

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2 CHARTER HALL HOMEOWNER'S)
ASSOCIATION and JEFF COHEN,)

3)
Complainants,)

4)
v.) PCB 98-81

5)
OVERLAND TRANSPORTATION SYSTEM,)

6 INC. and D.P. CARTAGE, INC.,)
)

7 Respondents.)

8

9

10 REPORT OF PROCEEDINGS had in the
11 above-entitled matter before JOHN KNITTLE, Hearing
12 Officer for the Illinois Pollution Control Board,
13 reported by Kim M. Howells, CSR, a Notary Public
14 within and for the County of Cook, State of
15 Illinois, at the James R. Thompson Center, 100 West
16 Randolph Street, Suite 8-31, Chicago, Illinois on
17 the 8th day of December, 1998, at the hour of 10:10
18 a.m.

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

2 ILLINOIS POLLUTION CONTROL BOARD
100 West Randolph Street
3 11th Floor
Chicago, Illinois 60601
4 (312) 814-3620
BY: MR. JOHN KNITTLE

5

6 JENNER & BLOCK,
One IBM Plaza
7 Suite 3900
Chicago, Illinois 60611
8 (312) 222-9350
BY: MR. BILL S. FORCADE,

9

Appeared on behalf of the Complainants,

10

11 McBRIDE, BAKER & COLES,
500 West Madison Street
12 Suite 4000
Chicago, Illinois 60661
13 (312) 715-5700
BY: MR. MARK J. STEGER,

14

Appeared on behalf of the Respondents.

15

16 Also Present:

17 Mr. Richard McGill

18 Mr. David Daniel

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1 THE HEARING OFFICER: Hello. My name is John
2 Knittle. I'm a hearing officer with the Illinois
3 Pollution Control Board. We are here on case PCB
4 98-81, which is Charter Hall Homeowners Association
5 and Jeff Cohen vs. Overland Transportation System,
6 Inc. and D.P. Cartage, Inc.

7 Today's date is December 8, 1998, and it's
8 approximately 10:10 a.m. We're having this hearing
9 pursuant to a board order of October 1, 1998, on an
10 expedited basis to address appropriate remedies
11 including civil penalties. According to that order
12 at this hearing, the parties may introduce evidence
13 not already in the record relevant to the issues of
14 remedies and civil penalties.

15 We have scheduled this hearing in
16 accordance with the IEPA, the Illinois Environmental
17 Protection Act, and the board rules.

18 Could I ask the parties to identify
19 themselves?

20 MR. FORCADE: Good morning. My name is Bill
21 Forcade. I'm from Jenner & Block. We represent the
22 complainants, Charter Hall Homeowners Association
23 and Jeffery Cohen.

24 MR. STEGER: My name is Mark Steger. I'm with

1 the law firm of McBride, Baker & Coles, and we
2 represent the respondents in this matter.

3 THE HEARING OFFICER: At this point, I'd like
4 to ask if there's any outstanding motions that
5 haven't been covered, and we've had a discussion
6 beforehand, and I think, Mark, you had something you
7 wanted to address?

8 MR. STEGER: Well, yeah. What I'd like to
9 address -- thank you, Mr. Hearing Officer -- is the
10 opportunity to provide additional comments on the
11 remedial action plan that was produced to us on
12 December 1st, provided to my client on the 2nd, by
13 letter dated December 1, 1998, from Steven Siros,
14 which is Bill Forcade's associate.

15 What we'd like an opportunity to do is in
16 one of two ways either submit additional comments on
17 this remedial action plan or schedule another
18 hearing to discuss our position on this remedial
19 action plan. As you well know, the board issued an
20 interim order, and on October 1st there was an issue
21 as to whether it was a final and appealable order.
22 We had a hearing officer conference to discuss
23 that. Respondents exercised their right to appeal
24 that decision last Thursday. It was determined that

1 it was not final and an appealable order.

2 Also -- well, we haven't had sufficient
3 time to analyze this remedial action plan. Also,
4 the first set of hearings, I believe it was in May,
5 was focused on the liability issue only.
6 Complainants even tried to submit some information
7 on the remedies in their final brief and the board
8 ignored it. So at this point in time, we're
9 starting anew. That's our position on the remedy
10 phase. We are willing to address the expedited
11 issue, but at the same time do not want to forego
12 any of our rights here that we may have.

13 So at this point in time, what I'm asking
14 for is the hearing officer to decide how he wishes
15 to proceed to the future either with additional
16 comments or scheduling a hearing.

17 THE HEARING OFFICER: Mr. Forcade?

18 MR. FORCADE: Yes. We would object to that,
19 and, I believe, as a preliminary matter I would like
20 on the record a clarification.

21 Mr. Steger has said the opportunity to
22 provide additional comments, and, obviously, we
23 would have no objection to Mr. Steger providing
24 legal briefs at the conclusion of the proceeding on

1 any issue that has been raised during the course of
2 this hearing. If I'm correct -- and I would seek
3 clarification on the record -- Mr. Steger is seeking
4 permission to provide additional factual
5 information --

6 MR. STEGER: That is correct.

7 MR. FORCADE: -- pertaining to the remedial
8 action plan?

9 With that, we would essentially object on
10 a series of bases. First, this proceeding has been
11 bifurcated, and Mr. Steger had the opportunity to
12 present evidence at both the first hearing and at
13 this hearing on any issue relative to the topic of
14 the hearing we wish to pursue.

15 He had the opportunity prior to the first
16 hearing and the opportunity prior to this hearing to
17 seek discovery on any topic he wished to pursue. He
18 chose to pursue discovery not at all. He chose to
19 provide witnesses for the presentation at this
20 hearing not at all. Therefore, he has, in my
21 opinion, waived his right to present any testimony
22 at this hearing or a later date on any of the issues
23 to be discussed in the first or second hearing.

24 As a second issue, the remedial action

1 plan was provided to Mr. Steger as a courtesy. It
2 was not a report by an expert witness covered by the
3 initial hearing officer order. We could have
4 legitimately simply brought the document with us
5 today. We could have legitimately simply raised the
6 issues in the written document verbally without
7 providing in the form of a remedial action plan, and
8 that testimony would not have been subject to the
9 same objection Mr. Steger is raising now.

10 Therefore, by extending a courtesy to
11 allow Mr. Steger advanced knowledge of what we
12 intend to produce at hearing where he could have
13 secured witnesses, Mr. Steger's failure to do so
14 forecloses his opportunity, in our opinion, to do
15 so.

16 Lastly, we believe this is effectively an
17 issue that has already been covered and all of its
18 parts, all of its relevant parts, in prior pleadings
19 either complaints, testimony, or final briefs, and
20 there's nothing new in the remedial action plan for
21 which Mr. Steger complained of surprise even if
22 surprise were a legitimate concern.

23 Therefore, again, reiterating, Mr. Steger,
24 obviously, has the right to file whatever legal

1 pleadings in the form of a brief that he wishes to
2 do so, but we believe that today, and if extended
3 until tomorrow, this hearing presents the last
4 opportunity to present any factual information for
5 board's consideration. We further believe that
6 Mr. Steger's failure to provide a witness list prior
7 to December 1st forecloses his opportunity to
8 present witnesses on any factual issues today.

9 THE HEARING OFFICER: Mr. Steger?

10 MR. STEGER: Yeah. First of all, I'd like to
11 respond to the last point. There are sufficient
12 pieces in this remedial action plan that are new,
13 and I'll just go through them. We're talking about
14 prominent, discrete tones. That was not discussed
15 at the last hearing. I believe it was impulsive
16 sound. Also, there's been no allegations in the
17 complaint. There's no allegations with respect to
18 daytime standards of 901.102(a).

19 Also, with respect to foregoing the
20 rights, I was produced this on December 2nd, the day
21 before the board was to decide whether I had a right
22 to appeal this, and now -- you know, I didn't want
23 my client -- why would my client want to waste the
24 time and energy to engage a witness, an expert, to

1 prepare testimony today when, in fact, he may not
2 have had to?

3 We're trying to compromise here with
4 respect to the other side, but at the same time, you
5 have to understand the position of the respondents.
6 This is a very large corporation. It takes time for
7 decisions to be made. We're trying to develop the
8 necessary information so they can make a decision.

9 The hearing -- at the request of the
10 complainants this thing was bifurcated, not at the
11 request of the respondents. It was bifurcated on
12 liability only, not remedies. So we're in a new
13 ballgame. And we agreed to expedite the hearing so
14 they can present their remedial testimony.

15 It only seemed fair for us to give the
16 opportunity given the procedural nature of this case
17 to have the opportunity to submit additional factual
18 information. That's all we're asking for.

19 THE HEARING OFFICER: Okay. And you're moving
20 this -- you're asking the hearing officer to allow
21 you to do this, correct?

22 MR. STEGER: I'm asking for a hearing officer
23 decision.

24 THE HEARING OFFICER: Okay. The hearing

1 officer decision on this is we're going to deny your
2 request at this point in time. You, of course, have
3 every opportunity to, you know, file a motion with
4 the board asking for a reconsideration of my
5 decision. But I think you have had opportunity to
6 this point. This is a hearing on the remedies, and
7 at this hearing, you're more than welcome to address
8 any of the issues raised in the -- what was it, the
9 remedial action report?

10 MR. FORCADE: Um-hum.

11 THE HEARING OFFICER: And you have today and
12 tomorrow if, in fact, you want to present factual
13 evidence, but to present any factual evidence after
14 the hearing, I would have to deny that request. You
15 are, of course, able to brief in your, you know,
16 posthearing brief any legal issues that you wish to
17 raise.

18 That's my decision on that issue.

19 MR. STEGER: Thank you.

20 Can we have recess for a minute so I can
21 talk with my client?

22 THE HEARING OFFICER: Yes, we can.

23 Can we go off?

24 (Break taken.)

1 THE HEARING OFFICER: After a brief recess, we
2 are now back on the record at PCB 98-81.

3 Mr. Steger, did you have anything else you
4 wanted to add on that?

5 MR. STEGER: I do not have anything else at
6 this time.

7 THE HEARING OFFICER: Mr. Forcade?

8 MR. FORCADE: If I could make a suggestion,
9 your Honor. It may be appropriate to just re-swear
10 all of the witnesses since, I think, everyone in the
11 room is not from the board or is a witness, if
12 that's appropriate.

13 THE HEARING OFFICER: Okay. That will be no
14 problem. And I should note now that there are no
15 members of the public here. We have Richard McGill
16 from the Pollution Control Board sitting in on the
17 proceedings. But everyone else is a member --
18 excuse me, is involved with this proceeding.

19 If you'd swear all the witnesses in.

20 (Witnesses sworn.)

21 THE HEARING OFFICER: Thank you.

22 The order of this hearing is going to go
23 according to the board's procedural rules found at
24 103.202, and we're going to start off with opening

1 statements.

2 Mr. Forcade?

3 MR. FORCADE: We have no opening statements.

4 THE HEARING OFFICER: Mr. Steger?

5 MR. STEGER: Neither do we.

6 THE HEARING OFFICER: Okay. I'll ask you again

7 anyway at the start of your case in chief. No

8 opening statements, I think we can just start

9 calling witnesses.

10 MR. FORCADE: Sure.

11 At this time, I would appreciate the

12 opportunity to call Mr. Behram Dinshaw, please.

13 WHEREUPON:

14 BEHRAM DINSHAW,

15 called as a witness herein, having been first duly

16 sworn, testified, and saith as follows:

17 DIRECT EXAMINATION

18 by Mr. Forcade

19 Q. Could you please state your name and

20 address?

21 A. My name is Behram Dinshaw. My address is

22 663 North Charter Hall Drive.

23 Q. Are you the same Behram Dinshaw that

24 testified in the previous hearing in this matter?

1 A. Yes, I am.

2 Q. Okay. Since the date of the last hearing
3 in this matter, have you changed the structural
4 layout of your house or the time periods that you
5 spend in your home in any significant manner?

6 A. No, I have not.

7 Q. Okay. Since the date of the last hearing
8 in this matter, have you continued to hear noises on
9 your property?

10 A. Yes, I have.

11 Q. Do you have any reason to believe that the
12 noises you have heard since the date of the last
13 hearing are coming from Overland Transportation?

14 A. Yes, they are coming from Overland.

15 Q. What reasons are those?

16 A. Both visually, and I can hear them, you
17 know, from my house.

18 Q. Okay. Since the date of the last hearing,
19 how has the type or description of the noises you
20 hear from Overland changed?

21 A. In my previous hearing, I had testified to
22 the effect that Overland typically does not run on
23 Sundays and during the daytime. It's ironical that
24 the very Sunday after our last hearing they started

1 running at 4 o'clock in the afternoon and ran until
2 10 o'clock at night. I remember that day
3 particularly because that one day they dragged a
4 trailer from almost a half minute. I even remember
5 talking to my neighbors about it.

6 So in that sense, it's gotten worse. I
7 also testified in my last hearing that typically on
8 Sundays they begin operations around midnight. For
9 several Sundays right after that hearing, they
10 started operations about 10 o'clock at night. In
11 that respect, it's gotten worse again.

12 The noises continued. Trailers are
13 continuously parked on the west side of their
14 compound, which is right across from the fence where
15 Charter Hall is situated. Just on Thanksgiving day,
16 for example, there were over four to five trailers
17 parked that night or early morning, Thanksgiving
18 morning.

19 That continues to be a very significant
20 source of noise when the trailers are hitched. Of
21 course, as I have testified before, the sound of the
22 forklifts continues to be a very, very loud noise
23 there when they run over the trailers. Also, they
24 continue blowing the horns. That's also very loud.

1 Another sense of discomfort for me has
2 been on September 1st they installed, as far as I
3 can remember, at least six, if not more, new
4 floodlights on the west compound of Charter Hall
5 Drive -- excuse me, off Overland, which is right
6 across from the fence.

7 The west compound now is lit up -- is lit
8 up as brightly as a baseball field. That's how I
9 see it. The east side of the compound does not have
10 those lights. Every time I drive by, the east side
11 is quiet. It's not as lit. While the west side,
12 which is right across from the perimeter of Charter
13 Hall, is heavily lit. It's loud. That's where they
14 park the yard trailer. That's where, in my opinion,
15 they continue to do most of the operations.

16 Also, I observed the operations more and
17 if you will notice, the doors to the dock -- I
18 believe the dock station or docks, whatever you call
19 them, on the east side of the compound typically
20 they close earlier at night before on the west side
21 again suggesting to me that they do more of the work
22 on the west side, which is across from the
23 perimeter, again, disturbing us late at night.

24 I mean, that's clearly visible to me when

1 I see the dock doors on the west side open and the
2 dock doors on the east side closed, which makes no
3 sense to me.

4 So, in my opinion, the whole situation has
5 gotten worse. Just this very Saturday, for example,
6 I was woken up twice, once at 5 o'clock in the
7 morning and once at 7 o'clock by dragging trailers,
8 again, on the west side of the compound. The
9 situation has not improved at all. In my opinion,
10 it's gotten worse.

11 Q. Since the date of the last hearing, how
12 has the loudness of the noises you hear from
13 Overland changed?

14 A. The loudness of the noise continues to be
15 probably the same level, if not worse. Last week,
16 in particular, was very, very bad. There came a
17 point at about 10 o'clock at night where I actually
18 went over to a friend's house for a while because it
19 got overly loud, and it was, frankly, embarrassing
20 because I had a few people over, and we just went
21 somewhere else.

22 Q. Since the date of the last hearing, how
23 has the number of times per day or the number of
24 times per week that you hear noises from Overland

1 changed?

2 A. I'm woken up just about every single night
3 except Saturday night because typically Saturday
4 night they don't run. But like I just testified a
5 few minutes ago, there was a couple of Sundays where
6 the frequency has increased simply because they
7 started working earlier, but the noise levels
8 continue. The disturbance continues, and it's not
9 getting any better.

10 Q. Since the date of the last hearing, do
11 these noises from Overland still interfere with your
12 ability to conduct normal, personal, social, and
13 business activities in your home?

14 A. Yes. They continue to interfere. As a
15 matter of fact right now, I am in a conference. I'm
16 missing a presentation that I'm supposed to be
17 giving at this very moment. It has continued to
18 play havoc on my personal life and now very
19 seriously on my work life.

20 Q. When was the last time such interference
21 occurred?

22 A. The last time I was home was Saturday
23 morning. At both 5 o'clock and 7 o'clock in the
24 early morning I heard the dragging of trailers which

1 woke me up.

2 Q. Okay. And over all since the date of the
3 last hearing, is the impact of these noises from
4 Overland on your life more severe, less severe, or
5 about the same compared to before the last hearing?

6 A. Based on my current testimony, I think the
7 situation has actually gotten worse.

8 MR. FORCADE: Okay. I have no further
9 questions.

10 THE HEARING OFFICER: Mr. Steger?

11 MR. STEGER: Yes.

12 CROSS-EXAMINATION

13 by Mr. Steger

14 Q. Let me direct your attention to that board
15 over there (indicating), which I believe is --

16 MR. FORCADE: I have an exhibit list. I can
17 provide it.

18 Q. -- Complainants' Exhibit No. 1.

19 MR. FORCADE: It's Complainants' Exhibit No. 1,
20 yes.

21 BY MR. STEGER:

22 Q. Okay. And you testified that your address
23 is 663; is that correct?

24 A. Yes.

1 Q. Okay. Do you live alone?

2 A. Yes.

3 THE HEARING OFFICER: Excuse me, Mr. Steger.

4 Can you just --

5 MR. STEGER: I'm sorry.

6 THE HEARING OFFICER: -- yeah, back it up a

7 little bit, or maybe I can move?

8 MR. FORCADE: Is it all right if I move around

9 so I can also see?

10 THE HEARING OFFICER: Yeah. That's fine.

11 BY MR. STEGER:

12 Q. Okay. So would it be fair to state that

13 what you're seeking out of this is reduction in

14 noise such that you can go to sleep -- you can go to

15 sleep at night and not be woken up?

16 A. More than that, so I can sleep at night,

17 so I can entertain during the day, so I --

18 Q. One moment. Entertain out your deck?

19 A. Yes.

20 Q. Okay. Carry on normal every day

21 activities at your house?

22 A. Yes.

23 Q. Okay. Would it be a fair statement that

24 you don't necessarily care to know how loud it is as

1 long as if it's bothering you, you want if softened?

2 MR. FORCADE: Objection. This goes far beyond

3 the scope of direct examination. It goes into the

4 remedy we're seeking. Mr. Dinshaw has not testified

5 on the technical qualifications for the remedy.

6 THE HEARING OFFICER: Mr. Steger?

7 MR. STEGER: What I'm trying to find out is

8 what he wants. That's all I'm trying to find out.

9 THE HEARING OFFICER: The objection is

10 overruled. He testified to how it was bothering

11 him, and I think if you will rephrase your

12 question -- or could you read it back for the

13 witness?

14 MR. STEGER: I'll rephrase it.

15 BY MR. STEGER:

16 Q. Actually, who lives next door to you at

17 667?

18 A. I believe that would be Bergaus.

19 Q. Bergaus. Okay. And who lives at 659?

20 A. Kim Goby.

21 Q. Okay. She's not here today, is she?

22 A. No.

23 MR. STEGER: But you're here (indicating).

24 THE HEARING OFFICER: Can we let the record

1 reflect that Mr. Steger was pointing at -- and your
2 name?

3 MS. BERGAU: Mary Ann Bergau.

4 THE HEARING OFFICER: -- (Continuing.) -- Mary
5 Ann Bergau.

6 MS. BERGAU: B-e-r-g-a-u.

7 MR. STEGER: No further questions.

8 THE HEARING OFFICER: Mr. Forcade?

9 MR. FORCADE: Yes. Thank you.

10 At this time, we would like to call
11 Mr. Jeff Cohen.

12 THE HEARING OFFICER: So there's no redirect?

13 MR. FORCADE: No redirect.

14 THE HEARING OFFICER: Sir, you're free to
15 leave, if you'd like.

16 THE WITNESS: Thank you.

17 (Witness excused.)

18 THE HEARING OFFICER: Mr. Forcade? I'm sorry.

19 Could you state your name for the record?

20 You've already been sworn.

21 THE WITNESS: My name is Jeffery Cohen,

22 C-o-h-e-n.

23 THE HEARING OFFICER: Mr. Forcade?

24

1 WHEREUPON:

2 JEFFERY COHEN,

3 called as a witness herein, having been first duly

4 sworn, testified, and saith as follows:

5 DIRECT EXAMINATION

6 by Mr. Forcade

7 Q. Mr. Cohen, are you the same Jeffery Cohen

8 who testified in the previous hearing in this

9 matter?

10 A. Yes, I am.

11 Q. And since the date of the last hearing in

12 this matter, have you changed the structural layout

13 of your house or the time periods that you spend in

14 your home in any significant manner?

15 A. Over the summer, we purchased a summer

16 home, weekend home, up in Wisconsin and have spent

17 pretty much every other weekend up there. Other

18 than that, we have changed nothing.

19 Q. Okay. And since the date of the last

20 hearing in this matter, have you continued to hear

21 noises on your property?

22 A. Yes.

23 Q. Do you have any reason to believe that the

24 noises you have heard since the day of the last

1 hearing are coming from Overland Transportation?

2 A. I know they are.

3 Q. What are the reasons for that?

4 A. I can see them operating from my bedroom

5 window. I can see them operating their forklifts

6 and hear the noise, or I can see the truck trailers

7 moving and hear the noise from that.

8 Q. Since the date of the last hearing, how

9 has the type or description of the noises you hear

10 from Overland changed?

11 A. There pretty much the same.

12 Q. The same. Okay. And since the date of

13 the last hearing, how has the loudness of the noises

14 you hear from Overland changed?

15 A. It's pretty much the same.

16 Q. Pretty much the same. And since the date

17 of the last hearing, how has the time of day the

18 noises occur from Overland changed?

19 A. It's still pretty much the same.

20 Q. Okay. Since the day of the last hearing,

21 how has the number of times per day or the number of

22 times per week of the noises you hear from Overland

23 changed?

24 A. It hasn't changed significantly.

1 Q. Okay. Since the date of the last hearing,
2 do these noises from Overland still interfere with
3 your ability to conduct normal, personal, social,
4 and business activities in your home?

5 A. Yes, they do.

6 Q. Okay. And when was last time this type of
7 interference occurred?

8 A. It was about quarter to 6:00 yesterday
9 evening when we were at home eating dinner, and they
10 started the banging. We had to turn up the TV just
11 to really listen to the TV over the loud sound of
12 the banging.

13 Q. Okay. And since the date of the last
14 hearing, is the impact from these noises from
15 Overland on your life less severe, more severe, or
16 about the same as it was before?

17 A. About the same.

18 MR. FORCADE: Okay. Thank you. No further
19 questions.

20 THE HEARING OFFICER: Mr. Steger?

21 MR. STEGER: I have a question of
22 clarification. Is Mr. Cohen here testifying on
23 behalf of Charter Hall, or is he testifying on
24 behalf of himself?

1 MR. FORCADE: Mr. Cohen is testifying as a
2 witness in this proceeding.

3 MR. STEGER: What I be would -- well, I need to
4 ask him something about Charter Hall.

5 MR. FORCADE: We did not discuss anything about
6 Charter Hall on direct. I would object to that.

7 MR. STEGER: Okay.

8 THE HEARING OFFICER: Okay. That's fine.

9 MR. STEGER: Charter Hall is a complainant in
10 this matter, and so far there's nobody that's
11 testified on behalf of Charter Hall.

12 THE HEARING OFFICER: Understood.

13 MR. FORCADE: We disagree.

14 MR. STEGER: Well, then who testified on behalf
15 of Charter Hall?

16 MR. FORCADE: All of the witnesses testified on
17 behalf of Charter Hall.

18 MR. STEGER: Okay. So I'm free to ask all the
19 witnesses about that?

20 MR. FORCADE: You're free to redirect. If I
21 ask questions about Charter Hall on direct, you're
22 free to follow up on it.

23

24

1 CROSS-EXAMINATION

2 by Mr. Steger

3 Q. Mr. Cohen, where do you live?

4 A. I live at 647 Charter Hall Drive.

5 Q. On Complainants' Exhibit No. 1, does that

6 accurately reflect where your address is

7 (indicating)?

8 A. Yes.

9 Q. Okay.

10 THE HEARING OFFICER: Mr. Steger, I hate to --

11 thanks. Let the record reflect Mr. Steger was

12 pointing at number six -- what was it, Mr. Steger?

13 647?

14 MR. STEGER: I'm sorry. 647, here

15 (indicating).

16 THE HEARING OFFICER: Okay.

17 BY MR. STEGER:

18 Q. And, again, I'll ask you the same question

19 as I did Mr. Dinshaw. Would it be a fair statement

20 to say what you're seeking is so that the sound is

21 quieted enough to enable you to sleep at night?

22 A. To sleep at night and not be disturbed

23 during the day.

24 Q. Entertain guests?

1 A. Entertain guests.

2 Q. Talk on the phone?

3 A. Talk on the phone.

4 Q. Watch TV?

5 A. Watch TV.

6 Q. Okay. Have you read any -- well, I'll

7 save that.

8 MR. STEGER: No further questions.

9 THE HEARING OFFICER: Mr. Forcade, do you have
10 any redirect?

11 MR. FORCADE: No redirect.

12 THE HEARING OFFICER: Thank you very much

13 (Witness excused.)

14 THE HEARING OFFICER: Mr. Forcade, your next
15 witness?

16 MR. FORCADE: If it's possible at this time,

17 I'd like to call Mary Ann Bergau.

18 THE HEARING OFFICER: Ma'am, could you state
19 your name and spell it for the record.

20 THE WITNESS: Mary Ann Bergau, B-e-r-g-a-u.

21 THE HEARING OFFICER: Thank you.

22 You can proceed.

23

24

1 WHEREUPON:

2 MARY ANN BERGAU,

3 called as a witness herein, having been first duly

4 sworn, testified, and saith as follows:

5 DIRECT EXAMINATION

6 by Mr. Forcade

7 Q. Okay. Ms. Bergau, are you the same Mary

8 Ann Bergau who testified in the previous hearing in

9 this matter?

10 A. Yes, I am.

11 Q. Since the date of the last hearing in this

12 matter, have you changed the structural layout of

13 your house or the time periods that you spend in

14 your home in any significant manner?

15 A. No, I have not.

16 Q. Okay. Since the date of the last hearing

17 in this matter, have you continued to hear noises on

18 your property?

19 A. Absolutely.

20 Q. Do you have any reason to believe that the

21 noise that you hear since the date of the last

22 hearing are coming from Overland Transportation?

23 A. Yes, I know they are because I can

24 visually see them. Over the fence, I see them

1 hooking up the trailers. I see the forklifts
2 running back and forth because the dock doors are
3 open when they're loading on that site. Horns are
4 coming from there. The other night, there was a
5 radio blaring. I don't know if it was from where
6 they repair the truck or the office or where it was
7 coming from, but they had a radio on with obnoxious
8 music, in my opinion. It was just blaring over the
9 fence.

10 Q. Since the date of the last hearing, how
11 has the type or description of the noises you hear
12 from Overland changed?

13 A. I would say it hasn't changed. It's still
14 the loud banging, you know, with the forklifts, the
15 dragging of the trailers, the horns beeping, the
16 radios blaring.

17 Q. Okay.

18 A. It hasn't changed.

19 Q. Since the date of the last hearing, how
20 has the loudness of the noises you hear from
21 Overland changed?

22 A. The loudness hasn't changed either. It's
23 still as loud as it was.

24 Q. Since the date of the last hearing, how

1 has the time of day of the noises you hear from

2 Overland changed?

3 A. The time of day as Behram Dinshaw

4 testified, we too noticed that occasionally now on

5 Sunday nights they're starting earlier. It's not

6 every Sunday night but, they do start at 10:00 as

7 opposed to, you know, 3 o'clock in the morning

8 Monday morning. So, you know, it has -- the

9 frequency has increased in that respect.

10 Q. Since the date of the last hearing, how

11 has the number of times per day or the number of

12 times per week of the noises you hear from Overland

13 changed?

14 A. It's just changed in that respect. I

15 mean, it stayed the same other than the increase on

16 occasional Sundays. Sometimes a Saturday afternoon

17 they'll be, you know, dropping trailers or

18 something.

19 Q. Okay. Since the date of the last hearing,

20 do these noises from Overland still interfere with

21 your ability to conduct normal, personal, social,

22 and business activities in your home?

23 A. Absolutely. Absolutely. We can't have

24 the windows open. Last week, the weather was still

1 very unseasonably warm. To talk on the phone, I
2 would have to close the sliding door, to close the
3 windows. TV, we would have to keep it up at a
4 higher volume to, you know, overpower the sound of
5 the bangs and the same thing.

6 Q. When was the last time such interference
7 occurred?

8 A. This morning.

9 Q. This morning.

10 A. Around 3:30, 4 o'clock in the morning.

11 Q. Since the date of the last hearing, is the
12 impact from these noises from Overland on your life
13 more severe, less severe, or about the same?

14 A. I would have to say because of a recent
15 experience, it's more severe, and pardon me if I get
16 emotional right now. But my mother passed away the
17 Tuesday before Thanksgiving. She had to move to my
18 sister's house in McHenry, 30 miles away because we
19 couldn't have her living with us because of the
20 noise. She couldn't get her rest. I wrote letters
21 to the village. I called Overland I don't know how
22 many times pleading with them to quiet down so that
23 she could sleep in our home. She couldn't. And
24 last week Tuesday she passed away. I missed a year

1 of her life because of the noise, the continuous

2 noise, coming from this company. I'm sorry. I

3 don't mean to get emotional.

4 MR. FORCADE: Thank you. No further questions.

5 THE HEARING OFFICER: Do you need a minute?

6 Could we go off the record for a second?

7 Is that okay, Mark?

8 MR. STEGER: Oh, yeah.

9 (Break taken.)

10 THE HEARING OFFICER: Ms. Bergau is back with

11 us.

12 Mark, do you have any cross-examination?

13 MR. STEGER: Well, actually, I just have a

14 brief. . .

15 CROSS-EXAMINATION

16 by Mr. Steger

17 Q. You talked about your interference. And

18 do you know approximately where on your property you

19 are when you experience this, backyard?

20 A. Upstairs, downstairs, outside.

21 Q. Okay. Do you ever experience it in your

22 driveway?

23 A. Yes.

24 Q. Okay. Do you ever take walks in Charter

1 Hall?

2 A. Yes.

3 Q. Okay. Do you experience it on your walks?

4 A. Yes.

5 Q. Where do you take your walks?

6 A. I walk around the blocks through the next
7 complex, which is Deer Run sometimes through Timber
8 Lakes, which is the second complex over, and I walk
9 the circle.

10 MR. STEGER: Okay. No further questions.

11 THE HEARING OFFICER: Mr. Forcade, do you have
12 redirect?

13 MR. FORCADE: No.

14 THE HEARING OFFICER: Thank you very much.

15 (Witness excused.)

16 THE HEARING OFFICER: Next witness?

17 MR. FORCADE: At this time, if we could, we'd
18 like to call Mr. Bergau.

19 THE HEARING OFFICER: Could you state and spell
20 your name, please.

21 THE WITNESS: Yeah. It's Dennis Bergau,
22 B-e-r-g-a-u.

23 THE HEARING OFFICER: Thank you.

24 You can proceed.

1 WHEREUPON:

2 DENNIS BERGAU,

3 called as a witness herein, having been first duly

4 sworn, testified, and saith as follows:

5 DIRECT EXAMINATION

6 by Mr. Forcade

7 Q. Mr. Bergau, would you please state your

8 name and address for the record?

9 A. My name is Dennis Bergau. I'm at 667

10 Charter Hall, Palatine.

11 Q. Are you the same Dennis Bergau that

12 testified in the previous hearing in this matter?

13 A. Yes, I am.

14 Q. Okay. Since the date of the last hearing

15 in this matter, have you changed the structural

16 layout of your house or the time periods you spend

17 in your home in any significant manner?

18 A. We haven't changed the structural layout

19 of the house, no. The only thing that's different

20 is I was on chemotherapy from December 1997 until

21 May 8, '98, where I was home on Fridays and

22 Saturdays recovering from the chemo. But other than

23 that, there hasn't been any change.

24 Q. Okay. Since the date of the last hearing

1 in this matter, have you continued to hear noises on
2 your property?

3 A. Yes, I have.

4 Q. Do you have any reason to believe that the
5 noises you have heard since the date of the last
6 hearing are coming from Overland Transportation?

7 A. Yes, they're coming from Overland.

8 Q. Where are the reasons for that conclusion?

9 A. I've looked out -- when I'm awoken in the
10 morning, I look out and I'll see activity in the
11 back looking at Overland, so. . .

12 Q. Okay. Since the date of the last hearing,
13 how has the type or description of the noises from
14 Overland changed?

15 A. I think it's similar. The noises are the
16 same.

17 Q. Okay.

18 A. You know, the dragging of the trailers and
19 so on.

20 Q. Since the date of the least hearing, how
21 has the loudness of the noises you've heard from
22 Overland changed?

23 A. It's about the same.

24 Q. Okay. Since the date of the last hearing,

1 how has the time of day of the noises you hear from

2 Overland changed?

3 A. It's the same.

4 Q. Okay. And since the date of the last

5 hearing, how has the number of times per day or the

6 number of times per week of the noises you hear from

7 Overland changed?

8 A. I think it's the same.

9 Q. Okay. And since the date of the last

10 hearing, do these noises from Overland still

11 interfere with your ability to conduct normal,

12 personal, social, and business activities in your

13 home?

14 A. Yeah, it does, sleeping and everything

15 else. I mean, we don't have friends over anymore

16 now because we go to their house because of the

17 noise in our house.

18 Q. When was the last time such interference

19 occurred?

20 A. Well, this morning it occurred. Yesterday

21 it occurred.

22 Q. Okay. Since the date of the last hearing,

23 is the impact of these noises from Overland on your

24 life more severe, less severe, or about the same?

1 A. I think it's the same, the same thing.

2 MR. FORCADE: Okay. I have no further
3 questions.

4 THE HEARING OFFICER: Mr. Steger?

5 MR. STEGER: Yeah. I have some clarifying
6 questions.

7 CROSS-EXAMINATION

8 by Mr. Steger

9 Q. You say again -- I'm assuming it was your
10 wife that previously testified; is that correct?

11 A. That's correct.

12 Q. Okay. You live in the same house?

13 A. Yes. We do.

14 Q. When you experienced these interferences,
15 are you in your house?

16 A. Yes.

17 Q. Are you in your backyard?

18 A. I experience it in my house and backyard.

19 Q. Okay. How about your driveway?

20 A. Yes, I experience it there.

21 Q. Okay. Do you take walks in the Charter
22 Hall residence?

23 A. I take walks and ride a bike. I do both.

24 Q. Okay. Does it interfere with your riding

1 a bike?

2 A. Does it interfere with my riding a bike?

3 No.

4 Q. Do you hear it?

5 A. I can hear it, sure.

6 Q. Okay. A clarifying question on -- you

7 said the sound is the same, and you testified to the

8 trailers dragging; is that correct?

9 A. As one of the sounds.

10 Q. What are the other sounds?

11 A. It's the same thing I testified before,

12 but it's --

13 Q. Would it be fair to characterize it as the

14 double bang sound?

15 A. I can still hear that.

16 Q. Okay.

17 A. Yes, I hear that. And I hear trailers

18 being hooked. I hear someone working or banging

19 pipes, air brakes. So it's the same thing as

20 before.

21 Q. Let me ask you this. What would you like

22 to see happen?

23 A. What would I like to see happen?

24 Q. Yes.

1 A. I'd like to be able to conduct my life in
2 a normal way.

3 Q. And how would you think that would happen?

4 A. How would that happen? I would like to
5 see it where I can sleep, where I can have guests
6 over, where I can open my window in the spring,
7 those types of things.

8 MR. STEGER: No further questions.

9 THE HEARING OFFICER: Mr. Forcade?

10 MR. FORCADE: No redirect.

11 THE HEARING OFFICER: Thank you, sir.

12 (Witness excused.)

13 MR. FORCADE: Okay. At this time, we would
14 like to call Ms. Cohen.

15 THE HEARING OFFICER: Could you please state
16 your name for the record and spell it, please?

17 THE WITNESS: Tara, T-a-r-a, Cohen, C-o-h-e-n.

18 THE HEARING OFFICER: Okay. Thank you.

19 Mr. Forcade?

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1 WHEREUPON:

2 TARA COHEN,

3 called as a witness herein, having been first duly

4 sworn, testified, and saith as follows:

5 DIRECT EXAMINATION

6 by Mr. Forcade

7 Q. Are you the same Tara Cohen who testified
8 in the previous hearing in this matter?

9 A. Yes, I am.

10 Q. And for clarification, are you Jeff's
11 wife, and do you live in the same house with him?

12 A. Correct.

13 Q. Since the date of the last hearing in this
14 matter, have you changed the structural layout of
15 your house or the time periods that you spend in
16 your home in any significant manner?

17 A. As my husband stated, we spend every other
18 weekend -- approximately every other weekend up in
19 Lake Geneva. Other than that, we are still at home.

20 Q. Okay. Since the date of the last hearing
21 in this matter, have you continued to hear noises on
22 your property?

23 A. Yes.

24 Q. Okay. Do you have any reason to believe

1 that the noises you have heard since the date of the
2 last hearing are coming from Overland

3 Transportation?

4 A. Yes, I do.

5 Q. And what are those reasons?

6 A. I can hear it and see them when they're
7 occurring, and. . .

8 Q. Okay. Since the date of the last hearing,
9 how has the type or description of the noises you
10 heard from Overland changed?

11 A. It seems to be the same. I hear all kinds
12 of sounds, bangs and booms and hisses and scrapes
13 and screeches and everything else, and I still hear
14 everything any time of the day.

15 Q. And how has the loudness of the noises
16 you've heard from Overland changed since the date of
17 the last hearing?

18 A. It seems to be the same.

19 Q. Okay.

20 A. Not improved.

21 Q. And since the date of the last hearing,
22 how has the time of day of the noises changed?

23 A. It seems to be the same.

24 Q. Okay. And since the date of the last

1 hearing, how has the number of times per day or the
2 number of times per week of the noises you hear from
3 Overland changed?

4 A. It seems to be about the same. It seems
5 they're a little busier right now, but it's not that
6 it's -- because it was always occurring, it varies
7 at different times during the day. I don't know
8 whether that -- you know, at any given day whether
9 that would have been on that day or more on the
10 other day.

11 Q. Okay. Since the date of the last hearing,
12 do these noises from Overland still interfere with
13 your ability to conduct normal, personal, social,
14 and business activities in your home?

15 A. Yes.

16 Q. Okay. And when was last time such
17 interference occurred?

18 A. Both yesterday and this morning. This
19 morning about 20 after 3:00, yesterday morning about
20 quarter to 5:00 and last night when we were trying
21 to eat dinner like a normal family.

22 Q. Okay. Since the date of the last hearing,
23 is the impact of these noises from Overland on your
24 life more severe, less severe, or about the same?

1 A. It seems about the same. I'm still tired
2 trying to go to work and things like that and carry
3 on life and still try to make up sleep.

4 MR. FORCADE: I have no further questions.

5 THE HEARING OFFICER: Mr. Steger, do you have
6 cross?

7 MR. STEGER: Yeah, just a few.

8 CROSS-EXAMINATION

9 by Mr. Steger

10 Q. Again, where are you when you hear these
11 noises?

12 A. Just about anywhere in Charter Hall, in my
13 house, upstairs, downstairs, in the yard, in the
14 front yard, in the driveway, in the garage, on the
15 sidewalk. I have been across the street and heard
16 them banging.

17 Q. Is there any particular difference between
18 the types of sounds you hear when you're in your
19 backyard versus the time you're in your front yard?

20 A. It depends on how loud they are. I mean,
21 if I'm farther away -- if they're louder, I'm going
22 to hear them farther away.

23 Q. So would it be fair to say it's quieter in
24 your garage -- in your driveway? I'm sorry.

- 1 A. In my driveway? I might not hear every
2 little sound there. So maybe it is, but. . .
- 3 Q. Okay.
- 4 A. I figure if I'm in my driveway hearing
5 sounds from something on the other side of my house,
6 I shouldn't be.
- 7 Q. And then let me ask you the same question
8 I asked Mr. Bergau. What are you seeking out of
9 this?
- 10 A. A normal life like everyone else leads and
11 don't have to be woken up all the time and have to
12 rearrange and. . .
- 13 Q. To be able to entertain guests outside?
- 14 A. Yeah, that would be nice.
- 15 Q. Not be woken up at night?
- 16 A. Um-hum.
- 17 Q. Carry on a conversation, a normal
18 conversation?
- 19 A. Um-hum.
- 20 Q. Talk on the telephone, watch TV?
- 21 A. Um-hum.
- 22 THE REPORTER: Is that yes?
- 23 THE WITNESS: Yes. Sorry.
- 24 THE HEARING OFFICER: Yes, please articulate a

1 response instead of nodding; otherwise, she has
2 trouble.

3 MR. STEGER: No further questions.

4 THE HEARING OFFICER: Mr. Forcade?

5 MR. FORCADE: No redirect.

6 THE HEARING OFFICER: Thank you very much.

7 (Witness excused.)

8 MR. FORCADE: Can we take five minutes before I
9 call Mr. Zak?

10 THE HEARING OFFICER: Is that okay with you,
11 Mark?

12 MR. STEGER: That's fine.

13 THE HEARING OFFICER: Yes. Can we go off the
14 record for about five?

15 (Break taken.)

16 THE HEARING OFFICER: We're back on the record
17 after a short recess.

18 Mr. Forcade, it's still your case.

19 MR. FORCADE: Sure.

20

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1 WHEREUPON:

2 GREG ZAK,

3 called as a witness herein, having been first duly

4 sworn, testified, and saith as follows:

5 DIRECT EXAMINATION

6 by Mr. Forcade

7 Q. Mr. Zak, could you please state your name
8 and business address?

9 A. My name is Greg Zak, and my business
10 address is the Illinois Environmental Protection
11 Agency, PO Box 19276, Springfield, Illinois,
12 62794-9276.

13 Q. Are you the same Gregg Zak who testified
14 in the previous hearing in this matter?

15 THE HEARING OFFICER: Can I interrupt?

16 THE WITNESS: Yeah.

17 THE HEARING OFFICER: Greg, were you sworn in
18 with the other witnesses?

19 THE WITNESS: Yes.

20 THE HEARING OFFICER: Okay. I wasn't sure if
21 we just did the citizens. Sorry for the
22 interruption.

23 THE WITNESS: No problem.

24

1 BY MR. FORCADE:

2 Q. Are you the same Greg Zak that testified
3 in the previous hearing in this matter?

4 A. Yes.

5 Q. Are you receiving any compensation from
6 Charter Hall for your testimony today?

7 A. No.

8 Q. Okay. Since the date of the last hearing,
9 have there been any significant changes to your
10 resume, your job functions, or your qualifications
11 regarding noise emission or noise control?

12 A. No.

13 MR. FORCADE: Okay. At this time, we would
14 like to tender Mr. Zak as an expert on noise
15 measurement and control if that is, in fact,
16 necessary since he was previously qualified in the
17 previous hearing.

18 THE HEARING OFFICER: Do you have an
19 objection?

20 MR. STEGER: No.

21 THE HEARING OFFICER: He's so qualified.

22 MR. FORCADE: All right. At this time, I would
23 like to mark for identification what we have termed
24 as Plaintiffs' Exhibit No. 1, provide a copy to

1 counsel, and a copy to the witness, if we could.

2 (Plaintiffs' Exhibit No. 1

3 marked for identification,

4 12/08/98.)

5 MR. STEGER: Is this the same document you

6 provided to me?

7 MR. FORCADE: Yes.

8 MR. STEGER: Okay.

9 THE HEARING OFFICER: Okay.

10 MR. FORCADE: And this document was provided to

11 opposing counsel on December 1st, received

12 December 2nd, whatever.

13 BY MR. FORCADE:

14 Q. Mr. Zak, I show you what has been marked

15 for identification as Plaintiffs' Exhibit No. 1, the

16 remedial action plan and ask if you've had an

17 opportunity to review this document before?

18 A. Yes, I have.

19 Q. Okay. Mr. Zak, directing your attention

20 to Roman numeral II of the remedial action plan

21 entitled Mandated Physical Changes, do you have an

22 opinion with a reasonable degree of scientific

23 certainty as to whether the physical changes

24 identified in paragraphs A, B, and C could be

1 completed within 60 days from the date of this
2 report?

3 A. Yes, I do.

4 Q. And what is that opinion?

5 A. I believe it could.

6 Q. Okay. Mr. Zak, directing your attention
7 to Roman numeral II of the remedial action plan
8 subsection A regarding a wooden fence, do you have
9 an opinion with a reasonable degree of scientific
10 certainty as to whether someone could build a wooden
11 fence that would not be an effective noise control
12 device?

13 A. Yes, I do.

14 Q. And what is that opinion?

15 A. My opinion is that it's been my experience
16 that quite often a wooden fence, or in this case on
17 the exhibit a brick barrier, can and it has been in
18 several situations built and was not effective for
19 controlling noise.

20 Q. Okay. Mr. Zak, directing your attention
21 to Roman number II of the remedial action plan
22 subsection B regarding adding absorptive material to
23 the surface of the barrier and to the facility
24 building, do you have an opinion with a reasonable

1 degree of scientific certainty as to whether someone
2 could place materials on those surfaces such that it
3 would not be an effective noise control device?

4 A. Yes, I do.

5 Q. And what is that opinion?

6 A. My opinion and experience has been that
7 it's not at all uncommon to have the wrong material
8 added. If I could give you an example, Lauhoff --
9 and it's spelled L-a-u-h-o-f-f -- Grain Company had
10 asked the state for information on good absorptive
11 material to line a machine room at an elevator. I
12 advised them to use ordinary construction grade
13 fiberglass insulation.

14 The manager called me a couple weeks later
15 and told me that the material didn't work. I
16 visited the site, and the reason the material didn't
17 work is they had substituted Styrofoam for
18 fiberglass, and Styrofoam is not acoustically
19 reactive at all. It will not work. And I advised
20 them -- I told him to use fiberglass. His
21 explanation was, well, insulation is insulation. I
22 said, well, when the acoustical parties are factored
23 in, it's not insulation is insulation. Some things
24 are acoustically active, and some things are not.

1 It so happens that fiberglass is one of the best
2 materials, and the foam is one of the -- the
3 Styrofoam is one of the worst materials.

4 Q. Okay. Thank you.

5 Mr. Zak, directing your attention to Roman
6 numeral II of the remedial action plan,
7 subsection C, regarding building a structure to
8 enclose the west side loading docks, do you have an
9 opinion with a reasonable degree of scientific
10 certainty as to whether someone could build an
11 enclosure to the loading docks such that it would
12 not be an effective noise control device?

13 A. Yes, I do.

14 Q. And what is that opinion?

15 A. My opinion is that, again, it's not
16 terribly uncommon to run into situations where it's
17 not done properly. To cite some examples, I see
18 situations where a contractor was given the plans to
19 design an airtight, sound-containing structure and
20 substituted materials -- used materials that were
21 too thin, and in some cases left gaps, such that the
22 acoustical properties of the containment building or
23 structure were almost totally ineffective.

24 Q. Okay. Thank you.

1 Mr. Zak, in summary, do you have an
2 opinion with a reasonable degree of scientific
3 certainty on whether someone could render each and
4 every one of the physical changes described in the
5 remedial action plan ineffective or less effective
6 as noise control devices by failure to properly
7 design, control, and test the devices?

8 A. Yes, I do.

9 Q. And what is that opinion?

10 A. It's been my experience over the last 26
11 years that it is not at all uncommon for the person
12 or persons doing the work to make what I would call
13 noise control engineering errors. To avoid that,
14 what's typically done is a noise control engineer
15 oversees the project and takes periodic noise
16 measurements to verify the degree of noise
17 reductions being obtained by the work.

18 Q. Thank you.

19 Mr. Zak, do you have an opinion with a
20 reasonable degree of scientific certainty on whether
21 the initial certification to the board such as those
22 described in Roman numeral VII under Supervision of
23 Noise Expert and the sound recording device
24 described in Roman numeral V and VI of the remedial

1 action plan entitled Sound Recording Device would be
2 necessary and effective procedures for detecting and
3 recording that the mandated physical changes are
4 properly designed, constructed, and tested to ensure
5 proper operation as noise control devices?

6 A. Yes, I do.

7 Q. And what is that opinion?

8 A. In my opinion, it would be wise and
9 prudent to follow the recommendations in Roman
10 numerals V and VI in order to ensure that the noise
11 abatement and noise control engineering would
12 effectively reduce the noise to the desired level.

13 Q. Okay. Mr. Zak, directing your attention
14 to Roman numeral II of the remedial action plan and,
15 I believe that actually should be Roman numeral III
16 of the remedial action plan entitled Mandated
17 Operational Changes, do you have an opinion with a
18 reasonable degree of scientific certainty as to
19 whether the operational changes identified in
20 paragraphs A and B could be completed within ten
21 days of the date of the board order in this matter?

22 A. Yes, I do.

23 Q. And what is that opinion?

24 A. My opinion is that ten days would not be

1 unreasonable to implement those operational
2 changes.

3 Q. Okay. Mr. Zak, directing your attention
4 to the mandated operational changes in Roman numeral
5 III of the remedial action plan, are you aware of
6 any physical limitation that would prohibit Overland
7 from recommencing its prior practice of parking
8 trailers and tractors on the west side or of
9 conducting hammering, banging, or other repair work
10 outside?

11 A. No, I'm not.

12 Q. Okay. Mr. Zak, do you have an opinion
13 with a reasonable degree of scientific certainty as
14 to whether the procedures such as the sound
15 recording device procedures outlined in Roman
16 numerals V and VI would be a necessary and effective
17 procedure for detecting and recording such isolated
18 and spontaneous events?

19 A. Yes, I do.

20 Q. What is that opinion?

21 A. My opinion is that I would recommend that
22 Roman numerals V and VI be followed and the
23 recording procedures to ensure accurate recordings.

24 Q. Mr. Zak, directing your attention to Roman

1 numeral IV of the remedial action plan entitled
2 Noise Limitations, do you have an opinion with a
3 reasonable degree of scientific certainty as to
4 whether the noise limitation identified in
5 paragraphs A and B would provide a reasonably fast
6 and inexpensive standard for testing to determine
7 whether the physical and operational noise control
8 measures have been constructed and operated in a
9 manner that will prevent unreasonable interference
10 with the enjoyment of life to Charter Hall
11 residents?

12 A. Yes, I do.

13 Q. And what is that opinion?

14 A. In my opinion, implementation of A and B
15 would provide sufficient noise reduction to solve
16 the existing noise problem.

17 Q. Okay. Mr. Zak, directing your attention
18 to Roman numerals V and VI of the remedial action
19 plan entitled Sound Recording Device, do you have an
20 opinion with a reasonable degree of scientific
21 certainty as to whether those noise measurement
22 devices and protocols would provide a reasonable and
23 effective method for determining whether the
24 physical and operational changes described in Roman

1 numerals II and III have been properly implemented

2 and are effective?

3 A. Yes, I do.

4 Q. And what is that opinion?

5 A. I believe that it would.

6 Q. Okay. Mr. Zak, directing your attention

7 to Roman numerals V and VI of the remedial action

8 plan entitled Sound Recording Device, do you have an

9 opinion with a reasonable degree of scientific

10 certainty as to whether the noise measurement

11 devices in protocols identified in paragraphs number

12 V and VI would provide a technically feasible and

13 economically reasonable method for determining

14 compliance with any existing regulatory noise

15 limitations or with any board established

16 site-specific noise limitations?

17 A. Yes, I do.

18 Q. And what is that opinion?

19 A. I believe that it would be effective.

20 Q. Okay. And, Mr. Zak, do you have an

21 opinion with a reasonable degree of scientific

22 certainty as to whether the sound recording device

23 procedures outlined in Roman numerals V and VI would

24 be a necessary and effective procedure for detecting

1 and recording increased noise levels transmitted to
2 Charter Hall properties resulting from future
3 physical or operational changes at Overland's
4 facility such as constructing new buildings or
5 changing the types of activities conducted?

6 A. Yes, I do.

7 Q. And what is that opinion?

8 A. I believe that it would be necessary.

9 Q. Okay. Mr. Zak, in the absence of some
10 form of noise measurement and recording device, is
11 there any mechanism to determine whether noise
12 emanating from Charter Hall -- from Overland's
13 property would violate any board regulatory
14 standards or site-specific standards set by board
15 order?

16 A. Short of recalling the witnesses and
17 having each witness explain what the current problem
18 is, in my opinion, the simplest way to verify
19 compliance would be to use the recording device in
20 order to ensure that Overland is meeting the
21 Pollution Control Board noise limitations.

22 Q. Thank you.

23 And, Mr. Zak, directing your attention to
24 Roman numeral VII of the remedial action plan

1 entitled Supervision of a Noise Expert, do you have
2 an opinion with a reasonable degree of scientific
3 certainty as to whether the qualifications
4 identified in paragraph seven would provide a
5 technically competent person trained and skilled in
6 appropriate and effective methods of noise
7 measurement and noise control?

8 A. Yes, I do.

9 Q. And what is that opinion?

10 A. My opinion is that the description there
11 would provide an individual that is qualified and
12 would be able to competently carry out the board
13 order and ensuring that the noise control practices
14 would meet the board order and bring the facility
15 into compliance.

16 Q. Mr. Zak, directing your attention to Roman
17 numeral VII of the remedial action plan entitled
18 Supervision of Noise Expert, do you have an opinion
19 with a reasonable degree of scientific certainty as
20 to whether the certification procedures identified
21 in paragraph seven would provide a reasonable
22 likelihood that the mandated physical changes and
23 sound recording options are conducted in a
24 technically competent manner?

1 A. Yes, I do.

2 Q. And what is that opinion?

3 A. My opinion is that certifying that the
4 individual is a member of the Institute of Noise
5 Control Engineering ensures that that person has the
6 necessary educational and experiential background in
7 order to properly perform this particular job.

8 It's been my experience in past years that
9 individuals that, for example, are registered
10 professional engineers may not have any experience
11 in acoustics and may not be able to properly oversee
12 this type of remedial action. The qualifications
13 necessary to be a member of the Institute of Noise
14 Control Engineering will ensure that the individual
15 does have the background to do the job in a proper
16 manner.

17 Q. Okay. And then, lastly, Mr. Zak,
18 directing your attention to the remedial action plan
19 Roman numerals II through VIII entitled Mandated
20 Physical Changes, Mandated Operational Changes,
21 Noise Limitations, Sound Recording Device, and
22 Supervision of Noise Expert, are there any
23 provisions or language in those provisions that in
24 your expert opinion should be changed to reflect a

1 better method of ensuring effective sound control

2 for the residents of Charter Hall?

3 A. No. I believe that the description is

4 adequate.

5 MR. FORCADE: Okay. Thank you. I have no

6 further questions.

7 THE HEARING OFFICER: Mr. Steger?

8 MR. STEGER: Yes.

9 CROSS-EXAMINATION

10 by Mr. Steger

11 Q. Directing your attention to Roman numeral

12 II, A, Mandated Physical Changes, construction of an

13 airtight solid brick or wooden barrier, you

14 testified that it's possible that it would not be

15 feasible. What would be?

16 MR. FORCADE: Objection. I don't believe that

17 Mr. Zak's testimony was that it would not be

18 feasible to construct it.

19 MR. STEGER: I'm sorry. Not effective in

20 control sound.

21 BY MR. STEGER:

22 Q. What would be effective?

23 A. What would be effective would be an

24 airtight, gap free, at least one-inch thick at all

1 points, barrier at least a 22-feet high at all
2 points around the north, western, and southern
3 perimeters of the Overland facility.

4 My testimony was directed at a situation
5 where this has come up in the past where the
6 contractor will use material in some locations that
7 may be less than an inch thick, may leave gaps,
8 perform the job in a less than workmanship-like
9 manner, and the result being that noise leaks
10 through the structure.

11 Q. Okay. Let me back up. Did you prepare
12 this report, this remedial action plan?

13 A. No, I did not.

14 Q. Okay. You simply reviewed it for today's
15 testimony?

16 A. Yes.

17 Q. Okay. Did you conduct a noise control
18 engineering on Overland's property?

19 A. No.

20 Q. When was the last time you were at
21 Overland?

22 Was it subsequent to the last hearings?

23 A. Yes.

24 Q. Okay. Do you recall -- were you there a

1 day? Did you drive by? How long were you there?

2 A. I was there one morning, and that was

3 previous to the last hearing.

4 Q. Okay. So you haven't been there --

5 A. I testified before as to my being there at

6 the previous hearing, and so my time on site would

7 have been the morning of the day I was there.

8 Q. Okay. So you haven't been there since the

9 hearings?

10 A. That's correct.

11 Q. Okay. Would the 22-foot high fence around

12 just the western edge solve the problem?

13 A. Probably not.

14 Q. And why is that, if you know?

15 A. Yes. With the truck traffic and

16 reverberation between, say, the western wall and the

17 side of the building, not having a 22-foot wall on

18 the south and the north, there would be quite a bit

19 of sound leakage around the northern and southern

20 edges of the western boundary.

21 Q. With respect to the western boundary

22 fence, could it be shorter than 22 feet?

23 A. I don't believe so, and the reason I say I

24 don't believe so is the height is designed in order

1 to protect the residents in their second floor
2 living space, and I believe the 22-foot height is
3 basically the minimum height needed to break the
4 line of sight from the second floor attic areas of
5 the residential area to the trucks and equipment
6 being operated at Overland.

7 Q. Did you take any measurements?

8 A. I'm not sure what you mean by
9 measurements.

10 Q. Did you make any measurements to
11 substantiate what you just testified to, or is that
12 just based on your experience?

13 A. That would be based on my experience of
14 the typical height of semi-stacks and the typical
15 height of the homes in the area.

16 Q. What are semi-stacks?

17 A. They typically run between ten to 12 feet
18 above ground level.

19 Q. What are they?

20 A. Oh. The exhaust pipes.

21 Q. To the cabs of the trucks?

22 A. I'm sorry. I don't understand your
23 question.

24 Q. When you say the semi-stacks, they are the

1 exhaust pipes on what?

2 A. The semi tractor.

3 Q. Okay. But you didn't independently go out
4 and measure to verify whether 22 feet would be
5 sufficient?

6 A. No. That would be an estimate.

7 Q. Okay. Would 22 feet be sufficient for the
8 southern boundary?

9 A. Yes, it would, in my opinion.

10 Q. Would something shorter?

11 A. Possibly not.

12 Q. And why is that?

13 A. Normally, when constructing a barrier, one
14 will go with the same height for all portions of the
15 barrier in order to avoid leakage around a single
16 structure. For example, you mentioned the western
17 wall, the western structure there. If we just had a
18 western structure at 22 feet and then northern and
19 southern structures of less than 22 feet where we
20 had a difference in height, we would have a pretty
21 good chance of noise leakage around those areas
22 where there was a height differential.

23 Q. Would you be able to give us an opinion as
24 to whether that noise leakage would cause an

1 unreasonable interference?

2 A. In my opinion, there is a significant

3 probability that it would.

4 Q. And how would it do that?

5 A. By creating noise or allowing noise to

6 leak around the structure that would disturb the

7 residents behind the western wall.

8 Q. So what you're testifying to is the noise

9 can leak around and go back? Let me use a visual

10 example.

11 On Exhibit 1, do you see a dotted black

12 line?

13 A. Yes.

14 Q. Okay. Would it be -- would that dotted

15 black line be where you'd propose the southern fence

16 line?

17 A. Yes.

18 Q. Okay. And then you see a dark red line

19 along the western edge?

20 A. Yes.

21 Q. Okay. Let's look at the corner between

22 627 and 613. If the corner at 627 and 613 was -- if

23 the southern was at a different height than the

24 western, are you testifying that the noise would

1 somehow leak around and impact the properties to the
2 north of 627?

3 A. Yes.

4 Q. Okay. So noise can travel back up that
5 way?

6 A. That's correct, and also while we have the
7 diagram there, the properties that would be running
8 south of there -- I believe it's like --

9 Q. 613, 609, and 605?

10 A. Yes.

11 Q. Okay.

12 A. Those properties would be largely
13 protected by a southern wall much as the properties
14 to the west of the western wall would be protected,
15 which, again, is another reason for having the wall
16 extend in the southerly direction for some distance.

17 Q. Would you propose that it extend all the
18 way to the western edge of Charter Hall's -- I'm
19 sorry, of Overland's property?

20 A. No. I don't think it would be
21 necessary --

22 Q. I'm sorry. Eastern edge.

23 A. I believe from looking at the diagram
24 there that it would probably only be necessary for

1 the wall to extend approximately halfway along the
2 property line.

3 Q. To the south?

4 A. To the south, yes.

5 Q. The same would go for the north?

6 A. On the northern end that would be
7 sufficient if there was no traffic using or
8 traveling between the northern building on Overland
9 property and the noise wall. If there is traffic
10 going in that corridor there --

11 Q. Which corridor are you referring to?

12 A. Okay. If we look at the building on the
13 northern --

14 Q. That's designated office?

15 A. Yes.

16 Q. Where I'm pointing (indicating)?

17 A. Yes. Right above the office, we've got a
18 little corridor there, and if that corridor --

19 THE HEARING OFFICER: Excuse me. Mr. Zak, are
20 you speaking about the corridor between the red
21 dotted line and the office?

22 THE WITNESS: And the office, yes.

23 THE HEARING OFFICER: Okay.

24

1 BY THE WITNESS:

2 A. If that's used for truck traffic and/or
3 traffic by the end loader, then you would want a
4 longer wall in that area than you would in a
5 southern area. If that is not -- if there is no
6 traffic using that, automobile traffic, or the
7 corridor is simply too narrow for truck traffic or
8 loader traffic, then it would not be necessary to
9 have the wall as long up there.

10 BY MR. STEGER:

11 Q. But it would have to be just as high?

12 A. Yes, it would have to be just as high.

13 Q. Okay.

14 A. Because, again, you're protecting that
15 residential area that lies to the north. Yes.
16 You've got an X on the -- you X'd out one residence
17 there apparently.

18 Q. 691.

19 A. Yeah. And so north of that, you would
20 want the northern wall to provide protection to the
21 homes up there.

22 And very briefly, hopefully, to answer
23 your question with a little more detail, your noise
24 walls do not provide a impenetrable barrier to

1 noise. The noise tends to refract over walls and
2 around walls, and that's one of the reasons why you
3 would typically have in this case three walls as
4 opposed to one because of the refraction
5 characteristic of noise, the bending effect.

6 Q. Could you treat the western wall with
7 sound absorptive material that would dampen it to
8 the extent where you wouldn't need the north and
9 southern wall?

10 A. No. And the reason I say no is because
11 you've got homes extending to the south of -- well
12 south of the western wall and well north of the
13 western wall. In order to protect that residential
14 area, you would still need the southern and northern
15 walls to provide protection out there.

16 Q. Do you have any idea the extent of the
17 noise impact to the north and to the south?

18 A. It would be somewhat less than the noise
19 impact to the west.

20 Q. Directly west?

21 A. Directly west, yes.

22 Q. Okay.

23 THE HEARING OFFICER: Just for the record,
24 we've been referring to complainants' Exhibit No. 1

1 from the previous hearing, and everything that we've
2 talked about including the western and the northern
3 and the southern boundaries -- excuse me, fences are
4 clearly marked on the exhibit.

5 I'm sorry, Mark.

6 MR. STEGER: That's okay.

7 BY MR. STEGER:

8 Q. Moving to II, B, I believe you testified
9 that it's possible to put absorptive material that's
10 not effective.

11 What would be effective?

12 A. There are a lot of materials that would be
13 effective, and the cost for those materials would
14 vary widely. The least expensive and one of the
15 most effective materials is ordinary fiberglass
16 building insulation typically, say, three-and-a-half
17 inches thick, unfaced on both sides. It can be held
18 in place by adding studding to the walls, studs, and
19 placing the insulation between the studs and then
20 holding it in place with materials such as chicken
21 wire. Then you run into a cost of probably for
22 materials 20 or 30 cents per square foot.

23 If you were to go with a commercially
24 available material, for example, Industrial

1 Acoustics Corporation makes a panel that consists of
2 perforated steel -- galvanized perforated steel
3 that's painted any color you desire with a
4 fiberglass core that would be very effective also in
5 absorbing the sound, but the cost for that material
6 would be probably a factor of several hundred times
7 the cost of the building insulation fiberglass.

8 Q. Okay. Let me back up to a question on
9 letter A.

10 Would A work in and of itself to dampen
11 the noise below nuisance levels?

12 A. I take it you're talking about II, A?

13 Q. II, A, yes.

14 A. No. It would -- by itself, that would not
15 be sufficient.

16 Q. And why is that?

17 A. Because of the echo effect between the
18 western wall and the building owned by Overland.

19 Q. So it would be the echo back from the
20 western facility building wall back over the fence?

21 A. Yes.

22 Q. Is that what you're referring to?

23 A. If I can describe what's happening there
24 from the standpoint of acoustics is let's say we've

1 got an end loader working near the building. The
2 sound from the end loader strikes the Overland
3 building and is projected toward the west. At the
4 same time, the sound from the loader also travels
5 out to the western wall and then bounces back toward
6 the building.

7 The sound that emanated out from the end
8 loader struck the building, then travels out toward
9 the residential area over the top of the wall. The
10 sound that echoed off the wall hits the Overland
11 building, and then that is projected out into the
12 residential area.

13 So in order to avoid that echo effect and
14 the projection by the side of the building into the
15 residential area, if we treat the western wall and
16 the side of the building with an absorptive
17 material, we then avoid a large part of that echo
18 magnification of the noise.

19 Q. Is it possible that the airtight barrier
20 would work by itself, the 22-foot wooden barrier?

21 MR. FORCADE: Asked and answered, objection.

22 THE HEARING OFFICER: Overruled. I don't think
23 you ever fully answered it. Can you try again?

24

1 BY THE WITNESS:

2 A. There's very little likelihood that it
3 would work.

4 BY MR. STEGER:

5 Q. The question is could it work?

6 MR. FORCADE: Objection. He's responded to the
7 question with his best expert opinion. Counsel
8 can't badger him to get a better answer.

9 THE HEARING OFFICER: Overruled. I'd like to
10 hear the answer to the last question.

11 BY THE WITNESS:

12 A. There is a very, very slight chance that
13 it could work without the absorptive material, but
14 it would not be a good engineering course to
15 pursue. It would be -- based on my 26 years of
16 experience, there is very likelihood that the wall
17 without the absorptive material would provide
18 sufficiently noise reduction to meet the board
19 regulations.

20 BY MR. STEGER:

21 Q. Could I build the wall higher?

22 A. Yes, you could build the wall higher, and
23 then you would not -- if you built the wall
24 sufficient high, you wouldn't need to put absorptive

1 material on there.

2 Q. How high would I have to build that?

3 A. I would have to give you an educated guess

4 on that as opposed to an exact number, but we'd

5 probably be looking at about a 30-foot wall. I

6 would want to add about eight feet to the existing

7 wall to, in fact, reflect the sound back to the east

8 such that the normal refractive events that occur at

9 the top of a barrier would be such that the sound

10 that does refract at the top would miss the -- would

11 travel over the top of the residential area and miss

12 the residential area then.

13 Q. So it would just keep going out over the

14 tops of residences to the west, is that what you're

15 saying?

16 A. Not exactly. If we could think about it

17 in terms of comparing, say, light, light would go in

18 a straight line, and if sound were light, it would

19 go over the tops of the fence, and the main beam

20 would miss the residential area.

21 However, if you think about it, whenever

22 you have even a light which goes in very straight

23 lines, you get a little bit of an illumination

24 effect everywhere, which you would with refraction.

1 With sound and acoustics, the situation is much
2 worse.
3 So you still get this refraction and
4 bending, and even though the majority of the sound
5 might be going over the residential area, you're
6 still going to have some refract downward into the
7 residential area. My best guess, again, would be
8 that by adding an additional eight feet to the
9 height of the wall one has a chance of being able to
10 come into compliance that way without having to add
11 the absorptive material to the wall.

12 However, cost construction I think would
13 enter into that, which would tend to make the
14 situation where one would want to go the much less
15 expensive route and insulate the wall at 22 feet
16 than try to build a 30-foot wall. That's
17 acoustically hard.

18 Q. Okay. You testified that they would come
19 into compliance with the board rules. Which rules
20 are you referring to?

21 A. I'm referring to the numerical limits and
22 also the nuisance -- what I call nuisance limits,
23 which would be 900.102.

24 Q. Have you read the board's opinion dated

1 October 1st in this matter?

2 A. Yes.

3 Q. Okay. Do you recall what we were found to
4 be in violation of?

5 A. No, I don't.

6 Q. Okay. Would it surprise you to find out
7 that we were determined that there was no violation
8 of numerical standards and that we were violating
9 the nuisance noise provision?

10 A. No, that would not surprise me.

11 Q. Okay. Let me move on to item II, b once
12 more. Would it be possible to add absorptive
13 material to the side of the facility such that I
14 wouldn't need a 22-foot fence?

15 A. No.

16 Q. And why is that?

17 A. The reason being that the assumption here
18 with a 22-foot high wall is that you're adding
19 acoustically absorptive material to the wall and to
20 the side of the building that has a sound absorption
21 coefficient of 1.00, which is a very efficient
22 acoustical absorber.

23 So anything less than that would, as far
24 as height is concerned or as far as the absorptive

1 characteristics are concerned, would not produce the
2 desired result of, say, compliance with 900.102.

3 Q. The nuisance provision?

4 A. Yes.

5 Q. So it sounds like you would definitely
6 recommend that a perimeter wall go up?

7 A. Yes.

8 Q. At least on the western, southern, and
9 northern perimeter?

10 A. Yes.

11 Q. And it is also your testimony that it is
12 possible to construct a wall high enough where you
13 wouldn't need the absorptive material on the side of
14 the facility?

15 A. Yes.

16 Q. Okay. What about the absorptive material
17 on the west perimeter wall, on the inside of the
18 wall? Are you recommending that we put absorptive
19 material on that wall as well. This is the fence
20 (indicating).

21 Do you understand the question?

22 A. Yes. I'm saying that you would want to
23 have the same absorptive material on the Overland
24 side of the 22-foot wall that you have on the

1 western side of your facility building.

2 Q. Does it have to be on the northern side as
3 well, the absorptive material?

4 A. No.

5 Q. Why is that?

6 A. Again, the distance from the building on
7 the north to the residential area is farther, and
8 the echo effect -- if we refer back to the drawing
9 of the area there, to imagine an echo going from
10 north to south, the echo would have to travel a long
11 distance.

12 So I don't see where we would have a large
13 echo occurring there. We're absorbing sound on the
14 building. We're absorbing sound on the western
15 wall. To have a hard surface on the north and a
16 hard surface on the south wouldn't effect the total
17 sound impacting the residential area much more than
18 if we insulated all three walls, again, because
19 we're picking up a lot of absorption from the
20 western wall and also from the side of the building.

21 THE HEARING OFFICER: Mr. Zak, I want to
22 clarify. You're talking about absorptive material
23 on the northern and southern barriers, not on the
24 northern and southern parts of the building,

1 correct?

2 THE WITNESS: Yes, if I could get clarification
3 from the question.

4 MR. STEGER: That exactly was the question, the
5 barrier wall.

6 THE HEARING OFFICER: That's what I assumed. I
7 just wanted to make it clear for the record.

8 THE WITNESS: Okay. I took the question to be
9 that he was referring to putting insulation on the
10 Overland side of the northern wall and the southern
11 wall, again, on the Overland side of the wall.

12 THE HEARING OFFICER: Okay. Thank you.

13 THE WITNESS: And, again, I said that I didn't
14 think that would be necessary mainly because it
15 wouldn't provide a lot of sound reduction.

16 THE HEARING OFFICER: Thank you.

17 BY MR. STEGER:

18 Q. Okay. If Roman numeral II, A and II, B
19 were constructed as set forth in this, would item C
20 be needed to control sound?

21 A. Yes.

22 Q. And why is that?

23 A. It's my understanding from reading through
24 this case and talking to the complainants a number

1 of times that loading and unloading of trucks is an
2 ongoing problem, and by "trucks," perhaps I should
3 clarify that a little bit.

4 The semi-tractor trailers that I
5 understanding are being loaded and unloaded, that
6 generates quite a bit of noise. Item C would be a
7 method of reducing the noise impact from that
8 loading and unloading operation by sealing the back
9 of the trailers against the loading dock to
10 basically trap the noise within the trailer
11 structure and also within the building structure to
12 prevent escape and eventually ending up in the
13 residential area.

14 Q. Would it be possible -- how would you
15 determine that you would need all three?

16 Is there a measurement method? How would
17 you go about analyzing that? Would you put -- why
18 don't you answer that first, and then all. . .

19 A. Okay. I'm sorry?

20 Q. Would you put up all three and then figure
21 out how good a job you did, or would you start with
22 one and see what happened?

23 A. No. I would -- based on my experience, I
24 would do all three, and the reason I would do that

1 is I've had a situation that is very similar to that
2 with the U.S. Post Office, and the solution was
3 virtually all three with item C taking care of the
4 loading and unloading the tracks.

5 Items A and B would take care of the end
6 loader, and also there's a device that's used for
7 moving the semi-trailers around in the parking area,
8 and, again, A and B would take care of that also.
9 Also, A and B would take care of any clanging or
10 banging that's going on inside the truck trailers as
11 they're being loaded and unloaded, and that would be
12 sound that would be transmitted through the metal
13 side of the trailer as it's banged on the inside, a
14 metal on metal type of sound would be taken care of
15 by A and B.

16 So I really think that A, B, and C would
17 be necessary, and it would be my recommendation in
18 order to contain the noise and after A and B and C
19 are completed, take measurements to see if further
20 measures are needed beyond A, B, and C.

21 Q. And correct me if I'm wrong, though, you
22 think all three are needed because of your
23 experience at the United States Postal Service?

24 A. Well, let me add to that, if I could. The

1 postal service basically used item C. The neighbors
2 were not totally satisfied with the existing wall
3 that was there, and I've had situations at other
4 trucking facilities where the wall has been a good
5 solution depending upon the nature of the noise.

6 The situation with the Overland facility
7 is such that it is similar to the U.S. Post Office
8 situation with the unloading and loading, meaning
9 the airtight structure, and also with some of the
10 other trucking facilities where they have quite a
11 bit of trailer movement and machinery movement in
12 the yard where they need the wall and the acoustical
13 material on the wall.

14 Q. In your opinion, do you think items A and
15 B would control the sound from the loading docks?

16 A. No.

17 Q. And why don't you think those will work?

18 A. One reason is with an open loading dock
19 and the clanging and banging that naturally occurs
20 with the operations there, the sound will go out,
21 and the 22-foot wall would reduce some of that
22 sound. The question, of course, is will it reduce
23 it sufficiently to not be a nuisance? And I don't
24 believe that the wall by itself would.

1 In this situation here with the loading
2 sound, it's an impulsive nature, and impulsive noise
3 is considerably more aggravating than nonimpulsive
4 noise. Impulsive noise is a noise that's in a very
5 short duration, clanging and banging type of noise.

6 And the ANSI committee I'm on right now,
7 we've basically come to the conclusion that
8 approximately a 12-decibel penalty should be added
9 in cases where you have impulsive noise. So what
10 we're looking for is actually -- it's been found in
11 the last 20 years that impulsive noise is 12
12 decibels more irritating than nonimpulsive noise.

13 And because we're dealing here with
14 impulsive noise on truck loading and unloading, we
15 want to do everything we possibly can to contain
16 that, and that's the reason for item C going with
17 the airtight structure to contain it and in addition
18 also using A and B to work with the airtight
19 structure to provide a reasonable amount of noise
20 reduction that should result in compliance with
21 900.102.

22 Q. The nuisance provision?

23 A. Yes.

24 Q. Is it possible to make, do you know, of

1 any changes to the loading docks themselves to
2 reduce the noise other than the airtight sound
3 control building around it?

4 A. No.

5 Q. So you couldn't make any changes to the
6 loading docks?

7 A. The reason I suggested C is because it is
8 so commonly used by the trucking industry when
9 they're handling any type of frozen or refrigerated
10 materials. That type of control, again, is used not
11 for noise control by the trucking industry, but to
12 prevent cold materials from being warmed up as
13 they're being loaded or unloaded. It is a very
14 common type of construction basically mass
15 produced. It's not expensive to use that then for
16 noise control.

17 So what I'm really doing with C here is
18 coming up with a method of controlling the noise
19 using a methodology designed for refrigeration.

20 Q. Do you personally know whether Overland
21 uses -- I mean, ships any frozen goods?

22 A. I don't know, no.

23 Q. Okay. Let's move on to the Mandated
24 Operational Changes. If we put in all of II, A, B,

1 and C, would III, A be necessary?

2 A. Yes.

3 Q. And why do you say that?

4 A. From the description that the complainants
5 have given of the nuisance noise, the parking of the
6 trailers and tractors on that west side is creating
7 a significant part of the problem. The simplest
8 method of dealing with that would be to park them on
9 the east side.

10 Q. Okay. I'd like you to review for a minute
11 your prior testimony here. I am referring to
12 Mr. Zak's testimony on May 13, 1998, page 411 and
13 412. Would you read it, just to refresh your
14 memory?

15 MR. FORCADE: Can I look at it before you hand
16 it to him?

17 MR. STEGER: Absolutely.

18 (Counsel perusing document.)

19 THE HEARING OFFICER: Back on the record.

20 BY MR. STEGER:

21 Q. I'd like you to read just to yourself 411,
22 18 through 24 and then 412, 1 through 13.

23 (Witness perusing
24 documents.)

1 BY MR. STEGER:

2 Q. Let me ask you. It appears that your
3 previous testimony indicated that if we put in the
4 barrier wall and the absorptive material -- and I
5 will quote here -- I don't think you would
6 necessarily have to seek parking trailers along the
7 west side.

8 It appears that your position has
9 changed. Could you tell me why?

10 A. There really isn't a change. What I said
11 before was that -- I was addressing whether or not
12 it was necessary -- the necessity of parking or not
13 parking the tractors on the west side of the
14 property at that time. I didn't state that it would
15 be all right to park the tractors there, and I think
16 it would be wise and prudent not to and would
17 ensure -- give you a grade of degree of assurance of
18 the compliance with the nuisance rule by not doing
19 so. So I don't really see that I necessarily
20 changed my position on that.

21 Q. Okay. So it's possible -- what you're
22 saying is it's possible that we may not have to do
23 that?

24 A. Yes. Again, if a qualified noise

1 consultant were to take measurements and in addition
2 with the tape recorder present and running, if that
3 parking on the west side of the property is a
4 problem, the tape recorder will pick it up. The
5 consultant that is overseeing the project also will
6 take measurements. Between the consultant and the
7 tape recorder, the final determination then could be
8 made as to whether or not to park tractors on the
9 west side.

10 Q. Okay. Let me then -- if we were to do II,
11 A, B, and C and III, A and B, do you think that
12 Overland would then be in compliance with the
13 nuisance provisions, in your opinion?

14 A. I would say there's a very high
15 probability that you would be.

16 Q. How high?

17 A. I would say at least 90 percent.

18 Q. So as a noise expert, you'd be willing to
19 live with a 90 percent solution?

20 MR. FORCADE: Objection. Objection. Legal
21 compliance with a rule is not something that a noise
22 expert is qualified to testify.

23 THE HEARING OFFICER: Mark?

24 MR. STEGER: Let me ask it a different way.

1 BY MR. STEGER:

2 Q. If we're suggesting sound recording
3 devices, would that be tantamount to saying that
4 your things don't work to control sound, or are you
5 simply suggesting that a sound recording device is
6 necessary to pick up that ten percent problem?

7 A. I think the idea of the sound recording
8 device is mainly to ensure that the workers and crew
9 at the Overland facility are carrying on the
10 operation in a manner that is in compliance with the
11 board order. The recording device I look upon as
12 largely a device that is being used to ensure
13 ongoing compliance by Overland.

14 Q. Let's move up to the Noise Limitations on
15 Roman numeral IV, B, where do those come from?

16 A. This was IV, B?

17 Q. Correct.

18 A. Okay. 51 A-weighted decibels would be
19 roughly equivalent to the industrial nighttime noise
20 limitation of Section 901.102(b) if we were to take
21 the 9 octaves and calculate an A-weighted
22 equivalent.

23 Under number two --

24 Q. Let me back up. Maybe we can flush that

1 out. What if I did that for daytime? Would I get a
2 different A-weighted decibel level?

3 A. I said daytime.

4 Q. I believe you said --

5 A. Oh, I'm sorry. No. You're right.

6 Q. You said nighttime.

7 A. You're correct. I stand corrected.

8 Yes, you would for daytime.

9 Q. And what would that be?

10 A. Sixty-one.

11 Q. How does 51 A-weighted decibel for
12 nighttime and a 61 A-weighted decibel for daytime
13 differ from the noise provisions of 901.102(a) and
14 (b)?

15 A. I don't understand the question.

16 Q. Okay. I believe your testimony was the
17 901.102(a), which is the daytime standards, and
18 102(b) is the nighttime are expressed how, nine
19 octave bands?

20 A. That's correct.

21 Q. And then B, 1 is simply -- explain how you
22 calculated 51 and 61 off of 102(a) and 102(b).

23 A. If we look at -- let's take 901.102(a)
24 first.

1 Q. Which is the daytime?

2 A. The daytime. And we've got nine octave
3 bands there going from 31 and a half hertz through
4 8,000 hertz.

5 In order to come up with an A-weighted
6 equivalent of those nine octave bands, we can
7 mathematically add the nine bands together. The
8 methodology used starting at 31 and a half hertz
9 would be to ask the first question, and that is what
10 correction do we need to make 31 and a half hertz to
11 get the equivalent decibel level as A-weighted?

12 A-weighting subtracts approximately 40
13 decibels at 31 and a half hertz. So we would take
14 whatever number we had -- for example, in the
15 regulation, I believe, the limitation is somewhere
16 around 75 decibels. We would subtract approximately
17 40 decibels from that giving us 35 decibels.

18 So we have 35 decibels for 31 and a half
19 hertz, and then in each of the other octave bands,
20 there is going to be either a subtraction or
21 addition that's going to be made for all the bands
22 with the exception of 1,000 hertz. There is no
23 correction to 1,000 hertz for A-weighting. The
24 correction is zero.

1 So by adding or subtracting decibels for
2 those nine octave bands, we then end up with nine
3 numbers in those bands taking the regulation,
4 subtracting the correction factor for each of the
5 nine bands, and then taking the nine decibel level
6 and adding them together in a method that's correct
7 for adding decibels. The result for daytime would
8 be 61 A-weighted decibels.

9 If we do the same thing with 901.102(b)
10 for nighttime and, again, make all the corrections
11 at all the frequencies and then add those nine
12 numbers together as decibels, we would end up with
13 51 A-weighted decibels.

14 Q. Would we be able to distinguish in the
15 sound recording device the noise under IV, A and IV,
16 B by the sound device we're using or you're
17 proposing to use here?

18 A. I'm not quite sure of your question
19 there. Could you rephrase that?

20 Q. Well, I'm just trying to find out if the
21 sound recording device can determine what we're
22 asking here. What complainants are asking here is
23 that there be specific noise limitations. Will we
24 be able to tell using the sound recording device?

1 A. Yes.

2 Q. Okay. Item IV, A is 901.106's reference
3 there. What is that?

4 A. I would call that one the prominent
5 discrete tone rule, and that would refer to a
6 measurement in one-third octave bands of the
7 frequencies present and then a determination by
8 examining each of the third octave bands to
9 determine if, in fact, there is the presence of a
10 discrete tone.

11 Q. Okay. Item IV, B, 2, a ten A-weighted
12 decibel increase over baseline noise levels during a
13 ten-second time period. Do you see that?

14 A. Yes.

15 Q. Okay. What is the baseline?

16 A. Okay. The baseline would pretty much be
17 your ambient.

18 Q. Okay. And how would that be determined,
19 and who would determine that?

20 A. The sound recording device would
21 establish as it's recording the various sounds in
22 the area and would record any other sound that had
23 to be in the area and that would be sounds at
24 Overland and any environmental sounds, and what

1 we're talking about here is a jump in sound level of
2 ten decibels that would have a duration of ten
3 seconds.

4 Q. Would it be possible that there exist a
5 noise source that would cause that to happen other
6 than Overland?

7 A. Yes.

8 Q. And what would those be?

9 A. A number of things, dogs barking, horns
10 honking, tires screeching, birds singing --

11 Q. Could other -- okay. I'm sorry. Are you
12 done?

13 A. -- a cricket gets up on the microphone and
14 starts chirping.

15 Those things all happen, and those would
16 be other things that could also be recorded on the
17 sound recording device.

18 Q. Would it be possible for the same
19 situation resulting in B, 1, a 51 A-weighted decibel
20 noise source, create that other than Overland?

21 A. Yes.

22 Q. And what would those be?

23 A. Most of the things I've already
24 enumerated.

1 Q. All right. Moving down to Roman numeral

2 V --

3 THE HEARING OFFICER: Mr. Steger?

4 MR. STEGER: Yes.

5 THE HEARING OFFICER: Can I interrupt?

6 Can we go off the record for a second?

7 (Discussion had off

8 the record.)

9 BY MR. STEGER:

10 Q. All right. On item IV, the Noise

11 Limitations, you're recommending procedures in terms

12 of measuring noise of 900.103 and Part 951; is that

13 correct?

14 A. Yes.

15 Q. Would you change any of those?

16 A. Okay. Could you repeat the question,

17 please?

18 Q. In Roman numeral IV, it is recommended

19 that the measurements be taken using procedures in

20 900.103 and Part 951. Would you change any of

21 those?

22 A. No.

23 Q. Okay. Moving on to the Sound Recording

24 Device, Roman numeral V, A, where exactly would you

1 propose that the recording unit be located?

2 Do you have any specific identifiable
3 parcel that it should go on, or do you not know at
4 this point in time?

5 A. I don't know at this time.

6 Q. Would you want to know after the wall and
7 all the physical changes went up? Would that help
8 you?

9 A. Yes.

10 Q. I might be jumping ahead, but what is
11 proposed to -- who is proposed to maintain this
12 shelter? I'm sorry. Respondents. Strike the
13 question.

14 Would it be possible to locate the
15 recording unit on Overland property?

16 A. Yes.

17 Q. And where would you put that?

18 A. Not having responded -- in other words,
19 you asked me earlier if I could say exactly where
20 the device would go, and we left that question
21 basically with me saying I wasn't sure.

22 As far as where it would go on the
23 Overland property, I'm kind of in the same situation
24 there. Depending upon the board order and what's

1 adopted, what's not adopted, at this time, it would
2 be difficult to say precisely where it should go.

3 Q. Would it be on the other side of the fence
4 from the loading docks? In other words, the sound
5 recording device would be -- the fence would be in
6 between the sound recording device and the
7 facility?

8 A. My feeling is one where I'd kind of want
9 the microphone, which is actually going to pick up
10 the sound -- the device can go almost anywhere
11 because of the fact the device itself, the recorder,
12 is simply storing the information that the
13 microphone has picked up. So I think what we're
14 talking about here is the microphone itself.

15 Q. Yes, I think we are.

16 A. And the microphone might well go at the
17 top of the fence or the barrier, the 22-foot high
18 wall.

19 Q. That wouldn't have any benefit of noise
20 reduction, though, would it? We'd be recording raw,
21 untreated noise, if I can use that term loosely?

22 A. Now, that's a good point. I haven't given
23 it any thought to the location of the microphone
24 itself, so . . .

1 Q. Are you familiar with the type of
2 recording device they're recommending here?

3 A. Yes, tape recorder.

4 Q. And how far could it extend from the
5 device?

6 Is it simply --

7 A. Several hundred feet.

8 Q. We would use it by a --

9 A. Cable.

10 Q. -- cable?

11 A. Yes.

12 Q. But you'd want --

13 A. In other words, the recording device could
14 be located, for example, in Overland's building, and
15 the cable would run from there to wherever the
16 microphone is located.

17 And as I said, that could be -- it might
18 possibly be one of the backyards of one of the
19 closest residents to the Overland property. Again,
20 that would be something that would be determined
21 more, I think, at a later date. Given the
22 information that I've got right now, it's difficult
23 to pick the best location for the microphone.

24 But, in the past, this sort of thing has

1 not been a problem as far as microphone location is
2 concerned. It can be worked on with all parties to
3 agree upon the location.

4 Q. Okay. With respect to the written
5 operations plan in item V, E, have you ever prepared
6 one of those?

7 A. Yes.

8 Q. How much time does it require?

9 A. Most experts have that information quite
10 readily available. Typically, I'd say about four
11 hours. If one has no information at all and one has
12 to dig all the information, it might take eight
13 hours. If one has got all the information and, in
14 essence, has got the operation plan virtually done,
15 it could be done in a few minutes on a personal
16 computer.

17 Q. Okay. Moving down to item VI, the Sound
18 Recording Device, are you recommending that it be
19 operated 24 hours a day or just during the nighttime
20 or just during the daytime, the daytime being as
21 defined by the board rules as well as the
22 nighttime?

23 MR. FORCADE: It's self-explanatory in the
24 opening sentence.

1 BY MR. STEGER:

2 Q. Well, there's a parenthesis there each
3 day. What does that mean?

4 A. That would be checking and maintaining the
5 recorder. I think the time that we're looking at
6 here -- what's a real concern is the nighttime
7 hours. So we're definitely going to -- we would
8 definitely want the machine operated at night during
9 from, say, 10:00 p.m. until 7:00 a.m., which would
10 be the nighttime hours as defined by the Pollution
11 Control Board and the noise control regulations.

12 And the daily activities would simply be
13 servicing the sound recording device and ensuring
14 that it's properly operated, say, changing tape,
15 changing batteries, checking calibration, things
16 like that.

17 Q. Let's move on to item VI, A. I am trying
18 to reconcile VI, A with your previous testimony that
19 it is possible that this sound recording device will
20 pick up a noise source that exceeds the noise
21 limitations set up in IV, A and IV, B other than
22 Overland.

23 How do you reconcile those two? It says
24 any failure. Maybe I'm not in the reading this --

1 A. No. I think it needs an explanation, and
2 the explanation is that the type of sound recording
3 device we're talking about here is, in essence, a
4 tape recorder, and the recording would be played
5 back and listened to.

6 If the noise on the tape recording is a
7 dog barking, since Overland doesn't normally
8 maintain dogs, we can safely assume, I think, that
9 the barking dog was in the neighborhood. If the
10 sound is chirping of a cricket, again, I'm sure it's
11 not an Overland cricket. So we would have a
12 situation there where that would also not be an
13 Overland sound.

14 If the sound is one of air brakes on a
15 truck, then you wouldn't normally expect to hear
16 semi air brakes in the Charter Hall area in the
17 middle of the night, but that would be a sound that
18 would be typical for the Overland facility.

19 So it would be a relatively safe
20 assumption that that noise was from Overland, and I
21 think it points to the necessity of using a tape
22 recorder as opposed to other sound devices that
23 simply give you a number and do not reproduce the
24 actual sound that creates the number.

1 So my feeling here is that it's necessary,
2 since this is a device that's just left on its own
3 to record, that it be a tape recorder so that the
4 sounds that are creating problems can be listened to
5 and identified. And that could be identified as
6 being Overland sound or non-Overland sound, and
7 non-Overland sound then would not be charged against
8 the Overland facility.

9 Q. And that would be determined by the noise
10 expert that listens to the tapes?

11 A. Yes.

12 Q. Okay. So you're recommending a tape
13 recording device, and you indicated it could be put
14 in the Overland facility?

15 A. Yes.

16 Q. And all you'd have to do then is run a
17 microphone 170 feet or so to somewhere on the
18 Charter Hall property?

19 A. Yes.

20 Q. Okay. And it would simply require
21 maintenance of that line out as well as the tape
22 recorder and the microphone?

23 A. Well, normally, your microphone and your
24 cabling wouldn't really require any maintenance.

1 Once you put it in place, it's typically very

2 weather resistant and --

3 Q. Is it childproof?

4 A. I'm sorry?

5 Q. Is it childproof?

6 A. Well, you would try and locate it where it

7 would not be that accessible.

8 Q. But it would have to be accessible to our

9 Overland people?

10 A. Yes. And, for example, what the EPA has

11 done in situations like that is if we were to

12 monitor an area like this with a tape recorder, we

13 would endeavor to find a home that didn't have

14 children. So we could set it up there, and that

15 would prevent the kids from playing with it.

16 Also, it's so small that if you find an

17 area where you don't -- you have a family there that

18 doesn't have children, small children, you don't

19 normally have a problem with the microphone.

20 Q. What about animals, dogs, cats, raccoons?

21 A. I've been doing it for 26 years, and I

22 never had an animal problem other than barking dogs.

23 Q. Finally, there is a recommendation here

24 that we maintain this sound recording device for

1 three years. Why do you pick three years, or why do
2 you think three years is sufficient?

3 A. It's been my experience that after three
4 years, the personnel at the facility become
5 accustomed to all the noise control operations they
6 need to perform in a situation like this.

7 But, generally speaking, after three
8 years, the problem tends to go away because of the
9 fact that the personnel at the facility basically
10 know what's required of them. If a new person
11 starts and is a little noisier than the rest of the
12 people working there, they'll usually inform that
13 individual that we've got a noise problem here and
14 what you're doing is not acceptable, and they'll
15 correct the new person.

16 Generally speaking, a period of three
17 years is a pretty good length of time to get
18 everybody trained and into compliance with this kind
19 of operating procedure.

20 Q. Has it ever been done in less than three
21 years?

22 A. Yes.

23 Q. How often?

24 A. Not terribly often. In most situations --

1 we have a situation where this sort of thing goes on
2 in perpetuity, and it seems to me that in a lot of
3 cases that's really unnecessary. It can be done in
4 a period of, say -- I think three years is
5 reasonable. Less than three years, again, you run
6 into the problem there of -- let me restate that a
7 little bit.

8 Generally, it's been my experience that
9 this sort of this is just done in perpetuity. It's
10 ongoing. It does not stop.

11 Q. You mean sound recording?

12 A. Sound recording, yes, as part of the
13 compliance agreement.

14 I think in this situation here, though,
15 three years is a reasonable plan. If three years
16 were not going to work out, then I would assume that
17 the people living there would have a noise problem
18 again and would attempt to deal with Overland to
19 correct the problem.

20 But I think that three years is a pretty
21 good experimental period of time to work it out,
22 say, between both the residents and the trucking
23 company in order to sufficiently, say, train the
24 personnel over there who become familiar with the

1 sound control, things they need to do in order to
2 get along with the neighbors.

3 Q. Okay. I mean, if you construct the
4 physical changes and these operational changes,
5 shouldn't we know almost immediately whether we've
6 achieved a reduction sufficient to reduce the
7 nuisance noise?

8 A. That is true to some extent, but there's a
9 problem, and the problem that I run across many,
10 many times over the years is initial compliance and
11 then backsliding on the part of the noise emitter.

12 And the typical solution to that is
13 continuous monitoring, which is generally what I
14 would recommend. But, as I said before, I did not
15 put the plan together. Three years seems
16 reasonable, but I would have no problems with
17 monitoring indefinitely.

18 I would not want to go with less than
19 three years because of the difficulties of training
20 all of the personnel there. By training them, I
21 don't so much mean training them in how to operate
22 the equipment or how to do the job quietly. I'm
23 thinking here more in terms of long-term patterns of
24 operation where it just becomes ingrained in the

1 facility that we have neighbors next door that are
2 very close, we have to be very quite here compared
3 to most trucking operations. And that sort of
4 mentality, I think, takes a period of years to
5 ingrain in the people working there.

6 Q. So it's more focused on training as
7 opposed to letting sufficient time go by so that the
8 physical and operational changes can work?

9 A. That and also -- yes, and also to the
10 extent that this problem is going on for several
11 years, and the folks living in the neighborhood
12 there had the problem for several years and giving
13 them some confidence that the problem is actually
14 solved and will remain solved.

15 How long do we monitor to ensure that? My
16 feeling there would be a minimum of three years. I
17 might even like to do it a little longer.

18 Q. Okay. Let me ask you -- okay. In item
19 VII, which is the Supervision of the Noise Expert --
20 strike that.

21 VIII, A, are you asking the noise expert
22 to certify compliance?

23 A. I'm sorry. I'm not quite sure where
24 you're at.

1 Q. Page five, A, right at the top.

2 A. Yes.

3 Q. And who would you believe would be
4 responsible if he's wrong?

5 A. I would assume if he's wrong if it can't
6 be resolved through negotiation, that it would be
7 litigated.

8 Q. Let me back up. One real quick question
9 with respect to the postal service and the total
10 enclosures --

11 A. Yes.

12 Q. -- that you were recommending, the postal
13 service you were discussing, their products are,
14 what, mail, packages?

15 A. Yes.

16 Q. Okay. Do they deal with any frozen goods?

17 A. No.

18 Q. Okay. Does this post office deal with any
19 of the goods of the type that Overland handles, if
20 you are aware?

21 A. I'm not aware of what Overland handles.

22 Q. Okay. But you're sure that it was
23 strictly mail and packages?

24 A. Yes.

1 MR. STEGER: Okay. I don't have any --

2 BY THE WITNESS:

3 A. The main noise source there -- if I could
4 just expand a little bit so that's clear as to what
5 the noise source was in the post office -- were the
6 metal carts that they used to roll the mail on and
7 packages on, and rolling the mail off the trucks
8 would create a lot of -- a tremendous amount of
9 rattling and banging noise. And the idea of sealing
10 the truck against the loading dock was to trap that
11 rattle and bang noise from these mail carts, these
12 metal carts, and metal wheels -- hard rubber wheels
13 and metal wheels and contain that noise within the
14 trailer of the truck and within the facility and not
15 let it escape out into the neighborhood.

16 BY MR. STEGER:

17 Q. Okay. Are you aware of any other physical
18 changes that you would consider, or do you think
19 this will do it?

20 A. I think it has a 90 percent chance of
21 doing it.

22 Q. So, if I may, it's got a ten percent
23 change of failing?

24 A. Well, typically, the way I've always

1 handled all noise solutions is to implement the
2 steps, take measurements as one works through the
3 steps to see how much reduction is being obtained on
4 each step, and then taking the final measurement
5 when everything has been completed.

6 It isn't so much a pass or fail. It's
7 more a situation, when I say 90 percent, of a little
8 bit of tweaking here or there; in other words, a
9 little bit of an adjustment on something. We may
10 find something that can use a little bit more
11 absorbing material, maybe a little bit more work on
12 certain aspects of it.

13 So we're not looking at strictly a pass or
14 fail situation where you totally fail or you totally
15 pass. Now, you can totally pass, but total failure,
16 I don't expect, but I would expect then a situation
17 where you do have to make some adjustments, and I'm
18 looking here at minor adjustments really to falling
19 into total compliance.

20 Q. So you'd approach it step-wise to see what
21 you'd have to tweak, a physical change, to solve
22 that particular problem?

23 A. Yeah. A good noise control engineer would
24 be to measure the amount of reduction obtained on

1 each step and then also take a measurement at the
2 end. If you fail at the end, since you've measured
3 each step, you then have an idea of where you may
4 have a little bit of a problem left.

5 And at that point, one can say -- for
6 example, we have the trucks parking in the western
7 side of the parking lot. We might find that with
8 the trucks parking on the west side of the parking
9 it's not in compliance. If we move the trucks out
10 of the west side, we're in compliance then. And
11 that's been found to be a doable thing to do. So we
12 would then say, well, we realize that in order to
13 keep it in compliance, the trucks cannot park on the
14 west side of the parking lot.

15 Q. Okay. Then let me ask you one more
16 question. Are you a structural engineer?

17 A. No, I'm a noise control engineer.

18 Q. Okay. So you don't know whether this
19 perimeter fence, in terms of what we'd have to do to
20 be able to sufficiently construct this, would
21 withstand the elements?

22 A. Well, the only element you really have to
23 worry about is wind, and as far as, say, design on
24 embracing for wind load, the Illinois DOT has a lot

1 of information on that, and also any contractor
2 would normally have access to the information to
3 tell him exactly how to build the supports for the
4 wall in order to withstand any expected or
5 anticipated wind load.

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

7 THE HEARING OFFICER: Okay. Unless you have an
8 objection at this point, I want to take a ten-minute
9 recess.

10 MR. FORCADE: Sure. That's fine. I expect
11 redirect will be very short.

12 THE HEARING OFFICER: Okay. Let's go off for
13 ten minutes. We'll meet back here at 1:10.

14 (Break taken.)

15 THE HEARING OFFICER: We're back on the record
16 at 1:10, PCB 98-81.

17 Mr. Forcade, you have redirect?

18 MR. FORCADE: Sure. I have a few questions.

19 Is there any way we can work with that exhibit to
20 make it reasonably --

21 THE HEARING OFFICER: Yeah. I think we can
22 prop it on a chair.

23 MR. FORCADE: Yeah.

24 (Brief pause.)

1 REDIRECT EXAMINATION

2 by Mr. Forcade

3 Q. Mr. Zak, if I could, you were asked some
4 questions on cross-examination regarding the
5 possibility of having a wooden fence or barrier
6 along the northern and the southern perimeter of the
7 Overland property, which would not go the full
8 distance across the northern and southern perimeter,
9 but would only go halfway across; is that correct?

10 A. Yes.

11 Q. If I could, directing your attention to
12 Complainants' Exhibit No. 1 from the first hearing,
13 which is the large oversized map, and directing your
14 attention particularly to the building described as
15 office and dock, would it be safe to say that there
16 is a significant open space to the east of the
17 office and dock on this particular exhibit?

18 A. Yes.

19 Q. It would also be safe to say that that is
20 the area where one of the preliminary suggestions
21 from the board order was that truck loading and
22 unloading on the west side be moved to the east
23 side; is that correct?

24 A. Yes.

1 Q. Okay. Now, assuming for purposes of an
2 expert question that there were trucks that were
3 located on the northern section of the eastern
4 portion of the open area adjacent to the office,
5 would there be a clear line of sight from that truck
6 eastward to the properties marked as 695, 699, 715,
7 719, 723, and 727?

8 A. Yes, there would be.

9 Q. Okay. If that fence were constructed only
10 halfway across and if there was a direct
11 unencumbered line of sight between those trucks and
12 those homes, what would diminish or minimize the
13 impact on those homes of noises such as loading,
14 unloading, disconnecting air hoses, hammering,
15 banging, and similar activities in the absence of a
16 fence going completely across the northern
17 perimeter?

18 A. Nothing.

19 Q. Okay. Directing your attention now, if I
20 could, to the same east side of the facility -- now,
21 directing your attention, again, to the east side of
22 the office and the dock area, but this time
23 directing your attention to the southern portion of
24 it, again, is there an area there which would be

1 possible for trucks to park, load, unload, release

2 air hoses, and similar activities?

3 A. Yes.

4 Q. If the fence on the southern portion of

5 the perimeter were constructed only halfway across,

6 would there be any impediment in a direct line of

7 sight from trucks in this southern parking area to

8 the properties identified as 609, 605, 595, 591,

9 587, 583, and 579?

10 A. No, there would not.

11 Q. Okay. What sound reducing devices then

12 would operate to restrict the noise levels created

13 by the loading, unloading, parking, and similar

14 activities of those trucks to the numbered

15 facilities -- numbered residences that we previously

16 described?

17 A. Absent the wall, there wouldn't be any.

18 Q. Okay. If the wall were constructed

19 completely across the northern boundary, completely

20 across the southern boundary, would there then be a

21 sound barrier of some type between the noise

22 producing activities that would occur on the east

23 side of the property and the numbered properties

24 that you previously described?

1 A. Yes.

2 Q. Okay. Let me ask you again then. Based
3 on the facts that we've just discussed, would you
4 recommend that there would be any benefit to the
5 properties located to the south and the properties
6 located to the north on the Charter Hall property of
7 extending the northern perimeter fence and the
8 southern perimeter fence across the entire southern
9 border and the entire northern border of the
10 Overland Transportation property?

11 A. Well, from the drawing we have there, it
12 would seem that that would be the prudent thing to
13 do.

14 Q. Okay. Thank you.

15 In response to questions by Mr. Steger
16 relative to Roman numeral IV under Noise Limitations
17 and particularly in relation to items B, 1 and B, 2,
18 which relate to A-weighted decibels, Mr. Steger
19 asked you several questions relative to what the
20 impact of using those numbers would be compared to
21 the numbers in the board regulations; is that
22 correct?

23 A. Yes.

24 Q. Okay. Could I direct your attention to

1 the opening paragraph of Roman numeral number IV and
2 the second sentence and the phrase says without
3 1-hour LEQ averaging. Would it be your
4 understanding that the without one-hour LEQ
5 averaging described would apply to the 51 A-weighted
6 decibels and the ten A-weighted decibels in B, 1 and
7 B, 2?
8 A. Yes.
9 Q. Okay. Would that then be one difference
10 between using the board's existing numerical
11 regulatory standards and using those developed in B,
12 1 and B, 2?
13 A. Yes.
14 Q. Okay. Would that be a faster and more
15 efficient method of determining the noise level?
16 A. Yes, it would be much easier and simpler
17 to use.
18 Q. Okay. Again, directing your attention to
19 the levels in item -- to the language in item number
20 IV, Mr. Steger asked you a series of questions
21 relating to dogs barking and crickets chirping and
22 similar things. Could you read the first line of
23 Roman numeral IV?
24 A. Respondents shall not cause or allow the

1 emission of sound onto Charter Hall properties that
2 exceed the following limitations when measured
3 without one-hour LEQ averaging using the procedures
4 in 35 Illinois Administrative Code, Section 900.103
5 and Part 951 or measured with procedures for the
6 recording device specified in Section 5 of this
7 remedial action plan, if those procedures should
8 differ from 35 Illinois Administrative Code,
9 Section 900.103 or Part 951 using a fast meter
10 response time.

11 Q. If there were crickets chirping, would
12 Overland be causing or allowing the emission of
13 sound?

14 A. No.

15 Q. If there were dogs barking, would Overland
16 be causing or allowing the emission of sound?

17 A. No.

18 Q. Okay. And I think the last question was
19 that Mr. Steger asked you a series of questions
20 about whether the procedures outlined in 900.103 and
21 Part 951 would be appropriate and applicable
22 procedures, and I believe your answer was generally
23 yes, they would?

24 A. Yes.

1 Q. Is there a second sentence or clause in
2 there which indicates that if those procedures are
3 inconsistent with the procedures described in the
4 sound recording device that that would also be an
5 acceptable measurement protocol?

6 A. Yes.

7 Q. Okay. And, I believe, towards the very
8 end of his conversation, Mr. Steger asked you if
9 there would be an option for proceeding in a
10 step-wise manner to implement some of the changes.

11 Does this in any way reflect or alter your
12 opinions stated earlier that the physical changes
13 mandated in one -- I'm sorry, in Roman numeral II,
14 A, B, and C would be a necessary first step followed
15 by appropriate monitoring to ensure that those were
16 effective?

17 A. That's correct.

18 Q. So that still remains a valid opinion as
19 far as you're concerned?

20 A. Yes.

21 MR. FORCADE: Okay. Thank you.

22 I have no further questions.

23 THE HEARING OFFICER: Mr. Steger, do you have
24 anything else?

1 MR. STEGER: Yes.

2 RECROSS-EXAMINATION

3 by Mr. Steger

4 Q. Let's go back to the drawing. Have you
5 ever been to the east side of Overland's facility
6 physically?

7 A. Yes.

8 Q. And when were you there?

9 A. The same morning that I was at the
10 facility.

11 Q. So you stood on the east side of the
12 facility?

13 A. Yes.

14 Q. Did you report to the office before you
15 were there?

16 A. Now, do you mean -- I believe there's a
17 shopping center.

18 Q. Yes, it's designated shopping center.

19 A. Yes, if that's what you mean as the east
20 side of the facility. That is what I meant by
21 answering yes to your question that I was --

22 Q. You were --

23 A. Actually, I have been outside of
24 Overland's property, but I was on the east side of

1 the facility. I was not on Overland property.

2 Q. Okay. Do you know how wide the east side
3 is in feet?

4 A. Not offhand.

5 Q. Would there be a distance by which noise
6 would sufficiently attenuate such that you wouldn't
7 need a wall on the southern or the northern edge --
8 I'm sorry, the southern or northern perimeter?

9 A. I doubt it, and the reason I say that is a
10 semi-tractor is allowed 86 DBA on the road under 35
11 miles an hour, which would be assuming from idle up
12 to 35 miles an hour it's allowed 86 DBA.

13 Assuming that you would have a semi
14 parked, let's say, on the north or south side
15 emitting the legal road limit of 86 DBA and then
16 projecting that approximately 300 feet to the
17 residential area or even 400 feet to the residential
18 area, there wouldn't be a sufficient drop in that
19 decibel level to meet the 51 decibel requirement.

20 Given that information, I would say that
21 it would be prudent to have the wall extend across
22 the entire Overland facility both north and south.

23 Q. Are you aware personally of any noise
24 impacts on the properties from 727 through 715 and

1 595 through 579?

2 THE HEARING OFFICER: And, once again, for the
3 record, we're referring to the east side of the
4 street on Charter Hall properties. The properties
5 are all numbered on Complainants' Exhibit No. 1 from
6 the previous hearing.

7 BY THE WITNESS:

8 A. I'm mostly familiar with that area by last
9 names of the property owner as opposed to the actual
10 address. It's a little hard for me to accurately
11 answer that and say whether I am -- if you even gave
12 me any other numbers besides the numbers you gave
13 me, I would have a hard time saying if I'm aware
14 of --

15 BY MR. STEGER:

16 Q. What names are you familiar with?

17 A. Well, the Cohens, and beside the Cohens,
18 if I heard the name, it might sound like a name I'm
19 familiar with.

20 Q. Would it be possible for the somebody to
21 tell Mr. Zak what those names are from either the
22 Cohens or the Bergaus?

23 THE HEARING OFFICER: Mr. Forcade?

24 MR. FORCADE: I don't, again, have the names of

1 the individuals by address.

2 MR. STEGER: Do you guys know who lives there

3 so we can figure out if he's --

4 MR. COHEN: I know some of them. I don't know

5 all of them.

6 MR. STEGER: Okay. Who do you know?

7 MR. COHEN: Actually, I can't see that far.

8 (Brief pause.)

9 MR. COHEN: Okay. Let's see. I know 655, 659,

10 663 --

11 MR. STEGER: Do you know anybody in 715, 719,

12 723, or 727?

13 MR. COHEN: I know 715.

14 MR. STEGER: And they are?

15 MR. COHEN: The last name is Lockwood.

16 BY MR. STEGER:

17 Q. Are you familiar with Lockwood?

18 A. The name sounds a little bit familiar, but

19 to be honest about it with this case, I'm not, no.

20 MR. STEGER: Okay. Do you know anybody else up

21 here?

22 MR. COHEN: I know who they were, but I don't

23 know. . .

24 MR. STEGER: The names escape you?

- 1 MR. COHEN: Yeah.
- 2 MR. STEGER: Okay. Do you know anybody from
3 595 to 579?
- 4 MR. COHEN: Yes, I do.
- 5 MR. STEGER: Okay. Which ones do you know?
- 6 MR. COHEN: I know 595.
- 7 MR. STEGER: And their name is?
- 8 MR. COHEN: Their name is Anderson.
- 9 BY MR. STEGER:
- 10 Q. Are you familiar with the Andersons?
- 11 A. That sounds familiar.
- 12 MR. STEGER: Okay.
- 13 MR. COHEN: I know 583.
- 14 MR. STEGER: And they are?
- 15 MR. COHEN: They are the Schaffers.
- 16 BY THE WITNESS:
- 17 A. Schaffer also sounds somewhat familiar.
- 18 MR. STEGER: Is that it?
- 19 MR. COHEN: I know 579, but I don't remember
20 their names.
- 21 BY MR. STEGER:
- 22 Q. Okay. When you say familiar, familiar
23 with potential noise problems from Overland?
- 24 A. To answer your question honestly, it is a

1 bit hazy because I do have so many noise complaints

2 and so many noise complainants.

3 Other than to really say the names do

4 sound familiar, can I definitely tie, as I'm sitting

5 here testifying, the Andersons and the Schaffers to

6 Overland clearly in my mind, no.

7 Q. Okay.

8 A. But, like I said, there seems to be a hazy

9 reference there.

10 Q. Okay. You can tie the Cohens?

11 A. The Cohens, definitely, yes.

12 Q. Bergaus?

13 A. I'm sorry.

14 Q. The Bergaus?

15 A. Yes.

16 Q. Okay. Dinshaw?

17 A. That sounds familiar, yes.

18 Q. Okay. Senbetta.

19 A. How do you spell that?

20 Q. S-a-n-b-e-t-t-a.

21 A. No.

22 Q. Hayden?

23 A. A-d-e-n?

24 Q. H-a-y-d-e-n.

1 A. Oh, Hayden. No.

2 Q. Or Lexby?

3 A. L-e-x-b-y?

4 Q. Correct.

5 A. No.

6 Q. Okay. On Noise Limitations with Roman
7 numeral IV, you had read the parenthetical phrase
8 without one-hour LEQ averaging. Does 901.102(a) and
9 (b) and 901.106 require 1-hour LEQ averaging in
10 order to determine whether you're in compliance?

11 A. Yes.

12 Q. Let me ask you then with respect to --
13 back on Roman numeral V, you testified that you
14 believed that respondents would not cause or allow a
15 dog to bark. Would it be possible in your
16 experience that the air brakes from a truck scare an
17 animal such that it might bark?

18 A. Yes. Thinking back over the many, many
19 years I've taken measurements, there had been
20 extraneous noises. If there's a dog in the area,
21 unless the noise is relatively continuous, it's not
22 unusual for air brakes or another noise to cause a
23 dog to bark.

24 Q. What about a cat jumping or otherwise

1 screeching?

2 A. Cats are relatively quiet.

3 MR. STEGER: Okay. I don't have any other
4 questions.

5 THE HEARING OFFICER: Do you have any recross,
6 Mr. Forcade?

7 MR. FORCADE: I have one question on re-cross.

8 FURTHER REDIRECT EXAMINATION

9 by Mr. Forcade

10 Q. Mr. Zak, you have, I believe, indicated in
11 your earlier testimony that a truck parked on the
12 northeast side of the parking area emitting noise at
13 legally allowable limits would, in your opinion,
14 generate noise levels on the Charter Hall properties
15 that are to the north and a truck located on the
16 southeast portion of the Overland property would
17 emit noise levels impacting Charter Hall homes to
18 the south that that would violate Pollution Control
19 Board noise regulations?

20 A. Yes, it could. I wouldn't say it would,
21 but it could.

22 Q. Is there a procedure that you're allowed
23 to violate some of the Illinois Pollution Control
24 Board regulations as long as you don't violate all

1 of them?

2 A. No.

3 MR. FORCADE: Thank you. No further
4 questions.

5 MR. STEGER: Mr. Zak, I've got a couple of
6 questions.

7 FURTHER RECROSS-EXAMINATION

8 by Mr. Steger

9 Q. Do you see Complainants' Exhibits No. 1
10 and the words Overland Transportation at the bottom?

11 A. Yes.

12 Q. And do you know what is located in that
13 general area?

14 A. I believe that's kind of a swampy area.

15 Q. With respect to the north, do you see the
16 dotted red line?

17 A. Yes.

18 Q. Then you'll see to the north of that some
19 letters TY, TY. Do you know what's in that general
20 area?

21 A. To the best of my recollection, when I was
22 there, it was a parking area that did not appear to
23 be part of the Overland facility.

24 Q. Okay. And this would be the area located

1 to the south of Whitehall and to the north of the
2 dotted red line?

3 A. Yes.

4 MR. STEGER: Okay. No further questions.

5 THE HEARING OFFICER: Mr. Forcade, do you have
6 a re-redirect?

7 MR. FORCADE: No. Thank you.

8 THE HEARING OFFICER: Okay. Mr. Zak, we have a
9 few questions from the board in which I think you
10 may be able to answer. If not, I would hope that
11 any party who has an answer might volunteer it
12 either at this time or at a later date.

13 Are you familiar with the property line of
14 Overland Transportation? Because we've been talking
15 about extending a fence on the north side and the
16 south side of the property. Would that run along
17 the property line, or does it extend farther out,
18 only if you're aware?

19 THE WITNESS: Mr. Hearing Officer, I'm not
20 quite sure of the -- could you rephrase the
21 question? I'm just not quite following your thought
22 here.

23 THE HEARING OFFICER: We are wondering if the
24 fence that you're proposing is extending along the

1 property line of Overland Transportation along the
2 north and south, and it looks like Mr. Forcade has
3 an question.

4 MR. FORCADE: Yeah. I'm a little confused.
5 Are you talking about does it extend north and south
6 precisely along the property line as opposed to a
7 couple inches or feet to the left or right?

8 THE HEARING OFFICER: No, not at all. We are
9 looking for a general idea of where the property
10 line to the north of the office and the south of the
11 dock building is. The fence that is the barrier
12 that you're proposing, does that run along the
13 property line?

14 MR. BERGAU: Can I add something to this?

15 THE HEARING OFFICER: You have to -- could you
16 identify yourself for the court reporter?

17 MR. BERGAU: Oh, I'm sorry. I'm Dennis
18 Bergau.

19 Where the red line is drawn at the north
20 end of the Overland where it says office --

21 THE HEARING OFFICER: Yes, the red dotted
22 line?

23 MR. BERGAU: Yeah. It looks to me like above
24 that, north of that, is a fence, and I believe

1 that's where the property line is.

2 THE HEARING OFFICER: You're talking about the
3 black line?

4 MR. BERGAU: No. The -- can I point it out to
5 you?

6 THE HEARING OFFICER: Yes, come up to the map,
7 please.

8 (Brief pause.)

9 MR. BERGAU: Okay. The red line that's down at
10 the north end here, there's a fence that goes along
11 approximately here (indicating).

12 THE HEARING OFFICER: You are moving your hand
13 from about building 695 to 699 approximately?

14 MR. BERGAU: Exactly.

15 THE HEARING OFFICER: Okay. So it extends, to
16 the best of your knowledge, farther north?

17 MR. BERGAU: That's where the trucks go, and
18 there's a pump here and so on.

19 THE HEARING OFFICER: On the south side?

20 MR. BERGAU: I don't know.

21 MR. STEGER: Okay. We've been advised that the
22 Overland property extends all the way down to this
23 diagonal line to the south of Overland
24 Transportation. So it would encompass from this

1 dashed black line straight down in this

2 triangular --

3 THE HEARING OFFICER: Trapezoidal thing.

4 MR. STEGER: There you go.

5 So this would be Overland's property line

6 to the west running down from the corner of 613 and

7 Overland straight to --

8 THE HEARING OFFICER: Right, to the end of the

9 map.

10 MR. STEGER: -- the end of the map and then

11 straight over to just south of the shopping center.

12 THE HEARING OFFICER: Okay. Thank you.

13 And on the north side, is -- excuse me. I

14 forgot your name.

15 MR. BERGAU: Dennis Bergau.

16 THE HEARING OFFICER: Dennis.

17 Was Mr. Bergau correct? Does the property

18 line extend from the top of 699 or 695 east,

19 roughly?

20 MR. DANIEL: Rough. Roughly.

21 THE HEARING OFFICER: Okay. Now, there was

22 testimony at the last hearing -- well, first of all,

23 Mr. Zak, when you were commenting on the barriers on

24 the north, west, and south sides, you weren't

1 suggesting that they run along the property line;
2 you were suggesting that they run along the lines on
3 the map, correct? Or are you suggesting that the
4 fence be extended all the way down south of the
5 trapezoid? You're just talking about from 627 over
6 east north to 683 and then east along the red dotted
7 line, correct?

8 THE WITNESS: Yes. Yes. Using the lines,
9 Mr. Hearing Officer, that are on the exhibit there,
10 that was my assumption as to where the north and the
11 south barriers would go.

12 THE HEARING OFFICER: Okay. Now, there was
13 testimony at the last hearing that sometimes trucks
14 park on the north side of the facility. Would that
15 be north of that red dotted line, and if so --

16 THE WITNESS: I don't know. That wasn't my
17 testimony.

18 MS. COHEN: Yes.

19 MR. BERGAU: Yes.

20 MS. COHEN: Tara Cohen. The X that you have as
21 Judy Lexby's -- I'm sorry. I can't see the number
22 either. I guess my eyes aren't any better.

23 MR. STEGER: Judy Lexby is at 699?

24 MS. COHEN: Yes, or whatever it is. I can't

1 see it. It's 691. It's X'd out.

2 THE HEARING OFFICER: I see.

3 MS. COHEN: And she has trucks that park behind
4 her. That's why the truck yard is -- TY was for
5 truck yard. I remember from the first hearing.

6 THE HEARING OFFICER: That's an X on the map at
7 691.

8 MS. COHEN: It seems like an irregular thing.

9 I have no idea where it is. I would assume counsel
10 would know, but to me, it seems like it goes like

11 that (indicating) because there is a parking area
12 here where the trucks do park. There's also another
13 parking lot on the other side of the chain link
14 fence.

15 THE HEARING OFFICER: And you are pointing
16 to --

17 MS. COHEN: But it's not straight across.

18 THE HEARING OFFICER: -- the area that says TY,
19 TY on the map?

20 MS. COHEN: Yes.

21 THE HEARING OFFICER: Horizontal and vertical.

22 Mr. Zak, if there were trucks that park at
23 that area, would the proposed noise abatement
24 measures rectify that, any noise from those trucks?

1 THE WITNESS: No. Any trucks parking north of
2 the proposed barriers would then fully impact the
3 residential area with their noise. The barriers
4 would have very little effect on trucks that were
5 parked in the north.

6 THE HEARING OFFICER: Mr. Zak, we've talked
7 about a 22-foot fence that's being proposed. Is
8 that on top of an eight-foot tall berm, or is that
9 from the bottom? Do you understand?

10 There's apparently a berm on the west side
11 of the property. I want to know if the fence is
12 from the top of the berm or if it is from level
13 ground all the way up including the eight feet of
14 the berm?

15 MS. BERGAU: Excuse me. I'm Mary Ann Bergau.
16 The berm is on our property.

17 THE HEARING OFFICER: Oh.

18 MS. COHEN: It's on their side.

19 MS. BERGAU: It is on their side?

20 MR. STEGER: We will be happy to provide a plot
21 of survey to the board.

22 THE HEARING OFFICER: Yeah, if you can address
23 this in your posthearing brief or. . .

24 MR. STEGER: We don't have any problem with

1 that.

2 THE HEARING OFFICER: I would appreciate that.

3 The board is curious as to how tall the 22-foot
4 fence actually has to be.

5 MR. STEGER: Understood.

6 THE HEARING OFFICER: I'm almost done here,
7 Mr. Zak.

8 You have acoustically absorptive material
9 that -- according to II, B, you're going to add
10 acoustically material supposedly to the entire
11 surface of the western side of the Overland
12 building?

13 THE WITNESS: Yes.

14 THE HEARING OFFICER: If, in fact, the board
15 orders II, C as a remedy, which is constructing an
16 airtight sound-containing building or structure
17 totally enclosing the west side docks, I would
18 assume that you still would like an acoustically
19 absorptive material on the outside of that
20 enclosure, correct, or is that not then necessary?

21 THE WITNESS: What I was envisioning would be a
22 means of sealing each truck trailer as it pulls in.
23 For example, a collapsible rubber gasket commonly
24 used on refrigerated areas, that would have

1 virtually no impact or effect on the existing
2 surface -- exposed surface area of the building that
3 faces the west side.

4 So by enclosing the back of the trailers,
5 say, with a gasket, one can still apply the acoustic
6 material to the side of the material building.

7 THE HEARING OFFICER: So the enclosure itself
8 would not have to have an acoustically absorptive --
9 excuse me. I don't say these words correctly.

10 They wouldn't have to have the acoustic
11 material on the outside of it?

12 THE WITNESS: Well, it would depend,
13 Mr. Hearing Officer, if a large structure was built,
14 and it took up, let's say, a significant percentage
15 of that side of the building. If the structure was
16 rather, say, sophisticated, large, took up a large
17 area, then it might need to be acoustically treated
18 on the outside.

19 So what we're talking about here really is
20 the size of the solution. If we go with a compact
21 solution, we don't need to acoustically treat it on
22 the outside. If it's fairly large, though -- and I
23 take it this would be up to Overland, to some
24 extent, I think.

1 I think if what we're looking at here is a
2 large structure, then you would treat it. If it's
3 relatively small, a small modification to the
4 existing side of the building, then you would treat
5 the existing side of the building as is, and that
6 would be sufficient.

7 THE HEARING OFFICER: Thank you. Those are all
8 the questions that the board has.

9 (Witness excused.)

10 Mr. Forcade, do you have any other
11 witnesses?

12 MR. FORCADE: I have no other witnesses, but I
13 would like at this time to move the admission of
14 Plaintiffs' Exhibit No. 1 for today's hearing.

15 THE HEARING OFFICER: Mr. Steger?

16 MR. STEGER: No objections.

17 THE HEARING OFFICER: Okay. Plaintiffs'
18 Exhibit No. 1 is admitted, and, just for the record,
19 this is a document that looks to be five pages long
20 entitled remedial action plan.

21 MR. STEGER: Well, actually, let me clarify
22 that. The only objection I do have relates to --
23 and I will be addressing this in our posthearing
24 brief -- the provisions of the board rules that

1 Overland was not found in violation of. That is my
2 only objection.

3 THE HEARING OFFICER: You're objecting then --
4 just let me clarify for myself and the record --
5 to any reference within Plaintiffs' Exhibit No. 1
6 that has regulations that you were not found liable
7 for --

8 MR. STEGER: Correct.

9 THE HEARING OFFICER: -- in the previous board
10 order?

11 MR. STEGER: Correct.

12 THE HEARING OFFICER: Mr. Forcade, do you have
13 any response?

14 MR. FORCADE: I'm not sure whether a response
15 is necessary. We're asking them effectively to
16 comply with board regulations in Section 1 to cease
17 and desist from their violation. That seems an
18 appropriate part of a remedial action plan for noise
19 for a facility that has been found in violation of
20 any noise standard.

21 THE HEARING OFFICER: Okay. I'm going to admit
22 this over the objection, but the objection will be
23 noted for the board. This is admitted.

24 Mr. Forcade, your next witness, please.

1 MR. FORCADE: That's the end of our case.

2 THE HEARING OFFICER: Okay. Mr. Steger, do you
3 have opening statements, or do you have witnesses?

4 MR. STEGER: No. We'll limit ours to our
5 posthearing briefs.

6 THE HEARING OFFICER: Okay. It's your case if
7 you have any witnesses you'd like to call.

8 MR. STEGER: No, we don't.

9 THE HEARING OFFICER: All right.

10 MR. FORCADE: At this time, could we take about
11 five minutes before we discuss the issue of
12 briefing?

13 THE HEARING OFFICER: Yes, we can. Let's go
14 recess for five minutes. We will adjourn, I don't
15 know, at 1:53.

16 (Break taken.)

17 THE HEARING OFFICER: We're back on the record,
18 and pursuant to an off-the-record discussion, we're
19 going to reopen complainants' case in chief and
20 recall Greg Zak who has already been sworn.

21 Mr. Forcade?

22 MR. FORCADE: Yes.

23

24

1 FURTHER REDIRECT EXAMINATION

2 by Mr. Forcade

3 Q. Mr. Zak, earlier there was a question as
4 to whether your suggestion for a noise attenuation
5 fence, which would be 22-feet tall as to whether
6 that would be 22 feet above grade or 22 feet above
7 ground level, and following some discussion I
8 believe that you crafted a document which I would
9 like to have marked for identification purposes as
10 Plaintiffs' Exhibit No. 2 which is a handwritten
11 graphical depiction of a cross-section showing
12 Overland Transportation and the adjacent houses, and
13 I'll label this as P-2 for identification.

14 (Plaintiffs' Exhibit No. 2
15 marked for identification,
16 12/08/98.)

17 BY MR. FORCADE:

18 Q. I'll show you this and ask if you can
19 recognize and describe that document for me,
20 please.

21 A. Yes. This is the hand drawing I prepared
22 a few minutes ago to illustrate the location and
23 height of the noise wall. What we see pictured in
24 the drawing, starting on the left-hand side which is

1 the eastern side of the area in question, we see the
2 Overland facility, an acutely drawn semitruck in the
3 process of either loading or unloading, an exhaust
4 stack drawn truck, and then looking to the extreme
5 right an acutely depicted residence labeled Cohen,
6 although it could be whichever house in the
7 subdivision there that has the highest roof.

8 The idea is to place a noise wall between
9 the subdivision and the Overland facility, and the
10 question came up as to the height being 22 feet. I
11 intended to illustrate my conception of how the wall
12 should be placed. The height of 22 feet is an
13 approximate height given that the idea of the wall
14 is such that it should be high enough to break the
15 line of sight between any noise source at Overland
16 and any windows or side walls of the houses in the
17 subdivision.

18 The wall could be slightly less than 22
19 feet, or it could be slightly more than 22 feet so
20 long as it's sufficiently high to break the line of
21 sight to the side wall of the tallest house abutting
22 the Overland facility.

23 BY MR. FORCADE:

24 Q. Okay. Would it be correct to say that you

1 have drawn a dotted line that attempts to represent
2 a line between what would be essentially the roof
3 gutter on a home proceeding towards the Overland
4 property and intersecting the top of the highest
5 noise emitting location there?

6 A. Yes, that's correct.

7 Q. And then the height of the fence should be
8 that it is sufficiently high to at least touch that
9 line of sight?

10 A. Yes, properly break it so that --

11 Q. Break it.

12 A. -- it would be just slightly higher than
13 the line of sight.

14 MR. FORCADE: Okay. That's the extent of my
15 questions on Plaintiffs' Exhibit No. 2.

16 THE HEARING OFFICER: Mr. Steger?

17 MR. STEGER: I have a question.

18 FURTHER RECROSS-EXAMINATION

19 by Mr. Steger

20 Q. Would it be possible -- you have depicted
21 a drop-off between what is marked as the Cohen
22 residence and the noise wall. Would it be possible
23 to put the fence on that drop-off as long as it
24 broke that line of sight?

1 MR. FORCADE: May I ask a clarifying question?

2 Are you talking about on the Charter Hall property

3 or on Overland property?

4 MR. STEGER: At this point in time, I'm not

5 sure whose property that is.

6 MR. FORCADE: We don't know for sure either,

7 but if you're asking about constructing a fence on

8 the Charter Hall property, that raises a series of

9 questions we have described earlier.

10 MR. STEGER: Understood.

11 BY MR. STEGER:

12 Q. Let's assume that that is Overland

13 property. For lack of a better term, the berm that

14 you have depicted here --

15 A. Yes --

16 Q. -- could it be possible to put it on top

17 of there?

18 A. Yes.

19 Q. As long as it broke the line of sight?

20 A. Yes, as long as it broke the line of

21 sight.

22 MR. STEGER: Okay. That's all I have.

23 (Witness excused.)

24 THE HEARING OFFICER: Mr. Forcade?

1 MR. FORCADE: At this time, we would move the
2 admission of Plaintiffs' Exhibit No. 2.

3 THE HEARING OFFICER: Any objection?

4 MR. STEGER: No.

5 MR. FORCADE: I'd like the prerogative, if I
6 could, tomorrow to come and get copies. That's the
7 only copy we have.

8 THE HEARING OFFICER: Yes. In fact, I can make
9 copies today, if you would like.

10 MR. FORCADE: Oh, okay.

11 THE HEARING OFFICER: You didn't have an
12 objection to this, did you, Mr. Steger?

13 MR. STEGER: No, I did not have an objection.

14 THE HEARING OFFICER: This item is admitted
15 with no objection.

16 Mr. Forcade, do you have any other
17 witnesses in your case?

18 MR. FORCADE: No.

19 THE HEARING OFFICER: Mr. Steger?

20 (Brief pause.)

21 MR. STEGER: No. I wanted to clarify my
22 posthearing briefs subject to our right to seek
23 appeal of the hearing officer's order earlier today.

24 THE HEARING OFFICER: Okay. Yeah. We can do

1 that. You do not have any witnesses you wish to
2 call?

3 MR. STEGER: Oh, is that what you're asking
4 me?

5 THE HEARING OFFICER: Yes.

6 MR. STEGER: No.

7 THE HEARING OFFICER: Your response case is
8 closed?

9 MR. STEGER: Yes, subject to --

10 THE HEARING OFFICER: Right. Understood. And
11 you do not wish to do a closing statement?

12 MR. STEGER: No, I do not.

13 THE HEARING OFFICER: Mr. Forcade, do you have
14 any closing statements?

15 MR. FORCADE: No.

16 THE HEARING OFFICER: Okay. Now, you can make
17 any motion you so desire.

18 MR. STEGER: Yes. We would like to limit our
19 case to the posthearing brief subject to the board's
20 ruling on appeal of the hearing officer order issued
21 earlier today.

22 THE HEARING OFFICER: Okay. Mr. Forcade -- I
23 think we should go off the record and talk just for
24 a second. Could we go off?

1 (Discussion had off
2 the record.)

3 THE HEARING OFFICER: We are back on the record
4 after talking about a briefing schedule.

5 First, before we do that, I'm required to
6 make a statement of credibility at the conclusion of
7 this proceeding, and I find that based on my legal
8 judgment and experience credibility is not an issue
9 in this case.

10 We have talked about a briefing schedule.

11 The briefing schedule is as follows: Complainants'
12 brief will be due 30 days from today. Respondents'
13 reply brief will be due 30 days from the receipt of
14 complainants', which will be sent to him by
15 messenger mail, and complainants have 14 days from
16 the receipt of the reply, which will also be sent by
17 messenger mail, for his response to the rely brief.

18 I think that's all I have.

19 Does any party have anything else to add
20 at this point in time?

21 MR. STEGER: No.

22 THE HEARING OFFICER: Mr. Forcade?

23 MR. FORCADE: No.

24 THE HEARING OFFICER: Thank you very much.

1 This hearing is closed.

2 (Whereupon, these were all the
3 above-entitled proceedings had
4 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

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23

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