

JAN 30 2004

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD STATE OF ILLINOIS  
Pollution Control Board

BARBARA STUART and RONALD )  
STUART )  
Complainants, )  
v. )  
FRANKLIN FISHER and PHYLLIS )  
FISHER )  
Respondents, )

No. PCB 02-164  
Citizen Enforcement

**MOTION TO INCORPORATE PORTIONS OF IPCB HEARING TRANSCRIPTS AND DOCUMENTS FROM A PRIOR NOISE COMPLAINT FILED WITH THE DIVISION OF LAND/NOISE POLLUTION CONTROL OF ILLINOIS IN 1979**

Complainants, Barbara Stuart and Ronald Stuart, herein moves, pursuant to 35 Ill. Adm. Code 101.306, to incorporate the following materials, authentic by virtue of being verifiable on the IPCB website, relevant in relation to the methods used to measure sound, when impulse (propane cannon) sounds are considered to be a nuisance, and credible in that each item has been admitted into the record of each of the cited cases, and relied upon by the board in the formulation of its opinions in each case.

The Illinois EPA issued a case number in 1979, which was DNPC COMP. #79-121, Should be verifiable through the EPA archived records department. The attached copies were obtained through the Knox County, Illinois clerks office.

1. September 26, 2001 Hearing Transcript- Stephen G. Brill v. Henry Latoria and TL Trucking PCB 00-219  
Testimony of Gregory T. Zak-  
Pages 284-290, When Regulation 900.102 is designated as a nuisance violation.  
Pages 298-312, Functions, capability, and reliability of inexpensive Radio Shack sound Meters for measuring sound.  
Pages 337-339, Mathematics of calculating ambient levels against noise source.  
Pages 345-357, Opinion of Brian Homan's testing methods used for noise measurement. Effects of noise on different people in the same location.
2. October 16, 1979 Copy of a certified letter #157315, from the Illinois Environmental Protection Agency, RE: DNPC Complaint #79-121. Signed by Gregory T. Zak. Verifiable through the Ninth Judicial Circuit Court in Knox County, Illinois. A copy of this letter was attached as exhibit A on the following court documents for SAM COFFMAN, JR. and DONNA COFFMAN vs. HELEN GEHRING, MELVIN MC CAW, and DOANE AGRICULTURAL SERVICE, INC. Case NO.79-CH-48

- a. COMPLAINT FOR INJUNCTION AND OTHER RELIEF
- b. MOTION FOR PRELIMINARY INJUNCTION

Other court documents related to this case are attached to demonstrate the outcome of this case.

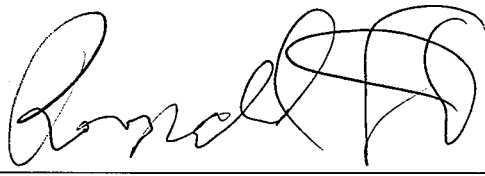
- a. COMPLAINT FOR INJUNCTION
- b. DECREE FOR PERMANENT INJUNCTION
- c. Order
- d. Petition to Leave to Intervene

The purpose of incorporating the Coffman vs. Gehring, McCaw, Doane Ag. Case 79-CH-48 is to demonstrate the effects of propane cannon noise on human activities both indoors and outdoors. Having Greg Zak testifying as the sound expert in our case will give him an opportunity to comment on the above case, since he was the field person investigating the noise complaint, and authored the letter to the Defendants in the case.

WHEREFORE, Complainants, Barbara Stuart and Ronald Stuart moves for an order incorporating the attached transcript excerpts, AND the Illinois EPA letter dated September 27, 1979 authored by Greg along with the attached court documents listed above, into the record of this case for consideration by the Board.

Respectfully submitted,

  
Barbara Stuart

  
Ronald Stuart

Complaints for PCB 02-164  
Ronald and Barbara Stuart  
213 E. Corning Rd.  
Beecher, Illinois. 60401  
708-946-9546

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

BARBARA STUART and  
RONALD STUART

Complainants

PCB 02-164  
(Citizens Enforcement)

FRANKLIN FISHER and  
PHYLLIS FISHER

Respondents

To:

David Harding  
Harding & Lopez  
100 N. La Salle St.  
Suite 1107  
Chicago, Illinois 60602

Bradley P. Halloran  
Suite 11-500  
100 W. Randolph  
Chicago, Illinois 60601

Dorothy Gunn  
Clerk of the IPC  
100 W. Randolph  
Chicago, Illinois 60601

Bobby Petrungerro  
Assistant States Attorney Office  
Will County States Attorney Court House  
14 W. Jefferson Room 200  
Joliet, Illinois 60432

**NOTICE OF FILING**

PLEASE TAKE NOTICE that we have, on January 28, 2004, filed with the Office of the Clerk of the Pollution Control Board a **MOTION TO INCORPORATE DOCUMENTS** into this proceeding, a copy of which herewith served upon you.

Barbara Stuart 1/27/04  
Barbara Stuart  
213 E. Corning Rd.  
Beecher, Illinois 60401

date

Ronald Stuart 1/28/04  
Ronald Stuart

date

**CERTIFICATE OF SERVICE**

We, Barbara Stuart and Ronald Stuart, certify that on January 28, 2004, I served the attached Motion to Incorporate Documents by delivery of U.S. pre-paid first class mail to Dorothy M. Gunn, Bradley Halloran, and David Harding at their addresses shown above.

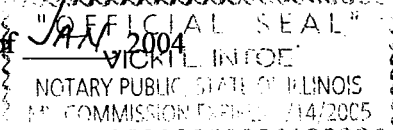
Barbara Stuart 1/27/04  
Barbara Stuart

Ronald Stuart 1/28/04  
Ronald Stuart

**NOTARY SEAL**

SUBSCRIBED AND SWORN TO BEFORE ME this 28 day of JAN 2004

[Signature]  
Notary Public



THIS FILING IS SUBMITTED ON RECYCLED PAPER

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY, ILLINOIS

FILE  
KNOX CO. IL.  
OCT 16 1979

SAM COFFMAN, JR. and DONNA COFFMAN, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 HELEN S. GEHRING, MELVIN McCAW, and )  
 DOANE AGRICULTURAL SERVICE, INC., )  
 a corporation, )  
 )  
 Defendants. )

IN CHANCERY

NO. 79-CH-

EDWARD F. WELCH  
Clerk of the Circuit Court

*Edward F. Welch* De

COMPLAINT FOR INJUNCTION  
AND OTHER RELIEF

Plaintiffs, SAM COFFMAN, JR. and DONNA COFFMAN, by Barash & Stoerzbach, their attorneys, complaining of the defendants, HELEN S. GEHRING, MELVIN McCAW, and DOANE AGRICULTURAL SERVICE, INC., a corporation, allege:

1. Plaintiff, Sam Coffman, Jr., is the owner in fee simple of the following described real estate:

The West One-half of the Southwest Quarter of Section 29, in Township 11 North, Range 3 East of the Fourth Principal Meridian, Knox County, Illinois,

and has been the owner thereof since February 27, 1961.

2. Plaintiffs are husband and wife and occupy said real estate as their residence.

3. Defendant, Helen S. Gehring, has the life use of the following described real estate:

The East One-half of the Southwest Quarter and the West One-half of the Southeast Quarter of Section 29, in Township 11 North, Range 3 East of the Fourth Principal Meridian, Knox County, Illinois.

4. Plaintiffs are informed and believe and so state the fact to be that defendant, Melvin McCaw, is in possession of the real estate described in paragraph 3 as tenant, and that defendant, Doane Agricultural Service, Inc., manages said real estate for and on behalf of defendant, Helen S. Gehring.

5. Plaintiffs' residence, which they occupy as such, is approximately 23 rods west of the west fence line of the real estate described in paragraph 3.

6. Defendant, Melvin McCaw, became, was and is possessed of gas-fired guns which he has placed on various parts of the real estate described in paragraph 3. Commencing on or about August 1, 1979, Melvin McCaw caused said guns to be fired at irregular intervals from 2 to 5 minutes each, generally beginning at dusk, but sometimes at 8:00 or 9:00 o'clock p.m., and sometimes at 2:00 or 3:00 o'clock a.m., and lasting until dawn, practically every night since on or about August 1, 1979, to and including the present time.

7. Defendants, Helen S. Gehring and Doane Agricultural Service, Inc., are aware of defendant McCaw's use of said guns and have acquiesced and approved the use thereof.

8. As a result of the operation of said guns the loud noise therefrom has been carried by prevailing air currents towards, upon and into the residence of the plaintiffs, thereby endangering the health and life and offending the senses of the plaintiffs, and preventing them comfortable and reasonable use and enjoyment of their premises, contrary to the provisions of Sections 1023 and 1024, Chapter 111½, Illinois Revised Statutes 1977, and the Rules and Regulations adopted by the Illinois Pollution Control Board pursuant to Section 1025, Chapter 111½, Illinois Revised Statutes 1977, and said conduct of defendants constitutes a public nuisance in violation of Chapter 100½, paragraph 26(8), Illinois Revised Statutes 1977. The plaintiffs by reason of said loud noises have been unable to occupy the bedroom which they customarily occupied and have been compelled to sleep in the basement of their residence.

9. On or about September 27, 1979, Illinois Environmental Protection Agency notified defendants of their violations by letter mailed to them on or about said date, a copy of which is marked "Exhibit A", attached hereto and made a part hereof, reference thereto being had. Heretofore on or about August 22, 1979, and on numerous other occasions, plaintiffs notified defendants of the above described noise and

requested them to discontinue the operation of said guns or to take such steps as might be necessary to obviate the detrimental effect thereof, but defendants failed and refused and still fail and refuse so to do.

10. By reason of the aforementioned noise, plaintiffs have suffered extreme mental anguish and their physical wellbeing has been adversely affected, all to the damage of the plaintiffs in a sum in excess of \$15,000.00.

11. Unless restrained and enjoined by this court, defendants threaten to and will continue to operate said guns to the great and irreparable damage of plaintiffs, for which they have no adequate remedy at law.

WHEREFORE, plaintiffs PRAY as follows:

A. That a Writ of Injunction may be issued herein forthwith restraining defendants, their officers, agents and employees and all persons acting or claiming by, for, through or under them, from operating said guns and from committing and continuing such nuisance pending the final determination of this case.

B. That upon the hearing of this case a Writ of Injunction may be issued herein permanently abating and enjoining the operation thereof.

C. That plaintiffs may have and recover judgment herein against defendants for a sum in excess of \$15,000.00.

D. For such other and further, or different, relief herein as the court shall deem equitable.

SAM COFFMAN, JR.

DONNA COFFMAN  
Plaintiffs

By

  
Their attorneys

BARASH & STOERZBACH  
Attorneys for plaintiffs  
139 South Cherry Street  
Galesburg, Illinois 61401  
Telephone: 309 343-4193

# Illinois Environmental Protection Agency



Ph. 786-6892

4500 S. 6th St.  
Springfield, Ill. 62701

CERTIFIED #157315

September 27, 1979

Mrs. Helen S. Gehring  
207 South Market Street  
Knoxville, Illinois 61448

RE: DNPC COMPLAINT #79-121

Dear Mrs. Gehring:

It is my understanding that you own farmland located to the east of land owned by Mr. Sam Coffman and that this land is currently being leased by a Mr. Melvin McCaw. As the property owner, you are responsible for any violations of Illinois Noise Regulations.

This office received a noise complaint from Mr. Burrel Barash, an attorney representing Mr. Coffman, regarding Mr. McCaw firing propane powered guns from dusk to dawn. According to the information in the complaint Mr. McCaw was firing these guns to keep coyotes away from his new-born pigs.

A letter was sent to Mr. McCaw advising him that discharging these gas powered guns is probably in violation of the Illinois Noise Regulations. Mr. McCaw telephoned me promptly after receiving my letter. I arranged to meet with Mr. McCaw to inspect the gas powered guns and to obtain data with a sound level meter to ascertain whether or not a violation exists.

I met with Mr. McCaw on the morning of September 25, 1979. He was cooperative and demonstrated both of his propane guns; a "Thunderbird Scare-away" and a "ZON". The sound levels thirty (30) feet to the rear of the "Thunderbird..." were 105 and 106 dB(A) for two measured explosions. Mr. McCaw fired his twelve (12) gauge shotgun for comparison and it registered 100 dB(A). The other gas powered gun (ZON) was mounted in a small wagon and registered 105 dB(A) thirty (30) feet to the side of it. The "ZON" registered 77 dB(A) at Mr. McCaw's residence.

**FILED**  
KNOX CO. IL.  
CCT 16 1979

EDWARD F. WELCH

Page 2

DNPC COMP. #79-121  
Gehring/GTZ

I asked Mr. McCaw to continue operating the noise generating guns while I obtained sound level readings at the Coffman residence as our regulations are written in terms of the amount of noise received at the complainant's property. Mr. McCaw complied and I obtained the following readings in Mr. Coffman's front yard: 53, 56, 57, 56, 57, 57, 60, 58, and 59 dB(A). The allowable limits under "Rule 206: Impulsive Sound" (see enclosed copy of Regulations, p.8) are; 56 dB(A) during the day (7 a.m. to 10 p.m.) and 46 dB(A) during the night (10 p.m. to 7 a.m.). Those readings in violation of the daytime limits are underlined. All of the readings exceed the nighttime limits.

Mr. McCaw stated that, unlike many hog farmers in the area, he can not afford to confine his pigs to protect them from coyote predation and that the use of the gas fired guns are reducing his pig losses.

While the Agency can understand Mr. McCaw's problem, we cannot allow him to violate State Regulations. Mr. McCaw will have to find another solution to his coyote problem.

According to Mr Coffman, hogs have been raised on your property for twenty years without the need for firing gas guns to protect the pigs. Since the hunting and trapping season on coyotes has been extended to year around and pig confinement is an alternative, I feel that Mr. McCaw does not have a good case for using the gas fired guns all night long every night.

It is the position of the Agency that the use of the gas fired guns on your property must cease unless the sound levels can be reduced to 46 dB(A) or lower, at the complainant's property (Mr. Coffman), at night. Failure to comply will leave the Agency no choice other than to turn this matter over to the Attorney General's Office for a hearing before the Illinois Pollution Control Board. Violations carry penalties of up to \$10,000.00 and up to \$1,000.00 for each day the violation continues (see TITLE XII: PENALTIES, SECTION 42, a., p.14 of the enclosed Environmental Protection Act).

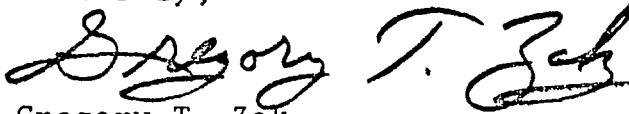


Page 3

DNPC COMP. #79-121  
Gehring/GTZ

Please respond within 15 days of the date on this letter.

Sincerely,



Gregory T. Zak  
Central/Southern Region Manager  
Noise Field Operations Section  
Division of Land/Noise Pollution Control

GTZ:bss

CC: Mr. Jim Reid  
Mr. Sam Coffman  
✓ Mr. Burrel Barash  
Mr. Melvin McCaw  
Manager, Doane Agricultural Services, Inc.  
Complaint File #79-121

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY, ILLINOIS

SAM COFFMAN, JR. and DONNA COFFMAN, )  
 )  
 Plaintiffs )  
 )  
 vs. )  
 )  
 HELEN S. GEHRING, MELVIN McCAW, and )  
 DOANE AGRICULTURAL SERVICE, INC., )  
 a corporation, )  
 )  
 Defendants )

IN CHANCERY

NO. 79-CH-48

MOTION FOR PRELIMINARY INJUNCTION

Now come SAM COFFMAN, JR. and DONNA COFFMAN, plaintiffs in the above entitled case, by Barash & Stoerzbach, their attorneys, and MOVE this court to enter a preliminary injunction restraining and enjoining the defendants, HELEN S. GEHRING, MELVIN McCAW and DOANE AGRICULTURAL SERVICE, INC., their officers, agents and employees and all persons acting or claiming by, for, through or under them, from operating certain gas-fired guns located on the following described real estate:

The East One-half of the Southwest Quarter and the West One-half of the Southeast Quarter of Section 29, in Township 11 North, Range 3 East of the Fourth Principal Meridian, Knox County, Illinois,

until the further order of this court. In support of this motion a copy of the verified Complaint is attached hereto and made a part hereof.

*Barash & Stoerzbach*  
Attorneys for plaintiffs

BARASH & STOERZBACH  
Attorneys for plaintiffs  
139 South Cherry Street  
Galesburg, Illinois 61401  
Telephone: 309 343-4193

FILED  
KNOX CO. IL.  
OCT 16 1979

EDWARD F. WELCH  
Clerk of the Circuit Court  
*Edward F. Welch* Deputy

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY, ILLINOIS

SAM COFFMAN, JR. and DONNA COFFMAN, )

Plaintiffs, )

vs. )

HELEN S. GEHRING, MELVIN McCAW, and )

DOANE AGRICULTURAL SERVICE, INC., )

a corporation, )

Defendants. )

IN CHANCERY

NO. 79-CH-48

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AND OTHER RELIEF

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1. Plaintiff, Sam Coffman, Jr., is the owner in fee simple of the following described real estate:

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and has been the owner thereof since February 27, 1961.

2. Plaintiffs are husband and wife and occupy said real estate as their residence.

3. Defendant, Helen S. Gehring, has the life use of the following described real estate:

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4. Plaintiffs are informed and believe and so state the fact to be that defendant, Melvin McCaw, is in possession of the real estate described in paragraph 3 as tenant, and that defendant, Doane Agricultural Service, Inc., manages said real estate for and on behalf of defendant, Helen S. Gehring.

5. Plaintiffs' residence, which they occupy as such, is approximately 23 rods west of the west fence line of the real estate described in paragraph 3.

6. Defendant, Melvin McCaw, became, was and is possessed of gas-fired guns which he has placed on various parts of the real estate described in paragraph 3. Commencing on or about August 1, 1979, Melvin McCaw caused said guns to be fired at irregular intervals from 2 to 5 minutes each, generally beginning at dusk, but sometimes at 8:00 or 9:00 o'clock p.m., and sometimes at 2:00 or 3:00 o'clock a.m., and lasting until dawn, practically every night since on or about August 1, 1979, to and including the present time.

7. Defendants, Helen S. Gehring and Doane Agricultural Service, Inc., are aware of defendant McCaw's use of said guns and have acquiesced and approved the use thereof.

8. As a result of the operation of said guns the loud noise therefrom has been carried by prevailing air currents towards, upon and into the residence of the plaintiffs, thereby endangering the health and life and offending the senses of the plaintiffs, and preventing them comfortable and reasonable use and enjoyment of their premises, contrary to the provisions of Sections 1023 and 1024, Chapter 111½, Illinois Revised Statutes 1977, and the Rules and Regulations adopted by the Illinois Pollution Control Board pursuant to Section 1025, Chapter 111½, Illinois Revised Statutes 1977, and said conduct of defendants constitutes a public nuisance in violation of Chapter 100½, paragraph 26(8), Illinois Revised Statutes 1977. The plaintiffs by reason of said loud noises have been unable to occupy the bedroom which they customarily occupied and have been compelled to sleep in the basement of their residence.

9. On or about September 27, 1979, Illinois Environmental Protection Agency notified defendants of their violations by letter mailed to them on or about said date, a copy of which is marked "Exhibit A", attached hereto and made a part hereof, reference thereto being had. Heretofore on or about August 22, 1979, and on numerous other occasions, plaintiffs notified defendants of the above described noise and

requested them to discontinue the operation of said guns or to take such steps as might be necessary to obviate the detrimental effect thereof, but defendants failed and refused and still fail and refuse so to do.

10. By reason of the aforementioned noise, plaintiffs have suffered extreme mental anguish and their physical wellbeing has been adversely affected, all to the damage of the plaintiffs in a sum in excess of \$15,000.00.

11. Unless restrained and enjoined by this court, defendants threaten to and will continue to operate said guns to the great and irreparable damage of plaintiffs, for which they have no adequate remedy at law.

WHEREFORE, plaintiffs PRAY as follows:

A. That a Writ of Injunction may be issued herein forthwith restraining defendants, their officers, agents and employees and all persons acting or claiming by, for, through or under them, from operating said guns and from committing and continuing such nuisance pending the final determination of this case.

B. That upon the hearing of this case a Writ of Injunction may be issued herein permanently abating and enjoining the operation thereof.

C. That plaintiffs may have and recover judgment herein against defendants for a sum in excess of \$15,000.00.

D. For such other and further, or different, relief herein as the court shall deem equitable.

SAM COFFMAN, JR.

DONNA COFFMAN

Plaintiffs

By

Barash & Stoerzbach  
Their attorneys

BARASH & STOERZBACH  
Attorneys for plaintiffs  
139 South Cherry Street  
Galesburg, Illinois 61401  
Telephone: 309 343-4193

STATE OF ILLINOIS    )  
                                  ) SS.  
COUNTY OF KNOX     )

SAM COFFMAN, JR., and DONNA COFFMAN, being duly sworn, say that they are the plaintiffs in the above entitled Complaint; that they have read the said Complaint and know the contents thereof; and that the same are true to their own knowledge, except as to the matters therein stated on information and belief, and as to those matters they believe them to be true.

Sam Coffman Jr  
Donna Coffman

Signed and sworn to before me  
this 16th day of October, 1979.

Earl M. Seiler  
Notary Public

REQUEST FOR SUMMONS

The Clerk will issue summons to the Sheriff of Knox County for service upon the defendants, as follows:

Helen S. Gehring  
207 South Market Street  
Knoxville, Illinois

Doane Agricultural Services, Inc.  
Bondi Building  
Galesburg, Illinois

Melvin McCaw  
Rural Route 2  
Gilson, Illinois

Barash + Pterzbach  
Attorneys for plaintiffs

**FILED**  
KNOX CO. IL.  
OCT 16 1979

EDWARD F. WELCH  
Clerk of the Circuit Court

*Ed F. Welch*

# Illinois Environmental Protection Agency



Ph. 786-6892

4500 S. 6th St.  
Springfield, Ill. 627

CERTIFIED #157315

September 27, 1979

Mrs. Helen S. Gehring  
207 South Market Street  
Knoxville, Illinois 61448

RE: DNPC COMPLAINT #79-121

Dear Mrs. Gehring:

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This office received a noise complaint from Mr. Burrel Barash, an attorney representing Mr. Coffman, regarding Mr. McCaw firing propane powered guns from dusk to dawn. According to the information in the complaint Mr McCaw was firing these guns to keep coyotes away from his new-born pigs.

A letter was sent to Mr. McCaw advising him that discharging these gas powered guns is probably in violation of the Illinois Noise Regulations. Mr. McCaw telephoned me promptly after receiving my letter. I arranged to meet with Mr. McCaw to inspect the gas powered guns and to obtain data with a sound level meter to ascertain whether or not a violation exists.

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**FILED**  
KNOX CO. IL.  
OCT 16 1979

EXHIBIT A

EDWARD F. WELCH  
Clerk of the Circuit Court

*Shirley D. Carpenter* Deputy

DNPC COMP. #79-121  
Gehring/GTZ

I asked Mr. McCaw to continue operating the noise generating guns while I obtained sound level readings at the Coffman residence as our regulations are written in terms of the amount of noise received at the complainant's property. Mr. McCaw complied and I obtained the following readings in Mr. Coffman's front yard: 53, 56, 57, 56, 57, 57, 60, 58, and 59 dB(A). The allowable limits under "Rule 206: Impulsive Sound" (see enclosed copy of Regulations, p.8) are; 56 dB(A) during the day (7 a.m. to 10 p.m.) and 46 dB(A) during the night (10 p.m. to 7 a.m.). Those readings in violation of the daytime limits are underlined. All of the readings exceed the nighttime limits.

Mr. McCaw stated that, unlike many hog farmers in the area, he can not afford to confine his pigs to protect them from coyote predation and that the use of the gas fired guns are reducing his pig losses.

While the Agency can understand Mr. McCaw's problem, we cannot allow him to violate State Regulations. Mr. McCaw will have to find another solution to his coyote problem.

According to Mr Coffman, hogs have been raised on your property for twenty years without the need for firing gas guns to protect the pigs. Since the hunting and trapping season on coyotes has been extended to year around and pig confinement is an alternative, I feel that Mr. McCaw does not have a good case for using the gas fired guns all night long every night.

It is the position of the Agency that the use of the gas fired guns on your property must cease unless the sound levels can be reduced to 46 dB(A) or lower, at the complainant's property (Mr. Coffman), at night. Failure to comply will leave the Agency no choice other than to turn this matter over to the Attorney General's Office for a hearing before the Illinois Pollution Control Board. Violations carry penalties of up to \$10,000.00 and up to \$1,000.00 for each day the violation continues (see TITLE XII: PENALTIES, SECTION 42,a., p.14 of the enclosed Environmental Protection Act).



IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY, ILLINOIS

SAM COFFMAN, JR. and DONNA COFFMAN, )

Plaintiffs )

vs. )

HELEN S. GEHRING, MELVIN McCAW, )  
and DOANE AGRICULTURAL SERVICE, )  
INC., a corporation, )

Defendants )

IN CHANCERY

NO. 79-CH-48

DECREE FOR PERMANENT INJUNCTION

This case coming on to be heard upon stipulation of the plaintiffs by Barash, Stoerzbach & Henson, their attorneys, and the defendants, Helen S. Gehring and Melvin McCaw, by McLaughlin, Hattery, Simpson & Sullivan, their attorneys, and pursuant to said stipulation, the court FINDS:

1. This court has jurisdiction of the subject matter of this suit and over all the parties hereto.

2. Defendant, Melvin McCaw, became, was and is possessed of gas-fired guns which he has placed on various parts of the real estate described in paragraph 3 of the Complaint herein. Commencing on or about August 1, 1979, Melvin McCaw caused said guns to be fired at irregular intervals from 2 to 5 minutes each, generally beginning at dusk, but sometimes at 8:00 or 9:00 o'clock p.m., and sometimes at 2:00 or 3:00 o'clock a.m., and lasting until dawn, practically every night since on or about August 1, 1979.

3. Defendant, Helen S. Gehring, is aware of defendant McCaw's use of said guns and has acquiesced and approved the use thereof.

4. Doane Agricultural Service, Inc. is no longer managing said real estate described in paragraph 3 of the Complaint herein and should be dismissed.

5. As a result of the operation of said guns, the loud noise therefrom has been carried by prevailing air currents towards, upon and into the residence of the plaintiffs, thereby endangering the health and life and offending the senses of the plaintiffs and preventing them from comfortable and reasonable use and enjoyment of their premises, and constitutes a public nuisance in violation of Chap. 100-1/2, par. 26(8), Ill. Rev. Stat., 1979. Plaintiffs by reason of said loud noises have been unable to occupy the bedroom which they customarily occupied and have been compelled to sleep in the basement of their residence, and have on occasion been compelled to leave their home for periods of time to seek relief from the noise.

6. A permanent injunction should be issued, subject, however, to the right of defendants, in cooperation with the Illinois Environmental Protection Agency, to operate said guns between the hours of 12:00 o'clock Noon and 2:00 o'clock p.m. on an experimental basis in order to determine whether or not they could be fired with a noise factor which will not interfere with the comfortable and reasonable use and enjoyment by plaintiffs of their premises.

IT IS, THEREFORE, ORDERED, ADJUDGED and DECREED, as follows:

1. Defendant, Doane Agricultural Services, Inc., a corporation, is hereby dismissed as a party defendant.

2. Defendants, Helen S. Gehring and Melvin McCaw, their agents and employees and all persons acting or claiming by, for, through or under them, or in any manner in privity with them, are permanently enjoined and restrained from operating said guns at any time; subject, however, to the operation thereof, in cooperation with the Illinois Environmental Protection Agency, between the hours of 12:00 o'clock Noon and 2:00 o'clock p.m. on an experimental basis in order to determine whether or not they can be fired with a noise factor which will not interfere with the comfortable and reasonable use by plaintiffs of their premises.

3. If the experiment described in paragraph 2 hereof is performed, the parties shall be permitted to present the results of said experiment to this court and the court hereby reserves jurisdiction for such purpose.

Dated: February 8, 1982.

ENTER:  
*Harold P. Roberts*  
\_\_\_\_\_  
JUDGE

**FILED**  
KNOX CO. IL.  
FEB - 8 1982

EDWARD F. WELCH  
Clerk of the Circuit Court  
*Mary D. Carpenter* Deputy

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY

PEOPLE OF THE STATE OF ILLINOIS     )  
  )  
                                  Plaintiff,     )  
  )  
  )     IN CHANCERY  
  )  
  )     No. 79-CH-48  
  )  
HELEN S. GEHRING, MELVIN McCAW,     )  
and DOANE AGRICULTURAL SERVICE,     )  
INC., a corporation,                     )  
  )  
  )  
  )     Defendants.     )

COMPLAINT FOR INJUNCTION

NOW COME the People of the State of Illinois by William J. Scott, Attorney General of the State of Illinois, and complaining of Helen S. Gehring, Melvin McCaw and Doane Agricultural Service, Inc. allege:

1. This action is brought pursuant to the terms and provisions of Section 42 of the Environmental Protection Act, (hereinafter referred to as the "Act"), [Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1042] authorizing the Attorney General to bring civil actions to restrain violations of the Act and to recover penalties for violations of the Act or any regulations adopted by the Illinois Pollution Control Board (hereinafter referred to as the "Board").

2. This action is being brought at the request of the Illinois Environmental Protection Agency (hereinafter referred to as the "Agency").

3. Defendant, Helen S. Gehring, has the life use of the following described real estate:

The East One-half of the Southwest Quarter and the West One-half of the Southeast Quarter of Section 29, in Township 11 North, Range 3 East of the Fourth Principal Meridian, Knox County, Illinois. (Hereinafter, the "Defendants' property").

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Clerk of the Circuit Court

*Shirley D. ...* Deputy

4. Plaintiff is informed and believes and so states the fact to be that Defendant, Melvin McCaw, is in possession of the Defendants' property as tenant, and that Defendant, Doane Agricultural Service, Inc., manages the Defendants' property for and on behalf of Defendant, Helen S. Gehring.

5. Defendant, Melvin McCaw, became, was and is possessed of gas-fired guns which he has placed on various parts of Defendants' property (hereinafter, said "gas-fired guns"). Commencing on or about August 1, 1979, Defendant, Melvin McCaw, caused said gas-fired guns to be fired at irregular intervals from 2 to 5 minutes each, generally beginning at dusk, but sometimes at 8:00 or 9:00 o'clock p.m., and sometimes at 2:00 or 3:00 o'clock a.m., and lasting until dawn, practically every night from on or about August 1, 1979, to the entry of a preliminary injunction in this case pursuant to the Complaint and Motion of Sam Coffman, Jr. and Donna Coffman on or about October 29, 1979.

6. Defendants, Helen S. Gehring and Doane Agricultural Service, Inc., are and were aware of Defendant McCaw's use of said gas-fired guns and have acquiesced and approved the use thereof.

7. Noise is caused and emitted beyond the boundaries of the Defendants' property by said gas-fired guns when they are fired, which noise is received on the property of Sam and Donna Coffman, husband and wife, whose property is described as:

The West One-half of the Southwest Quarter of Section 29, in Township 11 North, Range 3 East of the Fourth Principal Meridian, Knox County, Illinois. (Hereinafter the "Coffmans' property").

8. Sam and Donna Coffman have occupied at all times relevant to this Complaint, and continue to occupy, a portion of the Coffmans' property as their residence.

9. Section 24 of the Act provides:

"No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business activity, so as to violate any regulation or standard adopted by the Board under this Act."

Ill. Rev. Stat. 1977, ch. 111 1/2, par. 1024.

10. Pursuant to Sections 5(b) and 25 of the Act, the Board adopted Rule 206 of Chapter 8: Noise Regulations (hereinafter referred to as "Noise Regulations"), which became effective on July 31, 1973, which provides:

"Rule 206: IMPULSIVE SOUND

No person shall cause or allow the emission of impulsive sound from any property-line-noise-source located on any Class A, B or C Land to any receiving Class A, B or C land which exceeds the allowable dB(A) sound level specified on Table 5, when measured at any point within such receiving Class A, B or C land, provided, however, that no measurement of sound levels shall be made less than 25 feet from the property-line-noise-source.

TABLE 5

Classification of Land on which Property-Line- Noise-Source is located	Allowable dB(A) Sounds Levels of Impulsive Sound Emitted to Designated Classes of Receiving Land			
	Class C Land	Class B Land	Class A Land	
			Daytime	Nighttime
Class A Land	57	50	50	45
Class B Land	57	57	50	45
<u>Class C Land</u>	65	61	<u>56</u>	<u>46</u>

[Emphasis added]

11. That portion of the Coffmans' property which is and has been occupied by the Coffmans as their residence is "Class A land", as that term is defined by Noise Regulation 201(a) for purposes of Noise Regulation 206.

12. The portion of Defendants' property on which said gas-fired guns are located is "Class C land", as that term is defined by Noise Regulation 201(c) for purposes of Noise Regulation 206.

WHEREFORE, Plaintiff prays as follows:

A. That a Writ of Injunction may be issued herein forthwith restraining Defendants, their officers, agents and employees and all persons acting or claiming by, for, through or under them, from operating said guns and from committing and continuing such violations of the Noise Regulations and the Act pending the final determination of this case;

B. That, upon the hearing of this case, a Writ of Injunction may be issued herein permanently abating and enjoining the operation thereof in violation of the Noise Regulations and the Act;

C. That this Court, after hearing herein, enter an order against the Defendants, that they pay a penalty of up to Ten Thousand Dollars (\$10,000) for the violations alleged, plus an additional penalty of up to One Thousand Dollars (\$1,000) for each day the violations have continued;

D. That this Court tax or assess all costs of this proceeding against the Defendants; and

E. That this Court issue and enter such additional final order, or make such additional final determination as it shall deem appropriate under the circumstances.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS

WILLIAM J. SCOTT  
ATTORNEY GENERAL OF ILLINOIS

BY: 

ANN L. CARR

Assistant Attorney General  
Environmental Control Division  
Southern Region

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

DATED: January 9, 1980

Plaintiff,	)	
	)	IN CHANCERY
-vs-	)	
	)	No. 79-CH-48
HELEN S. GEHRING, MELVIN McCAW,	)	
and DOANE AGRICULTURAL SERVICE,	)	
INC., a corporation,	)	
	)	
Defendants.	)	

PETITION FOR LEAVE TO INTERVENE

Pursuant to Section 26.1 of the Civil Practice Act, Ill. Rev. Stat. 1977, ch. 110, par. 26.1, the People of the State of Illinois, by William J. Scott, Attorney General of the State of Illinois, petition for leave to intervene as a matter of right and, alternatively petition for leave to intervene in the discretion of the Court. In support whereof they state as follows:

1. The Complaint filed in this case on October 16, 1979 charges the Defendants with violations of the Environmental Protection Act, Ill. Rev. Stat. 1977, ch. 111 1/2, pars. 1000, et seq., and with violations of the nuisance statute, Ill. Rev. Stat. 1977, ch. 100 1/2, par. 26(8).

2. After a hearing at which an employee of the Illinois Environmental Protection Agency testified, a Preliminary Injunction was entered on October 29, 1979 which found that the Defendants had created a public nuisance by the operation of certain gas-fired guns in violation of Chapter 100 1/2, par. 26(8) and which, therefore, enjoined them from further operating the guns.



in the case, the Coffmans, have no standing to sue for violations of the Environmental Protection Act and that this action should somehow or is somehow being brought by the State before the Illinois Pollution Control Board for violations of the Illinois Environmental Protection Act.

4. The People, by the Attorney General, have specific statutory authority to sue initially in Circuit Court for violations of the Act. Ill. Rev. Stat. 1977, ch. 111 1/2, par. 42(d), People ex rel Scott v. Janson, 57 Ill. 2d 451, 312 N.E.2d 620, rehearing denied (1974).

5. No other action by the State is now pending before any court or administrative body for the violations of the Illinois Environmental Protection Act and its regulations which are charged in the Coffmans' complaint or in the proposed Intervenor's Complaint.

6. This application is timely. It will not unduly delay or prejudice the adjudication of the rights of the original parties.

#### INTERVENTION AS A MATTER OF RIGHT

7. The applicant's interest in this matter is that the Environmental Protection Act be enforced and a penalty collected so as to solve this particular problem and so as to serve as a deterrent to future violations of the Act. The public interest is or may be inadequately represented by the Coffmans in that a question has been raised concerning their standing to enforce the Environmental Protection Act and collect penalties for its violation.

have been used to aid in defining and demonstrating what is a violation of the public nuisance statute. Any findings on the credibility of the State's employees or the validity of the State's tests may be binding on the State.

#### INTERVENTION IN THE DISCRETION OF THE COURT

1. The claims of the Plaintiffs and the Intervenor are very similar, having many questions of law and fact in common, e.g. what regulatory standard applies, whether the Defendants are the cause of the noise in question, the volume and nature of the noise in question, the effect of the noise in question, and the remedy for the violations.

2. To litigate this case twice, once for nuisance and once for related statutory and regulatory violations, would require a large and unnecessary duplication of effort by the Plaintiffs, the Defendants and the judiciary/administrative bodies and may result in conflicting orders. A complete adjudication of the Defendants' liability for its acts charged in the Coffmans' Complaint may not occur unless the People are allowed to intervene. If intervention is allowed, the entire action can be resolved in one lawsuit.

3. Any interpretations by this Court of the Environmental Protection Act or the Board's regulations affects the public interest. Because these questions are within the scope of the Coffmans' Complaint, the State should be allowed to intervene.


Petitioner, therefore, prays that, on the hearing of this petition, it may be granted the following relief:

(b) That petitioner may have such other and further relief as the nature of this case may require.

PEOPLE OF THE STATE OF ILLINOIS,

Petitioner.

BY: WILLIAM J. SCOTT  
ATTORNEY GENERAL OF ILLINOIS

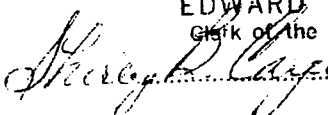
BY:   
Ann L. Carr  
Assistant Attorney General  
Environmental Control Division  
Southern Region

500 South Second Street  
Springfield, Illinois 62706  
217/782-9031

DATED: January 9, 1980

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KNOX CO IL.  
JAN - 9 1980

EDWARD F. WELCH  
Clerk of the Circuit Court

 Deputy

V E R I F I C A T I O N

I, ANN L. CARR, being first duly sworn upon  
my oath, do state:

1. That I am the Assistant Attorney General  
assigned to prepare the Environmental Protection Agency's  
case.

2. That I have prepared and signed the foregoing  
Petition and that its contents are true and correct.

FURTHER AFFIANT SAYETH NOT.



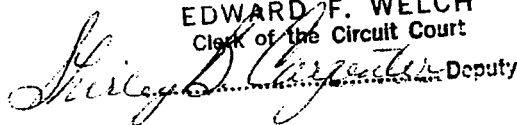
ANN L. CARR  
Assistant Attorney General

Subscribed and sworn to before  
me this 9th day of January, 1980.

  
Emilee R. Sapetti  
Notary Public

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KNOX CO. IL.  
JAN - 9 1980

EDWARD F. WELCH  
Clerk of the Circuit Court

  
Deputy

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY, ILLINOIS

SAM COFFMAN, JR. and DONNA COFFMAN, )

Plaintiffs )

vs. )

HELEN S. GEHRING, MELVIN McCAW, and )  
DOANE AGRICULTURAL SERVICE, INC., )  
a corporation, )

Defendants )

IN CHANCERY

NO. 79-CH-48

ORDER

This case coming on to be heard upon motions to dismiss by Helen S. Gehring, Melvin McCaw and Doane Agricultural Service, Inc., and the oral motion of plaintiffs to withdraw paragraph 10 of the Complaint and paragraph C of the prayer for relief; and the court having heard argument of counsel and being fully advised in the premises;

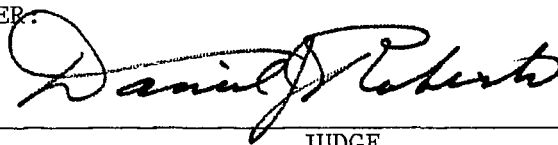
IT IS ORDERED that said motions to dismiss be, and the same are, hereby denied.

IT IS FURTHER ORDERED that defendants plead to said Complaint within 14 days from the date hereof.

IT IS FURTHER ORDERED that plaintiffs' motion to withdraw paragraph 10 of the Complaint and paragraph C of the prayer for relief be, and the same is, hereby allowed, and said paragraph 10 of the Complaint and paragraph C of the prayer for relief are hereby dismissed.

Dated: January 11, 1980.

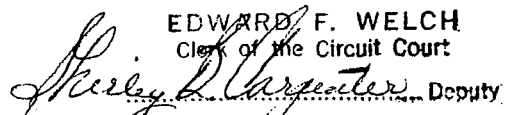
ENTER.



JUDGE

FILED  
KNOX CO. IL.  
JAN 11 1980

EDWARD F. WELCH  
Clerk of the Circuit Court



Deputy

STATE OF ILLINOIS  
IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT  
KNOX COUNTY

PEOPLE OF THE STATE OF ILLINOIS )  
)  
Plaintiff, )  
)  
-vs- ) IN CHANCERY  
)  
) No. 79-CH-48  
HELEN S. GEHRING, MELVIN McCAW, )  
)  
and DOANE AGRICULTURAL SERVICE, )  
)  
INC., a corporation, )  
)  
)  
Defendants. )

O R D E R

This cause coming on to be heard on petition of the People of the State of Illinois, for leave to intervene as a Plaintiff in said cause, and it appearing to the Court that due and timely notice of the hearing on said petition has been given, and the court being fully advised in the premises:

IT IS ORDERED THAT the People of the State of Illinois be and hereby are granted leave to intervene in said cause as a Plaintiff therein; and that said intervenor be and is hereby granted leave to file its Complaint instanter.

*Counsel for Defendants to answer otherwise plead within 14 days.*

ENTER: David J. Roberts  
JUDGE

DATED: Jan 11, 1980

FILED  
KNOX CO. IL.  
JAN 11 1980

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 STEPHEN G. BRILL, )

4 )

5 Complainant, )

6 )

7 vs ) No. PCB 00-219

8 )

9 HENRY LATORIA, individually and )

10 d/b/a TL TRUCKING FOODLINER. )

11 )

12 Respondent. ) VOLUME I

13

14

15 The following is a transcript of the  
16 above-entitled cause before HEARING OFFICER BRADLEY  
17 P. HALLORAN and stenographically taken before  
18 TERRY A. STRONER, CSR, a notary public within and  
19 for the County of Cook and State of Illinois, at  
20 Suite 11-512, 100 West Randolph Street, Chicago,  
21 Illinois, on the 26th day of September, A.D., 2001,  
22 commencing at 9:00 o'clock a.m.

23

24

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

2 ILLINOIS POLLUTION CONTROL BOARD,  
3 100 West Randolph Street  
4 Suite 11-500  
Chicago, Illinois 60601  
5 (312) 814-8917  
BY: MR. BRADLEY P. HALLORAN, HEARING OFFICER

6 KINTZINGER LAW FIRM,  
7 100 West 12th Street  
P.O. Box 703  
8 Dubuque, Iowa 52004  
(563) 588-0547  
9 BY: MS. PATRICIA M. REISEN-OTTAVI

10 Appeared on behalf of the Respondent.

11  
12 Mr. Stephen G. Brill, the complainant, appeared  
13 pro se.

14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24



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

8 Today's date is September 26th in the year  
9 2001. This matter has been noticed pursuant to  
10 Board regulations and has been publically noticed in  
11 the local newspaper in the county that it is  
12 effective here in Cook County, conducted in  
13 accordance with Sections 103.202 and 103.203 of the  
14 Board's regulations. It's a citizen enforcement  
15 matter alleging violations of 9A and 24 of the Act  
16 and regulations.

17 I want to note for the record that this  
18 matter is continued on record. It was noticed up  
19 originally for September 11th at 9:30. Due, one, to  
20 the unavailability of rooms, we had to continue it  
21 today.

22 Secondly, it was a tragic day, September  
23 11th, the building was evacuated at 9:30 due to the  
24 terrorist's activity so we could not have had the

2 MS. REISEN:, I have no doubt Mr. Zak is an  
3 expert in general terms. We need to qualify him as  
4 an expert in this particular case in order for his  
5 expert opinion to be allowed and therefore I would  
6 like to voir dire the witness.

7 HEARING OFFICER HALLORAN: You may do so.

8 MS. REISEN: You had indicated Mr. Zak that you  
9 have helped promulgate some of the Illinois  
10 Pollution Control Board writings pertaining to  
11 sound, correct?

12 MR. ZAK: That's correct.

13 MS. REISEN: And specifically, is there  
14 protocol to be followed in sound readings?

15 MR. ZAK: On some sound readings yes, there is.

16 MS. REISEN: And specifically what sort of  
17 sound readings require protocol?

18 MR. ZAK: Protocol is required in -- for  
19 sections 901.102(a), 901.102(b), 901.104, 901.106.

20 MS. REISEN: And that's a requirement that  
21 there be sound readings in those?

22 MR. ZAK: That's correct.

23 MS. REISEN: Are you aware that Mr. Brill's  
24 petition raises violations of those very code

1 sections with the exception of 106, that his  
2 petition raises violations of 102(a) 102(b) and 104?

3 MR. ZAK: Yes, I'm aware of that.

4 MS. REISEN: So by your own -- well, by the  
5 protocol that you help promulgate, that requires  
6 sound readings be taken, correct?

7 MR. ZAK: Are you -- I need you to clarify the  
8 question. Are you referring to in order to prove a  
9 violation of those specific sections?

10 MS. REISEN: Correct.

11 MR. ZAK: Yes. You would have to follow the  
12 absolute correct protocol.

13 MS. REISEN: And part of the protocol requires  
14 a differentiation between ambient and extraneous  
15 sound from what you're trying to test, correct?

16 MR. ZAK: Yes.

17 MS. REISEN: Okay. Because you have to know  
18 that what you're claiming is making the noise is  
19 actually the source?

20 MR. ZAK: That's correct.

21 MS. REISEN: Okay. There are decibel reading  
22 differential levels in order to determine whether or  
23 not that can be excluded, correct?

24 MR. ZAK: That's correct.

1 MS. REISEN: Okay. And what's that decibel  
2 differentiation, what's the minimum threshold?

3 MR. ZAK: Three and ten.

4 MS. REISEN: Okay. And does the protocol  
5 established indicate the type or quality of sound  
6 testing information being used?

7 MR. ZAK: Could you rephrase that?

8 MS. REISEN: Sure. Does the protocol or the  
9 rules that you help promulgate, do those indicate at  
10 least the minimum standard of the type of equipment  
11 used in testing?

12 MR. ZAK: Yes.

13 MS. REISEN: And what are the minimum standards  
14 required?

15 MR. ZAK: The minimum standards require is  
16 quite simply ANSI type one.

17 MS. REISEN: Repeat that.

18 MR. ZAK: A-N-S-I, all capitals, type one.

19 MS. REISEN: And if the reading is from  
20 anything other than that, it does not meet the  
21 Board's own recommendations of required protocol?

22 MR. ZAK: No, that's not correct.

23 MS. REISEN: Okay. What is ANSI type one, a  
24 certain make and model?

1           MR. ZAK: ANSI type one is a very detailed set  
2 of specifications defining what is a precision  
3 microphone, a precision preamplifier and a precision  
4 instrument.

5           MS. REISEN: And you want those precision tools  
6 to get the best read possible?

7           MR. ZAK: You want the -- it's not -- you can  
8 do better than type one. The Board specifies type  
9 one to meet the level of precision required by the  
10 Board. That is not the most precise type there is.

11          MS. REISEN: That's the minimum you allow?

12          MR. ZAK: That's the minimum.

13          MS. REISEN: On the cases that you testified  
14 before the Board, did you conduct sound testing?

15          MR. ZAK: No.

16          MS. REISEN: And how was that about that you  
17 testified as to actual sounds or did you?

18          MR. ZAK: Are you referring to this case or  
19 other cases?

20          MS. REISEN: Strike that. That is confusing.  
21 I apologize.

22                     In this particular case, did you take any  
23 sound readings?

24          MR. ZAK: No, I did not.

1 MS. REISEN: Did you have access to those --  
2 that equipment in you had desired to take the  
3 reading or if Mr. Brill had asked you to take the  
4 reading?

5 MR. ZAK: Yes, I did.

6 MS. REISEN: And did Mr. Brill ask you to take  
7 the reading?

8 MR. ZAK: Yes, he did.

9 MS. REISEN: And you did not take the reading?

10 MR. ZAK: That's correct.

11 MS. REISEN: So you have no objective data to  
12 present to the Court from a sound read, correct?

13 MR. ZAK: No, I do have specifically under  
14 900.102.

15 MS. REISEN: You indicated under 901.102, which  
16 is what Mr. Brill's petition alleges, that you need  
17 the sound readings to testify?

18 MR. ZAK: I believe they also allege 901.102.  
19 I'm sorry, did I say 900.102 or 901.102? Would you  
20 read that back, please? I want to make sure I said  
21 the correct numbers.

22 THE REPORTER: You said 900.

23 MR. ZAK: That's correct. It is 900.102.

24 Thank you.

1 MS. REISEN: At any time, did you conduct  
2 readings that allowed you to differentiate the  
3 ambient and extraneous noise?

4 MR. ZAK: No, I did not.

5 MS. REISEN: Do you have decibel readings that  
6 you can provide to this Board?

7 MR. ZAK: No, I will not.

8 MS. REISEN: Did you make an investigation as  
9 to other industry in the area?

10 MR. ZAK: Yes, I did, a very cursory one.

11 MS. REISEN: You did not take any sound reads  
12 of any of the other industry in the area, did you?

13 MR. ZAK: No.

14 MS. REISEN: So we cannot differentiate their  
15 controls out by anything that you put before this  
16 Board?

17 MR. ZAK: I would say that's incorrect.

18 MS. REISEN: Let me put it to you real simply,  
19 do you have anything other than your opinion to  
20 offer today, anything objective?

21 MR. ZAK: What do you mean by objective?

22 MS. REISEN: Reads, decibels, differentiation  
23 between different levels, something that was  
24 obtained by a statistical measure that we can put on

1 paper.

2 MR. ZAK: Again, I'm commenting on 900.102.

3 I am not going to comment on -- unless you ask  
4 questions -- as far as the 901 section of the  
5 regulations.

6 MS. REISEN: Do you want to repeat that back in  
7 something I can understand?

8 MR. ZAK: Yes. In other words, 900.102 is  
9 nuisance and my testimony will be revolving around  
10 that particular section of the regulations not under  
11 the 901 section, which will be 901.102 (a), (b), 104  
12 and 106 under 901. I will just be commenting on  
13 900.102.

14 MS. REISEN: My understanding is Mr. Brill has  
15 said before this Board today that his interest is in  
16 the dust and in the sound and those fall under  
17 901.102(a), 901.102(b) and 901.104, correct?

18 MR. ZAK: No.

19 MS. REISEN: So you're saying that you believe  
20 he also claimed nuisance?

21 MR. ZAK: There have been numerous Board, and  
22 I'm referring to Pollution Control Board, numerous  
23 Board decisions regarding measurements taken both



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1 relative to 900.102.

2 MS. REISEN: How much time did you spend at  
3 Mr. Brill's residence?

4 MR. ZAK: Approximately two hours.

5 MS. REISEN: And what did you do during that  
6 two hours?

7 MR. ZAK: Discussed the case to some extent  
8 with Mr. Brill, asked Mr. Brill how the noise was  
9 impacting him and his family, proceeded outside to  
10 look over the area, the park area, the neighbors --  
11 the position of the neighbors' homes, noting  
12 potential sound corridors in the area, reflection of  
13 sound in the area, looked through the fence at the  
14 trucking facility, took laser distance measurements  
15 from the Brill residence to the property line of the  
16 facility and from the property line of the facility  
17 back to the trucking bay and also laser measurement  
18 as to the width of the facility.

19 MS. REISEN: And would you agree that whenever  
20 there is sound -- whenever there are sound  
21 measurements that that is a better form of  
22 measurement than eyeballing it as Mr. Brill likes to

16 Exhibit No. 14, that's where I have being left off.

17 MR. BRILL: We ended there?

18 HEARING OFFICER HALLORAN: Yes, sir. That's  
19 where you ended.

20 BY MR. BRILL:

21 Q. I'd like to show this instrument to you,  
22 Mr. Zak, and see if you can identify what it is and  
23 what it's used for?

24 A. Yes. It's a Radio Shack sound level meter

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1 and they designate it as catalog number 33-2050. It  
2 has an analog display on the meter.

3 Q. Could you please describe its function?

4 A. The function of the instrument is to  
5 measure sound in a general manner as opposed to the  
6 more precise measurement of a type one meter. The  
7 different typically being about one decibel  
8 difference between this type of meter and the  
9 precision meter.

10 Q. A small amount?

11 A. A small amount.

12 Q. Based on your knowledge of such  
13 instruments, are they reasonably reliable for a  
14 measurement of sound intensity?

15           A. They are reasonably accurate for -- I would  
16 like to correct the question, I would say for sound  
17 level measurement. Sound intensity is an area of  
18 acoustics that the Board does not normally deal with  
19 and I would kind of like to clarify that. We're  
20 talking about sound levels and sound pressure  
21 levels. The Radio Shack meter is one that I  
22 typically recommend for the average noise  
23 complainant who calls me on the phone and wants to  
24 have an idea as to whether or not the noise that he

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1 is being bothered by is of sufficient magnitude to  
2 exceed or possibly exceed the Board's numerical  
3 regulations. Again, the rationale there is that  
4 this meter costs anywhere between 30 and \$60. The  
5 instrumentation that is typically used to meet ANSI  
6 precision costs usually in the area of three to  
7 \$5,000.

8           Q. For a calibrated difference of one decibel?

9           A. That's correct.

10          Q. Have you ever tested such an instrument for  
11 reliability?

12          A. Yes, I have. I have actually used them  
13 myself for the last 20 years.

14 Q. And what is your conclusion about its  
15 reliability?

16 A. They typically don't drift and by drifting  
17 I mean when they're calibrated, they basically hold  
18 their calibration. The accuracy is normally within  
19 one decibel or less of a precision meter. Because  
20 they are so inexpensive, if I have one in the field  
21 and I drop it or it gets somehow destroyed in the  
22 field, the loss is much, much less than it is with a  
23 precision instrument.

24 Q. You keep alluding to these precision

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1 instruments and yet this one is only one decibel  
2 different from the precision instrument.

3 Wouldn't this almost qualify as a  
4 precision instrument?

5 A. No, it wouldn't, and I can explain that  
6 to you, but to give you a fairly comprehensive  
7 explanation is about a two-and-a-half-hour  
8 explanation. For brevity, we may want to skip and  
9 suffice it to say that if one reads the ANSI  
10 standards, one can see the difference between the  
11 two instruments.

12 Q. From your experience with these

13 instruments, what's the likelihood that the  
14 calibration would change over time?

15 A. Again, very little.

16 Q. Mr. Zak, were you here when the complainant  
17 described how he took measurements with this sound  
18 level meter?

19 A. Yes.

20 Q. Based on the knowledge you have of such  
21 instruments, also assuming this is a reliable  
22 instrument and assuming the testimony of the  
23 complainant is true and correct, do you have an  
24 opinion based on a reasonable degree of scientific

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1 certainty whether or not the complainant's records  
2 on Exhibit No. 16 accurately reflect the noise  
3 values?

4 MS. REISEN: I'm going to object and I have a  
5 question if I may ask the witness.

6 MR. BRILL: Now?

7 MS. REISEN: It goes correctly to what you're  
8 reading off that piece of paper in front of you.

9 MR. BRILL: That's for cross-examination.

10 HEARING OFFICER HALLORAN: Let's go off the  
11 record for a minute.

12 (Whereupon, a discussion  
13 was had off the record.)

14 HEARING OFFICER HALLORAN: Before we got off  
15 the record Mr. Brill alluded to Exhibit 16. We went  
16 off the record. He's tried to locate it. He cannot  
17 locate it. It's my understanding he wants Mr. Zak  
18 to form an opinion based upon Exhibit 16, which no  
19 one has seen that I know of. Ms. Reisen, have you  
20 seen Exhibit 16?

21 MS. REISEN: No, I've not.

22 HEARING OFFICER HALLORAN: Mr. Brill, not that  
23 it makes any difference, but what exactly is Exhibit  
24 16 on your --

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1 MR. BRILL: I believe it's excerpts from my log  
2 that I transcribed to another paper that I marked as  
3 Exhibit 16 and that was a list of all the sound  
4 readings that I had in -- that I took from the log  
5 itself. Is it on the last page on that one,  
6 Mr, Halloran?

7 HEARING OFFICER HALLORAN: The log you're  
8 referring to is Exhibit 1, which has not been  
9 admitted into evidence. I've reserved ruling on  
10 that. Yes. There's three pages of yellow colored

11 --

12 MR. BRILL: That's the one. Is that marked as  
13 an exhibit?

14 HEARING OFFICER HALLORAN: It's marked as  
15 Exhibit 1.

16 MR. BRILL: Well, that should be Exhibit 16.  
17 It's part of number one, but because it's a separate  
18 entity, it probably should be marked as Exhibit 16.

19 MS. REISEN: Your Honor, I have an objection to  
20 a greater issue at this point.

21 HEARING OFFICER HALLORAN: Go ahead.

22 MS. REISEN: It is apparent that Mr. Brill is  
23 reading questions that are not of his own words and  
24 my question is if those questions were supplied by

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1 Mr. Zak or where Mr. Brill got those questions.  
2 Mr. Brill proceeds pro se, both to his detriment and  
3 to his benefit. His benefit being that he's not had  
4 to incur any legal expenses. His detriment being  
5 that he needs to pose his own questions and he needs  
6 to find a way to present his evidence in a manner  
7 similar to what anybody else would have to do.

8 HEARING OFFICER HALLORAN: Has anyone assisted  
9 you, Mr. Brill, in those questions?

10 MR. BRILL: My questions were taken from  
11 transcripts of former hearings. Mr. Zak did not  
12 advise me as to what questions to ask him. I just  
13 was able to transcribe them off of a case of a -- in  
14 the case of Overland Trucking, they had a number of  
15 questions in there and I took questions that I  
16 thought were pertinent to this case.

17 HEARING OFFICER HALLORAN: Ms. Reisen, and your  
18 objection was?

19 MS. REISEN: That he needs to present his own  
20 evidence, his own questioning and he had previously  
21 --

22 MR. BRILL: But all knowledge is secondhand and  
23 if I take knowledge from a dictionary or a former  
24 transcript, it's all secondhand knowledge and if I

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1 take questions that I figure that are apropos to  
2 this case, I can't see anything wrong with it.

3 HEARING OFFICER HALLORAN: I'm going to deny  
4 Ms. Reisen's objection about Mr. Brill's method of  
5 gathering the questions he's asking Mr. Zak.

6 At this point, I'd like to tender back to  
7 Mr. Brill -- it looks like a portion of Exhibit 1  
8 which has not been yet admitted into evidence and



9 it's entitled measured noise levels from logs.

10 Mr. Brill -- have you seen this?

11 MS. REISEN: No.

12 MR. BRILL: No. That's a compilation of all of  
13 my readings.

14 HEARING OFFICER HALLORAN: We're off the record  
15 for a moment.

16 (Whereupon, a discussion  
17 was had off the record.)

18 HEARING OFFICER HALLORAN: We're back on the  
19 record. Mr. Brill? I'm sorry. Ms. Reisen was  
20 looking over Exhibit 16. Mr. Brill, there's your  
21 exhibit back.

22 MS. REISEN: Mr. Brill, there's your exhibit  
23 back.

24 MR. BRILL: I'm sorry. Should this be remarked

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1 16? It's part of the log. It's excerpts word for  
2 word from the logs, but it is a separate entity in  
3 the fact that it is a compilation of only the parts  
4 of the log that refer to my readings with the sound  
5 level meter.

6 HEARING OFFICER HALLORAN: A copy would have  
7 been greatly helpful. In fact, copies would have

8 been greatly helpful for all this stuff to make the  
9 hearing go a little smoother and easier.

10 At this point, leave it marked as Exhibit  
11 1. We'll have to make a copy of it and mark it  
12 Exhibit 16, but would you like to tell the Board  
13 exactly what Exhibit 16 is?

14 MR. BRILL: Well, it's still one.

15 HEARING OFFICER HALLORAN: Sir, whatever,  
16 Exhibit 1 or 16, it seems to be one and the same.

17 MR. BRILL: This is a compilation of all of my  
18 sound reading -- sound readings that I took and I  
19 took them all from my logs and there's nothing else  
20 in here except sound readings and when and where and  
21 under what conditions they were taken.

22 I thought it would be a simplified matter  
23 because of the fact that my log -- I would have to  
24 look around -- as long as we're going to be working

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1 about readings, I thought it would be better to put  
2 them all on a couple pages so that they would be  
3 easier to address rather than me going through the  
4 whole log and picking off each one. All the entries  
5 are dated and they run in sequence from when I took  
6 those readings and I just thought it would be a

7 simplified method of -- that would pertain to noise  
8 readings and noise readings alone.

9 HEARING OFFICER HALLORAN: Well, the problem is  
10 if I don't accept Exhibit No. 1 into the evidence,  
11 that's going to go out the door as well. So that's  
12 my concern. That Exhibit No. 16 you have in front  
13 of you, soon to be 16, that was authored by you?

14 MR. BRILL: Yes.

15 HEARING OFFICER HALLORAN: You took the  
16 readings.

17 MR. BRILL: Yes, I did, sir.

18 HEARING OFFICER HALLORAN: Ms. Reisen, any  
19 comments?

20 MS. REISEN: Obviously if the Court is going to  
21 accept it, we'd like our objection to be noted on  
22 the record that these are readings taken by  
23 Mr. Brill, not by Mr. Zak and that actually the log  
24 indicates the time and what he has a read for, but

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1 doesn't necessarily indicate other conditions.

2 HEARING OFFICER HALLORAN: I'm going to admit  
3 it, not so much to prove there was a fact of a  
4 violation, but just to bolster Mr. Brill's claim  
5 of his alleged violations. Exhibit No. 16 is

6 admitted over the objection. You may proceed,

7 Mr. Brill. Thank you.

8 BY MR. BRILL:

9 Q. We left off with that rather long  
10 convoluted question that I asked you. I don't know  
11 if you remember what it was, but I was going to ask  
12 you if you had any opinion on that question.

13 A. Somebody has to read the question back to  
14 me.

15 HEARING OFFICER HALLORAN: Mr. Brill, would you  
16 please --

17 BY MR. BRILL:

18 Q. Based on the knowledge you have of such  
19 instruments --

20 HEARING OFFICER HALLORAN: Let's nip this in  
21 the bud right now. Has Mr. Zak -- before you get  
22 done with that long question, has Mr. Zak ever laid  
23 eyes on Exhibit 16? You might want to --

24 MR. BRILL: He has laid eyes on --

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1 HEARING OFFICER HALLORAN: You might want to  
2 ask Mr. Zak that before you ask him if Exhibit 16 is  
3 --

4 BY MR. BRILL:

5 Q. I don't think you've ever seen this because  
6 it's been lifted. You've seen parts of it on my  
7 log, but you haven't seen a compilation of the  
8 readings and the readings alone entered on this --  
9 on these three sheets?

10 A. Not until a few minutes ago.

11 Q. Huh?

12 A. Not until a few minutes ago.

13 Q. Okay. And if I let you look at this, can  
14 you give me an opinion on what you read?

15 HEARING OFFICER HALLORAN: I'm sorry. Let's go  
16 ahead and reread your question. I apologize. And  
17 let's see what that flushes out.

18 BY MR. BRILL:

19 Q. Based on the knowledge you have of such  
20 instruments, also assuming that this is a reliable  
21 instrument and assuming the testimony of the  
22 complainant is true and correct, do you have an  
23 opinion based on a reasonable degree of scientific  
24 certainty whether or not the complainant's records

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1 on Exhibit 16 accurately reflect the noise values  
2 that would have occurred at the time of the  
3 recordings?

4 HEARING OFFICER HALLORAN: I don't think  
5 Mr. Zak has seen Exhibit 16. If you -- if that's  
6 the question you're asking him, I assume that  
7 Mr. Zak has to look over Exhibit 16.

8 BY THE WITNESS:

9 A. Yes.

10 BY MR. BRILL:

11 Q. So your opinion is that -- they could very  
12 well be a true reflection of the readings that I  
13 took?

14 A. If I understood the question, you asked me  
15 if I could give you an opinion on Exhibit 16 and my  
16 answer to that was yes.

17 Q. Okay. What's that opinion, I'm sorry?

18 A. Having calibrated your meter with a  
19 precision calibrator to ensure it's accuracy and  
20 your data here indicates some measurements were  
21 taken indoors and some measurements were taken  
22 outdoors, but the levels in general are typical of  
23 the levels that normally would result in a  
24 significant amount of interference from the noise as

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1 far as sleep is concerned, as far as listening to  
2 television, using your backyard.

3 Q. How about normal conversation?

4 A. And normal conversation would also be  
5 interrupted by levels this high. This is my main  
6 concern, though, is from the levels and all the  
7 testimony today as far as the impulsive nature of  
8 much of the noise that it would make it difficult to  
9 sleep or nap with the impulsive nature of the noise  
10 present at the trucking facility.

11 I would compare this very much to the type  
12 of information that was provided to me when I  
13 testified in Overland versus -- actually, Cohen  
14 versus Overland before the Board and it also is very  
15 similar to -- almost identical to Thomas versus  
16 Carry Companies and Thomas versus Carry Companies  
17 was also a truck washing facility. The difference  
18 being the Thomas complaint was located a little bit  
19 closer than you are, but not any closer -- about the  
20 same type of position as the lady who's first name  
21 was Nancy that testified earlier about her house and  
22 her location.

23 So I would say the data here compares very  
24 much to the data that was taken at Overland and the

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1 testimony compares very much to the testimony at

2 Thomas versus Carry Companies.

3 Q. What do you think the impact of those  
4 readings would be on entertaining guests?

5 A. Again, we're looking at levels that are in  
6 the upper 60s and those type of levels would make  
7 conversation difficult. As far as guests are  
8 concerned if conversation is going on, there would  
9 be a significant impact on being able to carry on a  
10 conversation based on -- based on these types of  
11 levels and to kind of continue along the same line,  
12 the levels on the C-scale are quite high, which  
13 would indicate the noise would be very penetrating  
14 to a residence of normal construction, which has  
15 been described here today.

16 Q. I would like you to look at Exhibit No. 9,  
17 which is our original complaint that was filed with  
18 the Illinois Pollution Control Board and I would  
19 refer you to page four of that document, paragraph  
20 number nine I believe. Is there a ninth paragraph?

21 A. Yes, I have it on page four.

22 Q. Okay. Have you ever or are you familiar  
23 with any situation in which a device of this type  
24 has been used as a sound controlling mechanism or



6 will continue this hearing when the time come when  
7 Mr. Zak step downs to a date two or three weeks down  
8 the road whenever we can agree on a date.

9 MR. BRILL: Okay.

10 HEARING OFFICER HALLORAN: So be it. Thank  
11 you.

12 MS. REISEN: May I take no more than two  
13 minutes to talk to these gentlemen outside?

14 HEARING OFFICER HALLORAN: Sure. We're off the  
15 record.

16 (Whereupon, a discussion  
17 was had off the record.)

18 HEARING OFFICER HALLORAN: We're back on the  
19 record. It's approximately 5:43 and Ms. Reisen is  
20 about to cross Mr. Zak and I remind Mr. Zak that  
21 he's still under oath.

22 MR. ZAK: I understand.

23

24

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

2 by Ms. Reisen

3 Q. Mr. Zak, you had indicated that the Radio  
4 Shack sound meter that you've identified for the

5 record can give readings within the one decibel  
6 range, correct?

7 A. It could be anywhere from exactly right on  
8 to an error of -- the typical error is one decibel.  
9 I've seen it where the error may be two decibels.

10 Q. Wouldn't you agree that if we could reduce  
11 sound in a neighborhood by five decibels even,  
12 that's significant?

13 A. No. Ten decibels is significant. -

14 Q. If ten decibels is what it takes to be  
15 significant, why did the Board adopt the three  
16 decibel difference between extraneous and ambient  
17 noise?

18 A. It's a mathematical problem. In order  
19 to -- and it's a lengthy explanation. When you have  
20 -- I'll give you an example, it will be simpler that  
21 way. If we measure, say, 50 decibels at a certain  
22 frequency and then we measure the ambient at 47  
23 decibels, mathematically the 50 is the ambient plus  
24 the noise source in order to calculate out -- we can

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1 back calculate the actual level of the noise source  
2 in that case and it would turn out to be 40 decibels  
3 and because of the fact that it would be that low,

4 we would not want nor do we count a measurement  
5 where the difference between the ambient and the  
6 noise source is three decibels or less.

7 Q. Okay. You had indicated that that sound  
8 read will give differences in intensity or not give  
9 difference in intensity of sound.

10 A. I don't think you want to use the word  
11 intensity because acoustically that means something  
12 entirely different than what we're talking about  
13 here. Intensity is directional sound power.

14 Q. Let me ask you this: You were here this  
15 morning when Mr. Brill testified as to how he used  
16 that machine, correct?

17 A. Yes.

18 Q. And had you calibrated it before he started  
19 any of the reads that are on his Exhibit 16?

20 A. No, I calibrated it today.

21 Q. And so you can say that as of today it was  
22 calibrated fairly decently, correct?

23 A. That's correct.

24 Q. Can how it's handled such as dropped or

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1 issues like that change the calibration?

2 A. Not normally.

3 Q. What changes the calibration?

4 A. It depends more on the instrument in my  
5 experience. I ran a calibration laboratory for the  
6 state for several years. The more complex the  
7 instrument it seems, the more there is a tendency  
8 for drift. The simpler instruments unless there's a  
9 major change in an electrical component, don't  
10 normally have any significant drift. A Radio Shack  
11 meter is one that -- I have had these around for 20  
12 years and had examined dozens and dozens of these  
13 meters and I've never seen one to have virtually any  
14 drift.

15 Q. You're basing your statements on your  
16 general knowledge of that particular instrument,  
17 correct?

18 A. That's correct.

19 Q. You can state with any degree of certainty  
20 that Mr. Brill's instrument was indeed properly  
21 calibrated when he took the reads?

22 A. Yes, because I checked it today and they  
23 don't drift.

24 Q. They never drift, that's your testimony?

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1 A. That's been my experience for 20 years.

2 Q. But you didn't do any calibration checks at  
3 the time of the reads?

4 A. That's correct.

5 Q. Okay. Mr. Brill testified that he  
6 essentially just turned the knob until he got a  
7 read, do you remember that testimony this morning?

8 A. Yes.

9 Q. So is it your testimony that my  
10 eight-year-old son could walk outside, twist the  
11 knob and get just as good a read as say you can with  
12 the ANSI equipment?

13 A. No. Because I instructed Mr. Brill in  
14 great detail on how to do it.

15 Q. His testimony this morning was, however,  
16 that he read the book and he didn't have much faith  
17 in it himself, do you remember that?

18 A. Yes.

19 Q. He never mentioned at all about your  
20 training him?

21 A. We discussed it at length on the phone and  
22 I went through the whole procedure with him and  
23 basically how to do it.

24 Q. His statement today was he would just twist

1 you've not heard the other side of the case?

2 A. Well, based on my nearly 30 years of  
3 experience taking the Board regulations and the  
4 Board rules, we're all limited as to the amount of  
5 noise we can generate in Illinois. Once you have a  
6 situation where that is being, in my opinion,  
7 exceeded, then it's incumbent upon the noise emitter  
8 to work on solving the problem.

9 Q. I understand that. One of the tables  
10 that's in Mr. Homans reports is the Illinois  
11 Pollution Control Board Property Line Limits and it  
12 specifically has an octave band center frequency and  
13 it list several octave bands and then it gives  
14 decibel reading underneath that. Are you familiar  
15 with that table?

16 A. Yes. I helped to generate the data that  
17 created that.

18 Q. First of all, what's the difference -- why  
19 do you have different decibel levels at different  
20 octave frequencies?

21 A. A couple of reasons. Most states in the  
22 federal government tend to use -- A-weighted  
23 measurements, which is one single measurement and  
24 that's it. Illinois and the city of Chicago and

1 most of Europe, Japan, decided to go with octave  
2 band and even third octave band. The reason we do  
3 that is if we have a low frequency noise source,  
4 that will be clearly indicated with the measurement  
5 and we can also assign a decibel level that we call  
6 the allowable limit where that limit is exceeded --  
7 there's been a lot of research done that indicates  
8 when you exceed a certain level, you're going to  
9 create a certain amount of annoyance in the general  
10 population and that's basically how the Illinois  
11 regulations came to be based on lot of research.

12 Q. So depending on what frequency you're  
13 testing at will determine whether or not the  
14 decibels are too high?

15 A. That's right.

16 Q. Okay. And that sort of read usually comes  
17 from the better equipment, isn't that correct?

18 A. Not necessarily. If we take an A-weighted  
19 measurement that exceeds the sum of the octave bands  
20 and that A-weighted measurement is higher than it  
21 should be, we know proof positive that one of the  
22 octave bands is exceeding the regulation.

23 If we do the -- if we take an A-weighted

24 measurement and it's below what would normally be

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1 allowed for the octave band measurements, we can  
2 still have a situation where one of the octave bands  
3 is way above the regulatory limit, but because of  
4 the nature of A-weighting, it's not shown.

5 I can give you an example of that. If you  
6 take 31 and a half Hertz, that particular frequency  
7 when it's measured on A-weighting, 39 decibels is  
8 subtracted from the measurement. If that's -- with  
9 that situation in hand, we can have -- for example,  
10 in your client's case, their daytime A-weighted  
11 limit would be approximately 61 decibels. They  
12 could be 60 and producing 99 decibels at 31 and a  
13 half Hertz, which would greatly exceed the allowable  
14 limit. So the A-weighted type measurement is -- it  
15 indicates a violation, but it doesn't indicate  
16 compliance.

17 Q. And all of that that you just explained,  
18 you did not provide any of that testing at all  
19 yourself? You didn't take any reads of any octaves?

20 A. That's correct.

21 Q. You have a recommendation that some sort of  
22 a sound barrier will be sufficient or at least



23 alleviate some sound if the sound is in fact coming  
24 from TL Trucking, correct?

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1 A. Correct.

2 Q. That recommendation is premised upon the  
3 assumption that the sound is coming just from TL  
4 Trucking, isn't it?

5 A. Based on the testimony that we heard today.

6 Q. And again, that testimony today is just  
7 Mr. Brills witnesses?

8 A. Yes.

9 Q. Okay. Now, Mr. Homans was not able to  
10 separate out the sounds of TL Trucking statistically  
11 from the sounds of other noise in the area, correct?

12 A. That's correct.

13 Q. And so if Mr. Homans' report is correct,  
14 you can put up a barrier in front of TL Trucking and  
15 Mr. Brill is still going to have problems with  
16 noise, isn't he?

17 A. It isn't a question of Mr. Homans data  
18 being correct or incorrect. The big question really  
19 is were the sound emissions from TL Trucking typical  
20 when Mr. Homan was there?

21 Q. And if we assume that they were typical

22 when Mr. Homans was there -- first of all, you read  
23 that he did his testing from, I believe, five to  
24 seven or five to eight a.m., did you note that?

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1 A. That's correct.

2 Q. Okay. And several of the witnesses today  
3 testified that the worst time was around that time  
4 frame, correct, the early morning hours?

5 A. Correct.

6 Q. In fact, Mr. Homans states that's why he  
7 went during that time frame, he wanted to hit the  
8 time these people were complaining about?

9 A. That's correct.

10 Q. Okay. And so when he was out there on that  
11 date -- strike that.

12 Additionally, several of the witnesses  
13 indicated this is a daily event, you heard that  
14 testimony too, didn't you?

15 A. Yes.

16 Q. Other than conjecture, we have no  
17 information that the day Mr. Homans was there was  
18 somehow an atypical day that no one seemed to  
19 testify about today, do we?

20 A. I do have my experience and my experience

21 has told me in 30 years that in more cases than not,  
22 an industrial noise source will do everything they  
23 can when the consultant is there to minimize the  
24 noise.

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1 Q. Now, if I were to tell you my office  
2 arranged it and did not give prior notice to TL  
3 Trucking, would that change your opinion?

4 A. Only if Mr. Homans had taken it over  
5 several days so we had a reasonable sample as  
6 opposed to a one event type of situation there.

7 Q. So you're feeling that an isolated read is  
8 not a sufficient read?

9 A. In cases like this when the consultant is  
10 working for the company, a lot of diligence and care  
11 must be taken to be sure that the reading is  
12 actually an accurate reading. The way I've always  
13 done this myself is to have the residents there and  
14 ask the residents as I take the measurements, is  
15 this typical. If they say -- and it's been my  
16 experience that when they say it's typical, in  
17 probably 98 percent of the cases, the measurements  
18 were over.

19 Q. You stated on your direct examination that

20 Mr. Homans has an excellent reputation generally,  
21 correct?

22 A. Absolutely, impeccable.

23 Q. Okay. I'm curious as to why you're holding  
24 such a high standard to his report, but you don't

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1 hold a similar standard to the readings Mr. Brill is  
2 submitting to this Board?

3 A. I don't understand the question.

4 Q. You were indicating all sorts of problems  
5 with Mr. Homans report such as timing, such as is it  
6 typical, et cetera, but you're not raising the same  
7 typicality questions or motive or bias questions as  
8 to Mr. Brill and I'm concerned about your  
9 impartiality.

10 A. Well, being a private consultant myself and  
11 working for clients, the consultant is somewhat  
12 hampered in that he takes the measurements when the  
13 client tells him to take to measurements, either  
14 through the client or through the client's attorney  
15 and in a situation like that, the consultant can be  
16 acting in and typically is acting in good faith, but  
17 there can be an attempt on the part of the company  
18 to minimize the noise levels on the particular day

19 the consultant is there.

20 Q. And that presumes prior knowledge of when  
21 the test would be run?

22 A. Or if the consultant is spotted. I've been  
23 spotted many times when I worked for the state and  
24 as soon as I was spotted, the levels would typically

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1 drop dramatically.

2 Q. Mr. Homans notes in his report that there  
3 were three liquid trucks and one dry bulk truck that  
4 were being washed during the measurement period,  
5 which would indicate that activity was going on at  
6 TL Trucking, would you not agree?

7 A. Yes.

8 Q. And you have no reason to doubt that he put  
9 that in there without a basis for it?

10 A. Right.

11 Q. Mr. Homans states as can be seen good,  
12 parenthesis, nonextraneous, end of parenthesis, and  
13 ambient data are within three decibels of one  
14 another, therefore, it is not possible to discern  
15 noise emissions due to TL Trucking.

16 Are you calling that specific conclusion  
17 into question based upon the data that Mr. Homans

18 attached to his report?  
19 A. If I can explain that because I'm a little  
20 bit fuzzy on your question there. The ambient  
21 Mr. Homans measured and extraneous noise Mr. Homans  
22 measured would come into -- would be a problem if  
23 the levels from TL Trucking were extremely low.  
24 Again, we get back to the question of did he really

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1 measure typical levels. His measurement in all  
2 honesty -- you could take his measurements and end  
3 up with reading low numbers, which would then kick  
4 all his data into the ambient problem and into the  
5 extraneous noise problem.

6 Q. You met with Mr. Brill in his home for  
7 about an hour and a half?

8 A. Two hours.

9 Q. Two hours. And you were able to converse  
10 with him?

11 A. Yes.

12 Q. Okay. The Board typically in these sorts  
13 of cases needs to look not only at unreasonable  
14 interference with the lives of the individuals, but  
15 also looks to the benefit of the service being  
16 provided, isn't that correct?

17 A. Yes.

18 Q. Are you familiar with what TL Trucking does  
19 as a service?

20 A. Somewhat from the testimony today, I  
21 believe I am. Basically from your  
22 cross-examination.

23 Q. Okay. But other than what limited bit  
24 you've heard today, you've not heard either of my

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1 two clients here with me today talk about what they  
2 do, why they do it and how they're required to do  
3 it, is that correct?

4 A. If I could answer that with my experience  
5 through the case against Carry Companies, it  
6 basically had the same type of operation there and  
7 we spent several days in hearings in this case and  
8 again, I got quite an education on their food trucks  
9 and their tankers and their being washed out again  
10 to meet the various federal requirements for food.  
11 So from that case there, I am familiar with the  
12 basics of what's going on.

13 Q. Okay. And again, you've not heard the  
14 testimony of Mr. Stumbris or Mr. Esposito, who both  
15 have been excused for the day, regarding the actual

16 makeup of industry or the neighborhood in Franklin  
17 Park, correct?

18 A. That's correct.

19 Q. And your own investigation as to the area  
20 was cursory to use your own term?

21 A. Yes, it was.

22 Q. Those are factors the Board should  
23 consider, correct?

24 A. I'm not going to tell the Board what they

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1 should or should not consider.

2 Q. Fair enough.

3 I'm curious as to how you rectify in your  
4 own mind since you're basing much of your testimony  
5 on the witness testimony that you did here today,  
6 how we could have witnesses within close proximity  
7 -- indeed, we had a mother and a daughter in the  
8 same home who one said no, I don't hear air horns and  
9 the other one says, but I do. How do you rectify  
10 the difference in what these residents are hearing?

11 A. That's not the least bit unusual. Having  
12 heard hundreds of people testify over the years, it  
13 gets down to the individual personality of the  
14 person that is hearing the noise -- we could even



15 say sound as opposed to noise because we have  
16 situations were some people will say well, it's a  
17 sound and it sounds good to me, others will say it  
18 really irritates me.

19 I can give you an example of a case we had  
20 against Rock Theater, some of the younger folks  
21 heard the rock theater and thought it was great and  
22 lived in the house and the parents just couldn't  
23 stand it and so the younger folks perceived it as  
24 sound, there's no problem, and yet the parents in

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1 the house thought it was just the worse sound  
2 possible -- the worst noise possible.

3 Q. Understood. And if you had an incredibly  
4 sensitive complainant, then his level might be  
5 slightly different than that of other people?

6 A. Absolutely. That's again why in a hearing  
7 like this if you only have one witness, in my own  
8 mind there's always a large doubt. Once we begin to  
9 have several witnesses that are being bothered, then  
10 it indicates that there is a problem there.

11 MS. REISEN: I have nothing else. Thank you.

12 MR. ZAK: Thank you.

13 HEARING OFFICER HALLORAN: Mr. Brill, any