

1 APPEARANCES:

2

3 ILLINOIS POLLUTION CONTROL BOARD,

4 100 West Randolph Street

5 Suite 11-500

6 Chicago, Illinois 60601

7 (312)814-3917

8 BY: MR. BRADLEY P. HALLORAN, Hearing Officer

9

10 KINTZINGER LAW FIRM

11 100 West 12th Street

12 P.O. Box 703

13 Dubuque, Iowa 52004

14 (563)588-0547

15 BY: MS. PATRICIA M. REISEN-OTTAVI

16 Appeared on behalf of the Respondent.

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18 Mr. Stephen C. Brill, the Complainant, appeared

19 pro se.

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18
19
20
21
22
23
24

INDEX

WITNESS:

DONALD A. STUMBRIS

Direct Examination by Ms. Reisen. 370, 431

Cross-Examination by Mr. Brill. 416, 436

WITNESS:

DANIEL FISHER

Direct Examination by Ms. Reisen. 441

Cross-Examination by Mr. Brill. 463

WITNESS:

BRIAN L. HOMANS

Direct Examination by Ms. Reisen, 473, 570

Cross-Examination by Mr. Brill. 522, 576

WITNESS:

MARK WHITE

Direct Examination by Ms. Reisen. 579, 594

Cross-Examination by Mr. Brill, 590

1 WITNESS:

2 ROBERT

3 Direct Examination by Ms. Reisen. 596, 608

4 Cross-Examination by Mr. Brill. 604, 608

5

6 WITNESS:

7 HANK LATORIA

8 Direct Examination by Ms. Reisen. 609, 727

9 Cross-Examination by Mr. Brill. 706

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L.A. REPORTING, 312-419-9292

365

1 HEARING OFFICER HALLORAN: Good
2 morning. My name is Bradley Halloran. I'm a
3 hearing officer with the Illinois Pollution
4 Control Board. I'm also assigned to this matter
5 involving Stephen G. Brill, the Complainant,
6 versus Henry Latoria, individually, and doing
7 business as, TL Trucking Foodliner, PCB No. 00 -
8 219.

9 Today's date is November 14th and the
10 year 2001, approximately 8:45. This matter has
11 been noticed pursuant to board regulations and
12 has been publically noticed in the local
13 newspaper in the county that is in effect or
14 it's situated and this is Cook County.

15 It's also conducted in accordance with
16 Sections 103.202 and 103.203 of the Board's
17 regulations.

18 It's a citizen enforcement matter
19 alleging, among others things, violations of 9A
20 and 24 of the act, and 900.102, 901.102A,
21 901.102B and 901.104 of the regulations.

22 Are there any members of the public

23 here or are they all witnesses? There are no
24 members of the public here. I see Mr. Brill's

L.A. REPORTING, 312-419-9292

366

1 wife is here, but if there were members of the
2 public, again, they would be allowed to testify,
3 subject to cross-examination. And at the end of
4 the hearing, we'll set up public comment date as
5 well.

6 I also want to note for the record I
7 will not be making the ultimate decision in the
8 case. In fact, the ultimate decision in this
9 case will be made by the Illinois Pollution
10 Control Board, which is comprised of seven
11 members located throughout the state of Illinois
12 chosen for their environmental expertise. My
13 job is to insure an orderly transcript and a
14 clear record and to rule on any evidentiary
15 matters here at the hearing.

16 I do want to note for the record that
17 this hearing was held on September 26th, with
18 the Complainant, Mr. Brill, finishing up his
19 case in chief. We continued it on the record to
20 November 7, however, Ms. Reisen had called later
21 and said that conflicted with some travel plans

22 she had. So, Mr. Brill agreed to continue this
23 hearing to November 14th, and here we are.

24 With that said, Mr. Brill, would you

L.A. REPORTING, 312-419-9292

367

1 like to introduce yourself?

2 MR. BRILL: My name is Stephen Brill.
3 I live in the area of contention, 9204 Crescent
4 Drive, Franklin Park.

5 HEARING OFFICER HALLORAN: Okay. Ms.
6 Reisen?

7 MS. REISEN: I'm Patricia
8 Reisen-Ottavi, attorney for the Respondent.

9 HEARING OFFICER HALLORAN: One
10 housekeeping matter.

11 There was -- Mr. Brill had offered
12 Exhibit No. 1, Complainant's Exhibit No. 1, into
13 evidence, on September 26th. Ms. Reisen
14 objected. I noted her objections in the
15 transcript I read, however, at this time, I'm
16 willing to rule on Exhibit No. 1, and I will
17 allow it into evidence, again, not necessarily
18 to prove that there is a violation, but only to
19 bolster and substantiate complainant's claim.
20 The probative value, if any, will be weighed,

21 accordingly, by the board.

22 (Complainant's Exhibit No. 1 was
23 admitted into evidence.)

24 HEARING OFFICER HALLORAN: I also want

L.A. REPORTING, 312-419-9292

368

1 to note, too, for the record, that I guess there
2 was 30 or 32 references in there regarding Mr.
3 Brill's medical testimony, and, as I recall, Mr.
4 Brill was acceptable to striking that portion in
5 this document. This document, by the way, makes
6 up -- it's more or less a Group Exhibit No. 1,
7 it makes up five individually stapled documents
8 and the pages go from anywhere to 2 pages, 2 or
9 3 pages to about 20 pages per staple, but I
10 guess there is 30 or 32 references to his
11 medical history. Mr. Brill has agreed to --

12 MR. BRILL: I'm just very loquacious
13 with a pen.

14 HEARING OFFICER HALLORAN: Oh, duly
15 noted.

16 MR. BRILL: I feel sorry for myself.

17 HEARING OFFICER HALLORAN: But, in any
18 event, those portions, which reference Mr.
19 Brill's medical history or medical problems,

20 will be stricken, and the board is asked to
21 disregard them.

22 With that said, I think that pretty
23 does the housekeeping matters.

24 Ms. Reisen, would you like to present

L.A. REPORTING, 312-419-9292

369

1 your case in chief?

2 MS. REISEN: Yes, Mr. Halloran.

3 Two questions, first of all,
4 housekeeping matter. Are those references on
5 the transcript stricken before they go to the
6 board? And the basis of the question is, once
7 the cat is out of the bag, it is hard to put it
8 back in.

9 HEARING OFFICER HALLORAN: No. They
10 will remain in the documents. I've instructed
11 the board to disregard it and, in fact, in the
12 past they have disregarded lay opinions
13 regarding medical history.

14 MS. REISEN: The other housekeeping,
15 just for the record, we had spoken before we
16 went on the record before regarding exhibits. I
17 will be entering exhibits all marked as
18 Respondent's Exhibits 1 through 67, with an

19 omission for No. 4. There will be no
20 Respondent's Exhibit No. 4.

21 HEARING OFFICER HALLORAN: Thank you
22 for making that clear for the record.

23 MS. REISEN: We would call Don
24 Stumbris.

L.A. REPORTING, 312-419-9292

370

1 HEARING OFFICER HALLORAN: Sir, you
2 may step up and raise your right hand and the
3 court reporter will swear you in.

4 (Witness sworn.)

5 DONALD A. STUMBRIS,
6 called as a witness herein, having been first
7 duly sworn, was examined and testified as
8 follows:

9 DIRECT EXAMINATION

10 BY MS. REISEN:

11 Q. Can you, please, state your name and
12 spell your last name?

13 A. Donald A. Stumbris. S-T-U-M-B-R-I-S.

14 Q. And, Mr. Stumbris, what is your
15 occupation?

16 A. I'm a zoning administrator of the
17 village of Franklin Park.

18 Q. And how long have you been the zoning
19 administrator?

20 A. Three years, ma'am.

21 Q. What was your prior position?

22 A. I was the planning examiner, zoning,
23 for the village of Buffalo Grove for 10 years.

24 Q. Regarding the zoning administrator of

L.A. REPORTING, 312-419-9292

371

1 Franklin Park, what are your duties?

2 A. I basically interpret the code, the
3 zoning ordinance. I bring packages to the
4 zoning board of appeals for conditional or
5 variances or amendments that are necessary. I
6 review all business occupations coming into the
7 area. I also review plan reviews as far as
8 zoning is concerned for fencing, any new
9 structures that would go up on a property.

10 Q. How are the rules, the zoning rules
11 enacted?

12 A. Well, what they are is land use.
13 They're the most important part, probably,
14 across the entire country. I mean, the state of
15 Illinois has them, everyone has them.

16 The basic principles of your zoning is

17 to control what goes on in your land areas.

18 Q. Now, Franklin Park is one of many
19 suburbs of the Chicagoland area, correct?

20 A. Yes, ma'am.

21 Q. And, essentially, the borders are
22 fixed as you have other areas around, correct,
23 that are already occupied, correct?

24 A. Well, they are fixed to a point where

L.A. REPORTING, 312-419-9292

372

1 you go into unincorporated lands.

2 Q. And so do the zoning ordinances taken
3 in to account the amount of land that Franklin
4 Park has available for its use?

5 A. They take into account what available
6 land is in use and what use that land should be.

7 Q. Mr. Stumbris, I'm going to direct your
8 attention to what has been marked as
9 Respondent's Exhibit 67, which is a large color
10 coded map on the wall to your right.

11 Do you recognize that map?

12 A. Yes, ma'am, I do.

13 Q. And how do you recognize that map?

14 A. I initiated that map into a color
15 coded map to make it easier for people to

16 understand what the different sections of our
17 community are.

18 Q. Okay. And the particular map that
19 you're looking at right now, that came from your
20 office, did it not?

21 A. That's a copy of mine, the original,
22 yes.

23 MS. REISEN: We'd move for the
24 admission of Exhibit 67 at this time.

L.A. REPORTING, 312-419-9292

373

1 HEARING OFFICER HALLORAN: Mr. Brill,
2 any objection?

3 MR. BRILL: No objection.

4 HEARING OFFICER HALLORAN: Exhibit 67,
5 Respondent's Exhibit 67 is so admitted.

6 MS. REISEN: Thank you.

7 (Respondent's Exhibit No. 67 was
8 admitted into evidence.)

9 BY MS. REISEN:

10 Q. On the bottom left-hand corner, there
11 is a legend. And the legend divides out
12 Franklin Park into various sections, correct?

13 A. Zoning districts is the proper
14 terminology for that.

15 Q. Okay. And what color on the legend
16 indicates residential areas?

17 A. Green, generally, light green or the
18 dark green, that is the single family areas.

19 You have below that three orange
20 colored and yellow colored, that signifies
21 multi-families.

22 Q. Such as apartment complexes?

23 A. That's correct, ma'am.

24 Q. And what -- how is industry

L.A. REPORTING, 312-419-9292

374

1 characterized under the legend?

2 A. We have three types of industry.

3 We have what we call commercial
4 manufacturing district, which is in a purple
5 color.

6 We have a darker gray, which is an I-1
7 restricted industrial area.

8 And we have a gray, which is our
9 general industrial area.

10 Q. Okay. Now, I'm going to ask you,
11 first of all, if you're aware where King Drive
12 is?

13 A. Yes, ma'am.

14 Q. Okay. And describe what sorts of
15 structures are located on King Drive.

16 A. King Drive is in the dark gray area,
17 which is called our restricted industrial area.
18 This is based on what occupations can be
19 performed in that area, and is generally
20 established in the past. 1974 was when ours was
21 originated. It was generally designed because
22 you'll notice there are a lot of dark grays on
23 our zoning map, they usually touch against or
24 adjacent to residential properties.

L.A. REPORTING, 312-419-9292

375

1 Q. Okay. I'm going to slow you down a
2 minute.

3 And, first of all, speaking pertaining
4 to King Drive, I'm going to hand you what I've
5 marked as Respondent's Exhibits 29, 30, 31, 32,
6 33, 34, 35, 36, 37, 38, and they're photographs.
7 I'm going to ask you to just look through those
8 quickly.

9 HEARING OFFICER HALLORAN: Mr. Brill,
10 have you seen those photographs?

11 MR. BRILL: I believe I have copies,
12 if they're the same ones.

13 MS. REISEN: They're the same ones
14 that he has been provided copies with.

15 HEARING OFFICER HALLORAN: Thank you.

16 BY MS. REISEN:

17 Q. Okay. I'd like to direct your
18 attention to 29 and 30, which were the first two
19 photographs that you looked at, and ask you if
20 you recognize that area?

21 A. Yes, ma'am.

22 Q. And what does that area depict?

23 A. That is the intersection of King and
24 River Road.

L.A. REPORTING, 312-419-9292

376

1 Q. And is that a true and accurate
2 depiction of King and River Road as it would
3 appear, at least in the wintertime?

4 A. Yes, ma'am.

5 MS. REISEN: We'd move for the
6 admission of Exhibits 29 and 30 at this time.

7 HEARING OFFICER HALLORAN: Mr. Brill,
8 any objection?

9 MR. BRILL: I'd like to know who took
10 these pictures and whether I can cross-examine
11 that person.

12 MS. REISEN: I'm the one who took the
13 photos and if you would like to cross-examine me
14 now, that is fine.

15 HEARING OFFICER HALLORAN: You want to
16 voir dire Ms. Reisen?

17 MR. BRILL: Well, what I'm trying to
18 determine is whether there were any filters used
19 on the camera to enhance or to disenhanche areas,
20 and I'd also like to point out, because it's
21 part of our argument, that the Respondents have
22 tried to paint us in a bad picture here and I
23 would like to indicate on those very same
24 pictures that we have a huge forest preserve

L.A. REPORTING, 312-419-9292

377

1 area that is very close to our neighborhood
2 there and --

3 MS. REISEN: I'm going to object. The
4 purpose of this is a voir dire as to the
5 question --

6 HEARING OFFICER HALLORAN: That is
7 true, Mr. Brill. You can make your argument at
8 closing or whatever, but you wanted to ask Ms.
9 Reisen whether she used a filtered lens or --

10 MR. BRILL: Yes, she hasn't been

11 sworn.

12 MS. REISEN: I can make a
13 professional statement that I use a standard 35
14 millimeter camera with no special lenses, no
15 special zoom, no special features. It's the
16 sort of camera that many people own in their
17 home.

18 MR. BRILL: And you just pointed out
19 pictures 29 and 30. Does that pertain to all of
20 the pictures?

21 MS. REISEN: To all the photos that
22 were taken.

23 MR. BRILL: I see.

24 And the -- well, I guess there is no

L.A. REPORTING, 312-419-9292

378

1 point in pursuing this, because we have
2 photographs as well, but I was curious to know
3 who took the pictures, and I imagine you're
4 going to go through most of them and point out
5 what they're supposed to represent or is it just
6 29 and 30?

7 MS. REISEN: I'm not sure if that is
8 a proper voir dire question.

9 HEARING OFFICER HALLORAN: Just

10 answer the question, please, Ms. Reisen.

11 MS. REISEN: Basically, we're going
12 to be introducing all the photographs that you
13 have already been provided copies of, Mr. Brill,
14 which are nothing more than landscape photos
15 just depicting the area.

16 HEARING OFFICER HALLORAN: Thank you
17 very much.

18 Mr. Brill, do you still have an
19 objection?

20 MR. BRILL: No. No, I don't, because,
21 I think, actually, the photographs help our side
22 more than their side.

23 HEARING OFFICER HALLORAN: So no
24 objection.

L.A. REPORTING, 312-419-9292

379

1 Exhibit Nos. 29 and 30 will be
2 admitted.

3 Thank you.

4 (Respondent's Exhibit Nos. 29 - 30
5 were admitted into evidence.)

6 BY MS. REISEN:

7 Q. And then, Mr. Stumbris, if you'll look
8 at 31 through the balance of the photos I gave

9 you, up to 38, do you recognize those
10 industries?

11 A. Yes, ma'am.

12 Q. And where are all of those industries
13 located?

14 A. Down King Drive.

15 MS. REISEN: We'd move for the
16 admission of Exhibits 31 through 38.

17 MR. BRILL: No objection.

18 HEARING OFFICER HALLORAN: Okay. What
19 was the description of Exhibits 31 and 38, what
20 does that describe?

21 Ms. Reisen, you can answer.

22 MS. REISEN: Various industries
23 located on King Drive, up and down the road.

24 HEARING OFFICER HALLORAN: Residencies

L.A. REPORTING, 312-419-9292

380

1 on King Drive.

2 THE WITNESS: Businesses.

3 HEARING OFFICER HALLORAN: I'm sorry.
4 Businesses on King Drive.

5 (Respondent's Exhibit Nos. 31 - 38
6 were admitted into evidence.)

7 BY MS. REISEN:

8 Q. Now, you indicated that the first two
9 photos showed the intersection of King Avenue
10 actually and River Road.

11 Can you describe the sort of traffic
12 that River Road handles on a daily basis?

13 A. River Road is heavily traveled because
14 it deals with a lot of industrial districts,
15 both ours in Franklin Park and also in Schiller
16 Park. It also deals with a lot of residential
17 traffic going to O'Hare Airport, because it's a
18 great way to get to the convention center,
19 Rosemont Convention Center.

20 One problem we do have, we have a
21 train intersection there and we have several
22 back ups of trains. Your passenger trains going
23 to Vernon Hills, for instance, and Fox Lake go
24 through. You also have your passenger trains

L.A. REPORTING, 312-419-9292

381

1 going throughout to the western suburbs and
2 Elgin. And you also have freight lines from the
3 Canadian Pacific, which recently purchased that
4 line.

5 Q. What is the approximate distance from
6 those train intersections to King Avenue?

7 A. About five blocks, six blocks max.

8 Q. Just to the north of River Road and to
9 the north of King Avenue, there is another major
10 street that River connects with?

11 A. Yes.

12 Q. What is that road?

13 A. Robinson Road.

14 Q. And, approximately, how far north of
15 King Avenue is that road?

16 A. About two blocks.

17 Q. Describe the traffic on -- what was
18 the name, Robinson?

19 A. Yes.

20 Q. Describe the traffic on Robinson?

21 A. It's more of a residential. There is
22 some commercial because of the industrial that
23 is in the rear to the west of the Robinson Road
24 Circle, the residential circle. Best described

L.A. REPORTING, 312-419-9292

382

1 by what you see on that map, that's the easiest
2 way to describe it. We have a circle with
3 single family homes and then we have a small
4 industrial district just to the west of those
5 homes.

6 Q. And the circle that you're referring
7 to would include Crescent Drive where Mr. Brill
8 resides?

9 A. That's correct.

10 Q. You indicated that to the west of
11 Crescent Drive there is more industry?

12 A. More industry to the west and to the
13 north.

14 Q. Okay. I want to refer your attention
15 to Respondent's Exhibit 67. I'm going to give
16 you a yellow highlighter and I'm going to ask
17 that you draw a circle around the area where Mr.
18 Brill resides.

19 A. The area where Mr. Brill resides is
20 right in through here, right about,
21 approximately there.

22 Q. Okay. And is King Avenue noted on the
23 map?

24 A. King Avenue is this district right

L.A. REPORTING, 312-419-9292

383

1 through here.

2 Q. Can you take the yellow and draw on
3 King so we have that road highlighted?

4 Thank you.

5 Now, you had started to describe
6 earlier the zoning areas.

7 Will you describe what C -- or what
8 I-1 restricted zoning entails?

9 A. Well, the original concept, the zoning
10 legend that you see was designed in 1974 by the
11 first zoning ordinance of the village of
12 Franklin Park.

13 In establishing that, they knew --
14 Franklin Park has the fifth largest industrial
15 in Illinois. So you have a multi combination of
16 residential, commercial and industrial abutting
17 each other through the village.

18 The founding fathers of the zoning
19 ordinance decided to create a restricted
20 industrial. In that sense there is a section in
21 the zoning ordinance which tells what type of
22 businesses can be in that area.

23 Q. Okay.

24 A. There is also a conditional area,

L.A. REPORTING, 312-419-9292

384

1 which has to go before boards in order to be
2 accepted in that area.

3 Q. Okay. And that has been actually

4 codified under Chapter 6 of your code, which has
5 industrial districts outlined?

6 A. Yes, ma'am.

7 Q. I'm going to hand you what has been
8 previously marked as Respondent's 3 and ask you
9 if you recognize that as your zoning district?

10 A. Yes, ma'am.

11 Q. Okay. And, specifically, Respondent's
12 Exhibit 3 indicates what I-1 restricted
13 industrial allows, is that correct?

14 A. That is correct.

15 Q. Is that a correct copy of that section
16 of the code, as you know it?

17 A. Yes, it is.

18 MS. REISEN: We would move for
19 Exhibit 3 to be admitted at this time.

20 HEARING OFFICER HALLORAN: Mr. Brill,
21 any objection?

22 MR. BRILL: No objection.

23 HEARING OFFICER HALLORAN: Exhibit 3
24 reflecting the zoning district code, is that

L.A. REPORTING, 312-419-9292

385

1 correct?

2 MS. REISEN: Correct.

3 HEARING OFFICER HALLORAN: Will be
4 admitted.

5 (Respondent's Exhibit No. 3 was
6 admitted into evidence.)

7 BY MS. REISEN:

8 Q. Now, specifically, this document, Mr.
9 Stumbris, allows certain permitted uses,
10 correct?

11 A. That is correct.

12 Q. Okay. And on page 2 of the document,
13 does this zoning code indicate that light
14 machinery, production, appliances, business
15 machines are allowed to be operated in such
16 areas?

17 A. Yes, ma'am.

18 Q. Okay. And on the other column of the
19 page you're looking at, does it also indicate
20 that warehousing, storage and distribution
21 facilities are allowed?

22 A. That is correct.

23 Q. Furthermore, there are conditional
24 uses for air, motor, railroad, water and freight

L.A. REPORTING, 312-419-9292

386

1 terminals, correct?

2 A. Yes, ma'am.

3 Q. Now, TL Trucking is located in the I-1
4 residential -- or the I-1 area, correct?

5 A. Yes, ma'am.

6 Q. And do they fit the conditional
7 permitted uses that are allowed by your code?

8 A. Yes, they do.

9 Q. Okay. Are you personally familiar
10 with their business?

11 A. Yes, to a -- to the point of what was
12 given to us on the original application for
13 occupancy there.

14 Q. And do you remember about when that --
15 you would have received that?

16 A. I would not have. That would have
17 been prior to the -- they've been there quite a
18 few years.

19 Q. Okay. Do you from time to time make
20 sure that businesses remain in compliance with
21 the zoning requirements?

22 A. We always do.

23 Q. Okay.

24 A. We're constantly on the alert as much

L.A. REPORTING, 312-419-9292

1 as we can be.

2 We have problems that do come up
3 occasionally and generally we notify the company
4 what it has done and what is required to meet
5 the standards.

6 Q. Okay. Going to hand you what has also
7 been marked as Respondent's Exhibit 12, ask you
8 if you recognize that document?

9 A. Yes, ma'am.

10 Q. And what is that document?

11 A. This is a response that I myself had
12 sent to your law firm.

13 Q. Okay. And does that letter -- what is
14 the date of that letter?

15 A. May 15, 2001.

16 Q. And is that your signature at the
17 bottom?

18 A. Yes, ma'am.

19 Q. Okay. And does your letter indicate
20 the zoning that applies to TL Trucking?

21 A. Yes, it does.

22 Q. And that, again, is the I-1 restricted
23 industrial district?

24 A. That's correct.

1 MS. REISEN: We'd move for admission
2 of Exhibit 2.

3 HEARING OFFICER HALLORAN: Mr. Brill,
4 any objection?

5 MR. BRILL: No, I -- I note it now
6 where the I-1 industrial district is noted, yes.

7 HEARING OFFICER HALLORAN: Exhibit 2
8 will be admitted.

9 (Respondent's Exhibit No. 2 was
10 admitted into evidence.)

11 HEARING OFFICER HALLORAN: Ms. Reisen,
12 did you take back Exhibit 3? Did you need that?

13 THE WITNESS: I have it.

14 HEARING OFFICER HALLORAN: I'm sorry.
15 You can keep it until Ms. Reisen gives it to me.

16 You may proceed.

17 MS. REISEN: Thank you.

18 BY MS. REISEN:

19 Q. Now, over the course of time, have you
20 been in touch with the individuals at TL
21 Trucking regarding some fencing that was on
22 their lot?

23 A. Yes, ma'am.

24 Q. Are you aware of what the original

1 fencing was when they took possession of the
2 property?

3 A. I was not aware of the original
4 fencing. I was called on a complaint
5 approximately two years ago.

6 Q. Do you remember who the Complainant
7 was?

8 A. Well, it was a gray area. I don't
9 remember exactly who the Complainant was because
10 it just did not cover TL. It covered about six
11 businesses where required screening was to be
12 up, which is our fencing. And I addressed the
13 issue with all of the businesses along King
14 facing the north.

15 Q. Okay. And, specifically, do all of
16 the complaints come through your office or come
17 by you at some point or another?

18 A. If it is a zoning matter only.

19 Q. Okay. I'm going to ask you to review
20 Respondent's Exhibits 46, 47, and 48, which are
21 three different investigative reports.

22 Let's start with 46. Does the form
23 look like a -- the reports that you're familiar
24 with?

1 A. Yes, ma'am.

2 Q. And what is the date on Exhibit 46?

3 A. 01/10/2000.

4 Q. And who was that taken by, that
5 complaint?

6 A. It was received by Jeanine Malenzyny,
7 M-A-L-E-N-Z-Y-N-Y.

8 Q. Does that complaint refer to or allege
9 a complaint against TL Trucking?

10 A. It would -- it would appear to be.

11 Q. Okay. And, specifically, does it
12 raise the issue of fence, the fence?

13 A. It raises an issue of a sound barrier
14 fence.

15 Q. Okay. Did your office attempt to
16 follow up on that complaint under the findings
17 or investigation recommendation?

18 A. They made an attempt and there was no
19 one -- no answer at the door.

20 Q. In looking, did they actually make a
21 couple of attempts?

22 A. Yes. 9:15 and 2:40.

23 MS. REISEN: We'd move for admission
24 of Exhibit 46 at this time.

1 HEARING OFFICER HALLORAN: Mr. Brill,
2 any objection?

3 MR. BRILL: I -- I'm just wondering
4 that this was referred to Frank
5 Faleno(phonetic), is that correct? This is
6 not -- this is not a document that was made out
7 by you, is it, Mr. Stumbris?

8 THE WITNESS: No. This is an
9 investigation report, sir, a field report.

10 MR. BRILL: I just wonder about the
11 admissibility of this as there is no way that I
12 can cross-examine the people who made this out.

13 HEARING OFFICER HALLORAN: So you do
14 object?

15 MR. BRILL: Yes, I do.

16 HEARING OFFICER HALLORAN: I'll
17 overrule your objection.

18 Exhibit No. 46 is admitted.

19 (Respondent's Exhibit No. 46 was
20 admitted into evidence.)

21 BY MS. REISEN:

22 Q. I'd next like you to look at Exhibit
23 No. 47, which is, again, an investigative
24 report.

1 What is the date on that report?

2 A. 1/12/2000.

3 Q. Okay. And, again, the nature of the
4 report is what?

5 A. Fence not completed and much noise.

6 Q. Okay. And does it indicate the
7 location of who made the complaint?

8 A. In one it does not, however, in the
9 findings it mentions a person that they talked
10 to.

11 Q. And who was that?

12 A. That was Mr. Brill.

13 Q. Okay. And I assume you're looking at
14 the paragraph that says findings during
15 investigation and recommendations?

16 A. That's correct.

17 Q. About three lines above that, is there
18 a location noted?

19 A. There is location noted, 9204
20 Crescent, but no name is given.

21 Q. Are you familiar with who resides at
22 that address?

23 A. Now, I am.

24 Q. And who do you now know to reside at

1 that address?

2 A. Mr. Brill.

3 Q. When you look at the findings during
4 investigation, could you read the first
5 sentence, the handwritten sentence?

6 A. Talked with Mr. Brill at location. He
7 said he liked the new fence but it's not
8 finished and --

9 Q. Thank you.

10 A. That's it.

11 Q. Regarding that, has the fence now been
12 finished?

13 A. Yes, ma'am.

14 Q. Okay. Have all of the fences from all
15 of the businesses that you spoke to been
16 finished along King Avenue?

17 A. To a point where I wanted them
18 finished, yes.

19 To perfection, you never get
20 perfection. I can only get the limit to the
21 code, minimum of the code.

22 Q. Do you have any specific issue with
23 the fence that is located on TL Trucking's

24 property?

L.A. REPORTING, 312-419-9292

394

1 A. None.

2 MS. REISEN: We'd move for the
3 admission of 47 at this time.

4 HEARING OFFICER HALLORAN: Mr. Brill,
5 any objection?

6 MR. BRILL: Well, I suppose it won't
7 do me any good but I do object because, again, I
8 cannot question the people who made out this
9 report.

10 HEARING OFFICER HALLORAN: I'll admit
11 it over the Complainant's objection.

12 That was a complaint form dated when?

13 THE WITNESS: Dated 1/12/2000.

14 HEARING OFFICER HALLORAN: Thank you.

15 (Respondent's Exhibit No. 47 was
16 admitted into evidence.)

17 BY MS. REISEN:

18 Q. Lastly, I'd like you to look at
19 Respondent's Exhibit 48 and, again, that is an
20 investigative report.

21 What is the date on that report?

22 A. 1/21/2000.

23 Q. Okay. And, specifically, about
24 halfway down, this investigative report was

L.A. REPORTING, 312-419-9292

395

1 referred to you, wasn't it?

2 A. Yes, ma'am.

3 Q. And, again, who is the complaining
4 party?

5 A. Ms. Brill.

6 Q. And, specifically, what was the nature
7 of the complaint?

8 A. Power wash truck cleaning emitting
9 high level of noise, no fencing around area of
10 machines, running at various times. Is this
11 approved use for residential area? Police shut
12 them down on various occasions due to noise
13 concerned after -- over -- I -- I -- that one --
14 wrote, dirt emitted and noise and the effect on
15 the children in the neighborhood.

16 Q. And, specifically, during the findings
17 section, did you investigate whether or not the
18 use of the property was consistent with the
19 zoning?

20 A. Yes, ma'am, it was consistent.

21 Q. And does your report indicate that?

22 A. This would be a conditional use, it
23 says no. The area is zoned commercial, is okay.
24 Actually, that shouldn't be commercial, that

L.A. REPORTING, 312-419-9292

396

1 should be industrial. Talked with Mr. Latoria
2 at the -- the fence will be completed
3 immediately with sound absorbing slats. The
4 wash equipment has been moved inside and running
5 vehicles are limited in front now -- it's very
6 tough for me to read that last line. Again,
7 this is not my writing because these are -- what
8 we had was a voice correspondence between Mr.
9 Faleno(phonetic) and I, which I explained to him
10 the zoning ordinance and the coverage of the
11 district. So this is his report that he is
12 completing at the bottom.

13 Q. But the conclusion is is that what was
14 going on on TL's property was consistent with
15 zoning, correct?

16 A. It was consistent with zoning,
17 correct. And the cooperation, as you can see,
18 they cooperated in they were told that they --
19 washing machine should not be on the outside and
20 they were told of the other thing that should be

21 moved inside the building.

22 Q. To your knowledge, have those two
23 recommendations --

24 A. They were done immediately.

L.A. REPORTING, 312-419-9292

397

1 Q. Okay. And has all of the slating been
2 placed in the fence, as far as you know?

3 A. Yes.

4 Q. I'm just going to let you know, if we
5 both speak, the court reporter has a real hard
6 time taking it down.

7 And, again, there is indication that
8 if there were running trucks, that was in the
9 front of the building, would that be on the
10 opposite side of TL's building as from Crescent
11 Drive?

12 A. Yes, that would be to the south.

13 Q. And then Mr. Brill's property would be
14 to the north?

15 A. Correct.

16 MS. REISEN: We move for the
17 admission of 48 at this time.

18 HEARING OFFICER HALLORAN: Mr. Brill?

19 MR. BRILL: Again, I object because I

20 can't cross-examine this person about running
21 vehicles that are in the front of the building
22 rather than at the rear because that was part of
23 our case was that they had vehicles idling for
24 hours up against the northern border of their

L.A. REPORTING, 312-419-9292

398

1 property. And this person here states that the
2 vehicles were running near the King Street side
3 or in the front of the building, which is the
4 exact opposite of what we contend. And so I
5 object because I can't cross-examine the person
6 who made out this statement that differs 180
7 degrees with what we're contending.

8 HEARING OFFICER HALLORAN: Ms. Reisen?

9 BY MS. REISEN:

10 Q. Mr. Stumbris, are these reports filled
11 out in the ordinary course of business in your
12 office or in your --

13 A. These are filled out daily.

14 Q. Okay. And is there a certain protocol
15 that needs to be followed in filling out these
16 reports?

17 A. They are to be as you see here,
18 everything, the date, the Complainant, who it is

19 received by, everything is to be filled out, and
20 then they are given to Mr. Fisher, Dan Fisher.
21 That's why, if you notice, referred to zoning,
22 Don Stumbris, and you also have Dan Fisher.

23 Q. And so those are considered a regular
24 business record, as far as you're concerned, for

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399

1 Franklin Park?

2 A. Correct, ma'am.

3 MS. REISEN: We'd ask that they be
4 admitted under the business record exception,
5 your Honor.

6 HEARING OFFICER HALLORAN: Anything
7 further, any further argument, Mr. Brill?

8 MR. BRILL: I would also contend the
9 line that talks about sound absorbing slats in
10 the fence, I have talked with sound experts and
11 they say --

12 MS. REISEN: Your Honor, I'm going to
13 object.

14 HEARING OFFICER HALLORAN: I agree,
15 Ms. Reisen.

16 Mr. Brill, your objection so noted.
17 You may cross the witness, if you'd like, when

18 it is your turn, but I'm going to allow Exhibit
19 No. 48 over the Complainant's objection.

20 (Respondent's Exhibit No. 48 was
21 admitted into evidence.)

22 BY MS. REISEN:

23 Q. You had indicated, Mr. Stumbris, that
24 Franklin Park is the fifth largest industrial

L.A. REPORTING, 312-419-9292

400

1 area in the Chicagoland area, is that --

2 A. State of Illinois.

3 Q. State of Illinois.

4 So if zoning were to change or if
5 businesses, industrial businesses were to leave
6 Franklin Park, what effect would that have on
7 your village?

8 A. Major impact.

9 Q. How so?

10 A. Well, first of all, we have a lower
11 tax base because of all of the industrial that
12 we do have in our area. That is our first
13 impact.

14 Our second impact is that so much
15 business as it effects our area is businesses
16 incorporated within each other.

17 Just to the north of Robinson Road,
18 the Robinson Circle, as I describe, is Dean
19 Foods, which is one of our major companies.

20 Q. Do you know, does Dean Foods run 24
21 hours a day?

22 A. Yes.

23 Q. Go ahead. Continue.

24 A. They, for instance, could not get

L.A. REPORTING, 312-419-9292

401

1 ample land in our community and had to move
2 their corporate offices to Rosemont.

3 So every impact of land lost or
4 companies lost is an impact on the number of
5 people that you have coming into the area, the
6 businesses that we would have in our area, and,
7 eventually, if we vacated all of the buildings,
8 we'd have a tremendous tax input on the
9 residential districts.

10 Q. Now, you indicated that this zoning
11 legend became effective in 1974, however, are
12 you aware if King Avenue was industrial prior to
13 this legend being promulgated?

14 A. Probably was, yes, ma'am.

15 Q. Would you say that a fair percentage

16 or many of the businesses along King Avenue rely
17 heavily on use of semitractor trailers?

18 A. Almost -- I would say that every
19 business in there relies on tractor trailers.

20 Q. Okay. There was testimony on day one,
21 and I don't believe that you were present, that
22 Crescent Drive is in the middle of a very
23 residential area.

24 How would you describe the location of

L.A. REPORTING, 312-419-9292

402

1 Crescent Drive in relation to its surrounding
2 land?

3 A. Well, Crescent Drive, the south part
4 of Crescent Drive abuts against the industrial
5 districts. It definitely is not a major
6 residential area. It's a residential area that
7 is completely surrounded by industrial.

8 Q. Okay. So it's a pocket or an enclave
9 of homes?

10 A. It's basically a pocket. Basically, a
11 pocket.

12 Q. If a business were not in conformity
13 with your zoning regulations, what remedies do
14 you enforce?

15 A. Again, I need to address that, if
16 you're talking conditional or you're talking
17 completely out of -- that they don't agree with
18 anything that we have?

19 Q. Well, let's start with the latter, if
20 they're completely out of sync with what you
21 require?

22 A. Then I'm forced to notify them that
23 they must vacate the premises.

24 Q. Have you ever felt the standing to do

L.A. REPORTING, 312-419-9292

403

1 that with TL Trucking?

2 A. No.

3 Q. Regarding conditional uses, what sorts
4 of remedies are put into there if there is
5 noncompliance?

6 A. If I have noncompliance with a
7 conditional use, I have the option of pulling
8 their conditional use or taking them back to the
9 zoning board of appeals, where they would
10 present their case and then re-present it, if
11 approved by the zoning board, to the village
12 board of trustees. If they didn't wish to do
13 this, if they violated their conditions, as we

14 have done in the past, to businesses, we have
15 ordered them to vacate the premises also.

16 Q. And, again, has that ever had to be
17 applied to TL Trucking?

18 A. No, ma'am, it has not.

19 Q. How would you describe the compliance
20 record with TL as far as their land use?

21 A. As far as their land use and
22 cooperation at the village, and I have had
23 personally with them in the past three years,
24 has been very good.

L.A. REPORTING, 312-419-9292

404

1 Q. Now, recently there has been inquiry
2 to your office regarding erecting some sort of a
3 fence or a sound barrier.

4 Do you recall those --

5 A. Yes, I do.

6 Q. -- in general.

7 I'm going to hand you what has been
8 marked as Respondent's Exhibits 63 and 64. I'm
9 going to ask that you look at 63 and,
10 specifically, what is that document?

11 A. It's a letter from my office.

12 Q. What's the date on the letter?

13 A. The 2/10/2000.

14 Q. Okay. Is that your signature at the
15 bottom?

16 A. That is correct, ma'am.

17 Q. And does that letter refer to a fence
18 that was being requested or looked into?

19 A. Yes, ma'am, it does.

20 Q. And, specifically, what is the gist of
21 your letter?

22 A. It's basically a thank you letter for
23 their cooperation.

24 Q. Was that a thank you letter to whom?

L.A. REPORTING, 312-419-9292

405

1 A. Thank you letter to Foodliner.

2 Q. Was that thanking them for putting up
3 the original fence that is there now?

4 A. It was to put up the current, existing
5 fence, which was an improvement over the
6 existing fence in the past.

7 Q. How was it an improvement?

8 A. The existing fence had a concrete base
9 that was falling apart. They totally repaired
10 and rebuilt the concrete. The original fencing
11 was a mesh -- not a mesh at all, was just a

12 chain link. It had several posts that were
13 broken and leaning. I asked them when they
14 redid it to provide it with lats, slats that
15 were inside, which would provide me, as I've
16 mentioned in the letter, a 25 percent screening,
17 which is part of our ordinance that we would
18 require. That is similar to what I was working
19 with all of the businesses along King Street.
20 And they complied and that is why they received
21 the letter thanking them.

22 MS. REISEN: We would move for the
23 admission of Exhibit 63 at this point.

24 HEARING OFFICER HALLORAN: Mr. Brill,

L.A. REPORTING, 312-419-9292

406

1 any objection?

2 MR. BRILL: No objection.

3 HEARING OFFICER HALLORAN: Exhibit 63
4 is admitted.

5 (Respondent's Exhibit No. 63 was
6 admitted into evidence.)

7 BY MS. REISEN:

8 Q. Now, you're aware that on the other
9 side of that fence is Robinson Crusoe Park?

10 A. Yes, ma'am.

11 Q. And you indicated there is a concrete
12 base to that fence?

13 A. Yes.

14 Q. Okay. Do you feel that the fence with
15 the base is sufficient to allay any fears that
16 residents might have regarding safety to the
17 children in the park?

18 A. Oh, yes.

19 Q. I'd like you to now look at Exhibit
20 64, and ask what that document is?

21 A. This is a letter I sent to Mr. Brill
22 in response to a letter he had sent me.

23 Q. What is the date on that letter?

24 A. August 15, 2001.

L.A. REPORTING, 312-419-9292

407

1 Q. And is that your signature at the
2 bottom?

3 A. Yes, ma'am.

4 Q. And what is the general content of
5 that letter?

6 MR. BRILL: Pardon me, one moment.
7 What exhibit is that?

8 MS. REISEN: 64.

9 MR. BRILL: Thank you.

10 I guess I don't have a 64.

11 BY MS. REISEN:

12 Q. That would have been a letter that you
13 sent directly to Mr. Brill?

14 A. Yes.

15 Q. So he should have that in his own
16 records?

17 MR. BRILL: I'm not aware of a record,
18 not aware of a letter from Mr. Stumbris and I
19 don't have a copy.

20 MS. REISEN: If he wants to look at
21 that.

22 HEARING OFFICER HALLORAN: Could we
23 have Mr. Brill take a look at this?

24 MR. BRILL: I never received a letter

L.A. REPORTING, 312-419-9292

408

1 like that.

2 HEARING OFFICER HALLORAN: We'll make
3 a copy of that, when the witness gets done
4 testifying, and if we take a break, we'll give
5 you a copy, sir.

6 You may proceed, Ms. Reisen.

7 Thank you.

8 BY MS. REISEN:

9 Q. Mr. Brill just indicated he has not
10 received a copy of that, but you're stating that
11 that would have been mailed from your office to
12 his home, correct?

13 A. Yes, ma'am. I gave the letter to my
14 secretary. She typed it. She gave it to me and
15 what you have here is the computer draft, which
16 doesn't have the village letterhead on it.

17 Q. And, again, what is the gist of that
18 letter?

19 A. The gist is just an explanation to Mr.
20 Brill of the problems that we would have with a
21 14 foot high sound barrier.

22 Q. Okay.

23 A. And it also expresses that I had made
24 contact with yourself and the people from TL

L.A. REPORTING, 312-419-9292

409

1 Trucking, that anything exceeding 8 foot would
2 need to face the zoning board of appeals, would
3 need to go to a local newspaper, and if approved
4 there, would also have to go to the board of
5 trustees.

6 Q. Okay. I'm also going to hand you what
7 has been marked as Respondent's Exhibit 11, and

8 that is another letter from you, is it not?

9 A. Yes, ma'am.

10 Q. Who is that letter directed to?

11 A. To Ms. Patricia Reisen.

12 Q. That would be myself?

13 A. Yes, ma'am.

14 Q. Does that letter indicate the same
15 information as to what would be required in
16 order to get a variance on a height?

17 A. Yes, ma'am, it does.

18 Q. Okay. Specifically, you wrote those
19 letters because you got inquiry from at least
20 myself and Mr. Brill regarding a fence height,
21 correct?

22 A. Yes, ma'am, I had.

23 Q. And I'm assuming then that you wrote
24 the letters in response to both of our

L.A. REPORTING, 312-419-9292

410

1 inquiries?

2 A. I did.

3 Q. Those are true and correct copies of
4 the letters you would have drafted?

5 A. Yes, ma'am.

6 MS. REISEN: We'd move for admission

7 of Exhibits 11 and 64 at this time, your Honor.

8 HEARING OFFICER HALLORAN: Any
9 objection to Exhibit 64, Respondent's Exhibit
10 64? It's the letter to you from the zoning
11 board.

12 MR. BRILL: Again, I have no copy in
13 here and I have no recollection of that letter.

14 HEARING OFFICER HALLORAN: So do you
15 object?

16 MR. BRILL: I object.

17 HEARING OFFICER HALLORAN: The
18 objection is duly noted, however, Exhibit 64 is
19 admitted.

20 (Respondent's Exhibit No. 64 was
21 admitted into evidence.)

22 HEARING OFFICER HALLORAN: Exhibit 11,
23 again, could you, please, describe that, Ms.
24 Reisen?

L.A. REPORTING, 312-419-9292

411

1 MS. REISEN: That's the letter from
2 Mr. Stumbris to my office indicating the
3 protocol for a variance request.

4 HEARING OFFICER HALLORAN: And the
5 date?

6 MS. REISEN: What is the date on
7 that?

8 THE WITNESS: August 2nd, 2001.

9 HEARING OFFICER HALLORAN: Thank you.
10 Mr. Brill, any objection to
11 Respondent's Exhibit No. 11?

12 MR. BRILL: None at this time, no.

13 HEARING OFFICER HALLORAN: There is no
14 objection to exhibit --

15 MR. BRILL: That is just the letter to
16 her office, correct?

17 THE WITNESS: Yes.

18 MR. BRILL: I do have a copy of that.
19 No -- no objection.

20 HEARING OFFICER HALLORAN: No
21 objection.

22 Respondent's Exhibit No. 11 is
23 admitted.

24 (Respondent's Exhibit No. 11 was

L.A. REPORTING, 312-419-9292

412

1 admitted into evidence.)

2 BY MS. REISEN:

3 Q. Okay. And attached to your letter was
4 the original application for zoning relief that

5 you also sent to my office, correct?

6 A. That is correct, ma'am.

7 Q. Did Mr. Brill ever file an application
8 with your office for a variance --

9 A. No, ma'am.

10 Q. -- on height fence.

11 You indicate that Franklin Park has
12 issue with fences over 8 foot, correct?

13 A. We allow an 8 foot fence in certain
14 locations.

15 Q. Okay. And what locations do you allow
16 that 8 foot fence?

17 A. In the rear properties as a divider
18 between residential and commercial or
19 residential and industrial or commercial and
20 industrial.

21 Q. Okay. And, specifically, what is the
22 purpose of an 8 foot height restriction?

23 A. It's to provide the screening that
24 we're looking for, and it's also, hopefully, a

L.A. REPORTING, 312-419-9292

413

1 screening for keeping children out of an area.

2 Q. Cut down on the attractive nuisance of
3 children going into areas they shouldn't be in?

4 A. That's correct.

5 Q. You indicated earlier in your
6 testimony that you got a lot of areas whereby
7 industrial and residential abuts, correct?

8 A. Yes, ma'am.

9 Q. And what would be the village's
10 position, if there were 14 foot fences along all
11 of those abutting areas?

12 A. We'd have a major problem.

13 First of all, you're providing a
14 screening where the police department, fire
15 department cannot see into the areas. That is
16 what a wall does. A wall is a very difficult
17 thing to operate.

18 14 foot high sound barriers, I've only
19 seen them existing on the expressways.

20 Fire and police are very important.
21 We require front yards of houses to be 3 feet
22 only so we can see into the area if something is
23 going on.

24 And by putting up a 14 foot wall,

L.A. REPORTING, 312-419-9292

414

1 you're almost eliminating anyone's observation
2 what is going on in the area and you're

3 basically building a prison.

4 Q. Is there concern that if a 14 foot
5 wall is erected behind TL Trucking that other
6 businesses are going to or other complainants
7 are going to be requesting the same?

8 A. I think you've hit the nail on the
9 head, as far as my personal and zoning concept
10 is concerned. Where do we stop? We have one
11 business here, we're going to cover 300 feet.
12 Do we go the next 300 feet? Do we go the next
13 600 feet? What if somebody says Dean Foods has
14 got to do it because they have refrigerated
15 trucks back there? Dean Foods will pull out of
16 town. They've moved already their corporate
17 offices.

18 Q. Now, in addition to the industry you
19 have in Franklin Park, you have a major railroad
20 exchange or interchange near King Avenue and
21 Crescent Drive, correct?

22 A. Correct.

23 Q. And how far are you from O'Hare?

24 A. We are approximately, from that point,

L.A. REPORTING, 312-419-9292

415

1 I would say you're about 6 miles, 7 miles.

2 Q. Have you recently been in the area of
3 Crescent Park?

4 A. Yes.

5 Q. Okay. When would that have been?

6 A. Last week.

7 Q. Okay. And how did you -- can you just
8 describe what you heard when you were there.

9 A. Pretty quiet.

10 Of course, it all depends on the area.

11 O'Hare at this time is not running at
12 full max.

13 I personally live within eight blocks
14 of that area myself, so I know it well.

15 Q. And do you find your daily living is
16 interrupted by the industry in the area?

17 A. I have industrial behind me, two
18 blocks behind me. I have the railroad train one
19 block from me and I have a wonderful flight
20 pattern of O'Hare.

21 Q. So you can hear those noises, correct?

22 A. Constantly.

23 Q. Does it cause an unreasonable
24 interference with your daily activity?

L.A. REPORTING, 312-419-9292

1 A. You get used to it.

2 MS. REISEN: No other questions.

3 Thank you.

4 HEARING OFFICER HALLORAN: Thank you,
5 Ms. Reisen.

6 Mr. Brill, any cross?

7 CROSS-EXAMINATION

8 BY MR. BRILL:

9 Q. Mr. Stumbris, you said that you get
10 used to noises like airplanes and train horns,
11 various other noises that are associated with
12 the industrial production and things like that.

13 I've lived there for 30 plus years,
14 which probably predates your arrival by a good
15 amount of time, and we never had any
16 complaints --

17 MS. REISEN: I'm going to object.
18 The witness is testifying. I'm going to ask
19 that he pose a question.

20 MR. BRILL: I am sorry. I was
21 testifying. I'll ask questions --

22 HEARING OFFICER HALLORAN: Thank you,
23 Mr. Brill.

24 MR. BRILL: -- instead.

1 BY MR. BRILL:

2 Q. If you say these sounds don't bother
3 you, and another person who might live in that
4 area for some 30 years says that they do bother
5 him, is there anyway that you can figure out how
6 that is possible?

7 I mean, one person saying they don't
8 bother them and another saying they do bother
9 them.

10 A. Well, I think we're all individuals,
11 Mr. Brill.

12 Q. Uh-huh.

13 A. And we all handle situations in
14 different ways.

15 Q. All right. Do you think that it's
16 possible that somebody living within 75 yards of
17 TL Trucking and who hears the associated noises
18 with that particular industry might be hearing
19 noises that are somewhat louder than the ones
20 that you're hearing?

21 A. I think the matter could be addressed
22 but I think I would have addressed it more with
23 the local government than as far as the EPA.

24 We seem to have gotten good results

1 from the local. The fencing has been corrected.
2 The pavement, they are concreting their lot
3 currently. And we are also getting cooperation
4 from everything we've asked.

5 As far as a truck noise, I don't think
6 your -- you can say today that you have the
7 truck noises you had in the past.

8 Q. Of course, you weren't here for our
9 first day of testimony.

10 A. I was sitting outside, sir.

11 Q. So you didn't hear what was going on.

12 A. No.

13 Q. But a lot of people stated that they
14 hear a lot of noises from TL Trucking and that
15 if they are hearing these noises, and you may be
16 living somewhere else, couldn't they be effected
17 more adversely than you would be where you live?

18 A. They could, sir, I have no way of
19 knowing.

20 Q. When you explained that the old fence
21 was taken down, you didn't explain that a number
22 of trees and bushes and shrubs were also taken
23 down at the same time.

24 Were you aware of the fact that there

1 were trees, bushes and shrubs along that
2 particular property line between TL Trucking and
3 the park?

4 A. The area that you're talking about was
5 mostly weeds, high grown bushes and trees that
6 really weren't the typical bushes and trees that
7 you would have at a location. They were wild.
8 They were growing wild and the only way to fix
9 the concrete was to eliminate those.

10 Q. You mean --

11 A. They weren't a planted tree by anyone
12 for sure.

13 Q. Are you trying to tell me there is
14 tame trees and wild trees, is that --

15 A. There is a lot of wild bushes and
16 trees out there. I have one in my backyard that
17 my neighbor has. I wish I could cut it down.

18 HEARING OFFICER HALLORAN: Gentlemen,
19 we have to speak one at a time, don't interrupt,
20 please, thank you, so the court reporter and
21 myself can understand what is going on.

22 BY MR. BRILL:

23 Q. If a tree were wild or tame, wouldn't
24 it be an effective sound barrier in your

1 estimation?

2 A. I do not believe so, sir.

3 Q. It doesn't matter, in other words,
4 whether it is a tame tree or a wild tree?

5 A. It doesn't matter.

6 Q. Bushes also form a sound barrier?

7 A. Bushes would provide screening.

8 As far as a sound barrier is
9 concerned, I'm not a professional enough to
10 answer that question.

11 Q. And a canvas covered fence wouldn't
12 provide any sound protection either in your
13 estimation?

14 A. A canvas covered fence, yes, would
15 provide some sound protection.

16 Q. Okay. What was the fence, what was
17 the construction of the fence at the park and at
18 the TL Trucking prior to it being torn down?

19 A. Chain link.

20 Q. Do you remember that it was covered
21 with canvas?

22 A. Not when I was around it. When I
23 was -- saw it -- as a matter of fact, I saw it
24 three years ago, I certainly would, because I

1 was out there doing another inspection in the
2 area. And at that time it was chain linked. It
3 may have been canvas prior to but I do not know
4 that.

5 Q. I mean, canvas covered chain link, you
6 don't recall that being a fact?

7 A. When I saw it, sir, it was in such a
8 depleted condition that it was chain link,
9 everything was off of it. The posts were
10 hanging. It was in pretty deplorable condition.

11 Q. I see.

12 You said that there is a lot of
13 traffic on Crescent Drive?

14 A. No, sir.

15 Q. You didn't? Maybe you were just
16 referring to the neighborhood in general, that
17 there was a lot of traffic?

18 A. No, sir, I did not.

19 No. I was asked a question about
20 River Road and I explained River Road had lots
21 of traffic.

22 I said nothing about the Robinson or
23 Crescent area for traffic.

24 Q. I see.

L.A. REPORTING, 312-419-9292

422

1 According to the official maps of the
2 village hall, that one in particular, the
3 property located at 9200 King Street is within a
4 restricted industrial district. You agree with
5 that, right?

6 A. Yes, sir.

7 Q. You said that before.

8 HEARING OFFICER HALLORAN: If I may
9 interrupt, Mr. Brill was pointing to
10 Respondent's Exhibit 67 when he said that one.

11 Thank you, you may proceed, Mr. Brill.

12 BY MR. BRILL:

13 Q. Under applicable codes of a restricted
14 industrial district in Franklin Park, Chapter 6,
15 Section 9-6A-1, all businesses servicing or
16 processing, except off street parking and off
17 street loading, shall be conducted within
18 completely enclosed buildings.

19 So if TL Trucking is servicing trucks
20 or washing them outside of their building,
21 wouldn't that be a violation of these codes?

22 A. That was told to them, yes, sir.

23 Q. They were told?

24 A. Yes, sir.

L.A. REPORTING, 312-419-9292

423

1 Q. No citation was issued or anything?

2 They were just told --

3 A. No, sir.

4 Yes, sir.

5 Q. -- not to do that any longer, is

6 that --

7 A. That's right, sir.

8 Q. But TL Trucking has never been cited

9 for any violations? I mean, in regard to

10 washing trucks outside of their building?

11 A. I can't respond to that. I only deal

12 basically with the zoning ordinance and other

13 matters, citing in other matters.

14 Zoning, generally, Mr. Brill, advises

15 people first and we have to by law give everyone

16 an opportunity over a period of time and give

17 them proper correspondence before we do actually

18 issue any citations. The court system demands

19 that we give at least three or four notices to

20 everyone before we issue a citation.

21 Q. Under Section 9-6A-3, any

22 manufacturing, processing, storage or commercial
23 use found to be obnoxious, unhealthful or
24 offensive by reason of the potential emission or

L.A. REPORTING, 312-419-9292

424

1 transmission of noise, vibration, smoke, dust,
2 odors, toxic or nontoxic matter or glare or heat
3 would also be a violation --

4 A. That is correct.

5 Q. -- of these codes, isn't that
6 correct?

7 A. Yes, sir, that's correct.

8 Q. Now, you were not here, again, for the
9 first day of testimony so you didn't hear people
10 saying that these were the exact things that
11 were emanating from TL Trucking?

12 A. No, sir, I did not hear that.

13 Q. You're not aware of that?

14 A. No, sir.

15 Q. And the complaints that people have
16 lodged with your office about these same
17 problems, they were -- you are not cognizant of
18 that either?

19 A. None of these issues were ever brought
20 to mind. I do not have -- received any of them

21 from anyone.

22 The only ones that I got were the
23 complaints that I -- that we read to you from
24 yourself, Mr. Brill.

L.A. REPORTING, 312-419-9292

425

1 Q. Okay. You stated earlier that it's a
2 shame, in so many words, that we didn't go
3 through the village processes --

4 A. Correct.

5 Q. -- before we applied to the Illinois
6 EPA.

7 Are you aware that many, many phone
8 calls and many, many letters were written, not
9 only to the mayor, but to all people in the
10 health department, the zoning department, not to
11 your department, but to all of these various
12 departments of Franklin Park for help in this
13 matter and that we received no response
14 whatsoever?

15 A. No, sir, I'm not aware of that fact.

16 HEARING OFFICER HALLORAN: If I may
17 interrupt, I want to make the record clear that
18 this hearing is not before the Illinois EPA, it
19 is before the Illinois Pollution Control Board.

20 You may proceed, Mr. Brill. Thank
21 you.

22 BY MR. BRILL:

23 Q. Are you aware that exhaust fumes,
24 noise and dust are all potentially harmful to

L.A. REPORTING, 312-419-9292

426

1 human health?

2 A. Yes, sir, I am.

3 Q. Have you seen berms and sound barriers
4 along the tollway?

5 A. Yes, sir.

6 Q. Have you seen the 40, 50 foot high
7 berms around O'Hare field?

8 A. Yes, sir.

9 Q. With that in mind, can you explain to
10 the people at this hearing that if the village
11 of Franklin Park refuses to enforce its own
12 codes, why a suitable barrier to protect
13 children in the park and people in their homes
14 cannot be built, even though Respondents are
15 willing to do it?

16 A. Well, my response to that, Mr. Brill,
17 is no one has made application to the zoning
18 board to do so.

19 I cannot state -- I can only enforce
20 what the law is. Until someone makes an
21 application to the zoning board and then gets
22 approval from them and commences to the village
23 board of trustees, will we ever know if a 14
24 foot wall can go up.

L.A. REPORTING, 312-419-9292

427

1 Q. The Respondent didn't spend the \$500
2 to find out, is that right?

3 A. At this time, no one has made
4 application.

5 Q. I see.

6 You stated earlier that Complainants
7 also did not appeal for variance?

8 A. That is correct, sir.

9 Q. How could Complainants appeal for
10 variance when they have no possessivatory
11 interest in the property?

12 A. You could ask for an amendment, a text
13 amendment, which would allow a 14 foot barrier
14 wall to be installed. You could rewrite a
15 section of the zoning ordinance, as a citizen,
16 by making an application, and similar to what
17 they would do if they asked for a variance, you

18 would ask for a text amendment, which would put
19 in place a 14 wall being allowed in certain
20 districts.

21 Q. You said that the reason that you
22 don't allow barriers over 8 foot high is that
23 the police cannot see what is going on beyond
24 those areas?

L.A. REPORTING, 312-419-9292

428

1 A. Police and fire, sir.

2 Q. Police and fire.

3 Well, you already have a -- what, an 8
4 foot fence at TL Trucking. I don't imagine any
5 of your policemen are taller than 8 feet. How
6 do they see over that?

7 A. The fencing that they have provides
8 approximately 33 percent screening with the
9 slats in it. You still visibly can see through
10 it.

11 Q. You do not allow then for any solid
12 fences of any sort?

13 A. We allow for solid fences.

14 Q. To what height?

15 A. To 8 foot -- generally -- in
16 residential districts, only to 6. In industrial

17 districts to 8.

18 Q. How would a policeman see over that
19 solid fence you're talking about?

20 A. The police wouldn't see but fire would
21 get a quick reaction to smoke or fire.

22 Q. All right. You're the zoning
23 administrator for the village of Franklin Park,
24 someone familiar with the workings of the

L.A. REPORTING, 312-419-9292

429

1 village. Maybe you can explain to the people on
2 Crescent Drive why the witness list of TL
3 Trucking contains the names of: Robert Smith of
4 Franklin Park, Franklin Park District; Tom
5 Bastian, city attorney for Franklin Park; Billie
6 Esposito, Franklin Park, city inspector; and
7 unnamed dispatcher from Franklin Park police
8 department; Daniel Pritchett, mayor of Franklin
9 Park; Mark White, fire marshal of Franklin Park;
10 Robert Mashusen, an ex-employee of Franklin
11 Park; yourself, zoning administrator of Franklin
12 Park; can you explain, other than wages and
13 pensions that are extracted from TL Trucking's
14 taxes, why so many people of the village of
15 Franklin Park are appearing on behalf of TL

16 Trucking?

17 A. I think you'd have to ask the attorney
18 that reason.

19 I was subpoenaed here, sir. I'm not
20 here of my own freewill. I'm here because I was
21 subpoenaed to give testimony.

22 Q. I see.

23 Given the present conditions that
24 exists in Robinson Crusoe Park, would you advise

L.A. REPORTING, 312-419-9292

430

1 parents to allow their children to play in that
2 park?

3 A. I would bring my grandchildren there
4 to play, sir.

5 Q. You stated earlier that you thought
6 the barrier that TL Trucking built between the
7 park and their property was sufficient to stop
8 an 80,000 pound tractor trailer and tanker from
9 entering the Robinson Crusoe Park.

10 Do you still believe that that fence,
11 the way it is constructed now could stop such a
12 vehicle?

13 A. I believe, sir, I did not respond to
14 the question of an 80,000 pound truck entering

15 the park.

16 I think I said that the fence met the
17 code compliance and that it was a sufficient
18 fence for the village of Franklin Park.

19 No fence can be installed that is
20 going to hold an 80 ton truck. Not even a 14
21 foot wall is going to hold because the wall will
22 come tumbling, too.

23 Q. Exactly. That is my point.

24 But --

L.A. REPORTING, 312-419-9292

431

1 A. This isn't a highway -- I'm sorry, but
2 this isn't a highway. We're dealing with a
3 fence, which is a set location. And I have to
4 look at it that way as a location for parking
5 vehicles.

6 Q. In other words, the fence, the way it
7 is constructed now, has no -- there is no
8 guaranty that it could stop a semitractor and
9 tanker, is that right?

10 A. I'm certain it wouldn't, sir.

11 MR. BRILL: No more questions.

12 HEARING OFFICER HALLORAN: Thank you,

13 Mr. Brill.

14 Any redirect, Ms. Reisen?
15 MS. REISEN: Just briefly.
16 HEARING OFFICER HALLORAN: Thank you.

17 REDIRECT EXAMINATION

18 BY MS. REISEN:

19 Q. Mr. Stumbris, you've indicated that
20 you were aware of the three complaints made by
21 Mr. Brill against TL Trucking Foodliner, which
22 we went through in our exhibits?

23 A. Correct.

24 Q. Were any other citizens making

L.A. REPORTING, 312-419-9292

432

1 complaints against TL Trucking?

2 A. I never received any personally.

3 Q. If there had been a flood of
4 complaints at some point, would that have been
5 referred to your office?

6 A. Yes, ma'am, referred to any zoning
7 issue would have come to me.

8 Q. Okay. Mr. Brill asked you about berms
9 around O'Hare airport.

10 Does TL Trucking, first of all, manage
11 the sort of traffic that O'Hare manages?

12 A. No.

13 Q. Regarding the berms that are built
14 around O'Hare, there is also open land around
15 O'Hare on which to build them, is that correct?

16 A. That's correct.

17 Q. Do we have similar open land around TL
18 to build such berms?

19 A. No, we do not.

20 Q. Mr. Brill asked you questions if you
21 were aware if there was noise and dust and
22 exhaust around TL Trucking.

23 As far as you're aware, is there
24 noise, dust and exhaust around all of King

L.A. REPORTING, 312-419-9292

433

1 Avenue?

2 A. Yes, ma'am.

3 Q. Is there noise, dust and exhaust
4 around much of the Chicagoland area?

5 A. Yes.

6 Q. And you say that because it is just a
7 heavily populated, heavily traveled area,
8 correct?

9 A. And it is also industrial, which is --
10 industrial leads to that. There is no way
11 you're going to have a clean industrial.

12 Q. Regarding the fence issue and the
13 truck possibly going through the fence, TL
14 Tucking is used for parking and cleaning of
15 trucks, correct?

16 A. Correct.

17 Q. Are you aware of the distance, the
18 parameters of the lot, how long that lot is?

19 A. Approximately, I'm not -- I haven't
20 seen the plat lately. I know it is a fairly
21 deep lot.

22 Q. Have you had any complaints of trucks
23 speeding through the lot?

24 A. No.

L.A. REPORTING, 312-419-9292

434

1 Q. When you have been on the lot, are
2 there usually trucks parked there?

3 A. Yes.

4 Q. And are the trucks parked in an area
5 between the fence and the building on TL's lot?

6 A. Yes.

7 Q. You indicated that residential height
8 restrictions are 6 foot, industrial is 8 foot,
9 correct?

10 A. Correct.

11 Q. And so, in fact, isn't it true that
12 industrial areas are afforded a little less fire
13 and police protection in order to accommodate
14 residential living, is that a fair statement?

15 A. Very fair.

16 Q. Regarding Chapter 6, Mr. Brill had
17 read to you part of 9-6A-1, Sub B, and do you
18 have that in front you?

19 A. No, I do not.

20 Q. Look to page 1.

21 A. Do you know what exhibit?

22 Q. Exhibit 3.

23 A. Okay. I have that.

24 Q. Look at the bottom of page 1, and

L.A. REPORTING, 312-419-9292

435

1 there is Sub B there, uses conducted for an
2 enclosed building. Mr. Brill had read the bulk
3 of that paragraph into the record, however,
4 failed to read the last part, which is on the
5 top of the next column. Basically, it states
6 unless otherwise indicated here and after,
7 correct?

8 A. Uh-huh.

9 Q. And, additionally, I'd like you to

10 turn to page -- actually, if you look on the top
11 right-hand corner, it says page 4 from a
12 facsimile transmission, and we're looking at the
13 code Section 9-6A-5 -- excuse me -3, and, again,
14 Mr. Brill had read in that certain
15 manufacturing, which causes emissions of noise,
16 vibrations, smoke, dust, odors, toxics,
17 obnoxious matter will be a violation, correct?

18 A. That -- yes.

19 Q. There, obviously, has to be a
20 threshold employed somewhere, correct?

21 A. Yes. See, that particular thing is
22 taken out of context, because that is under the
23 9-6A-3, which is conditional uses. And it's a
24 continuation of what gives me the leeway to

L.A. REPORTING, 312-419-9292

436

1 interpret conditional use as not being able to
2 accomplish these other manufacturing.

3 Q. Okay.

4 A. Okay. It's not in the approved uses.
5 That paragraph is only for conditional uses.

6 Q. Okay. Have you had any complaints
7 that would be violations as so alleged by Mr.
8 Brill against TL Trucking?

9 A. No, ma'am.

10 MS. REISEN: Thank you. I have no
11 other questions.

12 HEARING OFFICER HALLORAN: Thank you,
13 Ms. Reisen.

14 Any recross, Mr. Brill?

15 MR. BRILL: Yes.

16 RE-CROSS-EXAMINATION

17 BY MR. BRILL:

18 Q. You stated that this was lifted out of
19 context.

20 Are you -- are you saying that the
21 transmission of noise, vibration and dust, and
22 odors and toxic, obnoxious matter and glare and
23 heat beyond the property line of a manufacturer
24 in Franklin Park is admissible? I mean, that is

L.A. REPORTING, 312-419-9292

437

1 all right?

2 A. Mr. Brill, when I made my statement,
3 so that you understand, we are dealing with TL
4 Trucking, which under I-1 is not a conditional
5 use. So when I give a presentation, if I have a
6 conditional use, as in 9-6A-3, my fallback to
7 allowing a company into an area is after

8 accessory uses incidental to, which is a line,
9 and then the next line, is other manufacturing,
10 processing, storages. This then is all
11 conditional. It's not actually part of the
12 approved use. That is why I took it out of
13 context.

14 In my original statements that I have
15 for the industrial district, it deals with some
16 of those problems, but it is specifically put
17 into the I-1 as a conditional, not as an
18 approved.

19 I hate to give you a training in
20 zoning ordinance, it is very unclear sometimes
21 to average people because it is so technically
22 written, but it is necessary for the
23 interpretation of the zoning administrator and
24 the zoning board of appeals that under certain

L.A. REPORTING, 312-419-9292

438

1 conditions we have to establish a guideline.
2 And under conditional uses that is one of our
3 major guidelines.

4 For general industrial, it's also a
5 guideline but not as much as it would be under a
6 conditional use.

7 Q. Do the laws of Franklin Park allow,
8 not speaking of any conditional uses or
9 anything, does the laws and the codes of
10 Franklin Park allow the admissions of noises,
11 fumes, dust, toxic materials beyond the lot
12 lines of the people whose property the -- whose
13 property it is? I mean, could --

14 A. It's impossible, Mr. Brill, to build a
15 wall around every industrial. I mean, you can
16 go to Chicago --

17 Q. That wasn't the question --

18 A. -- find the same problem.

19 Q. That wasn't my question.

20 A. That is my answer to it basically.

21 Q. The question is, is it allowed in
22 Franklin Park that these potentially dangerous
23 emissions are allowed behind the property lines
24 of the owner of that property?

L.A. REPORTING, 312-419-9292

439

1 A. Any transmission of noise, sound,
2 would be monitored by the village and a
3 determination made as to how dangerous they are.

4 Again, everyone is an individual.

5 I may have a company that has a phone

6 ringing system, which may be objectionable to
7 someone's ears because it happens at 1:00
8 o'clock in the morning.

9 I may have a truck starting up. I may
10 have a construction crew which is making tons of
11 dust.

12 How much must we live with in the
13 world today?

14 Unfortunately, we have the Illinois
15 Pollution Board, which sets standards. We try
16 to meet the standards as much as we can.

17 It's very difficult to come up with a
18 correct answer to what your question is and say
19 I know exactly what this is. No, we don't know
20 exactly what it is, but we work with it to the
21 satisfaction of our residents and we try the
22 best we can do and that is all we can do with
23 emissions of these various sounds, noises, et
24 cetera.

L.A. REPORTING, 312-419-9292

440

1 Q. TL Trucking has been in their location
2 approximately two years. And you said that the
3 village of Franklin Park checks into these
4 emissions that people object to.

5 Well, we have made objections to the
6 health department, other offices of Franklin
7 Park.

8 Have you taken any measurements of the
9 emissions that come from TL Trucking that you
10 know of?

11 A. Not that -- to my knowledge, I would
12 not be dealing with that. That would be more in
13 the building department's line.

14 Q. Uh-huh.

15 MR. BRILL: Okay. No further
16 questions.

17 HEARING OFFICER HALLORAN: Thank you,
18 Mr. Brill.

19 Any reredirect?

20 MS. REISEN: No.

21 HEARING OFFICER HALLORAN: Thank you.
22 You may step down, sir.

23 Thank you.

24 We're going to take a very quick 10

L.A. REPORTING, 312-419-9292

441

1 minute break and we're going off the record.

2 Thank you.

3 (Off the record.)

4 HEARING OFFICER HALLORAN: We're back
5 on the record, approximately 10:10.

6 I think Ms. Reisen will be calling her
7 second witness.

8 MS. REISEN: That's correct.

9 We call Dan Fisher.

10 (Witness sworn.)

11 DANIEL FISHER,
12 called as a witness herein, having been first
13 duly sworn, was examined and testified as
14 follows:

15 DIRECT EXAMINATION

16 BY MS. REISEN:

17 Q. Can you state your name and spell your
18 last name for the reporter?

19 A. Daniel Fisher. F-I-S-H-E-R.

20 Q. And what is your occupation, Mr.
21 Fisher?

22 A. Field supervisor for the building
23 department of Franklin Park.

24 Q. And who is your direct supervisor?

L.A. REPORTING, 312-419-9292

442

1 A. William Esposito.

2 Q. And are you here under subpoena today?

3 A. Yes, I am.

4 Q. In fact, you've taken over the
5 subpoena for Mr. Esposito, haven't you?

6 A. Yes, I have.

7 Q. What are some of your duties as field
8 supervisor?

9 A. I'm the immediate person under William
10 Esposito. I oversee all of the inspections and
11 procedures out in the field for the building
12 department of the village.

13 Q. And for the record, Mr. Esposito is
14 the building supervisor?

15 A. He is the building commissioner.

16 Q. Building commissioner.

17 How long have you been doing your job?

18 A. Going on five years.

19 Q. Okay. Do you take citizen complaints
20 that come in regarding any of the businesses in
21 Franklin Park?

22 A. Do I take the complaints? No. I do
23 not. They're taken by the secretaries, the
24 girls.

L.A. REPORTING, 312-419-9292

443

1 Q. And then they come to you at that

2 point?

3 A. Then they come to me, yes.

4 Q. What do you do with them?

5 A. I distribute them to the inspectors.

6 Q. And how many complaints do you average
7 a day?

8 A. Anywhere from 100 to 150, 175, total
9 inspections, complaints, everything combined.

10 Q. Okay. And now there was some
11 testimony through Mr. Stumbris, which you were
12 here when he testified?

13 A. Correct.

14 Q. And we have marked and placed into
15 evidence three complaints by Mr. Brill against
16 TL Trucking Foodliner.

17 Were you aware of those complaints?

18 A. The three that are here today, yes, I
19 am aware of them.

20 Q. Of the complaints that you have
21 received, obviously, you can't remember every
22 one, is that a fair statement?

23 A. Fair statement.

24 Q. When certain names pop up over and

L.A. REPORTING, 312-419-9292

1 over again, however, they ring a bell with you?

2 A. Sure, they will.

3 Q. Has TL been one of the names that
4 comes up with complaints?

5 A. Other than these three, no.

6 Q. To your right is what has been marked
7 as Respondent's Exhibit 67, which is a large
8 color coded map.

9 Are you familiar with that map?

10 A. Yes, I am.

11 Q. And is that a map that you use in the
12 course of your business?

13 A. Yes, I do.

14 Q. Okay. Are you familiar with where
15 King Drive is on the map?

16 A. Yes, I am.

17 Q. Has that been highlighted yellow by
18 the prior witness?

19 A. Yes, it has.

20 Q. For the sake of the record, that is in
21 the upper right-hand corner?

22 A. Yes.

23 Q. How do you describe King Drive?

24 A. King Drive is a restricted industrial

1 area.

2 Q. Which means what to you in layman's
3 terms?

4 A. Once it comes out of zoning, which was
5 the prior person that testified here, Don
6 Stumbris, if I received complaints regarding the
7 industry exceeding the restricted industrial,
8 then we will investigate them.

9 Q. Okay. And so, obviously, there has to
10 be some sort of threshold as to what would be a
11 founded complaint, what would not be a founded
12 complaint?

13 A. Yes, that's correct.

14 Q. Is it possible to have industry in the
15 area that is shaded gray on Respondent's Exhibit
16 67 and not have any resultant noise from that?

17 A. Sure.

18 Q. Okay.

19 A. It's possible.

20 Q. And is it likely?

21 A. No.

22 Q. Is it reasonable?

23 A. To have no noise from industry, not
24 real reasonable, no.

1 Q. Are you a resident of Franklin Park?

2 A. I'm a resident of just outside of
3 Franklin Park, one block.

4 Q. And -- one block outside of Franklin
5 Park?

6 A. Yes.

7 Q. What abuts where you reside?

8 A. O'Hare field, the tollway, railroad
9 and industry, and the heavier industry.

10 Q. Okay. Have you been in the Crescent
11 Park area recently?

12 A. Yes, I have.

13 Q. How recent?

14 A. This morning.

15 Q. Okay. How many times would you
16 estimate you've been there in the last year, in
17 that general area?

18 A. Thirty.

19 Q. Okay. How would you describe the
20 general noise level with all of the industry
21 together?

22 A. Quiet.

23 Q. Okay. There is noise that comes from
24 the area though, correct?

- 1 A. Of course.
- 2 Q. Can you ascertain which industries are
3 providing or producing the noise?
- 4 A. Specifically driving through, no.
- 5 Q. Okay. Why is that? Is it a
6 cumulative effect?
- 7 A. Sure.
- 8 Q. River Road is just to the east of
9 Crescent Drive.
- 10 Are you familiar with that road?
- 11 A. Yes, I am.
- 12 Q. How would you describe River Road?
- 13 A. Heavily traveled road with trucks and
14 cars.
- 15 Q. Okay. Currently under construction?
- 16 A. Yes.
- 17 Q. How long has it been under
18 construction?
- 19 A. About a year.
- 20 Q. What has the traffic been like with
21 the construction going on?
- 22 A. Probably more idling of vehicles
23 because of the construction.
- 24 Q. Okay. So cars are backed up?

1 A. Sure.

2 Q. Okay. Is there dust or fumes from the
3 construction?

4 A. Yes.

5 Q. Okay. Specifically, for the record,
6 are they ripping up and re-laying concrete?
7 What are they doing?

8 A. Yes, they are. Just as you stated,
9 ripping up and putting down new concrete.

10 Q. Okay. You've indicated that you live
11 by O'Hare.

12 Do you have noise interference in your
13 home from O'Hare?

14 A. Oh, yes.

15 Q. And how would you describe that?

16 A. I'm at the 75 to 80 DCB range.

17 Q. How long have you lived in your home?

18 A. My home, specifically?

19 Q. Correct.

20 A. Twenty-seven years.

21 Q. Okay. Do you have noise from the
22 tollway?

23 A. Yes.

24 Q. And that, again, that is in your home?

1 A. Yes.

2 Q. How would you describe that noise?

3 A. I don't know the DCBs on that, but I
4 can hear them at 1:00, 2:00 o'clock in the
5 morning, the trucks traveling down the tollway.

6 Q. When you're in Crescent Drive, does
7 the noise seem comparable to what you have in
8 your own home?

9 A. No, nowhere near it.

10 Q. Noisier where you reside?

11 A. Oh, yes.

12 Q. What is your opinion -- what is your
13 opinion as to, you know, the noise that you live
14 with where you reside? I mean, is it something
15 that you take issue with?

16 A. It's preexisting.

17 Q. Okay. Explain that.

18 A. It was there prior to myself.

19 Q. Okay. Are you aware of what was at
20 9200 King Street before TL Trucking was there?

21 A. Yes.

22 Q. What was there?

23 A. Scrap yard, a metal scrap yard.

24 Q. Okay. And do you know how long

1 they've been there?

2 A. Exactly, no. I would venture to guess
3 a minimum of 5 to 10 years, minimum, minimum. I
4 was not with the village at the time that they
5 came into their occupancy within the village.

6 Q. Okay. And what sort of activities
7 were you aware of going on when the scrap yard
8 was located there?

9 A. Excessive metal debris throughout the
10 land that they resided on, excessive old,
11 dilapidated buildings in the rear, dilapidated
12 fencing, overgrown shrubbery, rat harborage,
13 unpaved parking lot.

14 Q. So fairly run down?

15 A. Fairly is a mild statement. It was
16 very run down.

17 Q. Okay. The fence that was up
18 previously, can you describe what that fence
19 looked like?

20 A. Delapidation would be the best word.

21 Q. Was it a chain link fence?

22 A. As far as I remember, yes.

23 Q. Okay. Mr. Stumbris indicated that

24 there were some problems with the concrete with

L.A. REPORTING, 312-419-9292

451

1 that fence, the footings or the base of the
2 fence?

3 A. Yes.

4 Q. Do you recall those problems?

5 A. Yes, I do.

6 Q. And when TL Trucking took over the
7 property, did they tear down that fence?

8 A. Yes, they did.

9 Q. Was that something that Franklin Park
10 requested be done?

11 A. Yes.

12 Q. And the fence that has been put up in
13 its place now, was that done in a fashion that
14 was requested by Franklin Park?

15 A. Yes, it was.

16 Q. Now, Mr. Stumbris testified that there
17 is a height restriction on the fence.

18 What is your understanding of that?

19 A. 8 foot is the maximum, even between
20 industrial and residential.

21 Q. What is your understanding for the
22 reason for the 8 foot height restrictions?

23 A. The 8 foot height restriction, if it
24 starts to go over that, then we have problems.

L.A. REPORTING, 312-419-9292

452

1 We can have a domino effect of problems. We're
2 going to do it in one area, then we have to keep
3 doing it throughout the area. We don't want
4 over an 8 foot fence. One, that is the zoning
5 code. It would have to go in front of the
6 zoning board. It would have to go in front of
7 the executive board. And at the present time
8 they do not want to create the atmosphere of 14
9 feet fences.

10 Q. So this is an issue that has come up
11 with the board and you've been privy to?

12 A. I've been privy to it, specifically,
13 no, but they don't -- they don't want to
14 address -- nothing has ever been brought up to
15 them in regards to other than the letter that
16 was sent to Don Stumbris of the 14 foot fence.
17 That's what I am speaking of.

18 Q. And, specifically, Mr. Stumbris
19 indicated that we have many residential areas
20 that abut industrial areas?

21 A. Correct.

22 Q. And would you agree with Mr. Stumbris'
23 view as to how industrial in Franklin Park is?

24 A. Yes.

L.A. REPORTING, 312-419-9292

453

1 Q. What do you think would be the effect
2 of Franklin Park if the industry were to be
3 bottled up or left?

4 A. The industry left, we're the fifth or
5 fourth largest industry base in the state. With
6 the amount of industry that is within the
7 village of Franklin Park, it not only supplies
8 us with the tax base but it supplies the
9 community with a certain amount of jobs. Them
10 jobs would also disappear. If you lose some of
11 them or all of the industry, you're going to
12 lose all of them jobs that the people that
13 reside within the village of Franklin Park where
14 they work. You're also going to effect that tax
15 base then.

16 Q. Okay.

17 A. You possibly could lose people moving
18 out of homes, losing their homes.

19 Q. Now, your tax base is lower for the
20 residents of Franklin Park based upon the

21 industry, correct?

22 A. Yes.

23 Q. And so the residents actually benefit
24 in that regard, not only jobs but also tax wise?

L.A. REPORTING, 312-419-9292

454

1 A. Yes, they are.

2 Q. Okay.

3 A. To the best of my knowledge.

4 Q. Now, you indicated that the prior
5 owner of 9200 King Drive, in addition to having
6 the fence in disrepair, had the overgrown
7 shrubberies?

8 A. Yes.

9 Q. Do you feel that -- you said there was
10 rat harborage?

11 A. Yes.

12 Q. Was there any link between the two as
13 far as the city was concerned?

14 A. Define link between the two?

15 Q. Well, was -- did the -- did Franklin
16 Park specifically request that some of that
17 shrubbery and the overgrown stuff be cleared
18 out?

19 A. Yes, we did.

20 Q. What was the reason for that?

21 A. We -- we constantly receive complaints
22 about overgrown shrubbery causing problems for,
23 number 1, view; number 2, the amount of
24 overgrown shrubbery then you start to have the

L.A. REPORTING, 312-419-9292

455

1 animal harborage, rat harborage, raccoons,
2 possums, it brings all of that to fruition,
3 along with mice and rabbits and it just all
4 comes together. When it is gone, they don't
5 have a place to hide, they have a tendency to go
6 back into the forest preserve.

7 Q. Which is on the east side of River
8 Road?

9 A. Yes.

10 Q. Regarding the new fence, there is
11 concrete footings, correct?

12 A. Yes.

13 Q. Have you looked at those?

14 A. Yes.

15 Q. Do they appear to be consistent with
16 the standards that the city has put down?

17 A. Exceeding.

18 Q. Exceeding, in what regard?

19 A. Normally a fence does not have a
20 concrete abutment at the bottom to the height
21 that TL Trucking has installed.

22 Q. Regarding the lot, it previously was
23 not paved.

24 Have you been to the lot recently?

L.A. REPORTING, 312-419-9292

456

1 A. Yes, I have.

2 Q. When was the last time you were there?

3 A. This morning.

4 Q. And what is the status of the paving
5 at 9200 King Drive?

6 A. Two-thirds complete.

7 Q. Okay. And does it appear that paving
8 is continuing?

9 A. Yes, it is.

10 Q. Now, we're lucky in that it is
11 November and we have excellent weather still,
12 correct?

13 A. TL is very lucky at this point.

14 Q. So based upon the progress that has
15 been made, is it a fair statement that we should
16 be able to get the paving done, hopefully, in
17 the near future?

18 A. Yes.
19 Q. Does the paving appear adequate?
20 A. Yes.
21 Q. Were you aware that there was --
22 permits had to be issued by Franklin Park before
23 the paving could be completed?
24 A. Yes.

L.A. REPORTING, 312-419-9292

457

1 Q. What was the hold up? Was there
2 something with pitch?
3 A. Well, there were some problems with
4 pitch. There were some problems they had to
5 also put in some sewers, if I'm not mistaken,
6 before they could put their paving down so they
7 could take their rainwater away before the
8 sewers could go in.
9 Q. Okay. So new sewers have been
10 installed?
11 A. Yes, I believe so.
12 MS. REISEN: Permission to approach?
13 HEARING OFFICER HALLORAN: By all
14 means.
15 BY MS. REISEN:
16 Q. I'm going to hand you, first of all,

17 what has been marked as Respondent's Exhibit 45,
18 and apologize, you're not Mr. Esposito --

19 A. No.

20 Q. -- but does that look like
21 representation of an aerial photograph that Mr.
22 Esposito would have had in his office of
23 Crescent Drive and King Drive?

24 A. Yes.

L.A. REPORTING, 312-419-9292

458

1 Q. Have you had the opportunity to review
2 the original in your office?

3 A. No.

4 Q. Does that appear to be a fair and
5 accurate aerial photograph of the area?

6 A. Yes, it does.

7 MS. REISEN: We'd move for admission
8 of Exhibit 45 at this time.

9 HEARING OFFICER HALLORAN: Mr. Brill?

10 MR. BRILL: Is that the aerial
11 photograph?

12 MS. REISEN: Correct.

13 MR. BRILL: No objection, although it
14 is clearer than my copy.

15 HEARING OFFICER HALLORAN: Exhibit 45

16 is admitted.

17 (Respondent's Exhibit No. 45 was
18 admitted into evidence.)

19 MS. REISEN: Here is the original. I
20 inadvertently gave the witness the copy.

21 BY MS. REISEN:

22 Q. I'm also going to hand you
23 Respondent's Exhibits 9 and 10 and ask you to
24 look at Respondent's Exhibit 9 and do you

L.A. REPORTING, 312-419-9292

459

1 recognize that document?

2 A. Can I read it?

3 Q. Sure can.

4 A. Okay. I've read them.

5 Q. And, again, I apologize, you're not
6 Mr. Esposito, you're here in his place today,
7 but Exhibit 9 is that not a letter that is
8 addressed to Mr. Esposito?

9 A. Yes, it is.

10 Q. Promulgated by my firm?

11 A. Yes.

12 Q. And, specifically, what is the gist of
13 that letter?

14 A. That TL Trucking Foodliner was going

15 for a variance for a proposed sound barrier to
16 be erected higher than 8 feet to the height of
17 14.

18 Q. Okay. Do you have any reason to
19 believe that this would not have been received
20 by Mr. Esposito?

21 A. No.

22 MS. REISEN: We move for admission of
23 Respondent's Exhibit 9 at this time.

24 HEARING OFFICER HALLORAN: Mr. Brill?

L.A. REPORTING, 312-419-9292

460

1 MR. BRILL: I don't know if this jives
2 with what I have.

3 HEARING OFFICER HALLORAN: Could you
4 be more specific, please?

5 MR. BRILL: Well, does that --

6 HEARING OFFICER HALLORAN: What is the
7 date on this Exhibit No. 9?

8 THE WITNESS: July 25, 2001.

9 MR. BRILL: This speaks of -- well, I
10 have to bring that up in the summary because
11 it's not something I can ask this gentleman.

12 HEARING OFFICER HALLORAN: Do you
13 object to it?

14 MR. BRILL: No, not as it is.

15 HEARING OFFICER HALLORAN: Okay.

16 Thank you.

17 Exhibit No. 9 is admitted.

18 (Respondent's Exhibit No. 9 was
19 admitted into evidence.)

20 BY MS. REISEN:

21 Q. Mr. Fisher, if you'll next look at
22 Exhibit 10, that is a letter from Mr. Esposito,
23 June 29, 2001?

24 A. Yes, it is.

L.A. REPORTING, 312-419-9292

461

1 Q. I assume you've seen Mr. Esposito's
2 signature on documents floating around your
3 office?

4 A. Yes.

5 Q. Do you recognize that to be a true and
6 correct copy of his signature?

7 A. Yes, it is.

8 Q. Specifically, what does this letter
9 indicate regarding the height of fences?

10 A. This letter is in response to your
11 letter and it's thanking you for the letter
12 being submitted and the concerns that the zoning

13 ordinance did not allow a fence higher than 8
14 feet and he is also questioning does it set a
15 precedent for other litigation, the process in
16 Illinois control board. . .Applying for a
17 variance to raise the fence to 14 feet, he is
18 asking them to supply everything to the board of
19 appeals.

20 MS. REISEN: Okay. We would move for
21 admission of Respondent's Exhibit 10 at this
22 time.

23 MR. BRILL: No objection.

24 HEARING OFFICER HALLORAN: Thank you.

L.A. REPORTING, 312-419-9292

462

1 Exhibit 10 is admitted.

2 (Respondent's Exhibit No. 10 was
3 admitted into evidence.)

4 BY MS. REISEN:

5 Q. Are you privy to police reports of
6 complaints by citizens against individuals?

7 A. No, I am not.

8 Q. You're not.

9 Okay. If the police were to have
10 continual reports about somebody, at some point
11 it would be referred to your office?

12 A. Depending on the complaint. The only
13 time I would get anything from the police
14 department is if the complaint had to do with
15 buildings. Then it may be referred to myself as
16 the supervisor.

17 Q. Okay. And you've not had any such
18 referrals regarding TL Trucking, is that
19 correct?

20 A. Not that I'm aware of.

21 Q. How would you describe the compliance
22 or the cooperation of TL Trucking with your
23 rules or the enforcement of your rules by your
24 agency?

L.A. REPORTING, 312-419-9292

463

1 A. Exceptional.

2 MS. REISEN: I have no other
3 questions.

4 Thank you.

5 HEARING OFFICER HALLORAN: Thank you
6 Ms. Reisen.

7 Any cross, Mr. Brill?

8 MR. BRILL: Yes.

9 CROSS-EXAMINATION

10 BY MR. BRILL:

11 Q. You said that the original owners of
12 the 9200 King Street property was a scrap yard?

13 A. I said the previous owners.

14 Q. Yes.

15 What did I say? I'm sorry.

16 A. You said original. I'm saying
17 previous.

18 Q. Okay. Previous.

19 You said there was metal laying around
20 and dilapidated buildings and such in that
21 property?

22 A. Yes.

23 Q. Do you think those kinds of items keep
24 people awake at night?

L.A. REPORTING, 312-419-9292

464

1 A. Scrap metal and a dilapidated
2 building?

3 Q. Yes.

4 A. No.

5 Q. Okay. Scrap metal and dilapidated
6 buildings, they don't make a lot of dust or
7 exhaust fumes, right?

8 A. I -- I believe that in order for the
9 scrap metal to get to the property, it was

10 delivered on a truck.

11 Q. Yes, but, I mean, the metal itself --

12 A. No, sir.

13 Q. -- doesn't make any exhaust fumes?

14 A. No, but the trucks that bring it to it
15 do.

16 Q. That wasn't my question.

17 A. Okay.

18 Q. You -- does a lot of noise come from
19 scrap metal and dilapidated buildings?

20 A. Yes.

21 Q. How so?

22 A. The noise of the scrap metal banging
23 against other scrap metal, sir.

24 Q. No. You said it was just laying

L.A. REPORTING, 312-419-9292

465

1 around.

2 A. In order for scrap metal to get to a
3 certain spot, it has to be moved there.

4 Q. But we were talking about metal that
5 was just laying around and looking dilapidated,
6 the building --

7 A. Yes, sir. You're correct.

8 Q. Okay. If you were trying to quiet

9 some noises from an area, would a 14 foot solid
10 fence be a good idea?

11 A. I am not a sound transmission expert.
12 You would have to ask one of them.

13 Q. But a fence that is wide open would
14 tend to allow noises to go through it, wouldn't
15 it?

16 A. Once again, I'm not a sound
17 transmission expert. You would have to ask one
18 of them.

19 Q. Okay. You stated that the fence was
20 in a dilapidated condition, the one on the
21 property line between TL Trucking and the park.

22 Are you aware that that fence belonged
23 to the park and belonged to the village of
24 Franklin Park?

L.A. REPORTING, 312-419-9292

466

1 A. No.

2 Q. Do you realize that the old fence
3 extended far beyond the property of TL Trucking
4 and all the way up to the next property and that
5 would -- it was one continuous fence and that
6 would indicate that it was the same fence put up
7 by the Franklin Park Park District?

8 A. I'm not aware of that, sir.

9 Q. All right. But if that was -- if it
10 did belong to the park, and it was in a
11 dilapidated condition, that wouldn't be the
12 responsibility of the previous owners, that
13 would be the responsibility of Franklin Park
14 itself, wouldn't it?

15 A. Once again, you're asking me to give
16 you a statement on an if. I don't know about
17 the if, sir, so I can't make -- I can't give you
18 an answer.

19 Q. But you're sure that that fence
20 belonged to the previous owner?

21 A. I never said that.

22 Q. Okay. Oh, I thought you did. I'm
23 sorry.

24 You said that they're about two-thirds

L.A. REPORTING, 312-419-9292

467

1 done in their paving now?

2 A. That's correct.

3 Q. And the paving has taken two years to
4 get to this point, is that correct?

5 A. I believe so.

6 Q. Is that the usual time frame for

7 paving a parking lot?

8 A. I don't think that they've been paving
9 for two years, sir.

10 Q. No. That's the point.

11 Do you think that two years is enough
12 time to get a parking lot paved?

13 A. With the amount of funds that they had
14 to procure in order to obtain the monies to do
15 this type of work, yes.

16 Q. Does that have anything to do with it,
17 the funds that --

18 A. Sure, it does.

19 Q. When they moved in there, weren't they
20 supposed to have the funds to be able to
21 complete their parking lot?

22 A. Sir, we give everybody time to comply
23 within the village of Franklin Park.

24 Q. You mean if there was some glaring

L.A. REPORTING, 312-419-9292

468

1 fault with my home, you people wouldn't step on
2 my neck until I had funds to fix it, is that
3 correct?

4 A. Define glaring, define the problem.

5 Q. Well, let's say that -- let's say my

6 sidewalks were in bad repair --

7 A. Okay.

8 Q. -- and let's say I told you I don't
9 have any money to fix those.

10 A. Okay.

11 Q. Would that be all right for me just to
12 leave them in that condition?

13 A. If they were public sidewalks and you
14 wanted to get on the program for the next year,
15 yes, we would allow you to do that.

16 Q. That isn't what I mean.

17 I mean, would you -- would you allow
18 me to escape the expense of paving my sidewalks
19 if I just said, I don't have the money to do it?

20 A. Are you asking for forever?

21 Q. Well, two years to pave a parking lot
22 seems to be forever for me, if you've been
23 breathing dust for two years.

24 MS. REISEN: I'm going to object

L.A. REPORTING, 312-419-9292

469

1 that that is not a question. Ask that it be
2 stricken.

3 HEARING OFFICER HALLORAN: Sustained.

4 Stricken.

5 BY MR. BRILL:

6 Q. But you don't think that two years is
7 a long time to do some paving, is that correct?

8 A. No.

9 Q. I see.

10 If the building codes for I-1,
11 restricted industrial district, call for all
12 business to be conducted completely within
13 enclosed buildings, would washing of trucks,
14 repairing of trucks and load transferring
15 outside the building be a code violation?

16 A. I deal with the building codes, not
17 the zoning codes. You're asking me about the
18 zoning codes, sir.

19 Q. You're just -- okay. You're dealing
20 with the -- that would be an inappropriate
21 question for you, is that right?

22 A. Yes. As far as the truck washing
23 goes, they washed their trucks inside.

24 Q. Well, we have pictures that say

L.A. REPORTING, 312-419-9292

470

1 otherwise.

2 A. I believe now they wash their trucks
3 inside, sir.

4 Q. Oh, now.

5 A. They were asked to bring all of that
6 equipment to the inside and they've done so.

7 Q. Okay. I see.

8 Did TL Trucking have a special
9 agreement with the village as to when their
10 parking lot would be paved?

11 A. No.

12 Q. Is it normal procedure to allow an
13 industry to move in next to a residential area
14 without informing the people that a new industry
15 is going to be moved into that area?

16 A. Once again, you're going to zoning,
17 but under my pretense, if the zoning meets the
18 original criteria and it's not a conditional use
19 and a variance is not required, they are under
20 no obligation to inform anybody as to who is
21 moving in.

22 Q. I see.

23 This may not be an appropriate
24 question for you. I'll have to try it on you.

L.A. REPORTING, 312-419-9292

471

1 Can you tell me why the village of
2 Franklin Park allows semitractors to idle and

3 spew exhausts into our homes and parks for hours
4 on end knowing that people live here and
5 children play in Robinson Crusoe Park?

6 A. What is your question?

7 Q. Can you tell me why the village of
8 Franklin Park allows semitractors to idle and
9 spew exhausts into our homes and parks for hours
10 on end knowing that people live here and
11 children play in Robinson Crusoe Park?

12 A. To give you an honest answer, I would
13 have to say when the Illinois Pollution Control
14 Board wants to control the pollution of all
15 emissions from all trucks traveling anywhere
16 within the village, all trains traveling
17 anywhere through the village, all airplanes
18 traveling anywhere over the village, when they
19 want to control that, then we can control the
20 exhaust. Until that point in time, I don't
21 believe we can do that.

22 Q. You're not -- you don't have the
23 authority to cite TL Trucking, if they violated
24 any of your codes, do you?

L.A. REPORTING, 312-419-9292

472

1 A. Yes, I do.

2 Q. Okay. Then did you ever cite them for
3 violation?

4 A. No, I have not.

5 Q. Given the condition that exists in
6 Robinson Crusoe Park, would you advise parents
7 to allow their children to play in that park?

8 A. Definitely.

9 MR. BRILL: No more questions.

10 HEARING OFFICER HALLORAN: Thank you,
11 Mr. Brill.

12 Any redirect, Ms. Reisen?

13 MS. REISEN: Just one moment, please.

14 No, I don't believe so.

15 HEARING OFFICER HALLORAN: Thank you.

16 You may step down.

17 Ready to call your third witness?

18 MS. REISEN: Brian Homans.

19 (Witness sworn.)

20 BRIAN L. HOMANS,

21 called as a witness herein, having been first
22 duly sworn, was examined and testified as
23 follows:
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DIRECT EXAMINATION

BY MS. REISEN:

Q. Can you, please, state your full name and spell your last name for the record, please?

A. My name is Brian L. Homans.
H-O-M-A-N-S.

Q. And what is your occupation?

A. I'm an acoustical engineer.

Q. What training allows you to be an acoustical engineer?

A. I have a BS in physics from Ohio University, as well as other courses afterwards.

Q. Okay. And what year did you obtain your BS?

A. 1973.

Q. How long have you been employed as an acoustical engineer?

A. Since 1973.

Q. Okay. Are you -- you indicated other course work that you've done.

How often do you update or continue your training and education?

A. At this point, probably every two to three years.

1 Q. Okay. And, specifically, what does an
2 acoustical engineer do?

3 A. In our firm we're responsible for
4 working on projects dealing with building
5 acoustics, and as such my tasks would revolve
6 around measurements and analysis and predictions
7 of noises outside buildings and how the noise --
8 noise influences people inside.

9 My typical projects would include CTA
10 projects, for instance, hotels --

11 Q. What would CTA stand for?

12 A. Chicago Transit Authority.

13 Q. Okay.

14 A. Dealing with residences around
15 elevated tracks, hotels, new high-rise buildings
16 that are adjacent to expressways, CTA tracks or
17 other rail tracks, offices, office interiors.

18 I also manage two technicians at the
19 airport, who work with the residential sound
20 insulation program.

21 Q. You work here in Chicago, correct?

22 A. Yes.

23 Q. And is it a fair statement that based
24 upon population and the activity in this

1 metropolitan area, noise is a very constant
2 issue for you as well as other individuals in
3 Chicago?

4 A. Yes, I would say so.

5 Q. As an acoustical engineer, is it
6 feasible to be living and operating a business
7 and traveling and doing all of the things that
8 we do in such a metropolitan area without any
9 interference from that activity?

10 A. With respect to noise?

11 Q. Correct.

12 A. Yes, there is always interference from
13 noise.

14 Q. Okay. Now, you've conducted sound
15 testing around the area of King Street and
16 Crescent Drive in Franklin Park, Illinois,
17 correct?

18 A. That's correct.

19 Q. Before we go into that, how long have
20 you been doing sound testing?

21 A. Since 1973.

22 Q. Okay. Do you have specific
23 regulations or protocols that you must adhere to
24 in doing your sound testing?

1 A. I follow the regulations as
2 promulgated by the Illinois Pollution Control
3 Board.

4 Q. What equipment then do you use when
5 you're doing your sound testing?

6 A. For our sound testing we use a Type I
7 spectrum analyzer. Essentially, this is a sound
8 level meter that allows one to measure in
9 several octave bands simultaneously.

10 Q. Now, Mr. Zak is also a sound engineer,
11 correct?

12 A. Yes.

13 Q. And he had spoken in his testimony
14 about what is called an ANSI, A-N-S-I, Type I.
15 Is that what you're referring to?

16 A. Yes, the ANSI Standard 1.4 regulates
17 or gives specifications for various classes of
18 sound level meters and these go from Type 0,
19 which is a precision laboratory grade; Type I,
20 which is what we use and what the state of
21 Illinois requires; to Type II, which is a
22 general purpose sound level meter.

23 Q. Okay.

24 A. In 1983, the survey sound level

1 meters, those are the Type III, were dropped as
2 far as there is no precision requirements for
3 those instruments.

4 Q. And what could an individual purchase
5 over-the-counter? For instance, would they be
6 able to just walk into, say Radio Shack and
7 purchase a Type O laboratory type sound meter?

8 A. No. It is my understanding that Radio
9 Shack only sells Type II sound level meters and
10 the survey meters.

11 Q. The survey meaning the Type III, which
12 are no longer allowed as far as meter readings
13 for what you do, correct?

14 A. They were never allowed but they're
15 not covered by ANSI 1.4 anymore.

16 Q. Okay. We had discussion on day one of
17 testimony regarding a sound meter instrument
18 that was used by Mr. Brill. Specifically, in
19 front of you is a Radio Shack sound level meter.
20 I'd like you to take a look at that and see if
21 you're familiar with that make or model of
22 meters.

23 HEARING OFFICER HALLORAN: For the
24 record, the witness is looking at Complainant's

1 Exhibit No. 14.

2 THE WITNESS: And I've just taken a
3 look at a Radio Shack meter, model number
4 33-2050.

5 BY MS. REISEN:

6 Q. Are you familiar with those sorts of
7 meters?

8 A. Not with this particular one but I've
9 seen these meters, yes.

10 Q. Would those be considered a Type II
11 general meter?

12 A. No. There is no indication and the
13 literature that I could find on this meter, the
14 manufacturer's literature or on the box or the
15 instrument that would state that it was Type II,
16 so I would assume that it's a survey grade.

17 Q. Okay. Now, Mr. Zak had testified in
18 his direct examination that the ANSI type models
19 require precision microphone, a precision
20 preamplifier and a precision instrument.

21 Does that sound correct to you?

22 A. Yes.

23 Q. Would any of those appear to be part

24 and parcel of that meter that you're inspecting

L.A. REPORTING, 312-419-9292

479

1 now?

2 A. No.

3 Q. And Mr. Zak further testified that
4 that precision equipment is the minimum allowed
5 by the Illinois Pollution Control Board, is that
6 also your understanding?

7 A. That is correct. They specify Type I
8 instrumentation.

9 Q. Okay. When you get into a survey
10 level meter, what sort of variation can you get
11 in the reading, if properly done, from the Type
12 I instrument that you would use on the field?

13 A. There are three primary areas where
14 you could have variation.

15 One is how the instrument handles
16 transient sounds.

17 Another area is its linearity with
18 respect to frequency response.

19 And another area is its response with
20 respect to orientation to the sound source.

21 Q. Okay. Now, regarding handling
22 transient noises, describe what transient noises

23 are?

24 A. Transient noises would be any type of

L.A. REPORTING, 312-419-9292

480

1 brief sound, such as a train whistle, for
2 example, a car going by, which would tend to
3 overload the sound level meter. I did note this
4 meter does not have any overload indicator on
5 it.

6 Q. What do you mean by overload?

7 A. This would be, when input stage is
8 overloaded, or there is too much energy going
9 into the input stage, primarily due to low
10 frequency noise.

11 Q. If that occurs, that is something that
12 has to be blaringly loud to the listener or
13 could be more subtle?

14 A. It could be more subtle. Again, it is
15 primarily, I found in my experience over the
16 years, is low frequency noise can overload a
17 meter. It's not readily observable on the
18 meters, such as the needle swinging all the way
19 or pegging to the right. On other instruments
20 there is a light that comes on or a big
21 indicator that comes on the display that says

22 overload.

23 Q. Now, on the equipment that you use,
24 does it have an overload indicator?

L.A. REPORTING, 312-419-9292

481

1 A. Yes.

2 Q. I assume you're trained to know how to
3 read that information?

4 A. Yes. The word overload obscures the
5 image on the screen.

6 Q. No missing it then.

7 If there is an overload, what does
8 that do to the result that you get? Does it
9 nullify it? Does it skew it?

10 A. That means -- pardon me for
11 interrupting you.

12 Q. That's okay.

13 A. When you're in an overload condition,
14 it means that you can't trust the reading that
15 you get from the meter.

16 Q. Might not be accurate or precise?

17 A. That's correct.

18 Q. Regarding the linearity frequency
19 response, describe what that is. What do you
20 mean by that?

21 A. The American standards, American
22 National Standards Institute, has laid out a
23 precision or tolerance limits by one-third
24 octaves for various grades of sound level

L.A. REPORTING, 312-419-9292

482

1 meters.

2 And for the Type II instrument, which
3 I'm familiar with, or have seen the tables for
4 these, the low frequency portion of the scale,
5 the precision generally can be off by plus or
6 minus 3 DB or more.

7 Q. And is that significant?

8 A. Yes, it is.

9 Q. Okay. And that is for the Type II.

10 Now, as far as the Level III or Type
11 III of the surveys, is it a fair assumption that
12 the deviation might be greater?

13 A. That is a very fair assumption.

14 I tried to find a copy of the old 1971
15 standards and could not, which would contain a
16 table like that.

17 Q. The third issue that you talked about
18 was a response to orientation to sound. What do
19 you mean by that?

20 A. In the United States sound level
21 meters and microphones are specified as using or
22 having an hemispherical with respect to noise.

23 This means if you have -- this means
24 for -- I'm stepping on myself. I'm sorry.

L.A. REPORTING, 312-419-9292

483

1 In the U.S., we use Omni directional
2 microphones for sound measurements. This
3 differs from Europe, which uses another type of
4 microphone entirely.

5 The purpose of this specification is
6 so that you can be off a little bit when you're
7 pointing the meter at a source and still get the
8 same resulting sound level reading.

9 This also accounts for vehicles or
10 other objects that would move across the face of
11 the sound level meter.

12 Q. Deminimize a distracting noise from
13 those items?

14 A. Know that you would get a fair and
15 accurate reading no matter how the meter is
16 pointed and this is within certain limits.

17 Q. Now, you stated that all meters have
18 those three areas for variation.

19 My question is two fold.

20 One is the variation within the meter
21 itself, and, two, can there be further variation
22 or exacerbated variation by how the meter is
23 used by the person reading it?

24 A. In answer to your first question,

L.A. REPORTING, 312-419-9292

484

1 these are errors, which are caused by the meter
2 itself.

3 Q. Okay.

4 A. And may be several DB in the case of a
5 survey grade meter.

6 Q. Okay. And I'm assuming then that the
7 reason that the minimum meter allowed, the Type
8 I is because the Type I minimizes, as best as
9 possible, other than the laboratory grade, these
10 three areas of variation?

11 A. That's correct.

12 And I should further explain that when
13 verifying the calibration of a meter, this is
14 the easiest task for a sound level meter to
15 perform.

16 Q. Okay.

17 A. In other words, when you place a

18 calibrator on the microphone of the meter, this
19 is a sound wave at 1,000 hertz, which is in the
20 middle of the hearing range. This is the -- a
21 weighted scale is optimized for that.

22 You can expect very little variation
23 when placing that data, a calibrator on a meter,
24 and this is providing this is done at the same

L.A. REPORTING, 312-419-9292

485

1 temperature.

2 I know that these meters also use
3 electric microphones, which experience variation
4 due to temperature.

5 Q. If it is colder or warmer outside,
6 it's going to cause a variation also?

7 A. Yes, but generally a person would
8 verify the calibration indoors, you wouldn't see
9 that variation.

10 Q. So one calibration reading at one time
11 is not indicative that all the readings are
12 accurate, is that a fair statement?

13 A. That's very fair.

14 Q. Okay. And, again, the second part of
15 my earlier question then, how the person
16 using -- how the person with the meter using it,

17 can that exacerbate the difference in decibel
18 readings as to the true reading?

19 A. Yes, it can very much so.

20 And I just completed teaching a
21 training course for the Chicago city inspectors,
22 who some had been on the job for years taking
23 sound level readings. And I was very
24 enlightened by the questions that they asked and

L.A. REPORTING, 312-419-9292

486

1 how they operated the meters.

2 There are several things that you can
3 do which will influence meters, influence
4 readings.

5 The major contributor is wind, that
6 you have to be very aware of wind and its
7 influence on sound level readings.

8 Q. At what speed can wind cause problems
9 with your sound level reading?

10 A. If you have a wind screen on your
11 sound level meter, generally winds exceeding 10
12 to 12 miles an hour can cause a variation in
13 reading. This is seen at the low frequency end
14 of the scale.

15 Q. Is there a wind screen on that model

16 which was -- they just looked at?

17 A. No, there is not.

18 Q. Okay.

19 A. This would appear to be a nerf ball,
20 similar to a child's nerf ball that is placed on
21 the end of the microphone.

22 Q. Okay. When you stated that you were
23 working with the city individuals and you got
24 some interesting questions, is it a fair

L.A. REPORTING, 312-419-9292

487

1 statement that experienced, maybe not as
2 experienced as you, but experienced readers are
3 still having difficulties getting good reads at
4 times?

5 A. Yes, it's very much so. And I always
6 believe that it is necessary to measure the wind
7 where you're at, at least to quantify the wind
8 that is present, particularly, if you're not
9 real experienced taking sound level readings.

10 Q. As far as background noise, extraneous
11 noise, how does that effect a read?

12 A. Certainly the meter itself cannot
13 distinguish between the background or ambient
14 noises, and the noises that you're trying to --

15 trying to measure.

16 So really when you're taking a sound
17 level reading, you're measuring the sum of both
18 the background noises and the noise that you're
19 trying to measure.

20 Q. Okay. When you're doing one of your
21 reads, are you required by any guidelines to
22 differentiate background or extraneous noise
23 from what you're testing?

24 A. Yes. The Illinois standards directs

L.A. REPORTING, 312-419-9292

488

1 us to correct for ambient. And this -- this is
2 to mathematically subtract out what the ambient
3 environment is providing, say you're left with
4 the energy that is due to the -- be a noise
5 source that you're trying to test.

6 Q. What is the purpose for that?

7 A. This is so that you're taking credit
8 only for the noise that you're generating and
9 not taking credit for other noises in the area.

10 Q. Okay. Now, I'm going to turn your
11 attention to the sound testing that you
12 conducted for TL Trucking Foodliner.

13 To your right is Respondent's Exhibit

14 67, which has been previously admitted into
15 evidence and is marked as the village of
16 Franklin Park.

17 How familiar are you with Franklin
18 Park?

19 A. I have driven through Franklin Park
20 over the years, somewhat familiar with the area.

21 Q. Okay. You were actually on King
22 Avenue, correct?

23 A. Yes, TL Trucking is on King Avenue.

24 Q. Right. They're located at 9200 King

L.A. REPORTING, 312-419-9292

489

1 Avenue.

2 And then just north of that is a park,
3 Robinson Crusoe Park, do you recall being at
4 that park?

5 A. Yes.

6 Q. Okay. And just north of Robinson
7 Crusoe Park is Crescent Drive. Have you been on
8 Crescent Drive?

9 A. Yes, I have.

10 Q. Now, do you recall the date that you
11 did your sound testing?

12 A. Yes. That was August 31st of this

13 year.

14 Q. Okay. I'm going to hand you what has
15 been marked as Respondent's Exhibit 1, for your
16 benefit and testimony, also attached Exhibit 1A
17 and 1B.

18 Did you pick a particular time that
19 you wanted to do your sound reading?

20 A. Yes, I did, but I consulted with Hank
21 Latoria and your office as to when the
22 complaints had been received.

23 Q. Okay. So you wanted to go during a
24 busy time or a noisy time?

L.A. REPORTING, 312-419-9292

490

1 A. Yes, certainly. I would have
2 preferred going late at night, say after 10:00
3 p.m. This is my experience that the ambient
4 sound level is usually the lowest during this
5 period, but I was told most of the complaints
6 were received in the early morning hours, and so
7 that is when I conducted my study, starting a
8 little bit after 5:00 a.m.

9 Q. Okay. And how long did you continue
10 to take sound readings?

11 A. Until 7:00 a.m. and that is the end of

12 the Illinois EPA definition of nighttime.

13 Q. Okay. So about two hours?

14 A. Yes, approximately.

15 Q. So, when you said that, you were
16 technically in the nighttime hours, as far as
17 defined by the state of Illinois?

18 A. Yes.

19 Q. Where did you set up your readings?

20 A. I set up in the front of Mr. Brill's
21 property, at 9204 Crescent Drive. This would be
22 on the western edge of his property at the curb.

23 Q. Okay. Actually, on the public
24 sidewalk area?

L.A. REPORTING, 312-419-9292

491

1 A. At the curb, yes.

2 Q. Okay. And, again, you have used the
3 equipment that you previously testified to, the
4 ANSI 1 equipment?

5 A. Yes, the ANSI Type I instrumentation,
6 which consisted of a Larson Davis 2900 sound
7 level meter, with a microphone, a preamplifier
8 connected via an extension cable and mounted on
9 a tripod.

10 Q. Was there anything -- how was the

11 weather that day?

12 A. We just experienced a lot of rain that
13 evening. In fact, I had difficulty getting to
14 the site because Irving Park Road was -- the
15 underpass was flooded, but the streets were dry
16 at this time.

17 Q. Okay. Did that effect your reading at
18 all?

19 A. No, it did not. We really don't like
20 to do sound level readings when the streets are
21 wet because you get contribution from tire noise
22 from cars and trucks.

23 Q. Was there much traffic on Crescent
24 Drive when you were talking your read?

L.A. REPORTING, 312-419-9292

492

1 A. There was some traffic associated with
2 early morning activities, people going to work.

3 There was also a roofing business or a
4 siding business, which is located across the
5 street from Mr. Brill's residence. They were
6 staging and loading their trucks and getting
7 ready to go.

8 Q. Okay. And then also I assume you came
9 into Crescent Drive from River Road, is that

10 correct?

11 A. Yes.

12 Q. How would you describe the traffic on
13 River Road that morning?

14 A. River Road was a war zone. There were
15 lots of barricades up and traffic was
16 constricted.

17 Q. Okay. Was that due to the
18 construction, as best as you can tell?

19 A. Yes.

20 Q. What other industries did you note in
21 your viewing of the Crescent Drive, King Avenue
22 area? Did you notice other businesses there?

23 A. Not on Crescent Drive specifically.
24 On King Avenue there were a number of

L.A. REPORTING, 312-419-9292

493

1 businesses. Those dealing with plating and
2 forging and businesses such as that.

3 Q. Okay. I'd like you to turn to your
4 report.

5 First of all, is that your original
6 report that you promulgated after taking sound
7 readings at the site you just testified to?

8 A. No, it is not. I issued a draft

9 report. This is a final report.

10 Q. Is that your final report?

11 A. Yes, it is.

12 MS. REISEN: We move for the admission
13 of Respondent's 1 one at this time.

14 HEARING OFFICER HALLORAN: Mr. Brill?

15 MR. BRILL: I have a question.

16 Do you have a resume, sir?

17 MS. REISEN: That is actually
18 attached as 1B.

19 THE WITNESS: Yes, I do. Would you
20 like to see it?

21 MR. BRILL: I didn't receive a resume.

22 MS. REISEN: I apologize. Mr. Homans
23 brought one last time.

24 MR. BRILL: For all your accolades

L.A. REPORTING, 312-419-9292

494

1 that is a rather short resume, but I suppose it
2 covers the subject, but your compatriot Mr. Zak
3 said that you're a good man, and I believe him.

4 THE WITNESS: Thank you.

5 Greg is a good man.

6 HEARING OFFICER HALLORAN: Thank you,
7 Mr. Brill.

8 Respondent's Exhibits 1 and 1A and 1B
9 are admitted into evidence.

10 (Respondent's Exhibits No. 1, 1A - 1B
11 were admitted into evidence.)

12 HEARING OFFICER HALLORAN: Ms. Reisen,
13 did you mention these were attachments?

14 MS. REISEN: Correct. I didn't
15 staple them. I had a paper clip on them.
16 Specifically, Mr. Homans brought his resume with
17 him to the hearing on the last date so I didn't
18 have an opportunity to staple it together. And
19 then 1A is the bay activity that was going on
20 during the time of his sound reading.

21 HEARING OFFICER HALLORAN: For the
22 record, what I'll do is attach Exhibit 1A and 1B
23 along with Respondent's Exhibit No. 1 by a paper
24 clip, if that is okay.

L.A. REPORTING, 312-419-9292

495

1 MS. REISEN: That's fine.

2 HEARING OFFICER HALLORAN: You may
3 proceed.

4 Thank you.

5 MS. REISEN: Thank you.

6 BY MS. REISEN:

7 Q. In your report, Mr. Homans, you
8 indicated in some detail what TL Trucking uses
9 its terminal for.

10 Do you recall what they do on site?

11 A. Yes. They're involved in truck
12 washing specifically. They deal with liquid and
13 bulk trucks.

14 Q. Okay. And you took some measurements
15 of the length of their lot. Do you recall that?

16 A. If I could have the report to refresh
17 my memory?

18 MR. BRILL: I believe it is 270 feet.

19 THE WITNESS: Thank you. I'll agree.

20 BY MS. REISEN:

21 Q. In your report, you specifically list
22 out in detail the instruments that you're using
23 on the top of page 1, is that not correct?

24 A. That's correct.

L.A. REPORTING, 312-419-9292

496

1 Q. Okay. You also indicate that you kept
2 a log of activities.

3 What is the purpose in doing that?

4 A. That helps me, after the fact,
5 identify what noises were due to TL Trucking,

6 what noises were due to other things in the
7 environment, such as cars and trains and
8 airplanes, and what constituted the ambient
9 environment, which would be sounds not
10 associated with TL Trucking, or these extraneous
11 events.

12 Q. And not meaning to ask the obvious,
13 but how do you keep the log? Do you just listen
14 to the noise, check your watch, write it down?
15 What particularly do you do?

16 A. That is precisely what I did. I had
17 my watch synchronized with the spectrum
18 analyzer, and when I did hear noises, I would
19 write this down. I set up the instrument so
20 that it would record sounds every 30 seconds.

21 Q. And is that standard protocol?

22 A. For us it is. I should say generally
23 we usually use 1 minute intervals for
24 environmental studies like this, but, I knew

L.A. REPORTING, 312-419-9292

497

1 this was going to be a tough one.

2 Q. And you say you knew it would be a
3 tough one, why?

4 A. It was tough because of all of the

5 extraneous noises in the area.

6 Q. Okay. Were you able to identify every
7 source that was not related to TL Trucking?

8 A. Not every last source, no.

9 Q. Okay. What was the reason for that?

10 A. There was a great deal of industry in
11 the area and certainly other trucks were
12 arriving to other businesses in the area. I
13 also heard trucks, which I believe to be coming
14 from River Road, as well as general traffic, but
15 I -- I assumed that this was the ambient
16 environment.

17 Q. Okay. Over your 25, almost 30 years
18 of experience, have you been trained or have you
19 developed a procedure to help you try and
20 ascertain the source of noise when you hear it?

21 A. Yes, I guess this requires a little
22 experience as far as identifying the sources and
23 the direction that they come from. Certainly on
24 that particular morning, there was a lot of

L.A. REPORTING, 312-419-9292

498

1 train activity. There was a lot of airplane
2 overflight.

3 Q. Okay. How do -- how would like a

4 train whistle or train in the background effect
5 a meter reading from the equipment that you use?

6 A. Well, since I had my equipment set up
7 for 30 second intervals, when I did hear another
8 sound that was, I guess, in competition with
9 TL's sounds that were emanating from their
10 property, I noted that that entire 30 second
11 block was extraneous due to extraneous noise
12 sources.

13 Q. Okay. How would the sound of say a
14 train going by be reflected on a sound meter
15 such as the one that Mr. Brill used?

16 A. This meter is only capable of
17 instantaneous readings so you would see the
18 needle deflect to the right when a train went
19 by.

20 Q. Okay. You would not be able to
21 differentiate though by looking at it, that
22 meter, the difference between the two sounds,
23 correct?

24 A. Nor with my meter for the most part,

L.A. REPORTING, 312-419-9292

499

1 unless I take a note.

2 Q. Okay. How often were you hearing the

3 trains, if you could estimate?

4 A. This report does contain a log but I
5 would estimate probably 15 times or so that I
6 heard trains.

7 Q. Okay. How about airplanes?

8 A. Probably more than that, the trains.

9 Q. Okay.

10 A. We did have some very low overflights
11 that morning.

12 Q. Okay. And then what are the standards
13 as far as how much ambient noise could be
14 allowed in order to get what is considered a
15 valid read on what sort of noise TL Trucking is
16 emitting?

17 A. Well, a standard method of correcting
18 for ambient is to do a mathematical or a
19 logarithmic subtraction of the meter reading
20 that you have minus the energy due to the
21 ambient environment. That works fine as long as
22 the difference between the reading that you're
23 taking and the ambient environment is greater
24 than 3 DB.

L.A. REPORTING, 312-419-9292

500

1 Q. Who sets that standard?

2 A. I know that is -- I believe that is
3 contained in the Illinois regulations and it's
4 also promulgated by the American National
5 Standards Institute.

6 Q. Okay. Didn't mean to interrupt you.
7 Go ahead.

8 A. And so, generally, if the difference
9 between the sound that you're reading and the
10 energy from the ambient environment is greater
11 than 3 DB, then you can make a mathematical
12 correction for the ambient environment and be
13 able to ascertain what the noise is from the
14 source that you're measuring in the absence of
15 the ambient environment.

16 Q. So to put it in simpler terms, because
17 I'm not a sound engineer, so don't take that in
18 a bad way, but to put it in simpler terms, once
19 you have a difference of 3 decibels or more, it
20 is significant enough that we can differentiate
21 out the sounds, is that a fair statement?

22 A. That's correct.

23 Q. And so the 3 decibels there, 3
24 decibels is considered significant enough that

1 it is a cut off for at least one area of
2 determining sounds, correct?

3 A. Yes.

4 Q. Okay. I'm concerned that 3 decibels
5 is significant to separate out sound and yet we
6 may have up to 3 decibels differentiation
7 between a survey grade meter and Type I meters.

8 How would you characterize 3 decibels
9 difference, significant, insignificant?

10 A. Generally 3 DB is considered a
11 perceptible difference, but certainly the error
12 with a survey grade meter could be much more
13 than 3 DB.

14 Q. Okay.

15 A. Depending on the type of noise that
16 you're measuring.

17 Q. Okay. Now, I've been stating
18 extraneous noise and ambient noise
19 interchangeably. Am I incorrect in doing that?

20 A. Yes, you are.

21 Q. Why don't you describe what extraneous
22 noise is first?

23 A. Extraneous noises would be unusual
24 noises or events in the area. And by this I

1 mean aircraft overflights, cars and trucks on
2 the street where you're doing your measurements,
3 trains in the area.

4 Q. And what would ambient noise be?

5 A. Ambient noise would be the general
6 background noise in the area, the general
7 long-term background noise in the area. This
8 would include the general traffic or the humm
9 from River Road, for instance, the contribution
10 from other industries in the area, which is
11 pretty much of a steady state or a constant
12 level.

13 Q. Okay. Were you able to differentiate
14 between the noise emitted from TL Trucking and
15 the ambient noise of the general area?

16 A. Yes, I was, to some degree. I had the
17 advantage of being able to look through the
18 fence so that I could see operations within the
19 TL yard and determined that -- when the trucks
20 were off, I could also hear them when they were
21 off and no trucks were being washed that would
22 constitute an ambient condition, providing there
23 were no airplanes flying over or trains or other
24 things like that.

1 Q. Okay. How would you characterize the
2 ambient noise of that neighborhood?

3 A. It was high.

4 Q. Okay. How would you characterize the
5 extraneous noise of neighborhood?

6 A. Extremely high.

7 Q. And when you say extremely high, if
8 you had to, could you estimate how many sound
9 level readings you've done since 1973, can you
10 begin to guess that amount?

11 A. No, I can't. It would be hundreds or
12 thousands certainly.

13 Q. Okay. And was the extraneous noise in
14 Crescent Park higher than what you usually run
15 into?

16 A. Yes, I was surprised by the number of
17 interruptions.

18 Q. Okay. Can you take a look at the
19 analysis portion of your report, which I believe
20 is page 3, okay, and you state in there
21 specifically what the standards are for good,
22 non-extraneous and ambient data, and the
23 protocol that was used, is that correct?

24 A. Yes, in the first paragraph.

1 Q. Okay. On the third paragraph, you
2 indicate the amount of extraneous events, if you
3 want to review that?

4 A. Yes.

5 Q. Specifically, what about this sound
6 reading was so unusual?

7 A. This study was unusual in that almost
8 half of the data had to be thrown out because
9 they were due to extraneous sources.

10 Q. If you had to give a ballpark
11 estimate, how much data do you usually throw
12 out?

13 A. Generally 20, perhaps 30 percent would
14 be on the high side.

15 Q. And so up to 50 percent being thrown
16 out is significantly higher than what you're
17 used to?

18 A. Yes.

19 Q. Is it a fair statement that because of
20 that, that much of the noise in the area is due
21 to sources other than TL Trucking?

22 A. Yes, certainly.

23 Q. And of a level that is significant
24 enough to cause the data to be thrown out?

1 A. Yes.

2 Q. You gave some recommendations on your
3 next page and you start out by saying due to the
4 noisy environment surrounding 9204 Crescent
5 Drive it was not possible to determine noise
6 emissions due to TL Trucking. Explain that.

7 A. We were directed to correct for
8 ambient by the Illinois standards in the table
9 number 2 on this page, row number 3, is the
10 difference between good and ambient, which is
11 just the numerical difference or subtraction
12 between the -- those readings that were good or
13 not extraneous and the ambient readings. And in
14 no case were we over 3 DB. In fact, the highest
15 we were was 1.6 DB. So these were very close
16 and we were not able to correct for ambient.

17 Q. That is with the reading every 30
18 seconds for about a 2 hour block?

19 A. Yes.

20 Q. You did provide some recommendations.
21 I'm going to ask you first, what the basis for
22 your recommendations were?

23 A. Certainly my experience working with
24 environmental noise over the years, particularly

1 working both sides for -- both for the trucking
2 firms and also for municipalities and counties
3 surrounding trucking firms, as far as developing
4 abatement options.

5 Q. So you're trying to offer some
6 suggestions?

7 A. Yes.

8 Q. Regarding a noise barrier, are you
9 aware that Franklin Park has a height
10 restriction of 8 feet on their fencing and their
11 walls?

12 A. Yes, I am.

13 Q. Okay. And, specifically, Mr. Brill
14 has brought up questions regarding some of the
15 berms or the 14 foot noise barriers that are
16 around O'Hare or around the freeways.

17 First off, does it take a little bit
18 of room in order to effectuate the building of
19 those and the effective use of such noise
20 barriers?

21 A. Certainly, in the case of a berm, it
22 requires a lot of real estate. I'm familiar
23 with IDOT that requires a 1 to 3 slope on any
24 kind of berm that is built. This is to prevent

1 erosion and I suppose for safety.

2 So for a 6 foot berm, you would need
3 minimally 40 feet of area to construct a berm.

4 Q. Okay. And we've already ascertained
5 that the total lot of the 9200 King Drive is 270
6 feet, correct?

7 A. Yes.

8 Q. To construct a berm we'd be taking
9 approximately one-fifth of its usage, correct?

10 A. On that order, yes.

11 Q. Okay. For a sound barrier to be
12 effective, first of all, it has to break the
13 sound by a line of sight, is that correct?

14 A. Yes, it has to interrupt your line of
15 sight. In other words, if you can see the noise
16 source, you're not going to receive much benefit
17 from a noise barrier.

18 Q. Okay. If a 14 foot wall were to be
19 constructed at the rear end of TL Trucking, is
20 that going to stop the noise that comes from all
21 the extraneous and ambient noise that you heard
22 when you were taking your sound reading?

23 A. It would have no effect on those type

24 of noises.

L.A. REPORTING, 312-419-9292

508

1 Q. Is there any way to get rid of all of
2 that, the ambient or extraneous noise that you
3 heard when you were at Crescent Drive, that you
4 know of?

5 A. No, other than insulating your house.

6 Q. Is it possible to insulate a house
7 that well?

8 A. Certainly, my technicians at O'Hare
9 are involved in this every day.

10 Q. Okay. The reason I ask is we're on
11 the 11th floor of the James R. Thompson Center?

12 A. Yes.

13 Q. Have you been hearing the traffic down
14 below?

15 A. Yes, I've been hearing the street
16 traffic and the elevator traffic.

17 Q. So some noise is just going to occur,
18 is that a fair statement?

19 A. Yes.

20 Q. Have you had the opportunity to review
21 a transcript of Mr. Zak's testimony from
22 September 26th, I believe?

23 A. Yes.

24 Q. And Mr. Zak testified that he spent a

L.A. REPORTING, 312-419-9292

509

1 total of two hours at the Brill residence, part
2 of that speaking with Mr. Brill. Do you recall
3 reading that?

4 A. Yes, I do.

5 Q. Now, your two hours actually was all
6 sound reading, is that correct?

7 A. That's correct. I was there for
8 approximately two hours.

9 Q. So any additional information that you
10 had gathered such as looking at King Street,
11 looking at TL, if you did any other cursory
12 stuff, that was not included in your read time,
13 is that correct?

14 A. That's right.

15 Q. I had specifically asked Mr. Zak when
16 I was questioning him about that sound meter, if
17 there was -- what the variation was in sound
18 readings between that and the equipment you
19 used.

20 Do you agree with his ascertainment?

21 A. No, I don't.

22 Q. Do you -- what area do you take issue
23 with?

24 You may have already answered that.

L.A. REPORTING, 312-419-9292

510

1 You already spoke about the calibrations and the
2 issues there.

3 A. Yes. I'm trying to find the exact
4 passage and I can't.

5 As I recall, Greg Zak stated that the
6 readings that you would obtain would be about 1
7 DB different from those taken with a Type I or
8 precision instrument.

9 Q. Okay. And for the reasons that you
10 indicated earlier, the three sources of
11 variation, you feel it can be 3 decibels or
12 more?

13 A. Likely a lot more, and I found the
14 passage here now. Pardon me.

15 Q. What page are you looking at?

16 A. I'm looking at page 24 on my
17 transcript.

18 Q. Okay.

19 A. And he states in the third line, that
20 the accuracy is normally within 1 decibel or

21 less of a precision meter. I would say that's
22 true only when you're verifying the calibration
23 of the meter.

24 Q. Now, you testified this morning that

L.A. REPORTING, 312-419-9292

511

1 you worked with just recently city inspectors
2 who have a great deal of experience and you're
3 finding they're still doing readings
4 incorrectly, is that true?

5 A. Correct.

6 Q. And how were you working them,
7 face-to-face, over the phone?

8 A. I conducted two training seminars; one
9 last winter, and one this spring. We had a
10 little classroom situation where I talked for
11 about an hour and a half, and then we went out
12 into the field on a subsequent visit and
13 actually practiced taking some sound level
14 readings. Several of the things I was surprised
15 at was, I guess, the -- I had assumed that the
16 location for taking sound level readings would
17 be obvious and that is not necessarily the case.

18 Q. And why is that? I mean, how is that?

19 A. Particularly, the surrounding

20 environment can very much influence your sound
21 level readings. For instance, if you were to
22 take a sound level reading at the face of a
23 house, the readings would be high by as much as
24 3 DB due to the reflecting nature of the

L.A. REPORTING, 312-419-9292

512

1 structure.

2 Q. So where would be the ideal place to
3 take the reading?

4 A. When you're in a free field condition,
5 such as I did near the street at the curb.

6 Q. Okay.

7 A. Where you're away from structures.

8 Q. So if Mr. Brill were to walk right out
9 on his front stoop or step, and take a reading
10 he may be getting a read from the noise coming
11 at him but then a reflecting sound coming back
12 off his building?

13 A. Yes, you could.

14 Q. That could inflate the read?

15 A. Yes.

16 Q. And you found that individuals you
17 were training who had experience were making
18 those sorts of mistakes?

19 A. Quite commonly, yes.

20 Q. Okay. Do you feel that cursory phone
21 instruction on how to use a field meter is
22 something that you would send your city
23 inspectors out with as a being proper training?

24 A. No. And particularly after this

L.A. REPORTING, 312-419-9292

513

1 training exercise, I guess I have been
2 enlightened that it is not as simple as it
3 looks. You need more training with respect to
4 the range controls, for instance. There was a
5 lot of confusion with the waiting -- the meter
6 response, fast and slow, and things like that.

7 Q. What does that have to do with the
8 meter response, fast or slow? How would that
9 tie into a read result?

10 A. The meter response is a -- the damping
11 characteristic of a meter. This determines how
12 easy it is to read the meter. It also reflects
13 if you're interested in transient noise sources,
14 it's more accurate to read it with fast
15 reader -- fast meter response for instance.

16 Q. Okay. What is the meter response on
17 the Radio Shack meter there, as best as you can

18 ascertain?

19 A. This has a switch for both fast and
20 slow.

21 Q. We have -- do you have any idea which
22 would have been used in the reads by Mr. Brill?

23 A. No, but probably slow.

24 Q. Why do you say that?

L.A. REPORTING, 312-419-9292

514

1 A. It's easier to read the meter. The
2 meter fluctuates less often. This is fine.

3 Q. Okay. And, again, that will make a
4 difference in the accuracy?

5 A. Since Illinois requires readings taken
6 over an hour's period, certainly you want to
7 introduce averaging. So this would be -- would
8 be preferred. Other sources for error would be
9 the ANC waiting and confusion with that switch,
10 where -- as far as C waiting is closer to linear
11 and would give you a higher level.

12 Q. Now, all of these variables that we
13 have been discussing I assume were controlled
14 for or accounted for in your read?

15 A. That's correct.

16 Q. Okay. Would you, as an acoustical

17 engineer, be able to hear noise, run out take a
18 read, sit back down and do your paperwork,
19 whatever, do that 10, 15 times over the course
20 of a week and turn that in as accurate read
21 according to the Illinois standards?

22 A. No, Illinois requires that you have to
23 take readings for at least an hour in order to
24 accumulate an hour's worth of good data.

L.A. REPORTING, 312-419-9292

515

1 Q. Do you know why that is?

2 A. I know it is due to a decision in the
3 '70s with General Motors in Danville, but the
4 idea is that you're averaging the sound level
5 over an extended period of time, you're not
6 reading isolated or instantaneous events.

7 Q. To get a true picture as to what the
8 sound in the area is really like?

9 A. That's right.

10 Q. Again, that would be the whole basis
11 for factoring out the ambient and the extraneous
12 noises also, correct?

13 A. Yes.

14 Q. When you were training those
15 individuals, did they have a difficult time

16 initially with the difference between ambient
17 and extraneous noise or factoring those out?

18 A. Yes, they had confusion with ambient
19 versus what you're really reading with the
20 meter. And we did have to work on correcting
21 for ambient and how that is done. This is -- in
22 order to be fair to all the parties.

23 Q. One of your recommendations is to
24 close the doors during the washing and drying of

L.A. REPORTING, 312-419-9292

516

1 trucks. Specifically, what is that going to do?

2 A. This will reduce the mid and high
3 frequency noise due to the washing operation.
4 This would also reduce sound levels from the
5 pumps and blowers.

6 Q. And are you aware if that is currently
7 the protocol?

8 A. I don't know.

9 Q. Okay. That was just an obvious
10 recommendation to you?

11 A. Yes.

12 Q. Okay. You also indicated that
13 enclosing any blowers or water pumps would be
14 helpful, correct?

15 A. Yes, and perhaps moving those away
16 from the doors.

17 Q. You indicated that operating radios in
18 trucks inside is also beneficial, correct?

19 A. I recommended that the drivers not
20 play the radios in the trucks. I thought this
21 was inconsiderate and this is more of an
22 administrative control.

23 Q. Did you note some of that when you
24 were taking your sound readings?

L.A. REPORTING, 312-419-9292

517

1 A. Yes.

2 Q. That is something that is easy to
3 enforce as far as posting notices and telling
4 the drivers, correct?

5 A. I would assume so, yes.

6 Q. You indicated that a noise barrier
7 might be an option. What specifically were you
8 contemplating in putting that recommendation in?

9 A. I had assumed that an 8 foot noise
10 barrier would be all that would be -- would be
11 permitted in this case. Certainly my experience
12 with noise barriers are that they're more
13 effective when they're very close to either the

14 source or the receiver. A highway barrier
15 doesn't fulfill these criteria.

16 Q. And, in fact, I don't mean to
17 interrupt, but whatever goes up on the edge of
18 this property is not going to be close to the
19 source or the receiver, it's about midway
20 between them, is that correct?

21 A. That's correct.

22 So you're not going to get your
23 optimum performance out of a noise barrier in a
24 situation like this.

L.A. REPORTING, 312-419-9292

518

1 Q. And, again, whatever sort of barrier
2 goes up of, of whatever height, is not going to
3 change any of the other noises that are very
4 clearly present in that area, correct?

5 A. That is correct.

6 Q. Is there anything I missed as far as
7 sound readings that you think is important for
8 the board to know as to what you did or why you
9 did it?

10 A. None that I can recall at this time.
11 Only that I did verify the calibrations both
12 before and after readings. I did conduct

13 temperature and wind readings during the course,
14 and did walk through the park and look at the
15 condition of the fence and the wall below it.

16 Q. How did you observe that to be?

17 A. It was -- I saw a concrete base that
18 was in good condition and a fence that allowed
19 me to see right through it.

20 Q. It's got the slatting in it, correct?

21 A. I don't remember any slats. I
22 could -- I could see what was going on pretty
23 clearly.

24 Q. Okay.

L.A. REPORTING, 312-419-9292

519

1 A. Inside the yard.

2 Q. I'm going to show you what has been
3 marked as Respondent's Exhibit 14, and ask you
4 if that looks like an area that you've been in?

5 A. Yes, it does. This appears to be a
6 view from Mr. Brill's front yard.

7 Q. You're looking specifically at
8 Robinson Crusoe Park?

9 A. Yes.

10 Q. Do you see the fence there between the
11 park and TL Trucking?

12 A. Yes, I do.

13 Q. Does it appear there are some slats in
14 there?

15 A. I don't see any.

16 MR. BRILL: The fence is slatted.

17 THE WITNESS: It is?

18 MR. BRILL: I'll attest to that.

19 THE WITNESS: Okay.

20 From my standpoint, I could see right
21 through it. Acoustically the noise goes right
22 through it.

23 BY MS. REISEN:

24 Q. Were you here this morning when Mr.

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520

1 Stumbris was testifying as to the 33 percent
2 filtering that they have with those sort of
3 fences so they can basically see in in case
4 there is an emergency or a fire?

5 A. Yes, I was.

6 Q. Does that make sense to you as what he
7 was getting at with the filtering?

8 A. As far as visual filtering, yes, I
9 suppose.

10 Q. Okay. Would you --

11 A. As far as acoustical filtering, there
12 is no benefit to putting slats in.

13 Q. Okay. Would you agree that a 14 foot
14 sound barrier in the middle of Franklin Park is
15 going to be a visual barrier for law enforcement
16 or fire department in determining what is going
17 on in an area?

18 A. If it were a good sound barrier, and
19 by this, I mean solid construction with no gaps
20 or cracks and extending around the sides, then
21 yes, it probably would be a visual impediment.

22 Q. If you look, again, at Respondent's
23 Exhibit 67, I'm going to point up here to
24 Crescent Drive, which has been circled with a

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521

1 yellow highlighter, and that is a dark green
2 area, do you see that?

3 A. Yes, I do.

4 Q. And the whole surrounding area is
5 either dark or light gray, do you see that?

6 A. Yes, I do.

7 Q. Were you here this morning when there
8 was testimony indicating that the green
9 indicates residential and the gray, two shades

10 of gray indicate two grades of industrial?

11 A. Yes, I was.

12 Q. In order for the individuals at
13 Crescent Drive to be free of the noise from the
14 industry, would we need to erect a 14 foot
15 barrier around all of the green shaded area, and
16 if so, would that even get rid of all of the
17 noise?

18 A. It would offer some attenuation to
19 close by sources. However, due to the
20 diffraction of noise and sound propagation,
21 sound frequently goes up and over barriers, and
22 so the more distant your noise source is away
23 from the barrier, the less the barrier
24 attenuates a sound. So for sounds that are

L.A. REPORTING, 312-419-9292

522

1 generated say several hundred feet from the
2 barrier, the barrier would have little or no
3 effect with regard to sound attenuation.

4 Q. Okay. So in a nutshell,
5 unfortunately, for Mr. Brill, his residential
6 area is in the middle of a very noisy industrial
7 area, is that a fair statement?

8 A. It's noisy, yes.

9 MS. REISEN: Thank you. I have no
10 other questions.

11 HEARING OFFICER HALLORAN: Thank you,
12 Ms. Reisen.

13 Mr. Brill?

14 MR. BRILL: May I approach the map?

15 HEARING OFFICER HALLORAN: Yes, you
16 may, sir. You want to go this way?

17 CROSS-EXAMINATION

18 BY MR. BRILL:

19 Q. Brian, you pointed in this area here
20 and you're saying that we're surrounded by
21 industrial, restricted industrial areas, is that
22 correct? That's what you agreed to she said?

23 A. Yes.

24 HEARING OFFICER HALLORAN: May the

L.A. REPORTING, 312-419-9292

523

1 record reflect that Mr. Brill is pointing to
2 Respondent's Exhibit 67? Thank you.

3 BY MR. BRILL:

4 Q. Do you know what is on the fourth
5 side?

6 A. That is River Road, and across River
7 Road is the forest preserve and the river I

8 believe.

9 Q. Okay. Are you aware that this area
10 contains over 1,000 acres of wooded areas,
11 rivers, streams, ponds, even a golf course and
12 that we are not, as Ms. Reisen suggests,
13 surrounded by restricted industrial area?

14 A. You're surrounded on three sides by
15 industry and on the fourth side by River Road,
16 across River Road is the forest preserve that
17 you speak of.

18 Q. Okay. But even that can be construed
19 differently because, if I look to the north of
20 my house, I see nothing but other houses. So how
21 can I be surrounded? How can I be surrounded by
22 industry when all I can do is see houses when I
23 look north?

24 A. You're right. To the north of you are

L.A. REPORTING, 312-419-9292

524

1 two other row of houses.

2 Q. And when I look west, do I see
3 industry this way?

4 A. Not for awhile, probably for 8 or 10
5 blocks.

6 MS. REISEN: I'm going to object and

7 ask that Mr. Brill allow Mr. Homans to complete
8 his answer before he poses the next question.

9 HEARING OFFICER HALLORAN: Mr. Brill,
10 please, allow the witness to complete his
11 answer.

12 MR. BRILL: I will.

13 BY MR. BRILL:

14 Q. And even if I look south right into
15 the jaws of TL Trucking, there is a park and
16 there are trees and everything. How can that be
17 a fair statement to say that we're surrounded by
18 industrial area?

19 A. Your neighborhood is in a pocket or
20 enclave.

21 Q. I'm talking about my house, not my
22 neighborhood.

23 A. Your house is separated from TL
24 Trucking and by other industries by one lot, by

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525

1 a street and a lot.

2 Q. But not on this side?

3 A. Not on the north side.

4 Q. Not on this side?

5 A. No.

6 Q. Not on this side?

7 A. On the east side you're pretty close
8 to River Road.

9 Q. River Road and a thousand acres of
10 forest preserve.

11 I'll continue with my questions
12 seated.

13 HEARING OFFICER HALLORAN: Thank you.
14 Mr. Homans, you can be seated. Thanks.

15 BY MR. BRILL:

16 Q. Mr. Homans, I paid \$39 for that
17 instrument there. What is it good for?

18 A. It's a good survey meter, but beyond
19 that, for taking sound level readings, it
20 doesn't compare to our \$1600 meters.

21 Q. Was I scammed by Radio Shack when they
22 sold me that?

23 A. No, it's a fair value for \$39.

24 Q. All right. If I recorded 80 decibels

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526

1 on that meter, but in reality it was only 77
2 decibels, wouldn't that still be a loud noise?

3 A. It depends if you were actually
4 measuring the noise or if you were measuring

5 wind, for example.

6 Q. No, I wasn't referring to wind. I'm
7 saying if I recorded 80 decibels of noise coming
8 say from TL Trucking, and in reality it was only
9 77 decibels, wouldn't that still be a rather
10 loud noise?

11 A. Well, if you were outside without a
12 wind screen, taking sound level measurements, I
13 would almost bet that you were recording wind
14 noise also.

15 Q. What if the wind was calm?

16 A. It was calm when I took my
17 measurements, but my experience is that it's not
18 calm very often.

19 Q. In other words, when I made, oh, 30,
20 40 recordings with that same thing, my chances
21 are that the wind was blowing all the time, is
22 that fair to say?

23 A. It could have been if you were outside
24 without a wind screen.

L.A. REPORTING, 312-419-9292

527

1 Q. But you were there the day it was
2 calm, your recordings two hours with no wind and
3 I made all of mine with wind, is that right?

4 A. I used the wind screen and I was there
5 after a pretty good storm.

6 Q. Okay. I'll buy a wind screen.

7 MS. REISEN: I'm going to object and
8 ask that that last comment be stricken.
9 Nonresponsive. Not a question.

10 HEARING OFFICER HALLORAN: Mr. Brill,
11 just ask questions, please.

12 MR. BRILL: I'm sorry.

13 HEARING OFFICER HALLORAN: Objection
14 sustained.

15 BY MR. BRILL:

16 Q. You said you would rather have picked
17 a different time to make your tests, but you
18 chose 5:00 to 7:00 on the advice of Mr. Latoria.

19 Do you normally ask owners when the
20 best time to make a test is?

21 A. No, I also consulted with the
22 attorneys also.

23 Q. They wouldn't be biased either, would
24 they?

L.A. REPORTING, 312-419-9292

528

1 A. The reason I was asking was because I
2 wanted the most activities to measure. I

3 certainly didn't want to go to your home when
4 they weren't washing any trucks.

5 Q. You were advised that 5:00 to 7:00
6 would be the most activity at TL Trucking?

7 A. Yes, and this is when -- when the most
8 complaints have been received, to my knowledge.

9 Q. Who told you when -- who told you when
10 those complaints were made? I mean, you seem to
11 think that most people jump out of bed in the
12 morning and go make a complaint about noise,
13 5:00 to 7:00, when they're really getting up to
14 go to work.

15 Does that -- does that seem normal?
16 Does that seem like a normal complaint time or
17 would something more like 2:00 in the morning,
18 11:00 in the morning -- I mean, 11:00 in the
19 evening, wouldn't that be more of a time when
20 you would be getting complaints?

21 A. I've heard of a lot of complaints from
22 people who are awoken early.

23 Q. You said that building a berm would
24 take up a lot of real estate.

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529

1 If a berm would protect children and

2 the health of people around Robinson Crusoe
3 Park, is real estate that big of an issue?

4 A. I can't speak to the safety afforded
5 by a berm or the health effects from a berm.

6 Q. You don't think a berm would be a
7 safer barrier for highway tractors and trailers
8 than a chain link fence?

9 A. Well, from my observations, the
10 tractor trailers were operating at probably 5
11 miles an hour or less. They weren't racing
12 around the lot. They weren't operating at
13 highway speeds.

14 Q. Did you ever -- did you ever see a
15 tank moving at 5 miles an hour?

16 A. Yes, I have seen a tank moving at 5
17 miles an hour.

18 Q. Pretty potent piece of equipment,
19 right?

20 A. The tank is, yes.

21 Q. And yet it weighs less than a tractor
22 trailer?

23 A. Amazing.

24 Q. You are aware that we were provided

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1 with two different sound reports covering the
2 same test of August 31st of 2001?

3 A. Yes, I also issued a draft report, I
4 believe, it was on September 6th.

5 Q. Yes. September 6th and September
6 24th?

7 A. Yes.

8 Q. Those were the two.

9 Could you tell me why changes were
10 made in the second report dated September 24th,
11 all of which seemed to slant the report in TL
12 Trucking's favor?

13 A. Perhaps you can refresh my memory as
14 to what those changes were.

15 Q. I wouldn't mind at all.

16 On page 3, on the third paragraph a
17 line was added that states, this section of
18 Franklin Park can be considered a noisy area.
19 That wasn't in the first draft.

20 Do you know why that was changed to
21 slant the report more favorably towards TL
22 Trucking?

23 A. I wouldn't say that was more favorable
24 to TL Trucking but that was due to a review by

1 one of my peers.

2 Q. Hasn't the whole argument been here
3 this morning that there is so much dam noise
4 around Franklin Park and around where I live
5 that it can be considered a noisy area because
6 of all of that noise?

7 A. There has been questions of that
8 effect, yes.

9 Q. But you don't believe that slants the
10 report?

11 A. No, I think it's fair and accurate.

12 Q. But it wasn't added --

13 A. Yes, it was added after one of my
14 fellow engineers took a look at the report and
15 thought this would clarify the --

16 Q. In other words, the report is not
17 compiled by you exclusively, you have other
18 people look it over and --

19 A. Yes.

20 Q. -- change things?

21 A. They don't change things but they --

22 Q. Well, that is a change, isn't it?

23 MS. REISEN: Again, I'll ask that Mr.
24 Brill allow Mr. Homans to provide an answer

1 before he poses the next question.

2 HEARING OFFICER HALLORAN: I agree.
3 You're not letting the witness answer the
4 question and it's been going on for sometime. I
5 would appreciate it if you would let the witness
6 answer the question.

7 Thank you.

8 BY MR. BRILL:

9 Q. Okay.

10 A. My fellow employees do not make any
11 changes. They make comments. I choose whether
12 to incorporate those comments.

13 Q. And you chose that one, to incorporate
14 that one?

15 A. Yes.

16 Q. When you make a statement such as can
17 be considered, couldn't a different sound expert
18 on a different day, at a different time be of
19 the opinion that this is not a noisy section of
20 Franklin Park?

21 A. With the number of trains that I heard
22 and the aircraft that were going over, and my
23 experience with areas around the airport, I
24 would say that most people would be in

1 agreement.

2 Q. If you had taken the sound test when
3 you thought was the better time to take it, is
4 it possible that that comment might have been
5 changed as well?

6 A. It could have been if there was less
7 rail traffic and less air traffic and the
8 industrial source were quieter during that
9 period.

10 Q. I mean, people have lived in this
11 neighborhood for 30 plus years, appear before
12 this hearing and state under oath that any noise
13 from 9200 King Street were minimal to
14 nonexistent before the arrival of TL Trucking
15 and further state that noise emissions from that
16 site are now dramatically worse than before,
17 wouldn't it be fair to conclude from their
18 statements that one of the reasons this section
19 of Franklin Park may now be considered a noisy
20 area are the very noises that are coming from TL
21 Trucking's tanker wash?

22 A. I won't disagree that TL trucking does
23 not generate noise. I was able to hear noise
24 from their site and that is how I determined to

1 include this as good data.

2 Q. Okay. In the last paragraph of
3 recommendations on page 4 of the September 6th
4 report, you state that fences through which
5 daylight is visible are not effective.

6 Could you explain why that statement
7 was dropped in the September 24th report and do
8 you still believe that such fences are not
9 effective?

10 A. I thought this statement was redundant
11 when talking about a fence having no cracks or
12 gaps.

13 Certainly, I believe that a fence
14 through which daylight can be seen is largely
15 ineffective.

16 Q. But there is no explanation as to why
17 that was dropped?

18 A. I thought it was redundant, yes.

19 Q. You mean we're supposed to infer from
20 the fact that a structure that is with no cracks
21 and no air gaps, we're supposed -- from that
22 statement we're supposed to figure that a fence
23 that does have slats in it and is not effective,
24 I mean, it seems it me that when you drop

1 that --

2 MS. REISEN: I'm going to object.
3 The question has been posed, the conclusion by
4 Mr. Brill is not appropriate questioning.

5 HEARING OFFICER HALLORAN: Could you
6 rephrase what you're trying to get across here,
7 Mr. Brill?

8 BY MR. BRILL:

9 Q. I'm having difficulty.

10 You say that its redundant to leave
11 that sentence in that such fences are not
12 effective, because of the fact that you stated
13 that a solid barrier would be the type of
14 barrier we'd need to control noises from TL
15 Trucking?

16 A. Mr. Brill, I misspoke. If you will
17 look on page 5 of the September 24th report,
18 there that sentence appears about daylight being
19 visible, and I caution against using basket
20 weaved fences and I also talk about cracks or
21 gaps as being totally ineffective.

22 So, I apologize for misspeaking. I
23 just moved this sentence around.

24 Q. You moved it from one place to another

L.A. REPORTING, 312-419-9292

536

1 in the report, is that it?

2 A. Yes.

3 Q. Okay. Did the Kintzinger law firm or
4 TL Trucking or anyone else recommend that
5 changes be made in the second report?

6 A. No.

7 Q. That was all internal?

8 A. Yes.

9 Q. Okay. You stated in the original
10 report that 85 percent of the data was separated
11 out due to extraneous events, but said nothing
12 about considering this section of Franklin Park
13 a noisy area. Then in the changed report you
14 stated that 46 percent of the data was separated
15 out due to extraneous events, a much lower
16 figure. And yet we see the noisy section of
17 Franklin Park comment appear.

18 Can you explain that, in other words,
19 when it was 85 percent it wasn't considered
20 noisy?

21 A. That was a typographical error, Mr.
22 Brill, a gross error, if I may add.

23 Q. Only by 50 percent.
24 When you changed the paragraph,

L.A. REPORTING, 312-419-9292

537

1 changed paragraph 3 on page 3 of the report, by
2 adding the noisy section of Franklin Park
3 comment, didn't you change the impact of the
4 report dramatically?

5 A. No, I felt the conclusions from the
6 table spoke for themselves, and I wanted to
7 reinforce this in that I was not able to correct
8 for ambient and really couldn't ascertain what
9 noise was coming from TL Trucking and which was
10 coming from the environment in the end.

11 Q. But you didn't feel that that comment
12 changed the impact of the report?

13 A. No.

14 Q. On the morning of the test, what time
15 did you arrive at the 9204 Crescent Drive
16 address, do you remember?

17 A. It was shortly after 5:00 a.m.

18 Q. On page 2 paragraph 4, of both
19 reports, you stated the streets were dry and the
20 rain had ceased three to four hours before
21 measurements were initiated.

22 How do you know rain ceased three to
23 four hours earlier on Crescent Drive when I
24 presume you were home in bed?

L.A. REPORTING, 312-419-9292

538

1 A. I was just getting up and the rain had
2 ended about three or four hours previous to
3 measurements when I was at home. By the
4 condition of the streets, it looked like the
5 rain had been over for that long.

6 Q. I'm sorry. You judged it to have
7 ceased three to four hours earlier?

8 A. Yes.

9 Q. Okay. You stated in your report dated
10 September 6th, that table 3 represents the
11 result from our analysis.

12 How is the board or I to know what
13 you're talking about when we find a table 3 on
14 page 4, and a different kind of table 3 on page
15 9 of the report?

16 A. This is in the draft report you're
17 speaking of?

18 Q. Draft report.

19 MS. REISEN: Your Honor, we've
20 entered into evidence the final report, which is

21 what the board is going to review.

22 And I understand Mr. Brill's line of
23 questioning on some of the information as being
24 pertinent but as far as what they're actually

L.A. REPORTING, 312-419-9292

539

1 going to read, it makes more sense to question
2 as to what has been submitted and I think Mr.
3 Homans has been pretty clear in that he like
4 many other professionals does a draft report to
5 catch issues that weren't caught the first time.

6 HEARING OFFICER HALLORAN: Mr. Brill?

7 MR. BRILL: Well, I was just curious
8 that the -- you know, I get the feeling that
9 this is supposed to be a very precise report.
10 The only reason I'm bringing all of these
11 inconsistencies up is to show the exact
12 opposite.

13 THE WITNESS: Well, Mr. Brill, I
14 believe I got messed up on my table numbering
15 and corrected that in the final report.

16 BY MR. BRILL:

17 Q. You stated in your report on page 2,
18 now, this is the final report, that it was your
19 understanding that normal procedures were

20 followed during acoustical measurements.

21 Did someone from TL trucking tell you
22 normal procedures were in effect while you were
23 testing, if not, how can you tell what normal
24 procedures are and what they are not?

L.A. REPORTING, 312-419-9292

540

1 A. The only reason I made this statement
2 is that I met with Hank Latoria after the
3 readings in his office and talked over
4 specifically how many trucks were washed, and if
5 anything were out of the ordinary that morning.

6 Q. The same Hank Latoria that told you a
7 good time to test would be from 5:00 to 7:00?

8 A. Yes.

9 Q. I see.

10 If normal procedures were followed
11 during the test period, did you record any
12 workmen hammering on metallic tanker lids or
13 slamming them down while the tankers were being
14 inspected in the north -- at the north lot line?

15 A. Not at the -- at the north lot line
16 but I did hear some banging or slamming on one
17 or two instances.

18 Q. But you didn't see anyone slamming

19 lids looking down in there to see whether
20 they -- I presume whether they were dirty or
21 clean? You didn't see anybody slamming lids
22 near the fence line?

23 A. No, or if they were, I did not hear
24 them because of other noises. I did hear some

L.A. REPORTING, 312-419-9292

541

1 slamming from the back wash bays.

2 Q. If there was slamming of a lid close
3 to that fence, I presume that would be a lot
4 louder than if it was in that enclosed building
5 and someone slammed one there, wouldn't it?

6 A. Yes, presumably. It's a lot closer.

7 Q. Yes.

8 Did you record any power blowers used
9 in material transfer while the tankers were
10 parked near that same north fence?

11 A. No.

12 Q. Okay. Did you record any stone
13 grading or tractor scrapping to fill in pot
14 holes in the yard?

15 A. No, there was no roadwork that was
16 taking place while I was taking my measurements.

17 Q. Did you record any back up beepers

18 during truck maneuvers?

19 A. Yes, there were back up beepers that
20 were audible.

21 Q. Did you record any air horn use by the
22 truck drivers?

23 A. No, I did not.

24 Q. If you didn't record any of those

L.A. REPORTING, 312-419-9292

542

1 noises and others, how can you assume that
2 normal procedures were followed?

3 MS. REISEN: I'm going to object he is
4 making an assumption that the witness has not
5 testified to. The witness has testified he
6 actually did hear some of those noises.

7 HEARING OFFICER HALLORAN: Mr. Brill?

8 MR. BRILL: All right.

9 BY MR. BRILL:

10 Q. You didn't hear the blowers in use?

11 A. At the north property line, no.

12 Q. Well, did you hear them at all?

13 A. I heard them in the washing bays --

14 Q. I don't mean the blowers that blow on
15 the -- blow on the tankers to dry them. I mean,
16 the power blowers that are used to transfer

17 material from one chamber in the tanker to
18 another or from one tanker to another?

19 A. I did not hear that or the noise was
20 obscured by aircraft or something like that.

21 Q. You didn't hear the stone --

22 HEARING OFFICER HALLORAN: Mr. Brill,
23 could you, please, let the witness finish his
24 answer?

L.A. REPORTING, 312-419-9292

543

1 Thank you.

2 BY MR. BRILL:

3 Q. You didn't hear the stone grading
4 going on?

5 A. No. As I stated before, there was no
6 road work going on between 5:00 and 7:00 in the
7 morning.

8 Q. And you didn't hear any air horns?

9 A. No, I did not.

10 Q. And yet you assumed normal procedures
11 were followed?

12 A. Yes, I do.

13 Q. If the tanker truck wash facility were
14 in operation, aren't those some of the noises
15 you might expect -- you might expect to hear?

16 A. Not necessarily. I guess I questioned
17 the use of air horns for more than emergency
18 situations and I also wondered why road grading
19 would take place on a continuous basis.

20 Q. Did you ever record other truck wash
21 facilities around Illinois or anywhere?

22 A. Yes, I was involved with Cary
23 Company's trunk wash down in Decatur.

24 Q. And they didn't use air horns there

L.A. REPORTING, 312-419-9292

544

1 either?

2 A. Not that I recall, no.

3 Q. If you didn't record any of those
4 noises, is there a good chance that the
5 employees of TL Trucking knew you were recording
6 their activities?

7 A. They could have known I was there. I
8 was -- I was parked in front of your residence.
9 I could see them. They could certainly have
10 seen me, particularly set up the equipment, but
11 I doubt they would have known I was there
12 because I -- as I stated before, there was --
13 one employee was playing the radio loudly in the
14 cab of a truck.

15 Q. But you confirmed -- conferred with
16 Ms. Reisen and Mr. Latoria as to when a good
17 time would be to make your recordings, right?

18 A. That's correct.

19 Q. And but they wouldn't pass on any
20 information to their employees about that, would
21 they?

22 A. I don't know.

23 Q. On page 3 of the change sound report
24 it states that we cannot recall a survey where

L.A. REPORTING, 312-419-9292

545

1 46 percent of the data were separated out due to
2 extraneous events.

3 Does that mean of all of the surveys
4 you recall, none was as high as 46 percent, or
5 none was as low as 46 percent?

6 A. I can't recall throwing out nearly 50
7 percent of the data due to extraneous sources in
8 any other survey.

9 Q. In other words, you're saying you've
10 never seen anything that high?

11 A. I've never seen -- that is correct.
12 I've never seen that many interruptions.

13 Q. Does -- that doesn't mean that you can

14 recall higher and lower percentages, but none
15 exactly at 46? I mean, it's just that 46 figure
16 is -- that couldn't be just that you don't
17 recall any at that 46 percent, but there could
18 have been higher ones and lower ones?

19 A. No. That was not my testimony.

20 I spoke about never remembering
21 interruptions that approached 50 percent.

22 Previously with Ms. Reisen, I talked
23 about generally 20 to 30 percent would be
24 considered -- a normal 30 percent would be a

L.A. REPORTING, 312-419-9292

546

1 lot, a lot of interruptions.

2 Q. And both sound reports you stated that
3 measurements of sound emissions from TL Trucking
4 were taken from the curb in front of the Brill
5 residence.

6 Were any recordings taken in RCP to
7 ascertain the effect of noise TL Trucking might
8 have if I were seated at a table in the park?

9 A. No, there were not.

10 Q. Okay. Of course you weren't here --
11 well, I think I will still ask it.

12 If Mrs. Gibas, a complaining witness

13 in these proceedings, and whose property abuts
14 TL Trucking were the primary Complainant --

15 MS. REISEN: I'm going to object
16 because she is not the primary Complainant,
17 answer would be speculative.

18 HEARING OFFICER HALLORAN: Mr. Brill,
19 you want to rephrase, please?

20 MR. BRILL: It might be difficult.

21 BY MR. BRILL:

22 Q. If someone's -- if you were taking a
23 sound measurement on someone's property who
24 abutted the source of the sound, would you put

L.A. REPORTING, 312-419-9292

547

1 that sound recording setup out in the street or
2 would you set it up right next to their
3 property?

4 A. I would set it up -- the noisiest
5 location, which is generally the closest
6 location to the source of the noise.

7 Q. I see.

8 A. Not always.

9 Q. I'm sorry?

10 A. I'm sorry. Not always, but usually it
11 is the closest to the source of the noise.

12 Q. In both of your reports dated
13 September 6th and September 24th, on page 4
14 recommendations were made to reduce the high,
15 the mid and high frequency sound levels
16 emanating from TL Trucking. Do you have any
17 recommendations to reduce low frequency sound
18 levels that seem to penetrate every room in my
19 house?

20 A. No, I don't. The low frequency sound
21 emissions would come primarily from the tractor
22 trailer engines, and certainly closing the truck
23 bay doors would have no effect on those levels.

24 I did run a barrier analysis, which

L.A. REPORTING, 312-419-9292

548

1 has been included as Exhibit 1A, which shows the
2 effect of erecting both an 8 foot as well as a
3 14 foot barrier. And I'll explain about this
4 and then have you take a look at it, Mr. Brill.

5 I considered the four sources of
6 noise, those being in the wash bay with source
7 heights of 3 and 11 feet, and out on the rear of
8 the property and the north yard, at 3 and 11
9 feet, and what I find with my barrier analysis
10 with an 8 foot barrier is that the reduction at

11 low frequencies was as much as 5 DB but no more
12 due to the effect of a barrier.

13 When you get higher barriers, such as
14 14 feet then you do -- you do see additional low
15 frequency reduction due to the insertion lost by
16 the barrier.

17 Q. I certainly take your word for this,
18 because --

19 A. And, if I may go on, Mr. Brill.

20 Q. Sure.

21 A. The problem is that the stack height
22 is high on tractor trailers and that is -- that
23 is a primary source of noise.

24 Q. Well, this terminology is too esoteric

L.A. REPORTING, 312-419-9292

549

1 for me, so you can have that back.

2 In recommendations, number 1 on page
3 4, your report recommends that doors be mandated
4 closed during washing and drying of trucks.

5 What was the disposition of the bay
6 doors during the sound analysis of the report?

7 A. They were usually closed but not
8 always. There were open doors while I was
9 there. I could observe the trucks being washed.

10 Q. Does that recommendation mean that all
11 of the bay doors should be closed during truck
12 servicing or just the doors of the bay in use at
13 the time?

14 A. I'm not sure I understand what you
15 mean by servicing.

16 Q. Well, washing trucks basically, if --
17 does this recommendation say that all the bay
18 doors should be closed when they're washing one
19 truck, let's say in bay number 1, or that 2 and
20 3 can be open while they're washing the truck in
21 bay number 1?

22 A. Well, if the noise can get -- travel
23 between the bays, then they should all be
24 closed, travel among the bays. Pardon me.

L.A. REPORTING, 312-419-9292

550

1 Q. Does that recommendation mean that a
2 bay not in use can be open to a different tanker
3 being moved in while one is still being serviced
4 in the next bay?

5 A. Yes, providing it is isolated from the
6 other bays by a wall.

7 Q. Do you know if there is any such walls
8 at TL Trucking between the bay?

9 A. I seem to recall that there were
10 walls.

11 Q. There were walls?

12 A. Yes.

13 Q. Were they solid walls that go all the
14 way to the ceilings so there would be no sound
15 escape over them or say under them or around
16 them?

17 A. I do not recall that the walls were
18 continuous.

19 Q. Uh-huh.

20 Does that recommendation mean that the
21 bay doors should be closed even if the inside
22 building temperatures get uncomfortably hot or
23 humid?

24 A. This is always a problem with any

L.A. REPORTING, 312-419-9292

551

1 industrial source that in hot weather the
2 employees always like to keep the doors open for
3 ventilation.

4 Q. So your recommendation is only as good
5 as the weather?

6 A. The employees have to understand that
7 the doors have to be closed and other means of

8 ventilation have to be installed.

9 Q. Like air conditioning?

10 A. Not necessarily air conditioning, but
11 fans.

12 Q. Also in your recommendation number 1
13 you suggested that tractors and tankers be
14 unhooked while being washed and dried.

15 Is that so that the doors can be
16 closed during servicing?

17 A. That is correct.

18 Q. Doesn't that also mean that the bays
19 are too short to accommodate both tractors and
20 tankers as a unit?

21 A. I don't think it carry -- that the
22 tractor trailers would fit inside the bays
23 either, and that they had to be unhooked or
24 unhitched before the trucks could be washed.

L.A. REPORTING, 312-419-9292

552

1 Q. So, in other words, the -- well, let
2 me go on with this.

3 Wouldn't unhooking these tankers and
4 tractors so that the bay doors could be closed,
5 and then rehooking them after create even more
6 noise for the people who live there?

7 A. I think that would certainly be less
8 noise than having the doors open.

9 Q. Wouldn't, as a sound expert, wouldn't
10 it be far better to recommend that TL trucking
11 enlarge their building to a size where both
12 tractor and tanker could be washed within a
13 completely enclosed building as the Franklin
14 Park codes require?

15 A. It was not my understanding that this
16 was a requirement to totally enclose the trucks
17 and the tractors and the trailers.

18 Q. I won't go into the codes right now,
19 but you stated on page 1 of your report that an
20 air driver blower is located near the north
21 overhead doors, but in a letter postmarked June
22 5th, 2001, from the Kintzinger law firm,
23 Complainant is advised that an air compressor
24 for cleaning trucks has been recently moved into

L.A. REPORTING, 312-419-9292

553

1 an enclosed room to reduce noise.

2 Could you explain what seems to be a
3 conflict in these two statements?

4 A. I'm a little confused. You're
5 referring to a blower and to an air compressor,

6 I believe those are two different devices.

7 Q. So, they could be right that one was
8 moved and the other one wasn't, is that what
9 you're saying?

10 A. That could be.

11 Q. Okay. You stated in your report, page
12 2, that class C land use was the least stringent
13 classification.

14 If that were so, why would the TL
15 Trucking site be classified as restricted
16 industrial at the Franklin Park building
17 department?

18 A. I don't know about the Franklin Park
19 codes. Here I was referring to the state of
20 Illinois classifications. I believe it is
21 called the standard land use classification
22 manual that is used to determine that -- the
23 codes, the classes, pardon me.

24 Q. So, in other words, there are

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554

1 different classifications from state to village?

2 A. Yes.

3 Q. Is what you're saying?

4 Can you explain -- so, then maybe that

5 wouldn't be the least stringent classification?

6 A. According to Illinois, it is.

7 Q. I see.

8 A. There are only three land use
9 classifications that are used, A, B or C. A
10 being residential. C being industrial.

11 Q. So you're using Illinois standards in
12 comments about a village classification? I
13 mean, you're using the standards of Illinois but
14 we're talking about a village standard here.

15 A. Perhaps you are, but I was talking
16 about Illinois here.

17 Q. Okay. Can you explain how you can
18 determine in less than 2 hours to a person who
19 has lived in the area for 30 plus years that he
20 or she now lives in a section of Franklin Park
21 that can be considered a noisy area?

22 A. This is only based on what I observed
23 and heard at the time that I was there.

24 Q. In other words, it was a noisy area

L.A. REPORTING, 312-419-9292

555

1 for those two hours?

2 A. Yes.

3 Q. But you say nothing about the other 30

4 years?

5 A. I can infer nothing about the other 30
6 years.

7 Q. Wouldn't it take a lot more tests at
8 different times of the day and different days of
9 the week and different times of the year to make
10 such a determination?

11 A. As far as trying to infer out the 30
12 years, yes, it probably would.

13 Q. Okay. Wouldn't it be more accurate to
14 say that during our particular test period, you
15 might consider this section of Franklin Park a
16 noisy part but we know absolutely nothing about
17 the last 30 years or for that matter the next 30
18 years?

19 In other words, it's just that 2 hour
20 segment we're talking about, right?

21 A. I suppose that would be technically
22 correct, yes.

23 Q. Did your sound recording company get a
24 parking permit from the village to park on

L.A. REPORTING, 312-419-9292

556

1 Crescent Drive as it is a law violation to park
2 a nonresident vehicle on that street for more

3 than 15 minutes?

4 A. No, we did not. I was in the car most
5 of the time.

6 Q. You said that on page 4 of the report
7 that you recommend the erection of a noise
8 barrier along the north property line of TL
9 Trucking.

10 In what way should that barrier be
11 built and of what materials in order to stop the
12 noises escaping the property lines of TL
13 Trucking?

14 A. On page 5, I speak about the wall
15 construction, that the density should be at
16 least 3 pounds per square foot.

17 As a practical matter, a sheet of half
18 inch plywood weighs about 2 pounds per square
19 foot.

20 So this is all the mass that is
21 required. It could be of any solid material,
22 including metal or wood, certainly something
23 that won't have any cracks or gaps is a chief
24 concern of mine.

L.A. REPORTING, 312-419-9292

557

1 Q. I'm not really trying to solve TL

2 Trucking's problem, but what if they built a
3 steel building along that lot line there, say of
4 15 feet high or so, would that mitigate any of
5 the noises that came through that area?

6 A. Yes, if they were to build a
7 continuous shed, then it would. If it was a
8 small shed, it would not. It would have to --

9 Q. If it was a continuous one like we see
10 on the golf courses, storage sheds and it went
11 from one side to the other, and whatever the use
12 they could find for it but that would help with
13 the noise problem, wouldn't it?

14 A. It would providing the walls of the
15 structure were at least 3 pounds per square
16 foot. And, again, the structure would have to
17 extend from property line to property line, the
18 entire width.

19 Q. On page 2 of the report, of both
20 reports, you state that the winds were calm
21 during the test.

22 If the usual prevailing winds were
23 blowing and O'Hare jets were taking off to the
24 west, wouldn't the neighborhood sound levels be

1 dramatically lower?

2 A. No, not necessarily. I heard a lot of
3 noise from over flying planes also.

4 Q. But if they were flying out west and
5 north, you wouldn't have over flights, would
6 you?

7 A. During westerly winds you have over
8 flights, don't you?

9 Q. We have prevailing westerly winds, if
10 you look at the map, a plane always takes off
11 into the wind and that would bring it out over
12 Bensenville somewhere, and that's why we sort of
13 contend that we got a quiet neighborhood, or at
14 least relatively quiet.

15 In other words, if the winds were
16 blowing their usual direction, which is most of
17 the time, wouldn't the sounds that you were
18 picking up on your recording from planes be a
19 lot less?

20 A. If there were no planes flying over,
21 then the sounds would be less, however, I can
22 only speak to the O'Hare noise contours for the
23 area and I believe that you're in at least the
24 LDN 65 zone.

1 Q. But that you can be in an LD 69
2 zone -- is that --

3 A. 65.

4 Q. 65 zone. And there may not be a --
5 there might be a snow storm raging and there
6 wouldn't be a plane flying over your head at
7 all, right?

8 A. Right, but on an average basis there
9 would be significant air craft flying.

10 Q. Right.

11 But what I'm referring to is your
12 test, if your test was taken on say the average
13 type day when the wind is from the west or
14 during -- let's say -- yes, let's say the wind
15 was from the west or from the northwest,
16 wouldn't these planes be taking off in a
17 different direction and our noise levels would
18 have been significantly lower?

19 MS. REISEN: I'm going to object.
20 This has been asked and answered in several
21 different forms. Basically, the witness has
22 already indicated that he took a 2 hour test.
23 He did it in accord with the Illinois standards.
24 If the neighborhood would have been bombed, it

1 would have changed the readings, too. We can
2 draw out 500 scenarios but Mr. Homans has been
3 very, very clear that how he took the test, when
4 he took the test and what protocol he followed.

5 HEARING OFFICER HALLORAN: Mr. Brill?

6 MR. BRILL: Well, he took the test
7 when it was recommended by the law firm and --

8 MS. REISEN: I'm going to object.
9 That is Mr. Brill's assertion and belief. And
10 we can bring in testimony a little bit later
11 about that --

12 HEARING OFFICER HALLORAN: You can let
13 Mr. Brill explain, please, thank you.

14 BY MR. BRILL:

15 Q. Yes. Mr. Homans, that is -- how do
16 you pronounce your last name?

17 A. Homans.

18 HEARING OFFICER HALLORAN: Sir. What
19 is your response to Ms. Reisen's objection?

20 MR. BRILL: Well, my response is by
21 asking him a question that --

22 HEARING OFFICER HALLORAN: No. You
23 explain to me why -- she said that the question
24 has been asked and answered and I count -- I

1 would say 35 percent of the questions you've
2 asked in the last hour have been asked and
3 answered at least two or three times, but she
4 objected to your last question being asked and
5 answered regarding wind and the normal
6 procedural times. And I've heard that ten
7 times, you know. Who recommended it and why he
8 was out there.

9 MR. BRILL: Mr. Homans conferred with
10 your law firm and with Mr. Latoria as to when a
11 good time would be to take the test.

12 MS. REISEN: Perhaps I can ask Mr.
13 Homans two questions, which would clarify this.

14 MR. BRILL: I believe I am in
15 cross-examination now.

16 HEARING OFFICER HALLORAN: Mr.
17 Brill --

18 MR. BRILL: Yes.

19 HEARING OFFICER HALLORAN: I'm going
20 to have Mr. Brill tighten it up, ask one more
21 question of Mr. Homans, and then you can
22 rehabilitate on redirect, wherever we are, but
23 we've got to tighten this up, Mr. Brill.

24 You may proceed.

1 MR. BRILL: One more question?

2 HEARING OFFICER HALLORAN: Regarding
3 who supposedly told Mr. Homans to go out there
4 between 5:00 and 7:00 a.m., the normal
5 procedure, whatever that was.

6 MR. BRILL: No, he stated that
7 himself. It's in the record.

8 HEARING OFFICER HALLORAN: Well, then,
9 you're asking him again?

10 MR. BRILL: No. She was saying
11 that -- that -- I got to be careful how I say
12 this.

13 HEARING OFFICER HALLORAN: Last I
14 heard, Mr. Brill, and correct me if I'm wrong,
15 Ms. Reisen, you asked the witness, so it was the
16 law firm who advised, and I believe something to
17 the extent that Ms. Reisen objected to, and that
18 is that is where we were. And for the sixth
19 time I've heard that you've asked a witness.

20 MR. BRILL: Well, it's not that big of
21 an issue, I better just skip it.

22 HEARING OFFICER HALLORAN: Well, you
23 can ask him one more time. I'll allow you to do
24 that.

1 MR. BRILL: Ms. Reisen, did --

2 HEARING OFFICER HALLORAN: No, the
3 witness. You're asking the witness.

4 MR. BRILL: Oh.

5 BY MR. BRILL:

6 Q. Did you previously state that you
7 conferred with Mr. Latoria and Ms. Reisen as to
8 when a good time would be to take that test or
9 they at least prevailed on you as to when a good
10 time to take the test would be?

11 A. I requested a time when I should be
12 out there when most of the complaints had been
13 received and this is what I recall.

14 Q. Okay. On page 9 of your report, at
15 5:09 you identified a truck on River Road.

16 If you can't see River Road from where
17 you were testing, how did you know there was a
18 truck on River Road?

19 A. Well, I have two ears, and that is the
20 direction that I discerned that the truck was
21 coming from.

22 Q. Then it is an assumption?

23 A. That's correct.

24 Q. Okay. If you could see TL Trucking

1 from where you were parked, isn't there a chance
2 that people working at TL Trucking could see
3 you?

4 A. Yes, I've stated that.

5 Q. Okay. On page 11 of the report at
6 6:01, you recorded the train horns with the
7 notation that they were loud, yet a minute later
8 at 6:02 when you recorded a bang in the bay and
9 truck gear noises there is no mention of the
10 word loud, even though the sound values are even
11 higher or at least equal. Doesn't notation of
12 that sort tend to slant the report?

13 A. No, these were just my observations,
14 this was loud for a train horn, in that the
15 train -- train horn was close to my location.

16 Q. But when a louder noise came, you
17 didn't put a notation that it was loud?

18 A. No, this was --

19 Q. One minute later?

20 A. No, this was referring to the
21 amplitude of the train whistle.

22 Q. In your report you recorded a lot of
23 train horns, but there was no mention of truck

24 air horns, is that correct?

L.A. REPORTING, 312-419-9292

565

1 A. That's correct.

2 Q. Have you ever recorded truckers using
3 air horns?

4 A. Oh, yes.

5 Q. From 75 yards, how loud are they?

6 A. I don't know, they may be in the
7 neighborhood of 80 DBA.

8 Q. If a person were sleeping in his
9 bedroom at 3:00 a.m. with his windows open and a
10 truck driver sounded his air horns from 75
11 yards, isn't there a better chance that person
12 would be startled awake by that event than the
13 sounding of a train horn muffled by several
14 buildings and trees from several blocks away?

15 A. Yes.

16 Q. You stated in your report that your
17 loudest reading was at 6:42. You said it was
18 caused by a jet/truck revving.

19 Wouldn't both sounds produced have to
20 be about equal noise, be of about equal noise to
21 be heard by you?

22 A. No, they would not. In looking at

23 figure 6, around 6:41 a.m. you can observe the
24 build up from the approaching jet as well as the

L.A. REPORTING, 312-419-9292

566

1 decline in sound levels as the jet moves on.

2 Q. But you also noted that there was a
3 truck revving in that period?

4 A. Yes.

5 Q. But if the jet were louder than the
6 truck, wouldn't that mask the sound of the truck
7 so that you wouldn't hear it?

8 A. They are two different noises.

9 Q. So you could hear a loud jet and a
10 less loud truck at the same time, is that --

11 A. Certainly.

12 Q. Okay. In your code system, T stands
13 for TL Trucking, X stands for extraneous noises,
14 yet at 5:13:30, it's coded with a T and includes
15 a high plane sound?

16 A. That's correct.

17 Q. So that couldn't be -- that shouldn't
18 be coded T, is that right? That should be -- I
19 mean, there are two different noises there?

20 A. Well, there were a number of events
21 going on in that 30 second period.

22 Q. But that should have been thrown out
23 then, right?

24 A. Because this was a high plane and

L.A. REPORTING, 312-419-9292

567

1 distant, I considered that most of the noise was
2 due to TL Trucking.

3 Q. Also on 13 of the report, there are 13
4 spaces with no descriptions but coded T for TL
5 Trucking, again, how do we interpret that,
6 meaning of that?

7 A. This was a continuation of the wash
8 activity that was going on as recorded at
9 6:44:30.

10 Q. I'm sorry.

11 But you didn't enter any notation that
12 the wash was going on in those -- and they're
13 blank, correct?

14 A. That's correct, the wash was
15 continuing.

16 Q. Okay. Should there have been a
17 notation in there that the wash was continuing?

18 A. I could have made that notation, yes.

19 Q. Well, what I'm trying to say is we're
20 having a hard time interpreting what it means if

21 there is no notation.

22 A. Well, you see there that a wash is
23 ongoing.

24 Q. Oh, and that covers the other spaces?

L.A. REPORTING, 312-419-9292

568

1 A. Yes.

2 Q. Okay. Also you state in your report
3 at 5:22:30 that wash noises was inaudible.

4 How did you know it wash noise if you
5 couldn't hear it?

6 A. I could see the truck being washed.

7 Q. The truck or the tanker?

8 A. I'm sorry. The tank being washed.

9 Q. You said in item 4 of your report the
10 village of Franklin Park prohibits fences over 8
11 feet in height. This is repetitious.

12 Wouldn't -- there were to be -- well,
13 that's a statement. I can't make that.

14 TL Trucking claims that \$500 cost of
15 making an appeal to the Franklin Park zoning
16 department for a wall variance is cost
17 prohibitive.

18 So what are they paying your company
19 for this -- the sounds report and your court

20 appearance?

21 MS. REISEN: I object, that is --
22 that is privileged information. And it is
23 irrelevant as to how the company decides to
24 spend their money.

L.A. REPORTING, 312-419-9292

569

1 HEARING OFFICER HALLORAN: Mr. Brill?

2 MR. BRILL: I was trying to make --
3 sorry.

4 HEARING OFFICER HALLORAN: Mr. Brill?

5 MR. BRILL: I was trying to make a
6 comparison, 500 seems kind of piddling compared
7 to other expenses that TL Trucking is going
8 through, and I just wondered why that 500 formed
9 the barrier when if I could find out from Brian
10 here what they're charging may be by comparison
11 I could show that that wasn't a very big
12 expenditure.

13 HEARING OFFICER HALLORAN: Also
14 sustain Ms. Reisen's objection.

15 Any further questions, Mr. Brill?

16 BY MR. BRILL:

17 Q. Did you make any sound data recordings
18 of the area prior to 1999?

19 A. Not that I can recall.

20 Q. Did you make any sound data recordings
21 during the hours of say 11:00 p.m. and 5:00 a.m.
22 when most people in this area are asleep?

23 MS. REISEN: Objection, asked and
24 answered.

L.A. REPORTING, 312-419-9292

570

1 HEARING OFFICER HALLORAN: I agree.

2 Mr. Brill, you know, 6, 7 times, I think.

3 BY MR. BRILL:

4 Q. Did you make any sound recordings
5 within Robinson Crusoe Park?

6 MS. REISEN: Objection, asked and
7 answered.

8 HEARING OFFICER HALLORAN: I agree,
9 Mr. Brill. We have to tighten this up. You've
10 asked that I know three times, excuse me, twice
11 before, this will be the third.

12 MR. BRILL: I'm sorry.

13 No further questions.

14 HEARING OFFICER HALLORAN: Okay.
15 Before we go on, I'm going to, come heck or high
16 water, at 1:00 p.m. you know, regardless of
17 where we are with the witness, we're going to

18 take a lunch break. So you may proceed with on
19 a redirect.

20 MS. REISEN: Very brief.

21 HEARING OFFICER HALLORAN: Thank you.

22 REDIRECT EXAMINATION

23 BY MS. REISEN:

24 Q. Mr. Homans, Mr. Brill asked you

L.A. REPORTING, 312-419-9292

571

1 questions regarding the forest preserve to the
2 east of River Road.

3 Does that forest preserve have any
4 effect on the readings that you took?

5 A. No, it does not.

6 Q. Regarding a wind of 10 miles an hour,
7 is that slight? Is that a slight wind, if you
8 were outside?

9 A. Ten miles an hour is pretty
10 substantial. It's a noticeable wind.

11 Q. Okay. And we don't have any -- strike
12 that.

13 You got lucky in that there wasn't any
14 wind, correct?

15 A. That's correct.

16 Q. But your wind screen or wind shield

17 would have taken that into account had it been
18 present?

19 A. That's correct, up to about 10 or 12
20 miles an hour.

21 Q. There has been a lot of questions and
22 you've indicated that you requested to know what
23 time of the day was a busy time, correct?

24 A. Yes.

L.A. REPORTING, 312-419-9292

572

1 Q. Did we dictate what day you come out
2 and take the sound readings?

3 A. Not that I can recall, no.

4 Q. In fact, did you give us advance
5 warning as to what day you'd actually take the
6 sound readings?

7 A. I don't believe so.

8 Q. Was the purpose in your request to try
9 and hit what was felt to be a busy time?

10 A. Yes.

11 Q. And, actually, your results indicate
12 that it wasn't just a busy time for TL it was
13 just a busy time in the area, wasn't it, or a
14 noisy time in the area?

15 A. It was a noisy area, yes.

16 Q. Regarding the changes to your report
17 and the internal review process you have, is the
18 purpose of that to help lay people understand
19 your results?

20 A. Yes, and to make the report easier to
21 read.

22 Q. Okay. Your data, your objective data
23 was never changed, was it?

24 A. No, it was not.

L.A. REPORTING, 312-419-9292

573

1 Q. Another sound engineering could pick
2 up your raw data and write their own report,
3 could they not?

4 A. Yes.

5 Q. It's the report that helps people like
6 us who are not engineers, understand what is
7 going on, is that a fair statement?

8 A. Yes.

9 Q. Do you have any base of knowledge as
10 to what the volume of business is for other
11 industries now as compared to two years ago, in
12 that Franklin Park area?

13 A. No, I do not.

14 Q. It in any way relevant to the

15 objective data you obtained on the day you did
16 your testing?

17 A. No, I don't believe so.

18 Q. Mr. Brill asked you numerous questions
19 regarding picking up noises such as back up
20 beepers, air horns, and on numerous occasions
21 you tried to state that the noise might have
22 been obscured.

23 What might the noise have been
24 obscured by?

L.A. REPORTING, 312-419-9292

574

1 A. By aircraft, by trains, by trucks and
2 cars in the area.

3 Q. You made a voluntary notation or a
4 statement regarding DN 65 zones for O'Hare. You
5 have two consultants who work at O'Hare.

6 What is a DN 65 zone? What does that
7 mean?

8 A. DNL stands for day night sound level.
9 That is a contour that is drawn by the airport
10 to indicate where noise impact starts.

11 Q. So despite the prevailing winds on any
12 given day, O'Hare flies enough craft in and out
13 that they can give estimates of what noise is

14 going to be in what areas, is that a fair
15 statement?

16 A. Yes. And this is based on operational
17 data over a long period of time, that period of
18 time being one year.

19 Q. Regarding your recommendation to keep
20 the bay doors closed, that is something that can
21 be enforced at no additional cost to the
22 company, is that correct?

23 A. I would assume so. I'm not sure if
24 additional ventilation will have to be provided.

L.A. REPORTING, 312-419-9292

575

1 Q. Okay. Basically, though, posting
2 signs, getting on the drivers and possibly
3 providing additional ventilations will allow the
4 doors to stay shut, which will provide a benefit
5 in sound?

6 A. Yes.

7 Q. Lastly, regarding the class C land
8 use, that is the state standards, and if a city
9 decides to make a higher standard, they're free
10 to do so, correct?

11 A. They're certainly free to do so. I
12 was only referring to Illinois.

13 Q. Okay. But a city is not allowed to
14 make restrictions or use of noise that goes
15 below what the state requires, is that your
16 understanding?

17 A. Yes, that is my understanding.

18 MS. REISEN: I have no other
19 questions.

20 Thank you.

21 HEARING OFFICER HALLORAN: Thank you,
22 Ms. Reisen.

23 Recross, Mr. Brill

24

L.A. REPORTING, 312-419-9292

576

1 RECROSS-EXAMINATION

2 BY MR. BRILL:

3 Q. From your experience in a blue collar
4 neighborhood, such as I live in, wouldn't most
5 people be going to work in the hours between
6 5:00 and 7:00 a.m.?

7 MS. REISEN: Objection, beyond the
8 scope of redirect.

9 HEARING OFFICER HALLORAN: You
10 mentioned something about 5:00 to 7:00 normal
11 procedures. We'll give him a little latitude.

12 Go ahead, Mr. Brill, or the witness may answer.

13 THE WITNESS: I didn't consider this
14 to be a blue collar neighborhood. It looked --
15 it's a very nice neighborhood.

16 BY MR. BRILL:

17 Q. Nothing wrong with a blue collar one.

18 A. But -- but no, I didn't consider that.

19 Q. I see.

20 But if a lot of people were leaving
21 for work between 5:00 and 7:00, from our
22 neighborhood, wouldn't that make -- wouldn't
23 that explain a lot of the street noises that you
24 were picking up in your report?

L.A. REPORTING, 312-419-9292

577

1 A. Certainly, yes.

2 Q. Okay. How are they going to institute
3 a policy keeping the bay doors shut during
4 operations?

5 MS. REISEN: Objection, speculation.

6 HEARING OFFICER HALLORAN: I agree,
7 sustained.

8 MR. BRILL: Well, I'll ask that of
9 their other witnesses, if they have any.

10 MR. BRILL: That's all.

11 HEARING OFFICER HALLORAN: Any,
12 re-redirect, Ms. Reisen?

13 MS. REISEN: No.

14 HEARING OFFICER HALLORAN: Thank you,
15 sir. You may step down.

16 We're going to take a 45 minute lunch
17 break. Everybody be back here at 1:30. It's
18 now approximately a quarter to 1:00.

19 Thank you very much.

20 (Off the record.)

21 HEARING OFFICER HALLORAN: We're back
22 on the record. It's approximately 1:35, back
23 from lunch. I believe Ms. Reisen is about to
24 call her fourth witness.

L.A. REPORTING, 312-419-9292

578

1 MS. REISEN: Correct.

2 HEARING OFFICER HALLORAN: Okay.

3 MS. REISEN: And two housekeeping
4 issues. I originally put on the record that we
5 had Respondent's Exhibits 1 through 67 with 4
6 omitted. 62 is also to be omitted. I had one
7 double marked and that was my mistake. So there
8 will be Respondent's Exhibits 1 through 67 with
9 omissions for 4 and 62, and that is for the

10 board's clarity.

11 In addition, I'm just bringing out at
12 this point that we've got four witnesses, two
13 that should be very short, and two that are Mr.
14 Latoria and Mr. Birkett. And it's our intention
15 to try to get this done today. I know several
16 of us don't have lodging to stay in town another
17 night and I know all parties want to get this
18 done. So we're hoping that can be taken into
19 accord by everybody.

20 HEARING OFFICER HALLORAN: Okay.

21 MS. REISEN: With that we'll call Dan
22 White.

23 (Witness sworn.)

24 DAN WHITE,

L.A. REPORTING, 312-419-9292

579

1 called as a witness herein, having been first
2 duly sworn, was examined and testified as
3 follows:

4 DIRECT EXAMINATION

5 BY MS. REISEN:

6 Q. State your full name for the record.

7 A. Mark Kenneth White.

8 Q. And where do you reside?

9 A. 3436 Birch. It's a street in Franklin
10 Park.

11 Q. Okay. Mr. White, I'm going to direct
12 your attention to what has been marked as
13 Complainant's Exhibit --

14 HEARING OFFICER HALLORAN: You know,
15 if I may interject here, it's originally marked
16 Exhibit A, Complainant's Exhibit A, but I think
17 for continuity, I think we're going to remark it
18 Complainant's Exhibit No. 2.

19 MS. REISEN: Okay.

20 HEARING OFFICER HALLORAN: We'll now
21 refer to Complainant's Exhibit A as the
22 numerical Exhibit No. 2.

23 MR. BRILL: That doesn't conflict with
24 my other exhibits, does it, sir?

L.A. REPORTING, 312-419-9292

580

1 HEARING OFFICER HALLORAN: No, sir .

2 MR. BRILL: Okay.

3 BY MS. REISEN:

4 Q. Direct your attention to Complainant's
5 Exhibit No. 2, and you said Birch Street,
6 correct?

7 A. Correct.

8 Q. Could you take my yellow highlighter
9 here and indicate where Birch Street is on
10 Complainant's 2?

11 A. Here is Birch Street.

12 Q. Are you able to tell from that
13 document which of the lots would be your lot?

14 A. That is my house.

15 Q. You colored that in. I want you to on
16 the other side over here put MW for your
17 initials.

18 A. (Marking.)

19 Q. Thank you.

20 How long have you lived at that
21 address?

22 A. Since 1960.

23 Q. Okay. And have you ever not resided
24 there for any length of time?

L.A. REPORTING, 312-419-9292

581

1 A. Yes.

2 Q. When would that be?

3 A. Between approximately 1979 and 1986.

4 Q. Okay. That was the home you grew up
5 in, correct?

6 A. Correct.

7 Q. Now, you own that home?
8 A. Correct.
9 Q. Who resides there with you?
10 A. My wife, Kathleen White, and our three
11 children.
12 Q. What are the ages of your children?
13 A. Ben is 7, Maggi is 5, and Katie is 1
14 and a half.
15 Q. Okay. And what is your occupation,
16 Mr. White?
17 A. I'm a firefighter for the village of
18 Franklin Park.
19 Q. How long have you been a firefighter?
20 A. Twenty-one years.
21 Q. And for the record are you here
22 because I've subpoenaed you to be in court
23 today?
24 A. Yes.

L.A. REPORTING, 312-419-9292

582

1 Q. Are you familiar with the location of
2 TL Trucking?
3 A. Yes, I am.
4 Q. And what is their address, if you know
5 it?

6 A. 9200 King Street.

7 Q. Okay. And you've seen the property,
8 you know where they're at, you know what they
9 operate?

10 A. Yes.

11 Q. Are you aware of noises coming from
12 the property from time to time?

13 A. Yes.

14 Q. Okay. Are you aware of other
15 industries on King Street?

16 A. Yes, I know a lot of them because I'm
17 also a fire inspector for the village.

18 Q. Can you name a few?

19 A. You have Bruner & Lay, Just
20 Manufacturing. You have Regency. You have
21 Belmont Plating. Want me to keep going? MPP
22 Industries.

23 Q. Are there a lot of industries on King
24 Avenue?

L.A. REPORTING, 312-419-9292

583

1 A. Yes, it's all industrial, all of King
2 Street.

3 Q. Has it been that way as long as you
4 can remember?

5 A. Yes.

6 Q. What does Bruner & Lay do?

7 A. Bruner & Lay, if I'm not mistaken,
8 makes chisels and such. They have big drop
9 hammers, forges.

10 Q. Okay. Is it known, commonly known as
11 Bruner Forge?

12 A. I'm not aware. I've always known of
13 it as Bruner & Lay since I was a child.

14 Q. Describe the noise that comes from
15 there?

16 A. They have big hammers that more or
17 less are dropped down and the vibration and the
18 hammering can be heard throughout the
19 neighborhood.

20 Q. Can you hear that from your home?

21 A. Yes.

22 Q. Can you feel the vibration from your
23 home?

24 A. Oh, yes.

L.A. REPORTING, 312-419-9292

584

1 Q. How would you compare the noise and
2 the disruption from Bruner & Lay compared to
3 that from TL tucking?

4 A. I don't even know TL Trucking is there
5 because of the noise I hear from Bruner & Lay
6 and other industry.

7 Q. What does Just Manufacturing do, if
8 you know?

9 A. Just Manufacturing makes sinks.

10 Q. Okay. And do you know what Regency
11 does?

12 A. Regency is a warehouse for the Horizon
13 Expo Center.

14 Q. How about Belmont Plating?

15 A. Belmont Plating plates anything metal.

16 Q. Okay. Now, all of these industries,
17 are you aware if they use semitractor trailers
18 for their businesses?

19 A. I believe they all do.

20 Q. Okay.

21 A. Just for the size of the companies
22 that they have. I would say, yes. I've seen
23 semitrailers in each one of their locations.

24 Q. Is it uncommon to see several trucks

L.A. REPORTING, 312-419-9292

585

1 up and down King Street at any given time?

2 A. Not uncommon at all.

3 Q. Does that change by hour of the day or
4 do a lot these businesses run pretty
5 continuously?

6 A. Belmont Planting runs 24 hours a day.
7 Regency doesn't. Just Manufacturing, you know,
8 with the economy a lot of them ran for 24 hours,
9 a lot of them don't any more because of the
10 economy or they have just dropped off over in
11 the last couple of years. Bruner & Lay does not
12 run their big hammers. I don't ever hear them
13 like after 3:00 o'clock in the afternoon.

14 Q. Now, you're also near an exchange or a
15 bundle of railroad tracks, is that right?

16 A. That's correct.

17 Q. Do you know approximately how far your
18 home is from those railroad tracks?

19 A. I'm estimating, probably about 300
20 feet.

21 Q. Okay. Do you hear the trains?

22 A. Yes.

23 Q. Do you hear the whistles?

24 A. Hear the whistles, air brakes, when

L.A. REPORTING, 312-419-9292

586

1 they start them up, because they actually do

2 park them right behind there.

3 Q. What does that sound like?

4 A. The air, the air brakes when they let
5 them go, you can hear a high whistle. The
6 whistle they have to hit as far as cross -- or
7 the air horn crossing Belmont, when they start
8 them up at 5:00 o'clock in the morning, you hear
9 the -- as they hammer each other, bing, bing,
10 bing as they're taking off, so to speak. You do
11 hear them.

12 Q. What is the sound from the railroad
13 like in relation to the sound you hear from TL
14 Trucking?

15 A. I hear the railroad much more often
16 and more -- in inopportune moments. You know,
17 you hear them at 5:00 o'clock in the morning
18 because that's when they start the trains up.

19 Q. Do you also live near O'Hare?

20 A. Yes.

21 Q. And what would you estimate the
22 distance to be from your home to O'Hare?

23 A. Between a quarter and half a mile.

24 Q. Do you hear the planes?

L.A. REPORTING, 312-419-9292

1 A. Oh, yes.

2 Q. How often?

3 A. They're not as bad as they used to be

4 because they don't use the short runways

5 anymore, but they do -- you do hear them, yes,

6 on a good Sunday afternoon, you can -- I think

7 we've timed them every 45 seconds coming

8 overhead, but they are much higher than they

9 used to be but they're still there.

10 Q. They're still there.

11 Okay. Are you familiar with Robinson

12 Crusoe Park?

13 A. Yes.

14 Q. Did you play there yourself as a

15 child?

16 A. Yes.

17 Q. Do you use the park at all now with

18 your children?

19 A. Yes, I do.

20 Q. How often do you use the park?

21 A. Probably, I would guess, probably

22 maybe twice a week.

23 Q. Do you feel it is unsafe for your

24 children to play there?

1 A. No.

2 Q. You feel you're a prudent parent in
3 trying to protect your children?

4 A. Yes.

5 Q. Have you ever been driven out of the
6 park because of fumes or anything like that?

7 A. No, I have not.

8 Q. What other activities do you do in
9 your neighborhood? Go for walks with the family
10 or anything like that?

11 A. Go for walks. There is a Burger King
12 at the end of the block. We go visit neighbors.
13 We ride our bikes.

14 Q. You grew up in the neighborhood and
15 then you moved away and you chose to come back.

16 Was it industry when you grew up? Was
17 it industrial when you grew up around your home?

18 A. Yes.

19 Q. And yet you chose to come back.

20 Why is that with the -- all the noises
21 that you hear?

22 A. I grew up with it. I didn't -- it
23 didn't bother me. I knew what I was getting
24 into when I bought the house again because I

1 grew up with the noises so I knew what I was
2 getting into before I bought the home, but I
3 grew up with it, it doesn't bother me.

4 Q. Do you feel that the noises create an
5 unreasonable interference with your daily
6 activities?

7 A. All of the noises accumulated?

8 Q. Yes.

9 A. Only when trying to talk on the phone
10 outside, I mean, you can't, but that is more or
11 less the planes going overhead, you know. And
12 like I said, as far as a nuisance, the trains
13 are more of a nuisance at 5:00 o'clock in the
14 morning, you know, stopping or starting or
15 whatever.

16 MS. REISEN: Okay. Thank you. I
17 have no other questions.

18 HEARING OFFICER HALLORAN: Thank you.

19 Mr. Brill, any cross?

20 MR. BRILL: Yes.

21 May I approach?

22 HEARING OFFICER HALLORAN: Yes, you
23 may, sir.

24

1 CROSS-EXAMINATION

2 BY MR. BRILL:

3 Q. First of all, I don't believe I've
4 ever met you, Mr. White. Glad to meet you.

5 A. Pleasure.

6 Q. This is where you're property is,
7 right?

8 A. Correct.

9 HEARING OFFICER HALLORAN: For the
10 record, Mr. Brill is pointing to Complainant's
11 Exhibit No. 2.

12 BY MR. BRILL:

13 Q. And this is where the TL Trucking
14 facility is located?

15 A. Correct.

16 Q. Do you have any structures between TL
17 Trucking and where you live, I mean, like, other
18 houses and maybe --

19 A. Yes, you do have houses and garages.

20 Q. A couple of weeks ago I went down
21 Crescent and I observed at the end of the street
22 here that you have a large brick wall that
23 belongs to a factory just over your lot line?

24 A. Vernon Light, yes.

1 Q. Wouldn't that in essence sort of form
2 a sound barrier between you and other industries
3 on King Street?

4 A. Yes.

5 MS. REISEN: Objection, I believe
6 that Mr. Brill is using sound barrier in the
7 same term that we have been using it all along,
8 has not laid the proper foundation for sound
9 barrier to be used.

10 HEARING OFFICER HALLORAN: He may use
11 it. I think the record will reflect his
12 question.

13 BY MR. BRILL:

14 Q. Wouldn't houses along here perhaps 1 .
15 . .8 houses and the trees along here also form
16 sort of a sound barrier for you where you live
17 on Birch Street?

18 A. Yes.

19 Q. Yes. They would.

20 Even though you -- may I sit down?

21 HEARING OFFICER HALLORAN: Yes, Mr.
22 Brill.

23 MR. BRILL: I'm on my way.

24 BY MR. BRILL:

1 Q. Even though you have these brick walls
2 and homes and trees between your home and TL
3 Trucking, despite the fact that you live up to a
4 block from TL Trucking, can you still hear the
5 following from their operations; do you hear air
6 horns?

7 A. Can I or do I?

8 Q. Oh, do you?

9 A. Do I? I do hear air horns. If I know
10 if it is coming from TL Trucking, I don't know.

11 Q. I see.

12 You don't -- then you wouldn't hear
13 tanker hookups either from TL Trucking, you know
14 where they've --

15 A. I've never heard that from my home,
16 no.

17 Q. And slamming of tanker hatches, you
18 wouldn't hear that?

19 A. I have not.

20 Q. And power washing tankers, you
21 wouldn't hear that either?

22 A. I have not heard that. I don't know
23 if I would hear that, but no, I have not.

24 Q. In fact, you're not cognizant of any

L.A. REPORTING, 312-419-9292

593

1 noises that you hear specifically from TL
2 Trucking, is that right?

3 A. That is correct.

4 Q. Would the fact that all of those homes
5 that lie between your property and TL Trucking
6 have a deadening effect on the noises that might
7 be coming from TL Trucking towards your
8 property?

9 A. Yes, they would, but I do hear kids
10 playing in the park.

11 Q. Okay. In referring to the map, again,
12 we have a park that is directly between TL
13 Trucking and where I live, I've referred to it
14 as a noise corridor, but we don't have a brick
15 wall or anything in between there to break any
16 of the noise, is that correct?

17 A. That is correct.

18 Q. That's all open, right?

19 A. Uh-huh.

20 Q. Okay. You say you work for the
21 village of Franklin Park as a fireman?

22 A. That's correct.

23 Q. Does part of the taxes that TL
24 Trucking pay end up as wages and/or your

L.A. REPORTING, 312-419-9292

594

1 pension?

2 A. Yes.

3 MR. BRILL: I don't have any further
4 questions.

5 HEARING OFFICER HALLORAN: Thank you
6 Mr. Brill.

7 Any redirect, Ms. Reisen?

8 MS. REISEN: Briefly.

9 REDIRECT EXAMINATION

10 BY MS. REISEN:

11 Q. Do you feel all the residents in
12 Franklin Park benefit by the tax base from not
13 only TL Trucking but all of the industry?

14 A. Yes, I do.

15 Q. Do you have any personal bias towards
16 TL Trucking?

17 A. No.

18 Q. You're here because you were
19 subpoenaed, correct?

20 A. Yes.

21 Q. Are there homes between you and the

22 railroad track?

23 A. Yes, there is.

24 Q. About how many?

L.A. REPORTING, 312-419-9292

595

1 A. One, you have homes and then two sets
2 of factories.

3 Q. And yet you still hear --

4 A. Yes.

5 Q. -- the trains?

6 A. Yes.

7 Q. I assume there are many homes between
8 you and O'Hare?

9 A. Yes.

10 Q. And you still hear those planes?

11 A. Uh-huh.

12 Q. You're about half a block from
13 Robinson Crusoe Park, correct?

14 A. Correct.

15 Q. And you can hear kids playing in the
16 park?

17 A. I have a new second floor addition,
18 I'm above all the homes in front of my -- across
19 there, so my house actually faces the back yards
20 all the way to the park, and the reason I can

21 say I can hear the kids in the park is because
22 you can hear them playing baseball, about the
23 only place they play baseball in the
24 neighborhood.

L.A. REPORTING, 312-419-9292

596

1 Q. By the same token your second floor is
2 above the brick wall at the end of your street,
3 correct?

4 A. Partially, my home is higher than that
5 building. Can I look out on to the roof from my
6 window, no, I can't. My window is below that.

7 MS. REISEN: I have no other
8 questions.

9 Thank you.

10 HEARING OFFICER HALLORAN: Any
11 recross, Mr. Brill?

12 MR. BRILL: No.

13 (Witness sworn.)

14 ROBERT B. RASMUSSEN,
15 called as a witness herein, having been first
16 duly sworn, was examined and testified as
17 follows:

18 DIRECT EXAMINATION

19 BY MS. REISEN:

20 Q. Please state your full name for the
21 record and spell your last name for the court
22 reporter.

23 A. Robert B. Rasmussen.
24 R-A-S-M-U-S-S-E-N.

L.A. REPORTING, 312-419-9292

597

1 Q. And where do you reside?

2 A. 9237 Crescent Drive, Franklin Park.

3 Q. How long have you lived there?

4 A. We've lived there about 40 years.

5 Q. Okay. I'm going to direct your
6 attention to what has been marked as
7 Complainant's Exhibit 2. I don't mean to -- I'd
8 like you to, if you can ascertain, which lot is
9 yours, if you can't, let me know?

10 A. You've got it marked here, 9237.

11 Q. Okay. And then could you put your
12 initials on that square, also?

13 A. (Writing.)

14 Q. Thank you.

15 Let the record reflect that 9237
16 Crescent Drive was high lighted with a railroad
17 in the corner. You can have a seat.

18 Who resides with you at your home?

19 A. Just my wife and I right now.
20 Q. Okay. And what is your occupation,
21 sir?
22 A. I'm retired.
23 Q. Okay. How long have you been retired?
24 A. Two years.

L.A. REPORTING, 312-419-9292

598

1 Q. Are you familiar with the location of
2 TL Trucking Foodliner?
3 A. I am.
4 Q. And do you know them to be at 9200
5 King Street?
6 A. I didn't know exactly it was 9200, but
7 my wife, you know, works at Just Manufacturing
8 right across the street, so I'm aware of it.
9 Q. Okay. So you're about four lots down
10 from the back of their property, is that a fair
11 guess?
12 A. I'm -- yes, I'm the fifth lot.
13 Q. Are there other homes between yours
14 and Robinson Crusoe Park?
15 A. Yes.
16 Q. How many?
17 A. Four.

18 Q. The four. Okay.
19 Have you at times heard noises coming
20 from TL Trucking Foodliner?
21 A. I have.
22 Q. What sorts of noises have you heard?
23 A. Well, power washers, banging, repair
24 work.

L.A. REPORTING, 312-419-9292

599

1 Q. Okay.
2 A. Mostly we'd be sitting out in the
3 back, you know, during the summer you hear it.
4 Q. Okay. Do you also hear noises from
5 other industries along King Street?
6 A. I do.
7 Q. And what other industries are you
8 hearing noises from?
9 A. Basically Bruner & Lay's where I get
10 it.
11 Q. And what do you hear from Bruner &
12 Lay?
13 A. The banging and it's actually a
14 vibration.
15 Q. So you can feel that?
16 A. Big time.

17 Q. How would you describe the noise
18 coming from Bruner & Lay as compared to TL
19 Trucking?

20 A. Bruner & Lays is much more
21 aggravating.

22 Q. I'm going to direct your attention to
23 what has been marked as Respondent's Exhibit 67,
24 and this is the zoning map for Franklin Park.

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600

1 The area indicated in green in the upper
2 right-hand corner is your neighborhood.

3 Does that look familiar to you?

4 A. Yes.

5 Q. We had some testimony before you
6 arrived that the legend shows the areas by how
7 they're zoned.

8 The dark green, which is where exactly
9 you live, being single-family residence.

10 Do you see that?

11 A. I see it.

12 Q. And then you have got various shades
13 of gray, restricted industry and then a lighter
14 gray, general industry, around that.

15 Based upon your personal knowledge of

16 your neighborhood, okay, does this appear
17 consistent that there is a lot of industry
18 around the pocket of houses that you live in?

19 A. No doubt about it.

20 Q. And what are some other industries
21 that you're aware of in this general area?

22 A. Well, like I say my wife works at Just
23 Manufacturing directly across from TL.

24 Q. What do they do?

L.A. REPORTING, 312-419-9292

601

1 A. They're a stainless steel fabricator.
2 They make kitchen sinks as well other stainless
3 steel products, specialty things, if they're
4 ordered.

5 Q. Okay. Do they rely heavily or do they
6 rely on semitractor trailers, as far as you
7 know?

8 A. I see some coming in and out, but I
9 think the bulk of their's come in on Willow
10 Street, they have like back loading docks to
11 their building that run from King back through
12 to Willow.

13 Q. Are you aware of Bruner & Lay using
14 semitractors for their business?

15 A. Yes, I've seen some come and go.
16 Q. How about some of the other businesses
17 on King Street?
18 A. Well, as Mr. White mentioned, the
19 plating place, Belmont Plating, and I'm really
20 not that hip on the names of the other places.
21 Q. You just know that they're around?
22 A. But I know it is all industry on King.
23 Q. Do you hear the trains go by?
24 A. I do.

L.A. REPORTING, 312-419-9292

602

1 Q. What sort of sounds do you hear from
2 the trains?
3 A. Whistles, starting up like thunk,
4 thunk, thunk when the couplings, you know, all
5 stretch out.
6 Q. And about how far would you estimate
7 you are from the railroad area?
8 A. Oh, probably another 150 to 200 feet
9 east of -- from where Mr. White is.
10 Q. Okay. And there are at least three
11 homes between yours and Mr. White's?
12 A. Correct.
13 Q. Plus Birch Street?

14 A. Plus Birch Street and his house, yes.

15 Q. Do you hear the planes from O'Hare?

16 A. Yes.

17 Q. How would you describe the noise that
18 comes from the trains and O'Hare as compared to
19 the noise from TL Trucking?

20 A. Both are much louder.

21 Q. Being retired, you're home all day now
22 for the most part, except for running errands
23 and doing social things?

24 A. Yes.

L.A. REPORTING, 312-419-9292

603

1 Q. Do you find that the noise from TL
2 Trucking causes unreasonable interference with
3 your enjoyment of time at home?

4 A. No.

5 Q. Do you use the park at all, Robinson
6 Crusoe Park?

7 A. Nope. I'm beyond my basketball and
8 swings.

9 Q. Ever go for walks or anything in the
10 neighborhood?

11 A. Bicycle rider once in awhile.

12 Q. Okay. And, again, you feel that the

13 noise from TL Trucking is causing an
14 unreasonable interference that you can't do
15 that?

16 A. No, not to me.

17 MS. REISEN: Thank you. I have no
18 other questions.

19 HEARING OFFICER HALLORAN: Thank you,
20 Ms. Reisen.

21 Mr. Brill, cross?

22 MR. BRILL: Thank you.

23

24

L.A. REPORTING, 312-419-9292

604

1 CROSS-EXAMINATION

2 BY MR. BRILL:

3 Q. Bob, you said that Bruner & Lay was
4 your worst noise source where you live over
5 there. Is that right?

6 A. Well, I say it's causes me the most
7 consternation because of the fact that it shakes
8 my house.

9 Q. So, it's more of a vibration than it
10 is the noise?

11 A. It's noise as well as vibration.

12 Q. Mr. White testified that he didn't
13 hear Bruner & Lay after 3:00 p.m. Is that your
14 idea of it as well?

15 A. Yes, I'll go along with that, but may
16 I interject?

17 Q. Sure.

18 A. There is another drop forge, Scott
19 Forge up on Belmont, which we can hear if you're
20 sitting out on summer nights.

21 Q. But that is not as loud as Bruner &
22 Lay?

23 A. Oh, it's quite noticeable.

24 Q. So then you're not exposed to the

L.A. REPORTING, 312-419-9292

605

1 noises of Bruner & Lay 24 hours a day, seven
2 days a week, are you?

3 A. No, thank God.

4 Q. And amen to that.

5 Now, you have, despite the fact
6 that -- well, let me ask the question.

7 How many houses and brick structures
8 are between your home and TL Trucking?

9 A. Looks like four houses, and then a
10 factory runs all along a back fence, one factory

11 and then a second construction, which is, I
12 think, made out of brick and sheet metal on the
13 top, would run quite a ways, almost two-thirds
14 of the way, I think, between --

15 Q. So, to the south of your property
16 there is a brick structure then?

17 A. Yes.

18 Q. And that is basically between you and
19 TL Trucking?

20 A. Yes.

21 Q. And then that --

22 A. -- that and houses.

23 Q. Could that sort of form a sound
24 barrier?

L.A. REPORTING, 312-419-9292

606

1 A. Well, I believe it does.

2 Q. Okay. And despite the fact that you
3 do have that brick structure there, you can
4 still hear some noises from TL Trucking?

5 A. Yes, well, that would be, you know, on
6 summer nights when we're out though. I mean, if
7 we were in the house, I wouldn't probably hear
8 it.

9 Q. Okay. I see.

10 You're -- well, of course, we know
11 that your home doesn't face Robinson Crusoe
12 Park, does it?

13 A. No. No. It faces Crescent.

14 Q. So when you sleep at night, you have a
15 20 foot brick wall, four to eight -- four houses
16 and many trees between your bedroom and TL
17 Trucking, is that true?

18 A. Yes.

19 Q. Okay. Bob, did you ever work for the
20 village of Franklin Park?

21 A. Yes, I put in my last eight years
22 before I retired there.

23 Q. I see.

24 So, as part of your wages and that

L.A. REPORTING, 312-419-9292

607

1 would come from the taxes of all of us in there
2 including TL Trucking, is that right?

3 A. Yes.

4 Q. Okay. You're not on pension with the
5 Franklin Park though, are you?

6 A. I get a small pension from the
7 Illinois municipal retirement funds. I worked
8 long enough to --

9 Q. Qualify?

10 A. -- qualify for that.

11 Q. So you're vested in that regard.

12 And when we spoke earlier, you

13 indicated that you were hearing impaired, is

14 that still true today?

15 A. Yep, got about 30 percent hearing loss

16 from the printing industry.

17 Q. And you can still hear noises once in

18 awhile from TL Trucking?

19 A. Yes.

20 MR. BRILL: No further.

21 HEARING OFFICER HALLORAN: Thank you,

22 Mr. Brill.

23 Ms. Reisen, any redirect?

24 MS. REISEN: Just a few.

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608

1 REDIRECT EXAMINATION

2 BY MS. REISEN:

3 Q. Mr. Brill had asked you a question

4 about your prior employment.

5 Does your prior employment in any way

6 impact you to be more favorable to TL Trucking?

7 A. No.

8 Q. And, in fact, you feel that all of the
9 taxpayers in Franklin Park probably benefit from
10 the number of the industry in the area?

11 A. Probably do.

12 Q. And, again, the sounds that you hear
13 from TL, you indicated when you're outside, not
14 in your home, correct?

15 A. That's correct.

16 MS. REISEN: I have nothing else.

17 Thank you.

18 HEARING OFFICER HALLORAN: Thank you,
19 Ms. Reisen.

20 Mr. Brill, any recross?

21 MR. BRILL: Well, I could ask one
22 small question.

23 RECCROSS-EXAMINATION

24 BY MR. BRILL:

L.A. REPORTING, 312-419-9292

609

1 Q. When you're outside of your home, that
2 is still your property, isn't it?

3 A. Oh, yes.

4 Q. So you do hear noises on your property
5 from TL Trucking?

6 A. True enough.

7 MR. BRILL: No further.

8 HEARING OFFICER HALLORAN: Anything
9 further?

10 MS. REISEN: No.

11 HEARING OFFICER HALLORAN: Thank you.

12 MS. REISEN: We would call Hank
13 Latoria.

14 (Witness sworn.)

15 HANK LATORIA,
16 called as a witness herein, having been first
17 duly sworn, was examined and testified as
18 follows:

19 DIRECT EXAMINATION

20 BY MS. REISEN:

21 Q. State your full name for the record,
22 please?

23 A. Henry Michael Latoria.

24 Q. You go by Hank?

L.A. REPORTING, 312-419-9292

610

1 A. Yes.

2 Q. Hank, what is your occupation?

3 A. TL Trucking, I own and operate, along
4 with my brother, Michael.

5 Q. And how long have you done that?

6 A. Approximately, 17 years.

7 Q. How long have you been at the location
8 of 9200 King Street?

9 A. I believe we closed on it January of
10 '98.

11 Q. Where were you located prior to that?

12 A. 3656 Acorn Street, Franklin Park.

13 Q. Were you there the whole 15 years
14 prior to moving to King Street?

15 A. Yes. Basically, yes.

16 Q. Okay. I'm going to direct you to
17 Respondent's Exhibit 67, and ask you to identify
18 your old location, give you my red pen, if you
19 want to put an X there.

20 A. Where is Franklin Avenue? If I can, I
21 find Franklin, I can. It's completely on the
22 other side of town.

23 Q. Okay.

24 A. Hang on. Wolf Road. Here is Franklin

L.A. REPORTING, 312-419-9292

611

1 Avenue. It would be right here (marking).

2 Q. Okay.

3 A. Matter of fact, this was me.

4 MS. REISEN: Let the record reflect

5 that there is an X for TL for the former site.

6 BY MS. REISEN:

7 Q. When you were at the former site, did
8 you have any complaints ever lodged against you
9 regarding the work that you were doing?

10 A. No, we also owned a construction
11 company there for about 25 years.

12 Q. Okay. Any complaints against the
13 construction company?

14 A. No, ma'am.

15 Q. Any violations filed against you by
16 the village or any of the village subsidiaries?

17 A. No.

18 Q. At the new location, specifically what
19 operations do you run there?

20 A. We shut down the construction company
21 upon moving. We basically wash trucks there.
22 There were some preventive maintenance done
23 there and parking of the equipment.

24 Q. Okay. When you wash trucks, that

L.A. REPORTING, 312-419-9292

612

1 means that you wash the back end, the trailers?

2 A. We sterilize the tanker basically.

3 Q. What kind of trailers are you

4 cleaning?

5 A. It's all food grade materials. The
6 stainless steel trailers I'll describe them as
7 wet because that is what we use in the industry.
8 It's mostly corn syrups, anabrosis, invert.
9 Your pneumatic trailers, which are aluminum,
10 they basically deliver flour and granulated
11 sugar.

12 Q. You clean those both out?

13 A. Correct.

14 Q. On your property, first of all, do you
15 know the dimensions of your lot?

16 A. My lot is approximately 175 feet wide,
17 412 feet long.

18 Q. And your building is on the southern
19 end or the end closest to King Street?

20 A. Correct.

21 Q. And how many bays are there in your
22 building?

23 A. There are two mechanical repair bays
24 that face the front, that face --

L.A. REPORTING, 312-419-9292

613

1 Q. King Street?

2 A. -- King Street, and three wash bays

3 that will face the back.

4 Q. What would you estimate is the
5 distance from the front of your building to King
6 Street?

7 A. I just measured it because I'm pouring
8 the lot. About 312 feet.

9 Q. I'm sorry. What would be the distance
10 from the edge of King Street to your front door?

11 A. To my front door, edge of King Street
12 to my front door is approximately 41 feet.

13 Q. You have enough room to back a car in
14 there nose in, correct?

15 A. Yes.

16 Q. So it's not feasible to elongate the
17 building anyway toward King Street, is it?

18 A. No.

19 Q. The bays that are in the back, what is
20 the distance, if you know, from the edge of the
21 bays, to your back fence, to your northern
22 fence?

23 A. Have a concrete pad that was
24 previously poured and added onto, it's

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614

1 approximately 100 feet long by 120, almost the

2 same width as the building. Then you have from
3 the edge of the concrete pad to the back line
4 probably approximately 200 feet.

5 Q. Okay. The concrete pad is slightly
6 raised, correct?

7 A. It's raised almost 2 feet.

8 Q. And do you know what the purpose of
9 that is or did it come that way?

10 A. Well, it came that way, but the --
11 because I'm a building -- they raised the --
12 they had to unify the front of the building,
13 every village does it, according to the front of
14 the street, and it's 2 feet higher than the
15 front of the street.

16 Q. Okay. Do you know who the prior
17 owners were on your property?

18 A. Several. There was a construction
19 company in there, a bus company in there,
20 another trucking company in there, and RPS
21 Metals, scrap metals was in there, which was
22 bought out by United Scrap Metal, that's who I
23 bought the building from and now there is TL
24 Trucking Foodliner in there.

L.A. REPORTING, 312-419-9292

1 Q. Are you aware of all of the substances
2 that may or may not have been put on your
3 property before you bought it?

4 A. There was 5 tanks, underground storage
5 tanks that were removed before I bought it. Two
6 6,000 gallon diesel tanks; two, 3,000 gallon
7 gasoline tanks and one 1,000 gallon hydraulic
8 tank.

9 Q. And those have all been removed,
10 correct?

11 A. They have all been removed, correct.

12 Q. Had any soil testing to find out if
13 there is any after effects of --

14 A. We had a Phase 1, Phase II and Phase
15 III done before I moved in and then before I
16 bought the property my bank required a Phase I.

17 Q. So it's been a lengthy process?

18 A. Yes.

19 Q. Regarding the three bays, are they
20 separate or do they run together?

21 A. Bay one is completely enclosed, every
22 wall in that building is a masonry wall and it
23 goes all the way to the roof, it is a gyp roof,
24 which is approximately, only because I cut new

1 ventilation in, is approximately 6 inches thick.

2 Q. Okay. And where do you house the
3 blowers?

4 A. The blowers are at ceiling height.
5 Bays 1, 2 and 3, those are the driver blowers.
6 We do have another blower that is located on the
7 ground, which is the one everybody is speaking
8 of that was outside, we moved that inside. And
9 there is only two gentlemen that do all of this
10 work, that is me and my brother, Michael. I'm
11 going to be moving that second -- that third
12 blower that is on the ground right now into its
13 own room completely enclosed.

14 Q. And the one blower has already been
15 moved into an enclosed room?

16 A. Correct.

17 Q. That was the one that Mr. Brill
18 referred to in an earlier letter --

19 A. Actually, it was a compressor, but,
20 yes.

21 Q. There was some testimony on the first
22 day about the lot and the condition of the lot.
23 And before I do that, let me -- I am going to
24 hand you some exhibits. Okay.

1 A. Okay.

2 Q. You talked about what the bays looked
3 like. I'm going to hand you Respondent's
4 Exhibit 12. Is that a trailer in one of the
5 bays?

6 A. It's in bay 2, that's a pneumatic
7 trailer, it's a noninsulated trailer that
8 carries flour and it being dried at this point.

9 Q. For purposes of the record, in
10 response to Mr. Brill's earlier question, these
11 are still photographs that I took myself with
12 Mr. Latoria present with just a standard 35
13 millimeter camera.

14 MS. REISEN: We'd move for admission
15 of Exhibit 12 at this time.

16 HEARING OFFICER HALLORAN: Mr. Brill,
17 any objection?

18 MR. BRILL: No.

19 HEARING OFFICER HALLORAN: Okay. So
20 admitted.

21 (Respondent's Exhibit No. 12 was
22 admitted into evidence.)

23 BY MS. REISEN:

24 Q. I am going to hand you what has been

1 marked as Respondent's Exhibit 18, ask you if
2 you recognize that photograph?

3 A. Picture of the back of my building.

4 Q. When you say the back, we're
5 indicating the north wall --

6 A. Faces the north wall, correct.

7 That is the 3 wash bay doors and the
8 two windows you see, one is a boiler room and
9 the other one is a compressor room.

10 Q. For the record, the one that is in
11 the -- on the right side, that is the compressor
12 room, the window on the left side is the boiler
13 room?

14 A. Correct.

15 MS. REISEN: We'd move for admission
16 of Respondent's Exhibit 18 at this time.

17 HEARING OFFICER HALLORAN: Mr. Brill?

18 MR. BRILL: No objection.

19 HEARING OFFICER HALLORAN: So
20 admitted.

21 (Respondent's Exhibit No. 18 was
22 admitted into evidence.)

23 BY MS. REISEN:

24 Q. Going to hand you what has been marked

1 as Respondent's Exhibit 23, ask if you can
2 identify that?

3 A. This is the maintenance facility,
4 which -- these overhead doors face the front of
5 the property.

6 Q. Which would be King Street?

7 A. Yes, which would be south, and these
8 windows here would be facing east.

9 Q. East.

10 And that is where -- what is done in
11 that room?

12 A. This is where the trailers are -- and
13 tractors are, have them -- preventative
14 maintenance performed.

15 MS. REISEN: We'd move for the
16 admission of Respondent's Exhibit 23.

17 HEARING OFFICER HALLORAN: Mr. Brill,
18 any objection?

19 MR. BRILL: No objection.

20 HEARING OFFICER HALLORAN: Exhibit No.
21 23 is admitted.

22 (Respondent's Exhibit No. 23 was
23 admitted into evidence.)

24 BY MS. REISEN:

1 Q. I'm going to hand you Respondent's
2 Exhibit No. 24, and I'm assuming that is also
3 the maintenance area?

4 A. This is also the maintenance area, and
5 you can also see where we have gaited in the
6 parts room.

7 Q. Okay. And the gaiting in of the parts
8 room is on the left-hand side of the photograph
9 with the -- kind of the ladder leaning against
10 it?

11 A. Correct.

12 Q. Okay.

13 MS. REISEN: We'd move for admission
14 of Exhibit -- what was that, 24?

15 THE WITNESS: 24.

16 HEARING OFFICER HALLORAN: Mr. Brill,
17 any objection?

18 MR. BRILL: No objection.

19 HEARING OFFICER HALLORAN: Exhibit 24
20 is admitted.

21 (Respondent's Exhibit No. 24 was
22 admitted into evidence.)

23 BY MS. REISEN:

24 Q. I'm going to hand you now what has

1 been marked as Exhibit 15, going to give you
2 more than one, 16, 17, 19, what are those
3 photographs of?

4 A. This is the yard.

5 Q. Okay. And for clarification, that is
6 the area between the northern wall of your
7 property around Robinson Crusoe park?

8 A. This one is the western part of the
9 yard facing a blank parking lot.

10 Q. That's Respondent's Exhibit 15. And
11 by facing west then that would be going down
12 toward the avenue or toward the area of Bruner &
13 Lay?

14 A. Correct. That is Bruner & Lay in the
15 background.

16 Q. And you just said that that is Bruner
17 & Lay in the background, and that would be the
18 background of Exhibit 16?

19 A. Correct.

20 Q. Okay. And, again, those are trucks
21 that are being stored there?

22 A. These are preloaded trucks or trucks
23 to be washed or trucks that are already washed.

24 Q. Okay. And then -- sorry.

L.A. REPORTING, 312-419-9292

622

1 MS. REISEN: I would move for the
2 admission of 15, 16.

3 HEARING OFFICER HALLORAN: Mr. Brill?

4 MR. BRILL: No objection.

5 HEARING OFFICER HALLORAN: 15 and 16
6 are admitted.

7 (Respondent's Exhibit No. 15 was
8 admitted into evidence.)

9 (Respondent's Exhibit No. 16 was
10 admitted into evidence.)

11 BY MS. REISEN:

12 Q. And you've got the top one as
13 Respondent's Exhibit 17, that is what?

14 A. This is part of the back line that
15 backs up to Robinson Crusoe Park and this is the
16 other part of the line that backs up to an empty
17 parking lot.

18 Q. So that would be the northwest corner
19 essentially that we're looking at of your lot?

20 A. Correct.

21 MS. REISEN: We'd move for the
22 admission of 17 at this time.

23 MR. BRILL: No objection.

24 HEARING OFFICER HALLORAN: Exhibit 17

L.A. REPORTING, 312-419-9292

623

1 is admitted.

2 (Respondent's Exhibit No. 17 was
3 admitted into evidence.)

4 BY MS. REISEN:

5 Q. And Exhibit 19 I believe is what
6 you're holding now.

7 A. This is the rest of the back line, you
8 can see the green fence with the slats in it,
9 that backs up to Robinson Crusoe Park.

10 Q. Okay. And, again, those trucks parked
11 there are what?

12 A. These trailers here?

13 Q. Yes.

14 A. These are either empty -- these I know
15 are empty, either washed or going to be washed.
16 I can't see any seals on them so I couldn't tell
17 you if they're washed or dry.

18 MS. REISEN: We'd move for admission
19 of 19.

20 MR. BRILL: No objection.

21 HEARING OFFICER HALLORAN: Exhibit 19

22 admitted.

23 (Respondent's Exhibit No. 19 was
24 admitted into evidence.)

L.A. REPORTING, 312-419-9292

624

1 BY MS. REISEN:

2 Q. I'm going to hand you Exhibit 20, ask
3 you to identify that.

4 A. This, again, is the yard, it's facing
5 the empty lot. This is a fence that's being
6 torn down with the vines on it, and it has an
7 empty parking lot and then a junk yard directly
8 behind that.

9 Q. Okay. And when you say the empty lot,
10 that is again to the west of your property?

11 A. Correct.

12 MS. REISEN: We'd move for the
13 admission of Exhibit 20.

14 MR. BRILL: No objection.

15 HEARING OFFICER HALLORAN: Exhibit 20
16 is admitted.

17 (Respondent's Exhibit No. 20 was
18 admitted into evidence.)

19 BY MS. REISEN:

20 Q. Respondent's Exhibit 40, can you tell

21 what that is?

22 A. This is the east side of our yard,
23 towards the back, this is Chicago -- Chicago
24 Forging I believe.

L.A. REPORTING, 312-419-9292

625

1 Q. Okay. That would be the business that
2 is directly to your --

3 A. The east.

4 Q. All right.

5 MS. REISEN: We'd move for admission
6 of Exhibit 40 .

7 MR. BRILL: No objection.

8 HEARING OFFICER HALLORAN: Exhibit 40
9 admitted.

10 (Respondent's Exhibit No. 40 was
11 admitted into evidence.)

12 BY MS. REISEN:

13 Q. Exhibit 41?

14 A. This is the back line, this is where
15 that road is that I told you.

16 Q. For the record, Mr. Latoria is
17 pointing to a white garage that is in the
18 right-hand side of the photo, adjacent to the
19 front of a --

20 A. Would be our northeast, and then the
21 rest of the back line of Robinson Crusoe Park.

22 Q. Okay. Now, between those trucks we
23 can see the green slatted fence that we've heard
24 testimony about, correct?

L.A. REPORTING, 312-419-9292

626

1 A. Correct.

2 Q. And in each of the photos that you've
3 shown with the north barrier, the north wall,
4 the trucks are all parked with their tail ends
5 to the fence, is that the way you always park
6 them?

7 A. Yes, because there is not enough room
8 to have a tractor the other way. We wouldn't
9 put them sideways because we wouldn't gain any
10 room. They're parked up against concrete
11 parking bumpers about 5 feet away. At this
12 point in time this was in the winter yet, last
13 winter, then you have concrete wall that we put
14 on and then the new fence.

15 MS. REISEN: Okay. We'd move for
16 admission of Exhibit 41.

17 MR. BRILL: No objection.

18 HEARING OFFICER HALLORAN: Exhibit 4

19 is admitted.

20 (Respondent's Exhibit No. 41 was
21 admitted into evidence.)

22 BY MS. REISEN:

23 Q. Exhibit 43, again, is taken in the
24 wintertime, but can you describe it?

L.A. REPORTING, 312-419-9292

627

1 A. Yes. This is another fence that I
2 believe belonged to our neighbors because he had
3 the green weave on there. This fence was torn
4 down by us, during new construction now, it was
5 halfway up. This concrete wall is the new wall
6 that we put in. This fence is the new fence
7 that we put in. And you can note that the
8 parking bumpers are right there and our trucks
9 are backed up to it.

10 Q. And for clarification for the record,
11 you noted the concrete wall is on the left edge
12 of the photo, with the green slatted fence
13 coming up from the top of that, correct?

14 A. Correct.

15 Q. And the parking bumpers are to the
16 right side of the photo, which are directly
17 behind the wheels of the trucks?

18 A. Correct.

19 Q. Okay. Now, you indicated there is not
20 enough room, if you were to park the trailers a
21 different way.

22 Specifically, what is the problem with
23 the logistics and the size of the lot you've
24 got?

L.A. REPORTING, 312-419-9292

628

1 A. You can't make the turn around
2 because, if I may, from this wall --

3 Q. From the north fence.

4 A. -- from the north fence all the way
5 about 38 feet, now, we've poured the lot. Okay.
6 As a matter of fact, we poured it yesterday, 142
7 yards of concrete, roughly 6,000 square feet.
8 We had to move those trailers up 38 feet. We
9 had to move out almost 50 -- nom, not quite 50,
10 I'd say about 25 trailers out of the yard, out
11 into our system, which poses a hardship on the
12 company, just to have enough room so we can pour
13 that.

14 Q. So there had been some discussion by
15 Mr. Brill or some suggestions by Mr. Brill that
16 you could put a building on the back lot.

17 What would that do to your operations?

18 A. It would destroy it.

19 Q. Because you don't have room to move
20 the rigs?

21 A. Correct.

22 Q. And while I'm thinking about the
23 traffic moving in the lot, what is the speed
24 limit in there?

L.A. REPORTING, 312-419-9292

629

1 A. It is 5 miles an hour, if we find a
2 guy grabbing any more than 1 or 2 gears, which
3 first gear is roughly 2 miles an hour, second
4 gear is anywhere from 5 to 10 miles an hour, he
5 is reprimanded by Foodliner's management.

6 Q. I'm going to hand you Respondent's
7 Exhibit 39 and 42, and ask you what those are?

8 A. This is the entrance way, the back of
9 the entrance way, which half of this is poured,
10 and Exhibit 42, this whole strip from the front
11 all the way to the back, which is 412 feet
12 roughly, by 20 feet wide, was poured about a
13 week ago, you can see setting up so we can drive
14 on it. It's also a picture of our above ground
15 fuel tanks, which were removed and a concrete

16 pad was raised to match the floor of our
17 building and poured.

18 Q. Okay. So to put this in perspective
19 for the record, on 39, it's the property that is
20 against -- you've got a driveway essentially
21 between your building and the eastern --

22 A. 41 feet wide.

23 Q. -- the eastern neighbor.

24 So it is that driveway that runs up

L.A. REPORTING, 312-419-9292

630

1 around the side of the building?

2 A. Correct.

3 Q. And the gas tanks in there, those have
4 been removed and that's what we see in later
5 photographs as the concrete pad?

6 A. Correct.

7 MS. REISEN: That is Exhibit 39 that
8 we were just discussing. We'd move for
9 admission of 39.

10 HEARING OFFICER HALLORAN: Mr. Brill?

11 MR. BRILL: No objection.

12 (Respondent's Exhibit No. 39 was
13 admitted into evidence.)

14 BY MS. REISEN:

15 Q. And then Exhibit 42, again, shows
16 those concrete pads that are just to the rear of
17 your building, had been removed and it's just a
18 pad now, correct?

19 A. Correct.

20 MS. REISEN: We'd move for admission
21 of Exhibit 42, I believe it was.

22 MR. BRILL: No objection.

23 HEARING OFFICER HALLORAN: Exhibit 42
24 is admitted.

L.A. REPORTING, 312-419-9292

631

1 (Respondent's Exhibit No. 42 was
2 admitted into evidence.)

3 HEARING OFFICER HALLORAN: Ms. Reisen,
4 we still have 43 hanging out there. Did you
5 move for admission of that? I don't know if it
6 is down here with -- 43 is here. Are you going
7 to move for admission?

8 MS. REISEN: Yes.

9 HEARING OFFICER HALLORAN: Any
10 objection?

11 MR. BRILL: No.

12 HEARING OFFICER HALLORAN: Exhibit 43
13 is admitted.

14 (Respondent's Exhibit No. 43 was
15 admitted into evidence.)

16 BY MS. REISEN:

17 Q. Exhibit 44.

18 A. This is the whole east side of the
19 yard taken from the west about midway down, I
20 can tell from the pitch, again, before any of
21 the yard work was done. As a matter of fact, if
22 memory serves me correctly we started marking it
23 out but we were upheld because of weather.

24 Q. What building is that in the

L.A. REPORTING, 312-419-9292

632

1 background?

2 A. That is Chicago Die Cast, I believe.

3 Q. Which is your easterly neighbor?

4 A. Yes.

5 MS. REISEN: More for admission of
6 44.

7 MR. BRILL: No objection.

8 BY MS. REISEN:

9 Q. There was discussion, we'll get this
10 in at this point regarding the fence --

11 HEARING OFFICER HALLORAN: Exhibit 44
12 is admitted.

13 (Respondent's Exhibit No. 44 was
14 admitted into evidence.)

15 MS. REISEN: Sorry about that.

16 BY MS. REISEN:

17 Q. Exhibit 13, is that a photo of the
18 slatting in the fence?

19 A. Yes.

20 MS. REISEN: We'd move for admission
21 of Exhibit 13.

22 MR. BRILL: No objection.

23 HEARING OFFICER HALLORAN: 13 is
24 admitted.

L.A. REPORTING, 312-419-9292

633

1 (Respondent's Exhibit No. 13 was
2 admitted into evidence.)

3 BY MS. REISEN:

4 Q. Exhibit 21, is an interior photo of
5 what?

6 A. Those are my hot and cold water tanks,
7 we're under construction, that's why you see
8 everything else in our way. There is a bleach
9 barrel there.

10 Q. That is the white cylinder closest to
11 the right-hand edge of the photograph?

12 A. Correct. And bleach barrel that is
13 down to 200 parts per billion. And that is for
14 sanitation reasons.

15 Q. You're required to have the bleach in
16 the cleaning in order to clean the trucks in
17 their appropriate manner?

18 A. Every trailer.

19 MS. REISEN: We'd move for admission
20 of 21.

21 MR. BRILL: No objection.

22 HEARING OFFICER HALLORAN: Exhibit 21
23 is admitted.

24 (Respondent's Exhibit No. 21 was

L.A. REPORTING, 312-419-9292

634

1 admitted into evidence.).

2 BY MS. REISEN:

3 Q. What is Exhibit 22?

4 A. That is wash bay 1. Wash bay 3 and a
5 temporary stage because the floor hasn't been
6 dropped yet, and that is pneumatic trailer in
7 there that probably was flour at that time. We
8 recently got more in sugar. The new concrete
9 block wall running down the side in gray.

10 Q. For the record, the wall is evident by

11 the front end of the trailer by the doorway,
12 correct?

13 A. Correct.

14 Q. And you were saying about the other
15 wall?

16 A. This wall is -- actually a hole has
17 been knocked into this wall, and that is where
18 our wash bay office is.

19 MS. REISEN: We'd move for Exhibit 22
20 to be admitted.

21 MR. BRILL: No objection.

22 HEARING OFFICER HALLORAN: Objection
23 Exhibit 22 is admitted.

24 (Respondent's Exhibit No. 22 was

L.A. REPORTING, 312-419-9292

635

1 admitted into evidence.)

2 BY MS. REISEN:

3 Q. And for the record, the wall that has
4 been knocked with the hole for the office is
5 right in front of the nose of the tank?

6 A. Correct.

7 Q. Now, there was some discussion on the
8 first day of deposition testimony that the lot
9 had not been paved and when we were here last on

10 September 26th, had part of the lot been paved?

11 A. Yes.

12 Q. And, in fact, did you take photos of
13 that lot on that day for me?

14 A. Yes, I did.

15 Q. I'm going to hand you what has been
16 marked as Respondent's Exhibit 58 and ask you
17 what that is?

18 A. That -- this is a -- well, another
19 curb going all the way around the property,
20 approximately 800 lineal feet, it is 2 feet
21 high, rod reinforced, 4 foot deep piers every 10
22 feet. This wall goes completely around the
23 property except for the front of the building.
24 That is so we can retain our water for MSD and

L.A. REPORTING, 312-419-9292

636

1 the greater metropolitan sanitary district.

2 Q. So what is MSD?

3 A. MSD is the metropolitan sanitary
4 district. And then you have the Greater Chicago
5 Metropolitan Sanitary District. We have to --
6 as a matter of fact, we still do not have final
7 permits on this but we have to go ahead with it.

8 Q. Now, in that photograph, there is a

9 fence with a green slatting. Is the
10 northern quarter between your --

11 A. -- next to Robinson Crusoe Park, and
12 then there is another wall just below it.

13 Q. And this wall is directly in front of
14 the concrete wall underneath the fence that
15 you've testified to earlier?

16 A. Correct.

17 MS. REISEN: We'd move for admission
18 of Exhibit 58.

19 MR. BRILL: One question about Exhibit
20 58. Did you take the picture of 58?

21 MS. REISEN: I'm sorry. These
22 next -- that one and these three I just had him
23 testify he took on the morning of the last
24 hearing.

L.A. REPORTING, 312-419-9292

637

1 MR. BRILL: That wasn't explained to
2 us, and I don't have a copy of those.

3 MS. REISEN: I'm sorry. I just
4 stated it now on the record and I showed these
5 to you the last time we were in court.

6 HEARING OFFICER HALLORAN: Would you
7 like to take another look at them, Mr. Brill?

8 MR. BRILL: These were shown to me the
9 last time we were in court?

10 MS. REISEN: Correct, Mr. Brill, and
11 several of your witnesses as well as yourself
12 looked at them during your testimony.

13 MR. BRILL: Well, I don't think it is
14 that important. I have seen the additional wall
15 built there, I don't know the purpose of it or
16 anything like that, but, the mere fact that we
17 didn't receive these in discovery makes me kind
18 of curious about them, that's all.

19 HEARING OFFICER HALLORAN: Mr. Brill,
20 do you object to Exhibit No. 58 going into
21 evidence?

22 MR. BRILL: Yes, I do, because we
23 weren't privy to those pictures.

24 HEARING OFFICER HALLORAN: I'm going

L.A. REPORTING, 312-419-9292

638

1 to overrule your objection.

2 Exhibit 58 is admitted.

3 (Respondent's Exhibit No. 58 was
4 admitted into evidence.)

5 BY MS. REISEN:

6 Q. I'm going to show you Respondent's

7 Exhibit 59, and ask you if that depicts the bed
8 where the removed full tankers were?

9 A. Yes, this is an all new concrete pad
10 poured here. We removed the tanks. This is one
11 of the pictures that you showed at the last
12 trial. This is showing the driveway.

13 Q. When you say this is showing the
14 driveway, you mean what looks like a gravel area
15 to the left?

16 A. Yes.

17 Q. Okay. Now, that gravel area is now
18 poured?

19 A. The one all the way to the left, this
20 is split right down the middle at this point
21 because we still have to have trucks coming up
22 until this concrete is set up correctly.

23 Q. Okay. And the concrete pad was
24 required in order to keep the height

L.A. REPORTING, 312-419-9292

639

1 differential from front to the back of the
2 building?

3 A. Correct. And that was permitted and
4 inspected by the village.

5 MS. REISEN: We'd move for admission

6 of Exhibit 59.

7 MR. BRILL: May I see that picture?

8 THE WITNESS: Sure.

9 MR. BRILL: No objection.

10 HEARING OFFICER HALLORAN: Exhibit
11 No. 59 is admitted into evidence.

12 (Respondent's Exhibit No. 59 was
13 admitted into evidence.)

14 BY MS. REISEN:

15 Q. Show you Exhibit 60 and ask you what
16 that is?

17 A. This is the west side of my building
18 which, again, was all new sewer work. You can
19 see one sewer sticking up here. There is
20 another sewer down here.

21 Q. And for the record, you're pointing to
22 the two manholes that are obvious down the
23 center of the --

24 A. Correct, this is all brand new

L.A. REPORTING, 312-419-9292

640

1 concrete, poured approximately June, if memory
2 serves me correctly.

3 Q. June of 2001?

4 A. Correct.

5 MS. REISEN: We moved for admission
6 of Exhibit 60.

7 MR. BRILL: No objection.

8 HEARING OFFICER HALLORAN: Exhibit 60
9 is admitted.

10 (Respondent's Exhibit No. 60 was
11 admitted into evidence.)

12 BY MS. REISEN:

13 Q. And I'm going to show you Respondent's
14 Exhibit 61 and ask you what that is.

15 A. That again is the brand new parking
16 pad and we've already got the wire mats waiting
17 there for the parking lot because the parking
18 lot does have double wire mats 6 by 6 by 6 wire.

19 Q. And those go underneath the concrete?

20 A. Yes, actually, it's designed better
21 than any highway.

22 MS. REISEN: We'd move for admission
23 of Exhibit 61 at this time.

24 MR. BRILL: No.

L.A. REPORTING, 312-419-9292

641

1 HEARING OFFICER HALLORAN:
2 Respondent's Exhibit 61 is admitted.

3 (Respondent's Exhibit No. 61 was

4 admitted into evidence.)

5 BY MS. REISEN:

6 Q. I'm going to show you now four
7 photographs, excuse me, five exhibits,
8 photographs that were from the roll that I took
9 previously, 27, 14, 25, 26. What are those
10 photos of?

11 A. First two are Robinson Crusoe Park,
12 basically both sides of the park, and its sign.

13 Q. You just held them out side by side.
14 So if I were to have done that correctly,
15 Exhibit 14 --

16 A. One would overlap a little --

17 Q. -- would sit just to the left of
18 Exhibit 27?

19 A. Correct.

20 MS. REISEN: Okay. We'd move for the
21 admission of 14 and 27.

22 MR. BRILL: No objection.

23 HEARING OFFICER HALLORAN:

24 Respondent's Exhibit 14 and 27 is admitted.

L.A. REPORTING, 312-419-9292

642

1 (Respondent's Exhibit No. 14 was
2 admitted into evidence.)

3 (Respondent's Exhibit No. 27 was
4 admitted into evidence.)

5 THE WITNESS: These two pictures,
6 which are Exhibits 25 and 26, if I were to put
7 them right at Robinson Crusoe Park with the back
8 of my property and the back of that parking lot,
9 which that is a 5 foot metal slatted fence, with
10 a 10 foot area in between.

11 BY MS. REISEN:

12 Q. Okay. I'm going to slow you down a
13 little.

14 On 25 you indicate that the building
15 to the right is the other factory that there was
16 testimony to Bruner & Lay?

17 A. No, this is an empty parking lot.
18 This is still my building.

19 Q. Okay. And the green slatted fences,
20 the one that you're saying just to the right --

21 A. Is my neighbor's fence.

22 Q. And then the other one that you can
23 kind of see the trucks through, that is your
24 slats?

L.A. REPORTING, 312-419-9292

643

1 A. Yes.

2 MS. REISEN: We'd move for the
3 admission of 25.

4 HEARING OFFICER HALLORAN: Mr. Brill,
5 any objection?

6 MR. BRILL: No objection.

7 HEARING OFFICER HALLORAN: Exhibit 25
8 is admitted.

9 (Respondent's Exhibit No. 25 was
10 admitted into evidence.).

11 BY MS. REISEN:

12 Q. 26 is just a straight on view of your
13 property at 9200 King Street?

14 A. Yes.

15 MS. REISEN: We'd move for the
16 admission of 26.

17 HEARING OFFICER HALLORAN: Mr. Brill?

18 MR. BRILL: No objection.

19 HEARING OFFICER HALLORAN:
20 Respondent's Exhibit 26 is admitted.

21 (Respondent's Exhibit No. 26 was
22 admitted into evidence.)

23 BY MS. REISEN:

24 Q. And lastly I'm going to show you

1 Respondent's Exhibit 28 and just ask you if you
2 recognize that as Crescent Drive as you view it
3 from Robinson Crusoe Park?

4 A. Yes.

5 MS. REISEN: We'd move for the
6 admission of Exhibit 28 at this time.

7 MR. BRILL: That was a picture you
8 took, correct?

9 MS. REISEN: Correct.

10 HEARING OFFICER HALLORAN: Any
11 objection?

12 MR. BRILL: No objection.

13 HEARING OFFICER HALLORAN:
14 Respondent's Exhibit No. 28 is admitted.

15 (Respondent's Exhibit No. 28 was
16 admitted into evidence.)

17 BY MS. REISEN:

18 Q. Okay. Mr. Latoria, if I can have you
19 come up here to what has been remarked as
20 Claimant's Exhibit 2, I'm going to hand you my
21 green pen and I'd like you to note what areas
22 have already been paved on your lot?

23 A. This area here. Two new sewers in
24 here.

1 Q. You want to put S1 and S2 in there?

2 A. (Marking.)

3 Q. And for the record, the paved area is
4 from the green line to the north border?

5 A. Which is roughly 38 feet by 160, this
6 area here, splitting this whole drive is 20 by
7 roughly 412 feet.

8 Q. Okay.

9 A. There is also a new manhole here.

10 Q. You want to put MH?

11 A. We have to maintain the water and take
12 water in when it floods. And there is a new
13 sewer here and a new sewer here.

14 Q. Put S3 and S4.

15 Where is your concrete pad at?

16 A. This is all concrete. This is all
17 concrete. This is the building. The concrete
18 pad is kind of like this.

19 Q. Can you put CP.

20 And there is also concrete on the west
21 side of the building, is that correct?

22 A. The whole -- yes, this is all
23 concrete. This would be west side.

24 Q. Okay. And so what you have yet to

1 pour then is the central part of the back lot?

2 A. Correct.

3 Q. And then the westerly half of the
4 driveway?

5 A. Correct. Today we're framing up this
6 section, we would have poured it yesterday, but
7 due to my absence, we can't do it until Friday.

8 HEARING OFFICER HALLORAN: If I might
9 digress, Respondent's Exhibit 28, what does this
10 depict? Is this Mr. Brill's --

11 MS. REISEN: It's an angle from the
12 park to Mr. Brill's home.

13 HEARING OFFICER HALLORAN: Okay.
14 Thank you.

15 MS. REISEN: I believe.

16 BY MS. REISEN:

17 Q. Okay. You've been in touch with many
18 individuals about getting this lot done, is that
19 not correct?

20 A. Correct.

21 Q. And is it fair to say there have been
22 a few holdups?

23 A. Yes. Engineering, architectural,
24 plats of survey. Foodliner and I went out and

1 got two different bids to see if it can be done
2 cheaper and faster.

3 Q. Okay. I'm going to hand you what has
4 been marked as Respondent's Exhibit 50, and
5 first just do you recognize the document?

6 A. Yes.

7 Q. And what is the date of the document?

8 A. September 27, 2000.

9 Q. Okay. It indicates a job site. What
10 is the job site indicated?

11 A. Foodliner 9200 King Street.

12 Q. As such then would you have gotten a
13 copy of this?

14 A. Yes.

15 Q. What is this?

16 A. It's a letter from Mr. Wesenberg, our
17 regional manager, now, I believe, stating that
18 we need to get the lot done, unfortunately due
19 to the weather coming up we couldn't at that
20 point.

21 Q. So last fall you were precluded by the
22 fall and the winter?

23 A. Correct.

24 Q. Are there bids attached?

1 A. Yes, there are.

2 Q. And do you recognize those as being
3 the bids that were originally received?

4 A. Rose Paving was gotten by the terminal
5 manager, Mike O'Connor, and I thought I seen
6 Scurto here. This is just for the pouring, none
7 of the preparation, none of the permits, none of
8 the sewer work, none of the sewer pipe, none of
9 the curb work.

10 Q. So Scurto gave a very bare bones bid
11 at 116, \$117,000, correct?

12 A. Just for the flat work about 800 yards
13 of concrete.

14 Q. And what was anticipated would be done
15 regarding the work that Scurto was not going to
16 do?

17 A. Getting everything ready and put the
18 grade, plats of survey had to be shot,
19 engineering had to be done, had to be accepted
20 by the village, had to be accepted by MSD, and
21 Greater Metropolitan Sanitary District, and the
22 sewer wasn't done.

23 Q. Now, each time you had to do a step,
24 which were the steps you just outlined, did you

1 have to have a permit and/or an inspection
2 before you could go on to the next step?

3 A. Correct.

4 Q. And who were the different individuals
5 that you'd have to work with in that regard?

6 A. Bill Esposito, Dan Fisher, our
7 architect, Anthony Rossi. I'm trying to
8 remember the gentleman's name at the MSD Cook
9 County, it's actually the Cook County board but
10 he has got to approve the site to hold so many
11 gallons of water. It is going to be restricted
12 also. We put in 1 foot concrete pipe
13 approximately 600 feet in length connecting all
14 the sewers and back to our main. There has to
15 be a 2 foot long by 4 inch reducer coming out so
16 we hold the water.

17 Q. And it's purpose --

18 A. Make it simpler to understand --

19 Q. --so that you're not throwing water
20 at everybody else?

21 A. That, and we also have to hold the
22 water if the sewers back up due to the river is
23 so close to us the sewers will back up. The

24 parking lot next to us holds about a foot of

L.A. REPORTING, 312-419-9292

650

1 water. We're going to hold about 18 inches.

2 Q. Is it a fair statement that you are
3 not able to just go out and start pouring
4 concrete?

5 A. No.

6 Q. Back to Exhibit 50, is that a fair and
7 accurate copy of the original that you reviewed
8 earlier?

9 A. Yes.

10 MS. REISEN: We'd move for the
11 admission of Exhibit 50 at this time.

12 HEARING OFFICER HALLORAN: Mr. Brill,
13 any objection?

14 MR. BRILL: No.

15 HEARING OFFICER HALLORAN: Thank you.
16 Exhibit 50 is admitted.

17 (Respondent's Exhibit No. 50 was
18 admitted into evidence.)

19 BY MS. REISEN:

20 Q. Show you now what has been marked as
21 Respondent's Exhibit 49, with subattachment A,
22 and ask you what those are?

23 A. This is an old plat of survey, I
24 believe, or copies of it.

L.A. REPORTING, 312-419-9292

651

1 Q. Of your property at 9200 King Street?

2 A. Of my property at 9200 King Street,
3 still shows the metal building that I took down
4 due to the -- that the neighbors said it was
5 unsightly. The village asked me to take it
6 down, I did.

7 Q. And that building is in the upper
8 left-hand corner of the diagram underneath the
9 fax date, correct?

10 A. Correct.

11 And it also shows -- this would be the
12 front, what would be the southwest corner, this
13 is my sidewalks, my front parking lot and this
14 was unpaved at that time.

15 Q. When you say this, you're referring to
16 the alley just up the left side of the building
17 in the upper right-hand corner?

18 A. Correct. Again, it would show the
19 back line with the old fence that was laying on
20 the ground after I purchased the property.

21 Q. You're on page 3 now and you're

22 pointing to the line at the top of the page?

23 A. Correct. It's the back line, 175
24 feet, this fence was down completely. It had

L.A. REPORTING, 312-419-9292

652

1 barbed wire on it, that was not owned by the
2 village. It was owned by our premises. We
3 asked to take it down immediately and clean the
4 area.

5 Q. Okay. And did the village also ask
6 you to clean up that area?

7 A. Yes, they did.

8 Q. Did they give you a reason as to why?

9 A. It was a rat trap, there was -- I'm
10 sorry. There was -- I am trying to say how to
11 say this without being disrespectful. A lot of
12 things back there were not sanitary, let's say
13 that.

14 Q. Now, were you required to get an
15 updated plat before you could do any of the
16 paving?

17 A. Yes, I was.

18 Q. What do you have as attachment A to
19 Exhibit 49?

20 A. This is the second plat of survey that

21 only shows two sewers on it and all of the
22 grading and curbing but we couldn't hold enough
23 with those calculations.

24 Q. Couldn't hold enough what?

L.A. REPORTING, 312-419-9292

653

1 A. Water.

2 Q. Water.

3 A. So at that time, that's dated August
4 22, 2001, at that time my brother being somewhat
5 of an engineer, because he laid out most of our
6 work, this building encroaches on our property
7 line so --

8 Q. Okay. For the record, you're
9 referring to what building?

10 A. That is Chicago Die Cast.

11 Q. And that is shown on the right-hand
12 margin of the diagram in the upper left-hand
13 corner?

14 A. Correct. This fence line here, this
15 drops 3 feet down, this is all trees, there is
16 scrap steel in there, everything and their
17 brother, all kind of graffiti on the back of the
18 building.

19 Q. That is the northeast corner that

20 would about Ms. Gibas' property?

21 A. The house, the white house with the
22 white garage what I believe is -- they have
23 somebody living in the second story of the
24 garage.

L.A. REPORTING, 312-419-9292

654

1 Q. Why do you believe that?

2 A. There is air conditioning on the attic
3 or roof.

4 Q. And so this was the second plat that
5 you had to get in order to complete the paving
6 work?

7 A. And it still wasn't correct at that
8 point.

9 Q. How many more plats did you have to
10 do?

11 A. One more.

12 Q. Now, we don't have that with us here
13 today because that is being used, correct?

14 A. Correct.

15 MS. REISEN: We would move for the
16 admission of Respondent's Exhibit 49 with
17 attachment A, which is the old and the second
18 plat.

19 MR. BRILL: No objection.

20 HEARING OFFICER HALLORAN: Exhibit --
21 Respondent's Exhibit 49 is admitted.

22 (Respondent's Exhibit No. 49 was
23 admitted into evidence.)

24 BY MS. REISEN:

L.A. REPORTING, 312-419-9292

655

1 Q. Going to hand you Respondent's Exhibit
2 8, and, again, you've already identified who
3 Anthony Rossi is, but who is he?

4 A. He is the architect for this project.

5 Q. Okay. And is that a letter from
6 Anthony Rossi?

7 A. Yes.

8 Q. What is it dated?

9 A. August 31st, 2001.

10 Q. Okay. And it says regarding TL
11 Trucking Foodliner, were you a provided a copy
12 of this letter?

13 A. Yes, I was.

14 Q. Is that a true and correct copy of the
15 letter that you were provided?

16 A. Yes, it is.

17 Q. What is the gist of the letter?

18 A. The gist of the letter is that they
19 haven't given approval from Franklin Park yet,
20 and/or the metropolitan sanitary district or the
21 Chicago Greater Local Sanitation.

22 Q. Which meant that you couldn't finish
23 everything at that point?

24 A. We were already to go. We had all of

L.A. REPORTING, 312-419-9292

656

1 the materials ready to go. We couldn't do
2 nothing until the last permit was approved.

3 MS. REISEN: Okay. We would move for
4 admission of Respondent's Exhibit 8.

5 MR. BRILL: No objection.

6 HEARING OFFICER HALLORAN: Exhibit No.
7 8 is admitted.

8 (Respondent's Exhibit No. 8 was
9 admitted into evidence.)

10 BY MS. REISEN:

11 Q. Okay. Next is Respondent's Exhibit
12 65, which Mr. Brill provided to you this
13 morning, and, again, that is a letter to Mr.
14 Rossi, correct?

15 A. From his engineering firm to Mr.
16 Rossi, with a copy to me.

17 Q. Okay. And the copy to you is noted in
18 the upper right-hand corner?

19 A. Correct.

20 Q. What is the date of the original
21 letter?

22 A. September 17, he submitted -- he
23 submitted the plans to the metropolitan sanitary
24 district.

L.A. REPORTING, 312-419-9292

657

1 Q. Who did?

2 A. Mr. Rossi did.

3 Q. Okay.

4 A. Along with all of the proper
5 documentation. Mr. Dietz still wasn't
6 satisfied. Mr. Diets is the engineer. He
7 thought he was doing us an injustice by putting
8 it that deep.

9 Q. By putting what that deep?

10 A. The sewer line.

11 And also our parking lot because any
12 deeper we'll start getting into the food grade
13 area of the trailer.

14 The second page from Billie Esposito,
15 he personally -- I called him, told him we got

16 to get this deal going or we're not going to get
17 it done before weather hits. This is on
18 September 27, 2001. Billie approved -- Billie
19 had his engineer approve the plan as we
20 understand it with the four sewers, the curbing,
21 all the work to be done and inspected by the
22 village, and if the Chicago Metropolitan
23 Sanitary District accepts it.

24 Q. Okay. And you were privy to that fax

L.A. REPORTING, 312-419-9292

658

1 transmission also, correct?

2 A. Correct.

3 Q. Okay.

4 A. And this is the approval from the
5 village.

6 Q. Okay. And what is the date of the
7 approval?

8 A. 9/27/01.

9 Q. And that is what you needed in order
10 to finish up the paving that you're doing now?

11 A. Correct.

12 Q. Okay. And then the next page?

13 A. These are building department
14 inspections. This one here is for -- might be a

15 little backwards. This one is for paving, this
16 was the first pour, 412 feet long, 20 feet, 8
17 inches thick, double wires, 6 by 6, all the
18 sewer work was done and inspected.

19 This is the second pour, depicting the
20 back half that is 38 feet wide and 160 feet
21 long.

22 Q. That would be the most northern
23 portion that was just paved?

24 A. Correct. I think I threw two, I'm

L.A. REPORTING, 312-419-9292

659

1 sorry.

2 This is the curb.

3 Q. Okay.

4 A. This is the curb.

5 Q. Okay. So, basically, all of the
6 inspection reports indicate the various stages
7 of the paving as it had gone along?

8 A. Correct.

9 Q. And as you are the property owner
10 you've been provided copies of all of these as
11 they've come along, correct?

12 A. Correct.

13 Q. Are these collectively true and

14 accurate copies of the documents that you have
15 received and reviewed in the last month or so?

16 A. As I received them.

17 MS. REISEN: We would move for
18 admission of Respondent's Exhibit 65.

19 HEARING OFFICER HALLORAN: Any
20 objection?

21 MR. BRILL: Only that I don't believe
22 I received a copy of those documents.

23 MS. REISEN: I handed those to you
24 when you first walked in the room this morning.

L.A. REPORTING, 312-419-9292

660

1 HEARING OFFICER HALLORAN: Would you
2 like to take a quick look at them this morning,
3 sir?

4 You handed Mr. Brill copies of this?

5 MS. REISEN: No, I handed him that
6 report. We just got that in and when he first
7 came in the room --

8 MR. BRILL: You handed me this report?

9 MS. REISEN: Correct.

10 MR. BRILL: Itself?

11 MS. REISEN: No. No. I handed you a
12 copy.

13 I said here are your copies of our new
14 exhibit and I apologized that I didn't have it
15 sooner.

16 MR. BRILL: I have a pile of papers
17 here and I don't see anything that remotely
18 resembles that.

19 HEARING OFFICER HALLORAN: Do you
20 object to Respondent's Exhibit --

21 MR. BRILL: Yes, I didn't have time to
22 look it over.

23 HEARING OFFICER HALLORAN: I'm giving
24 you time now, sir.

L.A. REPORTING, 312-419-9292

661

1 MR. BRILL: Probably --

2 HEARING OFFICER HALLORAN: We can go
3 off the record.

4 (Off the record.)

5 MR. BRILL: No, no objection to that.

6 MS. REISEN: Can I have one moment?

7 (Off the record.)

8 HEARING OFFICER HALLORAN: We're back
9 on the record, took a couple of minutes while
10 Mr. Brill looked over Respondent's Exhibit No.
11 65. He has no objection. Respondent's Exhibit

12 65 is admitted into evidence.

13 (Respondent's Exhibit No. 65 was
14 admitted into evidence.)

15 MS. REISEN: There is going to be one
16 other that I just made copies over lunch. I
17 apologize.

18 BY MS. REISEN:

19 Q. Now, I asked you a lot of questions,
20 Mr. Latoria, about the paving because it took
21 awhile to pave. When the lot was not yet paved,
22 were steps taken to keep dust down?

23 A. We've -- over 50 to 60 loads of stone
24 brought in to create a good base you start out

L.A. REPORTING, 312-419-9292

662

1 with 3 inches of stone, move up to 1 inch stone,
2 then you move up to what they call CA6.

3 Q. What was there before the stone?

4 A. Nothing, raw dirt, parts, scrap metal
5 still on the ground, so on and so forth.

6 Q. You had to get crushed stone from a
7 quarry?

8 A. We bought first from IM Sales because
9 they carry 3 inch rock. We moved up to DP
10 Construction because they have crushed concrete.

11 And crushed concrete is dusty, once it is wetted
12 down it becomes like a concrete.

13 Q. Okay. What would you wet it down
14 with?

15 A. We used to fill a tanker full of
16 water, open up its main valve, it would come out
17 all over the bumper, which is 8 feet wide, and
18 our man would back the truck up and down, all
19 around.

20 Q. How many times a day or week would
21 that be done?

22 A. We tried to do it a minimum of once a
23 day, twice a day. If it rained, we wouldn't do
24 it.

L.A. REPORTING, 312-419-9292

663

1 Q. In addition, did you also use calcium
2 chloride?

3 A. Yes.

4 Q. I'm going to hand you what has been
5 marked as Respondent's Exhibit 7, and ask you,
6 first of all, is that a letter off of your
7 letterhead?

8 A. Yes.

9 Q. Who is it directed to?

10 A. This is directed to Greg Picotic --
11 no, Billie Esposito.

12 Q. Who is Mike O'Connor?

13 A. Mike O'Connor is our terminal manager.

14 Q. So when Mike sent that he sent that
15 with your knowledge?

16 A. Correct.

17 Q. And what is the date of the letter?

18 A. This date is October 4th, 2000.

19 Q. What is the gist of the letter?

20 A. Asking him to do calcium chloride,
21 currently seeking us to. . .Concrete, trying to
22 get the job rolling.

23 Q. Is that a true and correct copy of the
24 letter from your location to Mr. Esposito dated

L.A. REPORTING, 312-419-9292

664

1 October 4, year 2000?

2 A. Yes.

3 MS. REISEN: We'd move for the
4 admission of Respondent's Exhibit 7.

5 HEARING OFFICER HALLORAN: Mr. Brill?

6 MR. BRILL: No objection. I've seen
7 that before.

8 HEARING OFFICER HALLORAN: Exhibit 7

9 is admitted.

10 (Respondent's Exhibit No. 7 was
11 admitted into evidence.)

12 BY MS. REISEN:

13 Q. How often would you spray with the
14 calcium chloride?

15 A. We only did that two to three times,
16 if memory served me right, it would last
17 anywhere from two to three months depending on
18 how much rain we got and depending on how much
19 traffic was in the yard.

20 Q. And when you contracted to do the
21 calcium chloride spray and when you were
22 watering with just regular water, was it ever
23 your intention that that was going to be the
24 final answer to the back lot?

L.A. REPORTING, 312-419-9292

665

1 A. No.

2 Q. And the final answer was going to be
3 the paving?

4 A. Had to be paved, village ordinance is
5 1200 square feet.

6 Q. Also, going to hand you what has been
7 marked as Respondent's Exhibit 53, and ask you

8 if you recognize that document?

9 A. This is an MSD report showing what
10 calcium chloride can do to you or others if
11 directly in contact with.

12 Q. Was that something that Foodliner
13 procured in order to know what they were working
14 with?

15 A. Yes.

16 Q. Is that an accurate copy of the MSD
17 report as you recall receiving it?

18 A. Yes.

19 MS. REISEN: We'd move for the
20 admission of Exhibit 53.

21 MR. BRILL: No objection.

22 HEARING OFFICER HALLORAN: Exhibit 53
23 is admitted.

24 (Respondent's Exhibit No. 53 was

L.A. REPORTING, 312-419-9292

666

1 admitted into evidence.)

2 BY MS. REISEN:

3 Q. There was some testimony, also,
4 regarding noise.

5 What, first of all, I'm going to ask
6 you what is your policy on trucks in the lot,

7 when can trucks be in the lot?

8 A. Well, we're a 24 hour operation, seven
9 days a week. Okay.

10 Q. Okay. And before you go any further,
11 why is that?

12 A. We have to.

13 Q. Okay. What governs when you clean
14 trucks?

15 A. It's actually -- there is a 24-hour
16 period that the wash is good for. If it's a
17 kosher wash we actually have to have the rabbi
18 come in along with us and wash it in front of
19 the rabbi. All of our -- well, not all of our
20 trailers, about 80 percent of our trailers are
21 kosher, it's a big thing in our industry,
22 especially on the Jewish holidays that we have
23 to have that ready and ready to go.

24 Q. And so when those trucks -- you bring

L.A. REPORTING, 312-419-9292

667

1 the rabbi in, when those trucks are cleaned,
2 they have to be filled and on the road within 24
3 hours?

4 A. Yes.

5 Q. Or what?

6 A. The wash is no good. It's like you
7 didn't even do it.

8 Q. And is that for sanitation and health
9 reasons?

10 A. Yes.

11 Q. And, again, that is federal law?

12 A. That's FDA ruling, and it is all of
13 our shippers.

14 Q. Okay.

15 A. That's what they follow.

16 Q. Regarding the nonkosher trucks?

17 A. Nonkosher trucks are the same thing
18 because it's all food grade.

19 Q. You just don't need to have the rabbi
20 present?

21 A. Right, that's the only difference.

22 Q. How is it determined when a truck
23 comes to you?

24 A. It could come from one of our 15 other

L.A. REPORTING, 312-419-9292

668

1 facilities or come directly from the 50 trucks
2 that are stationed at our facility. Depending
3 on what load you're hauling, what commodity
4 you're going to pull next, the dispatchers tell

5 us what to wash and when they should be washed.

6 Q. Are the deliveries and your subsequent
7 cleaning of the trucks time sensitive?

8 A. Yes.

9 Q. Okay.

10 A. Extremely.

11 Q. And do you have the ability to alter
12 that time sensitivity?

13 A. No, ma'am.

14 Q. And, again, you're doing that in
15 accord with the FDA?

16 A. Correct.

17 Q. When the trucks come on your lot,
18 again, what is the dimension that the truck can
19 drive? This lane is about 40 foot wide,
20 correct?

21 A. Correct.

22 Q. That's the lane on the easterly side.
23 And then the truck has to swing around and go
24 into one of three bays?

L.A. REPORTING, 312-419-9292

669

1 A. Correct.

2 Q. What sorts of trucks are parked on
3 your lot and why?

4 A. You have pneumatic trailers,
5 roughly --

6 Q. And what do you mean by pneumatic
7 trailers?

8 A. Pneumatic are the -- what I'll refer
9 to as dry, that is a noninsulated trailer,
10 carries either flour or sugar. Those are the
11 only two commodities we carry in -- oh, no, we
12 carry some grits, too, but in the dry form.

13 That trailer is noninsulated and it is
14 blown off with a blower.

15 Q. Okay. Are those the blowers that are
16 overhead, the doors?

17 A. No, those blowers are attached to the
18 trucks themselves.

19 Q. Where is that done at, that process?

20 A. At the customer.

21 Q. Okay. And so when they come to you,
22 what do you do with those dry trucks?

23 A. I'll back them back into -- there are
24 only two bays that can accept them, bay 2 and

L.A. REPORTING, 312-419-9292

670

1 bay 3, I'll back either one of those trailers
2 into bay 2 or 3, you drop the spinner in two of

3 the holes, the two middle holes.

4 Q. What do you mean by drop the spinner?

5 A. The spinner was depicted in one of
6 those pictures. It's a stainless steel
7 apparatus, it's corked so it seals the holes so
8 you don't get -- we wash with only water. Bays
9 2 and 3 can go up to 110 degrees to 115. Bay 1
10 it's regulated at -- it recycles the water, you
11 can only wash syrup in it and that can go up to
12 187 degrees.

13 Q. So the reason that the dry trucks got
14 to go into bay 2 or 3 is because the temperature
15 differential in bay 1 is for the wet truck?

16 A. Correct.

17 Q. When the trucks -- are the trucks
18 sometimes parked on the lot before cleaning?

19 A. Yes.

20 Q. Why is that then?

21 A. Because you don't have enough -- if we
22 don't have enough trailers to commit to the
23 dispatch the following day, we're going to have
24 failure. And a failure to our company, whether

L.A. REPORTING, 312-419-9292

671

1 it be one a day, that's way too many.

2 Q. So you need to keep moving in a
3 process that gets the trucks back on the road?

4 A. Right. We probably pull on a busy
5 season, we would pull probably 100 to 125 loads
6 a day out of our facility.

7 Q. Okay. After the trucks are washed,
8 then what?

9 A. They'll either go to get preloaded or
10 another truck coming through the area will drop
11 off his dirty of truck and pick up a clean truck
12 to help our dispatch out. If you do 125 loads
13 and you only have 50 trucks and there are 48
14 states, you're not going to cover them all.

15 Q. When they're preloaded that occurs off
16 your site?

17 A. Correct.

18 Q. How quickly after the trucks are
19 washed do you try to get them off your lot?

20 A. Within four to five hours of their
21 delivery time usually, unless he is going out to
22 California or, you know, out and about.

23 Q. And, again, that's to keep the wash
24 good?

L.A. REPORTING, 312-419-9292

1 A. Yes.

2 Q. Okay. What is the speed limit on your
3 lot?

4 A. We want them to do 5 miles an hour.
5 We do really try to control that. We try to
6 control the horn blowing. We do want them to
7 blow their horn in an emergency if someone is
8 going to get run over. Yesterday I fell in the
9 lot and almost got whacked myself.

10 Q. And by that you mean a tuck almost hit
11 you?

12 A. Yes.

13 Q. So they would have blown the horn as a
14 --

15 A. One guy, he blew the horn, the other
16 guy stopped.

17 Q. Hand you what has been marked as
18 Respondent's 6 and ask if you recognize that?

19 A. Yes.

20 Q. And what is that?

21 A. It's a notice to all of the employees
22 trying to be neighborly not to blow our horns,
23 not to let the trucks idle over 5 minutes.
24 There is a catchall on all of our trucks. We

1 basically are all freight liner. We have three
2 different types of engines, either Detroit,
3 Cummings or Cat. 90 percent of them are
4 Caterpillar. The other 10 to 15 percent are
5 Cummings and then the other part is Detroit.
6 These trucks since 1993 are completely
7 computerized. If the driver is not in them for
8 over 5 minutes, they completely shut off.

9 Q. Those are the newer trucks that you're
10 having more in your fleet?

11 A. That is every truck we own.

12 Q. There was some testimony by Mr. Brill
13 that sometimes trucks would be idling for hours.
14 Would that be accurate?

15 A. If a gentleman needs to sleep, he has
16 a switch that he can set that up to about, I
17 believe it is 900 R.P.M. right now, and that is
18 only to keep the heater in the truck or his
19 sleeper birth hot enough.

20 Q. How often does that occur?

21 A. It doesn't occur in the lot at all
22 anymore. In the last six months we've told them
23 they have to be parked in front or down the
24 street.

1 Q. Okay. We'd move at this time -- I'm
2 sorry.

3 Where was that posted in your --

4 A. This was posted in the cafeteria in
5 the driver's room.

6 Q. And is that an accurate copy of the
7 notice posted?

8 A. Yes.

9 MS. REISEN: We'd move for admission
10 of Exhibit 6 at this time.

11 HEARING OFFICER HALLORAN: Mr. Brill?

12 MR. BRILL: No objection.

13 HEARING OFFICER HALLORAN: Exhibit 6
14 is so admitted.

15 (Respondent's Exhibit No. 6 was
16 admitted into evidence.)

17 BY MS. REISEN:

18 Q. In addition to the notice, do you have
19 conversations with your drivers about protocol
20 to get into the building?

21 A. Yes. And it's really since September
22 11th a lot of new stuff has come into effect.
23 I've gotten letters from three of our shippers
24 so to say, and the rabbi, they're concerned with

1 terrorism. We're trying to take more steps of
2 not -- of controlling that trailer more, exactly
3 where that trailer is going and where that truck
4 is going.

5 Q. So, not only you but it sounds like
6 the whole industry is trying to tighten the tab
7 so to speak on all of the trucks, where they're
8 at and --

9 A. -- September 11.

10 Q. Going to hand you what has been marked
11 as Respondent's Exhibit 51. Do you recognize
12 that?

13 A. Yes, this is a wash log, looks like
14 weekly.

15 Q. Okay. And there are dates on the
16 columns. Do you see those dates?

17 A. Correct.

18 Q. And what are the dates?

19 A. September 30, August -- oh, I'm sorry.
20 October 7th, October 14th, October 21st, October
21 28th, November 4th, November 11th and 12th.

22 Q. And that would be from the year 2000,
23 not 2001?

24 A. Correct.

1 Q. And the top corner it indicates TL
2 Franklin Park wash operation.

3 A. Correct.

4 Q. Does that pertain to your facility?

5 A. This is all my facility.

6 Q. Now, this is broken down by washes.
7 It's got first shift and second shift, both
8 company and outside units.

9 What does it mean by company units?

10 A. Company is -- if it's a company owned
11 truck -- well, all the trailers are company
12 owned. We also have owner operators that pull
13 for us. If we're going to wash that tractor
14 now, because we won't wash another trailer, but
15 if we wash that tractor, we'll do that for the
16 owner operator and then he gets charged.

17 Q. And what is the purpose that you don't
18 clean another trailer?

19 A. It's up to the owner operator to keep
20 that clean.

21 Q. Okay.

22 A. The other trailers we don't want in
23 our facility basically because it is too tight
24 right now.

1 Secondly, we don't want to take on
2 that liability.

3 Q. Okay. In addition, the breakdown
4 indicates shifts of the day, correct?

5 A. Correct.

6 Q. And also indicates liquid and dry.
7 Would that be referring to the drying of the wet
8 trucks as opposed to the dry trucks?

9 A. Yes.

10 Q. Now, when you look at these particular
11 weeks, first of all, just take a look at them,
12 does anything look unusual about those numbers?

13 A. Your September number is a little
14 higher on your dry. Your October number is a
15 little higher on your wet. And then they start
16 falling off.

17 Q. Okay. And, for the record, basically,
18 we've got totals at the bottom. And in
19 September it had -- on September 30th it had 118
20 liquid washes and 77 dry. And that is for the
21 whole week?

22 A. For the whole week.

23 Q. And you're saying that seems a little
24 high?

1 A. For the dry. For the wet, no.

2 Q. And then for the October 7, again, if
3 you're to read the bottom, it has 121, so 121
4 liquid washes for the entire week, 28 dry washes
5 for the entire week?

6 A. Right.

7 Q. And in that one you're thinking the
8 liquid looks a little high?

9 A. Yes.

10 Q. Now, in looking at this it looks like
11 there is a fair distribution between the shifts
12 with the most being first and second and only a
13 few, although definitely having some in the
14 third shift, is that correct?

15 A. Correct.

16 Q. Again, the third shift ones are
17 operated by when deliveries occur?

18 A. Correct.

19 MS. REISEN: We would move for the
20 admission of Respondent's 51 at this time.

21 HEARING OFFICER HALLORAN: Mr. Brill?

22 MR. BRILL: No objection.

23 HEARING OFFICER HALLORAN:

24 Respondent's 51 is admitted.

L.A. REPORTING, 312-419-9292

679

1 (Respondent's Exhibit No. 51 was
2 admitted into evidence.)

3 BY MS. REISEN:

4 Q. And lastly I'm going to hand you
5 Respondent's Exhibit 66, and the face sheet
6 indicates that this is a record of all of the
7 logs of all of the activity that went on in your
8 facility at the time that Mr. Homans did his
9 sound testing, correct?

10 A. Correct.

11 Q. Now, Mr. Homans asked you what were
12 your busy times, is that a fair statement?

13 A. Yes.

14 Q. At any time did you tell him what day
15 to come?

16 A. No.

17 Q. Did you have any idea what day he was
18 going to come?

19 A. No, ma'am.

20 Q. Are all of the logs on Exhibit 66
21 those kept in your usual course of business?

22 A. For that time frame, I went back and

23 pulled all of the logs, all of the chart
24 records, everything, to see when we had washed

L.A. REPORTING, 312-419-9292

680

1 after he told me the date, exactly what we
2 washed and when we washed it.

3 Q. Okay. And was part of the reason for
4 that because of the allegation that perhaps we
5 had Mr. Homans come to do a sound reading when
6 we were not going to be busy?

7 A. Exactly.

8 Q. I'd like you to flip to page 2 and it
9 says in the upper right-hand corner, bay 2, and
10 that is a wash log, isn't it?

11 A. Correct.

12 Q. And does that indicate washings that
13 were occurring during the time that Mr. Homans
14 would have been there?

15 A. There is one wash for sure being done
16 when Mr. Homans had been there. And, actually,
17 it's a dry unit, that would be the worst unit
18 noise wise to wash. That unit number was 5819.
19 It was flour. It was started at 3:10 a.m. It
20 was finished at 5:10 a.m. The finishing means
21 the paperwork was finished. That trailer still

22 had to be dried down.

23 Q. And why are they the noisiest?

24 Because they're not insulated?

L.A. REPORTING, 312-419-9292

681

1 A. They're not insulated. Any wet unit
2 has 6 inches of insulation packed to 4. I can
3 put you inside of that tank, you could scream
4 and nobody would hear you for hours.

5 Q. That's a nice thought.

6 A. Just telling you.

7 Q. So that second entry would have been
8 during Mr. Homans' sound testing?

9 A. Correct.

10 Q. I'd like you to turn to the next page
11 and it says TL trailer wash procedures, summer
12 season, date at the top is August 31st of 2001.
13 And, specifically, what does this tell us?

14 A. This is telling us the gentleman that
15 washed it, actually it's the foreman on that
16 shift. This was Francisco Menendez and Jose
17 Rodriguez. Jose is my superintendent and the
18 foreman on the -- from second shift -- no, from
19 third shift to first shift. He has to go down
20 and check off every item, what he is doing, when

21 it is being done, at the exact time it is being
22 done.

23 Q. Okay. And it says trailer number 5819
24 and that is the -- that corresponds to the entry

L.A. REPORTING, 312-419-9292

682

1 we just talked about on the previous page?

2 A. Correct.

3 Q. The next page also refers to 5819, and
4 the date wash, what does this document tell us?

5 A. This document gives you a variety of
6 products that can be washed at our facility,
7 that is accepted by any of our shippers. This
8 one happens to be flower, 5819.

9 Q. Okay. And the next page at the bottom
10 says bulk in handwriting. What does this
11 document tell us?

12 A. This document tells -- this is a wash
13 document. This is what a -- one of these parts
14 the driver carries with them, the other part the
15 office keeps, another part I keep and then
16 another part goes to Dubuque.

17 Q. And is that so that everybody in the
18 chain of command knows that the truck was washed
19 properly?

20 A. Exactly, where it was washed, what
21 time it was brought in, what time it left, what
22 commodity he had on, what commodity he had on
23 last. Every part of that trailer, if it was
24 washed and when it was washed.

L.A. REPORTING, 312-419-9292

683

1 Q. And this indicates that the wash
2 station was Foodliner at 9200 King Street?

3 A. Correct.

4 Q. In fact, the date and time is 3:01:31
5 a.m. and August 31st is when it started?

6 A. Correct.

7 Q. Next page?

8 A. That is our graft from bay 3.

9 Q. Okay. And that is broken down by
10 time, 2:00 a.m. --

11 A. 24 hour, one day log.

12 Q. Okay. Now, between 5:00 and 7:00
13 a.m., does that graft indicate that there was
14 activity in bay 3?

15 A. Yes.

16 Q. Okay. Specifically a truck being
17 washed?

18 A. This belongs to the other wash --

19 these are backwards. It does indicate at 6 --
20 at 5:45 a.m., they started to wash trailer 8022,
21 and at 6:15 that trailer was done.

22 Q. Okay. And it looks like only six
23 trucks were washed in that 24 hour period at
24 that bay?

L.A. REPORTING, 312-419-9292

684

1 A. In that bay.

2 Q. Is that average?

3 A. Probably.

4 Q. Next page, again, is a trailer wash
5 procedure check list, like the one you testified
6 to just a minute ago?

7 A. Correct.

8 Q. And then the next page says bay 3 and
9 it has got a wash log?

10 A. Yes.

11 Q. Okay. Were any of those trucks washed
12 during the time that the sound recording was
13 going on?

14 A. Yes. It was started at 5:40 a.m. to
15 6:29 a.m.

16 Q. Specifically, that is the third entry
17 and that would be trailer 3022?

18 A. Correct.
19 Q. Okay. And that was a wet truck?
20 A. That's a wet.
21 Q. And reading that because it says corn
22 syrup?
23 A. Right.
24 Q. And the following page corresponds

L.A. REPORTING, 312-419-9292

685

1 with that trailer as being washed indicating
2 that it was corn syrup?
3 A. Correct.
4 Q. And then we've got another official
5 wash station sheet.
6 Does that indicate the start time and
7 the date for this wash sheet?
8 A. Yes.
9 Q. And what date are you reading in the
10 upper right-hand corner?
11 A. This is bay one, August 31st, 02 --
12 01, I'm sorry. And it starts from 4:01 a.m. to
13 5:00 a.m. trailer 11912.
14 Q. We've got on the next page yet another
15 circle diagram. This would be the same thing as
16 the other but for a different bay?

17 A. Correct.

18 Q. Which bay would that be?

19 A. That is bay 1.

20 Q. And that's marked in the middle, isn't

21 it?

22 A. Correct.

23 Q. And, again, that would indicate

24 washing occurring when the sound readings were

L.A. REPORTING, 312-419-9292

686

1 going on?

2 A. Yes, ma'am.

3 Q. And for the board's purposes later,

4 the times are on the outside part of the circle

5 and you read inward to the graph?

6 A. Correct. Each line is a 15 minute

7 designation. And the trailer has to be spun at

8 180 degrees or hotter for a period of 15 minutes

9 or longer.

10 Q. And, again, the FDA sets out that

11 regulation?

12 A. Yes, and every shipper we have.

13 Q. Those are safety concerns that are

14 addressed by that sort of protocol?

15 A. Yes. We test it for microbiology,

16 yeast, bacteria, so on and so forth.

17 Q. The last four pages are yet another
18 bay log with the corresponding wash sheet and
19 checklist that we have just talked about and
20 that is for yet another truck that was being
21 washed during that time frame?

22 A. Yes.

23 Q. And that one specifically started at
24 4:01 a.m. and ended about 5:00 a.m.?

L.A. REPORTING, 312-419-9292

687

1 A. Correct.

2 MS. REISEN: We'd move for admission
3 of Respondent's 66.

4 HEARING OFFICER HALLORAN: Mr. Brill?

5 MR. BRILL: Yes, I've looked it over,
6 but it is, again, technically beyond me, so I
7 have no objection. It doesn't seem to plow any
8 new ground anyway.

9 HEARING OFFICER HALLORAN:
10 Respondent's Exhibit 66 is admitted.

11 (Respondent's Exhibit No. 66 was
12 admitted into evidence.)

13 BY MS. REISEN:

14 Q. Have you ever been cited by Franklin

15 Park for any violations of their zoning?

16 A. Not to the best of my memory.

17 Q. Have you ever been cited by the
18 building commissioner for violations?

19 A. Not to my knowledge.

20 Q. They did ask you to move that one air
21 compressor, blower inside and you did that?

22 A. Yes.

23 Q. And regarding the fence, they've asked
24 you to put up a new fence because the other one

L.A. REPORTING, 312-419-9292

688

1 was run down, correct?

2 A. Correct.

3 Q. And that was done?

4 A. And the barb wire on the top because
5 it was at the park, and it is illegal it do
6 that.

7 Q. As well as cleaning up the brush.

8 Do the drivers use their -- what are
9 referred to as jake brakes?

10 A. I'm not going to say they don't
11 because I've heard them at times, but they
12 shouldn't be having them on at that point.

13 Q. And when they do, what do you do about

14 it, if they do that?

15 A. They get reprimanded by Foodliner
16 management.

17 Q. How many times in the last year would
18 you estimate that has occurred?

19 A. Probably quite often.

20 Q. Is that something that you can address
21 with the drivers?

22 A. It's addressed daily.

23 Q. How are the drivers supposed to let
24 you know that they're outside wanting to get in?

L.A. REPORTING, 312-419-9292

689

1 A. They can pull into the yard, they may
2 park the tractor and the trailer, walk up to the
3 front, they have to go through the mechanics
4 area because they're not allowed in the wash
5 bay, come through the two offices and walk into
6 dispatch.

7 Q. And is that what -- that is the usual
8 procedure?

9 A. Yes.

10 Q. Do you have an outside intercom or PA
11 system?

12 A. No.

13 Q. Okay. Are you aware of one of the
14 industries near you that does?

15 A. Bruner & Lay and Chicago Die Cast.

16 Q. Bruner is directly to your west,
17 correct?

18 A. Uh-huh.

19 Q. And Chicago Die Cast is directly to
20 your east?

21 A. Correct.

22 Q. Okay. When you need to contact
23 someone that is outside, you or one of your
24 workers, how do you do that?

L.A. REPORTING, 312-419-9292

690

1 A. They call, if it's me they call me on
2 my cell, believe it or not.

3 Q. You don't have any use of an overhead
4 PA system outside?

5 A. No, not one out there.

6 Q. Do you hear either of the other two
7 neighbors' PA system?

8 A. Yes.

9 Q. Do you hear their phones ringing?

10 A. Bruner & Lay the first time one day
11 last week, can hear it ringing and ringing and

12 ringing. Our phones automatically get switched
13 to Eddie Golila, to central dispatch after 5:30,
14 6:00 o'clock.

15 Q. There was some testimony on day one, I
16 believe, from Mr. Brill that the trucks are
17 essentially ripping through your lot.

18 Do the dimensions allow for that?

19 A. It would be real dangerous to.

20 Q. Have you had problems with trucks just
21 speeding through the lot?

22 A. I believe there was a driver fired not
23 long ago for doing that.

24 Q. Okay. On your property?

L.A. REPORTING, 312-419-9292

691

1 A. Yes.

2 Q. Is that a common occurrence?

3 A. No.

4 Q. Do you hear the trains from your
5 business?

6 A. Oh, a lot.

7 Q. Okay. How would you describe the
8 noise from the trains?

9 A. I've heard them blow for over 20
10 minutes.

11 Q. Do you hear the planes at all?
12 A. Continuously.
13 Q. Have you ever been in Robinson Crusoe
14 Park?
15 A. Yes.
16 Q. Okay. And when you're in Robinson
17 Crusoe Park, when was the last time you were
18 there probably?
19 A. I was working along the whole back
20 line for about a week, this week.
21 Q. Okay. And what sorts of noises do you
22 hear when you're along the back lot?
23 A. Kids, birds, planes.
24 Q. Do you see children over there?

L.A. REPORTING, 312-419-9292

692

1 A. Trains.
2 Yes, about 10 to 15 a day, all day
3 long.
4 Q. When there is work to be completed,
5 maintenance to be completed on your trucks,
6 where is that done?
7 A. Should be in the two bays on the front
8 part of the building, east side.
9 Q. And that would all be done in the

10 front part of the property, not the back?

11 A. Correct.

12 Q. What is the protocol for hooking up
13 and unhooking the trailers from their --

14 A. That --

15 Q. -- tractor?

16 A. -- and I'll even admit it in front of
17 Mr. Brill and this whole board, there are times
18 when -- and recently, and it's because of the
19 unlevelness of the ground that a guy has to hit
20 his trailer pretty hard, but if the driver
21 wasn't lazy and did get out of his truck, we
22 have air ride suspensions, not only on our
23 trailers but on our tractors and he drops his
24 air bag, that allows him to go down 4 to 6

L.A. REPORTING, 312-419-9292

693

1 inches. He could back underneath that trailer,
2 put his air bags back up and hook up to the
3 trailer.

4 Q. Now, with the paving project you had
5 to do some grading also, correct?

6 A. Correct.

7 Q. The lot was pretty uneven?

8 A. Very uneven.

9 Q. So with the paving and the grading it
10 should be even by the time you're done?

11 A. There will be slopes, hills and
12 valleys but they'll be gradual and smooth.

13 Q. And is that going to make it easier
14 and quieter for the hook up and --

15 A. Should eliminate it.

16 Q. Okay. Mr. Brill had made the
17 suggestion of lengthening the bays, the
18 building.

19 Is there a problem with that
20 suggestion?

21 A. Cargill, ADM, CBI would rather see the
22 trailer in there alone.

23 Q. And why is that?

24 A. They don't want any of the soot or any

L.A. REPORTING, 312-419-9292

694

1 of the diesel fumes inside the building while
2 you're starting --

3 Q. Because there is going to be food
4 products going into the --

5 A. As long as that dome lid is open and
6 unsealed it is not a good idea.

7 Q. Is that part of a reason why drivers

8 are not allowed back in that area also --

9 A. Correct. There is no smoking, no
10 food. You have to be hair netted, so on and so
11 forth.

12 Q. And those -- whose Cargill?

13 A. Cargill is number 2 producer of
14 sweeteners, Arthur Daniels Midland -- and
15 flours, I'm sorry, Arthur Daniels Midland is
16 number 1 of sweeteners and flours, grains, so on
17 and so forth.

18 Q. And so to put the trucks in there,
19 it's going to cause us -- cause you to either --
20 you're going to be in violation of how the
21 proper protocol to keep the trucks clean and
22 remain --

23 A. Correct.

24 Q. Mr. Brill had suggested maybe be

L.A. REPORTING, 312-419-9292

695

1 putting up a shed or something along the back
2 wall.

3 What is going to happen if you lose
4 space on the north part of your property?

5 A. Foodliner would move out.

6 Q. And why is that?

7 A. They won't have room to park the
8 trailers.

9 Q. So you pretty much got to use every
10 inch of your lot, correct?

11 A. Correct.

12 Q. Give me just a minute.

13 What is the average length of time it
14 takes to clean one truck?

15 A. From start to go, except in bay 1, bay
16 1 is a recycling system. Bay one is
17 approximately 35 minutes of wash time, probably
18 another 5 to 10 minutes of blow down and drying
19 time. Bay 2 and bay 3 you could conceivably
20 wash a trailer in about 24 minutes, start to
21 finish.

22 Q. That would be rushing it?

23 A. That would be pushing it.

24 Q. There were some concern voiced by Mr.

L.A. REPORTING, 312-419-9292

696

1 Brill regarding trucks crashing into Robinson
2 Crusoe Park.

3 Do you see that being a realistic
4 threat?

5 A. I'm not going to say it can't happen,

6 but he now has to go over a 6 inch parking
7 bumper, which may turn into 9 inch, I don't
8 know, that is up to them. It has got to go over
9 a 6 inch curb and then again through the fence.

10 Q. And --

11 A. It has to do that all under power, so,
12 I even --

13 Q. By that you --

14 A. I'm not going to say it can't -- I
15 mean, are two planes going to hit the world
16 trade center, I would say no, but it did happen.

17 Q. The sugar trucks that you clean out,
18 the sugar that comes out, do you get a run out
19 that comes out when you're cleaning them?

20 A. Very little. It's maybe about a 4
21 gallon --

22 Q. If that gets in the water, what does
23 the sugar look like on the water?

24 A. It's shinny. It thickens it real

L.A. REPORTING, 312-419-9292

697

1 quick, but that is about it.

2 Q. Kind of leaves a film?

3 A. Yes, slight film.

4 Q. I asked you to make a videotape of

5 your business while you were --

6 A. Yes.

7 Q. -- didn't I?

8 A. Yes.

9 Q. And I specifically asked you to start
10 the videotape in the bay so we can hear it and
11 then walk out to the park while you were
12 cleaning the truck and do it in the middle of a
13 procedure, did I not?

14 A. Correct.

15 Q. Did you do that?

16 A. Yes, ma'am.

17 Q. We would like, we have an 8 minute
18 tape, we would like to view and we would like to
19 be turned into evidence, and it's specifically
20 Mr. Latoria, and it's him, you can hear his
21 voice, start of the tape at the beginning with
22 the truck in motion and walks out and it not
23 only picks up the sound of the truck, but it
24 also picks up many other sounds, such as trains,

L.A. REPORTING, 312-419-9292

698

1 et cetera, in the neighborhood. And we'd like
2 to have that marked as Respondent's 52, we have
3 no objection with it being played now or submit

4 it to the board.

5 HEARING OFFICER HALLORAN: I don't
6 know if we can play it. I don't know if this
7 thing is plugged in or not.

8 MR. BRILL: I would object to that.
9 How do we know how that machine was calibrated
10 and the noises were recorded. I don't see how
11 that can be pertinent to this case.

12 HEARING OFFICER HALLORAN: Well, you
13 know, again, like we let yours in, Mr. Brill,
14 it's not so much for, you know, whether it was
15 an alleged violation but just to bolster their
16 defense, just as it was to bolster your claim.

17 MR. BRILL: If we got time I don't
18 mind going to the movies, it will only give me
19 more opportunity for questions.

20 (Off the record.)

21 HEARING OFFICER HALLORAN: We're back
22 on the record, it's approximately 3:30.

23 Ms. Reisen, you may continue.

24 MS. REISEN: Thank you.

L.A. REPORTING, 312-419-9292

699

1 BY MS. REISEN:

2 Q. Mr. Latoria, have we offered through a

3 prior settlement negotiation to build some of an
4 8 foot wall on the north end of your property?

5 A. Yes.

6 Q. Was that accepted by Mr. Brill?

7 A. No.

8 Q. Okay. Specifically, he wanted a 14
9 foot wall, correct?

10 A. Correct.

11 Q. Now, we got -- we've established
12 through the testimony this morning that we made
13 inquiry into a 14 foot wall, is that correct?

14 A. Yes.

15 Q. And you yourself had conversations
16 with Mr. Esposito and Don Stumbris over the past
17 several months, haven't you?

18 A. Yes.

19 Q. And what did they tell you?

20 A. Basically, they said the same thing
21 Don testified to this morning, that we're not
22 going to get the variance because you've got to
23 have your neighbors sign for it and they're not
24 going to spend that kind of money. Chicago Die

L.A. REPORTING, 312-419-9292

700

1 Cast is on 4 days a week right now. He is ready

2 to shut it down.

3 Q. And so did that play a part in why you
4 didn't put in the formal request with the \$500
5 filing fee?

6 A. Correct.

7 Q. Approximately, how much improvement
8 have you done to the building since you took
9 possession a couple of years ago?

10 A. The building alone, roughly about 225
11 to \$250,000.

12 Q. Okay. And what sort of improvements
13 does that encompass?

14 A. Basically, the whole building, the
15 whole building was repainted three time. We
16 dropped bay 1, 2, 3 floors. All the sewers had
17 to be changed. Bathrooms were changed around.
18 Wash bay offices were built. The cafeteria was
19 changed around. Just the equipment just to heat
20 the water to keep up with our stuff is 55 to
21 \$65,000.

22 Q. And what has the paving contract run
23 you?

24 A. We figured that we could save some

L.A. REPORTING, 312-419-9292

1 money by doing it ourselves. The highest bid
2 they had was \$250,000 from Rose Paving. That
3 would be the quickest way to go. It would be
4 blacktopped. It does not include any permits,
5 engineering fees, architectural fees and/or any
6 sewer work.

7 Q. And so in order to save on the cost
8 that you do have to pay, you're doing much of
9 the work yourself?

10 A. Basically, me and my brother.

11 Q. Okay. I know a lot of times there is
12 a presumption that with a business that that
13 kind of money is not an issue. Is that a fair
14 statement?

15 A. Huge issue for TL.

16 Q. If a 14 foot wall were to be built on
17 the north wall, is it your understanding that
18 you would have to have reinforcements down into
19 the ground aways?

20 A. Just for wind purposes alone, yes, it
21 would have to go in probably about half again as
22 far, maybe twice as far.

23 Q. Would that require ripping up most of
24 the concrete?

1 A. Yes.

2 Q. Now, again, what is the length of your
3 back lot, your north wall?

4 A. 175 feet.

5 Q. Is it your understanding that a 14
6 foot wall that high, but yet that short, causes
7 significant concern for being blown over?

8 A. Yes. And my concern would be the
9 park, kids in the park.

10 Q. Specifically, if it blew over when
11 somebody was in the park?

12 A. Correct.

13 Q. If some sort of a berm were to be
14 conducted, Mr. Homans testified today that it
15 would take about 30 to 40 feet to do that. What
16 would that do to your operation?

17 A. It's the whole back line of the
18 trailers. We'd loss 35 percent of our parking.
19 Foodliner would pull out.

20 Q. You wouldn't be able to keep
21 operating?

22 A. No.

23 Q. Are you willing to continue to work
24 with the drivers regarding the noise issues?

1 A. We try to do it on a daily basis.

2 Q. And you're willing to continue to do
3 that?

4 A. Yes.

5 Q. Likewise are you willing to work with
6 the drivers on the bay doors, seeing that the
7 bay doors remain closed?

8 A. Yes. Those are directly my men and,
9 yes, I can have a lot of influence over them.

10 Q. And you anticipate the paving will be
11 done -- you have one more section to go,
12 correct?

13 A. I'm hoping before Thanksgiving.

14 Q. Which is next week.

15 MS. REISEN: I believe that is all I
16 have for questions.

17 HEARING OFFICER HALLORAN: Okay.

18 Thank you, Ms. Reisen. And you wanted to show a
19 video?

20 MS. REISEN: Correct. We've handed
21 you what has been marked as Exhibit, I believe,
22 52, which was taken by Mr. Latoria.

23 HEARING OFFICER HALLORAN: Exhibit 52
24 or 58? Oh, 52.

1 MS. REISEN: 52.

2 HEARING OFFICER HALLORAN: Let me make
3 this a little clearer.

4 I'm sorry. Go ahead and explain.

5 MS. REISEN: Again, it's a videotape
6 that I asked Mr. Latoria to take, just use a
7 standard video camera. As a matter of fact, he
8 has got it here with him, if you want to see it.
9 It's about a 7, 8 minute tape. He starts the
10 tape as you'll see in one of the wash bays while
11 they're washing a truck and then walks outside
12 to the lot line and into the park so that you
13 can hear the noise coming from these washers and
14 the trucks being washed in the standard fashion
15 that they wash these trucks.

16 HEARING OFFICER HALLORAN: All right.
17 With that said we'll play the tape. Let me
18 stand back here so Mr. Brill will be able to
19 see.

20 (Whereupon the videotape was played.)

21 HEARING OFFICER HALLORAN: We're back
22 on the record. It was approximately an 8 minute
23 video. I'm going to rewind it.

24 Ms. Reisen, anything further?

1 MS. REISEN: Not at this time.

2 HEARING OFFICER HALLORAN: Okay. Mr.
3 Brill, cross?

4 MR. BRILL: I still object to the
5 admission of that tape. I've never heard train
6 bells in our neighborhood after living there for
7 30 years, this tape picks up train bells as well
8 as train horns --

9 MS. REISEN: I'm going to object, if
10 Mr. Brill wants to make an objection that has a
11 legal basis, that is fine, but basically he is
12 testifying in the form of an objection.

13 HEARING OFFICER HALLORAN: I would
14 agree, Mr. Brill.

15 You want to confine your remarks to
16 your specific objection?

17 You're allowed to cross Mr. Latoria.

18 MR. BRILL: Mr. Latoria, does that --

19 HEARING OFFICER HALLORAN: No, not
20 now, when you're --

21 MR. BRILL: Oh, we're not into cross?

22 HEARING OFFICER HALLORAN: No. I
23 asked you would you please state your specific
24 objection while not testifying.

1 MR. BRILL: Oh, my specific objection
2 is that the tape could be doctored.

3 HEARING OFFICER HALLORAN: I'm going
4 to overrule your objection. The board will give
5 it it's due weight.

6 We may proceed with your
7 cross-examination.

8 Respondent's Exhibit No. 52 is
9 admitted.

10 (Respondent's Exhibit No. 52 was
11 admitted into evidence.)

12 CROSS-EXAMINATION

13 BY MR. BRILL:

14 Q. On the map on the wall you indicated
15 that you have operated from a different location
16 for many years?

17 A. Correct.

18 Q. And I see what appears to be maybe a
19 mile or more of all industrial area there on
20 your right located on Franklin Avenue, I drive
21 by that site quite often when I go play golf,
22 and you have a train trellis that ran along your
23 old property?

24 A. Sure.

L.A. REPORTING, 312-419-9292

707

1 Q. And that is maybe 15, 20 feet in
2 height?

3 A. About 20 feet.

4 Q. That could be construed as a sound
5 barrier as well, right?

6 A. Could.

7 Q. Well, why did -- why did you move from
8 that site next to a park in the area where there
9 are homes and where you're likely to run up some
10 red flags? Was there a reason for you to make
11 the move?

12 A. The reason we moved from that site,
13 that building was 6,000 square feet, I moved
14 into a 12,000 square foot building, the land
15 vacant there was a half an acre, not an acre and
16 a quarter.

17 Q. In other words, it was too small, you
18 expanded your operation and moved over here?

19 A. Correct.

20 Q. You said in the testimony that you
21 sprayed the lot up to four times a day, I mean,
22 up to twice a day with just a tanker with water

23 in it to keep dust down?

24 A. Correct.

L.A. REPORTING, 312-419-9292

708

1 Q. And yet we have pictures here of quite
2 a bit of dust, if you wouldn't mind looking at
3 that.

4 Is that dust raised between sprayings?

5 A. It could be between sprayings, on 100
6 degree day. I don't know when this picture was
7 taken. It could be -- it just looks like there
8 was fresh rock put down, according to this
9 picture right here. Could be the dust from the
10 fresh rock.

11 Q. Well, I would also like to refer you,
12 you testified that the trucks always parked with
13 their -- they always back in towards the fence.
14 Can you explain those two pictures?

15 A. It's a single tractor parked in
16 between two trailers. The driver may just be
17 walking in the building to find out what
18 trailer --

19 Q. But it does happen?

20 A. It happens.

21 Q. And you say a single trailer. I see

22 two trailers on -- I mean, two tractors?

23 A. That is possible.

24 Q. Okay.

L.A. REPORTING, 312-419-9292

709

1 A. I'm not back there 24 hours a day.

2 Q. Okay. Thank you.

3 I'm a little confused about the
4 barriers.

5 Didn't you say there were some
6 barriers between the bays?

7 A. There is a wall completely between bay
8 1 and bay 2, solid, all the way from the floor
9 to ceiling.

10 Q. Well, in the pictures here that you
11 gave us, I don't see that, you know, and that's
12 what I'm a little confused about.

13 Do you have the one of the interior
14 there?

15 A. Right here, Mr. Brill. Bay 3, this is
16 bay 2. Right here is a wall. There is not a
17 wall between bay 2 or 3, but there is a wall,
18 brand new, from floor to ceiling.

19 Q. I see.

20 But there is --

21 A. No wall between bay 3.

22 Q. So if you were washing a tanker over
23 here and the door was open over here, you could
24 probably hear the noise?

L.A. REPORTING, 312-419-9292

710

1 A. That could happen.

2 HEARING OFFICER HALLORAN: For the
3 record, that is Respondent's Exhibit No. 12.

4 BY MR. BRILL:

5 Q. Did the prior owners of that property
6 operate 24 hours a day, seven days a week?

7 A. Not that I know.

8 Q. Not that you know of.

9 You said that you needed every bit of
10 your lot for the operation that you have there,
11 and yet you have made that pour along that north
12 wall and you continue to operate and you
13 couldn't drive on that wet cement --

14 A. After we got rid of 15 trailers out of
15 our park, out of our yard, we were able to pour
16 that. Now, we got rid of another 10 trailers.

17 Q. So it is possible to operate your
18 operation --

19 A. No. That is a very, very short term.

20 They're in our system. They will be coming
21 back.

22 Q. Okay. Which neighbors said that the
23 building you torn down was unsightly?

24 A. The village told me that. I have no

L.A. REPORTING, 312-419-9292

711

1 idea. I just tore it -- took it down.

2 Q. You got reports from neighbors -- in
3 my neighborhood that you had an unsightly
4 building?

5 A. I have no idea. The village told me
6 that the neighbors thought it was unsightly,
7 take it down and I took it down.

8 Q. It wasn't to facilitate more trailer
9 parking?

10 A. Had nothing to do with it. Wasn't
11 connected to Foodliner at the time.

12 Q. On average, how many on average, how
13 many hours a week do you spend at your facility
14 there?

15 A. Anywhere from 60 to 70.

16 Q. So, you're not there obviously all the
17 time?

18 A. No.

19 Q. So, if your company is open 7 days a
20 week, 24 hours a day, you can only be there
21 about a third of the time, is that right?

22 A. Yes.

23 Q. Okay. And if truck drivers are using
24 air horns or allowing tractors to idle for

L.A. REPORTING, 312-419-9292

712

1 hours, you really wouldn't know anything about
2 it because you're not there, is that correct?

3 A. I would know immediately because I
4 have a superintended on my third shift that has
5 been with me for seven years and does nothing
6 but he loves to get truck drivers. And I have a
7 foreman on each shift, which is -- his name is
8 Francisco on the first shift, second shift is
9 Jose Ramirez, and third shift is Jose Rodriguez.
10 My cell is on 24, 7.

11 Q. Okay. But if I have heard trucks
12 idling for hours there, I would be just mistaken
13 about that, is that right?

14 A. You could call me and I'll have it
15 stopped right now.

16 Q. You're a hard man to reach.

17 A. No, I'm not.

18 MS. REISEN: I'm going to ask that
19 that comment be stricken. That's not a question
20 posed by Mr. Brill.

21 HEARING OFFICER HALLORAN: That remark
22 is stricken by Mr. Brill.

23 BY MR. BRILL:

24 Q. So if you say your company is doing

L.A. REPORTING, 312-419-9292

713

1 it's best to control noises at 9200 King, that
2 at best would only be the hours that you are
3 there, since you can't swear to what happens
4 when you're gone, is that?

5 A. I'm under testimony and under oath
6 right now and I just told you I have a
7 superintended for the third shift and a foreman
8 on each other shift.

9 Q. But you don't have direct information
10 that there is no noise going on while you're not
11 there?

12 A. No, I don't.

13 Q. Okay. Do you instruct your employees
14 about the disposal of broken parts from your
15 trucks that are being replaced?

16 A. That has nothing to do with my -- that

17 is the superintendent of maintenance. I have
18 nothing to do with maintenance.

19 Q. But you're the man responsible
20 ultimately, aren't you?

21 A. No. It's a Foodliner employee.

22 Q. In the last 23 months of operation at
23 9200 King Street, have you ever been served with
24 a citation or paid a fine in conjunction with

L.A. REPORTING, 312-419-9292

714

1 business activities there?

2 A. I've never paid a fine. I may -- I
3 don't even think I got a citation. I may have
4 got a written notice that there was a complaint.

5 Q. If your business is washing tractors
6 and tankers that are not within a completely
7 enclosed building, wouldn't that be a violation
8 of the codes of Franklin Park?

9 A. That would be a violation, which I
10 would take up and I would handle on what we call
11 a care policy.

12 Q. So when we have pictures that we
13 submitted that showed them washing a tractor --

14 A. Are they washing?

15 Q. Well, they're spraying it with

16 something, sir.

17 A. That is not telling me if they're
18 washing.

19 Are they washing it?

20 Q. That doesn't look like washing to you,
21 I mean, a fellow there with a hose spraying up?

22 A. We wash with brushes and pressure
23 washers.

24 Q. What would --

L.A. REPORTING, 312-419-9292

715

1 A. As a matter of fact, the pressure
2 washer don't even reach out the door.

3 Q. What would cause that thing that we're
4 looking at in that picture?

5 A. 211 degrees, water, steam rolling off
6 from the ceiling.

7 Q. If your business does repairs on
8 trucks or tankers in your yard area, wouldn't
9 that be a code violation?

10 A. Yes, but, again, I'm not -- I have
11 nothing to do with maintenance.

12 Q. If your workers transferred product
13 from one tanker to another or one compartment to
14 another in a vault tanker while out in the yard,

15 wouldn't that be a code violation?

16 A. I don't know about a code violation.
17 You can trans load in the rail yard because --
18 rail yard inspectors, but to the best of my
19 knowledge, we don't do that in the yard.

20 Q. If your operations at 9200 King Street
21 produced noise, fumes, dust, glare, vibration
22 and headlight emissions, wouldn't that be in
23 violation of the restricted industrial district
24 codes where you are located?

L.A. REPORTING, 312-419-9292

716

1 MS. REISEN: I'm going to object
2 because there is no threshold analysis to that
3 question.

4 HEARING OFFICER HALLORAN: Mr. Latoria
5 can answer if he is able.

6 THE WITNESS: I wouldn't be able to
7 answer that. I don't know what noise, dust
8 you're -- you know, environmental impact you're
9 talking about.

10 BY MR. BRILL:

11 Q. I'm not talking about environmental
12 impact.

13 I'm talking about the codes of the

14 building that you occupy and that all work is
15 supposed to be done within a completely enclosed
16 building?

17 A. Yes.

18 Q. So --

19 A. Your question is?

20 Q. So, if you had noise and fume and dust
21 and glare and vibration, headlight emission,
22 wouldn't that be a violation of that restricted
23 industrial district codes where you're at?

24 A. I don't believe that we're doing that.

L.A. REPORTING, 312-419-9292

717

1 Q. Okay. Didn't neighbors, letters and
2 calls, police and health department visits to
3 the truck wash send up some red flags with
4 management?

5 A. Yes, and that's why we put the
6 policies in place.

7 Q. Did you ever consider meeting with the
8 people who -- after they complained did you ever
9 consider meeting with the people?

10 A. No.

11 Q. And why would that be?

12 A. I figured if they had a complaint they

13 would come to me.

14 I don't know why they called the
15 police on me. Why wouldn't they come to my
16 door?

17 Q. I think if you weren't able to sleep
18 you might call the police, too.

19 MS. REISEN: Objection. I'm going to
20 ask that that comment be stricken, again. And
21 we have a question and answer format whereby Mr.
22 Brill is supposed to ask the questions.

23 HEARING OFFICER HALLORAN: I
24 understand what the format is, Ms. Reisen.

L.A. REPORTING, 312-419-9292

718

1 Mr. Brill's comment will be stricken.

2 BY MR. BRILL:

3 Q. If you, in your home were subjected to
4 shattering noises, while you're trying to sleep,
5 wouldn't you call the police?

6 A. No.

7 My backyard backs up to Palatine Road,
8 it's a two lane highway, 55 miles an hour. I
9 never called the police.

10 Q. Approximately, how much money was
11 saved by management by not paving the lot for

12 almost two years?

13 MS. REISEN: Objection. Again, what
14 monies have been spent have already been
15 testified to. What monies have been saved, is
16 information that is confidential to the client.
17 I don't know that, first of all, they can even
18 ascertain that. But he has already testified
19 what the bids were and what he has been paying.

20 HEARING OFFICER HALLORAN: The witness
21 may answer if he is able.

22 THE WITNESS: There was no money
23 saved because there was no monies to do it.
24 Okay. Once we had a signed contract to go

L.A. REPORTING, 312-419-9292

719

1 ahead, it was done immediately. I couldn't move
2 any faster. There are two men literally doing
3 this work.

4 BY MR. BRILL:

5 Q. In your sound test and report, it
6 states that overhead doors sometimes remain open
7 during warmer months for ventilation.

8 Doesn't that violate line B of a
9 restricted industrial district which states that
10 all business services or processing shall be

11 conducted within completely enclosed building?

12 A. Were we washing in those bays?

13 Q. Sir?

14 A. Are you getting noise from bay 1 with
15 a door closed and you got bay 2 or 3 open? I
16 don't know that.

17 Q. I don't -- well, I can't make a
18 statement, but you don't know the answer to that
19 question?

20 A. I don't know that.

21 Q. You have some 30 odd pictures of your
22 establishment there and the driveways and a lot
23 and everything, but I don't see any signs
24 telling drivers not to exceed 5 miles an hour or

L.A. REPORTING, 312-419-9292

720

1 not to use air horns or anything like that.

2 Are you able to point out a sign --

3 A. We had them up on the front gate,
4 which we tore down about a year ago. We had
5 them up on the side fences towards the front of
6 the building. We tore them down about a year
7 ago. Up until the back fence -- when all the
8 curbing was complete, which was last week, we
9 completed the curbing, new fencing will be put

10 up and the signs will be put back.

11 Q. Did -- was that sign that you had
12 posted somewhere in your building, was that
13 facetious?

14 A. No, that was for real.

15 Q. With the not crossed out?

16 A. That could have been a driver or
17 somebody else making a funny remark.

18 Q. But that is not his true belief I
19 don't suppose?

20 A. No. He wouldn't be working there,
21 let's say that.

22 Q. You concede that sometimes air horns
23 are used in that yard, right?

24 A. In emergencies, yes.

L.A. REPORTING, 312-419-9292

721

1 Q. Only in emergencies?

2 A. Yes, sir.

3 Q. If someone is playing Yankee-Doodle on
4 their horns, that is an emergency?

5 A. Get me a unit number and they'll be
6 stopped immediately.

7 Q. Yes, I'm going to get up at 3:00 for
8 that.

9 MS. REISEN: Objection. Motion to
10 strike.

11 MR. BRILL: I'm sorry.

12 MS. REISEN: Is that motion granted?

13 HEARING OFFICER HALLORAN: Yes, it's
14 granted, Ms. Reisen.

15 Mr. Brill's remarks is stricken.

16 MS. REISEN: Thank you.

17 BY MR. BRILL:

18 Q. Does TL Trucking management have an
19 agreement with the village of Franklin Park
20 authorizing the storage of tankers used to carry
21 flammable ethanol that was parked next to
22 Robinson Crusoe Park?

23 A. Not to the best of my knowledge.

24 Q. So if they were parked there, and we

L.A. REPORTING, 312-419-9292

722

1 have pictures of them, that would have been a
2 violation, is that right?

3 A. I don't remember ever an ethanol
4 trailer in my yard. We carry food grade
5 product.

6 Q. If I refreshed your memory with a
7 picture, would that help?

8 A. It could.

9 MR. BRILL: May I, sir.

10 HEARING OFFICER HALLORAN: Yes, you
11 may.

12 BY MR. BRILL:

13 Q. Here is one.

14 HEARING OFFICER HALLORAN: For the
15 record, Complainant is handing the witness
16 photographs from Complainant's Group Exhibit No.
17 3.

18 MR. BRILL: Here is three more.

19 THE WITNESS: Bell Fuel, that is our
20 fuel company that fuels our tractor.

21 BY MR. BRILL:

22 Q. But that is a flammable --

23 A. That is their business, sir.

24 Q. But why would they be parked in

L.A. REPORTING, 312-419-9292

723

1 your --

2 A. They're next to the tractor fueling
3 it. We don't have fuel on the premises.

4 Q. You mean, your tractors are all
5 refueled next to the park fence?

6 A. No. Our tractors are refueled, and I

7 don't see a fence, and I don't see a park.

8 Q. All right. Maybe that is a refueling
9 truck.

10 But there are other trucks as well,
11 and they're not all Bell fuel.

12 A. These two, Quest?

13 Q. Yes.

14 A. Well, I assure you they were never
15 washed in our facility. I can assure you
16 because I can.

17 Q. But why would they be there?

18 A. I have no idea, sir. These may have
19 been a lease that they dropped off and picked
20 back up.

21 Q. Well, may have been is as good of an
22 answer as we can expect.

23 MS. REISEN: Motion to strike again.

24 HEARING OFFICER HALLORAN: Mr. Brill,

L.A. REPORTING, 312-419-9292

724

1 I'm going to ask you to keep your comments to a
2 minimum, if at all.

3 Motion granted. Mr. Brill's remarks
4 are stricken from the record.

5 BY MR. BRILL:

6 Q. Well, that one you answered.

7 You say you -- in your -- in discovery
8 we were given a Dow chemical sheet on the proper
9 use of the sodium material that you use on your
10 parking lot for keeping dust down.

11 A. Correct.

12 Q. Do you notify people in Robinson
13 Crusoe Park that you are about to apply a
14 chemical that may be hazardous to their health
15 in the form of dust or mist?

16 A. I've never notified anybody.

17 Q. I see.

18 And you have never appealed to the
19 zoning board for any kind of a sound barrier
20 between your property --

21 A. I've talked to Mr. Esposito and I've
22 talk to Dan Fisher. I've talk to the gentleman
23 that was here this morning testifying. They
24 said it would not be granted, don't try.

L.A. REPORTING, 312-419-9292

725

1 Q. But you never went through the formal
2 appeal?

3 A. No, I didn't, sir.

4 Q. Other than part of the taxes you paid

5 that goes into wages and pensions of the
6 officials and employees of Franklin Park, is
7 there any other way they may benefit from you
8 being located there?

9 A. Not to the best of my knowledge.

10 Q. Given -- I'm sorry.

11 A. We pay a lot of taxes.

12 Q. So do I.

13 A. Yes. We pay \$38,000 a year.

14 Q. Given the present conditions that
15 exist in Robinson Crusoe Park, would you advise
16 parents to allow their children to play in that
17 park?

18 A. I over the last three weeks have been
19 out in the yard personally every minute, every
20 day, all day, three weeks ago, seven days a
21 week, and I have seen nothing but kids' mothers
22 bringing two and three little kids there,
23 reading books to them, all day long, every day.

24 Q. Did you ever see me sitting in the

L.A. REPORTING, 312-419-9292

726

1 park?

2 A. No, I didn't, sir.

3 Q. If you've never been cited for any law

4 violations, what would keep you from returning
5 to business as usual next week if you won your
6 case here?

7 A. I'm trying to be a good neighbor, as
8 it is. I have done things. People here
9 testified three weeks, four weeks ago that I
10 haven't done nothing. I spent a lot of money
11 and I'm still spending a lot of money and when I
12 get through it will be right.

13 Q. But you said that in the two years
14 you've been here you've never contacted any of
15 those neighbors that you're presenting the good
16 neighbor policy to?

17 A. If somebody has a problem, they should
18 come and see me.

19 MR. BRILL: No further questions.

20 HEARING OFFICER HALLORAN: Thank you,
21 Mr. Brill.

22 Any redirect?

23 MS. REISEN: Just a few, your Honor.

24

L.A. REPORTING, 312-419-9292

727

1 REDIRECT EXAMINATION

2 BY MS. REISEN:

3 Q. Hank, you were present this morning
4 when both Dan Fisher and Don were testifying,
5 correct?

6 A. Yes.

7 Q. And, specifically, we were talking
8 about Chapter 6, for the industrial districts,
9 the permitted and the conditional usages, do you
10 recall that?

11 A. Correct.

12 Q. Do you recall Mr. Fisher attempting to
13 explain to Mr. Brill that he was taking a
14 section specifically regarding conditional uses
15 and applying it impermissibly to the regular
16 uses?

17 A. Yes, I do.

18 Q. Okay. Do you understand that the uses
19 that you have are consistent with zoning as far
20 as Franklin Park tells you?

21 A. Yes.

22 Q. And you were here when they both
23 testified to that regard, is that not correct?

24 A. Correct.

L.A. REPORTING, 312-419-9292

728

1 Q. You stated that you were contacted

2 once over a complaint, I believe, actually that
3 original is in submission, Exhibit 48, judge, or
4 should I just have him look at my copy?

5 HEARING OFFICER HALLORAN: I'm sorry?

6 MS. REISEN: That's okay. Exhibit
7 48, Respondent's Exhibit 48.

8 HEARING OFFICER HALLORAN: Would you
9 like to see that or --

10 MS. REISEN: Yes, please.

11 BY MS. REISEN:

12 Q. This a complaint that was filed by Mr.
13 Brill on January 21st, year 2000. And, in fact,
14 the conclusions indicate that someone talked
15 with you, is that not correct?

16 A. Yes.

17 Q. Okay. Is that the complaint you were
18 referring to?

19 A. I believe so.

20 Q. Has the village ever told you about
21 other neighbors making complaints against you?

22 A. Other than the empty building and the
23 bad looking building, no.

24 Q. Okay. You've not gotten calls from

L.A. REPORTING, 312-419-9292

1 the neighbors?

2 A. No.

3 Q. You think it is your duty to go
4 knocking on their doors to see if they're happy
5 with the way you're running business?

6 A. No, ma'am.

7 Q. Now, you're not at your facility
8 yourself 24 hours a day, but you're there more
9 than the average person works a job, isn't that
10 a fair statement?

11 A. That's correct.

12 Q. And your superintendent and your
13 foremen are good trusted employees?

14 A. Seven years.

15 Q. You have no reason to doubt their
16 reporting to you?

17 A. They have nothing to hide.

18 Q. And, in addition, if there was
19 something they were hiding, do you believe you
20 would find out from the village or someone else
21 at some point?

22 A. Drivers, police, the village,
23 whatever, I'm going to find it out.

24 Q. Now, Mr. Brill asked you if

1 maintenance repair on the lot was a code
2 violation. Is it against your policy to do
3 that?

4 A. No, not really. We try to cover all
5 the basis safety wise, trying to be neighborly,
6 trying to do the right thing. Do we have always
7 have the money to do that, no. When we get the
8 money, yes, we do do it.

9 Q. As far as you know, though, it is not
10 a code violation to have some repairs done?

11 A. Not that I know of.

12 Q. Lastly, I would apologize, I believe I
13 need to see Exhibit 53.

14 I want to direct your attention to the
15 Exhibit 53, which is the Dow response, MSD
16 report. Read the first sentence underneath,
17 leaks slash spill?

18 A. Loss incident --

19 Q. Losses?

20 A. -- losses incidental to correct
21 applications of this product are -- is in it
22 intent, fumes are not expected to be harmful to
23 the environment.

24 Q. So a loss that is incidental to

1 correct application, meaning if there is a
2 little bit of over spray, says right on there,
3 it's not harmful to the environment, correct?

4 A. Correct.

5 Q. Did you ever spray calcium chloride
6 directly into the park?

7 A. No.

8 Q. Did you ever allow children onto your
9 lot?

10 A. No. If they are there, they are there
11 illegal. Actually, calcium chloride in this
12 form is delivered to every Miller brewing plant.
13 It's the stopping agent for the brewing.

14 MS. REISEN: I believe that is all I
15 have. Thank you.

16 HEARING OFFICER HALLORAN: Thank you,
17 Ms. Reisen.

18 Mr. Brill, any recross?

19 MR. BRILL: No.

20 HEARING OFFICER HALLORAN: Mr.
21 Latoria, thank you, you may step down.

22 Ms. Reisen, anymore witnesses?

23 MS. REISEN: One moment.

24 No, we would rest.

1 HEARING OFFICER HALLORAN: Thank you
2 very much.

3 Mr. Brill, any case in rebuttal?

4 MR. BRILL: No. I would reserve my
5 summary for --

6 HEARING OFFICER HALLORAN: That's a
7 closing. I didn't know if you had any more
8 witnesses to put on.

9 MR. BRILL: No.

10 HEARING OFFICER HALLORAN: Thank you.
11 We'll go off the record for a minute.

12 (Off the record.)

13 HEARING OFFICER HALLORAN: We're back
14 on the record.

15 We took a few minutes to talk about a
16 few things.

17 First, I want to clear up, on
18 September 26th, Complainant's Group Exhibit No.
19 3, was admitted, excuse me, and I believe it was
20 admitted without objection, other than striking
21 the notations or comments on the back, those
22 were admitted. And there is approximately 16
23 photos in Group Exhibit No. 3.

24 For clarity, there was one photo that

1 was objected to that was originally in Group
2 Exhibit No. 3. I want to take that out and
3 rename it Petitioner's Exhibit No. 17, if that
4 is fine with everybody, just in case Ms. Reisen
5 wants to object in any way to that ruling.

6 Additionally, I'm supposed to make a
7 credibility determination of the witnesses that
8 testified on September 26 and also today, on
9 November 14. And based on my legal knowledge
10 and experience, I find that there are no issues
11 of credibility with any of the witnesses.

12 I also want to note that today,
13 November 14, there have been no members of the
14 public present. It appears there has just been
15 interested parties, including Mrs. Brill.

16 Okay. I want to note the posthearing
17 brief, the schedule we had agreed upon off the
18 record, the Complainant's posthearing brief is
19 due to be filed on or before January 3rd, the
20 year 2002. Respondent's posthearing brief is
21 due to be filed on or before January 14, 2002.
22 Complainant's response, if any, is due on
23 January 21st. I am also going to make December
24 14 the public comment is due on or before.

1 MS. REISEN: That was December?

2 HEARING OFFICER HALLORAN: 14th,
3 public comment is due on or before.

4 With that said, the parties have
5 indicated that they wish to reserve their
6 closing arguments and argue them in the
7 posthearing briefs.

8 I'm trying to think if I forgot
9 anything. Any questions before we close for
10 today?

11 MR. BRILL: Just review that January
12 4th date with me, that on or before January 4 I
13 am to submit my --

14 HEARING OFFICER HALLORAN: That was
15 January 3rd you are to submit your posthearing
16 brief with the board, and you also serve Ms.
17 Reisen and myself.

18 MS. REISEN: Standard pleading
19 formation? Does the board have a preference of
20 one sided or two sided?

21 HEARING OFFICER HALLORAN: I think
22 they require two sided. You can look in the
23 rules.

24 MS. REISEN: I will do that.

1 HEARING OFFICER HALLORAN: The whole
2 environmental thing, saving paper.

3 MR. BRILL: Will we receive any
4 notification of these dates from your office?

5 HEARING OFFICER HALLORAN: Yes, I'll
6 get a hearing officer order out hopefully within
7 a week, possibly 10 days after the record comes
8 out, but you're on notice now regarding the
9 dates regarding the posthearing briefs.

10 MR. BRILL: If the dates somehow
11 differ, which one has protocol over the other?

12 HEARING OFFICER HALLORAN: They
13 shouldn't.

14 MR. BRILL: Anything going to happen?

15 HEARING OFFICER HALLORAN: They
16 shouldn't. January 3rd your brief is due.
17 Respondent's brief January 14. Your response,
18 if any, January 21st. Public comment is due
19 December 14. And we can go to the record if
20 there is a dispute.

21 With that said, I think that is all
22 and I appreciate your time and effort and I wish
23 everybody a happy and safe drive home.

24

Thank you.

L.A. REPORTING, 312-419-9292

736

1 STATE OF ILLINOIS)
) SS:
 2 COUNTY OF DU PAGE)

3 I, ROSEMARIE LA MANTIA, being first
 4 duly sworn, on oath says that she is a court
 5 reporter doing business in the City of Chicago;
 6 that she reported in shorthand the proceedings
 7 given at the taking of said hearing, and that
 8 the foregoing is a true and correct transcript
 9 of her shorthand notes so taken as aforesaid,
 10 and contains all the proceedings given at said
 11 hearing.

12

13

14

ROSEMARIE LA MANTIA, CSR
License No. 84 - 2661

15

16

Subscribed and sworn to before me
this day of , 2001.

17

18

Notary Public

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20

21

22

23

24

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