

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 CHARTER HALL HOMEOWNER'S ASSOCIATION)
AND JEFF COHEN,)

4)
Complainants,)

5)
vs) No. PCB 98-81

6)
OVERLAND TRANSPORTATION SYSTEM INC.,)
7 and D.P. CARTAGE, INC.,)

8 Respondents.) VOLUME I

9

10

11 The PROCEEDINGS taken before JOHN BURDS, The

12 Hearing Officer, stenographically recorded by GEANNA

13 M. IAQUINTA, CSR, a notary public within and for the

14 County of Cook and State of Illinois, at the James

15 R. Thompson Center, 100 West Randolph Street, Room

16 8032, Chicago, Illinois, on the 12th day of May,

17 A.D., 1998, scheduled to commence at 9:30 a.m.,

18 commencing at 9:45 a.m.

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1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD
100 West Randolph Street
3 Suite 11-500,
Chicago, Illinois 60601
4 (312) 814-3669
BY: MR. JOHN BURDS
5

6 JENNER & BLOCK,
One IBM Plaza
7 Chicago, Illinois 60611
(312) 222-9350
8 BY: MR. BILL S. FORCADE and MR. STEVEN M.
SIROS
9

10 Appeared on behalf of the Complainants,

11 McBRIDE, BAKER & COLES,
500 West Madison Street
12 40th Floor
Chicago, Illinois 60661
13 (312) 715-5700
BY: MR. MARK J. STEGER
14

15 Appeared on behalf of the Respondents.
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1 THE HEARING OFFICER: Let the record reflect
2 that this is PCB 98-81 in the matter of Charter Hall
3 Homeowner's Association and various of its members
4 as complainants vs. Overland Transportation System,
5 Inc. and D.P. Cartage, Inc.

6 Today' date, for the record, is May 12th,
7 1998. It is approximately a quarter to 10:00 a.m.
8 in the morning. My name is Jack Burds. Welcome.

9 Pursuant to Board order, this matter has
10 been set for hearing and was scheduled for hearing
11 in compliance with the notice provisions as required
12 by the Environmental Protection Act and the Illinois
13 Pollution Control Board's procedural rules.

14 At this time, I would ask that counsel for
15 each party identify themselves. Mr. Forcade.

16 MR. FORCADE: Good morning, Mr. Hearing
17 Officer. My name is Bill Forcade, and with me is my
18 associate, Steven Siros. We're from the law firm of
19 Jenner & Block who represent the complainants, the
20 Charter Hall Homeowner's Association and various of
21 its members, including, but not limited to Jeffrey
22 Cohen.

23 THE HEARING OFFICER: Thank you.

24 MR. STEGER: Yes. Thank you, Mr. Hearing

1 Officer. My name is Mark Steger. I'm with the law
2 firm of McBride, Baker & Coles, and I represent the
3 respondents in this matter Overland Transportation
4 System, Inc. and D.P. Cartage.

5 THE HEARING OFFICER: Okay. I will note for
6 the record that all attorneys have entered written
7 appearances in this matter. I will also indicate
8 for the record that prior to the -- prior to going
9 on the record, I discussed with counsel a motion
10 that was filed Friday afternoon, May 8th, 1998, a
11 joint -- well, a motion submitted by the respondents
12 in the form of an agreed motion requesting certain
13 agreed amendments to the complaint in this matter,
14 which I have allowed, and a written order will go to
15 that effect.

16 The motion also requested that this
17 proceeding be bifurcated and that this portion of
18 the proceeding deal with the liability issues and
19 that, if necessary, another hearing be scheduled to
20 deal with the issues related to any civil penalty.
21 That motion will also be allowed. There will be a
22 written order to that effect that should be mailed
23 to the parties and can certainly be faxed to the
24 parties sometime today.

1 All right. Now, at this point, I would
2 also indicate that there are members of the public
3 present. I believe certainly there are members
4 related to each of the parties, and as far as
5 preliminary motions, my understanding is that there
6 are none at this time. Is that correct, Mr.
7 Forcade?

8 MR. FORCADE: That's correct.

9 THE HEARING OFFICER: Mr. Steger?

10 MR. STEGER: That's correct.

11 THE HEARING OFFICER: All right. Now, as far
12 as the order of the proceeding, we'll proceed in the
13 fashion as described under the procedural rules. At
14 this time I would ask if either of the attorneys
15 have opening statements.

16 Mr. Forcade?

17 MR. FORCADE: I have a very brief opening
18 statement.

19 THE HEARING OFFICER: Thank you. Please.

20 MR. FORCADE: Thank you, Mr. Hearing Officer.

21 Members of the Board, ladies and gentlemen
22 of the audience, the complainants in this case are a
23 group of homeowners in a housing subdivision in
24 Palatine west of Route 53 and immediately south of

1 the Northwest Highway.

2 Our testimony will demonstrate that the
3 homeowners' subdivision is immediately adjacent to
4 and shares a common property line with the
5 respondents Overland Transportation and D.P.
6 Cartage.

7 By way of background, we will provide
8 testimony that the residents of Charter Hall lived
9 quite reasonably with the prior tenants of Overland
10 Transportation, but our testimony will show that
11 since Overland Transportation occupied the facility,
12 the noise has increased dramatically and that the
13 noise levels now and for the past several years of
14 Overland Transportation's occupation have been
15 unreasonable, illegal, and unacceptable for the
16 members of Charter Hall.

17 We will show that the noise levels have
18 interfered with the routine normal daily activities
19 by the residents, including sleeping, communication,
20 watching TV, using their patios outside, and
21 recuperating from illnesses.

22 We intend to make this demonstration by
23 providing three types of evidence. First, we will
24 provide testimony by eight residents from Charter

1 Hall who will testify that they have observed
2 activities at Overland Transportation that cause
3 noise and further testify that the noise caused by
4 those activities is unreasonably interfering with
5 their daily lives.

6 Second, we will introduce noise
7 measurements and other documents from Charter Hall
8 residents showing the loudness, the frequency, and
9 the duration of the noise.

10 And, third, we will introduce testimony of
11 expert witnesses retained by Charter Hall to measure
12 and discuss the noise levels in the area.

13 As a totally separate matter, we will
14 introduce technical experts that will testify that
15 noise levels from Overland Transportation violate
16 the numerical noise limitations adopted by the
17 Illinois Pollution Control Board.

18 We believe that the evidence is
19 overwhelming and will require the board to adopt the
20 remedies that we have requested. For remedies, we
21 will present expert testimony that there are
22 technically feasible and economically reasonable
23 methods of controlling noise from Overland
24 Transportation and that these methods include, but

1 are not limited to, constructing a tall, thick
2 wooden fence in between Overland Transportation and
3 the affected homes, enclosing in a sound-tight
4 device the truck loading and unloading operations,
5 which is one of the noisiest activities, and,
6 further, by restricting some of the noisiest
7 operations in both time and location at the
8 facility.

9 We have further requested the Board to
10 require Overland Transportation to install
11 continuous noise monitors to monitor the future
12 noise levels of the facility to ensure future
13 compliance and to establish a schedule of stipulated
14 penalties for any future noise violations.

15 We implore the Board to make its decision
16 in the fastest reasonable time and to command that
17 Overland Transportation implement all of the
18 requested noise reduction measures in the shortest
19 possible time not to exceed 30 days.

20 We will further provide testimony that
21 Charter Hall has made diligent and reasonable
22 efforts in the past to contact Overland
23 Transportation and to attempt to secure reduction in
24 the noise levels from the facility, but that those

1 efforts were unsuccessful.

2 Only after those efforts were unsuccessful
3 did Charter Hall go to the time and expense to
4 retain technical experts and counsel to prosecute
5 this civil enforcement action before the Pollution
6 Control Board, and finally after the Board has
7 issued its interim order finding specific days of
8 violation and commanding implementation of the noise
9 reduction techniques, we have already requested a
10 second hearing at which we will address the issue of
11 civil penalties.

12 That concludes my opening statement.

13 THE HEARING OFFICER: Thank you.

14 Mr. Steger?

15 MR. STEGER: I have no opening statement at
16 this time.

17 THE HEARING OFFICER: All right. For the
18 record, we'll indicate that Mr. Steger has waived
19 opening statement at this time. However, I will ask
20 again at the beginning of his case in chief.

21 All right. The first witness.

22 MR. SIROS: The first witness I'd like to call
23 is Jeff Cohen.

24 THE HEARING OFFICER: Okay. Mr. Cohen, it's

1 important that you speak clearly so the court
2 reporter can hear you. Will you be sworn in,
3 please? Can you swear in the witness, please?

4 (Witness sworn.)

5 THE HEARING OFFICER: Please state your name
6 and spell your last name for the record.

7 THE WITNESS: My name is Jeffrey Cohen,
8 C-o-h-e-n.

9 JEFFREY COHEN,
10 called as a witness herein, having been first duly
11 sworn, deposeth and saith as follows:

12 DIRECT EXAMINATION

13 by Mr. Siros

14 Q. Mr. Cohen, please tell us where you live.

15 A. I live at 647 Charter Hall Drive in
16 Palatine.

17 Q. And do you live there alone?

18 A. I live there with my wife Tara, T-a-r-a.

19 Q. Okay. Does anyone else reside there with
20 you?

21 A. No humans, just animals.

22 Q. And what kind of animals do you have?

23 A. We have cats and dogs.

24 Q. And how many?

1 A. Three cats and two dogs.

2 Q. Do you own your house?

3 A. Yes, I do.

4 Q. When did you move in?

5 A. I moved in in November of 1992.

6 Q. What's your occupation?

7 A. I'm a self-employed commodity trader.

8 Q. Are you taking time out to testify here

9 today?

10 A. Yes, I am.

11 Q. I'd like you to tell me where the Charter

12 Hall subdivision is located?

13 A. Charter Hall is located in Palatine south

14 of Northwest Highway between Smith Street and

15 Quinten immediately adjacent to Overland

16 Transportation.

17 Q. If I was to drive there from this building

18 here today, would you describe what route I would

19 take?

20 A. You would take the Kennedy past the

21 airport to the Northwest Tollway to 53. You'd go

22 north on 53 to Palatine Road, west on Palatine Road

23 to Northwest Highway, Route 14, and take 14 to

24 Charter Hall Drive and hang a left.

1 Q. Would you identify the Overland facility
2 in terms of the geographic location with
3 relationship to the Charter Hall subdivision?

4 A. It is immediately to the east.

5 Q. I'd like to direct your attention to the
6 enlarged map on the stand there that I'd like to
7 mark for identification purposes Complainants'
8 Exhibit 1.

9 THE HEARING OFFICER: That's fine.

10 (Complainants' Exhibit No. 1
11 marked for identification,
12 5-12-98.)

13 THE HEARING OFFICER: Let the record reflect
14 that Complainants' Exhibit 1 is on an easel
15 approximately two-by-three-and-a-half feet square.
16 It appears to be a map.

17 BY MR. SIROS:

18 Q. Mr. Cohen, does that appear to be an
19 accurate representation of the Charter Hall
20 subdivision?

21 A. Yes.

22 Q. Does that also appear, to the best of your
23 recollection, to be an accurate representation of
24 the Overland facility located directly to the east

1 of the Charter Hall subdivision?

2 A. Yes.

3 Q. Do you know when the homes in the Charter
4 Hall subdivision were constructed?

5 A. They were constructed during 1992. They
6 may have been begun in 1991, but the majority were
7 completed the end of 1992, very beginning of 1993.

8 Q. So after 1993, all the homes had been
9 constructed within the subdivision?

10 A. Yes.

11 Q. I'd like for you to tell me a little bit
12 about the Charter Hall Homeowner's Association.

13 A. The Homeowner's Association is composed of
14 the 49 townhomes. Each townhouse has one vote at
15 our annual meeting, which is held in June of each
16 year. The association is run by a board of six
17 members.

18 Q. When was the association formed?

19 A. The association, the actual formation day
20 was before I moved in. However, we were handed off
21 to become self-governing by Pulte in 1993.

22 Q. So Pulte ran the association?

23 A. Pulte ran the association before us.

24 Q. And what's the purpose of the association?

1 A. Basically to maintain the property,
2 enforce the rules, handling the assessments,
3 contracting, basically run the day-to-day
4 operations.

5 Q. And what's your role in the organization?

6 A. I'm president of the association.

7 Q. And how long have you been president?

8 A. On and off since the beginning. It was
9 either a one or two year period that I wasn't, but
10 I've been on the board since the beginning.

11 Q. And who was president during that period
12 when you weren't?

13 A. Bridget Sweeney.

14 Q. Did the association authorize the filing
15 of the complaint that's before the Pollution Control
16 Board today?

17 A. Yes.

18 Q. I'd like to direct your attention back to
19 what we've marked for identification as
20 Complainants' Exhibit 1. Would you identify by
21 stating the numerical address of your house on that
22 blown-up exhibit?

23 A. 647.

24 Q. So on that exhibit, your house is the unit

1 marked 647; is that correct?

2 A. Yes.

3 Q. I request you to approach the exhibit and
4 put an X on your address in blue marker, please?

5 A. (Witness complied.)

6 MR. SIROS: Let the record reflect that
7 Mr. Cohen has marked Complainant's Exhibit 1 with a
8 blue X at the number 647, which represents his
9 address.

10 THE HEARING OFFICER: The record will so
11 reflect.

12 BY MR. SIROS:

13 Q. Would you please describe generally the
14 layout of your home?

15 A. My home is two stories. The first floor
16 is the kitchen, living room, dining room, and
17 one-half bathroom. Upstairs are three bedrooms and
18 two additional baths. The master bedroom faces east
19 and overlooks Overland Transportation.

20 Q. And what is on the east end of your -- the
21 east part of your house on the first floor?

22 A. On the first floor there is a patio and
23 there is the dining room and the living room.

24 Q. Would you describe the view from your

1 first floor dining room?

2 A. Looking out you have our patio and then a
3 fence which was constructed by Pulte blocking the
4 view into Overland.

5 Q. And which direction is that view?

6 A. That view is east.

7 Q. Would you please describe the view from
8 your second floor bedroom, master bedroom?

9 A. From the second floor bedroom, you
10 overlook the patio and then you view directly into
11 Overland Transportation.

12 Q. Can you see Overland Transportation from
13 your second floor window?

14 A. Yes.

15 Q. And what do you see when you look out?

16 A. I see the truck terminal and most of the
17 time I see Overland trucks along with the few other
18 trucks with a few other names, Zelner, I've seen
19 Frontier.

20 Q. How far is your patio to the fence line?

21 A. I'd say it's about 40 feet.

22 Q. When you moved in in November of 1992,
23 were you aware that there was a trucking operation
24 located directly to the east of your property?

1 A. Yes, I was aware that Yellow was there,
2 but whenever we visited the property, they -- the
3 noise was really nothing.

4 Q. Were you aware that a notice of operation
5 of a trucking facility had been filed by Pulte prior
6 to your moving in?

7 A. Yes.

8 Q. Besides -- sorry.

9 Could you describe what you did, if
10 anything, to determine whether or not there would be
11 noise from the trucking operation located next door?

12 A. We had visited the property several times
13 and had never really noticed any noise or any
14 unreasonable noise.

15 Q. Who was the -- to the best of your
16 knowledge, who was the operator of that property
17 when you moved in in November 1992?

18 A. Yellow Freight.

19 Q. After November 1992, when did you first --
20 when were you first bothered by noise from the
21 facility?

22 A. Very occasionally we would be bothered by
23 Yellow Freight. Maybe every couple of weeks, once
24 every three weeks it would wake us up at night.

1 There would be a boom or something, but for the most
2 part, it wasn't a day-to-day occurrence. It was
3 fairly infrequently.

4 Q. And would you describe the type of noise
5 that you heard when you moved in in November of
6 1992?

7 A. There would be assorted bangs associated
8 with the loading and unloading of the trailers.

9 Q. I'd like to bring you to the present. I
10 would ask you to answer how often the noise occurs
11 now?

12 A. It is almost a daily occurrence.
13 Sometimes it's a little less on weekends, but
14 probably six days out of seven is a good...

15 Q. Is there a particular day when you don't
16 hear noise?

17 A. If there's any day that we're not going to
18 hear noise, it would usually be Sunday during the
19 day.

20 Q. Okay. I would like to take you through a
21 period, let's say, a typical Monday. We'll start at
22 8:00 in the morning and I'd like you to run to 8:00
23 in the morning the next day. I'd like you to
24 describe the times that you're bothered by the noise

1 from the operations.

2 A. Well, 8:00 in the morning I'm already
3 downtown.

4 Q. Okay.

5 A. But then when I come home, I usually get
6 home around 3:30 in the afternoon. Occasionally,
7 it's noisy, but usually it's fairly quiet until
8 roughly dinner time, 5:30, 6:00 o'clock, when we
9 hear more banging.

10 Then it has -- sometimes they'll slow down
11 until 8:00 o'clock or so when occasionally there
12 will be a few more bangs, but the majority of the
13 time the banging starts between 10:00, 11:00
14 o'clock, usually 10:00, 10:30 in the evening and
15 continues for about an hour, and then on the times
16 that it wakes me up, usually that's around 2:30 in
17 the morning or so, 2:00, 2:30 in the morning.

18 It will continue for an hour or so, and
19 then when I get up in the morning at 5:00 o'clock in
20 the morning, I usually hear them in the morning.

21 Q. And from 5:00 o'clock in the morning until
22 you leave for work, do you hear the noise?

23 A. Usually yes.

24 Q. And what time do you leave for work?

1 A. I leave for work at 5:20.

2 Q. Would you describe the types of noises
3 that you hear from the Overland facility?

4 A. I hear two types of banging. I hear a
5 double -- a loud double bang that I've since learned
6 is from the hooking and unhooking of the trailers.

7 Q. Okay. Let me ask you how you learned that
8 fact?

9 A. Overland Transportation, at a meeting we
10 had with them, told me that's what it was from.

11 Q. Okay. Have you ever seen any -- have you
12 ever physically observed the loading and unloading
13 operations and then associated the noise with that?

14 A. Yes.

15 Q. And what other types of noises?

16 A. I hear the -- I hear another type of
17 banging when the forklifts actually load onto the
18 truck when they drive into the truck and drop their
19 loads.

20 Q. And what kind of noise is that?

21 A. That is another type of bang.

22 Q. Okay.

23 A. And then occasionally I will hear it's
24 almost like a screech of metal being dragged across

1 something.

2 Q. Okay. And have you observed any specific
3 activity at Overland that you can associate with
4 that type of noise?

5 A. No.

6 Q. I'd like to now direct your attention to
7 the three types of noises that you just described.
8 I'd like you to go through each specific type and
9 tell me the range of time that you hear that noise?

10 A. Usually the bangs it will be -- you'll
11 hear a bang, bang when they're hooking up the
12 trailers and then nothing. It's a sharp single
13 bang. When they're loading and unloading the
14 trailers, it's the same type where it's a single
15 bang and then silence or until they load another
16 type of trailer, but it's not ever a continuous, you
17 know, bang, bang, bang, bang, bang. It's always a
18 bang, and then there will be a pause, and then
19 another bang.

20 Q. When they're loading and unloading the
21 trailers, how many times in a ten-minute period do
22 you hear the bang?

23 A. Depending on the level of how many
24 trailers they're unloading, a lot. I mean, I would

1 have to say maybe sometimes every ten, 15 seconds

2 I'll hear something.

3 Q. Now, I'd like you to describe how the

4 noise has affected your daily life?

5 A. Well, for the most part, I can't use my

6 patio because if you open the door and you sit out

7 on the patio, you're just going to hear the bangings

8 all day.

9 Q. Did you use your patio when you moved in

10 in November of 1992?

11 A. Yes.

12 Q. And when did you have to stop using your

13 patio?

14 A. I pretty much haven't used it since the

15 summer of -- that would have been the summer of '96.

16 Q. Okay. And what other affect, if any, has

17 this had on your life?

18 A. Well, I mean, I'm a commodity trader. I

19 get up very early in the morning. I'm also a very

20 sound sleeper. They do, however, wake me up on

21 occasion, which is actually pretty hard to do, and

22 if they wake me up, I'm usually up then for an hour

23 or so hearing them, and then the next day while I'm

24 trading, there have been times where I literally

1 have been so tired I fall asleep in the pit.

2 It also affects me because my wife, who is
3 more sensitive to the noise than me, and her side of
4 the bed is closer to the window, she's always tired
5 because she's up almost every night.

6 Q. Any other affects on your life besides the
7 inability to sleep?

8 A. There are times that it's hard to carry on
9 a normal conversation just because you're
10 interrupted. Downstairs you hear just a continuous
11 banging.

12 Q. Is that a conversation in the house?

13 A. In the house, yes. There will be times
14 that literally the noise will be so loud it will
15 literally shake the house and scare the animals.

16 Q. Are you able to have the windows open
17 during the springtime?

18 A. For the most part, no.

19 Q. Can you identify a specific event, a
20 specific time, when the noise particularly affected
21 you?

22 A. I can remember the last specific time that
23 they woke me up at night.

24 Q. When was that?

1 A. It was April 27th. I believe it was the

2 27th or the 29th. I think it was the 27th.

3 Q. Okay. And what year was that?

4 A. That was this year.

5 Q. And why does that -- why do you remember

6 that particularly?

7 A. Because it was one of the times where they

8 were very loud. It was one of the times they woke

9 me up at night, and I remember going to work

10 literally having to sit down -- sitting down in the

11 trading pit after a little while and dozing off for

12 15 minutes.

13 Q. How has the frequency of noise changed

14 from November 1992 when you moved in to the present?

15 A. It's a lot more. It's magnitudes larger.

16 Before it was an occasional thing. Now, it's a

17 day-in-and-day-out thing.

18 Q. Has the type of noise changed since

19 November of 1992 to present?

20 A. It's louder.

21 Q. I'd like to direct your attention to the

22 previous efforts you personally and the association

23 has taken to attempt to resolve these noise

24 complaints with Overland.

1 Can you tell me the first time that you

2 tried to resolve these?

3 A. The first time that we actually tried to

4 resolve them with Overland, we had talked to people

5 at Overland at the Palatine yard.

6 Q. Do you recall who you spoke with?

7 A. Offhand, no. We have called them.

8 Sometimes when they were loud, we would call them at

9 night to say listen, we're trying to sleep here, and

10 their response was basically well, we have a job to

11 do, and they just continued.

12 Eventually, it reached a point where we,

13 the homeowners, arranged a meeting with several

14 people from Overland, John DePietro, who we

15 understood to be in charge. There was a Don

16 Trujillo or something like that who was in charge of

17 the actual Palatine facility. We had a meeting with

18 them at the Palatine Village Hall.

19 Q. Do you recall the date of that meeting?

20 A. It was May of 1996. I don't know the

21 exact date.

22 Q. Okay. And would you describe what

23 happened at this meeting?

24 A. We had what we felt was a positive meeting

1 with Overland. They basically said yes, we know
2 we're loud. We know we have a problem. We're going
3 to work to see what we can do to eliminate the
4 noise, whether it's cushioning the dock plates or
5 maybe looking at building a fence, or we'll see what
6 we can do.

7 Q. Uh-huh.

8 A. And we thought, you know, this is good.
9 We've made progress. We're willing to be a little
10 patient because, you know, they said that they'll
11 work with us, and we felt it was a very positive
12 meeting.

13 Q. And how did the noise change after the
14 May '96 meeting?

15 A. If anything, it got worse.

16 Q. Was this immediately after the meeting
17 or --

18 A. No. It was just -- it was just a general
19 creep upward. As the facility got busier, the noise
20 increased.

21 Q. What additional actions, if any, did you
22 take to attempt to resolve these noise concerns?

23 A. We had -- I know some of the homeowners
24 had gone to the Village of Palatine to complain and

1 have basically gotten nowhere. We have tried
2 calling the police and have gotten nowhere. We had
3 contacted Overland again and said basically listen,
4 you know, if you -- you know, we've got to do
5 something and we're going to go to the Pollution
6 Control Board if we have to.

7 Q. And then what happened?

8 A. Nothing.

9 Q. And did you have any additional meetings
10 with Overland?

11 A. We did not -- we did not have any
12 additional meetings between Overland and the actual
13 Homeowner's Association.

14 Q. Did you have any meeting -- any other
15 meeting that you participated in with Overland?

16 A. I participated in a meeting with my
17 attorneys in May of 1997 at their office.

18 Q. And can you identify those attorneys,
19 please?

20 A. It was -- Bill Forcade was there and I
21 don't remember what his name is, the other attorney
22 in the back (indicating).

23 THE HEARING OFFICER: Let the record reflect
24 that the witness is pointing to, I believe, Mr.

1 Steger, but I am not --

2 THE WITNESS: No.

3 THE HEARING OFFICER: -- sure.

4 THE WITNESS: No.

5 THE HEARING OFFICER: Okay. Apparently the

6 party that he's identified as an attorney is the one

7 witness Mr. Steger has brought with him.

8 BY MR. SIROS:

9 Q. And what was discussed at the meeting?

10 A. Different types of noise solutions of what

11 basically they could do to reduce the noise.

12 Q. I'm sorry. Do you recall when that

13 meeting was that you had with your attorneys?

14 A. It was May of 1997. I think it was

15 like -- I think it was the 29th. It was the end of

16 the month.

17 Q. And, again, can you describe what was

18 discussed at that meeting?

19 A. The types of noise and different solutions

20 that Overland could take that would reduce the

21 noise.

22 Q. Do you recall some of the solutions or

23 possible solutions that were discussed?

24 A. Some of the possible solutions that we had

1 suggested were building a fence, a sound proof
2 fence, possibly enclosing the truck base, cushioning
3 the dock plates, replacing the yard tractor trailer,
4 which was something new that we had never seen until
5 Overland, possibly -- we had suggested possibly
6 restricting their hours or just operating on the
7 other side of the building at night.

8 Q. Would you describe the yard trailer? I'm
9 sorry.

10 A. The yard trailer is a -- it looks like a
11 weird cab of a truck. They use it to move the
12 trailers back and forth around.

13 Q. And you physically observed this?

14 A. I have physically observed it, yes.

15 Q. I'd also like to ask you when you said
16 that you suggested that -- you know, one of the
17 suggestions was that they carry on operations on the
18 other side of the building, what side of the
19 building do they currently carry on operations to
20 the best of your knowledge?

21 A. Right now, they use both sides. Just from
22 general observing, it seems that they use the west
23 side more than the east side, but I might be
24 mistaken. I can't see the east side.

1 Q. And how is that -- I'll rephrase that.

2 When you're looking out your upstairs
3 window, which side of the facility do you see?

4 A. I see their west side.

5 Q. Okay. And so the suggestion was that they
6 carry on their operations on the east side?

7 A. On the other side, yes.

8 Q. Okay. And what was their response, if
9 any, to your suggestions?

10 A. They said that they would discuss it with
11 their engineers and their operation people in
12 Indianapolis and see what they could do to reduce
13 the noise.

14 Q. And how did the noise change after the
15 May of '97 meeting?

16 A. For the most part, it didn't. It might be
17 a little worse now, but it's at the same basic
18 day-in-and-day-out level.

19 Q. One final question.

20 When were you last bothered by noise from
21 the Overland facility?

22 A. The last time I was bothered by noise
23 would have been yesterday morning.

24 Q. And what type of noise was that?

1 A. I heard the general banging when I went to
2 work about 5:00, 5:15 in the morning I heard them
3 banging.

4 Q. Did that wake you up in the morning?

5 A. No, it didn't wake me up. My alarm woke
6 me up, and then I heard them just sitting there
7 banging. When I was out walking the dogs, I heard
8 them banging.

9 MR. SIROS: No further questions.

10 THE HEARING OFFICER: Mr. Steger?

11 MR. STEGER: Yes. Thank you.

12 C R O S S - E X A M I N A T I O N

13 by Mr. Steger

14 Q. I just have first a few questions on
15 geographics referring to Complainants' Exhibit
16 No. 1.

17 THE HEARING OFFICER: Whatever you need,
18 Mr. Steger. If you want me to move the easel, I'll
19 do that or I don't know what's easier for you.

20 MR. STEGER: I need the exercise.

21 BY MR. STEGER:

22 Q. Could you -- could we have a pen? Let's
23 do -- what colors do you got? Let's do black.

24 With respect to the geography or the

1 layout of this area, could you identify what is
2 directly underneath the Northwest Highway on this
3 exhibit?

4 A. Sure. That --

5 Q. I'll write it in.

6 A. The little box, that is the --

7 Q. The --

8 THE HEARING OFFICER: Okay. Hold on. Hold
9 on. Let him finish for the court reporter's sake.

10 BY THE WITNESS:

11 A. That little box is White Hall Plaza. It's
12 a small shopping center.

13 BY MR. STEGER:

14 Q. A strip mall?

15 A. More offices than stores though.

16 Q. Okay. So this is White Hall?

17 A. Yes.

18 THE HEARING OFFICER: Okay. Let the record
19 reflect that Mr. Steger is writing in under
20 Northwest Highway on the exhibit identified as
21 Complainants' Exhibit 1 the term White Hall directly
22 under the type print Northwest Highway.

23 BY MR. STEGER:

24 Q. And Northwest Highway is how many lanes?

1 A. It is four lanes.

2 Q. Two in each direction?

3 A. Two in each direction.

4 Q. What is immediately east of Overland

5 Transportation?

6 A. That is another shopping center.

7 Q. Do you happen to know the name of the

8 shopping center?

9 A. Offhand, I don't know the name of it.

10 Q. I'll just mark this shopping.

11 Does it go from Northwest Highway --

12 A. Pretty much --

13 Q. -- all the way down the length of Overland

14 on the east?

15 A. Pretty much. So yeah, it's the back of

16 it.

17 Q. Okay.

18 THE HEARING OFFICER: Let the record reflect

19 that Mr. Steger is now writing on the -- what would

20 be the east side or what would be represented as the

21 east portion of the document labeled Complainants'

22 Exhibit 1 shopping center adjacent to what has been

23 identified at the Overland Transportation Center.

24

1 BY MR. STEGER:

2 Q. What is on the north side of Northwest
3 Highway?

4 A. There are other subdivisions.

5 Q. Residential subdivisions?

6 A. Residential subdivisions. Auburn Woods is
7 the one immediately across the street.

8 Q. Of Charter Hall?

9 A. Yes.

10 Q. Auburn -- I'm sorry, Auburn?

11 A. Woods.

12 Q. Woods.

13 THE HEARING OFFICER: Okay. Let the record
14 reflect that on Complainants' Exhibit 1, Mr. Steger
15 has now marked or written in the term Auburn Woods
16 not immediately on top of the Northwest Highway type
17 face, but north of the Northwest Highway.

18 BY MR. STEGER:

19 Q. Okay. Are you familiar then with the
20 dividing line between Overland and Charter Hall?

21 A. Yes.

22 Q. Okay. Is there a fence built on this?

23 A. Yes, there is a fence.

24 Q. How far does the fence extend?

1 A. The fence extends pretty much from unit

2 699 --

3 Q. 699.

4 A. -- and it continues down pretty much

5 through unit 627.

6 Q. And how high is that fence?

7 A. Eight feet or so.

8 Q. Okay. So from approximately 699 down to

9 627?

10 A. Yes.

11 Q. It's an eight foot high fence?

12 A. Yes, it's roughly eight foot high. It's

13 eight foot high on our side. On Overland's side,

14 there is a drop off.

15 Q. Okay. Let's first focus on the fence.

16 A. Okay.

17 THE HEARING OFFICER: Before you proceed, let

18 the record reflect that Mr. Steger has marked from

19 what has been identified as unit 699 to unit 627,

20 which are apparently units within the Charter Hall

21 subdivision or Homeowner's Association going

22 north/south or south, north/south. It's a thicker

23 line that was previously there marked by black

24 marker.

1 BY MR. STEGER:

2 Q. And with respect to the -- well, let's
3 finish this.

4 You said on your side of the fence line
5 how far is it to your -- how far is it to your
6 patio?

7 A. To the edge of my patio, the furthest edge
8 of my patio it would be 20, 30 feet.

9 Q. Okay. Probably another ten feet to the
10 house?

11 A. Yeah, and then there's another ten, 15
12 feet from the patio to the house.

13 Q. And is it level?

14 A. Yes.

15 Q. And then you previously mentioned that it
16 drops off on Overland?

17 A. It drops off on Overland's side a couple
18 of feet.

19 Q. Okay. So on the west side, do you know
20 how far of a drop it is from the fence line to
21 Overland's property or driveway?

22 A. I would say it's 15 feet or so.

23 Q. Okay. Fifteen feet inside of
24 Overland's --

1 A. Yeah. It's roughly 15 feet, maybe 20 feet
2 until you get to Overland's actual property.

3 Q. And do you know how far of a drop it is
4 from the fence?

5 A. Three feet or so.

6 Q. Up by lot -- house 699 and 695, is there a
7 fence coming out from approximately the location of
8 those two units all the way across Overland's
9 property?

10 A. It's a cyclone fence.

11 Q. Do you know approximately where it starts?

12 A. No. Offhand, I really couldn't tell you.

13 Q. Okay. All right. We'll do that later
14 then.

15 On the south part of the facility, is
16 there a fence along the south side of Overland's
17 property?

18 A. I believe there is.

19 Q. Do you know which unit it goes into?

20 A. No.

21 Q. Okay. What is south of that fence line?

22 A. Wetland area.

23 Q. A wetland area. Okay.

24 What is west here of Charter Hall?

1 A. That is the Deer Run Housing Association.

2 Q. Deer Run?

3 A. Yes.

4 THE HEARING OFFICER: Okay. Let the record

5 reflect that Mr. Steger has now marked -- written

6 the terms Deer Run based on the north direction

7 along Complainants' Exhibit 1 directly to the west

8 of the Charter Hall -- what has been identified as

9 the Charter Hall Homeowner's Association.

10 BY MR. STEGER:

11 Q. Further south of Overland and Charter

12 Hall, are there train tracks there?

13 A. There are train tracks. They are south.

14 Q. They are south of Overland and Charter

15 Hall?

16 A. Significantly further south.

17 Q. Is it a commuter line?

18 A. For the most part, yes. It's the Union

19 Pacific line.

20 Q. The Union Pacific line.

21 Is there a depot near there?

22 A. The depot is a mile, a mile and a half

23 away.

24 Q. Do you know which direction?

1 A. It is pretty much south. It is south and
2 maybe a little southeast.

3 Q. Okay. I don't have any other questions
4 right now on that.

5 Okay. You say you purchased your property
6 in November of 1992?

7 A. Yes.

8 Q. When did you actually enter into a
9 contract?

10 A. It wasn't much before that. Maybe
11 September.

12 Q. But you had visited the area before?

13 A. Yeah, we had visited the area several
14 times.

15 Q. Was the fence constructed when you
16 visited?

17 THE HEARING OFFICER: For the record, which
18 fence are you referring to?

19 MR. STEGER: The fence that I marked on the
20 exhibit running from the property line 699 through
21 627.

22 BY THE WITNESS:

23 A. I really don't remember.

24

1 BY MR. STEGER:

2 Q. You don't remember.

3 And you had previously testified that you
4 visited the property several times?

5 A. Yes.

6 Q. When was that?

7 A. During the -- after we had signed the
8 contract during construction.

9 Q. And what part of the day?

10 A. It would have been different times of the
11 day. Basically, daylight hours, maybe early
12 evening.

13 Q. Okay. Did you ever ask the IEPA to
14 investigate the noise coming from the facility?

15 A. I know my wife talked to Greg Zack of the
16 EPA about the noise.

17 Q. But you didn't personally?

18 A. I did not personally, no.

19 Q. Was your unit constructed when you visited
20 it?

21 A. It was in the process of being
22 constructed.

23 Q. And describe for me how these units sit?

24 Are they single freestanding townhomes or are they

1 connected to each other?

2 A. They are connected to each other.

3 However, the black line in the middle is the

4 demarcation of each separate building.

5 THE HEARING OFFICER: Okay. Let the record

6 reflect that there are thicker black lines between

7 certain units on the document marked as

8 Complainants' Exhibit 1, which Mr. Cohen has

9 identified as space between.

10 BY MR. STEGER:

11 Q. So your -- do you live in a unit that

12 consists of six units running from 647, which is

13 your unit, south to 627 or are those separate

14 buildings?

15 A. That is all one building.

16 Q. That's all one building, and you are on

17 the north side?

18 A. I'm on the north side, yes.

19 Q. Were there other units for sale when you

20 went to visit this property?

21 A. Yes, there were.

22 Q. Do you recall whether your unit was one of

23 the last units to sell or not?

24 A. No, it was not one of the last units to

1 sell.

2 Q. Do you know what you paid for the unit?

3 MR. SIROS: Objection, relevance.

4 MR. STEGER: If I ask the next question, you'll

5 find out.

6 THE HEARING OFFICER: I'll let it -- I'll allow

7 it.

8 BY THE WITNESS:

9 A. It was the low 150s.

10 BY MR. STEGER:

11 Q. Do you know whether there are identical

12 units to yours on the other side of Charter Hall

13 Drive, the other side being the west side?

14 A. The ones on the west side all have

15 basements. Our side does not have basements.

16 Q. Other than that, they consist of the same

17 general --

18 A. They are the same general style.

19 Q. And you would expect those houses to be --

20 those units to be a little bit more expensive

21 because they have a basement?

22 A. Yes.

23 Q. Do you know whether -- let's see.

24 Do you recall reading the Charter Hall

1 declarations of covenants, conditions, and

2 restrictions?

3 A. Yes.

4 Q. Do you know when you received that?

5 A. I received that right around the time I

6 moved in. I don't remember if it was immediately

7 before or after, but I know we had looked at it

8 before we moved in. I don't know when I actually

9 received my little folder.

10 Q. Have you seen what has been filed as the

11 joint stipulation of facts referred and Exhibit C?

12 Have you seen that filing?

13 THE HEARING OFFICER: Hold on. Before we

14 proceed, how do we want to deal with the joint

15 exhibit here, gentlemen?

16 As far as the joint exhibit, for the

17 record, a joint stipulation was submitted by the

18 parties in this case. It consists of several

19 attached exhibits with the stipulation of certain

20 what the parties have represented to be relevant

21 facts in this case.

22 Now, as far as referring to it, how do we

23 want to -- do we want to admit that document?

24 Putting it before the Board now with the clerk, are

1 we going to be admitting a separate document to
2 refer to or to have witnesses refer to? How will we
3 proceed here? Mr. Forcade?

4 MR. FORCADE: Can we go off the record for a
5 minute?

6 THE HEARING OFFICER: Okay. Let's go off the
7 record.

8 (Discussion had
9 off the record.)

10 THE HEARING OFFICER: Let the record reflect
11 that we are now back on the record at 98-81 after
12 going off the record pursuant to counsel's request
13 related to the joint stipulation.

14 While off the record, joint counsel --
15 counsel for each party identified three pages that
16 have been -- copies of which have been handed to the
17 hearing officer. What has been agreed is that a
18 complete exhibit including the three pages will be
19 put together. I don't know which party is going to
20 take on that responsibility. I will ask --
21 Mr. Steger has indicated that he will take on that
22 responsibility.

23 What we will do then with the joint
24 stipulation -- for the record, a joint stipulation

1 has been entered into in this case. It is
2 identified as such. We will refer to it as a joint
3 exhibit, Joint Exhibit 1, and all attached exhibits
4 thereto.

5 Upon any use of that for now, we will use
6 what we have with the three pages, but what I would
7 like hopefully before the end of the day is a
8 complete joint stipulation with all attached
9 exhibits including the three pages that have been
10 given to me to be submitted and marked as I
11 previously indicated so that we may refer to it and
12 that if witnesses are required to refer to it, they
13 may do so and we all have the same document.

14 Mr. Forcade?

15 MR. FORCADE: Yes. Would it be possible
16 to make it before the commencement of the hearing
17 tomorrow? If we're going to have copies of it, I'm
18 not sure we can get it before the end of business
19 today with the testimony. So if we could submit it
20 prior to the opening of hearing tomorrow.

21 THE HEARING OFFICER: That's not a problem.

22 MR. FORCADE: Okay.

23 THE HEARING OFFICER: I guess I was hoping that
24 during the lunch break, if possible, but that's --

1 you know, that's my -- but I will not impose that
2 upon Mr. Steger. However, we are in the
3 Complainants' case in chief. The sooner the better
4 for all our sake. That's all I would request.
5 Certainly before the hearing begins tomorrow.

6 All right. Mr. Steger, you were in the
7 middle of cross-examination.

8 BY MR. STEGER:

9 Q. Back to the fence, the wooden fence, who
10 built fence?

11 A. I believe it was built by Pulte.

12 Q. I've got a few more questions here.

13 Okay.

14 But for the Overland activities, what time
15 do you usually wake up for work in the morning?

16 A. 5:00 o'clock.

17 Q. And you leave?

18 A. 5:20, 5:25, sometime around then.

19 Q. And you return from work?

20 A. I'm usually home around 3:30.

21 Q. Do you know what time you go to bed at
22 night?

23 A. 10:00 o'clock.

24 Q. Is there anything else that disturbs your

1 sleep?

2 A. For the most part, no.

3 Q. Lucky you.

4 Are there other sounds that you hear?

5 A. What do you mean other sounds?

6 Q. Do you hear aircraft noise?

7 A. Yes.

8 Q. Do you have an air conditioning unit?

9 A. Yes.

10 Q. Birds flying overhead?

11 A. There are birds. I don't really hear

12 them.

13 Q. Do you hear traffic from Northwest

14 Highway?

15 A. No.

16 Q. You personally didn't take any sound

17 measurements?

18 A. No. My wife pretty much took the sound

19 measurements.

20 Q. With respect to the makeup of your unit,

21 you indicated that there are three bedrooms

22 upstairs?

23 A. Yes.

24 Q. Does only -- how many bedrooms face the

1 Overland property?

2 A. Just the master bedroom.

3 Q. And the other two are located where?

4 A. On the other side, on the west side.

5 Q. Facing Charter Hall Drive?

6 A. Facing Charter Hall.

7 MR. STEGER: I don't have any other questions.

8 THE HEARING OFFICER: Mr. Siros.

9 MR. SIROS: Yes, just a couple questions.

10 R E D I R E C T E X A M I N A T I O N

11 by Mr. Siros

12 Q. When you moved in in November of 1992,

13 were you bothered by noise in the middle of the

14 night or early morning from the Yellow Freight

15 operation?

16 A. Every once in a while we would be.

17 Q. And when you say every once in a while,

18 could you assign a frequency to that?

19 A. Maybe every three weeks, once a month.

20 Nothing really that much.

21 Q. And could you compare that to present?

22 A. To present, it's almost -- it's pretty

23 much a daily thing.

24 MR. SIROS: Okay. Nothing else.

1 THE HEARING OFFICER: Mr. Steger, any recross?

2 MR. STEGER: No.

3 THE HEARING OFFICER: No. All right.

4 Mr. Cohen, you may step down. The next

5 witness.

6 MR. SIROS: I call Mary Ann Bergau.

7 THE HEARING OFFICER: Ms. Bergau, welcome.

8 THE WITNESS: Thank you.

9 THE HEARING OFFICER: It's important that you

10 speak clearly.

11 THE WITNESS: Okay.

12 THE HEARING OFFICER: Mr. Cohen did fine. He

13 was a fine example. We'll use Mr. Cohen as our

14 example for good testimony here, testifying loudly

15 and clearly.

16 All right. Would you please swear in the

17 witness, Ms. Iaquinta?

18 (Witness sworn.)

19 THE HEARING OFFICER: Would you please state

20 your name and spell your last name for the record?

21 THE WITNESS: Mary Ann Bergau, B, as in boy,

22 e-r-g-a-u.

23 THE HEARING OFFICER: Thank you. Mr. Siros.

24

1 MARY ANN BERGAU,
2 called as a witness herein, having been first duly
3 sworn, deposeth and saith as follows:

4 DIRECT EXAMINATION

5 by Mr. Siros

6 Q. Ms. Bergau, would you please identify on
7 the exhibit that's been marked as Complainants'
8 Exhibit No. 1 the location of your home?

9 THE HEARING OFFICER: Let the record reflect --

10 BY THE WITNESS:

11 A. We live at 667.

12 THE HEARING OFFICER: Let the record reflect
13 that Mrs. Bergau has approached Complainants'
14 Exhibit 1 and placed a red X on the unit identified
15 as 667.

16 BY MR. SIROS:

17 Q. And do you reside there alone?

18 A. No. I live there with my husband Dennis.

19 Q. And does anyone else live there with you?

20 A. My son has moved in now temporarily. He
21 just moved back from Boston recently.

22 Q. What's your son's name?

23 A. Dennis.

24 Q. And do you own or rent your house?

1 A. We own.

2 Q. And when did you move in?

3 A. In June of 1993.

4 Q. And what is your occupation, Mrs. Bergau?

5 A. I'm an outside sales representative.

6 Q. Are you taking time out from your job to

7 testify here today?

8 A. Yes, I am.

9 Q. I was wondering if you would describe

10 generally the layout of your home?

11 A. It's a two story. The first floor has the

12 living room, dining room, family room, kitchen,

13 powder room, and laundry room, and two car garage,

14 and the second floor has two bedrooms, two

15 bathrooms, and a loft.

16 Q. Would you please tell me what rooms are on

17 the east side of your home on the first floor?

18 A. On the first floor is our kitchen with the

19 patio outside off the sliding doors and the family

20 room.

21 Q. And what's on the east side of your second

22 floor?

23 A. The two bedrooms face the east side.

24 Q. And how far is your house, the back, your

1 sliding patio doors from the Overland fence or from
2 the wooden fence?

3 A. Thirty-two feet. Approximately, 32 feet
4 give or take a few inches.

5 Q. Would you please describe the view from
6 your first floor looking out east from your patio?

7 A. From the family room and the kitchen as
8 well we look out onto the patio and then to the
9 fence dividing our properties.

10 Q. And would you describe the view from your
11 second floor bedroom looking east?

12 A. We look directly into Overland property.

13 Q. Okay. Would you tell me what you see when
14 you look directly east from your house?

15 A. We see the loading docks. There's
16 approximately 12 of them on our side I believe. I
17 don't know for sure. We also see their west side of
18 their office area, their parking lot.

19 MR. SIROS: I'd like to have marked for
20 identification a group exhibit of photographs as
21 Complainants' No. 2.

22 THE HEARING OFFICER: Okay. Is it a group
23 exhibit or one individual photograph, Mr. Siros?

24 MR. SIROS: It's a group exhibit.

1 THE HEARING OFFICER: All right.

2 MR. SIROS: It's a group of five pictures.

3 THE HEARING OFFICER: I'm just wondering for

4 practical sake whether we should mark all the

5 documents. I just don't want to mix them up.

6 Is there some way to, if they do become

7 displaced with the paperclip, that we can identify

8 them within that group exhibit?

9 MR. SIROS: These are numbered from one to five

10 also on the back, and they also have handwriting on

11 the back with the dates on them.

12 THE HEARING OFFICER: But will they be

13 distinguishable from other photographic group

14 exhibits --

15 MR. SIROS: Yes.

16 THE HEARING OFFICER: -- by just the

17 numerical --

18 MR. SIROS: Yes, your Honor. Well, the

19 other --

20 THE HEARING OFFICER: So other group exhibits

21 will be numbered sequentially after five or what?

22 MR. SIROS: Well, I was going to mark this as

23 one group exhibit, and then I've got other pictures,

24 but the other pictures have a date stamp on them.

1 So there's no way to mix the group exhibits up.

2 THE HEARING OFFICER: All right. I just want
3 it to be made clear how we can distinguish them in
4 the event that they do become -- what will happen is
5 someone will be reviewing these documents, and I
6 want them to be able to put them back in the same
7 place and identify them that way.

8 MR. SIROS: Then I suppose we can number them
9 sequentially if that would be --

10 THE HEARING OFFICER: We'll deal with it as we
11 have to. All I want is for our own -- for purposes
12 of the record that the record be clear and complete
13 and that in the event that the photographs are mixed
14 up ultimately or upon review by a Board member or a
15 board assistant that they are able to place them
16 back into the position necessary to keep them in
17 that group exhibit.

18 If you've done that, that's fine. I just
19 want to ensure that has been done.

20 MR. SIROS: I've numbered these one through
21 five.

22 THE HEARING OFFICER: All right. Let the
23 record reflect that counsel has submitted copies of
24 what has been identified at Group Exhibit 1 --

1 Complainants' Group Exhibit 1 to counsel for the
2 respondents.

3 MR. SIROS: Yes.

4 THE HEARING OFFICER: Mr. Steger, you've
5 received those copies?

6 MR. STEGER: It's Complainants' Group
7 Exhibit --

8 THE HEARING OFFICER: One through five, which
9 Mr. Siros has represented to be five photographs; is
10 that correct?

11 MR. SIROS: We can mark -- I was going to mark
12 this Group Exhibit 1, which consists of five
13 photographs.

14 THE HEARING OFFICER: That's fine.

15 (Group Exhibit No. 1 marked
16 for identification, 5-12-98.)

17 THE HEARING OFFICER: Let the record reflect
18 that the witness is reviewing the document.

19 BY MR. SIROS:

20 Q. Would you please describe what is
21 represented in the picture which on the back is
22 marked one?

23 A. Okay. This is an overview of the Overland
24 facility. I took this photo from the back where the

1 White Hall shopping center is -- between them and
2 the fence that divides White Hall from Overland. I
3 parked the car at that spot. I had a wide angle
4 lens on the camera so that I could show the whole
5 facility.

6 MR. SIROS: And let the record reflect that the
7 witness has indicated that she took the picture from
8 the area that is designated on Complainants' Exhibit
9 1 as White Hall, and she took the picture facing
10 south toward the Overland facility.

11 THE HEARING OFFICER: Is that correct?

12 THE WITNESS: Yes, that's correct.

13 THE HEARING OFFICER: The record will so
14 reflect.

15 BY MR. SIROS:

16 Q. Mrs. Bergau, would you please approach
17 what's been marked as Complainants' Exhibit 1 and
18 place a red circle where you were when you took the
19 picture?

20 A. This is approximate, but I was parked
21 about right here.

22 THE HEARING OFFICER: Let the record reflect
23 that --

24

1 BY THE WITNESS:

2 A. If this is the fence, I was behind that
3 fence. I just -- I don't know if that's the fence
4 or not.

5 THE HEARING OFFICER: Let the record reflect
6 that Mrs. Bergau has approached and marked on what
7 has been identified for identification purposes as
8 Complainants' Exhibit 1 and placed a red circle
9 where she took the photograph she has previously
10 described on what has been marked as Group Exhibit
11 1, photograph one; is that correct, Mr. Siros?

12 MR. SIROS: That is correct.

13 THE HEARING OFFICER: Thank you.

14 BY MR. SIROS:

15 Q. Would you please describe what's
16 represented in the picture in Group Exhibit 1,
17 picture number two?

18 A. Okay. Number two was showing all of the
19 trailers that are parked backing up to our
20 townhouses. This is reflective of what pretty much
21 happens every night and on weekends.

22 Q. And where were you when you took this
23 picture?

24 A. Again, I was at the same location. This

1 is just using a zoom lens to zoom in closer.

2 Q. So you took this picture from

3 approximately the same place where you had

4 originally put the red circle on Complainants'

5 Exhibit 1?

6 A. Exactly, exactly.

7 Q. I'd like to direct your attention to Group

8 Exhibit 1, picture number three. Would you please

9 describe what's represented in that picture?

10 A. Okay. This picture reflects the east side

11 of the Overland property, and what I tried to

12 demonstrate is the difference between, since these

13 were taken at the same time from the same location,

14 the difference in between what trucks are all parked

15 on our side and all the room that's left on the east

16 side of the building that the tractor trailers could

17 have been parked over there.

18 Q. Did you take the same picture from the

19 same place where you had previously placed a red

20 circle on Complainants' Exhibit 1?

21 A. Exactly.

22 Q. I'd like to direct your attention to Group

23 Exhibit 1, picture number four. Would you please

24 describe what is referenced in that picture?

1 A. Okay. Again, this was a wide-angle shot
2 of the facility and hopefully indicating again all
3 of the trailers parked on our side of the property
4 of Overland's property and all of the vacant area
5 where they could have been parked on the east side
6 of the property to eliminate some of the noise when
7 they hook them up.

8 Q. Did you, again, take this picture from the
9 same location where you previously placed the red
10 circle on Complainants' Exhibit 1?

11 A. That's correct.

12 Q. I'd like to direct your attention to the
13 last picture in Group Exhibit No. 1, which has been
14 marked as picture number five. Would you please
15 describe what's referenced in that picture?

16 A. Again, this is showing all of the trailers
17 parked on our side of their complex just to give
18 another angle of, you know, the number of trucks to
19 give some idea of what, you know, we're dealing with
20 when they do start working and moving these
21 trailers.

22 Q. And would you, again, inform us where you
23 took that picture from?

24 A. Where I drew the red circle on Exhibit 1.

1 Q. On Complainants' Exhibit 1; is that

2 correct?

3 A. Yes.

4 Q. When you moved in in June of 1993, were

5 you aware that there was a trucking facility located

6 directly to the east of your property?

7 A. We saw it when we went through the house.

8 Q. So you were aware that there was a

9 trucking operation?

10 A. We saw the building, yeah.

11 Q. Did you know if it was a 24-hour

12 operation?

13 A. We did not at the time that we looked at

14 the property, no.

15 Q. Were you aware that a restriction had been

16 filed by the developer which indicated that there

17 was a 24-hour trucking operation located to the east

18 of the property?

19 A. We were not made aware of first of all the

20 noise that was being emitted, that would be emitted

21 from this property, and also that it was -- that the

22 builder filed this form, whatever it is, until the

23 time of -- I believe it was the time of our closing

24 when we received a copy of our bylaws.

1 Q. So at the time of the closing, you were
2 aware of the existence of the 24-hour trucking
3 operation?

4 A. We actually were not made aware of it
5 until we read the bylaws --

6 Q. And when --

7 A. -- I'm thinking after the closing.

8 Q. When did you read those bylaws?

9 A. After the closing.

10 Q. Did you do anything before you purchased
11 the property to determine whether the facility, the
12 Overland facility, would be operating 24 hours a day
13 and create noise?

14 A. We drove past it several times after we
15 had put an offer in on the house, in fact, even a
16 couple times before we put the offer in. We put a
17 deposit on the day that we looked at it, but then we
18 drove past it a couple of times early evening,
19 during the day, on the weekend, and we just didn't
20 hear any noise. We didn't think it would be of any
21 concern. We had never lived next to a trucking firm
22 to begin with. So we had no expectation really of
23 what, you know, it meant.

24 Q. Did you hear any noise when you drove by

1 on these preliminary drives?

2 A. No, we did not.

3 Q. Did you ever drive by at night before you
4 purchased the property?

5 A. One evening I believe we drove by about
6 9:00, 8:30, 9:00 o'clock.

7 Q. Did you hear noise when you drove by?

8 A. No.

9 Q. After you moved in in June of 1993, when
10 did you first notice noise from the operations?

11 A. The first night actually that we slept in
12 the house.

13 Q. And when you moved in in 1993, can you
14 describe the number of times per week you would hear
15 this noise?

16 A. Probably I would say on the average three
17 times a week it would wake us up.

18 Q. Okay. How often do you hear the noise
19 now?

20 A. Six nights, six days a week. If we get
21 any reprieve, it would be Sunday afternoon, early
22 evening.

23 Q. I'd like to take you through a whole day
24 from 8:00 in the morning until 8:00 in the morning

1 the next day, a day other than Sunday.

2 Can you tell me when you first begin to
3 hear noise after 8:00 o'clock in the morning?

4 A. Well, they've -- they're pretty much
5 finishing up by 8:00 o'clock in the morning.

6 Q. Okay.

7 A. I leave for work usually about 9:00
8 o'clock. At that time, they're pretty quiet. With
9 the job that I do, I do sales out of my house as
10 well as the store, and so frequently I'll stop at
11 home and make phone calls when I can't, you know, do
12 phone calls at work without interruptions.

13 So I stop at home at various times during
14 the day, not every day, but on occasion. I've heard
15 them at various times during the day. Specifically
16 during the day, I couldn't tell you because I
17 don't -- it's kind of let me swing by and call so
18 and so and just automatically close the windows
19 because I can't hear and, you know, make my phone
20 calls and then, you know, be on my way again.

21 I usually go back, you know, out on the
22 road late afternoons. I get home on the average
23 around 5:00, 5:30, and they're banging when I get
24 home. There tends to be a little bit of a quiet

1 time, and then they start in again 8:00 o'clock,

2 9:00 o'clock, and then it's --

3 Q. When does that quiet time start?

4 A. I would say maybe 7:00 o'clock, 7:00 to

5 9:00 is on an average.

6 Q. Okay.

7 A. They start in between 8:00 and 10:00, you

8 know, and then sometimes they go as late as 1:30 in

9 the morning.

10 Q. What time do they normally end?

11 A. 12:30, 11:00 o'clock, 12:30, in that area.

12 Q. Okay.

13 A. They stop and then they'll start in

14 again. It seems like their routine has changed

15 somewhat recently. They used to start around 2:00

16 o'clock, 2:30. Now, it seems like they're starting

17 around 3:00 o'clock, 3:30, 4:00 we're noticing more

18 at that time.

19 Q. Is that -- that's 3:30 in the morning?

20 A. A.m., uh-huh.

21 Q. Would you please describe the different

22 types of noise you hear from the operations?

23 A. Okay. There's several different types.

24 The first one is the banging of the dock plates when

1 the forklifts go over -- drive over the dock plates

2 to load the trailer.

3 Q. How do you know it's the forklifts?

4 A. Well, after our meeting, we had a meeting

5 in May with Mr. DePietro.

6 Q. Do you know what year that was?

7 A. It was 1996, yes, because it was scheduled

8 for March 20th of '96 and it didn't happen, and it

9 was actually held in about the middle of May of

10 1996, and after -- at that meeting, the members or

11 the people that were there from Charter Hall were

12 invited to visit the facility and see what actually

13 transpires there.

14 Q. Uh-huh.

15 A. Well, my husband and I decided yes, we

16 would go and visit the facility, and we got there

17 and they took us through the office part first, and

18 then they took us out to the loading dock area, and

19 while we were there, we physically saw these two

20 forklifts driving, one very fast, driving into the

21 trailer itself carrying freight, and as it went over

22 the dock plate, it went boom, boom, and then it got

23 into the trailer and it released its freight.

24 However, while we were -- there was always

1 a third boom that would happen occasionally, and
2 none of us could figure what it was. Well, when my
3 husband and I were there, there was one particular
4 freight -- forklift driver and he was going really,
5 really fast, and he went over, and the faster they
6 would go, the louder the noise would become, and at
7 one point, he was going so fast over the -- you
8 know, into the trailer bed, the truck rocked, he got
9 in there while the truck was rocking, and it looked
10 like he just dropped the forks or something on the
11 trailer floor. I mean, it made -- that was the
12 third bang.

13 So the banging from the dock plates is the
14 first sound, and it's like -- I mean, especially
15 when we're sound asleep at night at 2:00 o'clock in
16 the morning, I mean, you're just falling asleep and
17 getting into a sound sleep, and it's like an
18 extremely loud close crack of thunder. It's that
19 sudden. It just bolts you up when they -- you know,
20 when these dock plates hit.

21 The second noise that we hear is when
22 they're hooking the trailers up, when they hook the
23 trailer to the truck itself. It's the banging when
24 they, you know, when they connect, and occasionally

1 they don't connect properly, I'm assuming, because
2 they start driving away and they drag the trailer,
3 these steel poles, you know, across the blacktop,
4 and when that happens, our whole house vibrates.

5 I mean, I have had to remove -- I have a
6 Hummel collection, and I've had to remove them from
7 the shelf because I'm afraid with the vibration that
8 they will fall off and break. So that's the second
9 noise is the banging and the dragging.

10 There are radios. There are horns
11 beeping. Two weeks ago at 1:00 o'clock in the
12 morning I was up because they had not stopped yet,
13 and it was exactly like 1:04, something like that,
14 when I looked at the clock, and I thought I don't
15 believe this. The guy is beeping his horn, and it's
16 a quick beep, beep. You know, it's very definitely
17 coming from the truck, and I looked at the clock,
18 and I thought I don't believe this. It's 1:00
19 o'clock in the morning. All the complaining and
20 trying, you know, to help have them work with us and
21 they're beeping their horns at 1:00 in the morning.

22 Q. So you've described three different types
23 of noises. Are there any others?

24 A. The radios, sometimes they'll be out there

1 playing the radios in the trucks, especially in the
2 summertime. Yelling. This morning at 5:41 I went
3 over to open the bedroom window because we were in
4 the bedroom packing, and I went over to open the
5 bedroom window, I opened the bedroom window, and,
6 you know, they had just hooked up one of these
7 trucks, I mean, I've heard that before, and the
8 guys -- there were two people out there. One is
9 standing at the middle of the truck and trailer and
10 the driver was going around to get into the truck,
11 and they're yelling.

12 Q. Well, where was that truck located?

13 A. It was directly under our window.

14 Q. And so --

15 A. Directly out by our window.

16 Q. So it was directly on the other side of
17 the wooden fence --

18 A. Of the wooden fence, yes.

19 Q. -- that separates the properties?

20 THE HEARING OFFICER: Okay. Okay. Okay. One
21 person can speak at a time. That's all she can
22 record. That's all that needs to be speaking at a
23 time. You need to let him ask the question, and you
24 need to let her finish the question. Okay?

1 BY MR. SIROS:

2 Q. Is that the wooden fence that runs -- that
3 divides Overland with the Charter Hall subdivision?

4 A. Yes, that's correct.

5 Q. And where was the truck located?

6 A. As I looked out our bedroom window, the
7 truck and trailer, it was a double trailer and the
8 truck, and it was parked directly out in front of
9 our bedroom window.

10 THE HEARING OFFICER: We're going to go off the
11 record for a second.

12 (Break taken.)

13 THE HEARING OFFICER: Let the record reflect
14 that we are back in the matter of Charter Hall vs.
15 Overland Transportation System, PCB 98-81, after a
16 five-minute recess. Our court reporter seems to
17 have corrected any technical difficulties. We'll
18 proceed.

19 Mrs. Bergau, I'll remind you that you are
20 still under oath. Again, it's important that one
21 person speak at a time. It's very difficult for the
22 court reporter to hear or to try to transcribe two
23 people. I just make a point of that for everybody's
24 sake. Thank you.

1 Mr. Siros.

2 BY MR. SIROS:

3 Q. Mrs. Bergau, could you describe how the
4 noise from the Overland facility has affected your
5 life?

6 A. Well, it has affected our lives in many,
7 many hardship ways, two specifically. In March of
8 1996, my mother was released from the hospital. Let
9 me backtrack. My father passed away five years
10 ago. Her health deteriorated, and in March of 1996,
11 she was hospitalized again for a heart condition and
12 other ailments.

13 Her doctor told -- I have two sisters.
14 One lives primarily in Florida now. The other lives
15 is McHenry, Illinois. The doctor told us that she
16 could no longer live by herself. She either had to
17 live with one of us or we had to put her into a
18 nursing home because she needed to have constant
19 care. We do not want to put her into a nursing home
20 if at all possible, and since my sister who lives --
21 who has a home in Arlington Heights, but resides in
22 Florida now, was the only one close to her hospital
23 and her doctors besides myself, we decided that she
24 would live with us. So on March 20th, she was

1 released to our care.

2 Q. March 20th of what year?

3 A. Of 1996, yes.

4 We brought her home from the hospital. We
5 put her upstairs. We made a room for her, moved her
6 clothes over from her house and everything into our
7 second bedroom. It turned out to be a nightmare.
8 She would be up walking the floor because the trucks
9 would wake her up, the loud banging, the dragging,
10 everything else. They would wake her up in the
11 middle of the night just like it woke us up.

12 I'd come out of the bedroom to go
13 downstairs, we have three sofas in our house, and
14 until she came to live with us, it became habit and
15 routine that when they would wake us up, Denny and I
16 would just go downstairs, pick a sofa, and sleep
17 there the rest of the night.

18 It's to the point now where we just leave
19 the bedding out during the week. If we have
20 company, we put the bedding away. Otherwise, we
21 keep the quilt and the pillow on the sofas.

22 She would wake up, as I said earlier, and
23 when I would come out of the bedroom to go
24 downstairs, she would already either be walking in

1 the bedroom with her walker or sitting on the end of
2 the bed saying her rosary. She just -- she could
3 not get sleep.

4 We tried various measures. I tried
5 earplugs with her. I tried putting a fan in her
6 bedroom to kind of drown out the noise hopefully.
7 That didn't help. We would take her downstairs and
8 have her sleep on one of the sofas with us, and, of
9 course, she was 85 years old at the time, and to
10 take a woman that age and put her through that, you
11 know, lack of sleep, it just seemed ludicrous to
12 me.

13 I called Overland. I don't remember the
14 date. I believe it was in April sometime. It was a
15 couple -- a week or two after she came to our
16 house. One morning around 4:00 o'clock because they
17 were so loud and she was up walking, you know,
18 walking the floor with her walker, and I called over
19 there and I spoke to, I don't remember the
20 gentleman's name, but I explained the situation to
21 him, told him that we had an elderly woman with a
22 heart condition who had just come from the hospital,
23 needed her rest, could you please do something to
24 quiet the noise, you know, at least work on the

1 other side of the building.

2 He said that he couldn't do anything.

3 They had to stay on schedule and get their work done

4 and I should call back at 7:00 in the morning and

5 talk to a Mr. Don Trujillo and explain it to him

6 because he was the facility manager.

7 I called Don Trujillo after 7:00 in the

8 morning and I explained again the situation to him

9 that she was in desperate need of her rest, she

10 could not be awoken suddenly by these loud

11 bangings. It wasn't good for her heart to begin

12 with. He said well, we'll try and do what we can,

13 but we have to do our job and that's not a quote,

14 but in so many words that's what happened.

15 Q. Did you inform anyone else besides

16 Overland about the problems that your mother was

17 having with the noise?

18 A. Yes, I did. When we didn't get any

19 response from Overland or any show of concern or

20 consideration, I wrote a letter of complaint to the

21 Village of Palatine and with -- I carbon copied I

22 believe all the trustees. I wrote it to the zoning

23 manager and copied the village president, the

24 village manager, the trustees, and everyone, you

1 know, involved, the association management company.

2 Q. Okay. I'd like to show you what I'd like

3 to mark as Complainants' Exhibit 2.

4 (Complainants' Exhibit No. 2

5 marked for identification,

6 5-12-98.)

7 MR. SIROS: Let the record reflect I'm

8 tendering a copy to Mr. Steger.

9 BY MR. SIROS:

10 Q. Do you recognize that document?

11 A. Yes.

12 Q. Could you please tell us what that

13 document is?

14 A. This is the document that I sent to

15 Mr. Fieldman, the zoning administrator in Palatine,

16 reiterating the entire incident, you know, what had

17 happened when she came to our house on the morning

18 of March 20th.

19 Q. Okay.

20 (Complainants' Exhibit No. 3

21 marked for identification,

22 5-12-98.)

23 BY MR. SIROS:

24 Q. I'd also like to show you what's been

1 marked for identification purposes as Complainants'

2 Exhibit 3.

3 MR. STEGER: I think you got the wrong one.

4 This is the same.

5 MR. SIROS: I apologize.

6 MR. STEGER: I think you want to do that again.

7 MR. SIROS: Let the record now reflect that

8 I've given Mr. Steger an accurate copy of what's

9 been marked as Complainants' Exhibit No. 2, and then

10 I'm also tendering Mr. Steger what's marked for

11 identification purposes as Complainants' Exhibit No.

12 3.

13 BY MR. SIROS:

14 Q. Do you recognize that document?

15 A. Yes. This is the response from the

16 village, from the village manager that I got telling

17 me basically that I should direct my concerns to the

18 association and the EPA.

19 Q. And what did you do, if anything, after

20 you received that letter from the Village of

21 Palatine?

22 A. Actually, I started contacting the

23 association members, Jeff Cohen in particular, to

24 find out what, in fact, was being done, if

1 anything. I talked to him about the letter and, you
2 know, told him that basically, you know, what's
3 going on. You know, is anything going to be done
4 with this?

5 I just want to emphasize the hardship that
6 it has created for our family with my mother. She
7 now has to reside -- we kept her for approximately
8 two months, three months at the most. Since she
9 could not get any rest, we had to move her to my
10 other sister's house in McHenry. She is an hour
11 drive away from her doctors, away from her hospital
12 that she has been being treated by these people for
13 approximately 25 years.

14 Now, she has gone to -- she had an
15 incident in McHenry I want to say about six months
16 ago, three months ago, where she had -- my sister
17 took her to the hospital in McHenry. Because they
18 could not, obviously, sift through 25 years of
19 medical history, they did what they thought was the
20 best thing to do and that was -- I believe it was
21 nitroglycerin that they administered to her. She
22 has an allergic reaction to nitro. They didn't know
23 that. She, of course, didn't tell them, and so, you
24 know, it could have been an extremely serious

1 situation.

2 Ideally, we would like to have her with us
3 in Palatine so she's ten, 15 minutes away from the
4 doctor, you know, that has treated her.

5 Q. And where is she residing now?

6 A. In McHenry, Illinois. It's approximately
7 45 minutes to an hour drive to Arlington Heights.

8 Q. How -- if at all, how else has the noise
9 affected your life?

10 A. Okay. Another serious issue is my husband
11 Dennis. He had colon cancer surgery this past
12 November. He was released from the hospital on
13 Thanksgiving Day and was -- he needed to have 18 --

14 MR. STEGER: Mr. Hearing Officer, I have an
15 objection.

16 THE HEARING OFFICER: Yes.

17 MR. STEGER: I believe her husband will be
18 testifying. I believe he can testify more
19 accurately to what he's experiencing than she can.

20 MR. SIROS: Your Honor, I believe she can
21 testify as to her actual observations.

22 MR. STEGER: As long as it's limited to her
23 actual observations.

24 THE HEARING OFFICER: Well, I think there's

1 going to be some crossover testimony on all this.

2 So I'm going to allow the testimony, but I would ask

3 that where we can avoid redundancy, let's do so.

4 So at this time, I'm going to overrule

5 your objection subject to the condition that we try

6 to limit redundancy where we can, but I understand

7 where that is going to be necessary sometimes,

8 Mr. Siros.

9 So with that ruling, do we want to reask

10 the question. I don't know if Mrs. Bergau got the

11 entire -- if she was finished with her answer.

12 BY MR. SIROS:

13 Q. Let me just ask the question again, and

14 you can answer.

15 In terms of how this has affected your

16 life, you were describing how it affected your

17 husband and his coming back from the hospital and

18 after having just received chemotherapy.

19 Based on your physical observations, how

20 has the noise affected your husband Dennis?

21 A. One of the effects from chemotherapy, and

22 the doctors explained this to me because I would be

23 helping him through this, among hair loss and

24 nausea, fatigue is the third most common reaction to

1 chemotherapy. The effects, as they were explained
2 to me, are cumulative. So, consequently, the more
3 chemo he would get, the stronger his chances were of
4 experiencing these reactions.

5 He was -- as I started to say earlier, he
6 needed to receive 18 treatments of chemotherapy in
7 six-week increments. So he would be -- every Friday
8 for six weeks he would receive a chemotherapy
9 treatment and then off two, on six, off two, and on
10 six.

11 As each week -- as each six-week increment
12 transpired, I would take him to chemo on Friday
13 mornings, and toward the end of this last treatment,
14 he was physically falling asleep in the car on the
15 way home.

16 He would come home and just go lay down.
17 I mean, he could not stay awake. He'd be sleeping
18 and all of a sudden the banging would start, and he
19 would be up, and he'd come downstairs, and it would
20 still be like 7:00, 8:00 o'clock at night and the
21 banging would get worse and worse, and he would just
22 kind of walk around in a stupor is the only way I
23 can explain it. I mean, he was just so fatigued and
24 tired, but he couldn't sleep. I mean, with the

1 banging noise outside, he could not get the rest
2 that he needed to get to help whatever this chemo is
3 doing to his body.

4 Q. Not to diminish in any way the effects
5 it's had on your mother and on your husband, what,
6 if any, effects -- what, if any, additional effects
7 has it had on your everyday life?

8 A. We can't entertain outside. We had
9 friends over about three, four weeks ago on a
10 Saturday. We were going to go and sit out on the
11 patio for the first time. It was the first nice,
12 warm day that we had. We were out there probably 15
13 minutes and they started in. We couldn't talk.
14 We'd have to stop talking because the banging was so
15 loud and the hooking up of the trailers to the
16 trucks, the dragging of the trailer.

17 We just finally went in the house. You
18 know, it's ridiculous. We can't entertain.
19 Everyday life, as I mentioned earlier, if you're on
20 the phone, you can't have the windows open if
21 they're working. You can't have the sliding door
22 open if they're working because you can't hear on
23 the phone. You have to say wait, what did you say?

24 Television, if we want to sit and watch

1 television, we'd have to turn the volume up. I'm
2 concerned about my neighbors, it being too loud for
3 them. To sit and turn on some soft music and just
4 read a book, it's next to impossible. I mean, you
5 cannot sit and just relax when they're working.
6 There's no such thing. They're just so loud.

7 Q. Anything else?

8 A. No. It's just constant.

9 Q. When was the last time -- I'm sorry. Let
10 me back up a second.

11 When you moved in in 1993, I'd like you to
12 compare that to the present in terms of the
13 frequency of the noise.

14 Can you compare the noise in 1993 to the
15 noise at present?

16 A. I can compare it in terms of my sleeping
17 at night. They would -- when Yellow Freight was
18 there, they would wake me up maybe three nights a
19 week. Now, it's every night except for Sunday
20 night, but then I know they're going to be working,
21 you know, at 2:00 o'clock Monday morning again. So
22 there really isn't a night.

23 Q. When was the last time you were bothered
24 by noise from Overland facility?

1 A. 5:41 this morning, absolutely.

2 Q. And what was that noise?

3 A. It was the hooking up of the truck to the
4 trailer and the guys yelling outside.

5 MR. SIROS: Thank you. Nothing further.

6 BY MR. SIROS:

7 Q. I'm sorry.

8 I would like to just direct your attention
9 back to what has previously been marked as Group
10 Exhibit 1, picture number three.

11 Would you just, again, describe where you
12 took that picture from and what that's a picture of?

13 A. Okay. Again, I took that picture from
14 where I indicated on Exhibit 1 with the red circle.
15 It's facing the east side of the Overland facility,
16 and it demonstrates all the space that's there where
17 they could park the trailers that are at that time
18 currently parked on the west side, on our side, of
19 the building.

20 MR. SIROS: Thank you. Nothing further.

21 THE HEARING OFFICER: Okay. Let the record
22 reflect that when Mrs. Bergau indicated Exhibit 1, I
23 believe she was referring to Complainants' Exhibit
24 1, is that correct, Mrs. Bergau, the same exhibit

1 where the red circle is?

2 THE WITNESS: Yes, yes.

3 THE HEARING OFFICER: Thank you.

4 Mr. Steger.

5 C R O S S - E X A M I N A T I O N

6 by Mr. Steger

7 Q. First of all, I have some questions with
8 respect to your pictures.

9 Referring to Complainants' Exhibit No. 1
10 where you took the picture, the red circle.

11 A. Uh-huh.

12 Q. Okay. There appears to be a fence in
13 front of you?

14 A. That's correct.

15 Q. Okay. That fence if you look at picture
16 number three.

17 A. Okay.

18 Q. Okay. On the left corner of the picture,
19 you'll see some cabs there?

20 A. Yes.

21 Q. Okay. Could you draw a blue -- would you
22 mark on Complainants' Exhibit 1 about where those
23 cabs are?

24 A. In all honesty, this drawing has me

1 confused with the actual layout, and it must be the
2 fence that's doing it because when we look out, it
3 appears that they can drive right straight through.
4 I'm not sure what this corner is.

5 Q. Okay.

6 A. So -- and consequently, I don't know where
7 these trucks relate to that drawing.

8 THE HEARING OFFICER: Okay. Mrs. Bergau, are
9 you indicating that you cannot tell where those
10 trucks are located in the photograph in relationship
11 to what's been marked as Complainants' Exhibit 1?

12 THE WITNESS: In relationship to this corner on
13 Exhibit 1.

14 THE HEARING OFFICER: All right.

15 BY MR. STEGER:

16 Q. Why don't you have a look at picture
17 number five?

18 THE HEARING OFFICER: Are you withdrawing that
19 last request, Mr. Steger?

20 MR. STEGER: Yes.

21 THE HEARING OFFICER: Thank you.

22 Let the record reflect that Mrs. Bergau is
23 now looking at what has been marked as Group Exhibit
24 1, photograph five; is that correct?

1 THE WITNESS: Five, yes.

2 THE HEARING OFFICER: Thank you.

3 BY MR. STEGER:

4 Q. And it shows in the picture with the
5 cyclone fence in the foreground a series of trailers
6 in the background?

7 A. Correct.

8 Q. Okay. And further in the background are
9 the Charter homes?

10 A. Yes.

11 Q. Can you -- is the fence shown in this
12 picture?

13 MR. SIROS: Object as to which fence.

14 THE HEARING OFFICER: Mr. Steger.

15 BY MR. STEGER:

16 Q. The wooden fence that runs along your
17 backyard.

18 A. Yes, it is.

19 Q. Could you tell us where that is? Describe
20 it for us in that picture.

21 A. If you look at the two trucks or trailers
22 most pronounced in the middle of the picture facing
23 you as you're looking at the photo --

24 Q. Whose backs are facing us?

1 A. Yes.

2 Q. Okay.

3 A. You can see the wooden fence in between
4 those two trailers.

5 Q. If you also look between those two
6 trailers, do you see some -- it looks like some
7 grass on our side, on Overland's side of the fence?

8 A. Yes, there's a grassy area.

9 Q. Do you know about how long and how high
10 that is?

11 A. I have no idea.

12 Q. You have no idea.

13 Do you know how high the fence is in your
14 backyard?

15 A. Eight feet I believe.

16 Q. When you put in an offer on your house, on
17 your unit, when did you look through your unit? Do
18 you recall the first time, what time of day?

19 A. It was a Sunday afternoon.

20 Q. How many times did you see it after that
21 before you moved in?

22 A. I would guess we drove by the area -- are
23 you talking inside the house or outside?

24 Q. Outside the house, the general area?

1 A. Just driving by?

2 Q. Right.

3 A. Probably three or four times after that

4 first time.

5 Q. Do you know what time of day?

6 A. Again, I want to say in the afternoon,

7 Sunday afternoon, and then a Sunday evening around

8 6:00 o'clock, just, you know, during the day. We

9 certainly weren't there at 4:00 o'clock in the

10 morning.

11 Q. Did you look at any other units in the --

12 A. No. It was the last unit available.

13 Q. And this was approximately what time, June

14 of '93?

15 A. June '93, yes. Well, no. It was -- it

16 would have been April or May because we moved in

17 June.

18 Q. In June of '93?

19 A. We closed June 4th, yes.

20 Q. Okay. But for the Overland operations,

21 what time do you normally get up for work?

22 A. I normally get up around 7:00 o'clock.

23 Q. And what time do you leave for work?

24 A. About 8:30, 9:00, depending on what my

1 schedule is for the day.

2 Q. And you return?

3 A. I return at different times. Again, if I
4 need to meet with a customer at the store or at the
5 showroom, then I, you know, will get home later,
6 earlier. It just depends.

7 Q. What exactly is it that you do?

8 A. I sell office furniture.

9 Q. Office furniture. Is there any office
10 furniture in your house now? Strike that.

11 A. Yes, the best.

12 Q. Okay. There are two bedrooms upstairs in
13 your unit; is that correct?

14 A. That's correct.

15 Q. When Overland is not operating, do you
16 hear anything from Northwest Highway, traffic?

17 A. Not that I notice.

18 Q. You don't hear anything from the shopping
19 mall?

20 A. No.

21 Q. You don't hear anything from White Hall?

22 A. No. No, their back is to us, not the
23 front of the shopping center.

24 Q. Would there be anything else that

1 interrupts your sleep other than Overland? Do you

2 get up at night --

3 A. If the geese --

4 Q. -- for any other reason?

5 A. If the geese are quacking very loudly,

6 then it wakes me up, yes.

7 Q. Ever woken up to an airplane flying

8 overhead?

9 A. No.

10 Q. Car alarm?

11 A. I haven't heard one.

12 Q. Dog barking?

13 A. Uh-uhn. There aren't any dogs really

14 close.

15 Q. Now, you testified, too, that when you're

16 awoken from a sleep, you go downstairs and then

17 sleep on the couch?

18 A. Exactly.

19 Q. And your husband does the same thing?

20 A. Exactly.

21 Q. And you get up for work about 7:00?

22 A. Exactly.

23 Q. Did you take any noise measurements

24 yourself?

1 A. No. Actually, my husband did the majority
2 of the noise measuring. I made a few entries on the
3 log that he kept, but primarily he did them.

4 MR. STEGER: Nothing further.

5 THE HEARING OFFICER: Mr. Siros.

6 MR. SIROS: Nothing.

7 THE HEARING OFFICER: Okay. Thank you, Mrs.
8 Bergau. All right. Where do we want to go from
9 here? Would it be convenient at this point -- what
10 I had hoped to do, for the record, was try to get
11 through three witness at least this morning --

12 MR. FORCADE: Yeah, we'd very much like that.

13 THE HEARING OFFICER: -- and then four in the
14 afternoon. Mr. Forcade.

15 MR. FORCADE: I'd very much like that.

16 THE HEARING OFFICER: Mr. Steger.

17 MR. STEGER: That's fine.

18 THE HEARING OFFICER: Okay. What I want to
19 make sure is that there's no -- some people have
20 health-related issues --

21 MR. FORCADE: Any reason we would not be able
22 to do a third witness?

23 THE HEARING OFFICER: Okay. The court reporter
24 is willing. I'm willing. We'll try to proceed

1 through one more witness and then take a lunch

2 break.

3 Mr. Siros.

4 MR. SIROS: I call Denny Bergau.

5 THE HEARING OFFICER: Mr. Bergau, if you'll

6 raise your right hand and be sworn in.

7 (Witness sworn.)

8 THE HEARING OFFICER: Mr. Bergau, would you

9 please state your name and spell your last name for

10 the record?

11 THE WITNESS: My name is Dennis Bergau,

12 B-e-r-g-a-u.

13 THE HEARING OFFICER: Mr. Siros.

14 DENNIS BERGAU,

15 called as a witness herein, having been first duly

16 sworn, deposeth and saith as follows:

17 DIRECT EXAMINATION

18 by Mr. Siros

19 Q. Mr. Bergau, would you please inform us

20 where you live?

21 A. I live at 667 Charter Hall Drive.

22 Q. I'd like to direct your attention to

23 Complainants' Exhibit No. 1. Would you please

24 identify the mark next to your address on the blown

1 up exhibit?

2 A. It's marked with a red X.

3 Q. At?

4 A. At 667 on the west side I guess it would

5 be. Actually, it's on the east side of the street,

6 of Charter Hall Street, next to Overland, facing

7 Overland.

8 Q. And who resides there with you?

9 A. My wife does and my son recently moved in

10 with us.

11 Q. And what's your occupation?

12 A. I'm a manager for a furniture store.

13 Q. Are you taking time out to testify here

14 today?

15 A. Yes, I took time off.

16 Q. After you moved into your house in June

17 of '93, when did you first notice noise from the

18 facility?

19 A. Pretty almost immediately. One of the

20 first times we were there, we noticed that Yellow

21 Freight was there, and they were doing some loading

22 and trailer hookups and stuff like that. So we

23 heard some noise then.

24 Q. And would you describe the frequency of

1 the noise back in June of '93?

2 A. It happened, I don't know, maybe a couple
3 times a week. I'm guessing. You know, it's been a
4 while, and they didn't bother me at that point like
5 they do now. So a couple times a week I would say.

6 Q. And what type of noise did you hear
7 back --

8 A. Oh, one other thing. Not only was it a
9 couple times a week, but I was never woken up in the
10 middle of the night. So the timing was different
11 too.

12 Q. What type of noise did you hear back in
13 June of '93?

14 A. Loading of trucks, hooking up of trucks
15 when the forklifts would go over the plates as we
16 know now or if a trailer was hooked up, noise from
17 the air brakes I guess is what they are or that kind
18 of noise, and we were used to sleeping with a window
19 open. So, you know, you hear it a lot more. We
20 can't sleep with the window open anymore.

21 Q. Did this noise bother you in June of '93?

22 A. Sure, it did then. You know, it just
23 wasn't as frequent as now.

24 Q. Did it wake you up?

1 A. You know, I don't recall ever being -- it
2 was during the day mostly.

3 Q. How often does the noise occur presently?

4 A. I hear it seven days -- almost seven days
5 a week, and it awakes me at night because I work
6 during the day. Also, Fridays, as my wife was
7 saying, I go to chemotherapy, and I kind of drop off
8 real quick after I have that treatment. So I try to
9 sleep in the afternoons just to, you know, catch up
10 with the or try to overcome the fatigue from the
11 medication. I can't do it a lot of times. So, you
12 know, I'll go to sleep, I'll hear the banging even
13 with the windows closed, and I wake up and go from
14 there, but other days you said -- you asked about.

15 During the week, we hear it -- I hear it
16 almost every night, and the pattern has been I hear
17 it, I wake up at 2:00 o'clock in the morning, and
18 it's changed recently to a 4:00 o'clock, 3:30, 4:00
19 o'clock. I'm not quite sure why, but it's what I
20 hear now, and that's what wakes me up.

21 Q. So you hear the noise currently at 3:30,
22 4:00 o'clock in the morning?

23 A. Right now.

24 Q. And how long does that continue?

1 A. You know, I get up and I try to shut it
2 out, but it goes on for a while because I get up --
3 I like to get up at 6:00. I try to get up at 6:00
4 and get ready and go to work. I can't do that now
5 because I'm woken up much earlier. So once I'm up,
6 I'm up, you know, that kind of thing.

7 Q. What time do you normally leave for work?

8 A. About 7:30.

9 Q. Do you hear the noise when you leave for
10 work?

11 A. Yeah, I hear the noise.

12 Q. What time do you usually get home from
13 work?

14 A. It varies. It depends on what my schedule
15 is for the day, 6:00, 7:00, 8:00 sometimes.

16 Q. And that's at night?

17 A. Yeah, uh-huh, at night.

18 Q. Do you hear the noise when you come home
19 in the evening?

20 A. Yeah, we hear it around supper time.

21 Q. And how long does that noise -- when you
22 come home and you hear it, how long does the noise
23 last?

24 A. It varies, but it goes 10:00, 11:00, 12:00

1 o'clock, sometimes later than that. Infrequently
2 later, but it's, you know, 11:00 o'clock in my
3 opinion is kind of the norm.

4 Q. What time do you usually try to go to bed
5 at night?

6 A. I try to go to bed at 10:00.

7 Q. Are you able to?

8 A. Sometimes. When you get so tired, you
9 just sleep.

10 Q. And when does the noise start again?

11 A. Well, like I said, in the past, it started
12 at 2:00. Recently now it's more like 3:30, 4:00
13 o'clock.

14 Q. Would you describe the different types of
15 noise that you hear?

16 A. I hear the -- like a double bang and
17 it's -- when we visited the facility, we'd notice
18 that a forklift goes over the loading plate or
19 loading dock, whatever they call that thing, and
20 they -- when the wheels go over it, it's a double
21 bang, and then sometimes we hear a third bang or I
22 hear a third bang that shows that they're loading or
23 dropping the freight off the forklift or lowering
24 the freight. That's one noise, and another noise,

1 of course, is when the trailers are hooked up to the
2 I guess it's the yard truck as they call it, and
3 another real big noise -- and you're shocked. I
4 mean, it's a loud bang that we hear or what I hear
5 anyway. That's what wakes me up.

6 The other thing is when sometimes they'll
7 hook up a trailer and the engine will rev and then
8 the next thing I know is you hear something dragging
9 and it just shakes the house. It vibrates the whole
10 house. So along, again, with air brakes and so on
11 and the engine, the noise, you know, from the
12 engines of the yard truck.

13 Q. You mentioned that you had a meeting with
14 Overland. Do you recall when that meeting occurred?

15 A. It was early May of '96. You know, I was
16 one of the attendees of the meeting with Mr. DePietro
17 and Don Trujillo I guess it is.

18 Q. Do you recall specific dates when you
19 heard excessive noise from the Overland facility?

20 A. Well, just recently it was on -- I think
21 it was May 4th, 5th. I had a pretty important
22 meeting on the 6th. So I had to prepare for that,
23 and I just remember that specific incident as being
24 one, and, you know, it happened other times, too,

1 but recently, that's one I remember recently where
2 it was very noisy.

3 Q. Do you keep any records of the noise from
4 the facility?

5 A. I have in the past, yeah. I've taken
6 measurements and I've kept records.

7 (Complainants' Exhibit No. 4
8 marked for identification,
9 5-12-98.)

10 BY MR. SIROS:

11 Q. I show you what I've marked for
12 identification purposes as Complainants' Exhibit 4
13 I've given a copy of Complainants' Exhibit 4 to
14 Mr. Steger.

15 Do you recognize that document?

16 A. Yes.

17 Q. Would you please inform me as to what that
18 document is?

19 A. It was my way of tracking by date and time
20 and a brief description of what the problem was.
21 For example, on 10-28-96 at 2:00 a.m. it was
22 loading, and then again at 11:45 p.m. there was
23 loading of the trailers is what woke me up, and what
24 I tried to do is just mark what woke me up.

1 Q. Do you independently remember all the
2 dates when excessive noise occurred?

3 A. No, I don't. I mean, that's why I tracked
4 them on here.

5 Q. Does this document accurately reflect the
6 notations you made when you heard excessive noise at
7 the Overland facility?

8 A. Yes, uh-huh, yes.

9 Q. Would you please turn to the last page of
10 what's been marked as Complainants' Exhibit No. 4?

11 THE HEARING OFFICER: How many pages are there,
12 Mr. Siros?

13 MR. SIROS: There should be seven.

14 THE HEARING OFFICER: Okay.

15 BY MR. SIROS:

16 Q. Would you please read that last paragraph?

17 A. I wrote although we stopped logging after
18 9-3-97, the noises of loading and dragging and
19 hooking up trailers has continued Monday through
20 Saturday on a constant basis. Then I signed it
21 Dennis Bergau.

22 Q. Do you recall the approximate date when
23 you signed that document?

24 A. I don't.

1 Q. Is that statement accurate through today?

2 A. Yes. Accurate -- as a matter of fact, I
3 mean, this also -- I wake up Sunday morning
4 sometimes when they start loading early Sunday
5 morning, 2:00, 3:00, 4:00 o'clock in the morning.
6 So I would include Sunday then as well. I put down
7 Monday through Saturday when Sunday should be
8 included too.

9 Q. Can you tell us what affect the noise from
10 the Overland facility has had on your everyday life?

11 A. Well, I think it's lowered the quality of
12 life in many ways. One thing I can't sleep in my
13 bed throughout the night. I have to go downstairs
14 after walking and, you know, getting very tired. We
15 sleep downstairs because the fence apparently blocks
16 the noise a little bit.

17 As far as having friends over, it's
18 difficult to have friends over and have a decent
19 conversation on our patio or even inside. I mean,
20 when you drag a trailer and the whole house shakes,
21 you know, you just can't -- you joke about it, but
22 it's not really funny. That's how it is, you know.

23 So as far as having company over, it's
24 almost impossible to have that. The quality of

1 life, you know, I get tired, obviously. It affects
2 my job negatively I should say. It affects it
3 negatively because I'm fatigued and I can't sleep.
4 So I go to work and I can't perform at the level I'd
5 like to perform at.

6 Q. How has it affected your ability to rest
7 after your chemotherapy?

8 A. Well, after chemo, I try to sleep on
9 Friday afternoons is when I have my chemo
10 treatments, once a week, and I'm almost every time I
11 can't go to sleep for any length of time. The time
12 I was able to sleep, I would sleep all the way from
13 like maybe 1:00, 2:00, 2:00 o'clock on all the way
14 through the night until the next morning. I can't
15 do that anymore. So I wake up, you know, several
16 times.

17 (Complainants' Exhibit Nos. 5
18 and 6 marked for identification,
19 5-12-98.)

20 BY MR. SIROS:

21 Q. I'd like to show you what's been marked as
22 Complainants' Exhibit No. 5 for identification
23 purposes.

24 Do you recognize this?

1 A. Yeah.

2 Q. Could you please inform us what that is?

3 A. It's a sound level meter that I purchased
4 at Radio Shack specifically for the purpose of
5 taking measurements and getting some idea of what
6 the decibel levels were at different baselines.

7 Q. And did you, in fact, use that to take
8 measurements?

9 A. Yes, I did take measurements and charted
10 the measurements.

11 Q. Would you please describe how you would
12 use that instrument to take noise measurements?

13 A. Yes. It has a -- I used it by, first of
14 all, setting it up, and I would get a baseline level
15 and set the unit to -- it has a slow and a fast
16 response. We want it to take a slow response to
17 take -- so that sudden noises would not appear as
18 heavy as they probably would with a more
19 sophisticated device and then the see wading would
20 be a lighter reading. So, in other words, it
21 wouldn't be -- show -- the output of this wouldn't
22 be as severe as it may be if it was done with a
23 \$50,000 machine. Okay.

24 Q. How would you set the baseline?

1 A. Then I would set the baseline by simply
2 dialing to the baseline, which then would indicate
3 zero on the meter and anytime -- there's a scale on
4 the meter. It has a zero in the center and it goes
5 to minus ten on the left to the minus side and plus
6 six on the right side, and the baseline would be set
7 at zero or at 50, for example, which would -- where
8 the needle would be at zero. Anything above it,
9 would be above 50 decibels.

10 So I would -- I took these measurements
11 from our bedroom window. I opened the window,
12 through a screen, and took the measurements, and I
13 just pointed the device that takes the reading, the
14 little silver spot or chrome or whatever this is,
15 and pointed it right towards the Overland activity
16 where the activity was going on.

17 Q. When you said you took it from your
18 bedroom window, where is that bedroom located in
19 relationship to your house?

20 A. The bedroom window is located upstairs
21 facing the Overland facility.

22 Q. So that would be on the east side of your
23 home; is that correct?

24 A. Yes, it would be the east side of my

1 house.

2 Q. How did you learn how to use that device?

3 A. I talked to the person at Radio Shack for
4 one, and we also got some instructions from Greg
5 Zack of how -- what we should set the settings at
6 and how we should set the settings. Greg Zack works
7 for the EPA, the Illinois EPA.

8 Q. Okay. Do you recall the measurements that
9 you got when you recorded the noise level?

10 A. I took the exact -- you know, each reading
11 I don't, but I remember taking it on intervals of
12 about a minute and then marking it down for charting
13 purposes.

14 Q. Do you independently recall those numbers?

15 A. No. I know some of them were 78
16 decibels. Some were pretty high.

17 Q. Did you record those numbers anywhere?

18 A. Yeah, I recorded them on a chart.

19 THE HEARING OFFICER: If we can go off the
20 record, please.

21 (Discussion had

22 off the record.)

23 THE HEARING OFFICER: All right. We're back on

24 the record for PCB 98-81. We went off the record to

1 discuss marking the testimony of the present
2 witness, Mr. Bergau, regarding his use and the
3 manner in which he used the device that has been
4 marked as Complainants' Exhibit 5 for purposes of
5 the possibility of rereading that testimony back to
6 an expert to be called by the complainant.

7 The court reporter has indicated that she
8 has marked that area and may not -- while this court
9 reporter may not be the person who is here tomorrow,
10 she will make it available to the court reporter who
11 is here tomorrow in the event that we need to have
12 that portion read back.

13 Is that your understanding, Mr. Forcade?

14 MR. FORCADE: Yes.

15 THE HEARING OFFICER: And, Mr. Steger, any
16 objection to that?

17 MR. STEGER: No.

18 THE HEARING OFFICER: And, Ms. Court Reporter,
19 I guess I'm going to ask you to confirm is that
20 something that will be available tomorrow.

21 THE REPORTER: Yes.

22 THE HEARING OFFICER: Okay. Thank you.

23 Mr. Siros.

24

1 BY MR. SIROS:

2 Q. I'll provide you with a copy of what's
3 been marked as Complainants' Exhibit 6.

4 Do you recognize that document?

5 A. Yes, I do.

6 Q. And would you please tell me what that is?

7 A. It's what they call a checkmark survey or
8 a data sheet I should say, which I marked the
9 baseline levels and then took readings at one-minute
10 intervals, and it shows the noise or the decibel
11 level recorded at each one of those one-minute
12 intervals.

13 Q. Can you please explain to me what the
14 little Xs marked in between the boxes on
15 Complainants' Exhibit 6 represent?

16 A. The Xs represent the magnitude of the
17 decibel level above the baseline.

18 Q. Can you please tell me where you got these
19 checkmarks or the data sheets from?

20 A. I used the Radio Shack sound level meter
21 to record -- take the readings pointing -- by
22 pointing this unit at the Overland trucking firm and
23 logging it onto the sheet.

24 Q. Where did you get the actual sheet from,

1 the blank sheet?

2 A. I got it from one of our neighbors who got
3 it from Greg Zack. Tara got those, Jeff's wife.

4 Q. You're referring to Tara Cohen?

5 A. Cohen.

6 Q. When you were recording the sound levels,
7 did you hear any other noises other than those from
8 the Overland facility?

9 A. You know, I don't know. I didn't
10 concentrate on anything else. I mean, I
11 concentrated on listening to what the trucks -- no.
12 It was -- you know, the times of the day, this was
13 done at 10:26 p.m. No, I don't remember hearing
14 anything else. It was specifically -- you know,
15 there weren't -- if you're looking for like airline
16 noises or anything, I didn't hear anything like
17 that.

18 Q. So these --

19 A. These were individual instances. You
20 know, they were taken for a period of like a couple
21 of seconds. You know, when the needle goes up and
22 goes back down, it's a matter of seconds.

23 Q. So each of the checkmarks that are on
24 these data sheets represent noise that was occurring

1 from the Overland facility?

2 A. Yes.

3 Q. And would you please explain to me your
4 handwritten -- the handwriting on the top of the
5 first page of what's been marked as Complainants'
6 Exhibit 6?

7 A. I marked down the address 667 Charter Hall
8 Drive, Palatine, Illinois, and then the date of the
9 -- that I took the recording, which was 5-1-96, and
10 the period of time that I did -- that I took these
11 readings at and the baseline, and it was from 10:26
12 p.m. until 10:36 p.m., and these measurements were
13 taken at a baseline level of 60, and then I put the
14 name at the top, Bergau.

15 Q. Did you, in fact, do that at the top of
16 each one of these checkmark data sheets that is
17 comprised of Complainants' Exhibit 6?

18 A. Yes, whichever baseline. The baseline
19 changed from 60 to 50, but yes, I did.

20 Q. Did you make these checkmarks -- I'm
21 sorry. Let me rephrase that.

22 After you saw the reading on the noise
23 meter, how long did it take you to record these
24 checkmarks on this data sheet?

1 A. As long as a stroke -- it takes the stroke
2 of a pen.

3 Q. So you did it at the same time?

4 A. Yeah.

5 Q. And did that document accurately represent
6 the noise levels at the point in time when you took
7 the readings off the noise meter?

8 A. To the best of my knowledge it did because
9 I took it right off the meter itself, and if I --
10 you know, if the recording was higher and if I
11 wasn't quite sure, I would always mark it a little
12 bit lower.

13 Q. Okay. Can you compare the noise when you
14 moved in -- compare the noise when you moved in with
15 the noise now in terms of the frequency of the
16 noise?

17 A. Yeah. The frequency of the noise it's
18 almost seven days a week, oftentimes seven days a
19 week versus just the noise that bothered me just a
20 couple times a week.

21 Q. Do you remember when the last time you
22 were bothered by noise from the Overland facility
23 was?

24 A. This morning, but we're very conscious of

1 it, but throughout the week, it has every day, and
2 it's been at 4:00 o'clock. I've been waking up at
3 3:30, 4:00 o'clock every morning, even this week.

4 Q. What time did you wake up this morning?

5 A. I woke up at ten to 5:00 this morning, but
6 it was with an alarm. We set our alarm.

7 Q. Okay.

8 A. To make sure that we got up on time to get
9 here.

10 Q. But then you heard the noise this morning?

11 A. Yeah. We heard the noise at 5:30 or
12 something like that.

13 MR. SIROS: Nothing further.

14 THE HEARING OFFICER: Okay. As far as
15 Complainants' Exhibit 6, how many pages are there,
16 Mr. Siros?

17 MR. SIROS: There are seven pages.

18 THE HEARING OFFICER: Seven pages.

19 Mr. Steger.

20 C R O S S - E X A M I N A T I O N

21 by Mr. Steger

22 Q. Well, let's go quickly to the measurements
23 just so I'm clear.

24 When you say set the baseline, what does

1 that mean?

2 A. It means that the meter will indicate
3 readings above or below the baseline anytime a noise
4 occurs and that's set on the meter. There's a dial
5 on the meter where I set the baseline. I set it to
6 that.

7 Q. And did you take it through the window?

8 A. Yes, I took it through the window --

9 Q. Did you hold it?

10 A. -- the upstairs bedroom window.

11 Yes, I hold it.

12 Q. Okay.

13 A. I hold it in my hand and point it just
14 towards the Overland facility.

15 Q. And then zero in -- and then -- I'm not
16 quite sure --

17 A. Okay. The first thing I do -- the process
18 goes like this. I take the meter, I check the
19 battery and make sure the battery power is good, and
20 there's an indicator on here that shows me that.
21 Then I set the baseline. There's a dial that sets
22 the baseline.

23 Q. Is there a dial that says baseline?

24 A. It's a dial that indicates a number, and

1 then that number -- and it's either battery or a
2 number like 50, 60, 70, which according to my
3 instructions, show that that's the baseline reading,
4 and then I take the meter, put it in my hand and
5 hold it out the window, and I have a chart on my
6 right side, and I take the readings with minute
7 intervals. We had a clock upstairs that I used for
8 the timing.

9 Q. So, for example, on the first page, you
10 would take those -- it was on May 1st, 1996, from
11 10:26 to 10:36 p.m. You merely looked at the meter
12 and then just checked the box where it read?

13 A. Right.

14 Q. So let's go to the first box.

15 THE HEARING OFFICER: You are referring to
16 Group Exhibit -- Complainants' Exhibit 6?

17 MR. STEGER: I'm referring to page one of Group
18 Exhibit 6.

19 THE HEARING OFFICER: I apologize. I misstated
20 it. It's Complainants' Exhibit 6; is that correct.

21 MR. STEGER: Complaints' Exhibit 6.

22 THE HEARING OFFICER: Thank you.

23 BY MR. STEGER:

24 Q. Do you see where it says baseline level on

1 the graph?

2 A. Uh-huh.

3 Q. Okay. You've circled 60?

4 A. Right.

5 Q. What does that mean?

6 A. That I set the baseline level on the meter

7 to 60.

8 Q. Through what you just described?

9 A. Uh-huh.

10 Q. And then the first checkmark it goes from

11 zero to 50 along the Y axis?

12 A. We're talking about a baseline level of 60

13 now, not 50.

14 Q. Okay. But the Y axis says zero, ten, 20,

15 30, 40, 50 --

16 A. Okay.

17 Q. -- going up the left side, the Y axis?

18 A. Uh-huh.

19 THE HEARING OFFICER: Mr. Bergau, it's

20 important that your answer be a yes or no response.

21 THE WITNESS: Oh, I'm sorry.

22 THE HEARING OFFICER: It's very difficult for

23 the court reporter to record that.

24 THE WITNESS: I didn't understand the

1 question.

2 BY MR. STEGER:

3 Q. I'm just putting a frame of reference.

4 I'll ask the question.

5 On the first block, you have marked what
6 appears to be two -- between ten and 20 on what's
7 called the two to four. What does that mean?

8 A. That means it was -- let's see. I have to
9 refresh my memory on this too.

10 THE HEARING OFFICER: Let the record reflect
11 the witness is looking at the document marked as
12 Complainants' Exhibit 6, the first page.

13 BY THE WITNESS:

14 A. God, I can't remember how I did this.

15 BY MR. STEGER:

16 Q. Were you pointing --

17 A. I took the reading --

18 THE HEARING OFFICER: Hold on. Hold on.

19 Are you saying you don't remember,

20 Mr. Bergau?

21 THE WITNESS: I don't remember exactly how I
22 did this, but I took the -- I want to say I took
23 the -- I don't remember exactly I hate to tell you.

24 THE HEARING OFFICER: Mr. Steger.

1 BY MR. STEGER:

2 Q. Let's ask you what about the columns to
3 the far right --

4 A. Uh-huh.

5 Q. -- the little numbers, did you fill those
6 in?

7 A. Yes, I did.

8 Q. Do you know what they mean?

9 A. Not really. I followed the directions
10 given to me. So they indicate the incidents, number
11 of incidents, at a certain level.

12 Q. Okay. Now, with respect to your
13 measurement, you set the baseline and then you sat
14 down and held it in your hand; is that correct?

15 A. Uh-huh.

16 Q. Pointing it out the window?

17 A. Right.

18 Q. So you would measure whatever sound came
19 in the window?

20 A. Exactly.

21 Q. And then you'd mark it on your chart?

22 A. Right.

23 Q. Okay. Was there any ability to account
24 for ambient noise levels to differentiate what noise

1 you're hearing by that unit?

2 A. I have no idea.

3 Q. Any -- does this unit account for

4 reflection?

5 A. I'm not the expert on this meter. I don't

6 know.

7 Q. All right. Let me ask you about -- okay.

8 You're currently under treatment for --

9 A. I just finished my last treatment last

10 Friday for colon cancer.

11 Q. And then you testified that you would go

12 to sleep and then be woken up throughout the night?

13 A. I meant -- this was after the treatment?

14 Are you talking about the Friday treatment?

15 Q. Since you moved in to the facility.

16 A. Oh, yes.

17 Q. Okay. And then you would go downstairs

18 and sleep?

19 A. Right, uh-huh.

20 Q. Okay. Is there anything else that wakes

21 you up during the night?

22 A. I don't -- I can't think of anything else

23 that would wake me up, not really.

24 Q. I believe you testified that you moved in

1 in June of 1993?

2 A. That's correct.

3 Q. And did you accompany your wife when you
4 guys drove around the area before you put in your
5 bid?

6 A. Yes, we did.

7 Q. About how many times?

8 A. About four times, four or five times I
9 would say. I don't remember exactly, but we took
10 different times of the day and tried to look and see
11 what the noise -- if the noise affected -- would
12 affect our living there.

13 Q. Uh-huh.

14 A. So obviously --

15 Q. So you were aware of the truck terminal?

16 A. Yes, sure.

17 Q. About how far is it from your backyard to
18 the fence from your -- excuse me, from your patio to
19 your fence?

20 A. From the house, I can tell you from the
21 house to the fence it's 32 feet.

22 Q. Okay. And is it about the same for your
23 neighbors?

24 A. Similar I would imagine. Some homes are

1 set back a little bit.

2 Q. Okay. And the fence was there when you
3 moved in?

4 A. Yes, it was.

5 Q. The wooden fence behind your house?

6 A. Yes, it was there.

7 Q. I'm sorry. I missed what your occupation
8 was.

9 A. I'm a furniture store manager, keep it in
10 the family.

11 Q. We should work out a deal. Strike that.

12 MR. STEGER: Okay. I believe that's it. I
13 don't have any other questions.

14 THE HEARING OFFICER: Mr. Siros.

15 MR. SIROS: Give me a moment. All right.

16 Nothing further.

17 THE HEARING OFFICER: Okay. Your witness asked

18 me if I kept the exhibits here. I simply indicated

19 that it would be -- and if they're introduced.

20 What I would like to ask at this time and

21 I should have probably made a preference prior to

22 the other witnesses testifying, but my understanding

23 is that these are exhibits that are going to be

24 introduced without objection; is that correct,

1 Mr. Steger?

2 MR. STEGER: That is correct.

3 THE HEARING OFFICER: All right. And that is
4 referring to the exhibits that have been marked up
5 to now, Complainants' Exhibit 1, Complainants'
6 Exhibit 2, Complainants' Exhibit 3, Complainants'
7 Exhibit 5, Complainants' Exhibit 6. There is no
8 Complainants' Exhibit 4 at this point. However,
9 there is a Group Exhibit No. 1.

10 MR. SIROS: Yes, there is.

11 MR. STEGER: Yes, there is.

12 THE HEARING OFFICER: I apologize. Oh, I
13 apologize. There is a Complainants' Exhibit --

14 MR. FORCADE: Four.

15 MR. STEGER: Complainants' Exhibit 4.

16 THE HEARING OFFICER: Oh, I see. That is the
17 handwritten --

18 MR. FORCADE: Log of noises.

19 THE HEARING OFFICER: -- log. I see. I stand
20 corrected. There is a Complainants' Exhibit 4,
21 which is the handwritten log, which consists of
22 seven pages. Yes, seven handwritten pages referred
23 to in the testimony of Mr. Bergau, and there is a
24 Complainants' Exhibit 5 and 6, and there is also a

1 Group Exhibit 1, which consists of five photographs
2 numbered one through five, and those are -- are you
3 asking that they be admitted now?

4 MR. FORCADE: We're going to reserve the
5 request to admit evidence until the end of the
6 citizen testimony, and then we'll move to a second
7 component and, again, refreshing that we will make a
8 motion at a later time to ask for return of the
9 mechanical devices.

10 THE HEARING OFFICER: Of course. All right.
11 Mr. Bergau, you can step down.

12 THE WITNESS: Thank you.

13 THE HEARING OFFICER: Thank you.

14 All right. If we're not going to admit
15 the documents, I'd ask that the documents remain in
16 your possession or exhibits.

17 MR. FORCADE: Sure.

18 THE HEARING OFFICER: Why don't we do this.
19 Let's -- based on what we've talked about
20 previously, let's take a lunch recess. I don't have
21 the exact time right now.

22 MR. FORCADE: It's about one -- sorry, about
23 12:20.

24 THE HEARING OFFICER: 12:20.

1 MR. FORCADE: And I'd like to ask if we could
2 keep it reasonably short.

3 THE HEARING OFFICER: Well, I would like to do
4 that as well. I would like to try to be back here,
5 but I wanted to go -- give everybody about 45
6 minutes. Is 1:00 o'clock reasonable for everybody?
7 Mr. Steger?

8 MR. STEGER: That's fine, yes.

9 THE HEARING OFFICER: That's less than 45
10 minutes obviously. What I'm afraid of is downstairs
11 you're going to hit lunch crowd now. We're a little
12 late. So I don't know what everybody's plans are.

13 We will be -- why don't we try to be back
14 here at 1:00 with the hopes -- and my expectation is
15 to restart back at no later than 1:15. Okay? All
16 right. Thank you all very much. We'll return at
17 that time. Thank you.

18 (Whereupon, further proceedings
19 were adjourned pursuant to the
20 lunch break and reconvened
21 as follows.)

22 THE HEARING OFFICER: Let the record reflect
23 that this is Pollution Control Board docket number
24 98-81, Charter Hall Homeowner's Association vs. D.P.

1 Cartage. We have come back after the lunch recess

2 and are back in the complainants' case in chief.

3 Mr. Forcade, anything that we need to

4 discuss prior to going on with testimony?

5 MR. FORCADE: No. We're ready to call our next

6 witness.

7 THE HEARING OFFICER: Thank you.

8 Mr. Steger?

9 MR. STEGER: No.

10 THE HEARING OFFICER: Okay. Let's go. Next

11 witness, please.

12 MR. SIROS: I call Behram Dinshaw.

13 THE HEARING OFFICER: Mr. Dinshaw?

14 THE WITNESS: Yes.

15 THE HEARING OFFICER: Am I pronouncing that

16 correctly?

17 THE WITNESS: Yes.

18 THE HEARING OFFICER: Okay. Would you please

19 state your name and spell -- I apologize. You need

20 to be sworn in first.

21 Geanna, if you don't mind.

22 (Witness sworn.)

23 THE HEARING OFFICER: Mr. Dinshaw, if you'll

24 please state your name and spell your last name? In

1 fact, why don't you spell your whole name?

2 THE WITNESS: My name is Behram Dinshaw.

3 That's B-e-h-r-a-m, D-i-n-s-h-a-w.

4 THE HEARING OFFICER: Thank you.

5 Mr. Siros.

6 B E H R A M D I N S H A W,

7 called as a witness herein, having been first duly

8 sworn, deposeth and saith as follows:

9 D I R E C T E X A M I N A T I O N

10 by Mr. Siros

11 Q. Mr. Dinshaw, would you please tell me

12 where you live?

13 A. 663 Charter Hall Drive in Palatine.

14 Q. Mr. Dinshaw, I would request that you

15 approach what's been marked as Complainants' Exhibit

16 1 and with this red pen put a circle -- I'm sorry.

17 Let me withdraw that.

18 With this blue pen, please put a circle

19 around the address where you reside.

20 A. (Witness complied.)

21 MR. SIROS: Let the record reflect that

22 Mr. Dinshaw has put a blue circle at 663 Charter

23 Hall Drive on Complainants' Exhibit 1.

24 THE HEARING OFFICER: The record will so

1 reflect.

2 BY MR. SIROS:

3 Q. And who resides there with you?

4 A. Just myself.

5 Q. Yourself.

6 Do you own or rent your house?

7 A. I own it.

8 Q. When did you move in?

9 A. August 1996.

10 Q. When did you sign the contract on your
11 house?

12 A. August 6th, 1996.

13 Q. When you moved in, how long --

14 A. About four or five days later.

15 Q. And what is your occupation?

16 A. I'm an actuary.

17 Q. And you're taking time out to testify here
18 today?

19 A. Yes, I am.

20 Q. Would you please describe the layout of
21 your house?

22 A. It's a two story house. Downstairs has
23 the living room, kitchen, dining room, half bath and
24 the garage, and the upstairs has three bedrooms, one

1 on the east side, two on the west side and two

2 baths.

3 Q. If I'm looking out from your first

4 floor -- the first floor of your house looking east,

5 what would I see?

6 A. From the first floor, you see the patio

7 and then a fence behind that.

8 Q. Okay. If I was looking east from your

9 second floor, what would I see?

10 A. You see the Overland trucking operations.

11 Q. And what can you see when you're looking

12 out from -- when you're seeing the Overland trucking

13 operations, what do you see?

14 A. You can see the terminal. You can see the

15 forklifts running in there. You can see the yard

16 truck. You can see the trailers parked and running,

17 and you can see individuals walking around.

18 Q. I'd like to hand you what I'm going to

19 mark as Group Exhibit 2, which will consist of 26

20 pictures. I've already tendered Mr. Steger a copy

21 of these.

22 (Group Exhibit No. 2 marked

23 for identification,

24 5-12-98.)

1 THE HEARING OFFICER: Mr. Steger?

2 MR. STEGER: Yes.

3 THE HEARING OFFICER: Let the record reflect
4 that Mr. Steger has indicated that he has received
5 copies.

6 Okay. These are marked as Group Exhibit
7 2 --

8 MR. SIROS: Yes.

9 THE HEARING OFFICER: -- and they are
10 numbered -- enumerated on the back as well?

11 MR. SIROS: They are enumerated on the back,
12 and they consist of pictures one through 26 with a
13 time date stamp on the front of each picture to
14 differentiate them from Group Exhibit No. 1.

15 THE HEARING OFFICER: Okay. The distinguishing
16 feature from Group Exhibit No. 1 is the time date
17 stamp on these photos that is not there on Group
18 Exhibit 1?

19 MR. SIROS: That is correct.

20 THE HEARING OFFICER: Thank you very much.

21 BY MR. SIROS:

22 Q. Mr. Dinshaw, do you recognize these
23 pictures?

24 A. Yes, I do.

1 Q. And can you tell me how you recognize
2 these pictures?

3 A. I took these pictures myself.

4 Q. I'd like to direct your attention to Group
5 Exhibit 2, picture number one. Can you describe
6 that picture for me?

7 A. Picture number one was taken out of my
8 bedroom window facing east that is looking at the
9 Overland operations.

10 Q. I notice a time date stamp on that. Is
11 that time date stamp on picture number one 3-29-97?

12 A. That's correct.

13 Q. Does that, in fact, indicate the date that
14 you took that picture?

15 A. That's correct.

16 Q. Are all the pictures -- do all the
17 pictures in the group exhibit have similar time date
18 stamps?

19 A. They have similar time date stamps.

20 Q. And would the time and date stamp in those
21 pictures reflect the date that those pictures were
22 taken?

23 A. Yes, they do.

24 MR. STEGER: For the record, I don't have any

1 times on these. All I have is dates.

2 THE WITNESS: It is dates.

3 MR. SIROS: I'm sorry.

4 THE HEARING OFFICER: Okay.

5 MR. SIROS: I'll rephrase that. It would only

6 be the date.

7 MR. STEGER: The date.

8 THE HEARING OFFICER: Okay. There are no time

9 values on any of the photographs?

10 THE WITNESS: Correct.

11 MR. SIROS: That is correct.

12 THE HEARING OFFICER: Thank you. Thank you,

13 Mr. Steger.

14 BY MR. SIROS:

15 Q. So Group Exhibit 2, picture number one,

16 represents what again? I'm sorry.

17 A. This is looking out of my bedroom window,

18 and it shows the west side of the west compound of

19 Overland, and it shows basically trailers parked on

20 that end.

21 Q. I'd like to direct your attention to Group

22 Exhibit 2, picture number two.

23 Would you tell me what that represents?

24 A. Picture number two is again taken out of

1 my window, and it's just -- it just shows the south
2 side of that compound and it shows trailers parked
3 along the perimeter fence.

4 Q. Is this picture taken from the second
5 floor of your house?

6 A. Yes, it is.

7 Q. I'd like to direct your attention to Group
8 Exhibit 2, picture number three.

9 Would you identify that picture, please?

10 A. That's a picture taken at night again from
11 my window facing the same direction, facing the east
12 so looking at the west compound of Overland.

13 Q. And would you describe what appears to be
14 a white spot along -- in the upper left-hand corner
15 of that picture?

16 A. Yes. Apparently, I believe, that's
17 probably the flood lights outside at nighttime. I
18 couldn't get a clearer picture, but this is the best
19 I could do. It shows that it shines directly in our
20 windows at night.

21 Q. I'd like to direct your attention to Group
22 Exhibit 2, picture four.

23 Please describe that picture for us.

24 A. Picture four was an attempt to see the

1 north side of the west compound again because there
2 are some trailers, but it's rather dark. So I can't
3 really see them from this picture.

4 Q. I'd like to direct your attention to Group
5 Exhibit 2, pictures number five and six. They
6 appear to be basically the same picture. Please
7 describe them?

8 A. Yes, they do. They are taken from my
9 bedroom window again, and it shows numerous trailers
10 parked on the west side of the compound.

11 Q. And were those pictures taken on two
12 different days?

13 A. Yes, they were.

14 Q. Picture number five was taken on?

15 A. The 22nd and picture number six on the
16 23rd.

17 Q. I'd like to direct your attention to Group
18 Exhibit 2, picture number seven.

19 Would you please describe that?

20 A. Picture number seven is again taken out of
21 my bedroom window, and, again, it shows numerous
22 trailers parked on the west side.

23 Q. I would direct your attention to picture
24 number eight and ask what that represents?

1 A. Picture number eight, again, represents
2 pictures taken out of my bedroom window showing
3 trailers parked on the west side.

4 Q. I direct your attention to Group Exhibit
5 2, pictures nine and ten.

6 Would you please describe those two
7 pictures.

8 A. Pictures nine and ten are, again, taken
9 out of my bedroom window and show numerous trailers
10 parked on that same west side.

11 Q. Okay. I direct your attention to picture
12 number 11.

13 Would you please describe that?

14 A. Number 11, again, taken out of my bedroom
15 window and shows numerous trailers parked on the
16 perimeter on the west side.

17 Q. Please describe picture number 12.

18 A. Picture number 12 is hazy. It was
19 probably snowing, but it's again pictures taken out
20 of my bedroom window in an attempt to capture the
21 trailers parked on the west side.

22 Q. Picture number 13, would you please tell
23 me what that represents?

24 A. Picture number 13, again, shows numerous

1 trailers parked on the perimeter on the west side.

2 Q. I direct your attention to picture number

3 13. There appears to be a wooden fence in the

4 background; is that correct?

5 A. Correct.

6 Q. I'd like to direct your attention to

7 Complainants' Exhibit 1, the dark black line that is

8 drawn between lots 699 -- I'm sorry, addresses 699

9 and 627.

10 Is the wooden fence referenced in picture

11 number -- Group Exhibit 2, picture 13, the same

12 fence line that appears to be referenced in

13 Complainants' Exhibit 1?

14 A. Yes, it is.

15 Q. Directing your attention to picture number

16 14, would you please tell me what that represents?

17 A. Picture number 14 is, again, another

18 picture taken out of my bedroom window showing

19 several trailers parked on the west side.

20 Q. I direct your attention to picture number

21 15. Would you please tell me where that was taken

22 and what that represents?

23 A. Yes. Picture number 15 is taken as I --

24 it's taken as I enter the complex from Northwest

1 Highway, and it shows the east side of the compound,
2 and it also shows that there are no trailers parked
3 on the east side of the compound like there were on
4 the west side.

5 Q. What direction were you facing when you
6 took this picture?

7 A. This would be facing south.

8 Q. I would request that you approach
9 Complainants' Exhibit No. 1 and with this -- with a
10 black pen, please make a black square where you took
11 that picture from?

12 A. Probably approximately -- kind of where
13 the circle is. If I can just make a black circle
14 here. There is a fence out here, a wire fence, and
15 it's before that. It overlooks this side
16 (indicating).

17 MR. SIROS: Let the record reflect that Mr.
18 Dinshaw has placed a black circle right next to the
19 red circle in the -- right next to the White Hall
20 designation on Complainants' Exhibit 1.

21 THE HEARING OFFICER: The record will so
22 reflect.

23 MR. SIROS: And that is, in fact, where he took
24 picture number 15 from.

1 THE HEARING OFFICER: Is that accurate,
2 Mr. Dinshaw?

3 THE WITNESS: Yes, it is.

4 THE HEARING OFFICER: Thank you. The record
5 will so reflect.

6 BY MR. SIROS:

7 Q. Directing your attention to picture 16,
8 would you please describe what is referenced in that
9 picture?

10 A. Picture 16 is taken from the same
11 position, except I've just twisted a little to the
12 right. In other words, facing the back side of
13 Charter Hall to show that there's trailers parked on
14 the west side.

15 Q. And are those homes in the far background
16 the Charter Hall homes?

17 A. Yes, they are.

18 Q. Directing your attention to pictures 17
19 and 18, could you please describe what those
20 pictures reference?

21 A. Yes. Pictures 17 and 18 are most likely
22 west, just a few paces slightly west, to capture a
23 better picture of the west compound, which shows,
24 again, that there's trailers parked on that end to

1 try and compare with the other photographs we saw
2 where there were no trailers parked on the east
3 side.

4 Q. And where approximately were these
5 pictures taken from?

6 A. Right where the black circle -- where the
7 black circle is, but a few paces to the west of
8 that.

9 Q. The black circle you're indicating is the
10 one that you marked on Complainants' Exhibit 1?

11 A. Yes.

12 Q. I direct your attention to picture number
13 19. Would you please explain what that references?

14 A. Picture number 19, again, is an attempt to
15 capture the trailers parked on the west side. I
16 moved even slightly further west of my black mark to
17 get a better photograph to show numerous trailers
18 parked on that side of the compound.

19 Q. Approximately, how much farther west did
20 you move to take this picture?

21 A. Probably another 20 feet.

22 Q. Referencing picture number 20, would you
23 please explain what that represents?

24 A. Picture number 20 is, again, taken at

1 approximately the black spot that I drew to show
2 that there are no trailers parked on the east side
3 of that compound.

4 Q. Would you please describe where you took
5 the pictures referenced in pictures 21 and 22 from
6 and what they reference?

7 A. Pictures 21 and 22 are, again, taken out
8 of my bedroom window and they show -- 21, for
9 example, shows a few trailers parked on the west
10 side of the compound, and 22 shows several trailers
11 parked in a line on the perimeter on the west side
12 of the compound.

13 Q. Turning your attention to picture number
14 23, would you please describe what that picture
15 references?

16 A. Picture number 23 is, again, taken from
17 the spot marked on the -- the spot marked with the
18 black circle again to show that on the east side of
19 the compound there are, in fact, no trailers parked
20 out there like there were on the west side.

21 Q. The black circle you're referencing is the
22 one you marked on Complainants' Exhibit 1; is that
23 correct?

24 A. Correct.

1 Q. And would you please describe what's
2 referenced in picture 24?

3 A. Picture 24, again, is taken out of my
4 bedroom window to show several trailers parked on
5 the west side of the compound.

6 Q. I'd like to direct your attention to
7 pictures 25 and 26. Would you please identify where
8 you took those pictures from?

9 A. Twenty-five and 26 were taken from a few
10 paces west of the black circle shown on Exhibit one,
11 again, to show that there were trailers parked only
12 on the west side of the compound.

13 Q. Mr. Dinshaw, when you moved in in August
14 of 1996, were you aware that there was a trucking
15 operation located immediately to the east of your
16 property?

17 A. I was aware there was an operation, yes.

18 Q. Were you aware that a -- that the
19 developer had filed a notice informing you --
20 informing people that there was, in fact, a 24-hour
21 trucking operation located to the east of the
22 property?

23 A. No, I was not informed.

24 Q. You were not aware of that?

1 A. I was definitely not aware of that.

2 Q. Did you do anything to determine whether
3 or not the trucking facility that you saw to the
4 east of your property -- I'm sorry. Let me rephrase
5 that.

6 Did you do anything to determine whether
7 the trucking facility generated noise?

8 A. Yes, I did. I was certainly concerned
9 about the trucking facility. So I actually went
10 over to the facility, went into their office and
11 asked them what their hours were, and I was told
12 specifically that they shut down by 10:00 o'clock at
13 night, they don't disturb neighbors, and they don't
14 work on the weekends.

15 Q. Do you recall who you spoke with?

16 A. No. I did not ask for a name. I had no
17 reason to ask or no reason not to believe them at
18 the time. I was simply inquiring. I also --
19 naturally, that was wasn't enough for me, and so I
20 visited the property at least twice, if not three
21 times. One was on a Saturday, you know, just to
22 make sure they weren't working on the weekend, and
23 the other one was -- I believe it was a Friday night
24 rather late. It was probably around midnight when I

1 went to visit them, visit the property rather, and
2 saw that it was quiet, the Charter Hall property
3 that is.

4 Q. After you moved in, when did you first
5 hear the noise from the Overland facility?

6 A. The very first day I moved in was the
7 Sunday following August 6th when I signed my
8 contract. That very night at midnight, it was a
9 warm night, it was August, I heard the trucks
10 rolling in at midnight and the facility beginning
11 work, and I couldn't sleep that whole night.

12 Q. How often would you say that you hear the
13 noise from the facility per week?

14 A. Every single night multiple times.

15 Q. I'd like to take you through a day
16 starting at 8:00 in the morning to 8:00 in the
17 morning the next day. Would you please tell me the
18 periods when you hear noise from the facility?

19 A. Usually I'm at work starting around 8:00
20 in the morning. Only on certain occasions have I
21 been at home and generally I think by around 8:00
22 o'clock that some of the noise has abated and you
23 can hear the occasional noise, but when I get home,
24 which is around 6:00 or 7:00, it's quite clear that

1 they're working at that point, and it's very noisy.
2 The noise tends to escalate all the way
3 through until they're done, which is around
4 midnight, sometimes likely before that, sometimes
5 well after that. The noise again starts around 2:00
6 o'clock. Sometimes it's before that. Just last
7 Thursday I was woken up at 1:40. I noted that time
8 down myself, and most of the time I've woken up
9 around 3:30 with a very, very loud bang, which
10 basically doesn't abate until the time I get out of
11 bed.

12 Q. Is that 3:30 in the morning?

13 A. Yes, it is. That's 3:30 in the morning.

14 Q. Okay. What time do you normally get up?

15 A. Since I moved into this property, I now
16 try to get out of bed by around 7:00 o'clock, which
17 is at least an hour later than what I used to do.

18 Q. And why is that?

19 A. That's because, frankly, I don't get to
20 sleep at night. By the time -- I can't get to bed
21 until they've stopped work at night, which is
22 usually around midnight. At that point, I try to go
23 to bed, and I'm woken up again in a couple hours,
24 and from that point, it's nothing but tossing and

1 turning until I wake up. It's multiple times.

2 So, I mean, because of that, I tend to
3 spend some more time at home trying to catch up on
4 whatever few minutes of sleep I can get. I don't
5 get more than like three to four hours of quality
6 sleep a night.

7 Q. Could you please describe the different
8 types of noise that you hear from the facility?

9 A. There's several types of noise. One of
10 the major noises is the dock plates clashing, at
11 least how I view it. When the forklifts sort of
12 roll into the trailer, you can hear -- there's a
13 double bang, and I'm not sure why it's double, but
14 from what I've seen, and I've seen the trailers,
15 I've seen the forklifts do this when they run in,
16 it's a very, very loud bang. It almost sounds like
17 an explosion or a clap of thunder perhaps, you know,
18 however you want to put it, but it is extremely loud
19 and many times it can shake the house.

20 For example, another source of noise, a
21 really large source of noise, is when the yard truck
22 hitches the trailers parked on the west side. When
23 they hitch those trailers, the yard truck usually
24 comes in with a fair amount of speed as it reverses

1 in. That's something, again, that I viewed and
2 noticed.

3 It comes in at a speed, shakes the whole
4 trailer, and the noise is so loud at that point,
5 especially if the trailer is parked at the perimeter
6 of Charter Hall Drive -- Charter Hall fence, excuse
7 me, that it shakes the house.

8 Q. Now, when you say perimeter, what do you
9 mean by that?

10 A. The fence. I call that the perimeter. I
11 should be more clear.

12 Q. And which side is that on?

13 A. That's on the east side of Charter Hall,
14 of my house. That's a very, very large source of
15 noise. Once the trailer has been hitched, at that
16 point, the engine revs real loud and picks up the
17 trailer from its two legs, if you will, and carries
18 it away.

19 Many times it's not hitched properly, at
20 least how I view it, and it's dragged along the
21 ground, and that is a terribly disturbing sound and
22 noise. I mean, it is amazing. One must hear that.
23 It's very, very loud.

24 Another source of noise is just the fact

1 that you can hear the reverse beep of the trucks
2 right on the west side. You hear the yard truck and
3 other trailers running around. There are times
4 when the yard -- the yard truck is very loud. If
5 you can imagine putting your car in first gear and
6 just simply running it in first gear, if you can
7 just imagine the revving, the noise, and that's how
8 the yard truck sounds.

9 In fact, there are some times in the
10 winter I've noticed when people running the yard
11 trucks are simply having fun out there in the snow,
12 and they'll come at a high speed from the north end
13 to the south and apply their brakes and spin around.

14 Q. How do you conclude that they're just
15 having fun?

16 A. Well, if they're coming at a high speed
17 while in snow and they're spinning around having
18 a -- it looks to me like they're having a good
19 time. You wouldn't come in at that speed and just
20 intentionally apply the brakes and spin around.

21 Q. Do they load a trailer after that?

22 A. Oh, yeah. Then they'll come and reverse
23 it and load the trailer. It's very loud. You can
24 hear them shouting. You can hear them playing music

1 very loud. You can hear them beeping early hours of
2 the morning, late hours of the night.

3 Q. When you say beeping, what are you
4 referring to?

5 A. It's the beeping of trucks or even the
6 beeping of, I think, the forklifts. It's like a
7 beep, beep, like a double beep you can hear. It's
8 quite clear what's happening.

9 Q. And when you testified as to the noise of
10 unloading and loading and the noise of the hitching
11 and unhitching of the trailers, is this something
12 you've physically observed?

13 A. Yes, I have.

14 There's another source of noise I failed
15 to mention too. Even after -- if they've stopped
16 running their forklifts around, what happens is when
17 the trucks roll into the west side, and I'm not an
18 expert on this, but there's -- apparently, there's a
19 certain -- it's a pressurized system and it lets go
20 of the pressure. It's not the brakes. They let go
21 of the pressure. It's like a hose. They let go,
22 and that lets the first trailer sort of settle down
23 in the ground, and it's a very loud hissing noise
24 that won't go away for a good ten seconds, just a

1 very strong hissing sound. It's some sort of
2 pressure mechanism. That alone will wake you up. I
3 mean, that's pretty loud.

4 Q. Have you done anything to record specific
5 dates when loud noises occurred?

6 A. Yes, I have. I kept a noise log in the
7 past.

8 Q. Do you independently recall the specific
9 dates without referring to that noise log?

10 A. No, I don't, but it's pretty much every
11 night.

12 (Complainants' Exhibit No. 7
13 marked for identification,
14 5-12-98.)

15 BY MR. SIROS:

16 Q. I'd like to show you what we're marking as
17 Complainants' Exhibit 7 for identification. I've
18 already tendered a copy to Mr. Steger?

19 THE HEARING OFFICER: Mr. Steger?

20 MR. STEGER: Uh-huh.

21 THE HEARING OFFICER: Mr. Steger has indicated
22 that he's received a copy for the record.

23 BY MR. SIROS:

24 Q. Do you recognize that?

1 A. Yes, I do.

2 Q. Would you please let me know what that is?

3 A. That's my noise log, basically, which
4 shows by date and time when I was woken up.

5 Q. Would you please describe how you would
6 place these entries on the noise log?

7 A. Basically, when I first woke up, I'd note
8 down -- you know, I'd turn the light on and note
9 down exactly what time it was.

10 For several of these dates, you see it is
11 multiple times a night. Now, these are the times
12 that only the loudest of all the noises occurred.
13 There were times in between when, you know, you
14 could hear the engines running and them fooling
15 around.

16 I couldn't really note everything down.
17 So when the loudest of all the noises happened is
18 when I'd note it down.

19 Q. I would ask that you turn to page eight,
20 which is the last page of the document.

21 Would you please read that last paragraph
22 there?

23 A. The last paragraph says due to sheer
24 inconvenience, I stopped keeping track of the

1 specific times that I was disturbed by noise created
2 by Overland's operations after 4-7-97.

3 Essentially, I'm awakened multiple times
4 in the late evening hours each day Monday through
5 Friday and the early morning hours each day Monday
6 through Saturday, including Saturday morning
7 starting around 8:00 a.m.

8 The noise consists primarily of; one,
9 clashing dock plates; two, hitching of trailers that
10 are parked just across the Charter Hall perimeter
11 fence; and three, high revving yard truck engine.

12 Q. Do you recall when you typed this, the
13 date?

14 A. I typed this a few months ago.

15 Q. Does this still accurately represent the
16 present conditions at the Overland facility?

17 A. Yes, with a couple of changes or
18 additions. Now, on Saturday morning they start much
19 before 8:00 a.m.

20 Q. What time would you -- do they start now?

21 A. Saturday morning -- two Saturdays ago,
22 they started at 5:45. Last Saturday they started at
23 5:00 a.m. It's gotten worse. In my logs also, just
24 for the record, there is one Sunday when they

1 started at 5:30 in the morning. I have noted that
2 down too.

3 Q. You recorded that on the noise log, which
4 has been marked as Complainants' Exhibit 7?

5 A. Yes, by date.

6 Q. How does the noise from the Overland
7 facility affect your daily life?

8 A. It affects my daily life in numerous
9 ways. Most importantly, I can't sleep at night.
10 I'm awakened multiple times. I don't sleep more
11 than a couple hours before I'm, you know, woken up.
12 At that point, it's simply, you know, tossing and
13 turning until I need to get out of bed. You can't
14 get -- I don't get more than three to four hours of
15 quality sleep a night. That has a profound effect
16 and has had a profound effect on me because this has
17 been continuous exposure to this kind of noise
18 level.

19 One of the things, of course, I go to work
20 much later now. I have -- I miss a lot of my 8:00
21 o'clock meetings. I used to always start around
22 7:45. I've been talked to about this by my boss. I
23 have been generally somewhat inattentive at work,
24 frankly, because I don't get enough sleep.

1 I'm responsible for several people and
2 productivity for several states, and I think my work
3 quality is diminished. At home, I don't even like
4 coming home after work. I try and come home after
5 7:00 o'clock just to stay at work as long as
6 possible. I don't need to, but I'll do anything to
7 stay away from home.

8 I come home, the first thing I hear is the
9 noise. I can't open the windows. It's too loud. I
10 can't talk on the phone with the windows open or
11 even sometimes closed. I had a very important phone
12 call from California one evening, which I had to
13 come home early for. I couldn't talk on the phone.
14 It was so loud even the gentleman on the phone was
15 asking what was going on in the background, what's
16 the noise, the thud as he called it. He had to call
17 me back at work the next day because we could not
18 hold -- just have a general conversation.

19 You can't just sit down and relax and
20 listen to music, read a book. You can't do anything
21 without any ambient noise. If the TV is on, you've
22 got to turn it up real loud. That drowns only some
23 of the noise. Once the windows are open, there is
24 no drowning of noise. It is extremely loud.

1 You can't -- you certainly can't entertain
2 at home. Since the day I moved in, I have not had
3 any entertainment at home at all since the day I
4 moved. My father came to visit me the day I moved
5 in, which was actually about August 12th, '96. He
6 stayed with me for about a month, and he had a very
7 difficult time with this. I mean, it was August.
8 It was warm. The windows were open. He's a
9 workaholic. Staying at home for him is not usual,
10 but every time I called him at home, like 11:00
11 o'clock in the morning or noontime, I'd wake him
12 up. That's very unusual for a gentleman who wakes
13 up by 7:00 every morning normally.

14 I asked him what's up, and he's like well,
15 I was just taking a nap. When is the last time my
16 dad has taken a nap at that time? He couldn't sleep
17 at night. I was embarrassed. He was embarrassed
18 for me. I mean, you can't have that going on. I
19 can't have friends over.

20 Many times in the evening we get -- I get
21 together with friends and they're like why don't we
22 just meet at Behram's house and go somewhere? It's
23 never done that way because I have to go to someone
24 else's house. It is too embarrassing. I can't just

1 relax. I can't put my head down to relax and sleep
2 on the couch or just relax and read a book I can't
3 even do it on Saturdays anymore. The noise has
4 worsened. They now work every Saturday starting at
5 5:00, for example, last Saturday.

6 There was one Saturday where they went all
7 the way until midnight. In fact, I got out of the
8 house just at 10:00 o'clock and just went to a
9 friend's house and can I just crash at your place?
10 I couldn't take it. This was my day off to relax.
11 They have gotten very loud.

12 Another thing they've been doing and one
13 thing I need to note is whenever the trucks come in
14 to the Overland facility, their first port of entry
15 is always the west compound, okay, the one right
16 outside of Charter Hall.

17 Q. When you say the west compound, what do
18 you mean by that?

19 A. Can I show you up there on the exhibit
20 or --

21 Q. Certainly. Why don't I ask you to put a
22 yellow X where you're referring to as the west
23 compound.

24 A. This is the west compound. Okay?

1 THE HEARING OFFICER: Let the record reflect
2 that a yellow X has been placed in the area within
3 the Overland Transportation boundary on
4 Complainants' Exhibit 1 between the Charter Hall
5 association residents and the Overland facility.

6 BY THE WITNESS:

7 A. The point I'm trying to make is all the
8 trucks come in through here, and their first port of
9 entry is here, not there. It's always here
10 (indicating).

11 THE HEARING OFFICER: Let the record reflect
12 that what Mr. Dinshaw is referring to are the -- as
13 the point of entry is from the Northwest Highway
14 coming in what appears to be behind the Overland
15 Transportation facility at least on the west -- what
16 would be the west portion of that facility between
17 the residents inside Charter Hall and the -- what
18 appears to be a building at the Overland
19 Transportation facility.

20 BY MR. SIROS:

21 Q. Mr. Dinshaw, when is the last time you
22 were bothered by noise from the Overland facility?

23 A. This morning. Starting at about 1:30, the
24 truck rolled in.

1 Q. Is that 1:30 a.m.?

2 A. 1:30 a.m., the truck rolled in and made
3 several attempts to park the trailer on the west
4 side, and it sat there with the engine running for
5 45 minutes and the lights on, too, by the way for 45
6 minutes, and then at about 1:45, I heard the first
7 bang, the clashing of the plates, and then some
8 louder ones around 3:30 that was -- I found it very
9 loud around 5:00 o'clock, 5:00, 5:15 this morning.
10 Basically starting around 1:30 I couldn't sleep.

11 Q. So you were -- were you awoken at 1:30
12 when the truck --

13 A. I was woken at 1:30.

14 MR. SIROS: Thank you. Nothing further.

15 THE HEARING OFFICER: Mr. Steger.

16 C R O S S - E X A M I N A T I O N

17 by Mr. Steger

18 Q. Just a few questions here. Who did you
19 buy your unit from?

20 A. Who did I buy it from? I believe the
21 O'Malleys was their last name.

22 Q. It was a couple?

23 A. Yes.

24 Q. Okay. Did you deal direct with the

1 O'Malleys or not or did you deal through a -- or did

2 you deal --

3 A. I had a lawyer.

4 Q. -- through a real estate broker?

5 A. Real estate broker and lawyer.

6 Q. Did either the broker for the O'Malleys or

7 your broker advise you as to the presence of the

8 truck terminal?

9 A. They advised me of the presence and also

10 advised me to go and find out more about it as to

11 their times, operations, and I did exactly that.

12 Q. Did you ever talk to the O'Malleys

13 directly?

14 A. No, because when I visited the home, they

15 weren't there.

16 Q. Other than the Overland activity, is there

17 anything else you hear, any traffic from Northwest

18 Highway?

19 A. Not particularly, no.

20 Q. From the mall?

21 A. No.

22 Q. Do you ever hear aircraft noise?

23 A. On occasion, aircraft flies by.

24 Q. Dogs barking?

1 A. I don't have any dogs around.

2 Q. Birds?

3 A. Not really. My window is always closed,
4 hot or cold.

5 Q. Did you have an air conditioning unit?

6 A. Yes, I do, an outside unit.

7 Q. Does that run during the hot months?

8 A. I have to. The windows are closed.

9 MR. STEGER: Okay. I don't have any other
10 questions.

11 THE HEARING OFFICER: Mr. Siros.

12 MR. SIROS: Nothing.

13 THE HEARING OFFICER: Mr. Dinshaw, thank you
14 very much.

15 THE WITNESS: Do I keep these here?

16 THE HEARING OFFICER: Why don't we hand those
17 back to Mr. Siros.

18 Let the record reflect that the exhibits
19 that Mr. Dinshaw has referred to have been handed
20 back to Mr. Siros.

21 Mr. Siros.

22 MR. SIROS: Our next witness is Tibebu
23 Senbetta.

24 THE HEARING OFFICER: Mr. Senbetta, would you

1 please raise your right hand and be sworn in?

2 (Witness sworn.)

3 THE HEARING OFFICER: Mr. Senbetta, why don't
4 you spell your first name and last name?

5 THE WITNESS: The first name is Tibebu, T, as
6 in Tom, i-b-e-b-u. The last name Senbetta,
7 S-e-n-b-e-t-t-a.

8 THE HEARING OFFICER: Thank you.

9 T I B E B U S E N B E T T A,
10 called as a witness herein, having been first duly
11 sworn, deposeth and saith as follows:

12 D I R E C T E X A M I N A T I O N

13 by Mr. Siros

14 Q. Would you please tell me where you live?

15 A. I live at 655 North Charter Hall in
16 Palatine.

17 Q. I'm running out of shapes.

18 I would ask that you put a red triangle on
19 Complainants' Exhibit 1 that would represent where
20 you reside?

21 A. (Witness complied.)

22 MR. SIROS: Let the record reflect that
23 Mr. Senbetta has placed a red triangle on the part
24 marked 655 on Complainants' Exhibit 1.

1 THE HEARING OFFICER: The record will so
2 reflect.

3 BY MR. SIROS:

4 Q. Mr. Senbetta, when did you move into your
5 house?

6 A. I moved May of '97.

7 Q. And do you own or rent?

8 A. Own.

9 Q. Do you live alone?

10 A. No. I live with my wife.

11 Q. Anyone else reside with you?

12 A. One fish.

13 Q. What's your occupation?

14 A. I'm an information systems professional,
15 systems analyst.

16 Q. Are you taking time out from your job to
17 testify here today?

18 A. Yes.

19 Q. What's the name of your fish?

20 A. I don't have a name yet.

21 Q. Still working on it.

22 Would you describe generally the layout of
23 your house, please?

24 A. Yes. It's a two-story house. The bottom

1 floor is a living room, a dining room, and a
2 kitchen, and a half bath, and a two-car garage, and
3 the upstairs has got three bedrooms and two full
4 baths.

5 Q. Okay. Would you tell me for the first
6 floor which rooms are located on the east side of
7 your home?

8 A. On the east side is the dining room and
9 the living room.

10 Q. And if I was looking out from the living
11 room to the east, what would I see?

12 A. You will see a patio and the little
13 backyard and then a few trees and the fence.

14 Q. Okay. Would you please tell me what rooms
15 are on the east side of your second floor?

16 A. On the second floor, it's the master
17 bathroom and the master bedroom.

18 Q. If I was looking out from the master
19 bedroom to the east, what would I see?

20 A. You'll see the top of the trees and the
21 property of Overland, the loading docks, the entire
22 building, a couple of trucks sometimes, some stored
23 gas I guess for the forklifts and stuff, and maybe
24 the shop I believe is out there, too, and the

1 offices.

2 Q. When you moved in in -- I'm sorry. You
3 moved in in May of '97; is that correct?

4 A. Yes, I did.

5 Q. When you moved in in May of '97, were you
6 aware that there was a trucking operation located
7 directly to the east of your property?

8 A. Yes, I was.

9 Q. And were you aware that that was a 24-hour
10 trucking operation?

11 A. No, I did not.

12 Q. Were you aware that the developer had
13 filed a notice indicating that, in fact, that
14 trucking operation was a 24-hour trucking operation?

15 A. Nobody had mentioned that to me.

16 Q. Who did you purchase your property from?

17 A. I don't remember their names. Watkins or
18 I don't really remember their names.

19 Q. Did you discuss with them at all the
20 trucking facility?

21 A. I never talked with them directly. Ever
22 time we went to look at the property, they were
23 gone. So I never really talked with them.

24 Q. How many times did you visit the property

1 before you purchased it?

2 A. We stopped by and drove by a number of
3 times. I would say in excess of ten times or more,
4 and we parked the cars normally, looked at the
5 property, looked at the surrounding areas.

6 Then we looked inside of the house.

7 Actually, we'd been there maybe I would say there or
8 four times actually inside with the realtor, with
9 the real estate agent.

10 Q. Did you ever visit the property in the
11 middle of the night?

12 A. No. Actually, let me back up a little bit
13 as far as visiting the place. In terms of the
14 trucking company, I did have a concern when I saw
15 the property of the trucking company back there, but
16 the concern was I wonder what kind of noise there
17 will be if there is any.

18 So we came by, drove at different times of
19 the day, early in the morning, 6:00 o'clock,
20 sometimes earlier than 6:00 o'clock. About three or
21 four times before I went to work, I'd go drive
22 through there, and there was visitors parking right
23 next door to our house. I parked the car there and
24 rolled down the window to see if I can hear anything

1 going on that would be a concern as far as noise is
2 concerned, and I didn't hear anything.

3 I left work at lunch time, and I came by
4 there at lunch time, and did the same thing, drove
5 around, sat around, and waited if I can hear
6 something. I can hear sometimes a truck going, but
7 nothing that was -- that everybody was explaining as
8 the banging noise or anything like that.

9 Then we came in at night, at different
10 times of the night right after work which will be
11 about 6:00, 6:30 or so. I came by there about 9:00
12 o'clock. So I did and my wife did all this in an
13 attempt to see -- you know, to get a feel of what
14 the property is and what we're getting into, that
15 kind of stuff, and all these times there was no
16 noise that we heard was of a concern. That was --
17 that's what we decided maybe this is a good property
18 to buy at this time, but we didn't come in at 3:00
19 o'clock in the morning or 2:00 o'clock in the
20 morning, which I never expected in my entire life
21 that would happen and it would be allowed.

22 Q. Now, after you moved into the property in
23 May of '97, when did you first hear noise from the
24 facility?

1 A. We moved in I believe it was a Friday or a
2 Saturday, maybe it was a Saturday, and the first
3 time that I heard the noise was early I guess it
4 would be Monday morning about 2:00 o'clock in the
5 morning, 2:00, 2:30 in the morning. I can't even
6 say I heard it. It woke me up in such a way I had
7 to jump and see what was actually going on. I mean,
8 it was so loud, like a big explosion was going on,
9 and I just jumped and looked around and where is
10 this coming from, and then I heard it again and
11 opened the window and looked out. Obviously, it was
12 coming from the trucking company. That's the first
13 time I heard it.

14 Q. What -- how often do you hear the noise
15 now?

16 A. Now, I hear the noise every single day
17 with the exception of Sundays, but even that
18 exception on Sundays sometimes you can hear it on
19 Sundays as well. So it's every single night except
20 Sunday.

21 Q. I'd like to start at 8:00 o'clock in the
22 morning Monday until 8:00 o'clock in the morning the
23 next day. Would you please describe the periods of
24 time when you would hear noise from the Overland

1 facility?

2 A. Okay. Normally, I start work at 8:00
3 o'clock. So I'm gone at 8:00 o'clock, and by the
4 time I come home, normally it's about 7:00, 6:30,
5 7:00, something around that time, and normally when
6 I come in, open the door, and go through the house,
7 you hear the banging at that time.

8 Then we'll start having dinner, and all
9 throughout dinner, you can all hear all this banging
10 and the trucks rolling around, all kinds of noises
11 going on. Then they will subside a bit about 9:00
12 or so. Then 10:00, 10:30, 11:00, around that time,
13 it starts back up again.

14 When I first moved in, it used to be
15 almost about 2:30, between 2:30 and 3:00 o'clock.
16 You'd hear all this banging enough to wake me up.
17 First I thought maybe I'll just put earplugs in and
18 I'll be okay, but earplugs didn't work. One, they
19 will fall off, and second it's very uncomfortable to
20 sleep with earplugs in your ears.

21 Q. When you said 2:30, is that 2:30 in the
22 morning?

23 A. 2:30 a.m.

24 Then sometimes I used to stay up for quite

1 sometime because I can't fall back asleep, and
2 sometimes you don't just wake up like an alarm
3 waking you up. It's a big noise that almost kind of
4 scares the daylight out of me to wake up to, and I
5 don't fall asleep right away.

6 Then I doze off and it starts back up
7 again at 4:00 o'clock, 5:00 o'clock, something
8 around that time, and from 6:00 to 7:00, it will be
9 quiet. You don't hear anything. Now, it seems like
10 it has changed. It's changed in a way that even on
11 a Saturday you can hear it at night about 1:00
12 o'clock in the morning at night. On a Friday, the
13 same story. On a Saturday, I occasionally hear the
14 noise. Monday mornings obviously it's a given.

15 It got to a point where first I thought
16 well, all I need to do is get used to it and that
17 will be the end of that. I didn't even -- couldn't
18 do that at all. So what I used to do is I'd wake up
19 at 3:00 o'clock in the morning, 2:00 o'clock in the
20 morning, I'd unplug the alarm clock, go to the other
21 room, plug in the alarm, set the alarm, and try to
22 go to sleep.

23 The bad thing about it is when the noise
24 gets pretty bad the echo you can hear on the other

1 side. I mean, it's not -- it's something you guys,
2 other than the Charter Hall folks, take for
3 granted. I mean, you're trying to sleep a night's
4 sleep and you can't. You wake up.

5 Q. Let's talk about the different types of
6 noise that you hear. Would you please describe
7 those different types of noises?

8 A. Sure. There's all kinds of noises. The
9 first one that is pretty loud is you hear a double
10 bang. I guess that is probably when the first wheel
11 gets into the truck, the tractor trailer, and then
12 the second wheel follows. I guess that's what it
13 is. It's like bang, bang right back to back.

14 Q. Have you physically observed that or is
15 that -- you're guessing what's going on?

16 A. Well, I haven't physically seen whether
17 the tires were actually doing the noise, but you can
18 see from a crack next to the trailer loading dock,
19 you can see a trailer -- I mean, not a trailer, a
20 forklift going in, and then that's when you hear
21 this bang, bang, and then when it backs out, the
22 same noise again, but you can't really see the whole
23 thing and say yeah, that's right, I've seen that
24 particularly, but you can deduce that's what's going

1 on there. That's the loudest noise. Another noise
2 is when the trucks go back into the trailer and
3 hitch, and that's when you hear this big banging
4 against something. So that is another noise that
5 you hear. That's also another big bang. That's
6 just one bang you hear, and the other one is -- I've
7 looked at it out the windows a number of times at
8 different times of the hour, including 3:00 o'clock
9 in the morning when you wake up and look out the
10 windows and see what's going on.

11 They hook into the trailers for some
12 reason, and I can't really tell you what the noise
13 is or what's causing it, but it's like if you take a
14 big heavy load of metal and drag it on the floor. I
15 mean, it goes for not just one split bang, it just
16 kind of drags on and shakes the whole house without
17 any of exaggeration at all. It really shakes the
18 whole house, and there's no way you can sleep with
19 that. That is another noise that you hear.

20 The other noise is, especially I think
21 what's -- this is my opinion. When -- especially
22 for shift changing time, I guess they're in a rush
23 to get the thing done and get out of there, you see
24 trucks running everywhere, trailers hooking up, and

1 this dragging noise that I told you about, the
2 forklifts going crazy. You hear all kinds of truck
3 noises, and the yard truck I think is what they call
4 is, that also makes a huge noise just running around
5 the yard, the property on the Charter Hall side of
6 property. I think that would be the west side of
7 the property, the west side of Overland's property,
8 between Overland and Charter Hall.

9 You see all that noise going on. You hear
10 music going on, especially when they have all the
11 loading dock doors open, people shouting. Those
12 kind of noises you hear. Those are the main ones
13 that I hear.

14 Q. Other than what you've already described,
15 does this have -- I'm sorry.

16 Other than what you've already described
17 as your inability to sleep and your inability to
18 have the windows open, does this have any other
19 affects on your life?

20 A. Yeah, absolutely. I mean, it's really not
21 asking a lot to have a night's sleep in your own
22 home in your own bed without being disturbed. I
23 explained to you earlier I used to wake up and
24 change rooms in the middle of the night. I gave

1 that up. I bought another alarm clock. So I will
2 decide if I have an important meeting coming up the
3 next day, I will not go and sleep in my own bed. I
4 will sleep in the other room.

5 Now, keep in mind, even then though I was
6 telling you about the echo effect that has -- that
7 is going on on the other side sometimes wakes me up,
8 but I can pretty much be okay for that.

9 During the day, I was sick one time, and I
10 came home to rest and sleep and had a headache
11 actually, basically, that's what it was, and I think
12 it was at 3:00 o'clock or something around that time
13 I tried to sleep, and that woke me up. I mean, you
14 have a headache and on top of that you can't sleep
15 in your own home.

16 My wife had the same problem when she was
17 sick and during the day she was disturbed and she
18 couldn't sleep. Another thing that happened is,
19 like everybody explained, we sit down and have
20 family over, family over mostly, and you start
21 talking and you hear this noise going on, and
22 everybody like stopped what they're talking about
23 and just kind of look what's going on. I said oh,
24 it's the trucks again. Oh, yeah, it's the trucks

1 again.

2 You can't go outside and play. We had the
3 kids over with my brothers and they were out playing
4 one day, and they heard this noise, and they were
5 scared like crazy. They didn't know what was going
6 on. So they came running into the house. They
7 didn't want to go back outside, and if people want
8 to come and visit it became a consideration, and
9 basically in our family we joke about it now, but
10 they say if you're going to go to his house, you
11 better make sure that you're going to sleep during
12 the day because you can't sleep at night, you know,
13 that kind of thing.

14 Things that you think are very simple that
15 were really affects you a whole lot. Those are the
16 things that affected me and also driving from work,
17 especially if I haven't had enough sleep, you know,
18 think about it, if you yourself go home and wake up
19 in the middle of the night for whatever reason and
20 you didn't sleep, when you wake up in the morning,
21 you know how that feeling is, and I find myself
22 dozing off driving back to -- driving back home from
23 work. That was a big concern of mine. I thought
24 maybe I might get into a car accident or something

1 one day. Those are the things that affect me.

2 Q. Does the noise wake your wife up?

3 A. Occasionally it wakes her up, but she is a
4 very heavy sleeper. For her to wake up, I mean,
5 she -- it takes a whole lot to wake her up, but when
6 we first started -- when we first moved there, it
7 was not that bad for her, but she would hear it, and
8 she will fall asleep right away, but now she's told
9 me that it has gotten worse every single time and
10 even became an issue with her. You know, she wakes
11 up at night, not as much as I do.

12 Q. When was the last time you were bothered
13 by noise from the Overland facility?

14 A. Last night. Last night it was all night.
15 Another thing that I failed to mention to you
16 earlier, but you reminded me when you asked me that
17 question, is last night I was sitting down and
18 watching TV and I had to turn the volume on, I mean,
19 high, high to be able to hear it because there was
20 all kinds of noise going on in the trucking
21 company. So that was last night, and the one that I
22 heard that woke me up again this morning was about
23 4:00 o'clock or so.

24 Q. At what time?

1 A. 4:00, 4:30 in the morning, and that went
2 on for a little while, and I dozed off and had to
3 get up anyway. So I got up. So the last time was
4 this morning at 4:00.

5 Q. And what type of noise was it this
6 morning?

7 A. The same old banging noise, and, you know,
8 trucks moving and banging, the forklifts going to
9 the trailer, that kind of stuff.

10 MR. SIROS: Nothing further.

11 THE HEARING OFFICER: Mr. Steger.

12 C R O S S - E X A M I N A T I O N

13 by Mr. Steger

14 Q. You purchased your unit in May of 1997; is
15 that correct?

16 A. Yes. Well, we moved in in '97. We closed
17 in April .

18 Q. Did you -- what did you ask your real
19 estate broker, if anything, about the trucking
20 terminal next door?

21 A. Well, I'm glad you asked that because I
22 asked her to find out what the trucking company is.
23 Keep in mind, this is our first home. So we didn't
24 have a lot of experience with this. So I was

1 relying heavily on the real estate agent's
2 information, and she called and asked, and the
3 information she gave me was it's a very light
4 operation trucking company and you don't need to be
5 concerned with noise, and my concern was noise at
6 that time, and I have called myself and I have asked
7 them what their operation was. I was thinking about
8 buying this property right behind you. Should I be
9 concerned? What are your hours? Can you tell me
10 any information at all, and the gentleman that I
11 talked to, I didn't ask for a name, like I said, I
12 really relied on -- there was no reason why they
13 would lie to me, and they basically said they closed
14 late in the afternoon -- I mean, late in the
15 evening, maybe about 10:00, 11:00 or something like
16 that, and they don't start in the morning. So we
17 don't need to be concerned about that. I accepted
18 what they explained to me, and I let it go like
19 that.

20 Q. And you independently then visited the
21 facility numerous times?

22 A. Yes, I did and my wife, together.

23 Q. At various times of the day?

24 A. At various times of the day.

1 Q. This was prior to May of '97?

2 A. This was prior to May.

3 Q. And what did you experience in those
4 visits?

5 A. In those visits, like I said, it was early
6 in the morning. There was not much of a concern as
7 far as noise that I heard. During lunch time that I
8 went there, I been spent a few minutes, drove by,
9 and didn't hear much.

10 The one time I heard trucks going in and
11 out, but the trucks going in and out was not really
12 a big issue with me. That didn't bother me at all.

13 The only thing that I did not do, and for
14 the life of me I did not expect or even think about
15 doing, is go at 3:00 o'clock in the morning or 4:00
16 o'clock in the morning or 2:00 o'clock in the
17 morning and see if there was noise at that time, and
18 that is the worst noise there is.

19 Q. But correct me if I'm wrong, you did visit
20 the facility at about 6:00 a.m.?

21 A. I did.

22 Q. Okay. If it weren't for the Overland
23 operations, what time do you get up for work in the
24 morning?

1 A. About that time, about 6:00 o'clock or so.

2 Q. 6:00 a.m.?

3 A. 6:00 a.m.

4 Q. Do you get up to feed the fish? Strike

5 that question.

6 And you leave for work when?

7 A. I leave for work about 7:00, 7:30.

8 Q. And you testified to that when you are

9 awakened from sleep in your master bedroom, you go

10 to the other bedroom?

11 A. Yes.

12 Q. But you still experience some residual

13 noise?

14 A. There's an echo that you hear. You really

15 have to -- to appreciate it, you have to sit down

16 and then listen to it. I mean, it's really hard to

17 explain to you here what an echo sounds like, I

18 mean, from the trucking company.

19 Q. Do you have any problems going to sleep?

20 A. Yeah. With all that noise, I can't.

21 Q. Let me rephrase the question.

22 Other than the Overland activities, is

23 there anything that you have a problem going to

24 sleep with --

1 A. No.

2 Q. -- either now or in the past?

3 A. No.

4 Q. Any health problems?

5 A. Not -- zero. Actually, I went to New

6 Orleans a couple of weeks ago, and a funny thing my

7 wife said to me was great, now you're going to sleep

8 all week without being disturbed. I mean, you know,

9 it sounds funny, but it really isn't.

10 Q. Are there any other sounds that you hear;

11 aircraft noise, dogs?

12 A. I never heard dogs. Aircraft, yes, planes

13 fly by.

14 Q. Traffic from Northwest Highway?

15 A. I've never heard one.

16 Q. The mall?

17 A. Zero.

18 Q. You didn't take any noise measurements,

19 did you?

20 A. I did not take any noise measurements. I

21 started writing some logs thinking that it might be

22 a short-time deal, but when it's every day and every

23 time of the hour, what's the point of writing it?

24 It's as simple as saying every day.

1 MR. STEGER: No further questions.

2 THE HEARING OFFICER: Mr. Siros.

3 MR. SIROS: Just one.

4 R E D I R E C T E X A M I N A T I O N

5 by Mr. Siros

6 Q. You testified that you had called to
7 verify the operations at Overland. Who did you, in
8 fact, call?

9 A. When I talked -- the person that I talked
10 to, I asked if I can speak with the manager, and the
11 first response that he had was who is this, and I
12 told him I am the resident from next door and wanted
13 to get some -- I had some questions that I wanted to
14 ask you, but he never really gave me his name.

15 At that time, what I asked him was is
16 there anything at all that you can do just, you
17 know, not to be adversaries of yours or anything
18 like that, anything that you can do at all so you
19 can help me get some rest. You know, I've got to
20 get up and go to work just like you have to work
21 now, and his response was what is it really that
22 bothers you? I told -- I mean, this tremendous
23 banging noise is going on, and I don't understand
24 what that is.

1 He said they do load quite a bit of heavy
2 loads, you know, tons of forklift loads, and that's
3 what makes the noise and there's nothing they can do
4 about that. I've talked with the city. I called
5 them and asked them if there was anything -- any
6 noise ordinance that there is that they can enforce
7 to help us with this situation because, quite
8 frankly, I never expected that a city like Palatine
9 would allow this to go on, and their response was
10 the Pollution Control Board is looking into this
11 matter, which was not the case anyway, and at this
12 point, there's nothing they can do. The best thing
13 I should do is talk with the association because
14 they think the association is doing something about
15 it.

16 Q. I'd like to bring you back to the first
17 question I asked you. When you called, who did you
18 call?

19 A. Where?

20 Q. You indicated that you called Overland.
21 Was that -- you made a telephone call to the
22 Overland facility; is that correct?

23 A. Yes, that is to the Overland facility
24 right next to us. I looked it up in the phone book,

1 and this was 3:00 o'clock in the morning. I asked
2 the guy -- the person who answered the phone I would
3 like to talk with the manager, and the person then
4 came on and really didn't give me the name. I
5 didn't really care for the name anyway.

6 By the way, that's something similar that
7 you hear, seriously. That is one of the noises that
8 you hear at 3:00 o'clock in the morning, 2:00
9 o'clock in the morning.

10 THE HEARING OFFICER: Let the record reflect
11 there was a noise. However, I don't want to deal
12 with what the noise was.

13 MR. SIROS: No further questions.

14 MR. FORCADE: Just one question.

15 R E D I R E C T E X A M I N A T I O N

16 by Mr. Forcade

17 Q. Prior to purchasing the home, did you at
18 any point contact Overland Transportation and ask
19 them about theirs hours of operation or anything?

20 A. Yes, I did. That's what I was telling
21 you.

22 Q. And prior to purchasing the home and you
23 contacted them, could you repeat, again, what they
24 said?

1 A. Basically, what they told me was their
2 operation, they stop in the evenings around 10:00 or
3 so and they don't start up until the morning so I
4 don't need to be concerned about noise.

5 Q. Thank you.

6 A. That's what they said to me.

7 THE HEARING OFFICER: Mr. Steger.

8 MR. STEGER: No further questions.

9 THE HEARING OFFICER: Thank you, Mr. Senbetta.

10 THE WITNESS: Thank you.

11 THE HEARING OFFICER: Let's go off the record.

12 (Break taken.)

13 THE HEARING OFFICER: We are back on the record

14 at 98-81, Pollution Control Board docket number,

15 Charter Hall Homeowner's Association and -- well,

16 I've got varying degrees, but we'll just go with

17 Charter Hall Homeowner's Association vs. Overland

18 Transportation System and D.P. Cartage, Inc. The

19 heading speaks for itself.

20 Mr. Siros, your next witness.

21 MR. SIROS: I'd like to call Kathy Hayden,

22 please.

23 THE HEARING OFFICER: Ms. Hayden, would you

24 please raise your right hand and be sworn in?

1 (Witness sworn.)

2 THE HEARING OFFICER: Ms. Hayden, would you
3 please state your name and spell your first name and
4 last name for the record since Kathy can be spelled
5 with a C and a K?

6 THE WITNESS: My name is Kathryn Hayden. It's
7 K-a-t-h-r-y-n. My last name is Hayden, H-a-y-d-e-n.

8 THE HEARING OFFICER: Thank you.

9 Mr. Siros.

10 K A T H R Y N H A Y D E N,
11 called as a witness herein, having been first duly
12 sworn, deposeth and saith as follows:

13 D I R E C T E X A M I N A T I O N

14 by Mr. Siros

15 Q. Would you please state your address?

16 A. 639 Charter Hall Drive.

17 Q. Well, it looks like the shape is a blue
18 triangle. So I would request that you go to the --
19 what's been marked as Complainants' Exhibit No. 1
20 and put a blue triangle as to where your address is
21 located on that chart?

22 A. (Witness complied.)

23 MR. SIROS: Let the record reflect that Mrs.
24 Hayden has placed a blue triangle on Complainants'

1 Exhibit No. 1 at 639.

2 THE HEARING OFFICER: The record will so
3 reflect.

4 BY MR. SIROS:

5 Q. Do you live at 639 Charter Hall Drive
6 alone?

7 A. No. I live with my husband.

8 Q. What's his name?

9 A. Gregory Hayden.

10 Q. And do you own or rent?

11 A. We own.

12 Q. When did you move in?

13 A. We moved in in December of 1992.

14 Q. And what's your occupation?

15 A. I'm a systems manager.

16 Q. Are you taking time out from your work to
17 testify here today?

18 A. Yes, I am.

19 Q. Would you please describe the layout of
20 your house?

21 A. It's a two-story townhouse. On the lower
22 level is the garage. There's a living room, a
23 dining room -- a dining area, kitchen, and family
24 room, and a half bath. In the upper level, there's

1 two bedrooms and a loft.

2 Q. If I was on your first floor -- I'm

3 sorry. Let me rephrase that.

4 Please describe what rooms are on the

5 first floor east side of your house?

6 A. Our living area is back there, the family

7 room and the kitchen.

8 Q. And if I was looking out through your

9 living room east, what would I see?

10 A. The fence. You'd see a fence, the patio,

11 and then a white fence.

12 Q. About how far from the living room is

13 it -- I'm sorry. Let me rephrase that.

14 How far is it from the edge of your house

15 to the fence?

16 A. I would say 35 feet maybe.

17 Q. What rooms would be on the east side of

18 your house on the second floor?

19 A. Both bedrooms.

20 Q. If I was looking out of either bedroom to

21 the east, what would I see?

22 A. You would see the far south end of the

23 truck yard, the trees, the fence -- top of the

24 trees, the fence, and the far south end of the truck

1 yard, and then the marsh starts right there.

2 Q. When you moved in December of 1992, were
3 you aware that there was a trucking operation
4 located next door to your house?

5 A. Yes, we were.

6 Q. Were you aware that it was a 24-hour
7 trucking operation?

8 A. No.

9 Q. Were you aware that the developer, Pulte
10 Homes, had filed a notice that there was a 24-hour
11 trucking operation next door to your property?

12 A. We found that out at closing.

13 Q. So after you closed on the house, you were
14 aware that there was that 24-hour trucking
15 operation?

16 A. Yes.

17 Q. Was this new construction?

18 A. It was new construction, and it was noisy
19 when we were there. There were windows and there
20 were lots of -- there was a lot of equipment
21 around. It was really hard to assess at that time.

22 Q. What kind of equipment was that?

23 A. There were trucks and there were
24 construction vehicles. It was in the winter so

1 there wasn't anything like road graders or anything
2 else, but there was a lot of traffic on the street.
3 There was a lot of construction noise and things
4 that are just associated with new construction.

5 Q. This was activity associated with
6 construction of your home, not activities associated
7 with the Overland facility?

8 A. Correct.

9 Q. Actually, let me rephrase that.

10 This was activity associated with the
11 construction of your home, not activity associated
12 with the facility?

13 A. Correct.

14 Q. Did you do anything before you moved in to
15 determine whether or not the trucking operation
16 would cause bothersome noise?

17 A. We moved from out of state. So we weren't
18 able to spend a lot of time there. However, I would
19 say while the house was in various stages of
20 construction, we probably spent a total of four
21 hours there. It would have been mostly during -- it
22 would have been always during the day.

23 Q. Did you notice noises coming from the
24 facility when you were there those four hours --

1 A. I don't recall.

2 Q. -- four times?

3 A. I don't recall.

4 Q. After you moved in in December of 1992,
5 when did you first notice noise from the facility?

6 A. I would say immediately, almost
7 immediately.

8 Q. What type of noise did you notice?

9 A. I noticed trucks driving. You know, it
10 was just you could hear trucks maneuvering in the
11 truck yard. I would notice it, perhaps, once or
12 twice a week, and it would not wake me in the night.

13 MR. STEGER: It would not what? I didn't hear
14 you.

15 THE WITNESS: Would not wake me during the
16 night.

17 BY MR. SIROS:

18 Q. When you said once or twice a week, what
19 time of the day would you generally hear that noise?

20 A. I know the latest I had heard it was 11:00
21 at night.

22 Q. Has the frequency of noise changed over
23 time?

24 A. Yes, substantially.

1 Q. At the present, how many times a week do
2 you hear the noise from the facility?

3 A. I'd hate to count it. It is -- when I'm
4 home, it's almost continual.

5 Q. Do you hear it every day?

6 A. Yes.

7 Q. How many days a week?

8 A. Six to seven.

9 Q. I'd like to, again, take you through an
10 entire day starting at 8:00 o'clock in the morning
11 until 8:00 o'clock in the morning the next day.

12 Would you please describe the periods when
13 you're normally home and you hear noise from the
14 facility?

15 A. I'm at work usually by 8:00 o'clock in the
16 morning, and I, like everyone else, gets home
17 somewhere between 5:30 and 7:30. I can tell you
18 that we religiously watch Seinfeld reruns at 6:30
19 when I'm home, and it's very loud at that time. It
20 does interrupt that.

21 Q. What time do you leave for work in the
22 morning?

23 A. I leave for work generally about 6:30 or
24 quarter to 7:00.

1 Q. Do you hear the noise when you leave for
2 work in the morning?

3 A. Yes, I do.

4 Q. And when you get home and are watching
5 Seinfeld at 6:30?

6 A. Yeah, hear noise. I generally go to bed
7 between 9:30 and 11:00, and I do hear it up until I
8 go to sleep. Now, my husband is impacted more by
9 that time of the day because he has trouble getting
10 to sleep.

11 Q. Have you made special plans for the final
12 Seinfeld episode?

13 A. Well --

14 THE HEARING OFFICER: Strike that.

15 BY THE WITNESS:

16 A. -- I'm kind of depressed.

17 THE HEARING OFFICER: Strike that, please.

18 MR. STEGER: Argumentative.

19 BY THE WITNESS:

20 A. It does, what was I saying, impact my
21 husband.

22 BY MR. SIROS:

23 Q. What time do you usually try to go to
24 sleep?

1 A. I generally try to go to sleep between
2 9:30 and 11:00. Where he would try to get to sleep
3 by 10:00 and seldom gets to sleep before 12:30 or
4 1:00.

5 Q. When you go to sleep at night, do you
6 normally hear the noise?

7 A. Yes.

8 Q. When next do you normally hear the noise?

9 A. Generally, I'm able to get to sleep,
10 whereas my husband isn't, but I wake up at quarter
11 to 6:00 in the morning, and I often wake up before
12 my alarm -- quarter to 5:00, 4:45, pardon me, and I
13 will lay awake waiting for the alarm to ring, and I
14 hear banging every day, every day.

15 Q. So let me go back a moment. So you're
16 normally awoken at 4:45 every morning?

17 A. By an alarm.

18 Q. By an alarm.

19 A. However, I wake up before the alarm most
20 of the time, and while I'm laying in bed, I hear it
21 banging.

22 Q. So your alarm is set for 4:45 in the
23 morning?

24 A. Yes.

1 Q. What time are you normally woken up?

2 A. I would say 4:15, 4:20.

3 Q. Do you hear noise before you wake up

4 usually at 4:15 in the morning?

5 A. Well, I think something wakes me up. I

6 can't say it's that, but I know that I wake up

7 before my alarm every day.

8 Q. Okay. Can you describe -- I'm sorry. Let

9 me rephrase that.

10 Does the noise wake your husband up as

11 well?

12 A. It doesn't wake him. He just simply can't

13 get to sleep at night.

14 Q. Would you please describe the different

15 types of noise that you hear from the facility?

16 A. Well, I hear banging noises, and unlike my

17 neighbors, I haven't been to the facility. So I

18 can't describe what's causing the banging noise, and

19 also from our perspective we don't have a real

20 direct shot of the truck terminal itself, but I hear

21 two very distinct, very harsh bangs and it's

22 associated with after a trailer has backed to the

23 dock, which I can see, but I don't know what happens

24 then. It's almost kind of a -- it's sort of a

1 thumping noise, and it's just a very harsh, very
2 startling noise.

3 Q. So you associated that with the loading
4 and unloading operations?

5 A. Yes, I think I'm right.

6 Q. Is there any other type of noise that you
7 associate with the facility?

8 A. Yes, I do. We hear the trucks maneuvering
9 in the west side of the Overland compound on the
10 west side of the base. The trucks pull in. It
11 seems that they drop the trailers, and then they
12 reposition the trailers and back them up to the
13 loading docks.

14 So there's a lot of truck and engine noise
15 going along. There's squeaking of brakes, horns,
16 odor, and the scraping noise that I -- I don't know
17 what it is. I thought it was chains or something.
18 It's just an awful noise, an atrocious noise.

19 Q. Can you describe that scraping noise?

20 A. To me, it sounds like metal on concrete.
21 It just -- it sounds to me like big heavy chains is
22 how I would -- but enough to -- it's just
23 startling. It's awful.

24 Q. How long does that screeching noise occur?

1 A. I would say several seconds at a time. I
2 mean, it seems longer just because it is such an
3 outrageous noise, but I would say a few seconds,
4 four to five seconds.

5 Q. Okay. I'd like to take you back to the
6 loading and unloading noise you've testified about.
7 Can you describe in the ten-minute period how often
8 you would hear that?

9 A. The scraping, the chain scraping?

10 Q. No. I'm sorry. The loading and unloading
11 I believe you had testified that was banging.

12 A. Yes. You'd hear the banging I would
13 say -- and I -- I think the whole process takes a
14 few minutes. It takes several minutes in order to
15 do whatever it is they do in the back of those
16 trucks, and so within a period of a few minutes
17 you'll hear bangs, oh, I don't know, maybe four.

18 Q. Okay. How does the noise affect your
19 daily life?

20 A. Well, we cannot use the back -- the
21 outdoor back of our house at all. It's just
22 impossible to spend any time outside. We cannot
23 open the back of our house just because the noise.
24 It's just -- we just can't use the back of our house

1 or we can't use the patio. We don't grill.

2 It's had significant impacts in different
3 ways. One of them is, I think may have alluded to
4 this, but we -- my family, my husband and my family
5 is from out of state, and we cannot entertain them
6 for weekends. They simply cannot sleep at our
7 house. We do not entertain other than our dear
8 friends that live on Charter Hall Drive. We really
9 don't have people in because it is embarrassing. I
10 mean, how did we end up in a place like this? So I
11 don't entertain.

12 It impacted me specifically in March of
13 this year when, again, once the -- I was up an
14 entire night before I had a trip. I had to
15 represent my company in Hartford. It was in March
16 of '98, and I was -- I did not sleep all night. I
17 was out of sorts. I real did a disservice to my
18 company by even attending because I wasn't able to
19 give this the concentration it really required, the
20 task that I needed to do while I was out there. So
21 I think everybody suffered because I didn't sleep
22 that night.

23 Q. And why were you not able to sleep that
24 night?

1 A. It was -- the whole night it was banging,
2 the whole night.

3 Q. What time did you have to leave in the
4 morning for your trip?

5 A. I went by plane. I believe before 7:00
6 a.m.

7 Q. When time did you try to go to bed?

8 A. 10:00.

9 Q. How else has this affected your life?

10 A. Well, again, my husband is -- cannot get
11 to sleep at night, and sometimes he's not all that
12 charming to be around and I'm sure it's fatigue.

13 Q. So your husband is awoken at night?

14 A. Yes, he is, and it impacts him as well in
15 that he works for the FAA and needs to be on the
16 ball.

17 Q. What does your husband do?

18 A. He works at Palwaukee Towers. He's a
19 control tower manager.

20 Q. And how often does this wake him up on a
21 weekly basis?

22 A. If affects him daily. Every night, he
23 cannot get to sleep.

24 Q. What time does he normally try to go to

1 sleep at night?

2 A. Well, he'll try between 10:30 and he

3 seldom gets to sleep before 12:30.

4 Q. When you first moved in in 19 -- in

5 December of 1992 and, you know, for the summer of

6 1993, had you been able to utilize your backyard?

7 A. Yes. Actually, we bought furniture and we

8 have a grill, beautiful windows in the back of the

9 house, and we can't open them.

10 Q. So has the frequency of the noise changed

11 since you moved in to present?

12 A. It has. It's intensified, the frequency,

13 yes.

14 Q. Do you have an approximate date as to when

15 it started to get worse?

16 A. I went over -- it seems that when --

17 actually whether Overland came in is when I noticed

18 it. That's the best I can do.

19 Q. Do you know approximately what date that

20 was?

21 A. I know it was in October, and I'm thinking

22 it was '95 or '96. I'm sorry. I can't recall the

23 year, but I do remember it was in the fall.

24 Q. Have you been involved in any efforts to

1 resolve the noise issues that the Charter Hall

2 Association has with Overland?

3 A. I have been in and I've supported the

4 association and what they're doing. I feel very

5 well represented by them and they know my complaints

6 and share them.

7 Q. When was the last time that you were

8 bothered by noise from the Overland facility?

9 A. This morning.

10 Q. And what --

11 A. Well, bothered, I heard it. I noticed it

12 when I was laying in bed waiting for the alarm to go

13 off.

14 Q. And what time was that?

15 A. About 20 to 5:00.

16 Q. And what type of noise was that?

17 A. I think it was the -- it was the banging

18 noise.

19 MR. SIROS: Nothing further.

20 THE HEARING OFFICER: Mr. Steger.

21 C R O S S - E X A M I N A T I O N

22 by Mr. Steger

23 Q. You testified to that it's approximately

24 35 feet from the back of your house to the fence?

1 A. Yes.

2 Q. Okay. But then you testified that you
3 said you don't have a direct shot. Could you --
4 I'll go up to the exhibit.

5 You're located at 639; is that not
6 correct?

7 A. Yes.

8 Q. Okay. You said you don't have a direct
9 shot. What do you mean by that?

10 A. What I mean by that, and I'm assuming this
11 represents the whole area, the building and the
12 drive area, and that being the case, we cannot see
13 directly in the back of the building just from the
14 location of our house. The building and the loading
15 dock stops.

16 Q. Is there a fence somewhere to the south
17 here and, if so, where would that be located?

18 A. The fence is located -- well, actually it
19 runs from 699 to 627. The markings -- the perimeter
20 of our property.

21 Q. Correct,?

22 A. There's a chain or a wire fence of some
23 type that runs adjacent, perpendicular. I'm not
24 sure. Anyway, it goes this way (indicating).

1 Q. It runs perpendicular to about 627?

2 A. Right.

3 Q. And it runs the full length?

4 A. I can only see around the -- I don't pay

5 much attention to it up where the project --

6 Q. You think that fence that runs from east

7 to west starts at about 627?

8 A. I believe so.

9 Q. What is to the south of that fence?

10 A. A marsh land.

11 THE HEARING OFFICER: Before we go on, Mr.

12 Steger, so the record is clear, Mr. Steger has been

13 pointing to Complainants' Exhibit 1 as has the

14 witness. The witness has been referring to the area

15 between what appears to be the Overland

16 Transportation building and the perimeter fence

17 previously identified by Mr. Steger and marked by

18 Mr. Steger as a black line from 699 to 627.

19 They have referred also to a fence that

20 apparently runs east/west from the -- the

21 approximation that Ms. Hayden gave was 627, but she

22 was not sure whether it went to the entire boundary

23 line -- to the entire east boundary line.

24 MR. STEGER: The jotted line from 627 and I'll

1 finish it off with my witness.

2 BY MR. STEGER:

3 Q. So you cannot -- your property at 639, if
4 you were to look directly east, would you see the
5 building or is it north of your lot?

6 A. I'd see the end of the building.

7 Q. You'd see the end. Okay. So this is not
8 a quite accurate representation of the layout?

9 A. Well, I think as far as the property is
10 concerned and where the driveway is it probably is,
11 but the actual building facility isn't the same.

12 Q. The actual building facility. Okay.

13 THE HEARING OFFICER: Let the record also
14 reflect that Mr. Steger has made a dotted -- a
15 dashed line, three dashes, from what appears to be
16 the southernmost boundary of the 627 unit to about
17 the beginning -- to the middle -- to the beginning
18 of the Overland Transportation facility. Is that
19 accurate, Mr. Steger?

20 MR. STEGER: That is correct.

21 THE HEARING OFFICER: And, Ms. Hayden; is that
22 right.

23 THE WITNESS: Yes.

24 THE HEARING OFFICER: Thank you.

1 BY MR. STEGER:

2 Q. And you testified to that your building
3 was new construction?

4 A. Yes. We moved in while it was under
5 construction our bought it while it was under
6 construction.

7 Q. And your unit is one of the middle units
8 of your block --

9 A. Yes.

10 Q. -- if you will?

11 Do you know how many units are in your
12 block? Well, let me ask it differently.

13 Is 647, 643, 639, 635, 631, and 627 in
14 your one freestanding building?

15 A. Yes.

16 Q. Okay. So you share common-laws with 643
17 and 635?

18 A. Yes.

19 Q. Do you know if yours was one of the last
20 units to sell or not?

21 A. No, actually, it wasn't.

22 Q. And you testified that if it wasn't for
23 the Overland activities you set your alarm clock for
24 4:45?

1 A. Yes.

2 Q. But that you're awakened sometime before
3 then?

4 A. I wake up before my alarm goes off.

5 Q. Did you take any independent
6 measurements --

7 A. No, I didn't.

8 Q. -- noise measurements?

9 And then you testified to that you leave
10 for work at anywhere between 6:30 and 6:45 in the
11 morning?

12 A. 6:30 and 7:00.

13 Q. And you return at least in sufficient time
14 to watch Seinfeld?

15 A. Most days.

16 Q. Aside from the Overland activities, is
17 there any other noise, sounds that you hear? Do you
18 hear the traffic from Northwest Highway?

19 A. I don't hear traffic from Northwest
20 Highway. I hear occasionally airplanes overhead.

21 Really that's -- I don't hear much else.

22 Q. Birds?

23 A. We don't have many birds.

24 Q. Any dogs barking?

1 A. No, there's no dog.

2 Q. Other than the Overland activities, is
3 there anything else that disturbs your sleep? Do
4 you get up at night?

5 A. For biological reasons.

6 Q. To go to the bathroom. Okay. That's
7 legitimate.

8 No health problems though?

9 A. No.

10 MR. STEGER: That's all I have.

11 THE HEARING OFFICER: Mr. Siros.

12 MR. SIROS: Nothing further.

13 THE HEARING OFFICER: Thank you, Ms. Hayden.

14 Let's take a five-minute break.

15 (Break taken.)

16 THE HEARING OFFICER: After a five-minute

17 recess, we are back in Pollution Control Board

18 98-81, Charter Hall Homeowner's Association vs.

19 Overland Transportation.

20 Mr. Siros, your next witness.

21 MR. SIROS: I call Judy Lexby, please.

22 THE HEARING OFFICER: Okay. Ms. Lexby, would

23 you please raise your right hand and be sworn?

24 (Witness sworn.)

1 THE HEARING OFFICER: Ms. Lexby, would you
2 please state your name and spell your last name for
3 the record?

4 THE WITNESS: My name is Judith M. Lexby,
5 L-e-x, b, as in boy, y.

6 THE HEARING OFFICER: Thank you.

7 JUDITH LEXBY,
8 called as a witness herein, having been first duly
9 sworn, deposeth and saith as follows:

10 DIRECT EXAMINATION

11 by Mr. Siros

12 Q. Where do you reside?

13 A. 691 North Charter Hall Drive.

14 Q. Okay. I would ask that you approach
15 what's been marked as Complainants' Exhibit 1, and I
16 would ask that you put a black X on the spot where
17 your address is?

18 A. (Witness complied.)

19 MR. SIROS: Let the record reflect that
20 Ms. Lexby has placed a black X at 691 on
21 Complainants' Exhibit 1.

22 THE HEARING OFFICER: The record will so
23 reflect.

24

1 BY MR. SIROS:

2 Q. Do you reside there alone?

3 A. Yes, I do.

4 Q. When did you move in?

5 A. In June of 1995.

6 Q. And do you own or rent?

7 A. I own.

8 Q. What's your occupation?

9 A. I'm a finance and marketing manager.

10 Q. And are you taking time out from your job

11 to testify here?

12 A. Yes, I am.

13 Q. Would you please describe the layout of

14 your house?

15 A. My first floor entering from the street

16 you walk into a living room, dining room

17 combination. Moving forward to the back of the

18 house, there's the kitchen and a family room.

19 Upstairs I have three bedrooms as well as two baths,

20 and there's also a half bath on the bottom floor.

21 Q. When you said moving to the back of the

22 house, is that the east side?

23 A. Correct.

24 Q. And if I was looking out your first floor

1 family room, what would I see looking east?

2 A. You would see a fence and trees.

3 Q. If I was upstairs in your east bedroom

4 looking east, which way would -- excuse me. Let me

5 rephrase that.

6 If I was upstairs looking east from your

7 bedroom window, what would I see?

8 A. You'd see the fence, the trees, and then

9 over the trees you'd see the end of their building,

10 Overland's building, and I also see the truck yard.

11 The truck yard is right behind me on the north side,

12 and then I have the back end of the building.

13 Q. Okay. Would you describe -- would you

14 explain what you mean by the truck yard?

15 A. Overland has -- they park cars there as

16 well as truck trailers are parked there.

17 Q. I'd ask you to approach what's been marked

18 as Complainants' Exhibit No. 1, and if you could

19 just put the letters TY in black marker at the

20 approximate spot where the truck yard is located?

21 A. There's trucks that are parked -- TY.

22 I'll do it both ways.

23 MR. SIROS: Let the record reflect that

24 Ms. Lexby has marked two TYs in the upper left hand

1 portion of the area that's indicated to be the

2 Overland Transportation site.

3 THE HEARING OFFICER: The record will so

4 reflect.

5 BY MR. SIROS:

6 Q. Generally speaking, how many trucks do

7 you -- I'm sorry. Let me rephrase that.

8 How many trucks do you generally see

9 parked in the truck yard when you look out your

10 bedroom window?

11 A. It varies greatly as to whether or not

12 it's in the Christmas season where there's a lot

13 parked. There's usually at least anywhere between

14 three and five, and it can go upwards of ten.

15 Q. And the ten would be during the Christmas

16 season?

17 A. Uh-huh.

18 Q. How far is the back of your house to the

19 fence line?

20 A. It's between 30 and 35 feet.

21 Q. When you moved in in June of 1995, were

22 you aware that there was a trucking facility located

23 directly east of your property?

24 A. I was aware there was a trucking

1 facility. However, it was vacant. Upon my seeing
2 that from going back several times to visit the
3 home, I asked the present owners, and they indicated
4 that Yellow Freight had moved out, and it was
5 vacant.

6 They also then told me that when Yellow
7 was there, because I asked, the noise was very minor
8 and that they -- it did not cause them any problems
9 or waken them or anything like that.

10 Just taking that a little bit further, I
11 wanted to my own investigation. So we called the
12 village of are -- the village, not of Arlington
13 Heights where I previously lived, but the Village of
14 Palatine and asked them if they were aware if
15 anybody was looking at the site, how it was zoned,
16 and if it was going to be changed.

17 Their comments to us where the fact that
18 they did not have anybody interested in the site at
19 the time and they actually had been thinking about
20 or had been proposed to change that to
21 noncommercial.

22 Q. What else, if anything, did you do to
23 determine whether or not there would be a trucking
24 operation, an active trucking operation, in

1 existence next to your property?

2 A. Well, we just -- I came back and visited
3 with several independent parties several times, and
4 we talked to the existing homeowners, we called the
5 village, and my realtor did some research. I feel
6 that I did all I could.

7 Q. Do you remember the names of the
8 homeowners you spoke with?

9 A. They were the previous owners. I don't
10 recall their names up front.

11 Q. After you moved in in June of '95, when
12 did you first notice noise from the facility?

13 A. Starting in the fall of 1995, and I was
14 hopeful, quite honestly, at that point in time that
15 it was just because it was like a temporary renting
16 or something of that nature because, again, having
17 done all the investigation, we were informed at that
18 time that there was -- that they were not planning
19 to reopen as a trucking facility.

20 Q. What types of noise did you start to hear
21 in the fall of 1995?

22 A. Trucks idling, very loud banging, scraping
23 noises.

24 Q. How often would you hear the noise in the

1 fall of 1995 per week?

2 A. In the fall of 1995, it was very loud, and
3 then it died down a little bit, but since probably
4 the summer of '96, it's gotten, you know,
5 excessively worse and worse and worse.

6 Q. Presently, how many times do you hear the
7 noise per week?

8 A. Every day except when they grace us by
9 taking Saturday night off.

10 Q. And in terms of a typical day running from
11 8:00 in the morning until 8:00 in the morning the
12 next day, could you tell me the times when you hear
13 the noise from the Overland facility?

14 A. Sure. I'll actually give you two
15 different scenarios because I have the wonderful
16 flexibility of being able to work from home
17 sometimes. So I am actually home several days a
18 week during the day too.

19 When I do go into my office, I get up
20 anywhere between 6:00 and 7:00, and the noise is
21 there, very loud. Then I'll usually leave by
22 between 8:00 and 9:00. So I don't know what happens
23 on those days when I'm not home.

24 I usually come home anywhere between 5:00

1 and 7:00 and the noise is going again up until I try
2 and go to bed, which is again -- I have a very weird
3 schedule, but anywhere between 10:00 and 12:00.

4 On numerous occasions, I have not been
5 able to get to sleep and have had to go to other
6 means, which I'll cover next. So that's my one
7 typical day.

8 The second typical day when I am home I
9 can reflect even just back to last Wednesday and the
10 noise was constant. It was as if they were
11 hammering away at something so hard during the day,
12 and this is at 10:00 o'clock Chicago time because I
13 had a conference call going on, and I had to turn up
14 the volume on my speaker phone almost all the way so
15 that I could hear and had to put it on mute so that
16 people all the way in California couldn't hear the
17 trucking firm. That's how loud it was. Because if
18 I didn't put it on mute, the sounds from the firm,
19 the trucking firm, interrupted the transmission of
20 the phone call.

21 Q. Let's say from 12:00 o'clock midnight
22 until 8:00 o'clock in the morning, what period of
23 time do you hear the noise?

24 A. It usually starts up around 4:00,

1 between -- you know, if they're quiet -- sometimes
2 to me it sounds like they're trying to rush to get
3 it all done before 10:00 or 11:00 o'clock at night,
4 which, you know, I can appreciate and give us a
5 little bit of a break, but then it usually starts up
6 anywhere between 4:00 and 5:00.

7 Q. Now, what types of noise do you hear?

8 A. I hear successions of banging. There will
9 be like a bang, bang and then a pause and another
10 big bang, and I'll hear that. I'll hear clanking
11 almost as if metal is dropping on a concrete floor
12 or on something. I'll hear the trucks idling,
13 racing. There is a forklift vehicle or whatever,
14 and I've looked out over the fence and seen it
15 driving through the parking lot like at full steam.

16 Q. I'd like to take you back to the banging
17 noise that you testified about. Have you ever seen
18 any physical activity occurring on the Overland site
19 that you can attribute to that banging noise?

20 A. Yes, and I can also explain what
21 Mr. DePietro at our meeting told us what's
22 responsible for that noise.

23 Q. Let's address the first part, and then
24 I'll get to the meeting.

1 A. Okay. What I see is the trailers of the
2 trucks being backed up into my side. There's actual
3 loading docks on both sides of the building, and for
4 the life of us, we cannot figure out why they don't
5 just help us out and move to the other side,
6 especially at night, but when they back the trailers
7 up to the west side of the building, you hear a
8 noise immediately upon it, you know, coming up
9 against the whole, whatever, the loading dock or
10 whatever it is. So that's the first noise I've
11 heard.

12 After that, I can't see, obviously,
13 because the trailer is up there, but I've seen the
14 forklift, and it sounds like it's, you know, a
15 forklift hitching and dropping boxes or whatever it
16 is into the trailers.

17 Q. You described a meeting. What meeting are
18 you referring to?

19 A. I'm referring to a meeting in 1996, May of
20 1996, where I'm part of the -- was part of the
21 Overland -- not Overland, the Charter Hall
22 Subdivision Homeowner's Association Noise Committee,
23 and we have been trying on numerous occasions to get
24 somebody from Overland to come and talk to us, part

1 of the good neighbor policy that supposedly they
2 had, to kind of talk with us about what our
3 complaints were, how they felt that they could
4 assist us and relieve some of the situations, for us
5 to get a better understanding, et cetera.

6 The initial meeting was scheduled for
7 March of 1996, which at the last minute was
8 cancelled. It was rescheduled to May.

9 At that meeting, Mr. DePietro from I think
10 it was D.P. Cartage, who is part of Overland, was
11 there. There were several homeowners there, and
12 this was held at the village hall in Palatine.

13 We had an opportunity at that point to
14 express face to face with representatives of
15 Overland what our concerns were, how it was
16 affecting our physical, emotional, and quality of
17 life, and they listened and seemed to understand
18 what we were saying, offered to go away and to do --
19 look into the situation themselves, and then they
20 were to respond back to us with what they could do
21 to help alleviate some of the noise.

22 At that meeting, and I do remember this
23 because I took notes, Mr. DePietro indicated that he
24 felt that the bang, bang noise after talking to his

1 operations people was where the trailers were being
2 hitched onto the loading dock, and that was the
3 bang, bang, and then the forklift was taking boxes
4 and putting it in and then that was the final big
5 bang. So that's what goes along with the sounds
6 from his own perspective.

7 Q. You had described a noise committee. What
8 is that?

9 A. The noise committee was developed by
10 various concerned owners, members of Charter Hall,
11 headed up by Jeff Cohen. Denny Bergau, who you
12 probably have already heard from, was the chairman
13 of the committee, and we started meeting probably I
14 want to say in the fall right after I had moved in
15 of 1995 through the summer of 1996. We had meetings
16 every other week in which we were trying to
17 understand, you know, what were our issues, make
18 sure that -- you know, find out were we being
19 unreasonable. We had talked to the village people,
20 the village management, we had talked to the police,
21 and from what we even heard at that point, the
22 police had indicated that they understood the noise
23 was loud. They indicated to us that it was
24 supposedly in violation of their code, but it was

1 such an old law they couldn't do anything about it.

2 At that meeting, then we decided to go
3 ahead and try and do something ourselves and
4 approach Overland, D.P. Cartage, whatever name they
5 were going under. Calls were made by
6 representatives of the committee to try and schedule
7 a meeting.

8 At the same time, we went off and did a
9 letter campaign where we, the whole Charter Hall
10 subdivision, we went door to door and, you know,
11 asked people were they disturbed by the noise or
12 were they not. Letters were then sent by almost
13 every member of Charter Hall subdivision to village
14 representatives, to our state representatives
15 indicating that we have a serious problem here, and
16 this was affecting our quality of life, and we were
17 asking in a plea for assistance in helping rectify
18 the situation because of the fact that we were not
19 seeing any results.

20 Q. When were these letters sent?

21 A. In 1996, the summer of 1996.

22 Q. All right. How does the noise affect your
23 everyday life?

24 A. The noise affects my life from various

1 aspects. The first part is physical. It's very --
2 I have a very demanding job, and if I can't sleep,
3 that affects my demeanor. It affects my
4 concentration. It affects how I feel in interacting
5 with people worldwide. I have a worldwide
6 position. So I'm talking to people in all different
7 time zones, and it's -- if I'm not feeling up to par
8 to go and do my job, there's a problem, and
9 physically it's affected me from fatigue.
10 Emotionally it's been a lack of concentration. The
11 quality of life, I can't -- I have entertained, and
12 I can give you some specific time frames.

13 In January of 1997, I had two instances --

14 (Brief interruption.)

15 THE HEARING OFFICER: We can proceed. You know
16 what, let's just wait.

17 (Brief pause.)

18 THE HEARING OFFICER: We went off the record to
19 accommodate a next door neighbor. We will begin
20 again. I don't know if you had a chance to finish
21 your last answer, Ms. Lexby.

22 THE WITNESS: No, but I know what I want to
23 say.

24 THE HEARING OFFICER: Okay.

1 THE WITNESS: He was asking how it affected my
2 life, and I was going into the part of quality of
3 life.

4 THE HEARING OFFICER: That's fine.

5 BY THE WITNESS:

6 A. In January of 1997, I had occasion to have
7 two gatherings of people at my home of 20 people,
8 two different Fridays, and this is winter. The
9 windows are closed, and I had people sitting in my
10 family room jumping at the sounds that were going on
11 and like oh, my gosh, what was that, and it's very
12 embarrassing to have to say well, I live with that.
13 You know, this is what I'm talking about in terms of
14 the trucking facility, and it went on just not at
15 6:00, which is when the party started, 6:00 and
16 6:30. This went on all the way until 11:00 o'clock
17 at night, and it was, you know, various home shows
18 that were going on. So it's not like we could turn
19 up the stereo. We needed to hear what the presenter
20 was saying.

21 In January of 1998 and in March of 1998, I
22 had overnight company at my house meaning by
23 five-year-old niece, my sisters, and my mother, and
24 they were awoken by the banging. So, again, it's

1 not that it's just me. You know, I know that it's
2 not just me just not being able to get back to
3 sleep. Try to get a five-year-old back to sleep in
4 the middle of the night. You know, I don't have
5 children, but, you know, I have to be careful of
6 when I have people over, and I basically, like my
7 neighbors, have to really -- it's a potshot because
8 you don't know when it's going to start.

9 Let's see. Then the biggest, you know,
10 the thing that really irritated me was I thought it
11 was quiet during the day until I started working
12 from home more. In the past nine months, I started
13 working from home more about two days a week, three
14 days a week, and, again, I just want to reiterate,
15 last Wednesday when I'm on a conference call at
16 10:00 in the morning to have to turn my speaker
17 phone up so loud and put it on mute so that people
18 across the country cannot hear the banging, again,
19 it's just like -- you shouldn't have to live that
20 way.

21 I would like to just continue on one
22 thing. You had asked me also as it relates to my
23 quality of life and how it affects me.

24 Because of the fact that I've had

1 difficulty sleeping and getting to sleep, I'm
2 exhausted when I finally do get to sleep. I had to
3 go out and see a doctor. He's given me sleeping
4 pills, which I try, but can't take because the next
5 morning then I can't wake up. So I can't take
6 them.

7 So then I tried the sound machine, and
8 even with the sound machine on loud volume, I still
9 hear the banging in the back, and there has been
10 twice when I've actually had to put the pillow over
11 my head.

12 Q. When is the last time you were bothered by
13 noise from the Overland facility?

14 A. Yesterday.

15 Q. What time?

16 A. I was working from home. It was
17 probably -- I worked yesterday all the way until
18 11:00 o'clock at night from home. So it was going
19 on when I was trying to work and watch TV at the
20 same time. So probably about 10:00.

21 Q. And what type of noise was that?

22 A. It was the banging.

23 Q. When do you hear the hammering noise?

24 A. The hammering noise was especially

1 noticeable to me. Again, I don't normally hear
2 that, but Wednesday, last Wednesday, when I was
3 home, it was as if it was right outside my window
4 hammering, clanking, things falling. It was like,
5 you know, I don't know if they're -- I have no idea
6 what they're doing. It wasn't the loading of the
7 trucks bang, bang, bang. It was clanking, something
8 going on.

9 Q. Can you estimate approximately how many
10 feet it is from your backyard to the actual loading
11 and unloading dock?

12 A. Thirty to 35 feet to the fence. I have no
13 idea. I really don't.

14 Q. What about from your -- can you estimate
15 how far it is from your house to the six -- I'm
16 sorry, 567 property line, 567 Charter Hall property
17 line on the north end?

18 A. 567?

19 Q. I'm sorry. Six -- my eyes are going.

20 MR. STEGER: I'll say they are.

21 BY MR. SIROS:

22 Q. All right. Let's try this again. Can you
23 see --

24 A. I mean, I can see -- I can see the loading

1 docks very clearly. I mean, they're -- it's like 30
2 feet to the fence. Then there's probably, I don't
3 know, from the wall to here space and then it's like
4 the truck can back up to the loading dock
5 (indicating).

6 Q. How many feet would you say it's from --

7 THE HEARING OFFICER: Hold on. All right. As
8 far as the distance from here to the wall, I'm not
9 going to --

10 THE WITNESS: I'm sorry.

11 THE HEARING OFFICER: -- try to guesstimate
12 what that is, but for the purpose of the record,
13 Mr. Siros, I'm going to ask that you be more
14 specific and --

15 MR. SIROS: Do you want me to rephrase the
16 question then?

17 THE HEARING OFFICER: -- direct your witness.

18 BY MR. SIROS:

19 Q. From your address at 691 to the
20 northernmost property line of 667, approximately how
21 many feet would you say there is between those
22 properties if you know?

23 A. I really don't know.

24 MR. SIROS: Nothing further.

1 THE HEARING OFFICER: Mr. Steger.

2 CROSS - EXAMINATION

3 by Mr. Steger

4 Q. Referring to what is Complainants' Exhibit

5 No. 1, you had written a TY. Is there anything in

6 between the TY and this yellow X?

7 A. I can't see that. No, I can't see that

8 close because of the fact that the fence is there.

9 So I can just see over the fence to tell that

10 there's a trucking --

11 Q. Are you aware if there's a cyclone fence

12 going east/west, do you know?

13 A. No, there is not.

14 Q. Okay.

15 A. There is not. There is no perpendicular

16 fence.

17 Q. Okay. But for the Overland operations,

18 what time would you normally get up for work when

19 you go to the office?

20 A. When I go to the office, somewhere between

21 7:00, 7:00, 7:30.

22 Q. Okay. And when you stay at home?

23 A. It depends if I've worked the night

24 before. I'm on a very flexible schedule.

1 Q. And your job is a --

2 A. I manage the marketing and finance,
3 right. I manage the -- sorry. I manage the finance
4 and marketing aspect of a worldwide organization for
5 a high tech company.

6 Q. Does that require a lot of travel?

7 A. No.

8 Q. Did you take any independent measurements
9 of noise?

10 A. I started taking some. Unfortunately, I
11 lost my binder that had all the measurements in
12 there. So, yeah, I still have the little monitor,
13 but suffice it to say --

14 Q. Other than the --

15 THE HEARING OFFICER: Okay. Hold on.

16 BY MR. STEGER:

17 Q. Other than the Overland operation --

18 THE HEARING OFFICER: Okay. Hold on. Hold on.

19 MR. STEGER: Sorry.

20 THE HEARING OFFICER: Ms. Lexby, it's important
21 that if you're not finished with the answer, simply
22 say you're not furnished with the answer, but it's
23 important that only one party speak at a time for
24 the court reporters's sake. She can't transcribe

1 both voices at the same time.

2 Let Mr. Steger finish his question before

3 you begin answering. Thank you.

4 THE WITNESS: I think we started at the same

5 time, but...

6 BY MR. STEGER:

7 Q. Were you finished?

8 THE HEARING OFFICER: Well, it's important that

9 one party speak at a time.

10 BY THE WITNESS:

11 A. Yes, I am. Thank you.

12 THE HEARING OFFICER: Thank you.

13 BY MR. STEGER:

14 Q. Other than the Overland operations, does

15 anything else wake you up at night?

16 A. No.

17 Q. Traffic noise, airplane noise, nothing?

18 A. No.

19 Q. Is the -- does the noise -- is the Charter

20 Hall Noise Committee still in existence?

21 A. I'm not actively involved in it at this

22 time.

23 MR. STEGER: I have no further questions.

24 THE HEARING OFFICER: Mr. Siros.

1 MR. SIROS: Nothing further.

2 THE HEARING OFFICER: Thank you, Ms. Lexby.

3 All right. Why don't we go off the record

4 for a moment.

5 (Discussion had

6 off the record.)

7 THE HEARING OFFICER: Back on the record in

8 98-81, Charter Hall Homeowner's Association vs.

9 Overland Transportation.

10 For the record, it's important that

11 everybody knows that we are in this room again

12 tomorrow. The notice that went out actually said

13 that it would be down on the second floor in room

14 25. I think I've already indicated this to some of

15 the parties here that this is, in fact, the hearing

16 room that it will be conducted in.

17 I will also note for the record that what

18 I -- I made a comment at the beginning of the

19 proceeding indicating that members of the public had

20 attended. Those members of the public apparently

21 are all members of the Charter Hall Homeowner's

22 Association, and members that have come out have

23 been members of those except for the exception of

24 Mr. Steger's one witness, who is no longer present.

1 MR. STEGER: He's not a witness. He was just
2 in-house counsel for Overland Transportation.

3 THE HEARING OFFICER: I apologize. Then I
4 misidentified him.

5 MR. STEGER: Mr. David Daniels.

6 THE HEARING OFFICER: Thank you. Then I
7 misspoke. He is not a witness, but in-house counsel
8 for one of Mr. Steger's clients. I say that because
9 each member of the public has the opportunity, as
10 you know, Mr. Forcade, and as you know, Mr. Steger,
11 has the opportunity to question if they so desire.

12 There have been no such members here today.

13 All right. As far as wrapping up today,
14 Mr. Forcade, you have indicated that you have
15 some -- you're going to speak with your clients
16 regarding the transcript issue that we discussed
17 earlier, and that after the proceeding is finished I
18 will let you do that and leave that responsibility
19 with you.

20 Then as far as exhibits, you had indicated
21 that you were going to move exhibits that you
22 referred to today; is that correct?

23 MR. SIROS: That's correct.

24 THE HEARING OFFICER: Mr. Siros.

1 MR. SIROS: I'd first like to move into
2 evidence Complainants' Exhibits 1, which consists of
3 the blown-up drawing of the Charter Hall subdivision
4 and the Overland facility into evidence.

5 THE HEARING OFFICER: Okay. Let's deal with
6 one at a time. Complainants' Exhibit 1, which is
7 the blown up depiction of the facility and Charter
8 Hall Homeowner's Association area, Mr. Steger, do
9 you have any objection to the introduction of that
10 document?

11 MR. STEGER: The only objection I have to that
12 is that based on the testimony I've heard today and
13 talking with my witness, it may not be an entirely
14 accurate representation of the layout. How we can
15 deal with that is through my witness.

16 Do you have any problems with that?

17 THE HEARING OFFICER: Well, are you
18 representing that it is a true and accurate
19 depiction of the area?

20 MR. FORCADE: An enlargement of the joint
21 stipulation document, and I had assumed that Mark --
22 Mr. Steger and his client had reviewed it and found
23 it to be accurate. I'm not going to contest the
24 fact that his witness may want to testify about some

1 things that are not precisely accurate, and we'll
2 certainly be willing to address that at the time it
3 occurs.

4 MR. STEGER: I don't see any problem with
5 that.

6 MR. FORCADE: I just had assumed by virtue of
7 the fact it was in the joint stipulation it had, in
8 fact, been reviewed for accuracy by them.

9 We'll be happy to discuss any potential
10 areas of discrepancy after Mr. Steger's witness has
11 taken the stand.

12 THE HEARING OFFICER: Okay. Mr. Steger, do you
13 have an objection? Is your objection specific to
14 the accuracy of the document?

15 MR. STEGER: That is correct.

16 THE HEARING OFFICER: I'm going to let the
17 document speak for itself. I'm going to admit the
18 document over your objection, and you can point out
19 any inaccuracies in your case in chief. The
20 document is admitted over objection.

21 MR. SIROS: The next exhibit is Complainants'
22 Exhibit No. 2, which is the letter from Mary Ann
23 Bergau to the Village of Palatine.

24 MR. STEGER: No objection.

1 THE HEARING OFFICER: Okay. I'm sorry. That
2 was Complainants' Exhibit 2. That's the
3 correspondence from Mrs. Bergau to the Village of
4 Palatine?

5 MR. SIROS: That's correct.

6 THE HEARING OFFICER: No objection,
7 Mr. Steger?

8 MR. STEGER: No.

9 THE HEARING OFFICER: It is admitted.

10 MR. SIROS: The next exhibit is Complainants'
11 Exhibit No. --

12 THE HEARING OFFICER: You know what, why don't
13 you hand me the documents as you see them, and then
14 that way I can -- for the record, Complainants'
15 Exhibit 1 is about a two-by-four, two and a half
16 feet by four foot overblown -- not overblown, blowup
17 of the area that's been testified to.

18 Complainants' Exhibit 2 is a two-page
19 document on eight-and-a-half-by-eleven letterhead
20 with the title Mary Ann Bergau. It looks to be a
21 correspondence from Ms. Bergau to the village zoning
22 administrator of the Village of Palatine dated April
23 15th, 1996. Mr. Steger has indicated that he has no
24 objection to that document. That document is

1 admitted as Complainants' Exhibit 1 over

2 Mr. Steger's objection.

3 MR. SIROS: Complainants' Exhibit 3 is the

4 letter from the Village of Palatine to Mary Ann

5 Bergau.

6 THE HEARING OFFICER: All right. This is a

7 one-page document on an eight-and-a-half-by-eleven

8 sheet of paper. It appears to be on Village of

9 Palatine letterhead from a Michael D. Kadlecik,

10 village manager, to Ms. Bergau dated May 13th, 1996.

11 Any objection, Mr. Steger?

12 MR. STEGER: No.

13 THE HEARING OFFICER: It is admitted.

14 MR. SIROS: Complainants' Exhibit 4 is a noise

15 log completed by Denny Bergau, which consists of

16 seven pages.

17 THE HEARING OFFICER: All right. Let the

18 record reflect that Complainants' Exhibit 4 does

19 consist of handwritten notes -- notations with the

20 title Bergau, 667 Charter Hall, pages one, two,

21 three, four, five, six, a seven-page document all in

22 handwritten notations.

23 Mr. Steger, any objection?

24 MR. STEGER: The only objection I have to that

1 is it goes more to its weight than anything else. I
2 believe in the testimony there was some uncertainty
3 as to his recordings, but I think those go to the
4 weight as opposed to the admissibility.

5 MR. SIROS: Actually, as to that document, that
6 is, in fact, the noise log which is not the
7 checkmark data sheet. So there was no question as
8 to uncertainty --

9 MR. STEGER: Oh, I'm sorry.

10 MR. SIROS: -- as to that.

11 THE HEARING OFFICER: This is the noise log.

12 As I recall the testimony, this was the --

13 MR. STEGER: Written?

14 MR. SIROS: Yes.

15 THE HEARING OFFICER: -- the handwritten, yes.

16 MR. STEGER: I'm sorry. I don't have any
17 objection to that one.

18 THE HEARING OFFICER: The objection is
19 withdrawn. The document is admitted.

20 MR. SIROS: The next exhibit is Complainants'
21 Exhibit 5, which is, in fact, the noise meter.

22 THE HEARING OFFICER: Okay. Any objection to
23 Complainants' Exhibit No. 5 being admitted,
24 Mr. Steger?

1 MR. STEGER: No.

2 THE HEARING OFFICER: It is a -- what is in a
3 carrying device captioned sound level meter,
4 catalogue number 33-2050. Within is what is
5 identified as Radio Shack sound level meter.

6 Any objection to that --

7 MR. FORCADE: Excuse me.

8 THE HEARING OFFICER: I apologize. Yes.

9 MR. FORCADE: Is there a, perhaps, serial
10 number on the inside machine at a location?

11 THE HEARING OFFICER: I do not see a serial
12 number, Mr. Forcade. However, if you're -- none on
13 the outside of the --

14 MR. FORCADE: Okay. We intend to --

15 THE HEARING OFFICER: -- instrument.

16 MR. FORCADE: -- introduce another one. I'm
17 just trying to find some mechanism of telling A from
18 B.

19 THE HEARING OFFICER: I understand. There's
20 nothing other than China.

21 MR. FORCADE: China. Thank you very much.

22 THE HEARING OFFICER: All right. And I'm not
23 sure that will be a way to distinguish it.

24 However, Mr. Steger, do you have any

1 objection to that document -- that item being

2 admitted?

3 MR. STEGER: No.

4 THE HEARING OFFICER: No objection. It is

5 admitted.

6 MR. SIROS: The next exhibit is Complainants'

7 Exhibit 6, which, in fact, is the checkmark data

8 survey sheet completed by Denny Bergau. It is seven

9 pages long.

10 MR. STEGER: I'll reiterate my last objection

11 that I thought I was referring to on Exhibit 4 for

12 this Exhibit 6.

13 THE HEARING OFFICER: Okay. Complainants'

14 Exhibit 6 is -- consists of one, two, three, four,

15 five, six, seven pages all -- it has handwritten --

16 they all have handwritten notes on them as well as

17 preprinted -- what appears to be a preprinted format

18 with the title checkmark survey data sheet page two,

19 all have the same entitle.

20 Regarding the objections, as I recall the

21 testimony, Mr. Bergau did indicate that he was not

22 an expert in the area. However, he did testify how

23 the recordings were made and when they were made and

24 the method in which he employed in making those

1 markings.

2 The weight to be given to that evidence
3 will be determined by the Board ultimately. So as
4 far as the objection, if I understand the objection
5 correctly, Mr. Steger, it is to the weight to be
6 given to it. You can argue that in your brief as to
7 what weight --

8 MR. STEGER: Understood.

9 THE HEARING OFFICER: -- should be given. The
10 document is admitted over objection.

11 MR. SIROS: The next exhibit is Complainants'
12 Exhibit 7, which consists of an eight-page document
13 which is entitled Charter Hall excessive noise
14 report completed by Behram Dinshaw.

15 THE HEARING OFFICER: All right. Complainants'
16 Exhibit 7 consists of one, two, three, four, five,
17 six, seven, eight pages. The first seven of which
18 appear to be on a preprinted form with handwritten
19 notes.

20 Mr. Dinshaw, as he testified regarding
21 alleged noises at the facility, he testified as to
22 where they were taken from. The last page appears
23 to be a paragraph of his that he read into the
24 record as well.

1 Any objection to that document going into
2 the record, Mr. Steger?

3 MR. STEGER: I have no objection to it being
4 admitted.

5 THE HEARING OFFICER: All right. Complainants'
6 Exhibit 7 is admitted without objection.

7 Mr. Siros.

8 MR. SIROS: The next exhibit is Group Exhibit
9 1, which consists of five pictures which are
10 numbered one through five on the back.

11 THE HEARING OFFICER: This document, as we
12 previously described, consists of five photos
13 numbered sequentially one through five taken by, I
14 believe, Ms. Bergau. The photos are distinguishable
15 from other photos referred to in that they have no
16 date stamp on any of the photos and consist of five.

17 Any objection to those five photographs?

18 MR. STEGER: No, there is no objections to
19 their admissibility.

20 THE HEARING OFFICER: Thank you, Mr. Steger.
21 The documents are admitted without objection.

22 MR. SIROS: The final exhibit is Complainants'
23 Group Exhibit 2, which consists of 26 pictures
24 numbered one through 26 on the back. These pictures

1 each have a date stamp on them.

2 THE HEARING OFFICER: Thank you.

3 Mr. Steger, any objection to those
4 documents?

5 MR. STEGER: Which ones are these?

6 THE HEARING OFFICER: These --

7 MR. STEGER: The group of 29?

8 THE HEARING OFFICER: These are the Group
9 Exhibit No. 2, one through 26.

10 MR. STEGER: I'm sorry.

11 THE HEARING OFFICER: There are 26 --

12 MR. STEGER: No objection to their
13 admissibility.

14 THE HEARING OFFICER: All right. The documents
15 are admitted. However, I do want to clarify for the
16 record so it's clear that these 26 photographs all
17 have a date stamp in what appears to be the
18 right-hand corner, lower corner, taken by
19 Mr. Dinshaw.

20 All right. Mr. Siros, anything else?

21 MR. SIROS: The final exhibit, and I'm not sure
22 how you want to handle this, is the joint three page
23 exhibit that was going to be attached to the
24 stipulations that were going to be added to

1 stipulations. I believe Mr. Steger was going to
2 take care of having that added to the stipulations.

3 THE HEARING OFFICER: Okay. I believe,
4 Mr. Steger, you indicated or pointed out that those
5 documents were missing; is that accurate?

6 MR. STEGER: That is correct.

7 THE HEARING OFFICER: Okay. Those three pages
8 we'll deal with how we -- I previously had indicated
9 to the parties and I thought what we agreed to was
10 Mr. Steger is to provide a new --

11 MR. FORCADE: Version.

12 THE HEARING OFFICER: -- stipulation with all
13 the documents within tomorrow morning and that we
14 will refer to and put into the record as a joint
15 exhibit on behalf of both parties, call it Joint
16 Exhibit 1, with all attached exhibits.

17 We'll give each party an opportunity to
18 review that. In fact, I would request prior to the
19 hearing tomorrow that the other side be given an
20 opportunity to review that document, Mr. Steger, and
21 then we can go from there. Okay?

22 Anything else, Mr. Siros?

23 MR. SIROS: No, that's all.

24 THE HEARING OFFICER: Mr. Steger?

1 MR. STEGER: No.

2 THE HEARING OFFICER: Okay. I'll go through my
3 own checklist here. We will start tomorrow at 9:30
4 a.m., this conference room.

5 Thank you all for your patients. I will
6 see you all tomorrow morning.

7 (Whereupon, these were all the
8 proceedings had in the
9 above-entitled matter.)

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