex has been used in its present manner for nearly three decades. The Midway Hotel Complex is zoned within the Bedford Park Cicero Avenue Overlay Zoning District, a business development overlay zone pursuant to Bedford Park's zoning laws that allows hotels among its permitted uses. See Village of Bedford Park Zoning Map, Exhibit B, last visited September 14, 2018, and Bedford Park, Illinois Village Code Sec. 6-1-6 (heavy manufacturing district regulations), Sec. 6-1-6-2 (Cicero Avenue Corridor Overlay District). The Cicero Avenue Corridor Overlay District provides for certain non-industrial uses, including hotels, to be located in the underlying H-1 industrial zone. See Bedford Park, Illinois Village Code, Sec. 6-1-6-2 (Cicero Avenue Corridor Overlay District). Bedford Park's zoning for the Midway Hotel Complex reflects that the Midway Hotel Complex property is classified for hotel use, among other uses. See id.

10. The Weglarz Hotels' properties cater to general business and leisure travelers, commercial air passengers, crewmembers, and other users of Midway Airport, which is one of the busiest airports in the country and a major hub for Southwest Airlines.

11. The continued excessive noise emissions from the East Classification Yard's inert retarders threaten a significant economic engine for the Village of Bedford Park. The Weglarz Hotels' properties contribute substantially to the local economy and to Bedford Park's tax receipts revenues through real estate and hotel taxes. In 2017, the Weglarz Hotels paid $4,104,937.56 in (i) real estate taxes; (ii) Village of Bedford Park, Cook County and State of

Illinois hotel taxes; (iii) State of Illinois sales and use taxes; (iv) Village and Cook County parking taxes; and (v) Cook County amusement taxes.

12. The Weglarz Hotels' properties are located in an area of the Chicago metropolis that includes a mix of commercial, industrial, residential, and transportation land uses. While their location within the heart of an active urban area and proximity to Midway Airport and nearby rail operations mean that relatively high ambient noise levels have always been present, these ambient noise levels have not unreasonably interfered with the successful operation of the hotel businesses. Prior to the dramatic increase in noise emissions from the doubling up of over 20 of the BRC's East Classification Yard's inert retarders beginning in the spring of 2014, the Weglarz Hotels historically have successfully addressed the ambient noise levels at the Midway Hotel Complex. The success of these measures is demonstrated in part by the continued patronage of airline crewmembers flying in and out of Midway Airport, including all Southwest Airlines crews, whose jobs require that they receive adequate rest during their stay at the Weglarz Hotels' properties. Similarly, the significant number of airline passengers and other guests who stay at the Weglarz Hotels' properties expect, and have historically enjoyed, a restful stay, including use of outdoor seating, dining and activity areas.

C. Disturbances Caused by BRC's Operation of Inert Retarders at Its Yard

13. In 2014, the Weglarz Hotels' properties started to experience sudden and often sustained loud, piercing and screeching noises emanating from the East Classification Yard. These noises were disturbing guests and staff at the Weglarz Hotels' properties, as well as other nearby properties.

14. Weglarz Hotels have since identified the increased noise disturbance as being caused by BRC's operation of inert retarders at the East Classification Yard. The noise

disturbance caused by BRC's operation of these inert retarders has occurred continuously and regularly during the operating hours of the Yard, which is open 24 hours a day, seven days per week, since the spring of 2014 up until the present day.

15. Neighboring businesses and Southwest Airlines pilots, flight crew members, and other hotel guests have continually voiced concern to the Weglarz Hotels over BRC's ongoing excessive noise emissions. The Weglarz Hotels believe BRC has acknowledged this impact based on the fact that, since the Weglarz Hotels made the railroad aware of the impact excessive noise from the inert retarders is having on the Midway Hotel Complex, BRC has not, to the Weglarz Hotels' knowledge and belief, doubled up more inert retarders.

D. Measurement and Analysis of Noise Caused by BRC's Inert Retarders

16. In 2017, in order to quantify the level of noise emissions caused by BRC's operation of inert retarders, the Weglarz Hotels engaged professional noise experts, Bowlby & Associates, Inc. ("Bowlby & Associates"), to conduct noise measurements and analysis.

17. Experts from Bowlby & Associates recorded noise measurements and made observations on multiple occasions in 2017 and 2018. The results of these measurements and analysis were detailed in the experts' final report, *see* Bowlby & Associates, Inc., Report Re: Belt Railway Company Yard Inert Retarder Noise at the Hyatt Place Chicago/Midway Airport, Bedford Park, Illinois (May 4, 2018) ("Bowlby & Associates Report") (attached as **Exhibit C**). Bowlby & Associates measured noise emissions at the Hyatt Place. The Holiday Inn and Residence Inn are located in close proximity to the Hyatt Place, with the Residence Inn being 350 feet closer to the Yard than the Hyatt Place.

18. Bowlby & Associates took primary measurements on April 18-19, 2017, and again on April 10-11, 2018. *See* Bowlby & Associates Report at 4. The primary measurements

Bowlby & Associates performed coincided with afternoon/early evening and late night/early morning times and were taken at the Midway Hotel Complex, including on the Hyatt Place property. *See id.* at 2-4. The conditions under which Bowlby & Associates made their reported measurements were typical downwind conditions at that location. *Id.* at 4, 19-20. As noted in the Bowlby & Associates Report, the noise measurements on the Hyatt Place property were made approximately 1,000 feet from the rail yard property line. *Id.* at 7. The measurements and analysis conducted by Bowlby & Associates conformed with the Board's procedures at 35 Ill. Admin. Code 910. *See* Bowlby & Associates Report at 7-13.

19. Bowlby & Associates' background research confirmed BRC's operation of the doubled-up inert retarders on over twenty of the tracks in the East Classification Yard starting in 2014. *Id.* at 5. Bowlby & Associates also located the position of most of the doubled-up inert retarders in the East Classification Yard during its investigations. *Id.* at 3. After conducting analysis on their measurements, Bowlby & Associates concluded that the doubled-up inert retarders were the specific cause of the excessive noise experienced at the Hyatt Place. *Id.* at 4-5. Bowlby & Associates also concluded that the noise caused by the doubled-up inert retarders were consistently the loudest recorded noise and that the noise caused by the doubled-up inert retarders exceeded the standards set by the Board when the wind was blowing from the south, south-southwest, southwest and south-southeast. Id. at 4-5, 12, 25. Bowlby & Associates' research found that winds from the south-southwest have been the most common wind direction at Midway Airport, as averaged over the last 21 years. Id. at 4, 20. Bowlby & Associates concluded that similar levels and exceedances would likely also occur on calm nights, and to a lesser extent, on calm days. Id. at 4.

20. Bowlby & Associates recorded hundreds of measurements of inert retarder noises in each of its measurements in April 2017, October 2017 and April 2018. In some cases the metal-on-metal screeches and squeals from the inert retarders were heard continuously or in rapid succession over three- to five-minute periods. *Id.* at 4. One measurement of inert retarder noise in April 2017 peaked at 95 dBA[1].

21. Bowlby & Associates analyzed the measured noise by octave bands, as required by the Board's procedures[2]. The analysis conducted by Bowlby & Associates showed that, overall, noise from BRC's inert retarders *exceeded* permissible levels under Board regulations by between 19 and 26 dB in the 2,000 Hz octave band, and between 9 and 17 dB in the 4,000 Hz octave band. *Id.* at 4. These two bands represent the bands for which the human ear is most sensitive. *Id.* at 10. Smaller exceedances also occurred in other octave bands. *Id.* at 4. Bowlby & Associates' analysis of its measurements of inert retarder noise showed exceedances of the levels permitted under Board regulations at all times of day—afternoon/evening, night, and early morning. *Id.* at 13-25.

E. Harm Caused to the Weglarz Hotels' Properties and Others

22. BRC's use of the current configuration of inert retarders at the East Classification Yard subjects guests and employees at the Hyatt Place and other Weglarz Hotels' properties to sudden, loud, piercing and screeching noises that impact their health and enjoyment while

[1] dBA, represents a noise reading in decibels (dB) that has been weighted to account for the difference in human perception of noise based on frequency (subjectively, the "pitch") of the noise.

[2] Most sounds contain a spectrum of different tones or pitches, which can be divided into different ranges or "bands" by filters in the noise measurement equipment. These bands are named by their octave band center frequencies, which essentially represent the midpoints of the range of frequencies that comprise each band. The Board's permitted noise limits are given for individual octave bands defined by center frequencies ranging from 31.5 hertz (Hz) to 8,000 Hz. The limits are based on an accumulation of the noise of interest over a time period of at least one hour compared against the background ambient noise absent the noise of interest.

staying or working at the hotel. The noise emitted from BRC's operation of inert retarders inhibits guests' ability to sleep or enjoy their time at the Weglarz Hotels' properties, and deprives them of the enjoyment of the outdoor facilities, including a sun deck, putting green, basketball court, garden, outdoor dining patios, and fire pits. Outdoor dining is available at all of the Weglarz Hotels' properties, including regular evening socials at the Residence Inn featuring outdoor grilling and drinks served on the patio. Weglarz Hotels' business model includes outside activities for guests' enjoyment, all of which is severely compromised by the excessive noise from the inert retarders at the East Classification Yard. Weglarz Hotels note that they had never received complaints about noise of this nature for the first twenty-five years of operations at the Midway Hotel Complex, and that such complaints from guests and staff members began in the spring of 2014, with what the Weglarz Hotels understand to have been the doubling up of over 20 of the inert retarders closest to the Midway Hotel Complex, and have continued regularly since then.

23. Employees of the Weglarz Hotels' properties who experience the sudden, loud, screeching and piercing noises caused by BRC's operation of inert retarders are subject to potentially a disruptive and harmful working environment, impacting their health and well-being on the job.

24. The frequent complaints from hotel guests about noise from the East Classification Yard has engendered a range of responses from hotel managers, including moving guests to alternate accommodations, sometimes in the middle of the night. The ongoing excessive noise severely compromises the primary function of the Weglarz Hotels' properties, namely, to provide their guests with a good night's rest and an enjoyable stay.

25. To protect their guests and employees while indoors, the Weglarz Hotels have incurred significant costs associated with responding to noise caused by BRC's operation of inert retarders. To date Weglarz Hotels have invested nearly half a million dollars in window, exterior building envelope, interior HVAC modifications, sound insulation, and related enhancements to attempt to mitigate these noise impacts. These actions do nothing, however, to reduce the noise at the outdoor seating and activity areas, or where guests unload and load their vehicles, or when guests are walking to and from the hotels, their cars, and nearby restaurants.

F. Efforts to Mitigate and Resolve the Issue, and BRC's Unwillingness to Cooperate

26. As described in Paragraph 26, the Weglarz Hotels have, at significant cost, sought to protect its guests from the repetitive, sudden, piercing and extreme noise from the inert retarders in BRC's East Classification Yard.

27. Since becoming aware of the source of the excessive noise emissions, the Weglarz Hotels have attempted to engage with BRC to mutually resolve the resulting significant impacts. The Weglarz Hotels have sought permission to inspect, observe, and test noise levels from within the Yard, in order to better determine specific causes and mitigation options, but BRC has rejected all such requests, and has not responded to other invitations from the Weglarz Hotels to achieve a cooperative solution to the ongoing noise violations. The Weglarz Hotels believe they have done everything they can to secure BRC's voluntary participation in resolving the noise violations.

28. Separately, the Weglarz Hotels and the Village also introduced BRC to two manufacturers of alternative devices and improved retarder technology currently in use in Europe that successfully mitigate noise emissions. Bedford Park expended significant efforts to encourage BRC to embrace a solution. Additionally, the Village of Bedford Park hired its own

noise consultant, who corroborated that the East Classification Yard inert retarders were the likely cause of the highest noise levels heard at the hotels. Despite the Village of Bedford Park's good faith efforts to facilitate noise mitigation strategies, BRC has not adopted any of these measures and the serious excessive noise emission impacts remain unabated.

29. BRC has refused, despite repeated requests, to alter the manner of its use or configuration of inert retarders to reduce noise emissions to levels typical prior to the spring of 2014, resulting in the ongoing excessive noise emissions described above.

30. As the owner and operator of the Yard, BRC is required to use its inert retarders in conformance with applicable noise emission requirements. BRC's failure to do so has been ongoing since 2014.

III. APPLICABLE LAW

A. Applicable Statute and Regulations

31. Pursuant to the Illinois Environmental Protection Act (the "Act"), codified at 415 ILCS 5, Title VI (2015), noise emissions are regulated by the Board. Section 24 of the Act provides that "[n]o 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."

32. Section 25 of the Act provides that "[t]he Board shall, by regulations under this Section, categorize the types and sources of noise emissions that unreasonably interfere with the enjoyment of life, or with any lawful business, or activity, and shall prescribe for each such category the maximum permissible limits on such noise emissions." 415 ILCS 5/25.

33. Title 35, Subtitle H, Chapter I of the Ill. Administrative Code, contains the regulations that implement the Act.[3] Section 900.102 provides that "[n]o person shall cause or allow the emission of sound beyond the boundaries of his property . . . so as to cause noise pollution in Illinois, or so as to violate any provision of this Chapter." 35 Ill. Admin. Code 900.102. [4]

B. Noise Emission Thresholds Under Sections 901.101 and 901.102 of the Code

34. Part 901 of the Code establishes maximum thresholds for noise emitted from properties as required under Section 25 of the Act. Section 901.101 establishes three types of land classifications—A, B, and C—in which properties are categorized based on their designation under a version of the American Planning Association's Land-Based Classification Standards ("LBCS"). 35 Ill. Admin. Code 901.101. The applicable LBCS use codes appear in Appendix B to Part 901.[5] Hotels are included in Land Class A along with residences. *Id.* 901.101, 901.Appendix B. Several categories related to railroad operations, including "Rail transportation", "Rail freight transportation", and "Rail transportation support establishment", are included under Land Class C. *Id*. 901.101, 901.Appendix B.

35. Section 901.102(a) provides that:

> [N]o person shall 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

[3] The Board recently published proposed amendments to Parts 900, 901, 902, and 910 of Title 35 of the Illinois Administrative Code. *See Order and Opinion of the Board - In the Matter of Noise Rule Update: Amendments to 35 Ill. Adm. Code Parts 900, 901, 902, and 910*, R18-19 (August 23, 2018) (Proposed Rule – Second Notice). These changes update definitions, references, applicable standards and sound measurement procedures, *id.* at 1, and do not substantively change allowable noise levels under the regulations. These changes do not impact the application of the rules to the facts presented in this complaint or to Weglarz Hotels' claims.

[4] The proposed revisions under R18-19 contain substantively the same language. *See* Rulemaking Addendum to the Order of the Board, R18-19, p.10 (Rulemaking – Noise) (Proposed Rule – First Notice) ("R18-19 Rulemaking Addendum").

[5] The Board's proposed rule amendments do not alter Appendix B to Part 901. *See* R18-19 Rulemaking Addendum.

> Class A land which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property-line-noise-source.

35 Ill. Admin. Code. 901.102(a).[6] The table provided in Section 901.102(a) provides that none of the sound levels allowed to originate from Class C Land exceed 75 dB for any octave band center frequency during daytime hours.[7] The values relevant to this complaint are:

Octave Band Center Frequency (Hertz)	**Allowable Level in dB for Class C Land onto Class A Land**
31.5	75
63	74
125	69
250	64
500	58
1000	52
2000	47
4000	43
8000	40

36. Section 901.102(b)[8] provides a similar ban as Section 901.102(a) applicable to nighttime hours. Under the table provided in Section 901.102(b), the sound levels allowed from Class C Land may not exceed the following levels:

[6] The proposed revisions under R18-19 contain substantively the same language. *See* R18-19 Rulemaking Addendum at 18.

[7] These thresholds are not changed under the Board's proposed rule amendments to Section 901.102. *See* R18-19 Rulemaking Addendum at 18-19.

[8] These thresholds are not changed under the Board's proposed rule amendments to Section 901.102. *See* R18-19 Rulemaking Addendum at 18-19.

Octave Band Center Frequency (Hertz)	**Allowable Level in dB for Class C Land onto Class A Land**
31.5	69
63	67
125	62
250	54
500	47
1000	41
2000	36
4000	32
8000	32

C. General Nuisance Standard Under the Act and Code

37. Illinois courts have held that Section 900.102 of the Code, combined with Section 24 of the Act, provide a separate cause of action before the Board based on a nuisance claim independent from causes of action based on per se violations of numeric noise levels established under Part 901 the Code. *Roti v. LTD Commodities*, 355 Ill.App.3d 1039, 823 N.E.2d 636, 644-645 (Ill. App. 2 Dist. 2005).[9]

38. The standard for a noise nuisance is whether the noise "interferes with the complainant's enjoyment of the life and the interference is unreasonable." *Id*. at 645.

39. The standard for unreasonableness is guided by Section 33(c) of the Act, which provides salient factors:

> In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges or deposits involved including, but not limited to:

[9] The Board's proposed amendments to the rule do not change the substance of these provisions and thus would not affect the applicability of common law.

(i) the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;

(ii) the social and economic value of the pollution sources;

(iii) the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;

(iv) the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution sources; and

(v) any subsequent compliance.

415 ILCS 5/33(c). *See also Roti*, 823 N.E.2d at 646.

D. Federal Law Does Not Preempt Board Jurisdiction Over Noise Emitted by Inert Retarders

40. Federal law does not preempt state law and the Board's jurisdiction over BRC's operation of inert retarders. Federal rules regulating noise emitted from interstate rail transportation facilities expressly exclude inert retarders from the regulations. 49 C.F.R. 210.3(b). *See also* Environmental Protection Agency, *Noise Emission Standards for Transportation Equipment - Interstate Rail Carriers*, 44 Fed. Reg. 22960, 22964 (Apr. 17, 1979) (explaining exclusion of inert retarders from EPA regulations); FRA, *Railroad Noise Emission Compliance Regulations*, 48 Fed Reg. 56756, 56757 (Dec. 23, 1983) (explaining exclusion of inert retarders from FRA regulation).

41. In a letter dated August 9, 2018, to Wegalrz Hotels' regulatory counsel, FRA's acting deputy chief counsel, Brett A. Jortland, confirmed the exemption of inert retarders from FRA jurisdiction by stating:

> It is clear from the regulatory scheme and history that inert retarders are exempt from Federal noise emission limits under the [Noise Control] Act and, as a consequence, under the Act, FRA does not have regulatory authority over noise emitted by inert retarders. Here, insofar as the noise emitted from the inert retarders at BRC's rail yard is associated with the squeal . . . of the movement of rail cars through the retarders, FRA does not have regulatory authority to limit that noise.

Letter from Brett A. Jortland, Acting Deputy Chief Counsel, FRA, to Charles A. Spitulnik, counsel for Weglarz Hotels, Re: FRA jurisdiction over noise emitted by inert retarders, dated August 9, 2018 (attached as **Exhibit D**).

42. More generally, state environmental regulations of general application that do not impose "pre-clearance" requirements on a railroad and do not interfere with the railroad's operations are not preempted by the federal rail regulatory regime under the Interstate Commerce Commission Termination Act (ICCTA), codified at 49 U.S.C., Subtitle IV. Railroads will be required to comply with generally applicable state or local laws or regulations enacted under a state's traditional police powers to protect the health, safety and welfare of the public as long as such laws do not unreasonably interfere with interstate commerce or discriminate against railroads. *James Riffin – Petition for Declaratory Order*, STB Finance Docket No. 34997 (Service Date May 2, 2008), slip op. at 4 ("[S]tate and local regulation is applicable where it does not have the effect of preventing or unreasonably interfering with interstate commerce. Localities also retain certain police powers to protect public health and safety") (internal citations omitted). Here, BRC must simply comply with generally-applicable noise limits, a result it can achieve by any means available to it. Coupled with the many decades of operations at the Yard during which BRC generated no documented excessive noise impacts, the requirement to comply with applicable state noise limits demonstrably does not hinder BRC's latitude to conduct its operations or impose any economic hardship on the railroad. Accordingly,

the Weglarz Hotels seek relief in the form of compliance, fines, and other relevant enforcement measures, but not a prescriptive remedy that would impose specific operational requirements.

COUNT 1

VIOLATION OF NOISE LEVEL LIMITS UNDER 35 ILL. ADMIN. CODE 901.102

43. Paragraphs 1-42 are re-alleged and incorporated herein by reference.

44. As an active freight rail yard, BRC's Yard falls within the Land Class C categorization provided under Sections 901.101(d) and 901.Appendix B, as either rail transportation (LBCS Function Code 4120), rail freight transportation (LBCS Function Code 4122), and/or rail transportation support establishment (LBCS Function Code 4123). *See* 35 Ill. Admin. Code 901.101(d) (includes LBCS Codes 4120 through 4180); 901.Appendix B (LBCS Function Codes 4120, 4122, and 4123 under "Transportation, communication, information, and utilities"). *See also* Bedford Park Zoning Map (**Exhibit B**).

45. The Midway Hotel Complex, including the Weglarz Hotels' properties, falls within Land Class A categorization provided under Sections 901.101(a) and 901.Appendix B, (LBCS Function Code 1330). *See* 35 Ill. Admin. Code 901.101(b) (includes LBCS Codes 1000 through 1340); 901.Appendix B (LBCS Function Code 1330: "Hotel, motel, or tourist court"). See also Bedford Park Zoning Map (Exhibit B).

46. The noise caused by BRC's operation of its currently configured inert retarders has since 2014 consistently and regularly exceeded the allowable levels in several of the octave bands under Section 901.102 of the Code, both during the day and the night.

47. For example, as demonstrated by the Bowlby & Associates Report, BRC's operation of inert retarders have been recorded to exceed the allowable daytime and nighttime

levels of noise emitted from a Class C property to a Class A property, in some cases by large margins. Bowlby & Associates Report at 4, 13-25.

48. Accordingly, BRC's operation of inert retarders at the East Classification Yard violated and continues to violate 35 Ill. Admin. Code 901.102 by exceeding the applicable levels of permissible noise emitted.

COUNT 2

NOISE NUISANCE VIOLATION

49. Paragraphs 1-48 are re-alleged and incorporated herein by reference.

50. BRC's operation of inert retarders at the East Classification Yard violates Section 24 of the Act and Section 900.102 of the Code by causing the emission beyond the boundaries of BRC's property noise that unreasonably interferes with the Weglarz Hotels' business and their guests' and staff's use and enjoyment of the Weglarz Hotels' properties. Weglarz Hotels are harmed through damage to its businesses' reputation and reduced economic activity. BRC's operation of the inert retarders therefore constitutes a noise nuisance.

IV. RELIEF SOUGHT

51. Paragraphs 1-50 are re-alleged and incorporated herein by reference.

52. Wherefore, Weglarz Hotels respectfully request that the Board find that BRC has violated 415 ILCS 5/24 and 35 Ill. Admin. Code 900.102, and has caused a general nuisance under common law.

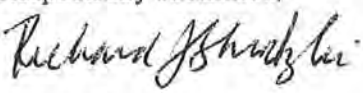
53. Pursuant to 415 ILCS 5/33(b), Weglarz Hotels respectfully request the Board to direct BRC to cease and desist from utilizing inert retarders at the East Classification Yard in a

manner that produces noise emissions in excess of the limits set forth at 35 Ill. Admin. Code § 900.102.

54. Pursuant to 415 ILCS 5/33(b) and (c), 415 ILCS 5/42, and 35 Ill. Admin. Code 103.502, Weglarz Hotels respectfully request the Board impose civil penalties on BRC for its violation of Illinois law and the Board's regulations.

55. Weglarz Hotels respectfully request the Board grant such other relief as the Board deems just and proper.

Respectfully submitted,



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Attorneys for Weglarz Hotel III, L.L.C., Weglarz Hotel IV, L.L.C., and Weglarz Hotel V, L.L.C.

Exhibit A

Map of Midway Hotel Complex

Cook County CookViewer Output

September 4, 2018

1:6,667

0 0.05 0.1 0.2 mi

0 0.075 0.15 0.3 km

MIDWAY HOTEL CENTER

BELT R.R. YARD

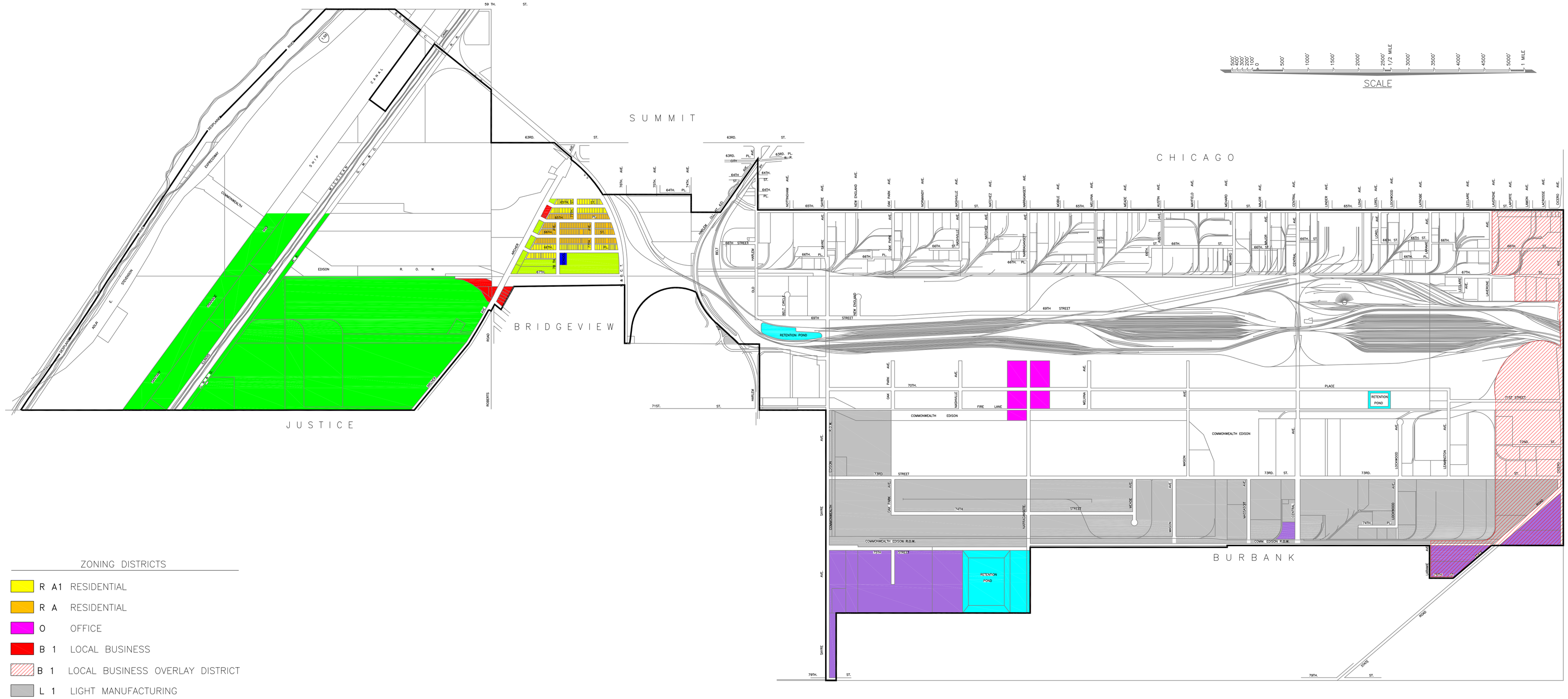
Cook County GIS Dept - Imagery from 2017

Exhibit B

Bedford Park Zoning Map

VILLAGE OF BEDFORD PARK

COMPREHENSIVE PLANNING & ZONING



ZONING DISTRICTS

R A1	RESIDENTIAL
R A	RESIDENTIAL
O	OFFICE
B 1	LOCAL BUSINESS
B 1	LOCAL BUSINESS OVERLAY DISTRICT
L 1	LIGHT MANUFACTURING
H 1	HEAVY INDUSTRIAL
F	MOTOR FREIGHT TERMINAL
T	BULK STORAGE of FLAMMABLES
PD	PARK
SD	SCHOOL
SR	STORM RETENTION

THE ZONING DISTRICT CLASSIFICATIONS, DESCRIPTIONS AND PERMITTED USES INDICATED ON THIS MAP ARE FOR GENERAL INFORMATION ONLY. USER SHOULD CONSULT WITH TEXT OF ZONING AND SUBDIVISION ORDINANCES OF THE VILLAGE FOR SPECIFIC INFORMATION.

THE VILLAGE OF BEDFORD PARK, ILLINOIS

BOARD OF TRUSTEES

PRESIDENT–DAVID R. BRADY
GAIL P. RUBEL
KATRINA M. ERRANT
ANTHONY W. KENSIK
CLERK–YVETTE SOLIS
EDWARD SALECKI
ROBERT S. REGEP
TERRY J. STOCKS

COMPREHENSIVE PLANNING AND ZONING
APPROVED BY ORDINANCE NO. 615 DATED JULY 19, 1973

REVISIONS
1. 3-4-74 ADDED STEVENSON EXPRESSWAY
2. 2-20-75 ORDINANCE NO. 632.
3. 9-22-05 ADDED CICERO AVE OVERLAY DISTRICT ADOPTED FEBRUARY 6, 2003

P:\Village Maps\Bedford Park\Bedford Park Zoning\B.P. Zoning Map 2015.dwg, 24X36, 1/13/2017 11:47:01 AM

Exhibit C

Bowlby & Associates Report, dated May 4, 2018

[attached hereto]

Bowlby & Associates, Inc.

504 Autumn Springs Court, #11
Franklin, Tennessee 37067-8278
(615) 771-3006, Fax (615) 771-3406
wbowlby@bowlbyassociates.com

May 4, 2018

Mr. Mark Weglarz and Mr. Jon Weglarz
c/o Weglarz Company
15255 S. 94th Ave., Ste. 601
Orland Park, IL 60462

Dear Sirs:

RE: Belt Railway Company Yard Inert Retarder Noise at the Hyatt Place Chicago/Midway Airport, Bedford Park, Illinois

This letter reports the results of our sound level measurements and analysis of the noise from the inert retarders in the Belt Railway Company's eastern classification yard that is heard at the Hyatt Place Chicago/Midway Airport. The hotel is located at 6550 S. Cicero Avenue, Bedford Park, Illinois. This noise is also heard at the other hotels in the hotel campus within which the Hyatt is located, including your Residence Inn by Marriott/Chicago Midway Airport. Included in this report are our findings of exceedances of the sound level limits in the Illinois Pollution Control Board (IPCB) noise regulation, *Section 901.102 - Sound Emitted to Class A Land.*

Figure 1 shows the eastern yard, the general location of its inert retarders, the active retarders in both the Belt's eastern and western yards, and the hotel campus.

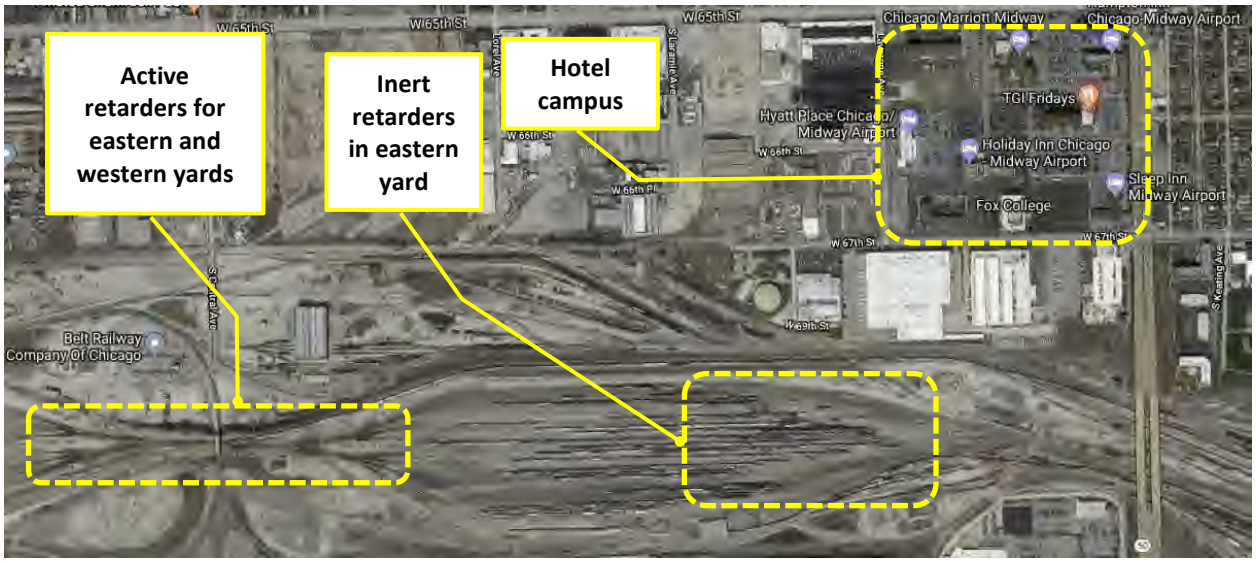


Figure 1. Belt Railway eastern classification yard and hotel campus. (Google Maps)

Figure 2 shows a closer view of the hotel campus, located between W. 65th and 67th Streets.

Figure 2. Hotel campus, including Hyatt Place and Residence Inn. (Google Maps)

Figure 3 shows our noise measurement site on the southern side of the Hyatt and our observation points at the south end of S. Leclaire Avenue and atop the Village's water reservoir tank. Also shown in the dashed boxes are locations of only those inert retarders visible in the photo. Other inert retarders are under the right-most cars on each classification track, holding the cars from rolling to the right (east) into cars on other tracks or rolling out of the yard.

Note the group labeled "Examples of doubled inert retarders." These are on five of approximately 21 tracks (out of a total of 57 tracks with inert retarders) where a second inert retarder was added in 2014 immediately before or after the original inert retarder. This is the

timeframe in which when you first heard the loud, squealing noise, and I conclude that these inert retarders are the noise sources causing the problem at the hotels.

Figure 3. Hyatt Place noise measurement location, observation points and some visible inert retarders in dashed yellow boxes (others are not visible, as they are under the right-most cars on the other tracks). (Google Maps)

Executive Summary

Noise measurements were made outside of the Hyatt Place hotel on April 10-11, 2018. They showed substantial exceedances of the allowable sound pressure levels in the IPCB noise regulation for two periods during the night and one period during the day of April 11:

- 1:30 AM - 3:30 AM
- 4:30 AM - 6:30 AM
- 2:10 PM - 4:10 PM

The cause of the exceedances was rail cars being pulled and pushed by locomotives through particular inert retarders in the Belt Railway's eastern classification yard. These actions create metal-on-metal screeches and squeals centered on the 2,000 hertz (Hz) and 4,000 Hz octave bands, two of the frequencies (subjectively, "pitches") to which the human ear is most sensitive.

These measurements were a follow-up to similar measurements we made outside the Hyatt Place and the Residence Inn in April 2017, which also showed exceedances of the nighttime IPCB noise limits. Additionally, measurements and observations in October 2017 showed that the inert retarder noise was loud enough to cause exceedances if there had been enough instances (or "events") of inert retarder noise to meet the IPCB regulation's requirements.

Over the roughly ten hours of sampling, hundreds of individual inert retarder squeals were heard and measured, sometimes for periods of three-to-five minutes as a group of cars was being pulled or pushed through an inert retarder. The inert retarder sound levels varied depending on the inert retarder in use. The inert retarders that had been doubled up, which were also the closest to the hotels, seemed consistently to be the loudest.

The measured exceedances in decibels (dB) during the three periods are shown below and are especially substantial in the 2,000 and 4000 Hz octave bands:

Period	Octave Band Sound Pressure Level Exceedance (dB)				
	250 Hz	500 Hz	1,000 Hz	2,000 Hz	4,000 Hz
1	--	2	7	26	17
2	2	5	8	25	11
3	--	--	--	19	9

The rail yard, including the inert retarders, operates 24 hours per day, seven days per week, all year round. The sound pressure levels we measured and exceedances we found are typical for operations of the yard whenever the wind is coming from the south, south-southwest, southwest and south-southeast. Similar levels and exceedances would likely also occur on calm nights, and to a lesser extent, on calm days. Wind from the south-southwest are the most common wind direction at Midway Airport, as averaged over the last 21 years.

Background

There are two types of retarders in rail classification yards – active and inert. In the Belt Railway yard, the active retarders, which are controlled from the hump tower, are located in three sets near the classification hump (near the lower left corner of Figure 1). They are designed to slow the rail cars in a precise manner after each car is pushed over the hump and released from the car following it at the top of the hump. All cars pass through the main active retarder, then through one of two secondary active retarders, then through one of several tertiary active retarders as they get sorted onto one of the 57 classification tracks in the eastern yard.

The inert retarders are located near the east end of each classification track, as illustrated in Figure 3, to prevent rail cars from rolling past the end of the track or out of the classification area. Twenty-one of the tracks had a second inert retarder added immediately before or after the original inert retarder in the spring of 2014, which is when you began construction of the Hyatt Place.

You have conveyed to me that this is when you began hearing the loud, squealing noise as being much different and louder than previous noises coming from the yard before the doubling up of these inert retarders. As I have observed in four visits to the site, some of the loudest retarder squeals seemed to come from one or more inert retarders due south of the S. Leclaire observation point and south-southwest of the Hyatt, with the noise coming over the top of the large commercial building with the white roof between the hotels and the yard, visible in Figure 3 (Corrugated Supplies Company).

The noise emissions from certain railroad yard operations, including active retarders, are governed by a U.S. Environmental Protection Agency (EPA) regulation and a complimentary Federal Railroad Administration (FRA) regulation. The EPA regulation is *40 CFR Part 201, Noise Emission Standards for Transportation Equipment; Interstate Rail Carriers.* Section 201.14 is the standard for active retarders. The FRA regulation is *49 CFR Part 210, Railroad Noise Emission Compliance Regulations*, with section 210.33 providing operational sound level limits for several sources including active retarders. However, *inert* retarders are specifically listed in the regulations as being exempt from the regulations. For this reason, we followed the measurement and data analysis procedures in the IPCB noise regulation.

IPCB Noise Regulation

The IPCB has a very comprehensive noise regulation with sound pressure level limits in *Title 35 (Environmental Protection), Subtitle H (Noise), Chapter I (Pollution Control Board), Part 901, Sound Emission Standards and Limitations for Property Line-Noise-Sources (35 Ill. Adm. Code 901).* IPCB's noise measurement and data analysis procedures are in *Part 910, Measurement Procedures for the Enforcement of 35 Ill. Adm. Code 900 & 901 (35 Ill. Adm. Code 910).*

The limits are in terms of octave band sound pressure levels and are a function of time of day: "daytime" occurs from 7 AM to 10 PM, and "nighttime" occurs from 10 PM to 7 AM. The

limits are also based on the land use classification of the sound-generating and sound-receiving properties, as defined in Part 901, Appendix B. Hotels are in Land-Based Classification Standards (LBCS) function code 1300, which is *Class A* for the purposes of the noise ordinance, and railroad activities are in the LBCS 4100 series of function codes, which is *Class C* in the ordinance ("rail transportation" – 4120; "rail freight transportation" – 4122; and "rail transportation support establishment" – 4123).

The nighttime sound level limits are in *Section 901.102 - Sound Emitted to Class A Land*, subsection (b), as follows (with the *Class C* column being the appropriate one for this situation):

> "Except as provided elsewhere in this Part, no person shall 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 which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property-line-noise-source."

Octave Band Center Frequency (hertz)	Allowable [Nighttime] 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

The daytime limits are 6 to 11 dB higher than the nighttime limits and are in *Section 901.102 - Sound Emitted to Class A Land*, subsection (a). Again, Class C applies to this situation:

> "Except as elsewhere provided in this Part, no person shall 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 which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property-line-noise-source."

Octave Band Center Frequency (hertz)	Allowable [Daytime] 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

As noted, the measurement is to be made no closer than 25 ft from the property line of the source. Our measurement point outside the Hyatt was approximately 1,000 ft from the Belt Railway property line.

Measurement and Observation Locations

Senior Engineer Clay Patton and I traveled to the site in the afternoon and early evening of April 10. After a field review, we set up the equipment and began sampling for the nighttime session.

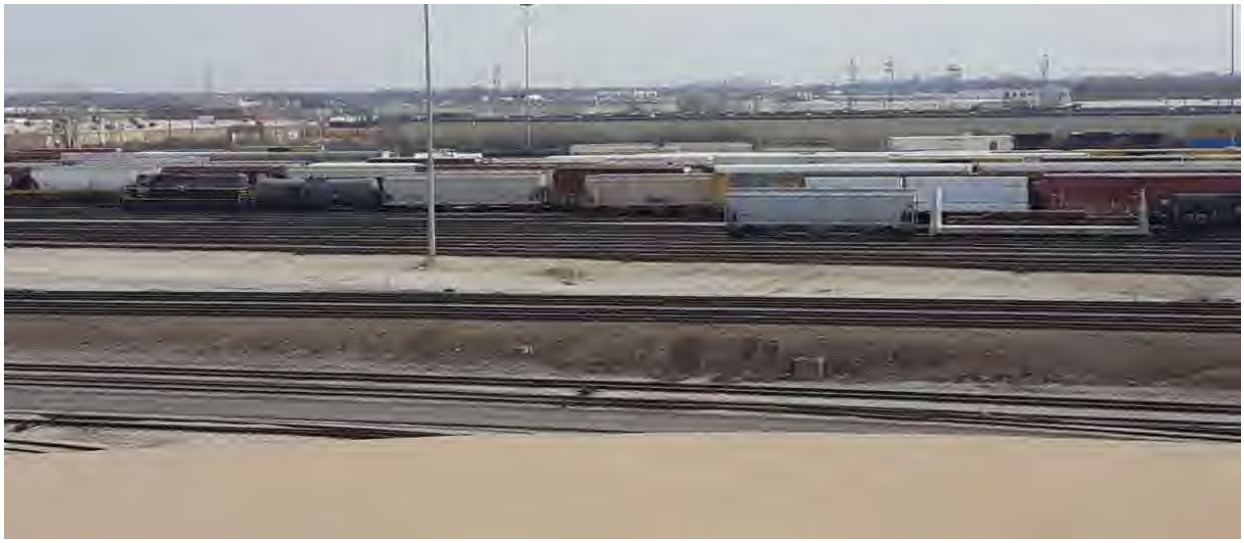
We deployed a Larson-Davis SoundTrack LxT sound level meter ("monitor") outside the Hyatt, approximately 10 feet in front of the south wall of the Hyatt's indoor pool enclosure on the south side of the hotel, approximately 100 ft to the east of Lavergne Avenue, which carried intermittent traffic between West 65th and 67th Streets (see Photographs 1 through 3 below). This monitor was shielded from noise from the air conditioners on the south-facing Hyatt lodging rooms by the roofline of the pool enclosure. The monitor was near a putting green and outdoor patio with a fire pit for use by the hotel's guests for outdoor dining and enjoyment.

We also observed (and listened to) operations from the south end of S. Leclaire Avenue and from atop the Village water reservoir tank (see Photograph 4 for a view from the water tank).

Photograph 1. Hyatt Place noise measurement location looking south.

Photograph 2. Hyatt Place noise measurement location looking east.

Photograph 3. Hyatt Place noise measurement location looking west.



Photograph 4. View of eastern yard looking south-southeast from atop Village water tank.

Measurement Procedures

Since inert retarders are exempt from the EPA and FRA regulations, we did not follow the measurement procedure in the FRA regulation. Instead, we followed the IPCB measurement

and data analysis procedures in *35 Ill. Adm. Code 910.* We sampled one-third octave band equivalent sound pressure levels in one second periods. We combined the one-third octave band data to get the octave band levels needed for comparison to the IPCB limits. We then combined the one-second data into 10-second periods, which is specified as an acceptable interval duration in *Part 910, Section 910.106 (1), Protocols for Determination of Sound Levels* "using small blocks" of data. Details of the IPCB data analysis procedure are presented in the next section.

> *[As a point of reference on octave bands, our hearing deemphasizes (or "attenuates") both low-frequency (low-pitched) tones and very high-frequency (high-pitched) tones, and it emphasizes (or "amplifies") relatively high frequencies (between 1,000 and 4,000 Hz). As examples, electrical circuit "hum" is at 60 Hz (very low), truck exhaust is around 125 Hz to 250 Hz, tire noise on highways is approximately 1,000 Hz to 2,000 Hz, and the metal-on-metal squealing or screeching of inert retarders is very tonal, with a narrow frequency range of mainly 2,000 Hz to 4,000 Hz. The inert retarder noise is thus in the range to which the human ear is most sensitive.]*

Before the start of the measurements, the clock in the monitor and the observers' watches were synchronized. The microphone was set on a tripod approximately four feet above the ground. An extension cable was used to separate the microphone from the monitor and the observer to avoid effects of the observer's body on the measured sound. Before the start of the each session, the system was calibrated with a 114 dB calibration tone. Calibration was also checked after each session, and any drift (on the order of a couple tenths of a decibel or less, which is minor) was noted.

During the measurements, we each kept detailed logs of the events being heard and their time of occurrence, in 10-second blocks. These logs were later used in the data analysis of the sound level data. Also, during the measurements, notes were kept on wind speed and direction, and temperature and humidity were obtained from smartphone weather apps.

For the first hour of the nighttime measurements, I attended the monitor and kept an event log. During this time, Mr. Patton kept his own log from the south end of S. Leclaire Avenue. He was in a better position to judge if a squeal was due to the inert retarders or to the active retarders to the west, while I was in a better position to judge if the retarder or background ambient noises were "contaminated" by each other or other noise sources. We switched positions for the second hour, during which we stopped data collection at 12:35 AM as light rain began to fall. We resumed data collection at 1:30 AM, with Mr. Patton attending the monitor and my observing from S. Leclaire Avenue. We switched positions again at around 2:30 AM. We briefly stopped data collection at 2:38 AM because of light rain but were able to resume the measurement at 2:45 AM. Mr. Patton and I took turns attending the monitor and logging events while the other person took a rest break until we completed this first measurement session around 7:15 AM.

We then conducted the afternoon measurement session from 1:50 PM to 4:47 PM, during which time I had access to the top of the Village water reservoir tank for a clearer view of the classification yard and train movements. I logged events from this position for two hours, while

Mr. Patton attended the monitor and also logged events. For the third hour, I attended the monitor.

During the nighttime measurement, the temperature ranged from 39 °F to 41 °F. The relative humidity was 65-68%. Skies were overcast at the beginning of the measurement, changing to partly cloudy and then clear by the end after sunrise. The wind was from south and south-southwest, ranging mostly from approximately 4 mph to 8 mph.

For the daytime measurement, the temperature ranged from 59 °F to 66 °F. The relative humidity was 34-44%. Skies were mostly cloudy. The wind was from southwest and west-southwest, ranging roughly from 4-6 mph up to 10-12 mph.

The monitor stored the measured sound level data in files that we downloaded into a PC and later imported into spreadsheets for editing, labeling, display, and analysis.

IPCB Data Analysis Procedure

The IPCB procedure in Section 910.106 requires determination of a one-hour equivalent sound level (L_{eq}) of the source of concern (the inert retarders) from data collected in the small blocks of data. With a 10-second block size and a 60-minute sample period, there are 360 blocks. The sound in each block is classified as being caused by the source or not caused by the source. At least 900 seconds (90 of the blocks) have to be attributable to the source for the measurement to be valid.

The IPCB procedure states that if 900 seconds of source-caused data are not collected in the hour, data collection should continue for a second hour, combining the two hours' data, again needing 900 seconds of source-caused data over the 2-hour period. The blocks identified as being caused by the source are then combined to get the L_{eq} using an equation in Section 910.106.

We identified three 2-hour periods with 90 or more 10-second blocks of source-caused noise:

- Period 1, 1:30 AM to 3:30 AM (132 blocks)
- Period 2, 4:30 AM to 6:30 AM (90 blocks)
- Period 3, 2:10 PM to 4:10 PM (92 blocks)

Section 910.106 also requires determination of the "background ambient" based on a 10-minute L_{eq} determined in a similar manner to the source sound level. In this determination, the periods with the source noise are excluded. For the background ambient measurement to be valid, at least 150 seconds of the data (fifteen 10-second periods) must be attributable to the background ambient:

- For Period 1, we analyzed the 10-minute period from 1:50 AM to 2:00 AM. We identified 15 of the blocks (150 seconds) as attributable to the background ambient.

- For Period 2, we analyzed the 10-minute period from 4:40 AM to 4:50 AM, identifying 40 of the blocks (400 seconds) as attributable to the background ambient.

- For Period 3, we analyzed the 10-minute period from 1:50 PM to 2:00 PM, with 24 of the blocks (240 seconds) as attributable to the background ambient.

The IPCB procedure states, "All data for any measurement block corrupted by one or more short-term ambient transient sounds must be discarded." We discarded several blocks when a vehicle passed near the microphone and also excluded periods when other noises from the rail yard were clearly audible. The procedure also states, "…sounds considered to be short-term transient may actually be part of the long-term background ambient and should be so redefined." We followed this direction by redefining the short-term transients of vehicles on nearby streets and aircraft flyovers as part of the background ambient.

In the procedure, the source L_{eq} is then compared to the background ambient L_{eq} for each octave band. If the background ambient L_{eq} in a band is within 3 dB of the source L_{eq} in that band, then the background noise in that octave band could be affecting the source L_{eq}, and no conclusion can be drawn about an exceedance of the Section 901.102 limits for that band. In this case, Section 910.106 states that the source L_{eq} for that octave band is to be reported as 0 dB for the sake of comparison to the Section 901.102 limits.

If the background ambient L_{eq} in an octave band is within 3 dB to 10 dB of the source L_{eq} in that band, a specified correction is subtracted from the source L_{eq}. If the background ambient L_{eq} is more than 10 dB below the source L_{eq}, no correction is needed.

The procedure also states that if a measurement is made within 25 ft of a reflecting surface, a correction needs to be applied. We were within 25 ft of the wall of the Hyatt Place and used a conservatively high correction of -3 dB, which we added to the source L_{eq} in each octave band.

Results

The main noise sources heard and measured, in rough order of overall effect on the measured levels during each period, were:

- Rail yard inert retarder squeal
- Aircraft departing and arriving Midway Airport
- Intermittent vehicles on Lavergne Avenue
- Other sounds from the rail yard including active retarders, rail car "banging" (car coupling), horns, bells, and locomotives
- Occasional vehicles in the hotel parking lot passing the monitor
- Occasional loud vehicles on S. Cicero Avenue and 67th Street

Local traffic and aircraft flyovers were present more frequently during the early morning and afternoon timeframes than in the middle of the night. There were periods of relatively heavy rail

yard activity and relatively light activity during all periods. The above sources are similar to what we observed during our April 2017 measurements.

Period 1, 1:30 AM – 3:30 AM, April 11, 2018

Table 1 presents the results for Period 1 by octave band. The first two data rows are the unadjusted inert retarder 1-hour L_{eq} and background ambient 10-minute L_{eq}, followed by the differences between the two. The fourth row then contains the adjustments to the inert retarder L_{eq} based on the differences. The fifth data row is the -3 dB adjustment to the inert retarder L_{eq} for possible reflections off the Hyatt Place building.

The sixth row shows the adjusted inert retarder L_{eq} adjusted for background ambient and reflections. Per the IPCB procedure, the inert retarder levels within 3 dB of the background ambient are reported as 0 dB because they are affected by the background ambient noise.

Below that row are the allowable nighttime octave band sound pressure levels emitted from Class C land noise and received on Class A land, from Section 901.102 of *35 Ill. Adm. Code 901*. Finally, the last row shows the exceedances, if any, of these limits by the adjusted measured inert retarder noise.

Figure 4 is a graph of the adjusted measured inert retarder octave band L_{eq} (in red with triangular symbols) and the allowable nighttime octave band sound pressure level levels (in black with circular symbols).

The table and figure show that the nighttime exceedances caused by inert retarder noise (rounded to whole numbers) were:

- 500 Hz: 2 dB
- 1,000 Hz: 7 dB
- 2,000 Hz: 26 dB
- 4,000 Hz: 17 dB

**Table 1 – Results of IPCB Measurement Data Analysis,
Period 1, 1:30 AM – 3:30 AM, April 11, 2018, Hyatt Place**

Octave Band (Hz)	**31.5**	**63**	**125**	**250**	**500**	**1,000**	**2,000**	**4,000**	**8,000**
Unadjusted Inert Retarder 1-hour L_{eq} (dB)	64.9	66.9	63.1	57.7	54.8	52.3	65.4	52.2	38.2
Background Ambient 10-min L_{eq} (dB)	63.0	65.5	61.9	55.2	51.6	46.5	42.0	37.9	38.0
Difference (dB)	1.9	1.3	1.2	2.5	3.1	5.8	23.4	14.2	0.2
Correction based on Background Ambient (dB)	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	-3.0	-3.0	-1.3	0.0	0.0	set Inert L_{eq} to 0 dB
Correction based on Reflections (dB)	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0
Adjusted Measured Inert Retarder L_{eq} (dB)	**0.0**	**0.0**	**0.0**	**51.7**	**48.8**	**48.0**	**62.4**	**49.2**	**0.0**
Allowable Class C Octave Band SPL (dB)	69.0	67.0	62.0	54.0	47.0	41.0	36.0	32.0	32.0
Exceedance of Allowable Limit by Inert Retarder Noise (dB)					**1.8**	**7.0**	**26.4**	**17.2**	

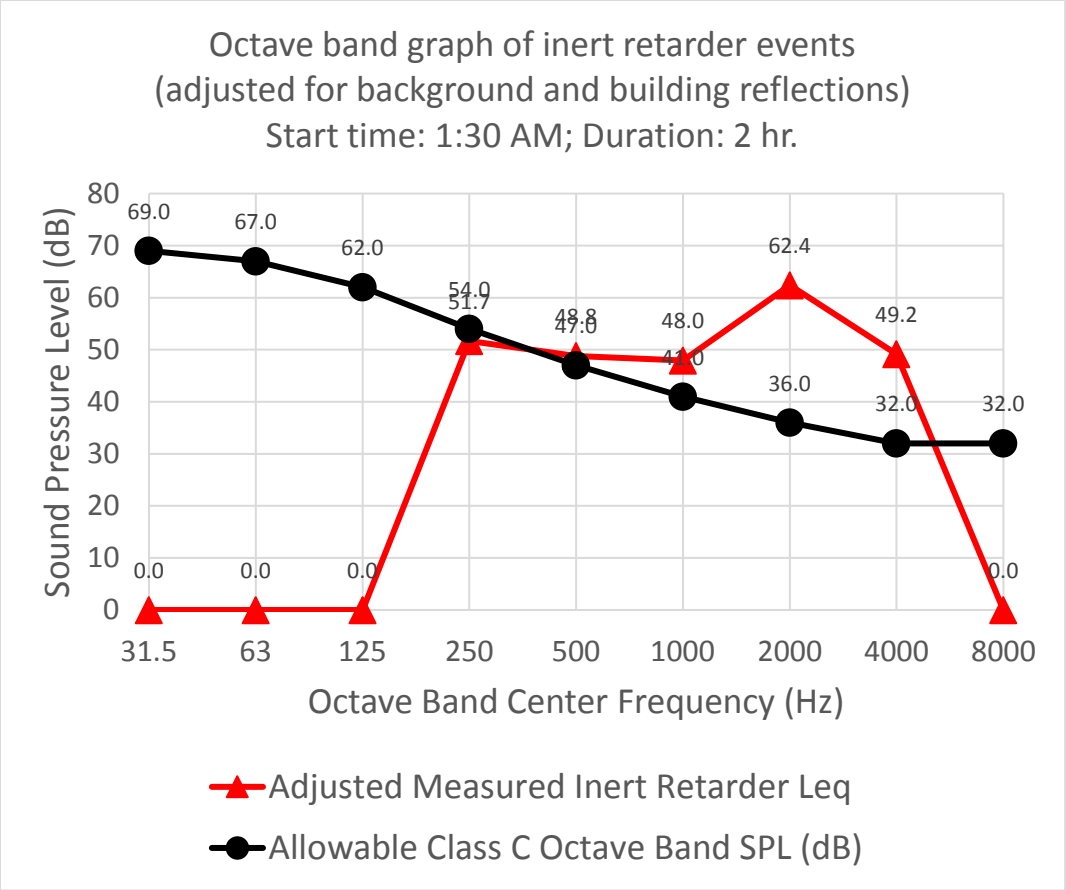


Figure 4. Octave band sound pressure levels for adjusted measured inert retarder L_{eq} for Period 1, 1:30 AM to 3:30 AM, April 11, 2018, outside Hyatt Place hotel and allowable nighttime levels from Class C land emitted to Class A land.

Period 2, 4:30 AM – 6:30 AM, April 11, 2018

Table 2 presents the results for Period 2 by octave band. Figure 5 is a graph of the adjusted measured inert retarder octave band L_{eq} (in red with triangle symbols) and the allowable nighttime octave band sound pressure level levels (in black with circle symbols).

The table and figure show that the nighttime exceedances caused by inert retarder noise (rounded to whole numbers) were:

- 250 Hz: 2 dB
- 500 Hz: 5 dB
- 1,000 Hz: 8 dB
- 2,000 Hz: 25 dB
- 4,000 Hz: 11 dB

**Table 2 – Results of IPCB Measurement Data Analysis,
Period 2, 4:30 AM – 6:30 AM, April 11, 2018, Hyatt Place**

Octave Band (Hz)	**31.5**	**63**	**125**	**250**	**500**	**1,000**	**2,000**	**4,000**	**8,000**
Unadjusted Inert Retarder 1-hour L_{eq} (dB)	68.8	70.3	66.3	60.9	57.7	54.3	63.5	47.0	38.7
Background Ambient 10-min L_{eq} (dB)	65.1	67.5	63.1	57.3	54.3	50.2	47.2	39.5	38.2
Difference (dB)	3.7	2.7	3.2	3.7	3.4	4.1	16.3	7.5	0.5
Correction based on Background Ambient (dB)	-2.3	-3.0	-3.0	-2.3	-3.0	-2.3	0.0	-0.7	set Inert L_{eq} to 0 dB
Correction based on Reflections (dB)	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0
Adjusted Measured Inert Retarder L_{eq} (dB)	**63.5**	**64.3**	**60.3**	**55.6**	**51.7**	**49.0**	**60.5**	**43.3**	**0.0**
Allowable Class C Octave Band SPL (dB)	69.0	67.0	62.0	54.0	47.0	41.0	36.0	32.0	32.0
Exceedance of Allowable Limit by Inert Retarder Noise (dB)				**1.6**	**4.7**	**8.0**	**24.5**	**11.3**	

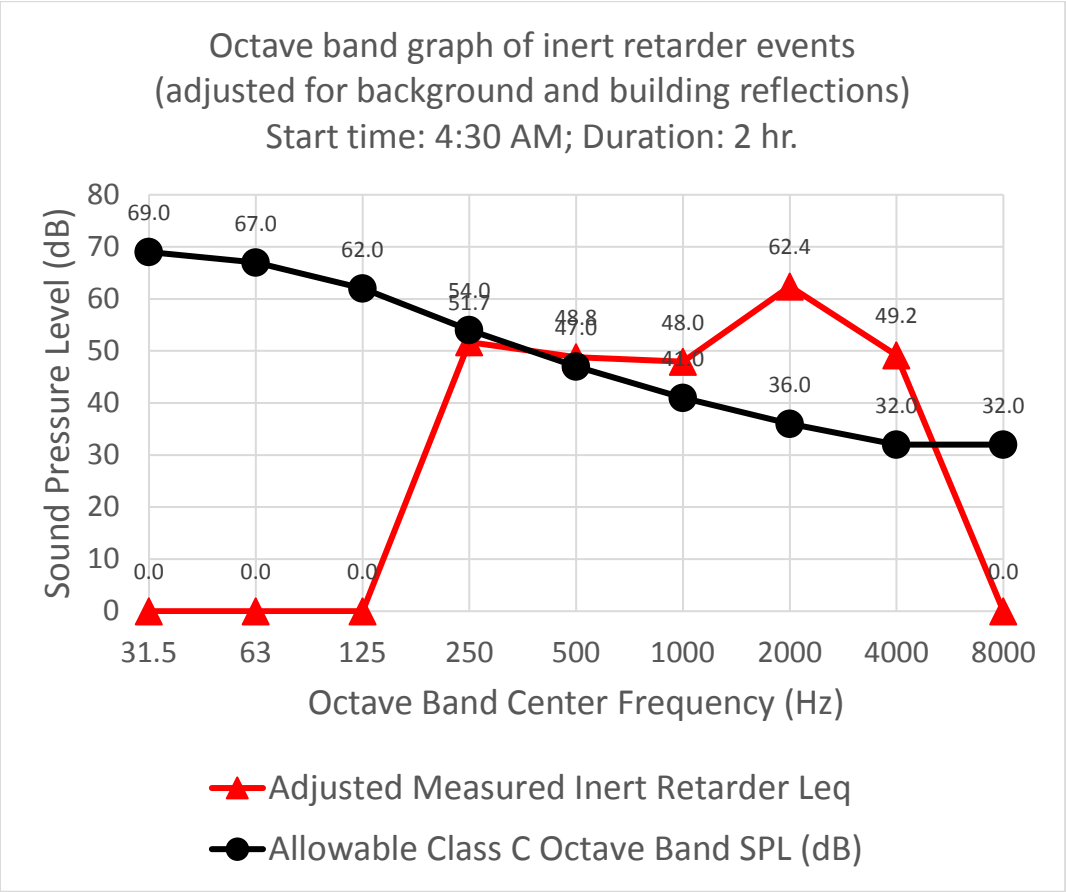


Figure 5. Octave band sound pressure levels for adjusted measured inert retarder L_{eq} for Period 2, 4:30 AM to 6:30 AM, April 11, 2018, outside Hyatt Place hotel and allowable nighttime levels from Class C land emitted to Class A land.

Period 3, 2:10 PM – 4:10 PM, April 11, 2018

Table 3 presents the results for Period 3 by octave band; in this case the allowable Class C limits are for daytime. Figure 6 presents a graph of the adjusted measured inert retarder octave band L_{eq} (in red with triangle symbols) and the allowable daytime octave band sound pressure level levels (in black with circle symbols).

The table and figure show that the daytime exceedances caused by inert retarder noise (rounded to whole numbers) were:

- 2,000 Hz: 19 dB
- 4,000 Hz: 9 dB

**Table 3 – Results of IPCB Measurement Data Analysis,
Period 3, 2:10 PM – 4:10 PM, April 11, 2018, Hyatt Place**

Octave Band (Hz)	**31.5**	**63**	**125**	**250**	**500**	**1,000**	**2,000**	**4,000**	**8,000**
Unadjusted Inert Retarder 1-hour L_{eq} (dB)	68.7	70.1	66.0	59.4	54.3	53.6	68.7	55.1	38.5
Background Ambient 10-min L_{eq} (dB)	72.3	73.2	67.9	62.3	57.9	54.0	49.0	42.2	43.1
Difference (dB)	-3.6	-3.1	-2.0	-2.9	-3.5	-0.4	19.6	13.0	-4.6
Correction based on Background Ambient (dB)	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	set Inert L_{eq} to 0 dB	0.0	0.0	set Inert L_{eq} to 0 dB
Correction based on Reflections (dB)	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0	-3.0
Adjusted Measured Inert Retarder L_{eq} (dB)	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**65.7**	**52.1**	**0.0**
Allowable Class C Octave Band SPL (dB)	75.0	74.0	69.0	64.0	58.0	52.0	47.0	43.0	40.0
Exceedance of Allowable Limit by Inert Retarder Noise (dB)							**18.7**	**9.1**	

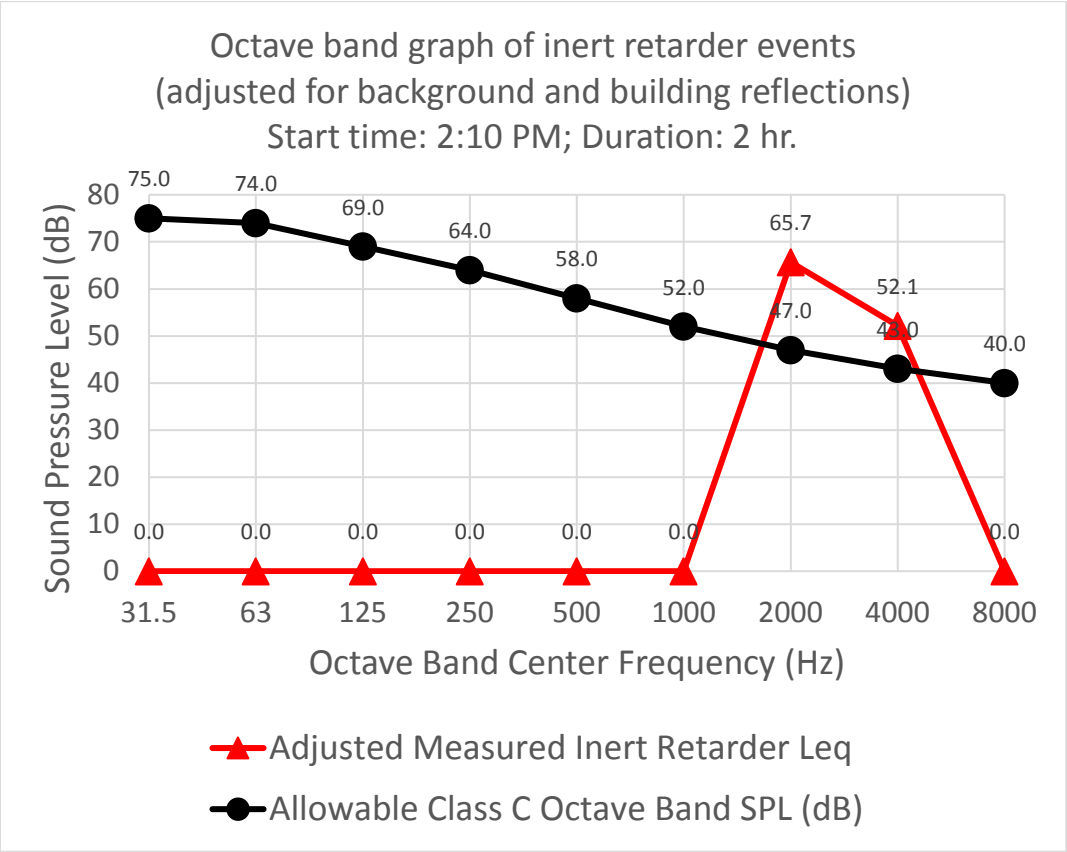


Figure 6. Octave band sound pressure levels for adjusted measured inert retarder L_{eq} for Period 3, 2:10 PM to 4:10 PM, April 11, 2018, outside Hyatt Place hotel and allowable daytime levels from Class C land emitted to Class A land,

The above data are for winds mostly from the south-southwest to west-southwest. The worst case for the sound levels at the hotel would be winds from the south and south-southwest. Figure 7 shows a 21-year wind rose for Midway Airport for 1995-2016. A wind rose shows the breakdown of wind direction and speed over a given time period. As seen, winds from the south-southwest are the predominant condition over the last 21 years; they account for roughly 23% of all wind conditions.

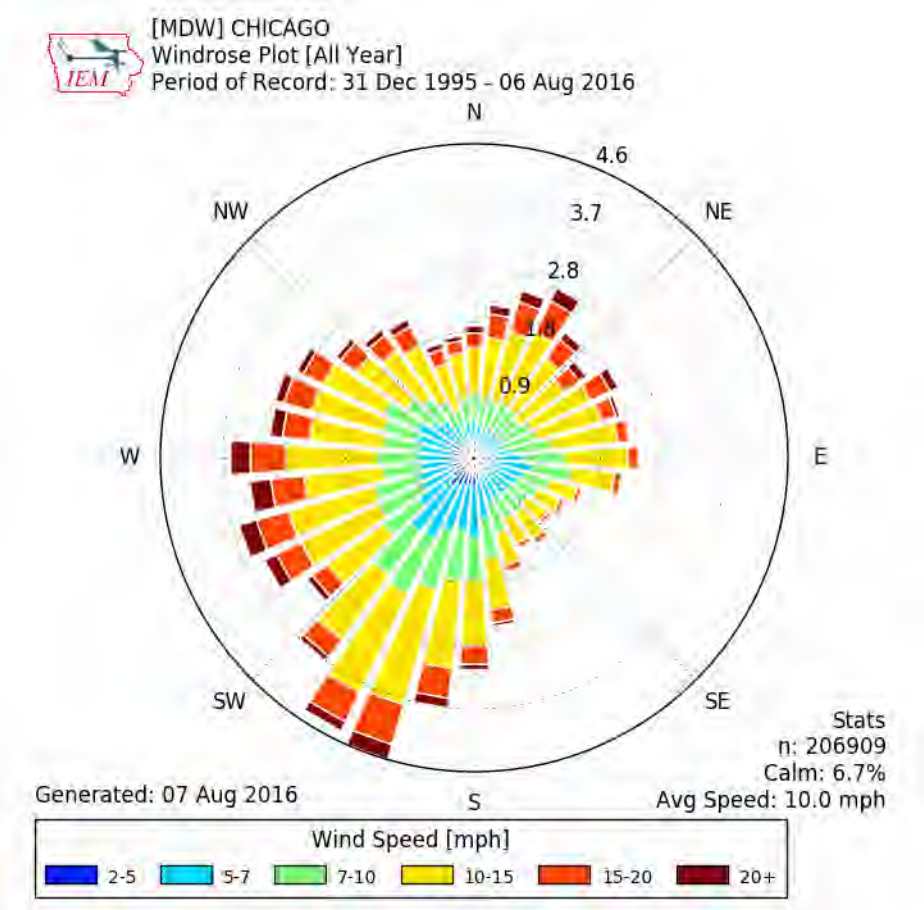


Figure 7. 21-year average wind rose data for Midway Airport.
(http://mesonet.agron.iastate.edu/sites/windrose.phtml?station=MDW&network=IL_ASOS)

April 2017 Results

We made our initial sound pressure level measurements at the Hyatt Place and the Residence Inn in April 2017. While the original scope of those measurements was to test against the Village of Bedford Park noise ordinance described in the next section, we also tested part of the data measured outside the Hyatt Place against the IPCB sound pressure level limits. The Hyatt Place measurements were made at the same location as this year's measurements. Specifically, we examined the inert retarder noise for a 60-minute period from 11:35 PM (April 18, 2017) to 12:35 AM (April 19, 2017) and the 10-minute background ambient from 11:20 PM to 11:30 PM

(April 18, 2017). There were 137 10-second periods dominated by inert retarder noise, above the need 90 periods per the IPCB regulation.

Figure 8 shows the adjusted measured inert retarder octave band L_{eq} corrected for background ambient and reflections (red line with triangular symbols) and the allowable nighttime octave band sound pressure level levels from Class C land emitted to Class A land (black line with circular symbols) in Section 901.102 of *35 Ill. Adm. Code 901*. Per the IPCB procedure, the inert retarder levels within 3 dB of the background ambient are reported as 0 dB because they are affected by the background ambient noise. This figure shows exceedances of the IPCB nighttime sound pressure level limits as follows:

- 1,000 Hz: 8 dB
- 2,000 Hz: 36 dB
- 4,000 Hz: 27 dB
- 8,000 Hz: 7 dB

The rest of the April 2017 data was not studied for IPCB violations, but the sound pressure levels of inert retarder squeals in other hours would have been sufficient to cause exceedances of the IPCB limits if the numbers of 10-second periods dominated by inert retarder noise met the IPCB requirement.

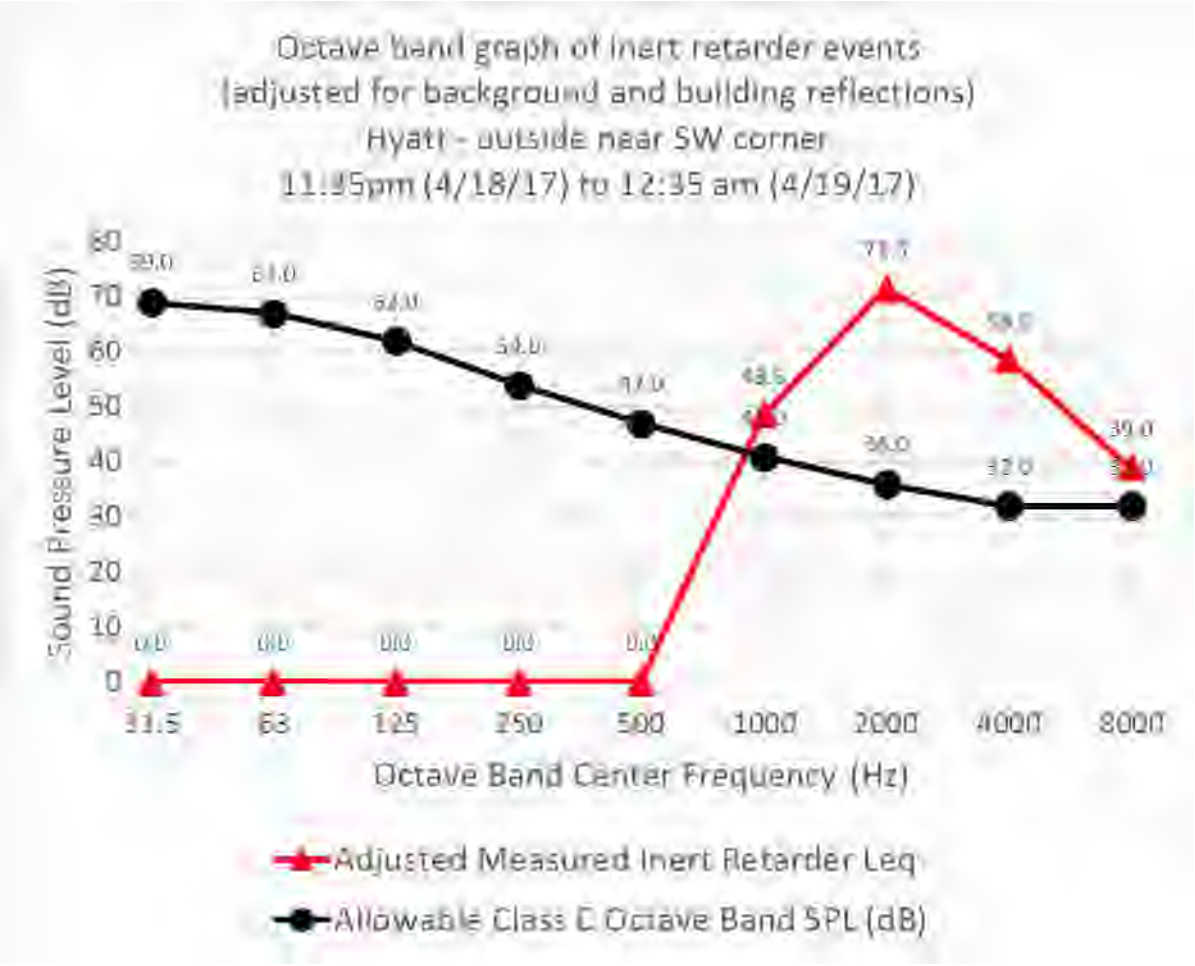


Figure 8. Octave band plot of adjusted measured inert retarder L_{eq} from 11:35 PM to 12:25 AM, April 18-19, 2017, outside Hyatt Place hotel and allowable nighttime levels from Class C land emitted to Class A land.

October 2017 Data

I was also on site in October 2017 to observe rail yard activity when ATS Consulting made its noise measurements for the Village. While their data was not analyzed against the IPCB regulations, I did make some of my own measurements outside the Hyatt Place at the same location as the two April sessions. I analyzed my data in accordance with the IPCB procedures and found exceedances in several octave bands for the period from 9:14 PM to 11:14 PM on October 2, 2017. There were 109 10-second periods of inert retarder noise, above the needed 90 periods. The background ambient was determined for a 10-minute period from 10:45 PM to 10:55 PM that same evening. Figure 9 This figure shows exceedances of the IPCB nighttime sound pressure level limits as follows:

- 250 Hz: 2 dB
- 500 Hz: 6 dB

- 1,000 Hz: 10 dB
- 2,000 Hz: 27 dB
- 4,000 Hz: 20 dB

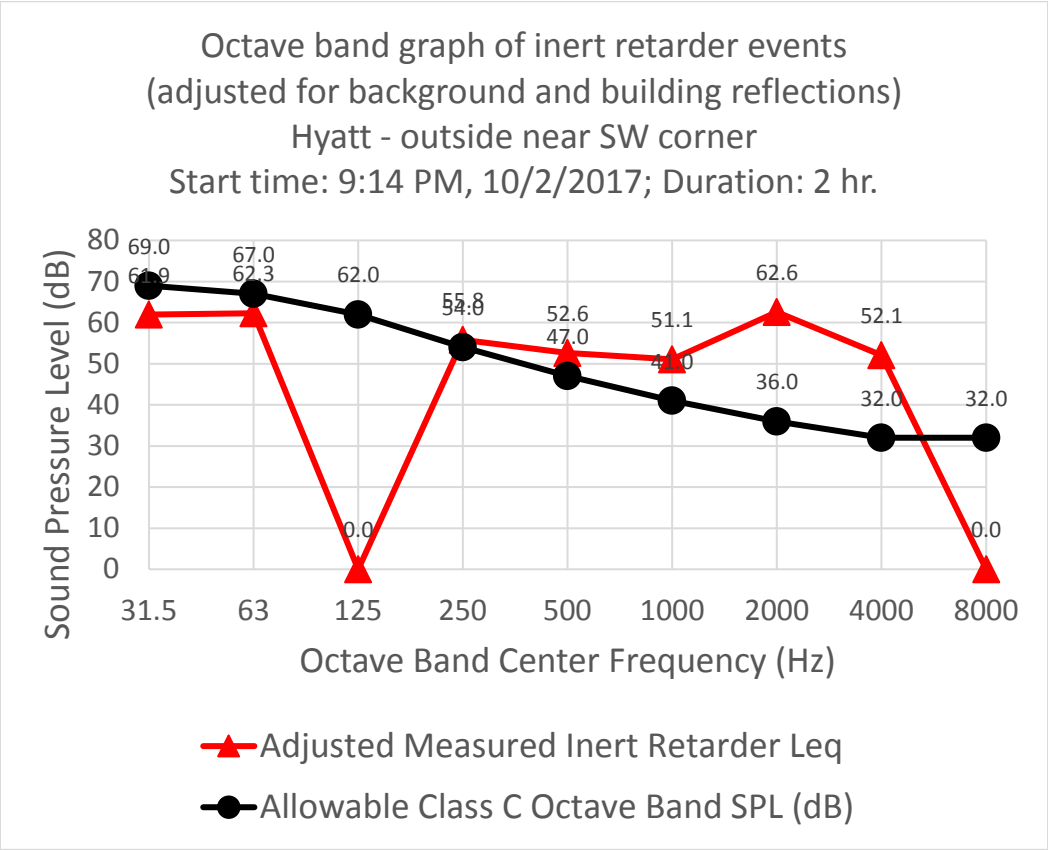


Figure 9. Octave band plot of adjusted measured inert retarder L_{eq} from 9:14 PM to 11:14 PM, October 2, 2017, outside Hyatt Place hotel and allowable nighttime levels from Class C land emitted to Class A land.

Bedford Park Noise Ordinance

As another point of reference, the Village of Bedford Park has Ordinance No. 07-1218, codified in *Chapter 7, Noise Regulations*, of the Village code. Of relevance to this study is section 4-7-1 of the ordinance, specifically:

- QUIET HOURS SOUND LIMITS (D) Sound emitting from any other location* shall not be plainly audible at any point more than thirty feet (30') in any direction from the sound source. *[* Author's note: in the context of the full ordinance, "other location" means not being a single-unit or multi-unit residential property.]*

- SOUND LIMITS IN DECIBELS (dB) DURING TIMES OTHER THAN QUIET HOURS: (D) Sound emitting from any other location shall not exceed sixty-five (65) dBA** at any one point more than thirty feet (30') in any direction from the sound

source. *[** Author's note: A-weighted sound levels are measured in decibels (dB), often written as dBA; A-weighting is the adjusting of the levels at the sound's different frequencies in a manner similar to that done by the human ear.]*

The ordinance defines "quiet hours" as follows: "Quiet hours shall be from ten o'clock (10:00) P.M. until seven o'clock (7:00) A.M. the following day, unless the following day is a Saturday, Sunday or nationally recognized holiday, in which case quiet hours shall be from eleven o'clock (11:00) P.M. until nine o'clock (9:00) A.M. the following day."

Figure 10 show a time history of the A-weighted sound level outside the Hyatt for Period 1 (1:30 AM to 3:30 AM) of our April 2018 measurements, with the dashed red line representing the Bedford Park 65 dBA limit for "other than quiet hours" (even though this time slice was during quiet hours). The black circles are markers indicating the sound was observed as being from an inert retarder. In the context of "quiet hours," all of the circles represent violations since they were all audible to the observer, as noted in the field, as an inert retarder sound. In the context of the much less strict non-quiet hours limit, there were many exceedances of the 65 dBA limit in this 2-hour period.

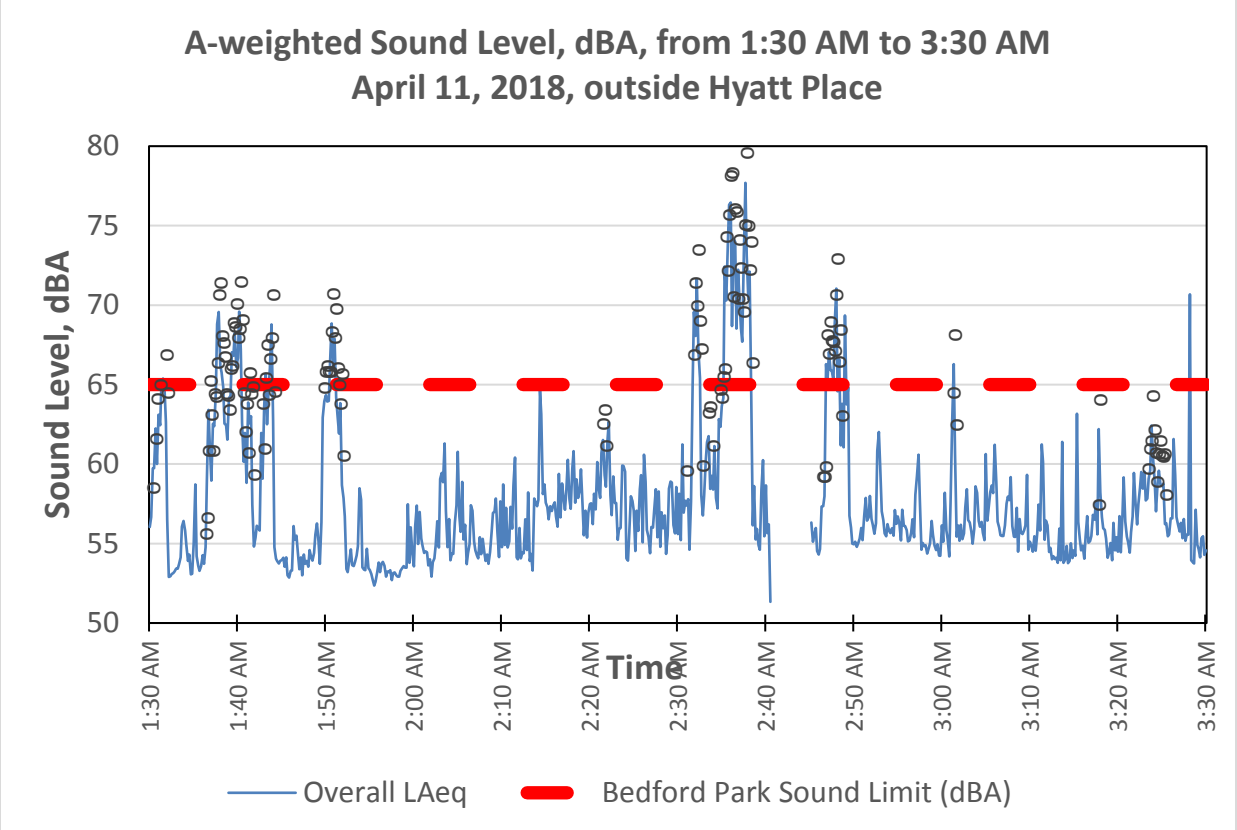


Figure 10. Time history of A-weighted 10-second equivalent sound levels (dBA) from 1:30 AM to 3:30 AM, April 11, 2018, outside Hyatt Place hotel and non-quiet hour limit in Bedford Park ordinance. (Periods dominated by inert retarder noise are marked by circles.)

Similar results with regards to the Bedford Park ordinance occurred in the other hours of sampling during the April 2018 measurements and also in the April 2017 measurements; in fact, several inert retarder levels were measured as high 95 dBA outside the Residence Inn just before midnight on April 18, 2017.

Conclusion

In conclusion, the noise measurements outside the Hyatt Place on April 10-11, 2018, showed three periods of clear exceedances of both the daytime and nighttime sound pressure level limits defined in the IPCB noise regulation, *Section 901.102 - Sound Emitted to Class A Land.* These exceedances were caused by use of the Belt Railway's inert retarders. An exceedance occurs when there are sufficiently high levels for a sufficient duration of noise "events" over a one-hour or two-hour period.

These exceedances were most substantial in the 2,000 Hz and 4,000 Hz octave bands. Some substantial exceedances were also seen in the 1,000 Hz octave band, and some smaller exceedances were seen in the 500 Hz, and 250 Hz octave bands. The results for the higher frequency bands are consistent with our April 2017 and October 2017 results.

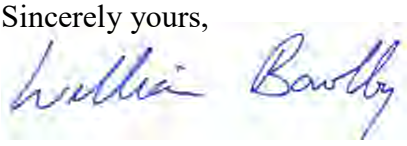
Violations of the Bedford Park noise ordinance were also prevalent during the April 2017, October 2017 and April 2018 measurements.

The April 2017, October 2017 and April 2018 data indicate that the problem of the inert retarder noise has continued over at least the past year. Based on feedback from you, this problem has persisted since the doubling up of the inert retarders on approximately 21 of the eastern yard classification tracks in 2014.

As noted earlier, the full data set is available in spreadsheets in our files, along with additional site photographs and our field data logs, which we could make available to you.

We appreciate this opportunity to be of service to you. Please call with any questions. We look forward to working with you further as needed on this project.

Sincerely yours,



William Bowlby, Ph.D., P.E.
Principal Engineer

Exhibit D

FRA Letter Re: Jurisdiction over Inert Retarders, dated August 9, 2018

[attached hereto]

U.S. Department
of Transportation

Federal Railroad
Administration

1200 New Jersey Avenue, SE
Washington, D.C. 20590

August 9, 2018

Charles A. Spitulnik
Kaplan Kirsch Rockwell LLP
1001 Connecticut Ave., N.W., Suite 800
Washington, DC 20036

Re: FRA jurisdiction over noise emitted by inert retarders

Dear Mr. Spitulnik:

Thank you for your letter asking whether the Federal Railroad Administration (FRA) has jurisdiction over noise created by inert retarders. Specifically, your letter asks FRA to confirm that it does not have jurisdiction over the noise created by inert retarders located at a Belt Railway of Chicago (BRC) rail yard.

As your letter notes, Congress established the regulatory scheme whereby the U.S. Environmental Protection Agency (EPA) sets noise emission limits for rail operations which are then enforced by the Secretary of Transportation through FRA. 42 U.S.C. § 4916; Noise Control Act of 1972 (Act), sec. 17. In promulgating the Act, "Congress declare[d] that it is the policy of the United States to promote an environment for all Americans free from noise that jeopardizes their health or welfare." 42 U.S.C. § 4901(b); Act, sec. 2(b).

EPA's noise emission regulations apply only to active retarders. *See* 40 C.F.R. § 201.1(y) (defining "retarder" to mean only an active retarder); 40 C.F.R. § 201.10 (only including "active retarders" when listing all the items covered by the regulation). FRA's noise emission compliance regulations likewise specifically state they do not apply to inert retarders. 49 C.F.R. § 210.3(b)(6). This is further supported by the history of both regulations. *See* 48 Fed. Reg. 36487, 36488 (August 11, 1983) ("paragraph [49 C.F.R. § 210.3](b) would be revised to include inert retarders in the list of areas not subject to the provisions of the part. Inert retarders are not covered by the EPA standards"); 44 Fed. Reg. 22960, 22964 (April 17, 1979) (the "retarder standard does not apply to the inert retarders commonly located near the end of each classification track. . . . Squeals may be produced by inert retarders when the consist of railcars [is] coupled to a locomotive and the train pulled through the inert retarder. . . . EPA is not proposing a specific noise source standard for inert retarders").

It is clear from the regulatory scheme and history that inert retarders are exempt from Federal noise emission limits under the Act and, as a consequence, under the Act, FRA does not have regulatory authority over noise emitted by inert retarders. Here, insofar as the noise emitted from the inert retarders at BRC's rail yard is associated with the squeal (or, as characterized in

your letter, screech) of the movement of rail cars through the retarders, FRA does not have regulatory authority to limit that noise.

Please note that FRA's regulatory authority under the Act is distinct from its authority to regulate all areas of railroad safety. 49 U.S.C. § 20103(a). FRA has exercised such safety authority in regulating the sound emitted by locomotive horns, *see* 49 C.F.R. § 229.129, even though EPA's noise emission regulations exempt the sound emitted by a warning device when operated for the purpose of safety. 40 C.F.R. § 201.10. Noise emitted by railroad operations may also indicate a safety issue, such as dragging equipment or a mechanical defect. Here, however, the cyclical, high-pitched noise described in your letter is consistent with the routine movement of rail cars through an inert retarder—noise that is exclusively within the scope of the Act and outside of FRA's regulatory authority.

Sincerely,

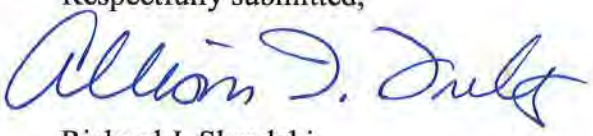
Brett A. Jortland
Acting Deputy Chief Counsel

CERTIFICATE OF SERVICE

I, Allison I. Fultz, the undersigned, do certify that on October 2, 2018, I served copies of the foregoing Complaint and Notice of Filing on the Respondent, The Belt Railway Company of Chicago, at the address listed below by electronic mail and certified U.S. Mail with return receipt requested to the person listed on the Notice of Filing on October 2, 2018.

The Belt Railway Company of Chicago
6900 South Central Avenue
Bedford Park, Illinois 60638
tcoffey@beltrailway.com

Respectfully submitted,



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October 2, 2018