

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

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

5))
6 Complainants,)

7))
8 vs) No. PCB 98-81

9))
10 OVERLAND TRANSPORTATION SYSTEM INC.,)

11 and D.P. CARTAGE, INC.,)
12)

13 Respondents.) VOLUME III

14

15

16 The PROCEEDINGS taken before JOHN BURDS, The

17 Hearing Officer, stenographically recorded by KIM M.

18 HOWELLS, CSR, a notary public within and for the

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

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

21 8032, Chicago, Illinois, on the 14th day of May,

22 A.D., 1998, commencing at 9:30 a.m.

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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,

5 Chicago, Illinois 60601

(312) 814-6062

BY: MR. JOHN BURDS

6 JENNER & BLOCK,

7 One IBM Plaza

8 Chicago, Illinois 60611

(312) 222-9350

BY: MR. BILL S. FORCADE and MR. STEVEN M.

SIROS

9 Appeared on behalf of the Complainants,

11 McBRIDE, BAKER & COLES,

12 500 West Madison Street

13 40th Floor

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BY: MR. MARK J. STEGER

14 Appeared on behalf of the Respondents.

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1 THE HEARING OFFICER: Let the record reflect
 2 that we are back on the record in 98-81 Pollution
 3 Control Board Docket No. 98-81 in Charter Hall
 4 Homeowner's Association vs. Overland Transportation,
 5 Inc., and D.P. Cartage, Inc.

6 After a recess from yesterday in which the
 7 complainants rested their case in chief, we are back
 8 today on the eight floor of the James R. Thompson
 9 Center, State of Illinois Building, here in Chicago,
 10 Illinois, pursuant to the notice that went out.
 11 Today's date is May 14th, 1998. It is approximately
 12 9:30 a.m. in the morning. Pursuant to the notice,
 13 we are ready to proceed.

14 I would like at this time counsel for each
 15 party to identify themselves for the record. Okay?

16 MR. FORCADE: Good morning, Mr. Hearing
 17 Officer. My name is Bill Forcade, and with me is my
 18 associate Steve Siros. We are from Jenner & Block,
 19 and we represent the complainants in this case, the
 20 Charter Hall Homeowner's Association and various of
 21 its members including Jeffery Cohen.

22 THE HEARING OFFICER: Thank you, Mr. Forcade.

23 MR. STEGER: My name is Mark Steger. I'm with
 24 the law firm of McBride, Baker & Coles, and I

1 represent the respondents in this matter.

2 THE HEARING OFFICER: Let the record also

3 reflect that there are parties in the audience.

4 However, those parties are parties to the

5 proceeding. Mr. and Mrs. Cohen are present. Also,

6 I believe, Mr. Steger's witness is present, and

7 in-house counsel for the respondents in this matter

8 is also present. There are no members of the public

9 at large or board members present at this time. All

10 right.

11 Gentlemen, are we ready to proceed,

12 Mr. Steger?

13 MR. STEGER: Yes.

14 THE HEARING OFFICER: My understanding,

15 Mr. Forcade, is you rested your case in chief?

16 MR. FORCADE: Yes.

17 THE HEARING OFFICER: Mr. Steger?

18 MR. STEGER: At this time, we will waive our

19 opening statement and go right to our witness.

20 THE HEARING OFFICER: Thank you.

21 MR. STEGER: At this time, I'd like to call Don

22 Trujillo.

23 THE HEARING OFFICER: Mr. Trujillo, if you'd

24 step right up here and raise your right hand and

1 have the court reporter swear you in please.

2 (Witness sworn.)

3 THE HEARING OFFICER: You may have a seat here,

4 Mr. Trujillo. If you would please state your full

5 name, spell your name for the record.

6 THE WITNESS: Don, D-o-n, Trujillo,

7 T-r-u-j-i-l-l-o.

8 WHEREUPON:

9 DON TRUJILLO ,

10 called as a witness herein, having been first duly

11 sworn, testified, and saith as follows:

12 DIRECT EXAMINATION

13 by Mr. Steger

14 Q. Mr. Trujillo, could you state who you work

15 for and the address of the facility?

16 A. I work for Overland Transportation. The

17 address is 419 West Northwest Highway, Palatine,

18 Illinois.

19 Q. Could you explain the current relationship

20 between D.P. Cartage and Overland Transportation at

21 this time?

22 A. Yes. In the past, I was an employee of

23 D.P. Cartage who subcontracted to Overland

24 Transportation to perform their operational --

1 operations.

2 At this time, Overland Transportation has
3 combined D.P. Cartage and Overland into Overland
4 Transportation.

5 Q. To the best of your knowledge, does D.P.
6 Cartage still exist as a legal entity?

7 A. Yes, they do.

8 Q. To the best of your knowledge, will it be
9 phased out over the next several months?

10 A. That's my understanding, yes.

11 Q. Okay. I'd like to turn your attention to
12 what has been identified as Plaintiffs' Exhibit No.
13 1, and I want to just go through with you some
14 corrections.

15 First of all, you will note on Plaintiffs'
16 Exhibit 1-A the dotted red line along the north side
17 of the facility, is that an accurate representation
18 of the fence?

19 A. It's relatively close. The fence is a
20 little bit farther away and angled more.

21 Q. What is that fence made out of?

22 A. Chain-link fence.

23 Q. Okay. Could you mark where the entrance
24 way, the gateway, is into Overland with your red

1 pen? Mark it with an X.

2 A. (Witness complied.)

3 MR. STEGER: Let the record reflect that he
4 marked on Plaintiffs' Exhibit 1-A a red X
5 approximately a few spaces above the dotted red line
6 signifying that that is the entrance gate.

7 THE HEARING OFFICER: The record will so
8 reflect that it has been reflected as a red X on
9 Complainants' Exhibit 1 for the record.

10 MR. STEGER: Complainants' Exhibit 1. Thank
11 you. I apologize.

12 BY MR. STEGER:

13 Q. Next I will turn your attention to what's
14 been identified by prior witness as a dotted black
15 line. It was testified that another chain-link
16 fence exists there, but the witness was unsure
17 whether it continued all the way to the east side of
18 Overland.

19 Do you know if this fence continues all
20 the way to the end?

21 A. Yes, it does.

22 Q. Okay. Could you mark it black, solid
23 black, from where the dotted line begins all the way
24 to where the fence line ends?

1 A. (Witness complied.)

2 MR. STEGER: Okay. Let the record reflect that

3 Mr. Trujillo has continued what was formerly a

4 dotted black line is now a solid black line from the

5 west side of the facility to the east side

6 indicating the cyclone fence extends all the way.

7 THE HEARING OFFICER: Okay. For the record,

8 Complainants' Exhibit 1 Mr. Trujillo marked a solid

9 black line as Mr. Steger indicated through what had

10 previously been marked as a dotted black line. It

11 looks to be a thinner line from the west end of the

12 Overland Transportation facility through to the east

13 end on what that area designated as the Overland

14 Transportation facility on Complainants' Exhibit 1.

15 BY MR. STEGER:

16 Q. Okay. Could you mark then in brand --

17 there is a space between the southern portion of the

18 terminal and the southern fence. Could you indicate

19 the number of feet between the fence line and the

20 back of the Overland facility?

21 A. Yes. It is 33 feet.

22 MR. STEGER: Let the record reflect that Mr.

23 Trujillo marked 33 in between the back -- the end of

24 the motor freight terminal and the beginning of the

1 fence line.

2 THE HEARING OFFICER: The record will so
3 reflect for Complainants' Exhibit 1.

4 BY MR. STEGER:

5 Q. Moving to the north side of the facility,
6 could you mark again in black the footage between
7 the northern most end point of the terminal and the
8 dotted red fence line? What is the footage in
9 between there?

10 A. Approximately 50 feet.

11 MR. STEGER: Let the record reflect that Mr.
12 Trujillo marked 50 feet -- the number 50 in between
13 the dotted red line and the northern side of the
14 motor freight terminal.

15 THE HEARING OFFICER: The record will so
16 reflect.

17 BY MR. STEGER:

18 Q. Now, turning your attention to the solid
19 red line that runs along the west side of the
20 Overland facility, that has been referred to in
21 prior testimony as a two-to-three foot dirt curb.
22 Is that an accurate representation of what this red
23 line designates?

24 A. No, it is not.

1 Q. Okay. Could you, for the record, describe
2 what this solid red line represents?

3 A. That would represent -- I would refer to
4 it as earth and berm. From ground level to the top
5 of the berm, I would say is between eight and ten
6 feet.

7 Q. Eight and ten feet in height or long?

8 A. In height. It is 22 feet from the fence
9 down to the bottom of the parking lot.

10 Q. Where the parking lot starts on the west
11 side?

12 A. Yes.

13 Q. And does the -- it's been previously
14 testified to that this solid black line running from
15 699 to 627 is an approximate eight-foot high wood
16 fence.

17 Does that eight foot high wood fence then
18 sit on top of that berm?

19 A. Yes.

20 Q. Are there any other notations that you
21 feel you need to accurately reflect the -- well, let
22 me back up. Strike that.

23 I'd like you to mark in blue where your
24 office is located.

1 A. Okay.

2 Q. You can just write in "office."

3 A. Okay. (Witness complied.)

4 Q. And again in blue, what is located to the

5 south of the office?

6 THE HEARING OFFICER: Okay. Before we go

7 there, let's -- for the record, Mr. Trujillo has

8 marked the north end of the facility within the

9 Overland Transportation designated area what appears

10 to be a rectangle and marked the term "office" in

11 blue lettering -- marker.

12 BY MR. STEGER:

13 Q. Okay. Again in blue, could you mark what

14 is directly to the south of the office in the long

15 rectangle shape?

16 A. Yes. This would be our dock.

17 MR. STEGER: Let the record reflect that

18 Mr. Trujillo designated the dock in the lower

19 southern portions of facility, the elongated

20 rectangle.

21 THE HEARING OFFICER: The record will so

22 reflect that he has done so on Complainant's

23 Exhibit 1.

24 BY MR. STEGER:

1 Q. Then, finally, would you mark down the
2 number of bays on each side --

3 A. Yes.

4 Q. -- in blue?

5 A. There's 15 on each side.

6 MR. STEGER: Let the record reflect that Mr.
7 Trujillo marked 15 on each side to designate the
8 number of bays on each side of the motor freight
9 terminal.

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

12 BY MR. STEGER:

13 Q. Okay. Have you been at the Overland
14 facility when it was not operational?

15 A. Yes.

16 Q. Okay. Are there any other sounds that you
17 hear when you're there?

18 A. Yes.

19 Q. Could you describe those?

20 A. Yes. There's quite a bit of air traffic
21 over the facility.

22 Q. And could you -- what is the general
23 direction of the flight pattern?

24 A. The flight pattern starts in the northwest

1 heading toward the southeast.

2 Q. Is there any other noise sources?

3 A. Yes. There's -- you can hear some traffic
4 from Northwest Highway and also from time to time
5 depending on the train schedule, you can hear the
6 Metra train.

7 Q. And where is the Metra train located
8 relative to the facility?

9 A. It's approximately 200 -- two to 300 feet
10 south of the facility.

11 Q. One more mark. Would you mark in red the
12 entrance way that the Overland trucks -- the
13 pathway into the facility in a dotted red line, long
14 lines, to differentiate it from the fence line?

15 A. As coming in?

16 Q. Coming in, yes.

17 THE HEARING OFFICER: From --

18 MR. STEGER: From Northwest Highway.

19 BY THE WITNESS:

20 A. (Witness complied.)

21 BY MR. STEGER:

22 Q. And that -- does that dotted red line
23 reflect the general traffic pattern --

24 A. Yes.

1 Q. -- of the Overland facility?

2 A. Yes.

3 MR. STEGER: Let the record reflect that

4 Mr. Trujillo marked in a solid red line -- I take

5 that back, dashes the general traffic pattern of the

6 Overland Transportation facility.

7 THE HEARING OFFICER: The record will reflect.

8 However, my concern is this, Mr. -- for the record,

9 Mr. Trujillo marked as Mr. Steger has indicated a

10 dashed red line around the facility from the

11 Northwest Highway. He indicated that it went back

12 to the western area of the facility. I'm not sure

13 if that designates that that's the way the traffic

14 always comes in or whether it can come in either way

15 from the east side.

16 MR. STEGER: We'll testify to that a little bit

17 later.

18 THE HEARING OFFICER: Okay. That's fine. As

19 long as we clarify it for the record. Okay. The

20 record will so reflect.

21 (Ms. Hennessey entered the

22 proceedings.)

23 BY MR. STEGER:

24 Q. Okay. Mr. Trujillo, how many employees

1 does Overland have at its facility?

2 A. Forty-one.

3 Q. Could you describe what they do, the
4 number of each?

5 A. Yes. We have 28 drivers. We have eight
6 dock workers, and the remaining five are clerical
7 and administrative persons.

8 Q. And what is the annual payroll of the
9 Overland Transportation facility?

10 A. In 1997, we paid out just over one million
11 dollars in payroll.

12 Q. Revenues generated from that facility?

13 A. Just short of nine million dollars, 8.9
14 million dollars last year.

15 Q. And taxes, be either property or used
16 taxes paid, do you have a figure for that?

17 A. Yes, I do. It's approximately \$102,000
18 for last year.

19 Q. Could you describe for the record the
20 services you provide from that facility?

21 A. Yes. We offer freight service on general
22 commodities giving next-day, one- and two-day
23 service from our service area as a company.

24 Q. And what types of goods would you

1 transport out of that facility?

2 A. Basically the company will handle
3 everything classified under what is referred to as
4 general commodities with the exception of hazardous
5 waste or toxic waste.

6 Q. Could you describe for the record the
7 service area of the Overland Palatine facility?

8 A. Yes. We service as far north of our
9 facility as Libertyville. We go out to the lake
10 including Evanston, Glenview. On the south end, we
11 don't go any farther south than North Avenue. And
12 on the west side of our service area, Elgin is the
13 western boundary.

14 (Respondents' Exhibit No. 1
15 marked for identification,
16 05/14/98.)

17 BY MR. STEGER:

18 Q. I'll show you what I marked as
19 Respondents' Exhibit No. 1.

20 Could you describe what this exhibit is?

21 A. Yes. This is a sales piece that our sale
22 force uses when soliciting to customers.

23 Q. Okay. Could you open it up and describe
24 what is shown in green?

1 A. Okay. What is shown in green is what is
2 our service area as a company. Everywhere there is
3 a star, we have a facility just like we have in
4 Palatine. The areas where there are just dots with
5 cities' names those are cities that are serviced as
6 well, but we don't have facilities in these cities.

7 Q. Okay. Could you describe then -- there's
8 a blue chart in the exhibit.

9 A. Okay. That would be our service matrix.

10 Q. Okay. Could you describe -- going down
11 the left side of the column, I see the letters
12 marked PAL. Does that reference the Palatine
13 facility?

14 A. Yes, it does.

15 Q. Okay. And then going from left to right
16 across the top it begins at ATA and stops at STL.
17 What do those designate?

18 A. Those are the other service centers such
19 as the Palatine facility, the other locations that
20 the company has.

21 Q. Okay. So let's take an example. Let's
22 start with PAL on the far left, and let's go to the
23 second column that starts BGR. Do you see where
24 that is?

1 A. Yes.

2 Q. And we'll go down to where the two
3 intersect, and you'll see the number -- you'll see
4 the number one. What does that indicate?

5 A. That means one-day service.

6 Q. To BGR, what does that designate?

7 A. Bowling Green, Kentucky.

8 Q. Okay. Let's start at the top at CAP.

9 What does that refer to?

10 A. Cape Girardeau, Missouri.

11 Q. And is there a service center located
12 there?

13 A. Yes, there is.

14 Q. Okay. And if we go to the intersection of
15 PAL and CAP, we'll see the number two. What does
16 that mean?

17 A. Two days in service.

18 Q. I'd like to move on to the general
19 description of the shifts at the facility.

20 A. Okay.

21 Q. Let's start with the a.m. shift.

22 A. Okay.

23 Q. When does the a.m. shift begin?

24 A. The supervisor for the a.m. shift arrives

1 at 2:00 a.m.

2 Q. Okay. And what does he do?

3 A. He does computer work basically, generates
4 the delivery receipts that we deliver our freight on
5 and does any other computer work that is necessary
6 at that time.

7 Q. And then do any other workers come in
8 later?

9 A. Yes. At 3 o'clock, the dock workers in
10 come in.

11 Q. Okay. Prior to 2:00 a.m., would trucks --
12 could trucks arrive at this facility?

13 A. Yes.

14 Q. And, if so, from where?

15 A. Just other locations such as Chicago,
16 Indianapolis, Milwaukee.

17 Q. Are they from other service centers --

18 A. Yes.

19 Q. -- from Overland?

20 Could you then generally describe for the
21 record what occurs on the a.m. shift from
22 approximately 3:00 a.m. until it ends?

23 A. Okay. At 3:00 a.m. when the dock workers
24 arrive, the trailers are being unloaded and reloaded

1 on to what we call city units, which are the

2 trailers that they use for delivery.

3 The freight from these trailers is sorted

4 out, segregated by area, such as you wouldn't put

5 freight for Elgin on the same trailer that you would

6 put freight for Evanston on.

7 Q. When these -- when you say the freight is

8 unloaded, will a trailer contain freight destined

9 for various locations?

10 A. Yes.

11 Q. And what do you have to do with that

12 freight then?

13 A. We have to sort it out, segregate it, put

14 it in the proper trailers.

15 Q. And then what happens?

16 A. After all the trailers are loaded, which

17 usually is a four- to five-hour process, that's when

18 the drivers come in, approximately 8 o'clock in the

19 morning. At that time, they'll be given their

20 delivery routes. They'll hook up to their trailers

21 and go out to the area that they're assigned to that

22 day.

23 Q. We had previously entered a stipulation

24 indicating that there are approximately 30 trucks

1 active in the a.m. shift?

2 A. That's correct.

3 Q. When do the majority of those trucks

4 arrive?

5 A. Between 5:00 a.m. and 8:00 a.m.

6 Q. And trucks can arrive before then?

7 A. Yes.

8 Q. And trucks arrive after that time?

9 A. Yes.

10 Q. Let's use an example. Let's take one of

11 your customers.

12 Is Medline a customer of yours?

13 A. Yes, they are.

14 Q. What type of service do you provide for

15 them?

16 A. We offer next-day service on their product

17 to their customers.

18 Q. And what is Medline products?

19 A. Medline Industries is a distributor of

20 medical supplies.

21 Q. Okay. And where are they located?

22 A. Mundelein, Illinois.

23 Q. Okay. And what would you -- go through

24 what you would do for them relative to the a.m.

1 shift.

2 A. Medline gets several products in that they
3 use for -- to make their products such as raw
4 materials to package their products in and also
5 finished goods as well. We take that freight. It
6 might come in from Kansas City or Columbus, Ohio, or
7 Indiana or Ohio or various points. It comes into
8 our facility, at which time we consolidate it onto a
9 trailer and take it up to Medline.

10 Q. Okay. Then what happens on the rest of
11 the shift then in the a.m.?

12 A. As I said, the freight is sorted out,
13 segregated as far as, you know, run area. It's
14 loaded on various trailers. I'd say we load
15 approximately 18 trailers for delivery each day, and
16 then that's when the drivers come in.

17 Q. About what time does the -- what I'll
18 characterize as the delivery shift -- the a.m. shift
19 end?

20 A. Approximately, 10:00 -- 10 o'clock.

21 Q. Okay. And you testified earlier that you
22 provide next-day service --

23 A. Yes.

24 Q. -- to your customers?

1 Could you describe what that is and what
2 you have to do to meet that customer demand?

3 A. What we call next-day service is delivery
4 to the customer, the final customer, before noon.
5 For us to perform that, we have to, obviously, be
6 ready to begin delivery during regular business
7 hours, which I would classify between 7:00 a.m. and
8 5:00 p.m.

9 Q. And you receive freight destined for the
10 before noon delivery in the mornings?

11 A. Yes.

12 Q. Okay. About how -- correct me if I'm
13 wrong. About how long -- it was three to four hours
14 to strip out the trucks and pack them up for
15 delivery; is that correct?

16 A. Yes.

17 Q. Then let's move to the p.m. shift. When
18 does the p.m. shift begin?

19 A. The supervisor for that shift comes in at
20 1 o'clock in the afternoon basically to do some
21 planning and preparing for his shift. We have dock
22 workers then arriving at approximately 2:30 to 3
23 o'clock to begin unloading trailers of freight that
24 we pick up from our customers.

1 Q. So let's use Medline again. You testified
2 earlier that you make deliveries to Medline. Then
3 you would pick up freight from them?

4 A. Yes.

5 Q. And what would you do then?

6 A. If we get a trailer of Medline in, a
7 trailer holds approximately 22 four-by-four skids.
8 Of that trailer, there might be 22 different
9 shipments going to 22 different locations throughout
10 our service area. At that time, we unload that
11 trailer and put it on trailers destined to those
12 other locations.

13 Q. Could you indicate to me the time of the
14 p.m. shift?

15 A. I would say between 3 o'clock and 10
16 o'clock.

17 Q. Have you gone later than 10 o'clock in the
18 past?

19 A. In the past, yes.

20 Q. And usually these trucks are repacked.
21 Where do they go when they leave your facility?

22 A. They go to other locations outside of our
23 service area, which could be Columbus, Ohio, or
24 Bowling Green, Kentucky, or Girardeau, Missouri.

1 Q. And similarly the trucks from these other
2 service centers destined for your customers in your
3 service area would head your way --

4 A. Yes.

5 Q. -- in the outbound shift?

6 A. Yes.

7 Q. And these are the trucks then that arrive
8 in the morning, the next day?

9 A. Correct.

10 Q. Could you just kind of give an example of
11 where these trucks come from that come in the
12 morning?

13 A. Mostly out of Indianapolis and our
14 facility in Chicago, which is Markham, Illinois.

15 Q. And on the p.m. shift, when your trucks
16 leave, where do they generally go?

17 A. They go to Milwaukee, Detroit, Grand
18 Rapids, Fort Wayne, Columbus, Ohio, Cleveland,
19 Cincinnati, Lexington, Kentucky.

20 Q. Are these then service centers located in
21 the midwest?

22 A. Yes.

23 Q. Okay. Moving to another phase -- well,
24 let me back up a minute.

1 In the p.m. shift, about how many trucks

2 are moving around during the p.m. shift?

3 A. I would say 30 to 40.

4 Q. Okay. Are you familiar with the citizen

5 noise complains from the Overland Transportation

6 facility?

7 A. Yes, I am.

8 Q. Okay. Have you been involved in any

9 meetings with the citizen group?

10 A. Yes, I have.

11 Q. Based on those meetings, were you able to

12 identify the sources of noise?

13 A. Yes, I was.

14 Q. Okay. It's been previously testified to

15 that they hear a double bang, bang. Could you

16 describe for the record what you believe the source

17 of that noise is?

18 A. Yes. We have determined that noise to be

19 our forklifts entering trailers. When we back a

20 trailer to the dock, it doesn't sit right against

21 it. So there is what we call a dock plate that

22 connects the trailer to the dock, which is metal.

23 Q. Okay. The dock plate is made out of

24 metal?

1 A. Yes, it is.

2 Q. What does the dock plate do then?

3 A. It basically just puts a platform between
4 the trailer and the dock.

5 Q. And what is the bang, bang we hear?

6 A. We load and unload freight with
7 forklifts. The forklifts weigh approximately 4,500
8 pounds each without any freight or without an
9 operator on it. The first bang would be the front
10 tires going over the dock plate. The second bang
11 would be the rear tires going over the dock plate.

12 Q. And is the dock plate hinged?

13 A. Yes, it is.

14 Q. And what is the -- is the hinge the source
15 of the noise when you hear the tires go over?

16 A. Yes.

17 Q. They've also testified that they hear a
18 bang. Do you have any idea what the single source
19 of the bang would be?

20 A. Yes. When we have empty trailers sitting
21 at the dock, when we move those trailers out into
22 the yard or wherever we might be taking them at that
23 time, when the truck hooks up to the trailer, it has
24 to hit it at a certain amount of force for what we

1 call the fifth wheel to connect to the trailer, and

2 it echoes from --

3 Q. The fifth wheel exist on the cab?

4 A. Yes.

5 Q. Okay. If you'll -- some liberty in

6 characterization. Is the fifth wheel the so-called

7 female part and the male part sits on the actual

8 trailer?

9 A. Yes.

10 Q. Okay. And then what actually occurs?

11 A. When the cab goes underneath the trailer

12 to hook to it, it's got to hit it hard enough to

13 where the fifth wheel and the cab locks into what

14 they call the kingpin on the trailer, so the trailer

15 does not come loose from the cab.

16 Q. There has also been testimony as to a yard

17 horse. Could you describe the yard horse or the

18 yard trailer? What do you refer to it as?

19 A. We call it a spotter.

20 Q. Okay. What is its function?

21 A. Basically, it moves trailers around the

22 yard. It is not street legal. It is to be used in

23 the yard only.

24 Q. Okay. And what was the principal source

1 of noise from the yard trailer?

2 A. The original yard horse or spotter that we
3 had was an older model that was probably 10 to 12
4 years old. We felt it didn't have sufficient
5 installation in the engine compartment to cover some
6 of the sound coming out from the engine as well as
7 the exhaust area.

8 At that time, we spent approximately 12 to
9 \$1,500 to try to insulate the engine compartment and
10 also modify the exhaust system to try to keep the
11 noise down. After doing this, we decided that that
12 was not enough reduction in noise.

13 At that time, we went out and we bought a
14 new spotting horse in which we spent approximately
15 \$44,000 on.

16 Q. Okay. And is that new spotting horse
17 quieter than the other one?

18 A. Much quieter, yes.

19 Q. And you testified that the yard horse will
20 move trailers around. So they will conduct the
21 hitching and unhitching operations you --

22 A. Yes.

23 Q. -- previously testified to?

24 Would it also pull out trailers under

1 load?

2 A. Yes.

3 Q. Is there some difference in noise when you
4 pull an empty trailer versus a full trailer?

5 A. Yes, there is some noise -- difference in
6 noise. Obviously, a loaded trailer weighs much more
7 than an empty trailer would. So obviously the
8 engine on the spotting horse has to work harder to
9 pull that load.

10 Q. Let's go back to these dock plates.

11 A. Okay.

12 Q. About how many sets of dock plates are
13 there?

14 A. Twenty-nine.

15 Q. What are they made out of?

16 A. Metal.

17 Q. Okay. And then there's a hinge in the
18 middle?

19 A. Correct.

20 Q. What is the noise problem associated with
21 the dock plates?

22 A. One of the biggest problem is all
23 trailers -- the first two feet of the trailer is
24 actually metal itself. That's pretty much a DOT

1 regulation.

2 Q. When you say the first -- the two feet

3 that's closest to the dock?

4 A. Yes.

5 Q. Okay.

6 A. Yes. It is made out of metal. Basically,

7 it's just a metal plate that's built right into the

8 floor of the trailer. So when we lay a metal dock

9 plate on top of there, that's -- the bang, bang that

10 they hear is caused from the hinge giving some

11 flexure, but it's pushing the plate against that

12 metal.

13 Q. Does the hinge ever wear out?

14 A. Yes, it does.

15 Q. What's the usual life of the dock plate?

16 A. Usually, two to three years depending on

17 the use of it. We've had some dock plates wear out

18 in less than two years.

19 Q. Are you currently undergoing a dock plate

20 replacement program?

21 A. Yes.

22 Q. Do you know about how much it will cost to

23 replace a single dock plate?

24 A. Yes, I do.

1 Q. Would you state it?

2 A. It's \$3,500 per plate.

3 Q. Per plate. So if -- and these

4 replacements go on --

5 A. It's pretty much consistent. We probably

6 replace one to two a month.

7 Q. Okay. And when you say replace, what

8 actually has to happen?

9 A. Actually to be able to -- for the dock

10 plate to be safe enough to put these forklifts on

11 top, we have to jackhammer the concrete out around

12 the dock itself.

13 Q. And would this jackhammering generally

14 occur during the daylight hours?

15 A. Yes.

16 Q. Continue.

17 A. From there, the concrete is replaced,

18 reinforcement from the dock plate is extended into

19 where the concrete would be, and then fresh concrete

20 is poured in there and finished in.

21 Q. Have you tried any other abatement

22 measures with respect to the dock plates in the

23 past?

24 A. Yes.

1 Q. What type of things have you done?

2 A. Well, we tried to figure out a way to
3 cushion the noise between the dock plate and the
4 trailer. So we tried putting several different
5 types of material between those two items there. We
6 started out with strips of carpet to see if that
7 would help. We then --

8 Q. Did you call in somebody to give you an
9 estimate on the carpeting, or how did you arrive at
10 --

11 A. Basically, we just went out and bought
12 these materials ourselves. We tried several
13 different things. Like I said, we started out with
14 carpeting first.

15 Q. And what happened with the carpeting?

16 A. It pretty much got chewed up. It didn't
17 last very long. I'd say each piece of carpeting was
18 torn to threads within about an hour.

19 After that, we tried different kinds of
20 rubber. We tried gummed rubber, which is the softer
21 type of rubber. We didn't have any success with
22 that because that was getting pretty much chewed up
23 as well, and we ended up with some hard rubber that
24 is used in conveyor belts and things like that that

1 has the fiber in the middle of it. And that was
2 becoming a safety hazard. So we had to discontinue
3 using those.

4 Q. And when you say "safety hazard," what
5 type of safety hazard?

6 A. Well, the pressure that was put down on
7 the rubber would cause the corners of it or the ends
8 of it to curl up. When the forklift was backing out
9 of the trailer, it would catch underneath the
10 forklift and kick the dock plate away from the
11 trailer causing a safety hazard.

12 Q. There has also been some testimony that
13 they hear a loud boom. Do you have any idea of the
14 source of the boom?

15 A. Yes. That would be the connection of
16 trailers on the east side of the dock.

17 Q. What do you mean by that?

18 A. Well, when you have a trailer with the
19 doors open, which obviously you can't put a trailer
20 to the dock unless the doors are open --

21 Q. Okay.

22 A. -- because they are swing doors, so they
23 have to be open before you back it into the dock.
24 When a truck hooks up to that or a cab hooks up to

1 that trailer and it's empty, that trailer actually
2 acts as a megaphone because of the loud boom, and it
3 obviously echoes toward the condominiums.

4 Q. Could you describe how the trailers are
5 loaded?

6 A. Yes. Most of our shipments are on what we
7 call by four-by-four wooden palates. The forklift
8 picks up the palate, takes it into the trailer, sets
9 it down, and then backs out from underneath it.

10 Q. So actually the forks of the forklift go
11 underneath the wood palate?

12 A. Yes.

13 Q. Okay. The complaint is also alleging
14 repairing operations. Could you describe the source
15 of noise from there and some of the efforts you've
16 done to curtail that noise?

17 A. Yes. When we decided to open up our --
18 what we call our shop area so that we can repair our
19 equipment, we took several things into
20 consideration.

21 The first thing we looked at was what
22 noise would be generated from opening such a shop.
23 We decided what those noises would be such as air
24 compressors, air wrenches, things like that. At

1 that time, we then looked at the facility to see
2 what we can do to eliminate as much noise as
3 possible.

4 The main thing we did to eliminate the
5 noise was we installed new overhead doors on the
6 shop area. We felt that the ones that were in place
7 when we took over the facility weren't adequate
8 enough to insulate any sound generated in the shop.

9 Q. Okay. And do you still conduct repair
10 operations there?

11 A. Yes.

12 Q. Who conducts those repair operations, and
13 where are they are located?

14 A. Anything that is done outside is done on
15 the east side of the building such as changing tires
16 on trailers or on the cabs or whatever might take
17 place outside.

18 Q. Could you describe for me what pup
19 trailers are, and how they are connected to each
20 other?

21 A. Yes. A pup trailer is a 28-foot trailer.

22 Q. And that's smaller than what is generally
23 referred to as a semi-trailer?

24 A. Yes. A semi-trailer is usually 48 feet

1 long. And the pup trailers are connected together
 2 to run what we call a set of doubles. There's what
 3 we call a convertor that connects them. You hook it
 4 underneath the first one, and the second trailer is
 5 backed up to the converter and hooked to the first
 6 trailer.

7 Q. And does the yard horse perform that
 8 hooking operation --

9 A. Yes.

10 Q. -- moving the pup trailers?

11 A. Yes.

12 Q. Where is that currently conducted?

13 A. We've instructed all of our employees to
 14 do any connecting of sets on the east side.

15 Q. Did this facility have a PA system?

16 A. It did when we first opened, yes.

17 Q. Do you use the PA system now?

18 A. No. We disconnected that. I think it was
 19 one of the first days we were in operation.

20 Q. And what would that -- how would the PA
 21 system be used, and what do you do now?

22 A. Basically, the PA system that was in place
 23 was a loud speaker on the dock. It was connected
 24 into the phone system, so that you can actually be

1 inside the office and call out onto the dock for

2 somebody.

3 Obviously, that was way too loud for what

4 we needed. So we disconnected the PA system and

5 purchased handheld radios for the dock people in the

6 office.

7 Q. So you currently use two-way radios?

8 A. Yes.

9 Q. What was the cost of that?

10 A. For the six radios we bought, I think we

11 spent approximately \$3,500 on those.

12 Q. Do you conduct driver and dock meetings --

13 A. Yes.

14 Q. -- with your associates?

15 A. Yes.

16 Q. About how often do you meet with the

17 drivers?

18 A. Twice a month.

19 Q. And how often do you meet with the dock

20 workers?

21 A. Weekly.

22 Q. During those meeting, do you discuss the

23 noise situation?

24 A. Yes, we do.

1 Q. What are some of the things you try to
2 discuss at that meetings?

3 A. Well, it's more of an awareness to our
4 employees that we do have neighbors and we do not
5 need to generate any unnecessary noise, such as each
6 one of the trucks, which is a federal law, is
7 equipment with warning. They're prohibited from
8 using this horn while in our yard.

9 We've also instructed all drivers in the
10 evening hours after dark when pulling into the yard
11 and going around the west side to shut the lights
12 off and just use their parking lights. That's been
13 put in place for a couple of years now.

14 Q. And these meetings, how long have they
15 been going on?

16 A. Since day one.

17 Q. Previously, you had marked on Plaintiffs'
18 Exhibit 1 a dashed red line indicating the general
19 traffic pattern?

20 A. Yes.

21 Q. Could you describe a little bit more for
22 the record what exactly that traffic pattern is?

23 THE HEARING OFFICER: For the record, it's
24 Complainants' Exhibit 1.

1 MR. STEGER: I'm sorry.

2 BY MR. STEGER:

3 Q. Complainants' Exhibit 1.

4 THE HEARING OFFICER: I think we'll all know,

5 but just for safety sake.

6 BY THE WITNESS:

7 A. We have designed that traffic pattern

8 because that's the way we want the traffic to flow.

9 We'd like it to flow in one direction. Obviously,

10 when you have that many trailers coming in the yard

11 and out of the yard each day, it can get can

12 congested in the yard. For safety reasons, we have

13 put that pattern into effect.

14 Now, obviously, if a trailer pulls into

15 the yard and there's no other traffic at that time

16 and he needs to go to the east side of the dock, he

17 will go directly to the east side rather than going

18 around to the west side.

19 BY MR. STEGER:

20 Q. So each trailer, when it arrives at the

21 facility, is assigned a specific dock?

22 A. Yes.

23 Q. Okay. And, obviously, those who would

24 arrive and go to the west -- if they have to go to

1 the west, they'd go to the west side?

2 A. Correct.

3 Q. Is there any ability to reverse that

4 pattern?

5 A. We could. It wouldn't really change

6 anything. We'd still have the same amount of

7 traffic.

8 Q. Well, during your busy time period, it is

9 possible to switch that?

10 A. Yeah, we could, but it wouldn't make any

11 difference. The same amount of traffic would be

12 going through there, just in a different direction.

13 Q. Except the only thing you'd eliminate

14 would be the trucks that have to remain on the east

15 side?

16 A. Right.

17 Q. Could you describe for the record --

18 there has been what is on Complainants' Exhibit 1 a

19 yellow X that is referred to as the west yard.

20 What do you park there?

21 A. Empty trailers.

22 Q. What do you park on the east side?

23 A. The trucks or cabs.

24 Q. Could you switch those?

1 A. We have taken that in consideration and
2 felt it was better for our neighbors that we don't
3 do that.

4 Q. And why is that?

5 A. Depending on -- the trucks or cabs as we
6 refer to them are just like your vehicle at home.
7 When you start those up, depending on the weather or
8 the temperature, you have to let it warm up, and
9 these are all diesel engines. So sometimes they
10 take a little bit longer. And diesel engines, when
11 they're cold, put out quite a bit of fumes. And if
12 we had them over on that side, we would have 18 cabs
13 over there running for, you know, five, ten minutes
14 each morning.

15 Q. Okay. And the trailers that are parked on
16 the west side, are they generally empty?

17 A. Yes.

18 Q. And then how do you get them into --

19 A. The spotting horse usually comes and
20 retrieves them.

21 Q. What does the spotting horse then do or
22 the yard tractor?

23 A. It just puts those empty trailers into the
24 dock as needed.

1 Q. Is it a possibility to cease operations on
2 the west side during daylight hours?

3 A. Define daylight hours.

4 Q. Well, between the hours of 7:00 a.m. to
5 10:00 p.m.

6 A. No.

7 Q. And why is that?

8 A. Well, obviously, to get our freight out
9 for delivery, we still have -- we're still using
10 both sides of the facility until approximately 9:00
11 to 10:00 a.m. Our busiest time, what we call our
12 second shift or outbound shift, is between 5:00 p.m.
13 and 9:00 p.m.

14 Q. And what occurs between 5:00 to 9:00?

15 A. That's when most of our trailers come off
16 the street for making pickups for customers such as
17 Medline, and then we sort and segregate the freight
18 as it comes in to put it on the right trailer and
19 get it headed in the right direction.

20 Q. And some of these trailers would be
21 located on the west side as well as the east side?

22 A. Correct.

23 Q. Depending on where it had to go?

24 A. Correct.

1 Q. And I believe you testified earlier that
2 each of the 29 docks is assigned an area, or is
3 assigned a service center? Exactly what --

4 A. Well, we have 18 drivers that go out each
5 day to deliver freight and then pick up freight. As
6 I said, we load approximately 30 to 40 trailers at
7 night out of our facility out of 29 doors.

8 So we have -- we have it set up to where
9 certain trailers go in certain doors so that freight
10 for Detroit goes in door ten, freight for Columbus,
11 Ohio, goes in door six and when those trailers fill
12 in, an empty trailer is put in there, and the
13 loading is continued.

14 Q. Is there anything in terms of
15 operational -- well, let me back up.

16 You defined your busiest time in the p.m.
17 shift is between 5:00 and 9:00?

18 A. Yes.

19 Q. Is there any attempt on Overland's part to
20 revise operations during that time, either
21 shortening it up, shifting it? Could you describe
22 that for the record?

23 A. Yes. As a company, we're going through
24 some operational changes where we are required to

1 have all of our trailers loaded and moving out of
2 the gate by 9:00 p.m. This was put in place within
3 the last two to three weeks, and we're currently
4 adjusting our staffing and our operational
5 procedures to attain this.

6 Q. If those -- those trailers that leave by
7 9:00, they're headed overnight, if you will, to
8 other service centers such as Cleveland?

9 A. Correct.

10 Q. Okay. Do you know how long of a drive is
11 it to Cleveland?

12 A. If I'm not mistaken, I think it's seven
13 hours.

14 Q. Is there any other efforts you've taken to
15 mitigate noise at the facility?

16 A. Well, other than the operational changes
17 we've had as far as drivers trying not to make any
18 unnecessary noise, we've also done some different
19 things to other forklifts. We've tried different
20 types of tires on them because they do have rubber
21 tires. So when they go to a certain thickness, we
22 replace those tires because newer tires are quieter
23 than the older ones.

24 Q. There's been some testimony that there has

1 been beeps when vehicles are backing up. Is there
 2 any possibility to eliminate that, or have you
 3 eliminated that for some?

4 A. Yeah. When we got the new spotting horse,
 5 it came out of the --

6 Q. That's the yard tractor?

7 A. Yes.

8 Q. Okay.

9 A. It came out of the factory with what they
 10 call a backup warning signal meaning when it's put
 11 in reverse, the beeping starts so that if anybody is
 12 in the way, they can -- and it was an annoying
 13 noise. So we disconnected that, and we tried --
 14 we've been training the operator of that yard horse
 15 to pretty much watch where he's going because he
 16 does not have that backup alarm anymore.

17 Q. And this yard trailer would be the thing
 18 that backs up to hook up the trailers from the west
 19 side of the facility?

20 A. Correct.

21 Q. Do you have any familiarity with noise
 22 control abatement measures?

23 A. No, I don't.

24 Q. Are you an engineer?

1 A. No.

2 MR. STEGER: Can I have a minute, please?

3 (Brief pause.)

4 BY MR. STEGER:

5 Q. Briefly, one other thing.

6 There has been some notation in the
7 exhibits that have been entered in the record about
8 writing notes for the lights of the Overland
9 facility. Have you done anything to correct the
10 lighting?

11 A. Yes. After the meeting we had with the
12 tenants of the condominiums, one of the concerns
13 that was expressed was the lights that are mounted
14 on top of our building.

15 Q. And these are mounted on the long
16 rectangular --

17 A. The dock area.

18 Q. -- building that's called dock?

19 A. Correct.

20 Q. On Complainants' Exhibit No. 1?

21 A. Correct. Those were on the building. I'm
22 sure that they were there when the building was
23 built, obviously, to light the yard in the evening
24 hours. One of the concerns was that light was

1 shining directly into the second floor of their
2 units which, from what I understand, is their
3 bedrooms and things like that.

4 So we hired an electrical contractor to
5 come out with what they call a boom truck because
6 these things sit in the air about 30 feet to lower
7 these lights down to where they're shining down
8 toward the parking lot and not directly into the
9 building.

10 MR. STEGER: I believe that is all the
11 questions I have.

12 THE HEARING OFFICER: Mr. Forcade?

13 MR. FORCADE: Yeah. Could we have about two or
14 three minutes?

15 THE HEARING OFFICER: Sure. Why don't we go
16 off the record and take about a five-minute
17 recess. Would that be --

18 MR. FORCADE: That would be great.

19 THE HEARING OFFICER: Let's do that.

20 (Discussion had off
21 the record.)

22 THE HEARING OFFICER: We're back on the record
23 in PCB Docket No. 98-81, Charter Hall Homeowner's
24 Association and various of its members including

1 Mr. Jeffery Cohen vs. Overland Transportation, Inc.,
2 and D.P. Cartage, Inc. I'm getting better at my
3 recollection here.

4 We went off the record after Mr. Steger
5 had finished his direct examination. Mr. Forcade
6 had asked for a few minutes before cross.

7 Mr. Forcade, are you ready to proceed?

8 MR. FORCADE: Yes, sir, I am.

9 THE HEARING OFFICER: Okay. Mr. Trujillo, I
10 would remind you that you are still under oath.

11 THE HEARING OFFICER: Mr. Forcade?

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

13 by Mr. Forcade

14 Q. Mr. Trujillo, if you could direct your
15 attention to Complainants' Exhibit No. 1 and
16 specifically direct your attention to the thin red
17 lines which you've drawn, which if I correctly
18 understand, characterizes the traffic pattern of the
19 trucks around the facility?

20 A. Correct.

21 Q. Could I paraphrase this and you tell me if
22 I'm wrong? Do the trucks enter from Northwest
23 Highway and proceed south through the entrance
24 driveway, for lack of a better term, pass through

1 the locked gate and then turn right and head in a
2 westerly direction to the west side of the Overland
3 Transportation buildings, then turn left and proceed
4 south along the Overland Transportation buildings,
5 turn left proceeding east along the southern portion
6 of the Overland Transportation buildings, and then
7 turn left again proceeding north along the eastern
8 side of the Overland Transportation buildings?

9 A. That is correct.

10 Q. Okay. Thank you very much.

11 You mentioned a number of different areas
12 for fences and stuff like that. Would it be
13 possible for you to take a red pen and outline the
14 property line, the extent of the property owned by
15 Overland Transportation?

16 A. I don't know exactly other than what is
17 right there (indicating). How far it extends back
18 or to each side, I don't have that information.

19 Q. All right. Thank you.

20 During the course of your testimony I
21 believe that you mentioned that you could hear
22 airplane noise, highway noise, and Metra trains.
23 Are you aware that during the testimony yesterday
24 the complaining citizens were asked about this

1 repeatedly and that none of them indicated they've
2 ever been awakened by either airplane noise, highway
3 noise, or Metra train noise?

4 A. No, I was not aware of that.

5 Q. Okay. To clarify my recollection of your
6 testimony, approximately how far away do you believe
7 the Metra train station is?

8 A. Well, the tracks are two to 300 feet south
9 of the fence line.

10 Q. Two to 300 feet south of the line?

11 A. Yes.

12 Q. And did you say something about the
13 station also or not?

14 A. No. The station isn't close to us.

15 Q. Okay. I show you what has been marked
16 Respondents' Exhibit No. 1, and if I can briefly
17 characterize that on the internal portion of this
18 there's a green map which represents a portion of
19 the central United States.

20 A. Okay.

21 Q. And if I could specifically direct your
22 attention to the state of Illinois in the markings
23 that are on there, and if you don't mind if I look
24 over your shoulder. Actually, could you hold it up

1 a little farther? I've got bifocals. Thank you.

2 If you could tell me, what does the star

3 underneath the Chicago represent?

4 A. That is a location, another service

5 center.

6 Q. Right. Could you tell me the address for

7 that location?

8 A. I don't know the exact address, but it's

9 in Markham, Illinois.

10 Q. It's in Markham, Illinois?

11 A. Yes.

12 Q. Do you have any idea how long that

13 facility has been there?

14 A. I can only give you an approximation. I

15 think it's about 15 to 20 years.

16 Q. Fifteen to 20 years.

17 Do you have any idea of a major

18 intersection near that facility?

19 A. 159th and Dixie Highway.

20 Q. Okay. And if I could briefly glance at it

21 again. Directly above the word Chicago there is

22 what appears to be a small white round circle; is

23 that correct?

24 A. Yes.

1 Q. Could you tell me what that represents?

2 A. That would represent the city of Chicago
3 itself.

4 Q. Just a service --

5 A. Right.

6 Q. -- service area?

7 And if I could direct your attention again
8 then to slightly above and slightly to the left is a
9 star which appears to be adjacent to the word
10 Palatine. Could you tell me what that represents?

11 A. That represents the Palatine service
12 center.

13 Q. Right. The facility in question in this
14 proceeding?

15 A. Correct.

16 Q. And directly below that, if I could point
17 to it, I believe is the word Elgin and a circle?

18 A. Yes.

19 Q. And does that mean Elgin is a service
20 center?

21 A. No. That means Elgin is serviced.

22 Q. Serviced by the facility?

23 A. Where the stars are is where we have
24 actual facilities.

1 Q. Right.

2 A. The cities that have the circles mean that
3 service is provided in those areas.

4 Q. Okay. Would it be correct to say then
5 that besides Palatine facility and the Markham
6 facility the only remaining facilities in Illinois
7 are in Rockford, Rock Island, and Springfield?

8 A. We've since added two more.

9 Q. And where would those be?

10 A. Peoria, Illinois.

11 Q. Peoria.

12 A. And Mattoon.

13 Q. And do you know approximately when Peoria
14 was added?

15 A. Six weeks ago.

16 Q. And in Mattoon?

17 A. The same time.

18 Q. You mentioned a series of sound reduction
19 activities that took place in your direct testimony,
20 and I didn't want to interrupt while it was
21 occurring. But you didn't mention the dates for
22 those activities.

23 Would you mind going back through those
24 activities, a much more brief description of them,

1 but then also add a time when that was done to that?

2 A. I can't give you the exact times. I don't
3 have the information with me. But we tried various
4 things with dock plates as far as placing materials
5 between the plate and the trailer.

6 Q. Okay. I believe the first thing you
7 mentioned had to do with -- and I'll probably
8 mischaracterize this -- the yard tractor?

9 A. Yes.

10 Q. Could you tell me what time you did
11 installation activities and replacement with the
12 yard tractor for, approximately?

13 A. That was last summer.

14 Q. That would be the summer of 1997?

15 A. Correct.

16 Q. And what was the next activity that you
17 think was the sound control activity you took?

18 A. We replaced the -- well, actually we
19 bought the new yard tractor.

20 Q. Okay. So improved your tractor and
21 replace air tractor would be when?

22 A. We did that, I would say, February of this
23 year.

24 Q. February of '98?

1 A. Yes.

2 Q. Okay. What would be the next sound

3 reduction activity that you believe you took?

4 A. After that it's an ongoing thing of

5 replacing the dock plates.

6 Q. So we'll say the dock plates. Can you

7 give me an approximate time when you believe the

8 dock plate replacement program began?

9 A. It started before we were actually even

10 open. There were several dock plates that we felt

11 were not in very good condition for us to use, and

12 since then it's been an ongoing process. Each month

13 there's at least one replaced.

14 Q. Okay. When you said it started before we

15 were even open, could you then give me a date when

16 you opened so that we would know when that would be?

17 A. Yes. We opened up November 13th, 1995.

18 Q. So this would be prior to November of

19 1995.

20 Okay. Prior to the summer of '97, did you

21 retain any noise experts to evaluate the noise

22 levels or the noise sources within Overland

23 Transportation?

24 A. Not to my knowledge.

1 Q. Okay. Prior to 1997, did you retain any
2 noise experts to evaluate mechanisms to control
3 noise from the noise sources within Overland
4 Transportation?

5 A. Not to my knowledge.

6 Q. From the summer of 1997 through and
7 including the last action which I believe you have
8 listed as February of '98 with an ongoing component,
9 did you retain any noise experts to evaluate the
10 noise sources at Overland Transportation?

11 A. Not experts. We've had some in-house
12 people do some readings.

13 Q. Can you give me their credentials?

14 A. He works in our safety department. He's
15 not an expert.

16 Q. Okay. After the summer of 1997 and prior
17 to the period of February of '98, did you retain any
18 noise experts in sound control to evaluate what
19 action should be taken?

20 A. No.

21 Q. Okay. You mentioned at one point
22 something about truck repair. Is all truck repair
23 done on the facility by Overland Transportation?

24 A. No.

1 Q. Is it done by Overland Transportation or

2 D.P. Cartage?

3 A. No.

4 Q. Can you tell me how truck repair is

5 accomplished then?

6 A. It's taken to an outside vendor, but if we

7 have a piece of equipment, whether it be a trailer

8 or a truck, with a flat tire, obviously we can't

9 move that. So we have to bring in a vendor that

10 comes to our location.

11 Q. Okay. If I could move to the very first

12 part, the taking it to an outside vendor. Are you

13 saying that the piece of equipment is transported

14 away from the Overland Transportation facility and

15 is repaired at a site that's distant from the

16 Overland Transportation facility?

17 A. It's in Palatine.

18 Q. Okay. Is it more than three blocks away?

19 A. Yes, it is.

20 Q. Okay. Thank you. And you mentioned that

21 there were some activities where a repair person

22 would come on site and conduct repairs on site.

23 Could you describe that more fully for me, please?

24 A. Yes. It's usually -- I would say most of

1 it is just changing the tires on equipment.

2 Q. Okay. And that would be happening on
3 site?

4 A. Yes.

5 Q. Could you give me the name of the vendor
6 that does the repair work for you?

7 A. Yes; Northwest Truck Service.

8 Q. And do you have any present plans to
9 change any of the relationships relating to truck
10 repair at your facility?

11 A. No.

12 Q. Are you familiar with a company called
13 Razor Leasing or Razor Company?

14 A. Yes.

15 Q. Could you describe what, if any,
16 relationship they had with Overland Transportation?

17 A. Yes. They were pretty much a
18 subcontractor to Overland as well, but Overland has
19 since absorbed them just like a D.P. situation.

20 Q. What particular activities do they perform
21 as a subcontractor?

22 A. Just minor repairs. They would change
23 oil, change lights, things like that.

24 Q. And that would have been on site?

1 A. Yes.

2 Q. Okay. Could you give me an approximate
3 time when that was -- that change was implemented?

4 A. Spring of '97 is when they opened, and
5 they since closed their operation in Palatine.

6 Q. It would be since the spring of '97. Do
7 you believe that it was more than, say, two months
8 ago that they closed, or could you give me an idea
9 of when it might have closed?

10 A. A month ago.

11 Q. A month ago?

12 A. Yes.

13 MR. FORCADE: That's the end of my questions
14 for this witness.

15 THE HEARING OFFICER: Mr. Steger?

16 MR. STEGER: Just one brief question.

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

18 by Mr. Steger

19 Q. Would it be fair to say that currently you
20 are undergoing modifications to your traffic pattern
21 for the Palatine facility?

22 A. Yes. We're always looking at options and
23 different considerations to improve what we're
24 doing.

1 Q. And would it be fair to say that that's

2 been going on since you moved in?

3 A. Yes.

4 MR. STEGER: Okay. No further questions.

5 (Ms. Hennessey exited the

6 proceedings.)

7 MR. FORCADE: We're thinking about that last

8 question for a second.

9 THE HEARING OFFICER: Okay. Why don't we --

10 well, we'll just hold tight.

11 (Brief pause.)

12 THE HEARING OFFICER: Let the record reflect

13 that Mr. Forcade is discussing with his associate

14 whether he has additional cross-examination.

15 MR. FORCADE: We have no further questions of

16 this witness.

17 THE HEARING OFFICER: Okay. After that

18 reflection, Mr. Forcade has indicated just as he's

19 indicated.

20 All right. Mr. Trujillo, thank you very

21 much. You may step down.

22 (Witness excused.)

23 THE HEARING OFFICER: Okay. Let the record

24 reflect that there was a board member previously

1 present. However, that board member has left.
 2 There is no other member of the public at large.
 3 Therefore, there is no need to ask if anyone else
 4 has questions. If there are other questions of Mr.
 5 Trujillo -- I don't believe there are any, and let
 6 the record reflect that there are none.

7 All right. Mr. Steger?

8 MR. STEGER: That's it for me.

9 THE HEARING OFFICER: That's it? Okay. You
 10 are resting?

11 MR. STEGER: Other than my exhibits.

12 THE HEARING OFFICER: All right. Why don't we
 13 go onto that?

14 MR. STEGER: Okay. First of all, I'd like
 15 entry into the record Respondents' Exhibit 1.

16 THE HEARING OFFICER: Mr. Forcade?

17 MR. FORCADE: No objection.

18 THE HEARING OFFICER: What has been marked as
 19 Respondents' Exhibit 1 looks to be a brochure --
 20 some type of promotional brochure, Welcome to
 21 Overland Territory as its title with Overland
 22 Transportation System, Inc., on the bottom portion
 23 marked as Respondents' Exhibit 1. It is a one --
 24 it's an all-in-one encompassed pamphlet that folds

1 tri-fold. It is admitted without objection.

2 (Respondents' Exhibit No. 2

3 marked for identification,

4 05/14/98.)

5 MR. STEGER: The next exhibit I have I'd like

6 to first state some foundation. There is an issue

7 relative to Count I of the complaint dealing with

8 the numerical standards. There is an issue

9 revolving around grandfathering the facility. And

10 what we have tendered for entry into the record is

11 respondents -- what I've marked Respondents' Exhibit

12 2, which is the affidavit of D.L. Hornback, the

13 secretary of the Yellow Freight System. His

14 affidavit relates to when it began operations, what

15 they did while they were there until they sold it to

16 Overland and then an authentication of what's

17 attached to this affidavit as Exhibit A, which is an

18 appraisal of the Palatine facility conducted in July

19 of 1973.

20 I would ask that that be entered into the

21 record.

22 THE HEARING OFFICER: Okay. What's been handed

23 to me and marked as Respondents' Exhibit 2 appears

24 to be -- it is a six-page document. The cover sheet

1 being the affidavit of one D.L. Hornback.

2 As far as the attachment, it appears to
3 be -- the affidavit is a one-page document with a
4 sworn affidavit. There appears to be a photocopy of
5 what is captioned Pure Associates Architect Engineer
6 Appraisers, drop down a real estate appraisal of a
7 one-story truck terminal building, which consists of
8 a five-page document.

9 All right. Well, I'll ask Mr. Forcade.
10 Any objection to that document being admitted?

11 MR. FORCADE: Yes, we do, your Honor. We have
12 two general objections to it. The first one is this
13 is a classic case of hearsay. It's the induction of
14 a statement by a person not in court asserting the
15 truth of the statement.

16 More importantly, we believe that this
17 statement is in direct conflict with the testimony
18 of our witnesses, and, therefore, the issue of
19 credibility would be a central issue. And while it
20 will be possible for the hearing officer to issue
21 statements regarding the credibility of witnesses
22 that appear before him, we question your ability to
23 make a statement regarding the credibility of an
24 individual who has not been before the Court.

1 THE HEARING OFFICER: When was the first time
2 that you were provided this document, Mr. Forcade?

3 MR. FORCADE: Approximately a week ago.

4 THE HEARING OFFICER: The affidavit and the --
5 the entire exhibit?

6 MR. FORCADE: I couldn't guarantee they were
7 clipped together.

8 MR. STEGER: I don't think they were.

9 MR. FORCADE: But I would say that the
10 documents were approximately the same time about a
11 week ago.

12 THE HEARING OFFICER: Okay. Mr. Steger? I'm
13 sorry. Mr. Forcade?

14 MR. FORCADE: That's it.

15 THE HEARING OFFICER: Mr. Steger, your response
16 to the objections?

17 MR. STEGER: No. Briefly, there is some
18 corroborating evidence with respect to the
19 operations. I believe we have the letter from the
20 Village of Palatine to Mrs. Bergau indicating the
21 '73 start date. All we're merely trying to do is
22 establish some dates in operations.

23 The only other -- what we could do is have
24 somebody from Yellow -- unfortunately people in

1 Yellow Freight are located in Kansas.

2 THE HEARING OFFICER: Mr. Forcade?

3 MR. FORCADE: Yes. I would point out that the

4 critical sentence in this is No. 4 where it says

5 that the operations continued unchanged. There's no

6 corroboration at any point in the testimony that I'm

7 aware of or in any of the supporting documents that

8 the operation of this facility continued unchanged

9 for any given period of time. So there is no

10 independent corroboration of any aspect of this. It

11 is a statement by a person nonpresent for

12 cross-examination. It is at best ambiguous, and I

13 think it has no credibility as evidence.

14 THE HEARING OFFICER: Okay. Well, here's my

15 concern. As far as the board procedural rules

16 directly address this point, they do allow written

17 narrative testimony to be introduced at hearing.

18 However, the rules are very specific, and, you know,

19 obviously, available to both counsel. It indicates

20 as follows that 103.205 of the Illinois Pollution

21 Control Board's procedure rules written narrative

22 testimony may be introduced by a party in a hearing

23 only if provided to all of the parties of record

24 prior to the date of hearing and only after the

1 opposing parties have had an opportunity to object
2 to all the portions of the written testimony and to
3 obtain a ruling on said objections prior to its
4 introduction.

5 It goes on. The person on whose behalf
6 the testimony is submitted shall be available at
7 hearing for cross-examination. Mr. Hornback, for
8 the record, has not been made available.

9 Mr. Steger, will he be made available
10 today?

11 MR. STEGER: Not today. We can make him
12 available, if you so choose.

13 THE HEARING OFFICER: Well, that is not my
14 choice. That apparently would be --

15 MR. FORCADE: We would object to that
16 strenuously.

17 THE HEARING OFFICER: That would be Mr.
18 Forcade's choice, and that is apparently what
19 he's -- part of his objection. I understand the
20 geographic constraints that you have. However, it
21 is your burden to provide that information pursuant
22 to the rule.

23 MR. STEGER: I understand.

24 THE HEARING OFFICER: As far as the objection,

1 I do believe that this would constitute hearsay, and
2 there is an objection to it. Based on the
3 unavailability of Mr. Hornback, I'm going to sustain
4 the objection related to this exhibit and not admit
5 the document at this time.

6 Now, I will, Mr. Steger, make available to
7 you the option of making Mr. Hornback available.
8 However, I'm not sure -- I'll listen to what you
9 have, but we have been here for three days.

10 Mr. Steger, do you want to try to make Mr.
11 Hornback available?

12 MR. STEGER: Can we go off the record for a
13 minute?

14 THE HEARING OFFICER: Let's go off the record.

15 (Discussion had off
16 the record.)

17 THE HEARING OFFICER: We are back on the record
18 after going off the record at Mr. Steger's request
19 in 98-81 -- Pollution Control Board Document No.
20 98-81, Charter Hall Homeowner's Association and
21 various of its members including Mr. Jeff Cohen vs.
22 Overland Transportation Systems and D.P. Cartage,
23 Inc.

24 Mr. Steger, you have a motion?

1 MR. STEGER: Yes. At this time, I'd like to
2 make a motion to continue the hearing to a date
3 certain where we can make available a representative
4 from Yellow Freight System, and the reason I think
5 this is important is because it would establish one
6 of the issues of grandfathering. There are two
7 issues.

8 One is associated with when the operations
9 began and then another issue related to the change
10 in classification, and with that, we would make that
11 motion.

12 THE HEARING OFFICER: Let me ask you this. How
13 soon could this person be made available?

14 MR. STEGER: Within a week.

15 THE HEARING OFFICER: Mr. Forcade?

16 MR. FORCADE: Your Honor, we would strongly
17 oppose this. We, with our initial complaint,
18 informed the board we wanted this case handled on
19 the most expedited possible basis. We have
20 reiterated that concern throughout the course of
21 this proceeding. Mr. Steger has known the date of
22 this hearing for well in excess of 30 days and the
23 rules of evidence far longer than that.

24 The objection to this document was

1 conveyed to Mr. Steger last week, and now at the
2 very culmination of the hearing, Mr. Steger asked
3 for a further extension to accomplish what could
4 have been and should have been accomplished in
5 preparation for trial.

6 Further, Mr. Steger is also aware that I
7 go into surgery on Monday and will be out for five
8 weeks, and, therefore, that unwarranted delay will
9 further delay under relief for the homeowners well
10 into the winter system.

11 I strongly object any delay. We believe
12 that there's been ample opportunity for counsel to
13 prepare their case. If they've chosen not to do so,
14 we believe the consequences should flow to them, not
15 to the complainants who are suffering noise damage
16 because of the failure of respondents to prepare.

17 THE HEARING OFFICER: Mr. Steger?

18 MR. STEGER: Could I have a minute to confer?

19 THE HEARING OFFICER: Of course.

20 Let the record reflect that Mr. Steger has
21 asked for a moment to confer with his client.

22 (Brief pause.)

23 MR. STEGER: Correct me if I'm wrong, Bill or
24 Steve. Do you have any problem with the appraisal

1 being entered?

2 MR. FORCADE: Are you talking about the last --

3 MR. STEGER: The last five pages.

4 MR. FORCADE: No.

5 MR. STEGER: Okay. With that, we will withdraw

6 the motion and rest our case.

7 THE HEARING OFFICER: Okay. Let me understand

8 correctly. What we are going to do in the document

9 that you've handed to me as Respondents' Exhibit 2,

10 we are going to redact the first page which consists

11 of affidavit of D.L. Hornback?

12 MR. STEGER: Correct.

13 THE HEARING OFFICER: And then the remaining

14 five pages which are entitled -- what we previously

15 captioned -- titled on photocopy and facsimile --

16 well, it looks to be a photocopy from a facsimile

17 entitled Pure Associates and drops down to a real

18 estate appraisal consisting of a five-page

19 document.

20 Is that accurate?

21 MR. STEGER: That is accurate.

22 THE HEARING OFFICER: And that's what you seek

23 for admission.

24 Mr. Forcade, do you have an objection to

1 that document going into the record?

2 MR. FORCADE: That is --

3 THE HEARING OFFICER: Let me show you what I
4 have.

5 MR. FORCADE: So that I clearly understand.

6 THE HEARING OFFICER: Of course. Let the
7 record reflect that I have handed the document as it
8 has been modified by Mr. Steger to Mr. Forcade for
9 his review.

10 MR. FORCADE: No objection.

11 THE HEARING OFFICER: All right. The document
12 is admitted. Let the record reflect that Mr. Steger
13 had withdrawn the motion to continue the hearing.

14 Is that accurate, Mr. Steger?

15 MR. STEGER: That is correct.

16 THE COURT: All right. Mr. Steger has rested
17 his case. Both documents, Respondents' Exhibit 1
18 and Respondents' Exhibit 2, are admitted without
19 objection. I would like to hand back the redacted
20 portion of Respondents' Exhibit 2, please.

21 Let the record reflect that the first
22 page -- cover page has been handed back to
23 Mr. Steger which consists of the affidavit of
24 Mr. Hornback.

1 All right. Now, Mr. Forcade, do you have

2 rebuttal?

3 MR. FORCADE: We have one rebuttal witness.

4 THE HEARING OFFICER: All right.

5 MR. FORCADE: We would like to call Miss Cohen

6 to stand, please.

7 THE HEARING OFFICER: Miss Cohen, if you would

8 please raise your right hand and be resworn.

9 (Witness sworn.)

10 THE HEARING OFFICER: And Miss Cohen, if you

11 would please state your name again and spell your

12 last name.

13 THE WITNESS: Okay. My name is Tara, T-a-r-a,

14 Cohen, C-o-h-e-n.

15 THE HEARING OFFICER: Thank you.

16 Mr. Forcade?

17 WHEREUPON:

18 T A R A C O H E N ,

19 called as a witness herein, having been first duly

20 sworn, testified, and saith as follows:

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

22 by Mr. Forcade

23 Q. Miss Cohen, were you present in the

24 courtroom today when Mr. Trujillo described the

1 corrections that had been made to improve the sound
 2 quality beginning when they first purchased the
 3 facility in the summer of '97 and in February of '98
 4 and up through and including today?

5 A. Yes.

6 Q. In your opinion, has the frequency, the
 7 loudness, or the probability of an awakening or
 8 disturbing decreased over the period of time from
 9 the summer of '97 to the present?

10 A. No.

11 Q. Do you find the sound levels and the
 12 disturbance to your day-to-day activities to be the
 13 same or greater than they were in the summer of '97?

14 A. Yes.

15 Q. The same or greater than they were in
 16 February '98?

17 A. Yes.

18 MR. FORCADE: No further questions.

19 MR. STEGER: No questions for this witness.

20 THE HEARING OFFICER: Thank you, Miss Cohen.

21 (Witness excused.)

22 THE HEARING OFFICER: Mr. Forcade, anything
 23 further?

24 MR. FORCADE: We have a brief closing statement

1 Mr. Siros would like to make. If we could have two
2 or three minutes, I think he will be five minutes at
3 most.

4 THE HEARING OFFICER: That's fine. Let's go
5 off the record for a moment.

6 (Discussion had off
7 the record.)

8 THE HEARING OFFICER: Let's go back on the
9 record.

10 We are back on the record in PCB Docket
11 No. 98-81, Charter Hall Homeowner's Association and
12 various of its members including Jeffery Cohen vs.
13 Overland Transportation, Inc., and D.P. Cartage,
14 Inc., as respondents.

15 When we rested, Mr. Forcade had indicated
16 that he or Mr. Siros would be making a short closing
17 remark.

18 I'm trying to decide -- I guess we can
19 go -- I would like to go through the exhibits one
20 more time just to check off with counsel that we
21 have all the exhibits in our possession. I can do
22 that before or after closing. Mr. Siros or
23 Mr. Forcade, whatever is convenient for you.

24 MR. FORCADE: What do you want to do?

1 MR. SIROS: We can do it after. That's

2 appropriate.

3 THE HEARING OFFICER: That's fine.

4 Mr. Siros, closing statement?

5 MR. SIROS: Mr. Hearing Officer, Charter Hall

6 homeowners have been forced to endure the constant

7 unreasonable and disruptive noise from the Overland

8 Facility on a daily basis since Overland

9 Transportation Systems, Inc., and D.P. Cartage took

10 over operations at the site in the fall of 1995.

11 When Overland Transportation commenced

12 operation at the site, the unloading, loading -- the

13 unloading and loading operations associated loud

14 double bangs, the hitching and unhitching of the

15 trailers and the associated loud bang with that

16 hitching and unhitching operation and the dragging

17 of metal trailers across the concrete parking lot

18 became a 24-hour around the clock occurrence for the

19 Charter Hall homeowners.

20 Moreover, the number of trucks which were

21 actually loaded and unloaded by Overland facility

22 increased as well. As a result of this excessive

23 noise that was generated by the Overland facility,

24 Charter Hall homeowners have been unable to sleep

1 through an entire night without being awoken by the
2 sounds of metal dragging across metal and huge
3 semi-trailer trucks being dragged across the
4 concrete which shakes the homes of the Charter Hall
5 residents.

6 Moreover, these residents have been unable
7 to carry on normal conversations either with persons
8 in the same room with them or with people on the
9 telephone as a result of the noise from the Overland
10 facility. These Charter Hall homeowners have been
11 unable to utilize their backyard for summer
12 barbecues, have been unable to open their windows to
13 listen to the outside sounds without hearing the
14 loud crashes, bangs, and scraping from the
15 operations of the Overland -- at the Overland
16 facility.

17 These homeowners have also been unable to
18 entertain or have to people over into their house as
19 a result of these noises. This unreasonable noise
20 from the Overland site forced an 85-year-old woman
21 with a heart condition to have to move almost an
22 hour away from her daughter in the Charter Hall
23 subdivisions and her doctors which have treated her
24 for over 50 years because she was unable to sleep

1 through the night due to the noise generated by the
2 Overland facility.

3 The noise from the Overland site also
4 precluded an older gentleman from resting and
5 recuperating after his exhaustive chemotherapy
6 treatment. One resident from Charter Hall was even
7 forced to quit her job as a result of the noise
8 because she was afraid she would fall asleep while
9 driving to and from school because she was unable to
10 sleep through the night.

11 However, not only do the operations of the
12 Overland site create noise which unreasonably
13 interferes with the daily lives of the Charter Hall
14 homeowners, the operations of the Overland facility
15 have also resulted in the unquestioned violations of
16 the Illinois Numerical Noise Emission Units.

17 The head of the Illinois Environmental
18 Protection Agency's noise department testified that
19 the noise records compiled by both Charter Hall's
20 expert witnesses as well as individual Charter Hall
21 homeowners illustrate that the noise from the
22 Overland facility causes an unreasonable
23 interference with the lives of the Charter Hall
24 homeowners.

1 This is not the situation where the
2 Charter Hall homeowners blindly moved next to the
3 facility without attempting to determine the extent
4 of noise from the facility. Many homeowners
5 investigated whether the operations at the site
6 prior to moving in would cause an unreasonable
7 interference with their daily lives.

8 Several homeowners contacted the Village
9 of Palatine and were informed that the operations of
10 Yellow Freight had not generated excessive
11 complaints, and they were also informed that once
12 Yellow Freight vacated the premises, no additional
13 operations would continue at the site.

14 Charter Hall homeowners made numerous
15 telephone calls to the facility both at the time
16 Yellow Freight operated the facility as well as the
17 time when Overland operated the facility, and the
18 Overland personnel indicated that the activities at
19 the site always ended at a reasonable hour and did
20 not continue overnight.

21 Even after the Charter Hall homeowners
22 discovered that the noise from the Overland facility
23 would invade every aspect of their lives, the
24 homeowners still attempted to resolve these issues

1 in a reasonable fashion in accordance with

2 Overland's purported good neighbor policy.

3 The Charter Hall homeowners made numerous

4 calls to Overland to see if Overland could take

5 actions which would eliminate or mitigate the level

6 of noise, and Overland replied that it would see

7 what it could do. However, nothing ever changed,

8 and, in fact, several homeowners indicated that the

9 noise level actually increased.

10 The Charter Hall Homeowner's Association

11 also had several face-to-face meetings with

12 Overland. In the summer of 1996, the Charter Hall

13 Association met with Overland and discussed the

14 homeowners' concerns, and Overland responded that it

15 would attempt to take measures to reduce the level

16 of noise. Again, nothing ever changed. The noise

17 level remained the same, and, in fact, some people

18 testified that it even became louder.

19 In the summer of 1997, the Charter Hall

20 Association met with Overland with counsel present,

21 and, again, the Charter Hall Association discussed

22 possible mitigation measures with Overland. The

23 Charter Hall Association provided Overland with a

24 copy of the draft complaint that was eventually to

1 be filed in this case which also discussed the
2 possible mitigation measures that could be taken.

3 Again, Overland responded that it would
4 see what it could do and would try to take some
5 measures to reduce the noise. Again, nothing ever
6 changed, and the noise level continued unabated to
7 this very day.

8 Based on Overland's actions to date with
9 regards to the excessive noise generated by the
10 facility, there is a real concern that Overland will
11 approach any order of this board in the same manner
12 as it approached suggestions provided by the Charter
13 Hall Homeowner's Association specifically by failing
14 to act or by delaying implementation of any remedial
15 measures for as long as possible.

16 As such, there is compelling need for any
17 order of this board to provide a verification
18 process that would allow for continuous meaningful
19 monitoring of the noise levels from the Overland
20 operations to determine whether the continued
21 operations of the Overland facility will create a
22 nuisance which unreasonably interferes with the
23 lives of the Charter Hall homeowners.

24 Moreover, any order of this board must

1 provide for periodic analysis of the monitoring data
2 to ensure that Overland lives up to the mandates of
3 any order of this board and that the Charter Hall
4 homeowners are not required to return to the board
5 in six months seeking to establish through
6 additional layers of citizen testimony that the
7 noise nuance still exists.

8 Additionally, in order to ensure that
9 Overland will comply with an order of this board and
10 will not treat an order of this board the same that
11 they've treated the previous citizen complaints, we
12 request that the board provide incentives to compel
13 Overland's compliance with any board order that
14 should be issued.

15 While the Charter Hall homeowners will
16 address this civil penalty faced with this
17 proceeding at a later date, in order for a civil
18 penalty to be imposed, Charter Hall would request
19 that the board make specific findings regarding
20 specific dates of violation as required by the
21 board's procedural rules.

22 Charter Hall homeowners would also request
23 that the board provide for a stipulated penalty for
24 violations of the board's order and/or mandate which

1 violations could be demonstrated by a continuous
2 noise monitoring system specifically tailored to a
3 set of noise standards designated by the board.

4 In this matter, the Charter Hall
5 homeowners would hope that the Overland facility,
6 the Overland Transportation Systems, Inc., and D.P.
7 Cartage, would have sufficient incentive to comply
8 with a board order.

9 Finally, we would implore the board to
10 move as quickly as possible to order Overland to
11 remediate the unreasonable noise in the shortest
12 time as possible in order to allow the Charter Hall
13 homeowners to be able to receive an undisturbed
14 night of sleep.

15 Thank you.

16 THE HEARING OFFICER: Mr. Steger, closing
17 argument?

18 MR. STEGER: I have no closing argument. I
19 will reserve mine for my brief.

20 THE HEARING OFFICER: Okay. At this time what
21 I would generally do is ask if there are any
22 uninterested or informal citizen remarks. Let the
23 record reflect that there are no parties here that
24 are not a party to the proceeding, and I'm aware of

1 no remarks. I'm asking at this time if anyone has

2 any remarks they wish to make on the record?

3 Let the record reflect that there are

4 none.

5 I would like at this time to go through

6 the exhibits to make sure that we have specifically

7 identified each exhibit that has been admitted and

8 have counsels check those off with me to ensure that

9 the record is correct.

10 MR. FORCADE: Mr. Hearing Officer, do you

11 intend to make a statement regarding the credibility

12 of witnesses --

13 THE HEARING OFFICER: I do.

14 MR. FORCADE: -- on the record?

15 THE HEARING OFFICER: I do.

16 MR. FORCADE: We're ready for your exhibits

17 whenever you are.

18 THE HEARING OFFICER: What I would like to do

19 is -- why don't we do this? If I could have counsel

20 just be responsible for checking off the exhibits.

21 I have all the exhibits laid out on the witness

22 table. Maybe for ease, we can just go through one

23 at a time here. I want to make sure that I have all

24 the exhibits down.

1 What I have as the first exhibit is Joint
2 Exhibit 1, which I believe is marked with the yellow
3 tag stick as amended with the three-page addendum to
4 Attachment C which is different from what was filed
5 with the board. Mr. Steger has gratefully stated
6 that he will -- we are grateful that Mr. Steger is
7 going to provide additional copies with the
8 corresponding motion to rectify those motions or
9 stipulations before the board.

10 Mr. Steger, is that accurate?

11 MR. STEGER: That is accurate.

12 MR. FORCADE: Yes.

13 THE HEARING OFFICER: Counsels, have you each
14 had an opportunity to review Joint 1, and is it a
15 document that should be admitted?

16 MR. STEGER: Yes.

17 THE HEARING OFFICER: Mr. Forcade? Yes. Hold
18 on.

19 MR. STEGER: Can we go off the record for a
20 minute?

21 THE HEARING OFFICER: Let's go off the record.

22 (Discussion had off
23 the record.)

24 THE HEARING OFFICER: All right. Back on the

1 record. Pursuant to Mr. Steger's request, we went
2 off the record for a moment to discuss an individual
3 exhibit. We are now back on the record.

4 Regarding joint stipulation one, are the
5 parties agreed this is the exhibit before you that
6 you have agreed to having admitted, Mr. Forcade?

7 MR. FORCADE: Yes.

8 THE HEARING OFFICER: Mr. Steger?

9 MR. STEGER: Yes.

10 THE HEARING OFFICER: All right. Next we have
11 what is a blow up of the -- a diagram -- a blow up
12 of the diagram of the area marked as Complainants'
13 Exhibit 1.

14 Mr. Steger, you had an objection as to the
15 accuracy of that exhibit. You have indicated during
16 the short recess that you are now withdrawing
17 that --

18 MR. STEGER: Correct.

19 THE HEARING OFFICER: -- objection?

20 MR. STEGER: That is correct.

21 THE HEARING OFFICER: Let the record reflect
22 that that document is now admitted without objection
23 based on Mr. Steger's withdrawal of his previous
24 objection.

1 Okay. I just want to ensure that

2 Complainants' Exhibit 1 on the easel here is the

3 document that the parties want admitted in the

4 record.

5 Mr. Steger?

6 MR. STEGER: Correct.

7 THE HEARING OFFICER: Mr. Forcade?

8 MR. FORCADE: Correct.

9 THE HEARING OFFICER: All right. Next let's go

10 to Complainants' Exhibit 2, which consists of a

11 correspondence from a Mr. Bergau to the Village of

12 Palatine and is seated at the exhibit table.

13 Mr. Forcade, is that the document?

14 MR. FORCADE: Correct.

15 MR. STEGER: Mr. Steger?

16 MR. STEGER: Correct.

17 THE HEARING OFFICER: And that is admitted

18 without objection.

19 All right. Complainants' Exhibit 3

20 consists of the response from the Village of

21 Palatine to Mr. Bergau and was admitted without

22 objection.

23 Is that the document, Mr. Steger?

24 MR. STEGER: Yes.

1 THE HEARING OFFICER: Mr. Forcade?

2 MR. FORCADE: Correct.

3 THE HEARING OFFICER: Complainants' Exhibit 4

4 the noise log of Mr. Bergau that was admitted

5 without objection, the document is at the exhibit

6 table, Mr. Forcade?

7 MR. FORCADE: Yes.

8 THE HEARING OFFICER: Mr. Steger?

9 MR. STEGER: Yes.

10 THE HEARING OFFICER: Complainants' Exhibit 5-A

11 which consists, I believe, of the sleeve for the

12 sound meter, the Radio Shack sound meter marked as

13 Complainants' Exhibit 5?

14 MR. STEGER: Correct.

15 THE HEARING OFFICER: I apologize.

16 Mr. Forcade?

17 MR. FORCADE: Correct.

18 THE HEARING OFFICER: Mr. Steger?

19 MR. STEGER: Correct.

20 THE HEARING OFFICER: All right. Let the

21 record reflect there are no directions or

22 instructions within that exhibit.

23 MR. FORCADE: Within that, yes.

24 THE HEARING OFFICER: All right. And that

1 document was admitted without objection.

2 Correct, Mr. Steger?

3 MR. STEGER: Correct.

4 THE HEARING OFFICER: Complainants' Exhibit 6,

5 the sound meter recordings of Mr. Bergau, that

6 document consists of five pages?

7 MR. FORCADE: Yes.

8 THE HEARING OFFICER: Five pages on eight and a

9 half by 11 paper and was admitted over the objection

10 of Mr. Steger?

11 MR. FORCADE: Yes.

12 THE HEARING OFFICER: Is that -- I'm sorry.

13 Mr. Forcade?

14 MR. FORCADE: Bergau, B-e-r-g-a-u.

15 THE HEARING OFFICER: Bergau. I apologize.

16 MR. FORCADE: That's for the court reporter.

17 THE HEARING OFFICER: My enunciation and

18 pronunciation of the name has been inaccurate. It

19 is Bergau.

20 As far as the document, is that the

21 document, Mr. Forcade?

22 MR. FORCADE: Yes.

23 THE HEARING OFFICER: Mr. Steger?

24 MR. STEGER: Yes.

1 THE HEARING OFFICER: Your objection remains?

2 MR. STEGER: Yes.

3 THE HEARING OFFICER: The document is admitted

4 over objection, and I refer back to previous

5 ruling.

6 All right. Complainants' Exhibit 7, which

7 consists of the noise log of Mr. Dinshaw was

8 admitted without objection.

9 Mr. Forcade, that is the document on the

10 exhibit table?

11 MR. FORCADE: Yes. Correct.

12 THE HEARING OFFICER: Mr. Steger?

13 MR. STEGER: Correct.

14 THE HEARING OFFICER: Okay. Complainants'

15 Exhibit 8 consists of the Cohen calendar for the

16 year 1996 and was admitted without objection.

17 Is that correct -- is that Complainants'

18 Exhibit 8 at the table, Mr. Forcade?

19 MR. FORCADE: Yes.

20 THE HEARING OFFICER: Mr. Steger?

21 MR. STEGER: Yes.

22 THE HEARING OFFICER: That document was

23 admitted without objection.

24 Complainants' Exhibit 9, the Cohen

1 calendar -- the Tara Cohen calendar for the calendar

2 year 1997 was admitted without objection.

3 Is that correct, Mr. Steger?

4 MR. STEGER: Correct.

5 THE HEARING OFFICER: And that is the document,

6 Mr. Forcade?

7 MR. FORCADE: Yes.

8 THE HEARING OFFICER: All right. Complainants'

9 10, the final Cohen calendar dated 1998 with

10 handwritten notes, was admitted without objection.

11 Correct, Mr. Steger?

12 MR. STEGER: Correct.

13 THE HEARING OFFICER: But that is the document,

14 Mr. Forcade, at the exhibit table?

15 MR. FORCADE: Correct.

16 THE HEARING OFFICER: All right.

17 Complainants' 11-A and 11-B which consist of the

18 Bergau Radio Shack sound level meter consists of

19 three separate exhibits, the cover -- I apologize.

20 MR. FORCADE: Cohen.

21 MR. STEGER: Cohen.

22 THE HEARING OFFICER: I apologize.

23 MR. STEGER: Eleven is Cohen.

24 THE HEARING OFFICER: I apologize. For the

1 record, this is Mrs. Cohen's sound level meter

2 marked as 11-A and 11-B. The sleeve is marked as

3 11-A.

4 MR. FORCADE: The instructions are 11-B.

5 THE HEARING OFFICER: The instructions are

6 marked as 11-B.

7 MR. FORCADE: And the meter is 11.

8 THE HEARING OFFICER: Thank you, Mr. Forcade.

9 The meter itself has been marked as

10 Complainants' Exhibit 11 which was admitted without

11 objection. Is that correct, Mr. Steger?

12 THE HEARING OFFICER: That is the item,

13 Mr. Forcade?

14 MR. FORCADE: Yes.

15 THE HEARING OFFICER: Complainants' 12 which

16 consists of the handwritten meter readings of

17 Mrs. Tara Cohen, again, that is the document at the

18 exhibit table, Mr. Forcade?

19 MR. FORCADE: Yes.

20 THE HEARING OFFICER: Mr. Steger, that was

21 admitted without objection, correct?

22 MR. STEGER: Yes.

23 THE HEARING OFFICER: All right. Let's gone to

24 Complainants' 13. Those are the check mark data

1 survey sheets and logs of Mrs. Tara Cohen.

2 Mr. Forcade, is that the document?

3 MR. FORCADE: Yes.

4 THE HEARING OFFICER: Those documents were

5 admitted without objection, correct, Mr. Steger?

6 MR. STEGER: Correct.

7 THE HEARING OFFICER: All right.

8 Complainants' 14 which is the resume of a Ron

9 Harmon.

10 MR. FORCADE: Roger.

11 THE HEARING OFFICER: I apologize. Roger

12 Harmon. Thank you, Mr. Forcade.

13 That is the document, Mr. Forcade?

14 MR. FORCADE: Yes.

15 THE HEARING OFFICER: That document was

16 admitted without objection, correct, Mr. Steger?

17 MR. STEGER: Yes.

18 THE HEARING OFFICER: All right. Next,

19 Complainants' 15 which is the resume of Mr. Thomas

20 Thunder, is that the document, Mr. Forcade?

21 MR. FORCADE: Yes.

22 THE HEARING OFFICER: And it was as admitted

23 without objection, correct, Mr. Steger?

24 MR. STEGER: Correct.

1 THE HEARING OFFICER: Thank you.

2 Complainants No. 16, the Thomas Thunder
3 report which consists of two -- a two-page cover
4 sheet and four attachments all encaptioned figures
5 one, two, three, and four.

6 That is the document, Mr. Forcade?

7 MR. FORCADE: Yes.

8 THE HEARING OFFICER: Admitted without
9 objection, correct, Mr. Steger?

10 MR. STEGER: Correct.

11 THE HEARING OFFICER: Complainants' 17 which is
12 the impulsive noise analysis, is that document that
13 you have in your hand, Mr. Forcade?

14 MR. FORCADE: Yes.

15 THE HEARING OFFICER: And admitted without
16 objection, correct, Mr. Steger?

17 MR. STEGER: Yes.

18 THE HEARING OFFICER: Moving on to
19 Complainants' 18, it is a correspondence dated March
20 8th, 1997, with an attachment. That is the
21 document, Mr. Forcade?

22 MR. FORCADE: Yes.

23 THE HEARING OFFICER: And, Mr. Steger, admitted
24 without objection?

1 MR. STEGER: Correct.

2 THE HEARING OFFICER: Complainants' Exhibit 19

3 which consists -- I apologize. Complainants'

4 Exhibit 19 -- we did admit Complainants' 19?

5 MR. FORCADE: Yes.

6 MR. STEGER: Yes, we did.

7 THE HEARING OFFICER: Noting that it is subject

8 to the nonsubstantive amendments requested by the

9 parties in a joint agreement and allowed by the

10 hearing officer requesting certain corrections,

11 nighttime limitations as well as bifurcated

12 proceeding?

13 MR. STEGER: Yes.

14 MR. FORCADE: Yes.

15 THE HEARING OFFICER: Okay. That is the

16 document, Mr. Forcade?

17 MR. FORCADE: Yes.

18 THE HEARING OFFICER: No objection, Mr.

19 Steger?

20 MR. STEGER: Yes.

21 THE HEARING OFFICER: Complainants' 20,

22 Mr. Zach's resume, that is the document,

23 Mr. Forcade?

24 MR. FORCADE: Yes.

1 THE HEARING OFFICER: Admitted without
2 objection, Mr. Steger?

3 MR. STEGER: Yes.

4 THE HEARING OFFICER: Complainants' Exhibit 21,
5 the noise regs. which, I believe, both counsels have
6 copies. Those are admitted without objection,
7 Mr. Steger?

8 MR. STEGER: I believe they are the
9 measurements -- entitled measurement procedures for
10 the enforcement of 35 Illinois Administrative Code
11 900 and 901 registered as Part 951.

12 THE HEARING OFFICER: I stand corrected. That
13 is what is marked as Complainants' Exhibit No. 21,
14 Mr. Forcade?

15 MR. FORCADE: Yes.

16 THE HEARING OFFICER: No objection to that
17 document being admitted, Mr. Steger?

18 MR. STEGER: None.

19 THE HEARING OFFICER: Thank you.

20 Let's go on to Group Exhibit 1 which
21 consists of five photographs taken by Mrs. Bergau.
22 That is the -- those are the documents,
23 Mr. Forcade?

24 MR. FORCADE: Yes.

1 THE HEARING OFFICER: Mr. Steger, they are
2 admitted without objection?

3 MR. STEGER: Yes.

4 THE HEARING OFFICER: And the final
5 Complainants' Exhibit Group 2 which consists of 26
6 photos taken by Mr. Dinshaw. Those are the
7 documents, Mr. Forcade?

8 MR. FORCADE: Yes.

9 THE HEARING OFFICER: And they are admitted
10 without objection, correct, Mr. Steger?

11 MR. STEGER: Correct.

12 THE HEARING OFFICER: All right. Let's move on
13 to the respondents' two exhibits.

14 Respondents' 1 which consists of the
15 trifold pamphlet of Overland Transportation, Inc.,
16 is that the document, Mr. Steger?

17 MR. STEGER: That is correct.

18 THE HEARING OFFICER: Mr. Forcade, that has
19 been admitted without objection, correct?

20 MR. FORCADE: Yes.

21 THE HEARING OFFICER: Let's go to
22 Respondents' 2 which consists of the appraisal
23 itself, a five-page document marked as Respondents'
24 Exhibit 2.

1 Is that the document, Mr. Steger?

2 MR. STEGER: Yes, it is.

3 THE HEARING OFFICER: It is admitted without
4 objection, Mr. Forcade?

5 MR. FORCADE: That's correct.

6 THE HEARING OFFICER: As I understand it those
7 consist of all the exhibits that have been provided
8 and introduced and admitted at this hearing pursuant
9 to hearing officer order.

10 Mr. Steger?

11 MR. STEGER: That is correct.

12 THE HEARING OFFICER: Mr. Forcade?

13 MR. FORCADE: That is correct.

14 THE HEARING OFFICER: All right. Now, for the
15 record we have also discussed a briefing schedule.
16 Right now, I would like to make what I am required
17 to make under the board rules, a credibility
18 determination regarding the witness in this case.

19 I do not believe based on the testimony
20 that there are any direct contradictions or any
21 credibility issues in this matter. I think it's
22 ultimately for the board to determine whether or not
23 the violations as alleged in the complaint, in fact,
24 have been sufficiently substantiated or proved.

1 Now, therefore, I find based on my legal judgment
2 and my knowledge that there are no credibility
3 issues in this case.

4 All right. Now, as far as briefing, both
5 parties have indicated they have a desire to brief
6 in this case. The schedule will go -- my
7 understanding is both parties are going to be
8 briefing?

9 MR. FORCADE: Yes.

10 MR. STEGER: Yes.

11 THE HEARING OFFICER: I may have -- all right.

12 As far as the briefing schedule then, I've
13 discussed with the parties while off the record a
14 proposed briefing schedule which have been adopted
15 and accepted by both the parties. I will try to
16 articulate it as best I can. Please fill in if
17 necessary, Counsel.

18 My understanding is that based -- from the
19 date of the last transcript being file stamped by
20 the clerk of the board 30 days from that date or
21 before is when the complainants' brief shall be
22 due. Mr. Forcade has indicated that he will take on
23 the responsibility of checking with the clerk to
24 determine when that transcript is received by the

1 board.

2 Mr. Forcade, is that accurate?

3 MR. FORCADE: That's correct.

4 THE HEARING OFFICER: Now, as to the response

5 brief to be filed by Mr. Steger and on behalf of his

6 client -- Mr. Forcade?

7 MR. FORCADE: We will also serve Mr. Steger by

8 messenger.

9 THE HEARING OFFICER: Thank you. Mr. Forcade

10 has indicated that he will be serving his brief by

11 messenger mail to Mr. Steger.

12 Mr. Steger's brief will then be due 30

13 days from the date received by messenger which will

14 be noticed as well in the notice to the hearing

15 officer and the board to indicate the date. His

16 brief will be due 30 days from that date.

17 From the date that Mr. Steger then

18 messenger mails -- is that correct, Mr. Steger?

19 MR. STEGER: That is correct.

20 THE HEARING OFFICER: Mr. Steger has indicated

21 that he will messenger mail as well to Mr. Forcade.

22 Ten days from the date that is on that notice in the

23 messenger mail the reply brief of the complainants

24 shall be due.

1 Is that accurate?

2 MR. FORCADE: Yes. I didn't know if that was a
3 question.

4 THE HEARING OFFICER: I apologize.

5 All right. I'll indicate again, the board
6 member who was previously present has left and left
7 prior to the proceeding being closed and closing
8 statements. There have been no members of the
9 public at large. The members have been limited to
10 the parties and in-house counsel or witnesses for
11 the parties.

12 I thank you all. Is there anything else
13 that we need to do before we go off the record in
14 this case, Mr. Forcade?

15 MR. FORCADE: No.

16 THE HEARING OFFICER: Mr. Steger?

17 MR. STEGER: No.

18 THE HEARING OFFICER: Thank you all very much.
19 I believe that's all we have.

20 I will take the exhibits into my
21 possession, and you will receive a hearing officer
22 order regarding the briefing schedule and the
23 closing of the record in this matter upon transcript
24 receipt.

1 Thank you all very much.

2 MR. STEGER: Thank you.

3 THE HEARING OFFICER: Have a good day.

4 (Whereupon, these were all the

5 above-entitled proceedings had

6 at this time.)

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1 STATE OF ILLINOIS)

) SS.

2 COUNTY OF C O O K)

3

4 I, KIM M. HOWELLS, CSR, do hereby

5 state that I am a court reporter doing business in

6 the City of Chicago, County of Cook, and State of

7 Illinois; that I reported by means of machine

8 shorthand the proceedings held in the foregoing

9 cause, and that the foregoing is a true and correct

10 transcript of my shorthand notes so taken as

11 aforesaid.

12

13

14 Kim M. Howells, CSR.

Notary Public, Cook County, IL

15 Illinois License No. 084-004037

16

17 SUBSCRIBED AND SWORN TO

before me this ____ day

18 of _____, A.D., 1998.

19 _____

Notary Public

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21

22

23

24