

ILLINOIS DEPARTMENT OF LABOR

Illinois OSHA

Lincoln Tower Plaza
524 South 2nd Street, Suite 400
Springfield, IL 62701
Phone: 217-782-9386 Fax: 217-785-8776
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October 6, 2022

Mr. Omer Osman - Secretary
IL Dept. of Transportation - West City
2300 S Dirksen Parkway
Springfield, IL 62764

Re: Illinois OSHA Complaint 1954838

Dear Secretary Osman,

On Oct 4, 2022, Illinois OSHA received **notice of an alleged hazard(s)** at your workplace/worksite at:

107 N Browning
Benton, IL 62812

This notice of an alleged hazard(s) is similar to the alleged hazards to which you responded in Complaint #1913495 that has been closed. However, this is from a new complainant which disagrees with the employer response in that complaint and has submitted additional information.

The specific nature of the alleged hazard(s) is:

On June 30th a hazard to the workplace was posted from Illinois OSHA at the West City yard Case number 1913495. The complaint was of a known diagnosed Narcoleptic CDL holder.

The Department has ruled because the individual is medicated, they are safe enough to operate heavy equipment and CDL vehicles on and alongside state routes.

That diagnosis alone disqualifies you from having a CDL with the FMCSA and DMV. In multiple cases an exemption has never been allowed. So, I asked why the department is allowed to put multiple individuals at risk daily.

Reference: <https://www.fmcsa.dot.gov/faq/narcolepsy-disqualifying> , and <https://www.ttnews.com/articles/narcoleptic-truck-driver-seeks-exemption-get-behind-wheel>.

Read FMCSA-2018-0320- starts at Bottom of last column, first page
<https://www.govinfo.gov/content/pkg/FR-2019-03-28/pdf/2019-05949.pdf>

Conclusion. The Agency has determined that the available medical and scientific literature and research provides insufficient data to enable the Agency to conclude that granting these exemptions would achieve a level of safety equivalent to, or greater than, the level of safety maintained without the exemption. Therefore, the applicant, Terry L. Curtner (IL), has been denied an exemption from the physical qualification standards in 49 CFR 391.41(b)(8) and (b)(9):

The applicant has, prior to this notice, received a letter of final disposition regarding his exemption request. The decision letter fully outlined the basis for the denial and constitutes final action by the Agency. The applicant's information published today summarizes the Agency's recent denials as required under 49 U.S.C. 31315(b)(4).

————— <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1978311/> —————

Under the Supremacy Clause, found in Article VI, section 2 of the U.S. Constitution, both the Constitution and federal law supersede state laws. The supremacy cause contains what's known as the doctrine of pre-emption, which says that the federal government wins in the case of conflicting legislation. Basically, if a federal and state law contradict, then when you're in the state you can follow the state law, but the fed can decide to stop you.

Hazard Location: West City IDOT yard and All traffic in Franklin County on State routes.

We have not determined whether the hazard(s), as alleged, exists at your workplace and we do not intend to conduct an inspection at this time. We request that you immediately investigate and control any hazardous conditions. Please respond in writing no later than **October 21, 2022**, with the results of your investigation and any corrective action taken or planned as well as any supporting documentation. Please address your response to the attention of Illinois OSHA. You may also send your response electronically to DOL.Safety@illinois.gov. **Reference Illinois OSHA complaint number 1954838 in all correspondence.**

This letter is not a citation. A citation and any applicable penalties may only be issued if an inspection is conducted. Our ultimate goal is to ensure safe and healthy working conditions. **If we do not receive a satisfactory response from you by October 21, 2022, indicating that corrective action has been taken or that no hazard exists and why, an Illinois OSHA inspection may be conducted.**

If you need assistance to control the hazard(s), you may contact the Illinois On-Site Consultation Program. This program offers free and confidential advice to small and medium-sized employers in Illinois, with priority given to high-hazard industries. If appropriate, a consultant will visit your workplace and assess the validity of the complaint. In addition, you will be provided with methods of controlling the hazard, if necessary. To discuss or request their services, contact the consultation program at:

On-Site Safety and Health Consultation Program
Illinois Department of Labor – Illinois OSHA
Lincoln Tower Plaza
524 South 2nd Street, Suite 400
Springfield, IL 62701
Tel: 1-800- 972-4216
Fax: 1-217-785-8776
Website: osha.illinois.gov

You are required to conspicuously post a copy of this letter where it will be readily accessible by all employees and return a copy of the signed Certificate of Posting (Attachment A) to this office. In addition, you are required to provide a copy of this letter and your response to a representative of any recognized employee union or safety committee if present at your facility.

IL-OSHA reviewed the response provided by IDOT. The highway maintainer has been evaluated by a medical doctor, Jon Jacobson, and was considered “fit for duty” with no restrictions. Dr. Jacobson also provided conditions on maintaining fit for duty status.

IL OSHA has no standard on medical qualifications for operation of a vehicle, however we do require respirator users to have a medical evaluation by a licensed healthcare professional. We are not licensed healthcare professionals so we do not make determinations as to whether someone is medically fit to wear a respirator. Likewise we do not question the determination made by a licensed healthcare professional, however we do enforce the requirement that one is made for each respirator user.

In a similar position, we must trust that the medical doctor that has personally seen the highway maintainer has made a proper determination.

Thank you for your concern for a safe and healthful workplace.

IL OSHA