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ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

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

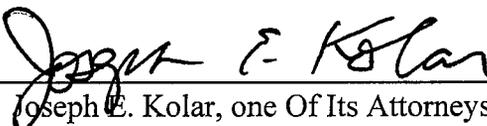
LTD COMMODITIES' MOTION TO SUPPLEMENT ITS SECTION 101.520 MOTION FOR RECONSIDERATION AND MODIFICATION AND STAY

Respondent, LTD Commodities, Inc., by its attorneys, Baizer & Kolar, P.C., moves the Illinois Pollution Control Board ("PCB") to allow it to supplement its section 101.520 motion for reconsideration and modification. In support of this motion, LTD states as follows:

1. Cycle Logistics operates the yard tractor at LTD Commodities.
2. On September 9, 2003, LTD's attorney, Joseph E. Kolar, received an email from Jack Voigt of LTD regarding Cycle's refusal to disconnect the backup beeper on the yard tractor. (Ex. A). Mr. Kolar immediately requested that Mr. Voigt have Cycle put its position in a letter. Attached as exhibit B is the letter prepared by Cycle.
3. In its motion for reconsideration filed on August 28, 2003, LTD argued that it was unsafe to disconnect the backup beeper during day time hours. (See LTD's motion, pars. 14-19). Thus, permitting LTD to supplement its motion with the attached letter from Cycle will not prejudice Complainants or cause any delay of these proceedings.

WHEREFORE, LTD respectfully requests that the PCB grant this motion and accept the attached September 10, 2003, letter from Cycle as an additional exhibit in support of LTD's motion for reconsideration and modification and stay.

LTD Commodities

By 
Joseph E. Kolar, one Of Its Attorneys

ATTORNEYS FOR RESPONDENT
BAIZER & KOLAR, P.C.
513 Central Avenue, 5th Floor
Highland Park, IL 60035
847-433-6677
Fax: 847-433-6735

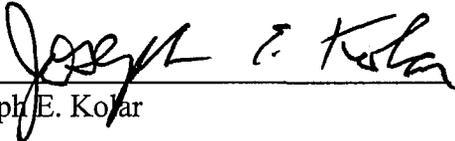
CERTIFICATE OF SERVICE

The undersigned states that on September 12, 2003, he served by Federal Express for delivery on Monday, September 15, 2003, the original and nine copies of the foregoing LTD COMMODITIES' MOTION TO SUPPLEMENT ITS SECTION 101.520 MOTION FOR RECONSIDERATION AND MODIFICATION AND STAY 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 Federal Express for delivery on September 15, 2003 to the attorney listed below:

Steven P. Kaiser
35 E. Wacker Drive, Suite 1750
Chicago, IL 60601



Joseph E. Kolar

Joe Kolar

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

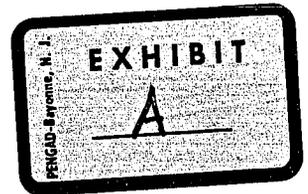
Hello Harri,

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?



301 North Third Avenue
Des Plaines, Illinois 60016
Phone: (847) 759-8900
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 if 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,

A handwritten signature in black ink, appearing to read "Timothy E. Mudd".

Timothy E. Mudd
President

