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**FEB 24 2004**

**STATE OF ILLINOIS**  
Pollution Control Board

**ILLINOIS POLLUTION CONTROL BOARD**

|                              |   |                                  |
|------------------------------|---|----------------------------------|
| KAREN & ANTHONY ROTI, et al, | ) |                                  |
|                              | ) |                                  |
| Complainants,                | ) |                                  |
|                              | ) |                                  |
| v.                           | ) | PCB 99-19                        |
|                              | ) | (Enforcement - Noise - Citizens) |
| LTD COMMODITIES,             | ) |                                  |
|                              | ) |                                  |
| Respondent,                  | ) |                                  |

**LTD COMMODITIES' MOTION**  
**TO STAY PENDING DIRECT APPELLATE REVIEW**

Respondent, LTD Commodities, Inc., by its attorneys, BAIZER & KOLAR, P.C., pursuant to 35 Illinois Administrative Code §101.514 and Illinois Supreme Court Rule 335(g), moves the Illinois Pollution Control Board ("PCB") to stay enforcement of its February 15, 2001, July 24, 2003, and February 5, 2004, decisions pending direct appellate review of those decisions. In support of this motion, LTD states as follows:

**Illinois Supreme Court Rule 335**

1. LTD is appealing the PCB's decisions in this case directly to the Second District Appellate Court. Illinois Supreme Court Rule 335(g) provides that "[a]pplication for a stay of a decision or order of an agency pending direct review in the Appellate Court shall ordinarily be made in the first instance to the agency."

**Necessity For Stay**

2. In its August 28, 2003, motion for reconsideration, LTD requested that the PCB modify its decisions to permit use of a backup beeper on a yard tractor during day light hours. LTD supplemented this request with an email and letter from the operator of the yard tractor.

3. To attempt to lessen noise at LTD's property, LTD's Harri Broman sent an email to Cycle Logistics, the owner and operator of the yard tractor, that provided in part as follows:

With respect to our need to keep the noise level to a minimum to our residential neighbors. One thought was to eliminate the back up alarm on the yard dog, but provide the spotter with a person for safety purposes. What is Cycle's feeling on this?

Cycle's response to this request was an emphatic "no." In an email response, Cycle stated: "*I am sorry we cannot comply with the request.* Cycle is committed to servicing LTD, however, the exposure is too great. I hope you understand our position." (Ex. A, p. 1)(emphasis added).

4. In a September 10, 2003, letter to Jack Voigt of LTD, Cycle reiterated its position that it could not turn off or lower the volume of the backup beeper. Cycle's decision was based on "extensive research," namely contact with OSHA, Cycle's insurance carrier, Cycle's attorneys and the manufacturer of the yard tractor. (Ex. B).

5. Despite Cycle's emphatic position that it *will not* disconnect the backup beeper because of worker safety concerns, the PCB's February 5, 2004, decision provides in part as follows:

Within 40 days after receipt of this order, LTD must cease and desist from using backup warning beepers at the Bannockburn facility on any yard tractor owned and operated by LTD. LTD must replace any backup warning beeper with either a human spotter or a strobe light in accordance with applicable State and federal law.

#### **Likelihood Of Reversal By Appellate Court**

6. LTD believes it is entitled to a stay because it expects the appellate court will reverse the PCB's decision regarding the backup beeper on the yard tractor. The only evidence in the record is that the operator of the yard tractor will not disconnect the beeper because of worker safety concerns. LTD does not expect the appellate court to affirm a decision that exposes employees to dangers in the truck dock area.

7. LTD also believes the appellate court will reverse the PCB's decision regarding the backup beeper because a human spotter and/or a strobe light are not reasonable alternatives during day light hours. Obviously, a strobe light will not be visible during day light hours. A human spotter is not a reasonable alternative because the yard tractor is not the only tractor moving trailers in the truck dock area. Over-the-road truck drivers pull trailers in and out of the LTD truck dock area. When trailers are being moved around the dock area by means other than the yard tractor, then the human spotter will be in danger of being hit by a tractor. Quite simply, for safety reasons, LTD wants to reduce the number of people walking around the truck dock area. However, the PCB's decision mandates another person (the spotter) in the truck dock area who will be at risk of injury while he or she follows the yard tractor around the dock area.

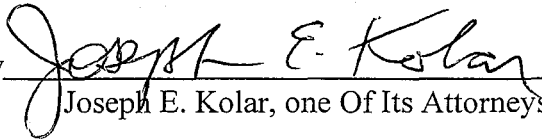
#### **Conclusion**

8. In its original motion for reconsideration, LTD requested that the PCB stay its decisions if it did not grant LTD's motion for reconsideration. While this request was noted in the PCB's February 5, 2004, decision, the PCB did not act on the request. LTD needs a definitive decision from the PCB on this motion for stay before it can apply to the appellate court for a stay. Of course, if the PCB grants this motion for stay, LTD will not need to request a stay from the appellate court.

WHEREFORE, LTD respectfully requests that the PCB:

- A. Stay enforcement of its February 15, 2001, July 24, 2003, and February 5, 2004, decisions pending direct appellate review of those decisions; and
- B. Provide such other and further relief as is just and equitable.

LTD Commodities

By   
Joseph E. Kolar, one Of Its Attorneys

ATTORNEYS FOR RESPONDENT

BAIZER & KOLAR, P.C.  
513 Central Avenue, 5<sup>th</sup> Floor  
Highland Park, IL 60035  
847-433-6677  
Fax: 847-433-6735

CERTIFICATE OF SERVICE

The undersigned states that on February 23, 2004, he served by Federal Express for delivery on February 24, 2004, the original and nine copies of the foregoing LTD COMMODITIES' MOTION TO STAY PENDING DIRECT APPELLATE REVIEW upon the Illinois Pollution Control Board at the following address:

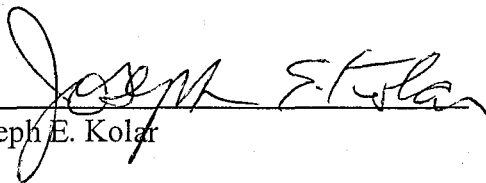
Ms. Dorothy M. Gunn  
Clerk of the Illinois Pollution Control Board  
100 West Randolph Street  
Suite 11-500  
Chicago, IL 60601

and one copy by United States Mail, with postage prepaid on the complainants at the following addresses:

Karen & Anthony Roti  
1591 W. Wedgewood Drive  
Lake Forest, IL 60045

Paul Rosenstock  
1541 W. Wedgewood Drive  
Lake Forest, IL 60045

Leslie & Henry Weber  
1481 W. Wedgewood Drive  
Lake Forest, IL 60045

  
\_\_\_\_\_  
Joseph E. Kolar

**Joe Kolar**

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From: "Jack Voigt" <JVoigt@LTDCommodities.com>  
 To: "Michael Hara" <MHara@LTDCommodities.com>; "Joe Kolar (E-mail)" <Joe@baizlaw.com>  
 Sent: Tuesday, September 09, 2003 2:16 PM  
 Subject: FW: Spotter

Please note Tim Mudd's response to turning off the audio signal on the spotter truck.

-----Original Message-----

From: Harri Broman  
 Sent: Tuesday, September 09, 2003 2:04 PM  
 To: Jack Voigt  
 Subject: FW: Spotter

FYI

-----Original Message-----

From: Tim Mudd [mailto:tmudd@cyclelogistics.com]  
 Sent: Tuesday, September 09, 2003 2:14 PM  
 To: 'Harri Broman'  
 Cc: 'Dan Mudd'  
 Subject: RE: Spotter

Hello Harri,

I spoke to our Attorney, Insurance Carrier, OSHA (anonymously) and the manufacture about the signal. They all were very emphatic about not tampering with a safety device. Upon receipt of your e-mail I checked with Cycle's Attorney and Insurance Agent and they stated that we are opening Cycle and LTD up for a huge liability issue.

I am sorry we cannot comply with the request. Cycle is committed to servicing LTD, however, the exposure is too great. I hope you understand our position.

>From what I understand the "quiet time" is after 10 pm. How many moves take place after this time? Perhaps we should release the spotter at 10pm and have one of our shuttle drivers finish up in Bannockburn and complete the final moves. What are your thoughts?



Thank you for your continued patronage. If you have questions or would like to discuss this further, I can be reached at 847-489-2623.

Tim Mudd

-----Original Message-----

From: Harri Broman [mailto:HBroman@LTDCOMMODITIES.COM]

Sent: Tuesday, September 09, 2003 6:56 AM

To: 'Tim Mudd'

Subject: Spotter

Hi Tim.

With respect to our need to keep the noise level to a minimum to our residential neighbors. One thought was to eliminate the back up alarm on the yard dog, but provide the spotter with a person for safety purposes.

What is Cycle's feeling on this?



**CYCLE**  
LOGISTICS, INC.

301 North Third Avenue  
Des Plaines, Illinois 60016  
Phone: (847) 755-8900  
Fax: (847) 298-2338

Mr. Jack Voigt  
Vice President of Distribution  
LTD Commodities  
2800 Lakeside Dr.  
Bannockburn, IL 60015

September 10, 2003

Dear Mr. Voigt,

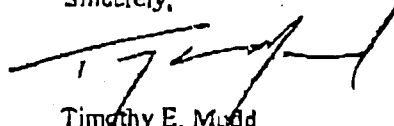
As per your request, I have done some extensive research to reduce or eliminate the backing signal on the spotting unit at LTD's Bannockburn facility. The following is a brief outline of my findings:

- 1.) The Manufacturer of the OTTOWA (spotter) - When asked if there is a signal with an adjustable volume, they said no. When asked if there is a signal with a lower volume, they said no and that the decibel level is set by OSHA.
- 2.) Cycle's Insurance Carrier - When asked about adjusting the volume or removing the signal. Cycle's Carrier stated that any tampering with a safety device will be deemed a willful and negligent act and could potentially expose Cycle to a coverage issue if any incident related to backing did in fact occur.
- 3.) Cycle's Attorney - Also stated that any tampering with safety equipment would "open Cycle up to substantial liability".
- 4.) OSHA - Stated that the decibel levels were set at that point because testing was done and tone and decibels utilized were found to be the most effective with out being too loud. The gentleman went on to say that any tampering at all with any safety device is against OSHA regulations and will be a flagrant act and will call for significant fines and penalties.

I appreciate LTD's concern for the noise level and the negative impact it has on LTD's neighbor relations. However, based on my findings and the emphatic responses I received from everyone I spoke to, Cycle has no choice but to leave the backing signal at its current setting. LTD is a valued customer and Cycle would like nothing more than to make life easier for you and your team. We are open to other suggestions.

If you have any question, I can be reached at 847-489-2623. Thank you for your continued patronage.

Sincerely,



Timothy E. Mudd  
President

