

ILLINOIS POLLUTION CONTROL BOARD
July 24, 2003

ANTHONY and KAREN ROTI, PAUL)
ROSENSTROCK, and LESLIE WEBER,)
)
Complainants,)
)
v.) PCB 99-19
) (Citizens Enforcement – Noise)
LTD COMMODITIES,)
)
Respondent.)

STEVEN P. KAISER, OF THE LAW OFFICE OF STEVEN P. KAISER, APPEARED ON BEHALF OF COMPLAINANTS; and

JOSEPH E. KOLAR, OF BAIZER & KOLAR, P.C., APPEARED ON BEHALF OF RESPONDENT.

FINAL OPINION AND ORDER OF THE BOARD (by N.J. Melas):

This citizens' noise enforcement action concerns a trucking operation. Complainants, Anthony and Karen Roti, Paul Rosenstock, and Leslie Weber (complainants), filed a complaint alleging that respondent LTD Commodities' (LTD) trucking operation exceeds Illinois' numeric nighttime noise standards, impulse noise standards, and nuisance noise standards. LTD's facility is located at the northeast corner of the Interstate 94 tollway and Route 22 at 2800 North Lakeside Drive in Bannockburn, Lake County. Complainants contend that LTD therefore violated Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2002)) and the Board regulations at 35 Ill. Adm. Code 900.102, 901.102(a), 901.102(b), and 901.104.

On February 15, 2001, the Board entered an interim opinion and order (Int. Op.), which it incorporates here by reference, finding that LTD violated the Board's nuisance noise provisions, but not the Board's numeric nighttime sound or impulsive noise limits. 415 ILCS 5/24 (2002); 35 Ill. Adm. Code 900. However, the Board found that the record lacked sufficient information regarding remedies and directed the parties to hearing to further address appropriate remedies, including civil penalties.

Hearings on the remedy were held in this matter on October 15 and 16, 2002, and on December 9, 2002.¹ On March 17, 2003, complainants filed a closing brief (Comp. Br.) originally due on or before January 31, 2003. LTD Commodities filed a response brief on April 22, 2003 (Resp. Br.). The complainants filed a reply brief on May 27, 2003. The Board accepts the parties' late-filed briefs.

¹ The transcripts from these hearings will be cited to as: "Tr. 1 at ___"; Tr. 2 at ___"; and "Tr. 3 at ___," respectively.

For the reasons set forth below, the Board orders LTD to cease and desist trucking operations during nighttime hours at the Bannockburn facility, replace back up warning beepers on LTD's yard tractor with a dock pilot or strobe light, and cease and desist from parking, standing or idling tractors and semi-trailers on Lakeside Drive, including on the ramp leading into LTD's dock area. The Board orders LTD to pay a civil penalty of \$15,000.

STATUTORY BACKGROUND

After the Board finds a violation, the Board considers the factors set forth in Section 33(c) of the Act to devise an appropriate remedy for the violation. *See* 415 ILCS 5/33(c) (2002). Section 33(c) of the Act provides in part:

In making its orders and determinations, the Board shall take into consideration:

- (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 source;
- (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 source; and
- (v) any subsequent compliance. 415 ILCS 5/33(c) (2002).

The maximum civil penalties the Board may assess are established by Section 42(a) of the Act, which provides in part:

[A]ny person that violates any provision of this Act or any regulation adopted by the Board . . . shall be liable to a civil penalty not to exceed \$50,000 for the violation and an additional civil penalty of not to exceed \$10,000 for each day during which the violation continues 415 ILCS 5/42(a) (2002).

In determining the appropriate civil penalty, the Board may consider any mitigating and aggravating factors of record including those set forth in Section 42(h) of the Act:

1. the duration and gravity of the violation;
2. the presence or absence of due diligence on the part of the violator in attempting to comply with requirements of the Act and regulations thereunder or to secure relief therefrom as provided by this Act;

3. any economic benefits accrued by the violator because of delay in compliance with requirements;
4. the amount of monetary penalty which will serve to deter further violations by the violator and other persons similarly subject to the Act; and
5. the number, proximity in time, and gravity of previously adjudicated violations of this Act by the violator. 415 ILCS 5/42(h) (2002).

FACTS

In the February 15, 2001 interim opinion and order, the Board made findings of fact that the Board incorporates here by reference. In addition, today the Board makes findings of fact regarding a noise barrier and LTD's attempts to control noise.

Dr. Paul Schomer testified on behalf of the complainants. Dr. Schomer is an acoustical consultant and executive director of the Institute of Noise Control Engineering, a professional society dedicated to noise control engineering. Dr. Schomer prepared a report, dated August 26, 2002, in which he proposed a noise barrier located immediately north of LTD's dock area. Dr. Schomer designed his proposal to provide a minimum of 10 decibels (dB) of noise reduction in the 1 kHz octave band at any one of the three complainants' homes. Dr. Schomer opined that the reduction at the 1 kHz octave band is important for two reasons: (1) because noise measurements taken by LTD on January 8, 1998, show the primary noise disturbances occur at the 1, 2, and 4 kHz octave bands; and (2) because human speech occurs at the 1 and 2 kHz octave bands and noise in these particular octave bands is particularly disruptive. Resp. Exhibit 48, at 6, 7.

The barrier Dr. Schomer proposes is approximately 520 feet in length and 25 feet tall. Dr. Schomer recommends the noise barrier be constructed with noise-absorbing material on the loading-dock side. Schomer Report at 8. Dr. Schomer proposes to extend the wall an additional 150 feet should LTD continue to allow tractors and trailers to idle, stand or park on the ramp connecting the dock area with Lakeside Drive. In making his conclusions, Dr. Schomer relied on previous testimony of noise experts in this proceeding as well as International Organization for Standardization (ISO) document 9613-2-1996. Dr. Schomer predicts the proposed barrier will reduce noise by 10 dB in the 1 kHz octave band at any of the three houses in question. In terms of human perception, Dr. Schomer opines this reduction is subjectively "one half as loud." Comp. Exh. 1 at 7. Dr. Schomer estimated the cost of the wall before the 150-foot addition at \$47.95 per square foot and costing a total of \$623,350.

LTD retained noise consultant Mr. Tom Thunder. Mr. Thunder noted that LTD operates a night shift from mid-July to late December. Tr. 3 at 12. Mr. Thunder stated that the Weber home would be less impacted by the noises at LTD's Bannockburn facility because of wave divergence. Wave divergence is a term that means the further away the source, the lower the sound from the source is perceived in decibels, and the less impact the sound makes upon the receiver. Tr. 3 at 18. Mr. Thunder also opined that a property-line noise barrier would be a viable alternative to a barrier located immediately north of LTD's dock area. Tr. 3 at 20. Mr.

Thunder stated a noise barrier could be constructed out of conventional materials other than what Dr. Schomer had recommended, including wood, glass, or berming. Tr. 3 at 65. Mr. Thunder stated he thought a wood wall could be built in the range of \$30 to \$35 per square foot. Tr. 3 at 68. He based this conclusion on a 2000 noise barrier report by the Department of Transportation that compared the construction costs of walls utilizing various conventional materials. Tr. 3. at 68. Mr. Thunder did not provide drawings or specifications.

Mr. David Lothspeich, the former village manager of Bannockburn, testified that Section 9-101.50 of the Bannockburn zoning code limits the height of walls or fences to 6 feet. Tr. 1 at 150. Mr. Lothspeich testified that the only way to gain permission to increase the height of a proposed wall more than 20% of the permitted height would be to request a “text amendment.” Tr. 1 at 151. A “text amendment” is a change in the language of the ordinance and would apply generally throughout Bannockburn.

Mr. Steven Mitchell, president of the Huff Company, testified on behalf of the complainants. The Huff Company is a manufacturers’ representative that specializes in noise control. Mr. Mitchell stated that the Huff Company’s estimated cost of the barrier that Dr. Schomer included in his report is conservative. Mr. Mitchell stated he could reasonably foresee the wall costing between \$35 and \$36 per square foot. Tr. 1 at 241.

Mr. Edward Anderson testified on behalf of LTD. Mr. Anderson is a professional engineer and has experience designing noise walls. Mr. Anderson has been to the LTD facility several times and stated there are several layers of fabric underneath the surface of the ground that support the existing retaining wall. The fabric layers extend horizontally creating a 16-foot zone of influence. A noise wall cannot be built within the zone of influence because it would affect the integrity of the wall. Tr. 2 at 21-23.

Mr. Jack Voigt is the vice president of distribution at LTD’s Bannockburn facility, Naperville and Aurora facilities. Mr. Voigt stated that LTD is willing to hire a dock pilot and turn off the backup warning beeper on the yard tractor for nighttime operations at the Bannockburn facility. Tr. 2 at 53. Mr. Voigt also said the LTD is willing to have the dock pilot prevent trailers from parking on the exit ramp during nighttime hours. *Id.* Mr. Voigt explained that LTD’s first shift begins at 6:00 a.m. and ends at 2:30 p.m. and that LTD’s second shift begins at 3:30 p.m. and ends at midnight. Tr. 2 at 55.

LTD states that it has not operated the second shift since October 18, 2002. *See* Tr. 2 at 76 (Mr. Voigt stating that LTD would shut down the night shift as of Friday, October 18, 2002). LTD also opened a facility in Naperville in May 2001 (Tr. 2 at 75), and leased a second space in Aurora (700,000 square feet). Resp. Br. at 11.

THE COMPLAINANT’S REQUESTED RELIEF

The complainants urge the Board to grant them relief by ordering LTD to do the following: (1) turn off the backup warning beeper on the yard tractor during daytime and nighttime hours of operation; (2) prohibit tractors and trailers from idling, standing or parking on

the ramp connecting the dock area with Lakeside Drive and on Lakeside Drive during daytime and nighttime hours of operation; (3) build a noise wall with a length of approximately 520 feet and a top elevation of 710 feet above sea level (with an average height of 25 feet above grade); and (4) pay a civil penalty of \$50,000. The Board summarizes each form of requested relief in turn.

Backup Warning Beeper

The complainants ask the Board to order LTD to replace the back-up warning beeper on the yard tractor it uses with a human spotter dock pilot during all hours of operation. Comp. Br. at 4.

Parking on Lakeside Drive

The complainants argue that the Board should order LTD to stop trucks and semi-trailers from idling, standing or parking on Lakeside Drive and on the ramp connecting the dock area with Lakeside Drive at all hours of operation. Comp. Br. at 5. The complainants argue that the noises impact the Weber and Rosenstock residences. *Id.* The complainants argue that alternatively, the Board should order LTD to relocate the ramp further to the south and extend the noise barrier wall to include the relocated ramp.

Noise Wall

The complainants argue the evidence presented at hearing demonstrates that construction of a 25-foot tall and 520-foot long noise wall located at the north side of the dock area will reduce noise as measured at the second story of the Weber home by about 10 decibels in the 1000-hertz octave band. Comp. Br. at 1, 6. The Webers would perceive the noise emitted by LTD as reduced by about half. Tr. 1 at 111. The wall would reduce noise measured at the complainants even more. LTD's consultant conceded that a thirteen-foot high noise wall would not reduce the sound as measured at the second story of the complainants' residences. Tr. 2 at 87-89.

The complainants contend that Dr. Schomer's report shows that a 25-foot high wall is necessary to reduce sound for the following reasons: (1) many of the noise sources are 12 feet above the level of the dock area; (2) the LTD building is a hard surface that reflects sound; and finally, (3) the Roti, Rosenstock, and Weber residences are all two-story homes. The combination of these three factors dictates that a 25-foot tall noise wall is necessary to reduce the sound 10 dB in the 1000-hertz octave band. The complainants also request that the Board order LTD to construct the wall with sound absorbing material on the loading-dock side of the noise wall. Comp. Br. at 9.

Civil Penalty

The complainants also ask the Board to order LTD to pay a civil penalty of at least \$50,000 to promote compliance with the Act. Comp. Br. at 11; citing 415 ILCS 5/42 (2002). The complainants argue that this penalty is appropriate because LTD failed to take reasonable

steps to reduce noise pollution and failed to provide the Board with any meaningful information or analysis on how to reduce the migration of noise from LTD to the complainants' homes. The complainants contend that a \$50,000 penalty will deter other similarly situated noise polluters from failing to reduce noise in the future.

DISCUSSION

Summary of Interim Opinion and Order

The Board's findings on the Section 33(c) factors in the February 14, 2001 interim opinion and order are summarized below.

1. Interference With the Enjoyment of Life. The Board found that noise from LTD's Bannockburn facility substantially and frequently interfered with the complainants' enjoyment of life. The Board weighed this factor against LTD.
2. The Social and Economic Value of the Pollution Source. The Board found that LTD has social and economic value and weighed this factor in favor of LTD.
3. The Suitability or Unsuitability of the Pollution Source to the Area in Which It Is Located, Including the Question of Priority of Location. The Board found that although LTD had priority of location, LTD substantially increased its activities at the Bannockburn after the complainants moved into their homes. Therefore, LTD cannot rely on priority of location as a mitigating factor. The Board found that LTD, as operated at the time of the interim opinion, is unsuitable to the area and weighed this factor against LTD.
4. The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions from the Pollution Source. The Board found that eliminating LTD's nighttime operations would not be economically reasonable. However, the Board found that LTD could have hired a dock pilot to reduce noise from the Bannockburn facility. The Board weighed this factor against LTD.
5. Any Subsequent Compliance. The Board found that LTD made minimal efforts to reduce noise at the Bannockburn facility, but despite those efforts, noise was ongoing at the time of hearing. The Board weighed this factor against LTD.

Noise Reduction Measures

The Board's interim opinion and order directed the parties to hearing to further address appropriate remedies. This section discusses the parties' arguments and the Board's analysis regarding each proposed noise reduction measure.

Ceasing Operations During the Night Shift

The complainants argue that while LTD claims to have ended nighttime operations at the Bannockburn facility, there is nothing stopping LTD from resuming nighttime operations at any point in the future. Reply at 2. The complainants contend that nothing in the record shows that LTD opened the Aurora and Naperville facilities to reduce noise at the Bannockburn facility. The complainants argue that LTD will continue to grow and will one day restart a second shift at the Bannockburn facility. Reply at 4. The complainants argue that therefore the Board must order LTD to construct a noise wall that will substantially reduce the noise emissions off-site.

The parties agree that LTD's second shift sometimes lasts until 2:30 a.m. Int. Op. at 25. The Rosenstocks claimed they heard noises 24 hours a day, but LTD claimed it never operated around the clock. *Id.* LTD states that it shut down its night shift on October 18, 2002, and has not reinstated this shift since. Resp. Br. at 3. However, LTD also states that it cannot guarantee there will be no night shift in the future. Resp. Br. at 10.

Backup Warning Beeper

LTD claims it has committed to turning off the backup beeper on its yard tractor at night. Resp. Br. at 4.

Ceasing Parking, Standing, and Idling on Lakeside Drive

The complainants argue that if LTD does not build a 150-foot extension to the proposed noise wall, it must cease staging semi-trailers on the ramp and on Lakeside Drive. Mrs. Leslie Weber complained of noises coming from Lakeside Drive and Dr. Schomer testified that he observed semi-trailers parked on the ramp and on Lakeside Drive. Reply at 14. Dr. Schomer also stated that a noise wall without the 150-foot extension will only reduce noise in the 1000 kHz octave band at the second story of the Weber home by 7.3 dB. However, a noise wall with the 150-foot extension would reduce noise at the same place within the same octave band by 11.5 dB. The complainants contend that the Village of Bannockburn prohibits LTD from parking on Lakeside Drive, but that it does so anyway. Reply at 15.

LTD claims it has agreed to hire a dock pilot for use at night to keep trucks off Lakeside Drive, but that it is unnecessary so far because LTD has not operated a night shift since October 18, 2002. Resp. Br. at 4.

Noise Wall

Dr. Schomer's report proposes a noise wall 25 feet tall and 520 feet long to be located immediately north of LTD's staging area. The complainants argue the evidence in the record demonstrates that a noise wall like the one described by Dr. Schomer can substantially reduce the off-site migration of noise. Reply at 6. Dr. Schomer testified that if a noise wall was built according to his design, the wall would reduce noise as measured at the second story of the

Weber residence by 10 dB in the 1000 hertz octave band. Reply at 5. Dr. Shomer also testified that noise would be reduced even more at the Roti and Rosenstock homes. *Id.* At hearing and in their closing briefs, the parties raise several issues surrounding the construction such a wall. The Board summarizes each issue in turn.

Technical Feasibility. LTD argues that it initially investigated a noise wall, but stopped doing so because no one could guarantee LTD that a wall would eliminate the complained-of noise. Resp. Br. at 3. LTD contends that several factors would make installing a noise wall both difficult and more expensive than estimated. LTD states those factors include the clay soil and the existence of fabric mesh that currently support the existing retaining wall. Resp. Br. at 6. LTD contends that it investigated installing absorptive materials on the north face of its warehouse, but that it did not pursue this option because neither Dr. Schomer nor Dr. Thunder believed it would be beneficial at this time. Tr. 10/15/02 at 188, 270-1.

Approval from Bannockburn. The complainants argue that LTD has received permits in the past to construct non-conforming structures at the Bannockburn facility. Reply at 6. The complainants claim that complainants' exhibit D is an "Ordinance Amending the Zoning Map and Granting a Special Permit and a Height Variation for a Business Headquarters Planned Development of 2800 Lakeside Drive." Exhibit E amends Bannockburn's zoning ordinance to allow LTD to construct a lot in excess of 25 acres. The complainants also point to a construction approval by Bannockburn to construct an 18 foot high enclosure surrounding the air-conditioning units for the development adjacent to LTD. Comp. Group Exh. B. The complainants contend that Bannockburn's past practices show that Bannockburn is likely to grant LTD permission to build a noise wall. Reply at 7.

LTD contends that the Bannockburn zoning code only permits walls up to six feet high. Tr. 10/15/02 at 150. Although the zoning code allows for variances, the code only allows for variances up to 20% of the height allowed by ordinance (in this case six feet). Exh. I, at 183. Another option available to LTD would be to request a text amendment changing Bannockburn's variance procedures. Tr. 10/25/02 at 164. However, a text amendment would change Bannockburn's ordinance as it applies to all of Bannockburn. Mr. Lothspeich, the former village manager, could not say whether Bannockburn would approve such an amendment.

Location

Immediately North of the Dock. The complainants argue that a noise wall immediately north of the dock area is both technically practicable and economically reasonable. LTD argues that a noise wall in this location is not economically reasonable because LTD would have to knock down the existing wall and build a new retaining wall with the noise wall foundation integrated into the retaining wall support structure. Comp. Br. at 8. This method of construction is necessary because a fabric mesh that extends 16 feet horizontally from the wall provides support for the existing retaining wall. Nothing can be built in this "zone of influence." Resp. Br. at 6. LTD argues that replacing the retaining wall in addition to building the noise wall would cost between \$1.5 and \$3.0 million.

The complainants point to Mr. Steve Mitchell's testimony that the Huff Company could build a 25-foot high noise wall immediately north of the LTD dock that could withstand one hundred mile per hour wind loads. Reply at 7. Additionally, the complainants claim a noise wall is more effective the closer it is to the Bannockburn facility because the wall prevents winds from lifting sound waves over it. Comp. Br. at 8; citing Tr. at 114-16.

In the LTD Parking Lot. Both parties agree that a noise wall in the middle of LTD's parking lot is not technically practicable. Reply at 7. The parties contend that a noise wall is most effective when placed near either the noise source or the receiver. *Id.*

At the Property-Line. The complainants argue that a property-line noise wall is not technically feasible. Dr. Schomer testified that in order for a property-line noise wall to obtain the same noise reduction as a noise wall near the dock area, the wall must be 23 feet above grade at the Roti residence, rising to 28 feet above grade at the Rosentrock residence, and 33 feet at the Weber residence. However, LTD cannot construct a wall along the Weber's property line because it does not own the property bordering the Weber residence to the south. Comp. Br. at 11.

Finally, the complainants argue that LTD failed to present enough evidence to support a property-line noise wall. The complainants contend that LTD has failed to provide the following: (1) an illustration of the property-line noise wall; (2) the height of the proposed wall; (3) the materials LTD expects to use; (4) exactly where it would locate the wall; (5) how a property-line noise wall would protect the Weber family from noise; and (6) the effectiveness of a property-line noise wall in reducing noise at the Rosenstock home. The complainants argue that therefore, LTD did not fulfill the Board's interim order to further address appropriate remedies. Reply at 10.

Economic Reasonableness. The complainants argue that Dr. Schomer's proposed noise wall is not unreasonable in relation to LTD's profits and other expenses. Reply at 8. The complainants state that LTD employs over 1,000 people at the Bannockburn facility, 350 people at the Naperville facility, 600 people at the Aurora facility, spent \$6.6 million for the Bannockburn facility in the mid-1980's and approximately \$6.0 million to expand the Bannockburn facility in 1994. Comp Br. at 9. The complainants claim these figures show that LTD can afford to build a \$623,350 noise wall, as proposed by Dr. Schomer.

LTD argues that Dr. Schomer proposed a noise wall that costs a minimum of \$623,350. However, the cost would increase to approximately \$900,000 if the 150-foot section recommended by Dr. Schomer were added. Resp. Br. at 9. Finally, building a noise wall in the location recommended by Dr. Shomer, on top of the current retaining wall, would cost between \$1.5 and \$3.0 million. Tr. 10/16/02 at 35.

The complainants argue that even a \$1.5 million noise wall is economically reasonable because of the size and nature of LTD. Comp. Br. at 9.

Board Analysis

The Board orders LTD to cease trucking operations during nighttime hours. The Board defines nighttime hours as the hours between 10:00 p.m. and 7:00 a.m. local time. 35 Ill. Adm. Code 900.101. The Board also defines nighttime hours as 8 continuous hours between 10:00 p.m. and 7:00 a.m. that are not part of the daytime hours (any continuous 16-hour period between 6:00 a.m. and 11:00 p.m.). 35 Ill. Adm. Code 901.105. Accordingly, as applied to this proceeding, the Board defines nighttime hours as the hours between 10:00 p.m. and 6:00 a.m.

Also for the purposes of this proceeding, the Board defines trucking operations as the loading or unloading of trucks, moving trailers with the yard tractor, and the coupling and uncoupling of trailers. The evidence demonstrates that the nuisance noise emanating from LTD's dock area is more problematic during the nighttime hours. Int. Op. at 9, 25; *see also* Comp. Br. at 1. In the first set of hearings, the complainants proposed as a remedy that LTD limit its operations to daytime hours. Int. Op. at 30. Although the Board found in the interim opinion and order that ceasing nighttime operations at LTD's Bannockburn facility would not be economically feasible, LTD has since opened new facilities and has not operated the night shift since October 18, 2002. Additionally, LTD has never operated a night shift there year-round. Resp. Br. at 10. The Board also orders LTD to disconnect the backup warning beepers on yard tractors when the tractors are used at any time at the Bannockburn facility and replace the beepers with either a human spotter or a strobe light.²

The Board finds the order to cease and desist nighttime trucking operations is economically reasonable and technically feasible. These operational changes are readily available, practical, and reasonable means of reducing noise at the LTD facility. LTD has already voluntarily ceased nighttime operations. In addition, both parties agree that these operational changes will reduce noise emanating from the LTD facility. The Board found in the February 15, 2001 opinion and order that hiring a dock pilot would be a technically feasible and economically reasonable method of reducing noise. Int. Op. at 30. LTD itself agrees to implement the dock pilot and/or strobe light as an alternative to the backup beeper at night. Today the Board orders LTD to implement this measure both during daytime and nighttime hours.

If LTD wishes to resume nighttime trucking operations at the Bannockburn facility, it may do so provided it first build a noise barrier. If LTD builds a noise barrier in the location and in accordance with the characteristics proposed by Dr. Schomer in his report (Comp. Exh. 1), LTD will not be subject to these operational restrictions as long as the barrier is maintained. The noise barrier must be completed before LTD may resume operations after 10:00 p.m. or before 6:00 a.m. local time.

The Board finds that a noise barrier is an economically reasonable alternative. On February 15, 2003, the Board ordered the parties to provide additional information on noise walls that would be just as effective as the noise wall that Huff proposed during the first round of hearings. LTD provided no estimates for less expensive noise walls or other alternative control options at the hearings on the remedy. Compared with other expenditures by LTD, the Board

² *See* Occupational Safety and Health Administration (OSHA) regulation 29 C.F.R. 1926.601(b)(4) and OSHA interpretation letter of 29 C.F.R. 1936.601(b)(4) dated July 12, 1993.

finds the expenditure of \$623,350 to \$1.5 million is economically reasonable. The limited financial information that LTD has provided the Board does not refute that LTD is able to pay for the estimated cost of the wall. In fact, LTD offered only that if it is required to build a noise wall, it should be permitted to build a wall along the north property line. However, LTD did not propose the height of a property line noise wall, the estimated cost, the materials, the length, or the potential reduction in noise.

The Board finds a noise barrier in the location proposed by Dr. Schomer in his report is also technically feasible. While Mr. Anderson stated building a wall in the proposed location may be more difficult, but not infeasible. Steve Mitchell stated the Huff Company could successfully build a wall in the proposed location.

The Board also finds LTD must protect against noise generated on Lakeside Drive and the ramp connecting Lakeside Drive with LTD's dock area. Therefore, the Board orders LTD to cease allowing vehicles to park, stand, or idle on Lakeside Drive and the ramp. If LTD wishes to resume the standing, parking, and idling of tractors and semi-trailers on Lakeside Drive or the ramp, the barrier described above must include a 150-foot extension in the location shown in Figure 3 of Dr. Schomer's report (Comp. Exh. 1) and the entrance ramp must be relocated to the dock area south of its current location. Before LTD may resume the standing, parking, and idling, LTD must complete the extension and ramp relocation.

After consideration of the 33(c) factors, the Board finds the ordered-remedies appropriate. In past proceedings, the Board has ordered respondents to restrict operations to remedy a finding of nuisance noise. *See Thomas v. Carry Co. of Illinois*, PCB 91-195 (May 19, 1994) (ordering respondent to close all bay doors while washing trailers, close bay doors at night, use only south end of lot at night, and repair brakes); *Madoux and Moody v. B&M Steel Service Center, Inc.*, PCB 90-148 (Nov. 19, 1992) (ordering respondent to close all doors to its building during operation). Based on the record, the order should eliminate the unreasonable interference while giving LTD flexibility. LTD can comply by either restricting its operations or constructing and maintaining a noise barrier. Either way, the Board finds the remedy economically reasonable and technically feasible.

Civil Penalties

Based on the 33(c) factors, the Board finds a civil penalty is appropriate. The complainants ask the Board to order LTD to pay a civil penalty of \$50,000 to promote compliance with the Act. Comp. Br. at 11. In the interim opinion and order, the Board found that LTD violated Section 24 of the Act and Section 900.102 of the Board's rules. Pursuant to Section 42(a) of the Act, the Board may order LTD to pay a civil penalty of \$50,000 for each of these violations. In addition, Section 42(a) allows the Board to impose an additional civil penalty of \$10,000 per day for each day the violation continues. The Board found in its interim opinion and order that the noise problems substantially increased in 1996 after LTD expanded the Bannockburn facility. The Board also found the noise problem was ongoing as of the time of the hearing.

The Board has already discussed above the factors set forth in Section 33(c) of the Act. Below, the Board will address the Section 42(h) factors in determining the amount of a civil penalty.

Duration and Gravity of Violation

LTD's Bannockburn facility truck noise has been proven to interfere with the lives of three sets of neighbors. The disturbances occur during the daytime hours five days a week and continue on into the nighttime hours approximately five months out of the year. The noise has disrupted the complainants' sleep and limited the use of their property. The complainants moved into the area between 1987 and 1990, but the noise only became a problem after LTD expanded in 1995. Interference from the noise is severe and frequent and has continued for over seven years. LTD has stopped operating the night shift since October 18, 2002. However, LTD still parks semi-trailers on Lakeside Drive and uses the backup warning beeper in its staging area. The Board weighs this factor against LTD.

Diligence in Attempting to Comply

The complainants contacted the Village of Bannockburn in January 1997 regarding the noise coming from the LTD facility. Int. Op. at 11. Leslie Weber wrote a letter to the Administrator for the Village of Bannockburn, David Lothspeich, in January 1997 to ask for assistance with the noise problem. The complainants filed this complaint on July 22, 1998. LTD made an effort to comply by implementing a "Good Neighbor Policy" asking truck drivers not to blow their horns, to avoid excessive acceleration and shouting, and to stay off the north parking lot of the Bannockburn facility. Int. Op. at 11. LTD secured a quieter yard tractor in 1997. Tr. 10/15/02 at 13. In 1999, LTD turned off the yard tractor's backup warning device, but the device was reinstalled after a couple of days. LTD also fixed its dock levelers so they make less sound. Int. Op. at 12. Mr. Jack Voigt, LTD's vice president of distribution, estimated the repairs to the dock levelers at less than \$20,000. In the interim opinion, the Board found these actions amounted to "minimal efforts" to reduce noise at the Bannockburn facility and weighed the "subsequent compliance" 33(c) factor against LTD. Since the Board's interim opinion, LTD has employed no further efforts to minimize or reduce noise from the facility. The complainants have complained about the noise from LTD's facility for over six years. The Board weighs this factor against LTD.

Economic Benefits Accrued

Though LTD has incurred some expenses trying to reduce noise, LTD has gained economic benefit by putting off the expense of more effective noise control measures such as replacing the backup warning beepers, installing a noise wall, or hiring a dock pilot. *See Charter Hall Homeowner's Assoc. v. Overland Transp. System, Inc.*, PCB 98-81 slip op. at 13, May 6, 1999. The Board weighs this factor against LTD.

Penalty Amount that Will Deter Further Violations and Aid in Enhancing Voluntary Compliance

The Board finds that a penalty is necessary to deter LTD from further violating the Act and to enhance voluntary compliance with the Act by LTD and other similarly situated companies. Noise from LTD's Bannockburn facility has unreasonably interfered with the complainants' enjoyment of life for many years. LTD does not dispute that it employs approximately 2000 people at its three facilities in Illinois (over 1,000 at the Bannockburn facility), spent \$6.6 million for the Bannockburn facility in the mid-1980's and spent approximately another \$6.0 million to expand the Bannockburn in the mid-1990's. However, because LTD put forth effort to abate the nuisance noise by repairing dock levelers, securing a quieter yard tractor, and ceasing the night shift, the Board will not impose a \$50,000 penalty as requested by the complainants.

Previously Adjudicated Violations

The record contains no evidence of previously adjudicated violations of the Act by LTD. The Board weighs this factor in favor of LTD.

Board Analysis

In consideration of the above factors, the Board will impose a civil penalty of \$15,000. The noise reduction measures imposed by the Board in this order are intended merely to eliminate the unreasonable interference and bring LTD into compliance with the Act and Board regulations. The disruptive noise has lasted for several years, occurred frequently, and has been severe. LTD has not diligently attempted to comply, and has benefited by delaying necessary compliance expenses. A penalty of \$15,000 is necessary to sufficiently deter further violations by LTD and aid in enhancing voluntary compliance by LTD and others like it. The Board imposed the same civil penalty under very similar circumstances in Charter Hall Homeowner's Ass'n and Cohen v. Overland Transportation System, Inc. and D.P. Cartage, Inc., PCB 98-81 (May 6, 1999).

CONCLUSION

The Board found LTD in violation of the Act and Board's nuisance noise provisions in a February 15, 2003 interim opinion and order in this proceeding. Today the Board orders LTD to implement operational noise reduction measures to eliminate the unreasonable interference. The Board also orders LTD to pay a \$15,000 civil penalty to encourage compliance and deter future noncompliance.

This order constitutes the Board's findings of fact and conclusions of law.

ORDER

1. The Board incorporates its February 15, 2001 opinion and order, as if fully set forth. That order finds that LTD Commodities (LTD) has unreasonably interfered with the enjoyment of life in violation of the nuisance noise prohibitions of 415 ILCS 5/24 (2002) and 35 Ill. Adm. Code 900.102.
2. LTD must cease and desist from any further violations of 415 ILCS 5/24 (2002) and 35 Ill. Adm. Code 900.102.
 - a. Within 40 days after LTD receives this order, LTD must cease and desist from trucking operations during nighttime hours, between 10:00 p.m. and 6:00 a.m. at the Bannockburn facility.
 - b. Within 40 days after LTD receives this order, LTD must cease and desist from using backup warning beepers at the Bannockburn facility at any time and replace any backup warning beeper used on a yard tractor with either a human spotter or a strobe light.
 - c. Within 40 days after LTD receives this order, LTD must cease and desist from parking, standing or idling trucks, tractors or semi-trailers on Lakeside Drive and the ramp connecting LTD's dock area with Lakeside Drive.
3. If LTD constructs and completes a noise barrier in accordance with the following, it is not subject to paragraph 2.a., b., and c. of this order.
 - a. The noise barrier must be built immediately north of LTD's dock area.
 - b. The barrier must be designed and constructed in accordance with good engineering practices and under the supervision of a qualified noise control engineer.
 - c. The barrier must be constructed out of integral sound absorbing metal, concrete, concrete-lik, or other material with equal or greater integral sound absorbing properties.
 - d. The barrier must be of uniform elevation with a wall-top elevation of 710 feet above sea level. A wall-top elevation of 710 feet corresponds to a wall height of approximately 25 feet.
 - e. The barrier must be 520 feet in continuous length. LTD cannot allow tractors or semi-trailers to resume parking, standing, or idling on Lakeside Drive or the ramp connecting Lakeside Drive to the staging area unless

LTD relocates the ramp as provided in Dr. Schomer's report and constructs an additional 150 foot noise barrier of the same material and in the location as indicated by Dr. Schomer's report.

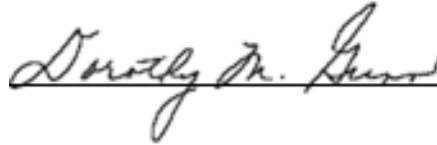
- f. LTD must maintain the wall in good condition.
4. LTD must pay a civil penalty of \$15,000 for violating 415 ILCS 5/24 (2002) and 35 Ill. Adm. Code 900.102.
- a. LTD must pay this penalty by August 23, 2003, which is the 30th day after the date of this order.
 - b. TL Trucking must by certified check or money order payable to the Treasurer of the State of Illinois, designated to the Environmental Protection Trust Fund. The number, case name, and LTD's social security number or federal employer identification number must be included on the certified check or money order.
 - c. TL Trucking must send the certified check or money order to:
 - Illinois Environmental Protection Agency
 - Fiscal Services Division
 - 1021 North Grand Avenue East
 - P.O. Box 19276
 - Springfield, Illinois 62794-9276
 - d. Penalties unpaid within the time prescribed will accrue interest under Section 42(g) of the Environmental Protection Act (415 ILCS 5/42(g) (2002)) at the rate set forth in Section 1003(a) of the Income Tax Act (35 ILCS 5/1003(a) (2002)).

IT IS SO ORDERED.

Chairman T.E. Johnson and Member M.E. Tristano dissented.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2002); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 24, 2003, by a vote of 4-2.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board