

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

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

4 )  
Complainants, )

5 )  
vs ) No. PCB 98-81

6 )  
OVERLAND TRANSPORTATION SYSTEM INC., )

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

8 Respondents. ) VOLUME II

9

10

11 The PROCEEDINGS taken before JOHN BURDS, The

12 Hearing Officer, stenographically recorded by

13 CARYL L. HARDY, CSR, a notary public within and for

14 the County of Cook and State of Illinois, at the

15 James R. Thompson Center, 100 West Randolph Street,

16 Room 8032, Chicago, Illinois, on the 13th day of

17 May, A.D., 1998, scheduled to commence at 9:30 a.m.,

18 commencing at 9:40 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 Suite 11-500,  
Chicago, Illinois 60601  
4 (312) 814-3669  
BY: MR. JOHN BURDS  
5

6 JENNER & BLOCK,  
One IBM Plaza  
7 Chicago, Illinois 60611  
(312) 222-9350  
8 BY: MR. BILL S. FORCADE and MR. STEVEN M.  
SIROS  
9

10 Appeared on behalf of the Complainants,

11 McBRIDE, BAKER & COLES,  
500 West Madison Street  
12 40th Floor  
Chicago, Illinois 60661  
13 (312) 715-5700  
BY: MR. MARK J. STEGER  
14

15 Appeared on behalf of the Respondents.

16 ALSO PRESENT:

17 Mr. David Daniels  
Ms. Kathleen Hennessy  
18  
19  
20  
21  
22  
23  
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1 THE HEARING OFFICER: Let's go on the  
2 record.

3 Let the record reflect that we are back on  
4 the second day of hearing in PCB 98-81, Charter Hall  
5 Homeowner's Association and various of its members  
6 vs. Overland Transportation System, Inc., and D.P.  
7 Cartage, Inc.

8 Today's date is May 13th, 1998. It is  
9 approximately 9:30 a.m. We are here as scheduled at  
10 the State of Illinois Center, Conference Room 25 on  
11 the eighth floor. All parties are present. I will  
12 note for the record that there are no members of the  
13 public. All parties present -- well, I take that  
14 back. All parties present are either parties to the  
15 proceeding or in-house counsel for one of the  
16 parties present.

17 I would ask at this time that counsel  
18 identify themselves for the record. Mr. Forcade?

19 MR. FORCADE: Yes, good morning. My name is  
20 Bill Forcade. With me is associate Steven Siros.  
21 We are from the law firm of Jenner & Block. We  
22 represent the Complainants, the Charter Hall  
23 Homeowner's Association and various of its members,  
24 including, but not limited to, Mr. Jeffrey Cohen.

1 THE HEARING OFFICER: Thank you.

2 Mr. Steger?

3 MR. STEGER: Mark Steger on behalf of the

4 Respondents. I'm with the law firm of McBride,

5 Baker, & Coles.

6 THE HEARING OFFICER: Thank you. As one

7 preliminary matter, I will indicate that all the

8 exhibits have been taken into the possession of the

9 hearing officer that have been admitted. That

10 includes two group exhibits, 1 and 2, and seven

11 Complainant exhibits all have been admitted by

12 agreement or over objection. I will indicate that

13 they are on what I will call the evidence table. I

14 would ask that if they are to be used that counsel

15 return them to that table prior to them -- when they

16 are finished with whatever testimony or whenever

17 their witness is completed. Now, the only other

18 issue that I can think of before hearing is pursuant

19 to yesterday, I had the parties review the joint

20 stipulation in this case based on, I guess, a

21 recognition of some missing pages in Attachment C of

22 the joint stipulation, and it is entitled joint

23 stipulations of fact submitted by both parties. I'm

24 going to mark this document as a joint exhibit and

1 call it Joint Exhibit 1. It consists of five  
2 attachments with a corresponding motion in the front  
3 with various stipulations of fact and attachments.  
4 Mr. Steger pointed out that there were three missing  
5 pages in Attachment C. We have now added those  
6 three missing pages. I have indicated that we still  
7 have to work with the nine existing copies before  
8 the board and board members, and that will have to  
9 be corrected. For that Attachment C, Mr. Steger has  
10 graciously agreed to provide those copies with the  
11 appropriate motion pursuant to the hearing officer's  
12 order. So I will expect that, and he has indicate  
13 that he will do so by the end of the week. So  
14 that's how we will correct Attachment C and make  
15 sure that Attachment C is completed or corrected in  
16 the motions -- or I apologize -- the joint  
17 stipulations before the board.

18 Any objection to that, Mr. Forcade?

19 MR. FORCADE: No objections.

20 THE HEARING OFFICER: Mr. Steger?

21 MR. STEGER: No.

22 THE HEARING OFFICER: All right. Then I will  
23 place -- now, as far as the joint stipulations of  
24 fact, any objection to marking this document as I

1 have indicated and using it in that fashion,

2 Mr. Forcade?

3 MR. FORCADE: No.

4 THE HEARING OFFICER: Mr. Steger?

5 MR. STEGER: No.

6 THE HEARING OFFICER: All right. Then that's

7 how I will clip it for now. I will simply call it,

8 again, Joint Exhibit 1.

9 (Joint Exhibit No. 1 marked for

10 identification, 5-13-98.)

11 MR. FORCADE: Mr. Hearing Officer?

12 THE HEARING OFFICER: Yes.

13 MR. FORCADE: Yesterday you did not indicate

14 whether Joint Exhibit 1 had been admitted as

15 evidence or not. Are you now admitting it or not?

16 THE HEARING OFFICER: I apologize. If I did

17 not, I intended to. In fact, my recollection was

18 that it was an admitted document subject to the

19 corrections that had to be made. Is that your

20 understanding, Mr. Steger?

21 MR. STEGER: That is correct.

22 THE HEARING OFFICER: No objection to its

23 admission, correct? I will need an affirmative

24 answer.

1 MR. STEGER: Yes.

2 THE HEARING OFFICER: Thank you very much. And

3 Mr. Forcade?

4 MR. FORCADE: Yes.

5 THE HEARING OFFICER: No objection?

6 MR. FORCADE: Objections.

7 THE HEARING OFFICER: All right then. Let's

8 proceed. Your first witness, Mr. Forcade.

9 MR. FORCADE: I would call Tara Cohen.

10 THE HEARING OFFICER: Thank you. Would you

11 please raise your right hand and be sworn?

12 (The witness was duly sworn.)

13 THE HEARING OFFICER: Thank you. Would you

14 please spell your first name and last name,

15 Mrs. Cohen?

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

17 THE HEARING OFFICER: Thank you. Mr. Siros or

18 Mr. Forcade.

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1           TARA COHEN,  
2 called as a witness herein, having been first duly  
3 sworn, was examined upon oral interrogatories, and  
4 testified as follows:

5           DIRECT EXAMINATION

6 BY MR. SIROS:

7     Q   Mrs. Cohen, would you please tell me where  
8 you live?

9     A   At 647 -- 647 Charter Hall Drive where the  
10 blue X is.

11    MR. SIROS: Let the record reflect that  
12 Mrs. Cohen identified on Complainants' Exhibit 1 the  
13 blue X at 647.

14    THE HEARING OFFICER: Is that accurate,  
15 Mrs. Cohen?

16    THE WITNESS: Yes.

17    THE HEARING OFFICER: All right. The record  
18 will so reflect.

19 BY MR. SIROS:

20    Q   And do you live there alone?

21    A   No. I live with my husband, Jeff Cohen,  
22 and five animals.

23    Q   What kind of animals do you have?

24    A   Two dogs, Misty and Rasta; three cats,

1 Shadow, Sheba, and Jellico.

2 Q And when did you move in?

3 A November of '92.

4 Q What is your occupation?

5 A I'm a teacher's assistant in special  
6 education.

7 Q Are you taking time out to testify here  
8 today?

9 A Yes, I am.

10 Q Would you please generally describe the  
11 layout of your house?

12 A Facing Charter Hall, if you walk in the  
13 front door, you have a hallway with a half bath.  
14 Then you go to the living room, kitchen -- dining  
15 room, kitchen, garage. Then if you go upstairs, you  
16 have master bedroom, master bathroom, and two other  
17 bedrooms.

18 Q And which rooms are on the east side of  
19 the second floor?

20 A On the second floor is the master bedroom  
21 and the master bathroom.

22 Q If I was to look out the master bedroom  
23 facing east, what would I see?

24 MR. STEGER: Mr. Hearing Officer, I believe

1 Mr. Cohen has testified to all this. Is this simply  
2 repetitive testimony?

3 THE HEARING OFFICER: Mr. Siros?

4 MR. SIROS: I'm laying a partial foundation for  
5 Mrs. Cohen's use of the noise meter.

6 THE HEARING OFFICER: As I indicated, I  
7 envision, and I think we all envision, some  
8 redundant tenant testimony. As I indicated  
9 yesterday, I note your objection for the record,  
10 Mr. Steger. I think there is going to be a certain  
11 amount of redundancy, but I think just where we can  
12 avoid it -- Mr. Siros, I certainly understand if you  
13 are trying to lay a foundation, but please limit it  
14 to what you need to.

15 MR. SIROS: Certainly.

16 THE HEARING OFFICER: Thank you.

17 BY MR. SIROS:

18 Q Would you like me to repeat the question?

19 A What I see out of my bedroom window?

20 Q That is correct.

21 A I know that.

22 You see the tops of the trees, the top of  
23 the fence, and the end of Overland -- you see a few  
24 bays, the end of Overland's building and lights on

1 their building.

2 Q When you say the end of Overland's  
3 building, can you describe that?

4 A The end of the building, if you -- I mean,  
5 I can see the whole building if you are looking up  
6 and down the window, but as you look straight out,  
7 you see like the last couple of bays -- well, at 647  
8 you see the last couple of bays of their loading  
9 dock and then the end of the building, garbage and  
10 whatever and whatnot, and the parking lot. That's  
11 what you see.

12 Q When you first moved in in November of  
13 1992, were you aware of the existence of a trucking  
14 facility located next door?

15 A I was aware Yellow Freight was there.  
16 We -- it was during construction, and it was very  
17 hard to visualize what would be looking out of our  
18 bedroom window because there was only ground, but I  
19 was aware there was -- Yellow Freight was there.

20 Q Were you personally aware that there was a  
21 24-hour trucking operation there?

22 A Twenty-four hours, no. I don't think we  
23 found out about the 24-hour thing until like after  
24 the closing or something like that, but I knew there

1 was Yellow Freight.

2 Q How did you find out about the 24-hour  
3 trucking operation after the closing?

4 A The 24 hours was -- because they would be  
5 occasionally noisy later at night. I do not  
6 remember hearing them during the middle of the  
7 night. I could have. I just don't remember. I  
8 didn't hear them on the weekend, and I know we went  
9 to the village and asked and called Yellow and  
10 things like that, and I found out they had  
11 permission to work 24 hours, but they didn't.

12 Q Who did you hear that from?

13 A I talked to various and sundry people at  
14 the village of Palatine, and Yellow told me, you  
15 know, we just don't, and they just didn't have that  
16 many trucks. They just didn't have that much  
17 business to keep them going that long.

18 Q When you first moved in in November of  
19 1992, can you tell how many times a week you would  
20 be bothered by noise from Yellow Freight?

21 A Maybe once or twice, and it was -- like I  
22 said, I do not remember it waking me up from  
23 Yellow. I remember hearing it and knowing it was  
24 there but not stopping me from doing anything.

1 Q How often does the noise bother you from  
2 the Overland facility today?

3 A From Overland today, at least six days a  
4 week.

5 Q Is there a particular day when you are not  
6 bothered?

7 A Sunday afternoon, earlier evening.

8 Q I would like to take you through an entire  
9 day starting at 8:00 o'clock in the morning going to  
10 8:00 o'clock in the morning the next day. Would you  
11 please tell me the periods of time during the day  
12 when you are bothered by noise from the Overland  
13 facility?

14 A Okay. If it was like 8:00 o'clock, I  
15 would be at school already. I get home about 3:30.  
16 I normally hear banging as soon as I pull in the  
17 driveway pulling into the garage. I hear bangs or  
18 something coming from Overland. Various and sundry  
19 throughout the night, there does seem to be a  
20 downtime. We eat an earlier dinner. Around --  
21 after dinnertime, maybe around 6:00, 7:00, something  
22 like that, but it starts up around 9:00 and goes --  
23 my average is until about 11:00 o'clock, sometimes  
24 later, sometimes earlier.

1 And then if I get to sleep, I'm usually --  
2 I'm woken up -- I have been woken up anywhere from  
3 midnight to 4:00 o'clock in the morning to 5:00 --  
4 2:00, 3:00, 4:00, 5:00 o'clock in the morning.

5 Q You had earlier indicated that --

6 A I'm sorry. I didn't finish -- I'm sorry.

7 I didn't finish until the 8:00 o'clock.

8 We get up -- I get up about 5:00 or  
9 quarter after 5:00, and I hear them usually anywhere  
10 from just noticing that they are there to very loud  
11 noises until about 6:30 when I leave.

12 Q I would like to go back to you had  
13 indicated that you would eat dinner and then you  
14 would hear the noise until around 9:00 o'clock. Is  
15 that accurate?

16 A No. It's normally -- it's quieter in  
17 between, it seems to be on an average, and it starts  
18 up again later on around 9:00.

19 Q Is that 9:00 p.m.?

20 A Yes, 9:00 p.m.

21 Q And then you wake up at about what time?

22 A Depends. I have been woken up any time  
23 between midnight and 5:00 a.m. It just depends on  
24 what is going on over there.

1 Q What time do you leave for work in the  
2 morning?

3 A By usually 6:00, quarter to 7:00 in the  
4 morning.

5 Q Do you hear noise when you leave for work  
6 in the morning?

7 A Before I leave, yes.

8 Q Do you also hear noise when you are  
9 leaving for work in the morning?

10 A Not that I notice because, like I said, it  
11 seems to be quieter around 6:30.

12 Q Would you describe the different types of  
13 noise you hear from the Overland facility?

14 A I have quite a list. I have bangs which --  
15 all these vary in their loudness whether it's just I  
16 hear it or whether it's extremely loud and  
17 irritating, bangs of -- I call them -- they are a  
18 little bit sharper noise that comes -- I don't  
19 know. It's just a little sharper noise. It comes a  
20 lot of times when you hear the yard tractor running  
21 into things or the trailers backing up into things,  
22 into the dock or the forklifts going over the plates  
23 or dropping things in the truck. That's when I hear  
24 the bangs.



1 I also have a boom which is more echoing,  
2 and it seems to be deeper. All the above things do  
3 that. It just depends -- it seems to depend on how  
4 fast it's going, how many times they have had to do  
5 something to get something done, or how heavy the  
6 load is possibly because it seems to be deeper when  
7 it's bigger.

8 Q Have you physically observed activities  
9 occurring on the Overland property that you can  
10 associate with these different types of noises?

11 A Yes, I have. Well, when there is a  
12 trailer in the bays in front of us, you can't see  
13 obviously a forklift going into something in front  
14 of you, but they are open bay doors all the time  
15 where I can see the same activity going on right  
16 across, or maybe a few bay doors down you can see  
17 the forklifts going in with the lights on and  
18 they're beeping. So I can physically see this and  
19 know that that's the same sound because I keep  
20 hearing it over and over.

21 Q You said you hear the forklifts beeping.  
22 What is that?

23 A I think it's backing up or if they are  
24 just picking -- sometimes -- well, sometimes it's

1 beeping -- I guess people get out of their way if  
2 they are walking in front of them on the docks.  
3 When they are backing up, I hear beeping. I think  
4 it's more of a warning thing to other people around,  
5 but I hear it.

6 Q Besides the bangs and booms, are there any  
7 other types of noise that you hear?

8 A I don't know how you hear a shake, but I  
9 also -- it's like I hear some of the bangs and the  
10 booms and the other noises or a big scraping sound  
11 when things are being dragged, and when you have  
12 these big, huge trailers being dragged or sometimes  
13 these big metal -- I don't know. They hold the  
14 truck up. I don't know what they are. They are  
15 these big, metal, round things, and they drag them  
16 across the parking lot, or you hear stuff --  
17 metal -- I have heard or seen metal being dragged  
18 across the concrete floor inside of the boating  
19 bays, and you can hear that sound. It's anywhere  
20 from a real loud screech which is like fingernails  
21 on a blackboard. It's just that irritating. And  
22 when it's heavy enough, it shakes the whole house.  
23 I mean, you can be in any room in the house -- we  
24 have had furniture shake, glass items -- everything

1 shakes. The animals run and hide, and it's a very  
2 loud sound.

3       There is also -- sometimes there is just  
4 these huge crashes, and it's just something huge  
5 falling. You know, a lot of times I have heard  
6 metal hitting metal, and I have seen like the  
7 forklifts hitting the concrete floor which, is metal  
8 hitting the concrete floor. As they have got this  
9 load on there, it's just this crash, and it can  
10 reverberate, and that also has shaken the house.  
11 When you hear something crash -- you can hear it.  
12 If the bay windows are open, even if they are on the  
13 other side -- if the bay doors are open, excuse me,  
14 you can still hear it even if they are on the other  
15 side because the bay doors are open and everything  
16 just comes through the open bay doors.

17       I think I have hit all my noises. I don't  
18 remember for sure: Crushes and booms and bangs.

19    Q   When you say the house shakes, can you  
20 describe that, please?

21    A   It's literally -- yesterday morning at  
22 6:15 in the morning, that was the last time it  
23 happened. I was in the bathroom. The two cats were  
24 in the bathroom with me, and the house literally

1 shook. There was just -- the cats ran. I'm trying  
2 to tell them it's okay, even though it's not a  
3 natural sound for them to hear. You hear all this  
4 rattling going on. It shakes.

5 Q How long do these different types of  
6 noises usually last? I'm sorry. Let me rephrase  
7 that.

8 With regards to the banging and booming,  
9 how long do those types of noises usually last?

10 A Maybe a couple of seconds, but they can  
11 be -- there are can be a pause in between. I mean,  
12 if you have the double boom, the double boom, or the  
13 double bang from the forklift going over, then  
14 that's like boom-boom, and it's right there, so  
15 maybe two or three seconds in length. But there can  
16 be like a second pause in between, and then it  
17 starts again, so it seems like there is no stoppage  
18 until it's quiet for a while.

19 Q In a ten-minute period when they are  
20 loading and unloading, can you give me an  
21 approximation as to how many times you would hear  
22 the double boom?

23 A The double one? Okay. Probably at least  
24 three or four times in a minute which would be 30 or

1 40 times in ten minutes.

2 Q What about this scraping noise, how long  
3 does that usually occur?

4 A It seems like it goes on forever. It's  
5 probably about five seconds, maybe ten seconds  
6 because I have seen them drag stuff from one end of  
7 the parking lot to the other or from one end of the  
8 inside of the bay to the other.

9 Q Do you recall specific dates when  
10 excessive noise occurred?

11 A Like I said, the last one I can remember  
12 is yesterday morning at 6:15 when I had the huge  
13 crash and getting ready coming for here. They woke  
14 me up Monday morning. I don't remember the exact  
15 time, but they woke me up two days ago Monday  
16 morning with loud noise and whatever, and that's the  
17 last specific ones that I remember. Otherwise, I  
18 would have to refer to all my stuff.

19 Q When you say all your stuff, is there  
20 something that you use to record the daily noise  
21 from the facility?

22 A I have a calendar that I keep on my  
23 dresser which is right across from the bed that I  
24 try to write down extraordinary noises on. I do not

1 write down everything I hear because it seems to --  
2 it's just so redundant after almost three years, I  
3 would be writing it down constantly, and I can't do  
4 that, but I write down all the -- try to write down  
5 all the loud noises when they wake me up or disrupt  
6 us or something happens.

7 (Complainants' Exhibit No. 8 marked  
8 for identification, 5-13-98.)

9 BY MR. SIROS:

10 Q Let me show you something that I have  
11 marked as Complainants' Exhibit 8 for identification  
12 purposes. Do you recognize that?

13 A Yes. That's my calendar that I first  
14 started writing stuff down in in 1996.

15 Q And what month of 1996 did you first start  
16 writing things down?

17 A I believe that was October. Yes, October  
18 of 1996.

19 Q And would you please tell me how you would  
20 record things on this calendar?

21 A On my calendar, what I was doing was I  
22 would try to write if I was gone or not there to  
23 notice if anything was happening. On a day-to-day  
24 basis, I would try to write down times if they woke

1 me up, if they woke my husband up, if I heard  
2 extremely loud noises or if it was just loud. I was  
3 trying to write what I was hearing just to log it so  
4 I could remember so it wasn't just all in my head.

5 Q For example, I ask you to look at October  
6 of 1996 on what has been marked for identification  
7 as Complainants' Exhibit 8, Friday, October 11th.

8 A Yes.

9 Q And would you please read what you wrote  
10 there?

11 A Loading at 5:00 a.m. to 6:30 a.m., 4:00 to  
12 6:15 p.m. sporadic loud loading, noise until 11:00  
13 p.m., so that means from -- it was sporadically loud  
14 loading noises from 4:00 to 6:15 and then until  
15 11:00 p.m. And it looks like I took a measurement  
16 after 10:00 p.m.

17 Q So that would be what the circled M would  
18 reference on October 11th?

19 A Yes. It looks like I did that. I didn't  
20 necessarily carry that through the whole -- through  
21 1998, but I tried.

22 Q And would you record your observations on  
23 a daily basis on this calendar?

24 A I tried. If it was at all possible, I

1 tried, yes, and if I didn't remember, I didn't go  
2 back and make it up later.

3 Q So if there is a blank on a day, what  
4 would that indicate?

5 A Either I didn't hear anything or I didn't  
6 remember to write it down or it wasn't loud enough  
7 for me to note it or I was gone.

8 (Complainants' Exhibit No. 9 marked  
9 for identification, 5-13-98.)

10 BY MR. SIROS:

11 Q I would like to show you what I have  
12 marked for identification as Complainants' Exhibit  
13 9. Do you recognize that?

14 A Yes. That's my 1997 calendar for my  
15 Overland noises and wake ups and such.

16 Q And what months in 1997 did you record  
17 noise from the Overland facility?

18 A All of them, January through December.

19 Q So all 12 months you have made notations  
20 on that calendar?

21 A Correct.

22 Q And did you follow the same procedures on  
23 this calendar as you did on Complainants' Exhibit  
24 Number 8 which was the 1996 calendar?



1 A Yes. I might have changed my methods over  
2 time of how I wrote it or what I would write or  
3 abbreviations or trying to be more specific. As I  
4 got more used to writing it -- like anything, you  
5 get more used to writing down, you get used to what  
6 you want to write and how you want to write it  
7 down. But other than that, it's the same thing. If  
8 I heard it, I wrote it down. I didn't make anything  
9 up, didn't go back and fill in something if I didn't  
10 remember.

11 Q I would like to turn your attention to  
12 March 11th of Complainants' Exhibit Number 9. Would  
13 you please read what is written in that box?

14 A I have got -- I started using  
15 abbreviations here. I wrote it at the top VL equals  
16 very loud, so I have got VL revs and bangs. I  
17 forgot about revs in my noises. Revving is the  
18 revving of the engines. It's like they are in low  
19 gear trying to speed up going around the whole  
20 building. That's the revving. 10:15 p.m. to  
21 10:45 p.m., the check on the top of my calender, I  
22 used a star to note the dates that they woke me up  
23 and a checkmark in the dates that they kept me up,  
24 so I have a checkmark, and it also says keep me up

1 10:30 to 10:45 p.m.

2 Q So where you used abbreviations on these  
3 calendars, you would provide a legend at the top of  
4 each?

5 A Yes, or I tried, or I had used it at one  
6 time and didn't feel I had to write it every month.

7 Q As used on Complainants' Exhibit Number 10  
8 (sic), what does the VL stand for?

9 A Is 10 1997?

10 Q Yes. I'm sorry.

11 A The VL equals very loud like I wrote at  
12 the top. I don't know if it came off in the copies,  
13 but I wrote on top of it VL equals very loud  
14 meaning -- that would be the noises. That would be  
15 a level. I had several different levels.

16 Q Let me direct your attention to January --

17 MR. STEGER: Let me make a correction. I  
18 believe that's Exhibit 9, not 10.

19 MR. SIROS: I'm sorry. Exhibit 9.

20 THE HEARING OFFICER: So noted.

21 BY MR. SIROS:

22 Q I would like to direct your attention to  
23 the January 1997 date. What does OCC stand for on  
24 January 7th?

1 A Occasionally. That's the abbreviation for  
2 occasional. I just didn't put a period after it. I  
3 guess I didn't put a thing for that because most  
4 people use that in their everyday life.

5 (Complainants' Exhibit No. 10 marked  
6 for identification, 5-13-98.)

7 BY MR. SIROS:

8 Q I would also like to show you what has  
9 been marked for identification purposes as  
10 Complainants' Exhibit 10. Do you recognize this?

11 A Yes. This is my 1998 calendar for writing  
12 down.

13 Q And can you tell me for which months in  
14 that 1998 calendar you have recorded the noise from  
15 the Overland facility?

16 A January through May -- or what we have had  
17 of May so far. The last notation I made was  
18 yesterday.

19 Q That would be May 12th; is that correct?

20 A Yes.

21 Q I would like to direct your attention to  
22 the March 1998 calendar in Complainants' Exhibit 10.

23 There seems to be a notation at the bottom  
24 of that around March -- the 31st of March. Would

1 you please read that?

2 A Okay. I hear them morning, noon, and  
3 night at least five days a week on an average. I'm  
4 just tired of writing every minute. I hear them --  
5 I'm tired of writing every minute I hear them. I  
6 hear them outside, in front, in the garage,  
7 upstairs, on both sides of the house, and downstairs  
8 front and back, in the backyard, everywhere. They  
9 have changed my life and enjoyment of life. I was  
10 very frustrated with them.

11 Q When did you write that down?

12 A It was -- I just remember writing it at  
13 the end of the month. I also wrote another thing on  
14 there. It says extremely, extremely noisy month.  
15 They had woken me up many times that month. I was  
16 very tired and just very frustrated with the whole  
17 thing. We had gotten no resolution, and we still  
18 don't.

19 MR. STEGER: Mr. Hearing Officer, my copy does  
20 not have the last sentence.

21 THE HEARING OFFICER: Hold on.

22 MR. STEGER: It says backyard, everywhere. I  
23 don't show anything else.

24 THE WITNESS: It probably didn't show up.

1 MR. STEGER: I'm sure it didn't show up. Is  
2 there a possibility that I could be provided a copy  
3 that I can see?

4 THE HEARING OFFICER: Well, as far as the copy  
5 is concerned, the original is here. As far as  
6 making a copy, Mr. Siros, I'm not sure -- I don't  
7 know whether you want to write that in, Mr. Steger,  
8 what's going to be preferable to you.

9 As far as making a copy, I'm not sure that  
10 that's possible. We can certainly -- I can  
11 certainly ask Mr. Siros to try to make a copy for  
12 you, but I don't know if it's going to be possible  
13 based upon the fact that it is written -- I have not  
14 been provided a copy of any of this, so I don't have  
15 a copy to refer to.

16 So, Mr. Siros, if you would hand the  
17 original to Mr. Steger.

18 (Document tendered.)

19 MR. STEGER: So it reads they have changed my  
20 life and enjoyment of life?

21 THE WITNESS: I believe that's what it says.

22 THE HEARING OFFICER: I'm trying to  
23 understand. Is that sufficient for you, Mr. Steger?

24 MR. STEGER: Yes.

1 THE HEARING OFFICER: Thank you.

2 Mr. Siros.

3 BY MR. SIROS:

4 Q And with regards to Complainants' Exhibit  
5 10, which is the 1998 calendars, can you describe  
6 the procedures you followed for filling these  
7 calendars out?

8 A The same as the previous, 1996 and 1997.  
9 It's been a very trying year this year, and I notice  
10 I don't have all the dates filled out. I have had a  
11 couple of deaths of my animals, and I don't  
12 necessarily -- Overland's noises are not a primary  
13 thing in my life at the time, so I don't fill it out  
14 for a few days. And I think that's also part of my  
15 frustration of writing. The thing is I'm sick of  
16 filling it out after two and a half years or two  
17 years or whatever it's been.

18 Q I think you have testified a little bit  
19 about how the noise affects you on a daily basis. I  
20 will give you the opportunity to elaborate on that a  
21 little bit.

22 A It's changed my life. It's changed the  
23 way I sleep. It's changed what I can do outside, if  
24 I am awake at work or if I'm really -- very awake or

1 awake or alert or just there physically. If I get  
2 woken up or can't get to sleep, it shows the next  
3 day or over a cumulative time. It will show at the  
4 end of two weeks, and I'm just so tired I don't want  
5 to go anywhere. All I want to do is sleep. It's  
6 changed the way -- physically the way I sleep. I  
7 have to sleep on a certain side because I can't hear  
8 as well out of one ear, so I put the ear that I hear  
9 everything out of on the pillow, and the other ear  
10 is up so I don't hear everything so I can get to  
11 sleep hopefully.

12 I have to -- I'm constantly trying to tell  
13 myself to calm down because when I hear these  
14 noises, it jars me. I mean, you would think you get  
15 used to it after all this time, but it's not a  
16 constant, constant, constant thing. It's noisy and  
17 then quiet and then noisy and then quiet. They are  
18 also changing their schedule. It's not like I  
19 always get woke up at 3:00 o'clock in the morning.  
20 Sometimes it's midnight. Sometimes it's 5:00 a.m.  
21 Sometimes it's 2:00 a.m. Sometimes it's two or  
22 three times a night.

23 Keeping these records, making the  
24 measurements, phone calls, noise committees,

1 everything, it's taken on a whole other life of its  
2 own just trying to get my life back to normal to  
3 what most people would expect, a quiet night's  
4 sleep. You get up and you go to work the next day.  
5 You don't have to worry about things in your house  
6 shaking or your animals running or being woken up in  
7 the middle of the night on a regular basis.

8       When I'm sick, I take over-the-counter  
9 medicine to make sure that I sleep. Otherwise, you  
10 are sick and you can't sleep and you just get sicker  
11 and sicker. If my animals are ill or they die, I do  
12 the same thing so I can get sleep because I'm upset  
13 physically and emotionally already, and I need to  
14 sleep. So I will take over-the-counter medication  
15 just so I can make sure that I can get some sleep.  
16 Otherwise -- that's the only way I can make sure  
17 that I won't be woken up.

18    Q   How many days a week is your sleep  
19 interrupted?

20    A   It depends on the month. It really does.  
21 I think March of this year it was at least three  
22 times a week. There has been months where -- like  
23 so far this month, I think it's only been three  
24 times this month, but, I mean, I'm saying only three



1 times. If most people got woken up three times a  
2 month, they would be furious over somebody making --  
3 if one of their neighbors was making noise, they  
4 would be like banging on the door saying shut up,  
5 you know.

6       It's beyond me that we are supposed to  
7 live with this, with the changes that it has made in  
8 every aspect of my life. I feel like saying I don't  
9 know how it hasn't changed my life. It's easier to  
10 say what it hasn't changed.

11    Q   Is there any specific event that sticks  
12 out in your mind that the Overland noise has  
13 affected?

14    A   One major one was I changed jobs almost  
15 two years ago. I work at a high school. I'm a TA,  
16 teacher's assistant. The job I had three years  
17 before that, I did driving. I would pick up  
18 students in the morning in a suburban and take them  
19 to school and then be in school with them all day  
20 and then drive them home in the afternoon. For the  
21 first couple of years, that was fine. We had Yellow  
22 Freight, and then we had nobody, and that wasn't a  
23 problem.

24       The last year that I was driving, Overland

1 was there, and by the end of the year, I was so  
2 tired, I was worried about the safety for myself and  
3 the students. I couldn't -- couldn't get up. I  
4 couldn't do an hour and a half of driving before, be  
5 in school all day, and then drive them afterwards.  
6 It was just too much for me physically, and I was  
7 literally worried about my own safety and that of  
8 the students. It wasn't worth my life. I changed  
9 jobs. I got a TA position where I didn't have to  
10 drive or where I couldn't drive. That was also  
11 where I got paid by driving.

12 Q Are you able to use your backyard at all?

13 A No, we don't. We had patio furniture. We  
14 had a very nice party that summer that nobody was  
15 there in between Yellow and Overland, and I remember  
16 using the patio before that. We don't use it now.  
17 We have furniture out there that just sits. I mean,  
18 we just don't use it. It's too loud. There is no  
19 way you can go out there and have a conversation  
20 with someone if they are going because you can't  
21 hear anything. You have to come inside. You  
22 can't -- even inside people come over -- most of  
23 them are from Charter Hall because they know, and  
24 even the people that have been there from Charter

1 Hall, they hear the noise and they are like what was  
2 that, you know? Was that thunder? We are like no.  
3 It's sunny out. That's Overland. We don't entertain  
4 other people, for the most part, except for those on  
5 Charter Hall.

6 Q Have you had the occasion to take sound  
7 measurements of the noise from the Overland  
8 facility?

9 A Yes.

10 (Complainants' Exhibit No. 11 marked  
11 for identification, 5-13-98.)

12 BY MR. SIROS:

13 Q I would like to show you what we have had  
14 marked for identification as Complainants' Exhibit  
15 11. Do you recognize that?

16 A Yeah. This looks like my sound meter that  
17 I got from Radio Shack.

18 Q And when did you purchase that  
19 approximately?

20 A I have no clue. I don't remember the  
21 approximate date. I would have to --

22 Q Do you remember the year?

23 A I think maybe April of last -- of '97  
24 possibly, or it could have been -- I just don't

1 remember exactly. No, I don't remember. I don't  
2 remember.

3 Q That's fine.

4 A Sorry.

5 Q Have you used that noise meter to take  
6 noise measurements from Overland?

7 A Yes, I have.

8 Q Where did you use that to take noise  
9 measurements from?

10 A From our master bedroom window which is  
11 right by the head of the bed. It looks right out on  
12 Overland.

13 Q Is that on the east side of your house?

14 A Correct.

15 Q And would you please describe how you  
16 would use that meter? Go through each step that you  
17 would use -- you would take to make sound  
18 measurements.

19 A Okay. I would obviously have to open the  
20 window. We keep them closed most of the time  
21 because of the noise. I would open the window, make  
22 sure it was up as far as I could so I didn't have  
23 any interference from windows or glasses or  
24 anything. I'm trying to remember step-by-step.

1           So then I would get a chair, make sure I  
2 had my papers that I would log on, make sure I had  
3 my meter, make sure I had a pencil to write with, a  
4 pen, something to write with. A clock was there so  
5 I could see the time on the clock so I could write  
6 down the time and also try and measure my ten  
7 seconds at the beginning because I had a hard time  
8 guessing ten seconds at the beginning.

9           I would make sure this was set on A slow.  
10 The A is the weighting -- this is the meter. Excuse  
11 me. A is the weighting, and slow is the response  
12 because that's what Greg Zak told me to set it on.  
13 I don't remember why he told me, but that's what I  
14 set it on. Then he is also the man that told me  
15 what meter to get and where to get it for measuring.

16          I turn it on. Just automatically by  
17 turning on the meter -- I would hold the meter in  
18 the middle of the window, and I would try to hold it  
19 to the side of my body, not in front of me, because  
20 I didn't -- so I wouldn't have any bounce back of  
21 noise or anything that would affect the reading,  
22 about in the middle of the window in the bedroom.  
23 Just by turning it on, immediately you see whether  
24 the battery works. It just goes to an immediate

1 battery test so you know that.

2       And then I would go down to the base range  
3 depending on a couple of things. One, if they were  
4 being really loud and I knew putting it down to 60,  
5 which is the lowest it goes in the center reading --  
6 there was a number -- let me backtrack.

7       There was a number that I had heard from  
8 Greg Zak of the nighttime -- I normally did this at  
9 the nighttime. The nighttime number of decibels was  
10 52 that I remember. I don't remember what decibels  
11 or whatever it was, but I just remember that  
12 number. So I would usually choose on my range  
13 either 60 or 70 because if you put it on 60 in the  
14 middle of the meter, it also registers ten below  
15 which would be -- it would go down to 50 which would  
16 include the 52 or anything below if they were being  
17 quiet at that particular ten-second interval, and it  
18 would also go up to the six above or 66 plus if you  
19 had it on the 60.

20    Q   Now, when you are describing this ten  
21 below, can you describe what you are referencing?  
22 Describe the scale on the Radio Shack meter.

23    A   Okay. There is a scale on the meter.  
24 It's got a dB. If you set your range on 60, the

1 dial on 60, which is next to the range on the meter,  
2 the range in the arrow, the 60 would mean it would  
3 register -- that 60 would be the zero middle. It  
4 goes down two, four, eight, ten -- well, if you are  
5 looking at the meter, it goes to the left side,  
6 that's a negative, so it would be down to 50 if you  
7 had it on 60.

8       On the right-hand side, it goes two, four  
9 and then plus six, and that's how you would get the  
10 60, 62, 64, 66 plus. If it went -- if it would  
11 register over there like it is right now, that would  
12 be a 66 plus.

13    Q   Now, when you said it would register over  
14 there --

15    A   That would be the far right-hand side past  
16 the plus six.

17    THE HEARING OFFICER: I'm just going to ask  
18 that we be aware of -- and I know we have all heard  
19 this lecture, and I won't prolong it, but I would  
20 ask that one party speak at a time, please, for the  
21 court reporter's sake. Thank you.

22       Were you finished with your answer,  
23 Mrs. Cohen?

24    THE WITNESS: Oh. I was describing how I took

1 these. No, I'm not.

2        Depending on what number would register,  
3 that's why I would have my paper right there. As  
4 soon as I took a reading -- within the ten-second  
5 interval, I chose ten seconds. I would register --  
6 I would record the highest noise that I had within  
7 that ten-second interval. There might be three or  
8 four bangs, booms, whatever within that time, but I  
9 would only do the highest one, the loudest number,  
10 the largest number, whichever, and I would write  
11 that down on my paper immediately, and I would try  
12 to write next to that what the noise was and, if  
13 possible, what was making that noise if I could see  
14 it or knew that noise from seeing it at another  
15 time.

16 BY MR. SIROS:

17    Q    Do you remember now all of the noise  
18 levels that that meter registered?

19    A    All of them, no. I would have to look at  
20 my legal sheets that I wrote down my readings on.

21            (Complainants' Exhibit No. 12 marked  
22            for identification, 5-13-98.)

23 BY MR. SIROS:

24    Q    I would like to show you what I have had



1 marked for identification as Complainants' Exhibit

2 12. Do you recognize that?

3 A Oh, yes, I do. These are my readings when  
4 I would use my meter and write down -- when I said  
5 write down on my legal sheets, these are the legal  
6 sheets that I am talking about, the legal pads of  
7 paper, some legal size, some white, and that's how,  
8 I would write and mark it down. So I would have  
9 room to write things that I would notice about the  
10 building or what was going on or what was making the  
11 noise, time as much as I could.

12 Q Let me direct your attention to the first  
13 page here that has Thursday, 5-18 marked on it.  
14 Would you please describe to me what each of the  
15 written comments are starting with A slow?

16 A Okay. A slow would be what I was talking  
17 how I would set the meter. It was the A-weighting  
18 and the slow response as Mr. Zak told me to do.  
19 Sixty was the base range that I would use. The 60  
20 was the bottom one. Ten seconds is I was taking a  
21 reading once every -- the highest reading once every  
22 ten seconds as I explained before.

23 Do you want me to keep going?

24 Q Yes, please.

1 A I put the date. I tried to put the  
2 beginning and ending time. I have MBR wind. That  
3 means master bedroom window. I have got forklifts.  
4 That means the forklifts were operating. Sometimes  
5 I would say how many. Obviously at this time of  
6 night, which was 10:13 p.m. that I started, it was  
7 dark outside, but I wrote -- was able to write this  
8 by -- it says written by O/D, DP, DePietro. Lights,  
9 LTS, that means it was written by the lights that  
10 were shining into our house from Overland. I didn't  
11 have to turn on any more lights in the house to see  
12 my clock and to write. There was two cabs running I  
13 wrote. I also have empty bay doors open. It was  
14 hot out. I have hot in parentheses on the bottom.

15 Q I would like to direct your attention to  
16 the top of that page where there appears to be a  
17 long column of numbers and different references.  
18 Would you please tell me what those numbers  
19 reference?

20 A What those numbers reference are the  
21 numbers that I would get from the meter readings. I  
22 would take the one that I got in the ten-second time  
23 and write it down. There was no time -- there was  
24 no later writing it down. I just wrote it down

1 immediately, and then I would write what was  
2 taking -- what was making the noise, if I could, and  
3 what sound it made.

4 Q So each of these numbers represents a  
5 different ten-second interval?

6 A Yes. That's why I had the ten seconds  
7 over there.

8 Q And would you do this same process for  
9 each of the -- each of the pages in there, would you  
10 fill out the same way?

11 A Yes. I would take readings. I would  
12 write it down immediately and write in as much  
13 information as I could.

14 (Complainants' Exhibit No. 13 marked  
15 for identification, 5-13-98.)

16 BY MR. SIROS:

17 Q For identification purposes, Complainants'  
18 Exhibit Number 13, do you recognize this?

19 A Yes. These are the checkmark survey data  
20 sheets that I received from Greg Zak and would  
21 eventually on some of my readings, not all,  
22 transcribe the numbers and some of the information  
23 onto these. I did not do these at the same time I  
24 took the readings. Everything I did when I took the

1 reading on the meter was always on my notes so I  
2 could write as much as possible. These were just  
3 done for official reasons and trying to make it look  
4 a little neater and easier to read for other people,  
5 in my opinion.

6 Q When you say for official reasons, what do  
7 you mean by that?

8 A Because I was dealing with Mr. Zak and  
9 trying to get written documentation that Overland  
10 was driving me nuts, you know, being too loud and  
11 things like that, and I think this was a standard  
12 form that he had that he asked me to fill out.

13 Q Approximately how long after you had taken  
14 the contemporaneous time records referenced on  
15 Complainants' Exhibit 12 did you transcribe those  
16 onto Complainants' Exhibit 13?

17 A It could have been any time from an hour  
18 to two months later. I mean, it just -- to me,  
19 these are the important ones. This was just  
20 transcribing the information I already have in a  
21 more readable form and neater form for other people  
22 to read.

23 Q I would like you to direct your attention  
24 to the checkmark survey data sheet that's indicated

1 with the date of 5-30-96. The day of the week would  
2 be Thursday. Would you please tell me what -- or  
3 would you please describe to me what the first page  
4 represents?

5 A This is Page 1 of the complete checkmark  
6 survey data sheet. I wrote on there -- there was a  
7 description of trying to describe and draw a picture  
8 to give Mr. Zak an idea of where I was, what I was  
9 doing, our guesstimate of approximate footage and  
10 things like that so he could understand more,  
11 without seeing, as to what I was talking about. I  
12 drew our -- we drew our unit, where our window was.  
13 I put an explanation of approximately how big the  
14 opening was, what floor we were on, Overland's  
15 building, the parking lot direction, wood fence,  
16 just little stuff on there to make it easier for him  
17 to understand.

18 Q I notice you also wrote something designated  
19 Radio Shack sound level meter; is that correct?

20 A Yes. That's my meter here with the  
21 category number on it.

22 Q So the same meter referenced here is -- in  
23 the sheet dated 5-30-96 is the same noise meter that  
24 was identified as Complainants' Exhibit 11?

1 A Yes.

2 Q Thank you.

3 A On all of these, if it was transcribed  
4 from my original notes, I wrote that on there  
5 transcribed from notes taken so there is no guessing  
6 as to --

7 Q On the sheet that's marked 5-30-96, I  
8 would like you to flip to that second page that's  
9 referenced checkmark survey data sheet Page 2.  
10 Would you please describe to me how you filled out  
11 that chart based on the numbers that you transcribed  
12 from your recordings on Complainants' Exhibit  
13 Number 12?

14 A Yes.

15 THE HEARING OFFICER: Before we proceed, I  
16 don't have an idea of what you are referring to, and  
17 I want to make sure that the board is able to follow  
18 what you are referring to, Mr. Siros. How are you  
19 distinguishing this from any other checkmark survey  
20 data sheet and what has been marked Complainants'  
21 Exhibit 13?

22 MR. SIROS: I was referencing the date of  
23 5-30-96 which is referenced on the first page of  
24 that. Each of these are individually stapled and

1 then attached at the front, so I'm referencing the  
2 date 5-30-96, day of the week Thursday, begin time  
3 9:17, finish time of 9:30 p.m.

4 THE HEARING OFFICER: All right. So  
5 Complainants' Exhibit 13 consists of --

6 MR. SIROS: Of 25 sets of two-page checkmark  
7 survey data sheets.

8 THE HEARING OFFICER: And all are consistent,  
9 and you are referring to the first page. When you  
10 refer to the first page, that designates the date  
11 that you are referring to?

12 MR. SIROS: That is correct.

13 THE HEARING OFFICER: All right. Thank you.

14 Mrs. Cohen, do you recall the question?

15 THE WITNESS: No.

16 THE HEARING OFFICER: Mr. Siros, if you will  
17 repeat the question.

18 MR. SIROS: I will repeat the question.

19 THE HEARING OFFICER: Thank you.

20 BY MR. SIROS:

21 Q The question is how did you fill in what  
22 appears to be little checkmarks and letters on Page  
23 2 of the checkmark data sheet dated 5-30-96?

24 A From Page 2, I would just transcribe the

1 numbers. On the front, you will see that I had it  
2 set at A slow 70, which is my A-weighting slow  
3 response, and 70 was my base number. So on the  
4 baseline level, since it goes down ten below, my  
5 base -- the lowest number it could have went to was  
6 60, and then everything above -- that would have  
7 been 70, 80, 90, and there on. Obviously, it's only  
8 going to register to 76 plus because that's what I  
9 had the meter set on.

10 All I did here was write in 60 here  
11 because that was the lowest number on the bottom  
12 line, and then I would make a checkmark or sometimes  
13 a letter, and if I used a letter, I reference on the  
14 front Page 1 the F meant forklift; T, truck; H,  
15 hissing; sometimes G for goose; A for airplane. It  
16 just depended on -- if there was something else, I  
17 marked down what it was. There are things that you  
18 would hear besides Overland occasionally if they  
19 were quiet. And for the first number I -- at 62 on  
20 my sheet, and so I put a checkmark in the first box  
21 between 62 and 64 because that's what the number  
22 was, and I just continued. Do you want me to  
23 explain every box?

24 Q You would do that for each of the noise



1 readings that you got out off of the noise meter?

2 A Correct, and if I put a letter instead of  
3 just a checkmark, it meant the noise that I heard at  
4 that time, but it was still marked in the  
5 appropriate number from my Exhibit 12.

6 Q Now, if there was a checkmark, what kind  
7 of noise would that reference?

8 A It just meant a noise that I didn't have  
9 anything specifically that I knew made that noise.  
10 It just -- it was that noise. It was that noise  
11 that registered.

12 Q And how did you learn how to fill this  
13 sheet out?

14 A From Mr. Zak.

15 Q Would you please describe the -- I'm  
16 sorry. Let me rephrase that.

17 Would you please compare the noise when  
18 you moved in in November of 1992 with the noise that  
19 you hear now in terms of the frequency of the noise?

20 A In my mind, there is no comparison. It  
21 was a slight -- it was an annoyance from Yellow, and  
22 now it's just changed my life, and there is no  
23 comparing that. It went from occasionally hearing  
24 it to bothering me to six days a week of waking me

1 up and changing my whole life.

2 Q Okay. When was the last time you heard  
3 noise from the Overland facility?

4 A Yesterday morning at 6:15.

5 Q And what type of noise was that?

6 A There was a loud shaking. I believe it  
7 was a loud banging -- very loud bang or boom that  
8 shook the house. I don't know what made it. I was  
9 unable to look out the window at the time to see  
10 what made that noise, but that's when the house  
11 shook, and the cat ran. I was upstairs in our  
12 master bathroom.

13 MR. SIROS: Mr. Forcade has a few more  
14 questions.

15 MR. FORCADE: I just have a few questions, if I  
16 could just to clarify.

17 DIRECT EXAMINATION

18 BY MR. FORCADE:

19 Q Mrs. Cohen, I believe you said in a  
20 portion of your testimony that there were different  
21 categorizations of sound, and I believe that you  
22 said that there was one called a bang, and I believe  
23 that you said that it lasted a second or two. Is  
24 that a fair appraisal of your definition of the bang

1 and your definition of how long the bang would

2 occur?

3 A Yes. I mean, each separate bang -- I

4 mean, it would happen. That was a sharper -- it

5 seemed to be a sharper, shorter noise. I mean,

6 there could be many in succession, but that would be

7 one. It's not always the same -- it's not the same

8 noise going on and on and on. It's a bang and then

9 another bang and then another bang.

10 Q All right. Then I believe you described

11 some other sounds and mentioned that they had a

12 duration, if I correctly recall, of five to ten

13 seconds.

14 A Yes.

15 Q Is that correct, and if so, what kind of

16 sounds would those be?

17 A Yes, I remember that. It was -- what

18 seemed to go on the longest is when they drag things

19 in the parking lot either from those big metal

20 things. Sometimes they are dragging trailers. They

21 are just dragging stuff from one end of the parking

22 lot to another, or inside the terminal itself, I

23 have seen them dragging things and heard them

24 dragging things, and it lasts longer because there

1 is no interruption of that sound. It's not an

2 instantaneous sound. It carries on.

3 Q But would it be correct to say it lasts

4 about 10 to 15 seconds generally?

5 A I think I said ten -- five to ten,

6 somewhere around there.

7 Q Are there another category of sounds which

8 tend to last a longer period of time than five to

9 ten seconds that you could identify?

10 A I don't think so. I think the screeches

11 and the squeals and things, I think that's - it

12 seems like longer, but I think that's physically

13 really all it is.

14 Q Okay. If you were to try and roughly

15 characterize the proportion of sounds which fall

16 into the second or two category versus the

17 proportion of sounds that fall into the longer time

18 frames, could you give us any idea of the

19 comparative amount of them in any way?

20 A Can you repeat that? You lost me.

21 Q Okay. Would it be safe to say that the

22 vast majority of the sounds are of the shorter

23 second or two variety or that the vast majority of

24 the sounds are of the five to ten second variety?

1 A The shorter ones.

2 Q And would you say that that's a slight  
3 preponderance of the sounds being of shorter  
4 duration, or is it really a very large proportion of  
5 the sounds?

6 A No. There is a big difference. The ones  
7 that are extended time, they are not as frequent as --  
8 they are definitely not as frequent as the sharp and  
9 the one right after the other.

10 Q So the sharp, short sounds tend to be the  
11 ones that most acutely impact your life?

12 A The bangs and the booms, yeah. They are  
13 shorter, yes.

14 Q The second thing is you made a comment to  
15 the extent that there was a period of time when  
16 Yellow operated the facility, there was a period of  
17 time where it was vacant, and then there was a  
18 period of time where Overland operated the  
19 facility. Would it be possible for you to provide  
20 approximate time frames from what you perceive to be  
21 the end of Yellow's operation of the facility to the  
22 beginning of Overland's operation of the facility,  
23 how long was the empty space in the middle?

24 A I will try. I'm very bad at -- that's why

1 I write everything down. I'm very bad at estimation  
2 of time of guessing something that I didn't write  
3 down.

4 I believe they ended, I would say, the  
5 beginning of '95 and then --

6 THE HEARING OFFICER: They, Mr. Forcade? I'm  
7 just asking if we can have a reference to the date.

8 MR. FORCADE: I was going to wait until she  
9 finished talking.

10 THE HEARING OFFICER: I apologize.

11 THE WITNESS: They is Yellow. Sorry.

12 THE HEARING OFFICER: Thank you.

13 BY THE WITNESS:

14 A Yellow Freight, I believe the beginning of  
15 '95. I know the summer of '95 they were not there,  
16 and then Overland -- Yellow was not there, excuse  
17 me, they. And then in the fall of '95 is when  
18 Overland came to the best of my recollection.

19 BY MR. FORCADE:

20 Q So the best of your recollection would be  
21 six to nine months?

22 A Yes.

23 Q If I could direct your attention briefly  
24 to what has been marked as Complainants' Exhibit 12,

1 do you happen to have a copy of that with you?

2 A The originals.

3 Q Are we looking at the same documents?

4 A Yes.

5 Q If I could also ask you if you wouldn't

6 mind looking at Page 2. Near the bottom five and

7 six entries from the bottom, do you see an entry

8 that says 54?

9 A Yes.

10 Q Could you read what it says to the right

11 of that, please?

12 THE HEARING OFFICER: Okay. I want to stop you

13 here. These are not Bates stamped, and she seems to

14 be looking at Page 1.

15 THE WITNESS: This is one and two.

16 THE HEARING OFFICER: Oh. Let's do this.

17 Here's what I am going to ask before this document

18 is admitted or otherwise. What I would like to do

19 is have some type of Bates numbering. I don't care

20 if you write on the pages somehow or whatever.

21 Because of the length of this document, the number

22 of pages involved, as well as Complainants' Exhibit

23 13, I want some way to determine the number of

24 pages --

1 MR. STEGER: I believe one and two are

2 identical pages.

3 THE HEARING OFFICER: I'm not sure the board

4 member or board assistants who will be reviewing

5 this material will be able to make that distinction

6 as we are able to, so my --

7 MR. FORCADE: Is it all right if I simply

8 approach the witness and look over her shoulder and

9 ask the same questions that I am asking looking at

10 that copy so the confusion is clarified?

11 THE HEARING OFFICER: That will be fine.

12 However, before they are admitted, what I would like

13 to do is somehow enumerate both Complainants'

14 Exhibits 12 and 13. Whether it be in a handwritten

15 fashion, I just want some distinguishable

16 characteristic where we can enumerate the pages so

17 we have the pages numbered and we know the total

18 amount of pages in each document and what the total

19 is so the reference point then can be used as that.

20 MR. SIROS: Mr. Hearing Officer, that exhibit

21 that you just referenced consists -- which is

22 Complainants' Exhibit Number 12, consists of 48

23 double-sided, handwritten pages, and there are, in

24 fact, numerical designations on the bottom of the



1 pages for reference.

2 THE HEARING OFFICER: Well, here's what I see,

3 Mr. Siros. What I see down in the right-hand corner

4 is a one plus two and on the back of that document

5 26 plus 27. I guess I either need clarification as

6 to how that enumeration was conducted or how it's

7 been done on that document or some way to distinguish

8 it because the board is not going to have the

9 convenience of what we have here referring to the

10 document that Mr. Forcade is calling Page Number 2

11 and with the witness referring to the first page of

12 the document.

13 MR. FORCADE: Mr. Hearing officer, could we go

14 off the record? Could we approach with counsel?

15 It's difficult with copies and originals to figure

16 out --

17 THE HEARING OFFICER: That's fine. Let's go

18 off the record.

19 (Whereupon, a recess was taken.)

20 THE HEARING OFFICER: Let's go back on the

21 record.

22 Let the record reflect that we are back on

23 the record in PCB 98-81.

24 After a short delay regarding the

1 exhibits, for point of clarification, what we have  
2 come up with, as I understand it, is that we have  
3 enumerated Complainants' 12 page-by-page front and  
4 back -- front to back one through 96 in blue magic  
5 marker based on the kindness of Mr. Siros.

6 Now, as far as that method of identifying  
7 these documents, that will only speak to how  
8 Mr. Forcade refers to the document. It does not  
9 relate back to the testimony already given related  
10 to this document. We will let that speak for  
11 itself.

12 Now, Mr. Steger, any objection to how we  
13 have numbered the document?

14 MR. STEGER: No objection.

15 THE HEARING OFFICER: Mr. Forcade?

16 MR. FORCADE: Okay. Thank you.

17 THE HEARING OFFICER: Mrs. Cohen, you are still  
18 under oath.

19 BY MR. FORCADE:

20 Q Mrs. Cohen, if I could please direct your  
21 attention to Complainants' Exhibit Number 12, on  
22 Page 1 near the bottom approximately six lines from  
23 the bottom, do you see an entry marked 54?

24 A Yes, I do.

1 Q Could you please read what is to the right  
2 of that?

3 A One truck and one cab only, idle.

4 Q Could you please read the next line down?

5 A Sixty-six hisses.

6 Q Would it be a fair appraisal that that  
7 represents a change in the decibel reading from your  
8 meter from 54 to 66 in that time interval?

9 A Yes.

10 Q Okay. Could you tell me was this taken  
11 Thursday, May 18th, between the time of 10:03 and  
12 10:39?

13 A Between 10:13 and 10:39, yes.

14 Q I'm sorry. Between 10:13 and 10:39.

15 Thank you.

16 If I could please direct your attention of  
17 the same Complainants' Exhibit 12 to Page Number 3,  
18 there is a double line in the middle of the page.  
19 Approximately four lines down from that, do you see  
20 an entry which is 52-66 plus?

21 THE HEARING OFFICER: For Mr. Steger's benefit,  
22 could you refer him to his copy where he would be?

23 MR. FORCADE: This would be on Page 3.

24 MR. STEGER: I have got it.

1 THE HEARING OFFICER: Thank you.

2 BY THE WITNESS:

3 A Yes.

4 BY MR. FORCADE:

5 Q Did you make this entry?

6 A Yes.

7 Q What did this entry mean in terms of the  
8 change of decibel value?

9 A It meant that during that -- at the times  
10 when I was starting to record at the beginning of  
11 the recording the first few months, I was trying to  
12 figure out the best way to write it, and eventually  
13 I got into it, but sometimes I would write that it  
14 went anywhere between -- on that particular line  
15 between 52 and 66 plus during that ten-second  
16 interval instead of just writing just the highest  
17 number. But the highest number is represented at  
18 the end, but I also had the lowest number that was  
19 there, too.

20 Q So would it be correct to say that in the  
21 ten-second interval the sound levels changed from 52  
22 to 66?

23 A Yes.

24 MR. STEGER: Objection. I don't think that's

1 an accurate characterization. I think it's a

2 15-second interval.

3 BY MR. FORCADE:

4 Q I'm sorry. Is it a 15-second interval?

5 THE HEARING OFFICER: Hold on. There is an

6 objection.

7 THE WITNESS: Oh. I wrote 15 seconds up

8 there.

9 THE HEARING OFFICER: When there is an

10 objection, we just need to deal with the objection

11 first. All right, Mr. Forcade?

12 MR. FORCADE: Sure.

13 THE HEARING OFFICER: Mr. Steger, what is your

14 objection?

15 MR. STEGER: My objection is is that it is -- I

16 believe, the reference period is 15 seconds, not

17 ten.

18 THE HEARING OFFICER: We are referring to Page

19 3. If you could point me to where you are referring

20 to, Mr. Forcade.

21 MR. FORCADE: Yes. I would be pleased to

22 withdraw the question.

23 THE HEARING OFFICER: Okay. The question is

24 withdrawn. All testimony after the question

1 objected to will be stricken.

2 BY MR. FORCADE:

3 Q Mrs. Cohen, directing your attention to  
4 the same line on the same page, I believe you  
5 testified that the numbers 52 and 66 represented  
6 numbers that were recorded on your meter. Would  
7 that be numbers recorded within a 15-second  
8 interval?

9 A Correct, for that day.

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

11 BY MR. FORCADE:

12 Q Going to the next line, could you read the  
13 two numbers there?

14 A The same numbers, 52 through 66 plus.

15 Q All right. What would that represent as  
16 far as the change over a 15-second period?

17 A The same: The lowest reading would have  
18 been down to 52, the highest above 66. That's what  
19 the 66 plus means.

20 Q Could we go down to the next line and ask  
21 the same question?

22 A Fifty-one through 66 plus.

23 Q Okay.

24 A The same.

1 Q Going down to the next line, same  
2 question.

3 A Fifty-two through 66 plus.

4 Q And the next line after that?

5 A Fifty-two through 64.

6 Q And this would have occurred, am I  
7 correct, on April 25th between 8:17 and 8:20?

8 A It's either 8:20 or 8:30. I can't exactly  
9 read my writing either. I think it's 8:30.

10 Q Okay. Fine. Thank you.

11 If I could, direct your attention to  
12 Complainants' Exhibit 12, Page Number 7, directing  
13 your attention to the middle of the page -- slightly  
14 above the middle of the page, is there an entry  
15 marked 52-66?

16 THE HEARING OFFICER: I believe that's on Page  
17 6 of your photocopy, Mr. Steger.

18 MR. FORCADE: Yes.

19 MR. STEGER: Okay.

20 BY THE WITNESS:

21 A Yes.

22 BY MR. FORCADE:

23 Q Could you please read that entry and the  
24 language to follow it?

1 A I wrote 52-66 plus, and I wrote airplane.

2 Q Okay.

3 A I also wrote that for the next two

4 entries, 52 through 66 plus.

5 Q And four entries above that, did you have

6 a similar set of entries?

7 A Pardon me?

8 Q Four entries above that?

9 A Right here?

10 Q Yes.

11 A Fifty-two through 66 plus bang.

12 Q Bang. Okay.

13 Further down on the page just below the

14 writing on the left-hand side that says our side, do

15 you have another entry, and could you tell me what

16 that represents?

17 A Fifty-two through 66 plus bangs. That was

18 one way that I had of referring to the double bangs.

19 Q Right. Again, this would represent that

20 in a period of time of approximately -- well, let me

21 ask you what period of time would this change in

22 reading have occurred over on the page we were just

23 discussing?

24 A It says on the top ten-second interval.



1 Q Ten-second intervals this time, right?

2 Okay. Directing your attention to --

3 MR. STEGER: Mr. Hearing Officer, can I ask a  
4 question? Is it the intent to go through each -- I  
5 mean, how many times do we need to go through this  
6 and for what purpose?

7 MR. FORCADE: I have a total of five separate  
8 pages. The purpose is to establish, for isolated  
9 incidents, the change in decibel reading over a very  
10 short period of time which I believe is a relevant  
11 point to the issue of the impulsive nature of the  
12 noise that is occurring here. I think it is  
13 relevant to the nature of the fact that it will  
14 cause unreasonable interference with the enjoyment  
15 of life.

16 MR. STEGER: But don't the notes speak for  
17 themselves. I mean, she has testified as to the  
18 range, what it means, interval. How many more do  
19 you need?

20 MR. FORCADE: I have questions on five  
21 additional pages and would appreciate the  
22 prerogative to pursue them. Each one has somewhere  
23 between one and three lines, and I believe that it  
24 is important in a document that is some 97 pages

1 long that I be allowed to draw the board's attention  
2 to some of the events which I think have the  
3 possibility of causing unreasonable interference to  
4 my clients.

5 THE HEARING OFFICER: The basis of your  
6 objection is relevance and redundancy, Mr. Steger,  
7 or the document speaks for itself.

8 MR. STEGER: And the document speaks for  
9 itself. He has asked two questions demonstrating  
10 the interval, what it reflects.

11 THE HEARING OFFICER: I'm going to overrule the  
12 objection. I believe that highlighting at least  
13 certain limited portions, as Mr. Forcade has  
14 indicated, may be helpful to the board in this  
15 case. I don't want to do it for the entire  
16 document. I understand your objection, Mr. Steger,  
17 but I do believe that some highlight of that will  
18 aid the board in its review.

19 You may proceed, Mr. Forcade.

20 MR. FORCADE: If I could have a second, perhaps  
21 I might be able to skip one or two.

22 THE HEARING OFFICER: Of course.

23 (Brief pause.)

24

1 BY MR. FORCADE:

2 Q Directing your attention to Complainants'

3 Exhibit 12, Page 13, near the top --

4 MR. FORCADE: And I believe that's on Page 12,

5 counsel, of the copy that we have.

6 BY MR. FORCADE:

7 Q Immediately to the right of the left-hand

8 notation MBR, could you tell me is there an entry

9 that says 50 to 66 plus?

10 A Yes.

11 Q And what is the comment to the right?

12 A Bang.

13 Q Does that reflect a 16-decibel plus

14 increase over the averaging period?

15 A Yes.

16 Q And what was the averaging period at that

17 point in time?

18 A Ten seconds.

19 Q Thank you.

20 THE HEARING OFFICER: So the record is clear,

21 as far as Complainants' Exhibit 12, Mr. Forcade is

22 simply -- the page on the original, if he could

23 reference the original with the page numbers. As I

24 have indicated, Mr. Siros has gone through and

1 marked page numbers on each of the pages in a  
2 numeric fashion front to back. However, he is, for  
3 Mr. Steger's benefit, also indicating or referring  
4 to a photocopy on 8-and-a-half-by-11 paper  
5 pagination. I hope that clarifies the record. I  
6 want to be -- like I said, I want to be as clear in  
7 this reference as possible, so if you could  
8 reference the original in the photos that you are  
9 referring to in your questioning, Mr. Forcade.  
10 Thank you.

11 MR. FORCADE: I'm down now, I believe, to two  
12 more.

13 BY MR. FORCADE:

14 I direct your attention to Page 23 --  
15 sorry -- Page 24 of Complainants' Exhibit 12, four  
16 lines from the bottom, is there an entry that says  
17 60 to 75?

18 A Correct.

19 Q And what is the comment behind that?

20 A Hiss with an exclamation mark.

21 Q And could you tell me at that time what  
22 was the averaging period?

23 A Ten seconds.

24 Q Thank you.

1 And the last question I have is if I could  
2 direct your attention to the very top line, could  
3 you please read the very top line?

4 A I have 50-66 plus times two, bangs.

5 THE HEARING OFFICER: What page are we on,  
6 Mr. Forcade?

7 MR. FORCADE: I'm sorry. This is on Page 26.

8 THE HEARING OFFICER: Twenty-six of the  
9 original?

10 MR. FORCADE: Of the original.

11 MR. STEGER: And my page is?

12 MR. FORCADE: Twenty-five.

13 THE HEARING OFFICER: Thank you.

14 BY MR. FORCADE:

15 Q And does this represent a 16-decibel  
16 increase in an averaging period of what time?

17 A Well, if I don't have it written down,  
18 it's ten seconds. That's what I finally settled on  
19 is ten seconds.

20 MR. FORCADE: Thank you very much. I have no  
21 further questions.

22 THE HEARING OFFICER: Okay. Mr. Siros,  
23 anything further from you?

24 MR. SIROS: Nothing further.

1 THE HEARING OFFICER: Mr. Steger?

2 CROSS EXAMINATION

3 BY MR. STEGER:

4 Q With respect to your measurements, you say  
5 you set a baseline. How did you determine that?

6 A As I explained before, there was a number  
7 that Mr. -- I had heard from Mr. Zak of a -- at  
8 night the violation number I believe was 52. At  
9 least that's what stuck in my head.

10 Q Okay.

11 A And I would use either -- on my little  
12 meter, I would dial the dial to 60 a lot of times  
13 because I wanted to show anything that would go  
14 above 52. In my mind, whether it was 66 plus or 72  
15 plus -- or 72, I figured as long as it's 54 or 53 or  
16 whatever above, it was above the violation, and  
17 that's how I would try to determine it.

18 Q And then you said you sat in a chair and  
19 pointed it at the window, your bedroom window?

20 A I would keep it on the side so I didn't  
21 interfere with the noise, but I would have a chair  
22 to the side, have it -- like if my window was in  
23 front, which I know that the board can't see what I  
24 am doing, but I would set it in the middle of the

1 window -- you know, hold it in the middle of the  
2 window so I wouldn't interfere, away from the screen  
3 so it wasn't, you know, picking up anything from the  
4 screen or anything like that.

5 Q And then you would just simply read what  
6 the sound would come through the window?

7 A Whatever number came up is what I wrote  
8 down.

9 THE HEARING OFFICER: One person at a time.

10 Mrs. Cohen, did you finish your answer?

11 THE WITNESS: No.

12 THE HEARING OFFICER: Please finish your  
13 answer.

14 BY THE WITNESS:

15 A Whatever number came up, I would then  
16 immediately write down the highest number even.

17 BY MR. STEGER:

18 Q To the best of your knowledge, does the  
19 machine have any way to differentiate the source of  
20 the sounds?

21 A I have -- no, as far as I know.

22 Q Okay. But for the Overland operation,  
23 what time do you normally get up for work in the  
24 morning?

1 A Between 5:00 and 5:15 a.m.

2 The only -- the answer -- between the  
3 machine telling the difference, no. I would write  
4 down if there was another noise, as you saw in all  
5 my -- can see on my logs if it was a dog or a goose  
6 or an airplane or whatever.

7 Q Understood.

8 Except for Overland operations, is there  
9 anything else that wakes you up at night?

10 A The only thing is when my cats fight, sort  
11 of like a tune in thing, you know, trying to avoid  
12 bloodshed. Other than that, no.

13 Q Any other noises you hear except for  
14 Overland from your bedroom window?

15 A No. The storm we had last night did not  
16 bother me at all.

17 Q You don't hear anything from Northwest  
18 Highway or the malls?

19 A No.

20 Q To the best of your knowledge, do you  
21 know -- back to the measuring device. To the best  
22 of your knowledge, do you know whether that machine  
23 will account for any reflection of sound occurring  
24 outside of your unit?



1 A I have no clue. I don't know how it  
2 could -- I don't know what it would reflect from.

3 Q A simple yes or no will be okay.

4 MR. STEGER: There are no further questions.

5 THE HEARING OFFICER: Mr. Siros?

6 MR. SIROS: Nothing further.

7 THE HEARING OFFICER: Mr. Forcade?

8 MR. FORCADE: No.

9 THE HEARING OFFICER: Thank you, Mrs. Cohen.

10 MR. FORCADE: Take five minutes while we switch  
11 from citizen testimony to expert testimony and  
12 reorganize our files here?

13 THE HEARING OFFICER: Okay. Why don't we go  
14 off the record for a moment.

15 (Whereupon, a recess was taken.)

16 THE HEARING OFFICER: Let's go back on the  
17 record.

18 We are back on the record in 98-81 PCB  
19 Docket Number, Charter Hall Homeowner's Association  
20 vs. Overland Transportation.

21 Mr. Siros?

22 MR. SIROS: Initially, I think that we would  
23 like to move for the admission of exhibits that have  
24 been marked for identification purposes.

1 THE HEARING OFFICER: That's fine. For the  
2 record, we have what has been admitted at this point  
3 as Joint 1, Group 1 and 2, and Complainants' 1  
4 through 7 by agreement and some over objection.

5 What I have marked up to this point today  
6 are Complainants' 8 through 13. Let's deal with  
7 each one individually, please.

8 MR. SIROS: The first exhibit would be  
9 Complainants' Exhibit Number 8 which is a 1996  
10 calendar.

11 THE HEARING OFFICER: Okay. What I have been  
12 handed and what has been marked as Complainants' 8  
13 by the designation C-8 is a bound -- what appears to  
14 be a 1996 calendar with a cover page Kat Tails 1996  
15 calendar by Kelly. It's a full corresponding  
16 calendar of each month running through December of  
17 '96. It is bound by a coil wire.

18 Any objection to that document's  
19 admission, Mr. Steger?

20 MR. STEGER: No.

21 THE HEARING OFFICER: Okay. It is admitted by  
22 agreement.

23 MR. SIROS: The next exhibit has been marked as  
24 Complainants' Exhibit 9 which is a 12-month 1997

1 calendar -- I'm sorry. It's a 16-month 1997  
2 calendar running from September of 1996 through  
3 December of 1997.

4 THE HEARING OFFICER: What I have been handed  
5 and what has been designated as Complainants' 9 with  
6 an exhibit sticker in the lower right-hand corner as  
7 C-9 exhibit is a bound calendar beginning with a  
8 photocopied first page with Love of Cats with a cat  
9 on it. It is a full calendar starting from  
10 September 1996, as Mr. Siros has indicated, and  
11 ending with December 1997. It does have handwritten  
12 notes throughout except for the period from  
13 September '96 to December '96. Beginning from  
14 January of 1996 (sic), there are handwritten  
15 notations made through the document.

16 Any objection to that document being  
17 admitted, Mr. Steger?

18 MR. STEGER: No.

19 THE HEARING OFFICER: The document is  
20 admitted.

21 MR. SIROS: The next exhibit is marked as  
22 Complainants' Exhibit 10. It is a 1998 calendar  
23 with a designation of the Humane Society of the  
24 United States of America on the front cover.

1 THE HEARING OFFICER: Okay. This document is  
2 another calendar that appears to be bound by  
3 staples. It has another photo of a cat. It is  
4 entitled 1998 calendar, the Humane Society of the  
5 United States. It is designated as Exhibit C-10  
6 referencing Complainants' Exhibit 10 offered by the  
7 complainant. Again, it is a calendar for the year  
8 1998. There are handwritten notes on the calendar  
9 portions beginning with the year January 1998 within  
10 the calendar period and notations outside the  
11 calendar enumerations through it appears to be May  
12 of 1998. The rest of the months appear to be blank  
13 without handwritten notations.

14 Any objection to that document being  
15 admitted, Mr. Steger?

16 MR. STEGER: No.

17 THE HEARING OFFICER: All right. It is  
18 admitted.

19 Mr. Siros?

20 MR. SIROS: The next exhibit was marked as  
21 Complainants' Exhibit 11. It is a carrying case  
22 with a sound level meter inside.

23 THE HEARING OFFICER: Okay. Here's what I want  
24 to do with Complainants' 11. It is what apparently

1 looks to be the same as Complainants' 5. What I  
2 don't want to do is the same thing I don't want to  
3 do with the other things. I don't want to mix and  
4 match here with carrying cases and otherwise, so I  
5 would like both the exhibits -- I would like you to  
6 get Complainants' Exhibit 5, put a sticker on the  
7 meter itself, as well as on the carrying case, and  
8 we will refer to them that way. In fact, why don't  
9 you call Complainants' Exhibit 5, the meter itself  
10 5-A, and we will call the meter -- in Complainants' 11,  
11 the carrying case will be referred to as  
12 Complainants' 11. The meter itself will be 11-A.

13 For the record, I have been handed  
14 Complainants' what has been marked as Complainants'  
15 11-A which is the carrying case. There are  
16 instructions. Why don't we call those 11-B? The  
17 meter itself within the carrying case is -- does not  
18 appear to have a serial number that I can  
19 designate. It is a sound level meter. The meter  
20 itself is marked as Complainants' 11. Again, it is  
21 a Radio Shack sound level meter. It appears to be  
22 identical to the one admitted yesterday and marked  
23 as Complainants' Exhibit 5 with the instructions.  
24 There is an instruction booklet within the carrying

1 case. That has been marked as Complainants' Exhibit

2 11-B.

3 Any objection to those items being

4 admitted, Mr. Steger?

5 MR. STEGER: No.

6 THE HEARING OFFICER: All right. They are

7 admitted without objection, all three, but they are

8 treated all in one.

9 Going to Complainants' Exhibit 5, the case

10 has been marked as Complainants' Exhibit 5-A.

11 Again, the case is Catalog Number 332050. However,

12 that designation does not distinguish it from the

13 other carrying case. The own distinguishing feature

14 is the exhibit stamp. There is an exhibit sticker

15 on Complainants' 5 which consists of the meter

16 itself, the sound level, meter, which is identical

17 but for the exhibit sticker on Complainants' 11. In

18 this exhibit, there are no instructions and are not

19 marked.

20 Any objection to those designations of

21 documents? The items have already been admitted.

22 Any objections to those clarifications?

23 MR. FORCADE: No.

24 THE HEARING OFFICER: Mr. Siros?

1 MR. SIROS: The next document has been marked  
2 as Complainants' Exhibit 12. It consists of a  
3 series of 8-and-a-half-by-11 and 8-and-a-half-by-14  
4 line handwritten notes which are marked by a blue  
5 marker on the bottom of each page which numbers run  
6 from one to 96.

7 THE HEARING OFFICER: Okay. What has been  
8 marked as Complainants' Exhibit 12 has been handed  
9 to me is on both 11-by-14, as well as  
10 8-and-a-half-by-11 -- or is it 8-and-a-half-by-14,  
11 an 8-and-a-half-by-11 sheet of paper both front and  
12 back which were identified as handwritten notations  
13 by Mrs. Cohen. The blue marker on the corresponding  
14 pages from front to back were designated pages in  
15 Mr. Forcade's version of the direct testimony of  
16 Mrs. Cohen as to the method. The other numerical  
17 representations on this document, those  
18 representations, for instance, on the first page and  
19 circled one with a plus sign; two are references, as  
20 I understand it, to the photocopies made for the  
21 purposes of this hearing which were made on  
22 8-and-a-half-by-11 paper in order to be able to  
23 correspond with the copies made for the attorneys in  
24 this case.

1 Is that accurate, Mr. Siros?

2 MR. SIROS: That is correct.

3 THE HEARING OFFICER: All right. So that would  
4 be the frame of reference for Mr. Siros' portion of  
5 Mrs. Cohen's direct testimony.

6 Mr. Steger, any objection to that  
7 document?

8 MR. STEGER: No.

9 THE HEARING OFFICER: Thank you. The document  
10 is admitted.

11 Mr. Siros?

12 MR. SIROS: The next exhibit is Complainants'  
13 Exhibit 13 which consists of 25 stapled checkmark  
14 survey data sheets by Tara Cohen which have been  
15 enumerated with numbers one through 50 in blue  
16 marker on the bottom of each page.

17 THE HEARING OFFICER: Just for clarification  
18 sake, Complainants' Exhibit 12, it does have C-12 on  
19 it, but I have marked with a Complainants'  
20 identifier as well.

21 Okay. Going next to Complainants' 13,  
22 again, they are enumerated one through 50 and the  
23 cover sheet. Apparently. This consists of 25  
24 two-page what has been referred to as checkmark



1 survey data sheets and corresponding logs on those  
2 documents. There are 25 sets that are at this time  
3 stapled. However, in order to distinguish them, the  
4 second page of each of those 25 is similar to what  
5 was marked yesterday as Complainants' Exhibit 6, the  
6 sound meter checkmark data survey sheet recorded by  
7 Mr. Bergau. The distinguishing feature are these  
8 are all enumerated in blue magic marker at the  
9 bottom of the page and are identified as Mrs. Cohen's  
10 meter readings.

11 Any objection to those documents being  
12 introduced into evidence, Mr. Steger?

13 MR. STEGER: No.

14 THE HEARING OFFICER: Are my representations  
15 accurate, Mr. Siros?

16 MR. SIROS: Those are correct.

17 THE HEARING OFFICER: Thank you. The document  
18 is admitted by agreement.

19 Okay. That's all I believe I have from  
20 Mrs. Cohen. Is that correct, Mr. Siros?

21 MR. SIROS: That is correct.

22 THE HEARING OFFICER: Okay.

23 MR. FORCADE: Mr. Hearing Officer, at this  
24 time, we would like to call Roger P. Harmon to the

1 stand, please.

2 THE HEARING OFFICER: Mr. Harmon, if you would  
3 step forward.

4 (The witness was duly sworn.)

5 THE HEARING OFFICER: Thank you. Mr. Harmon,  
6 if you would state your name and spell your last  
7 name for the record, please.

8 THE WITNESS: My name is Roger, R-o-g-e-r,  
9 P., Harmon, H-a-r-m-o-n.

10 THE HEARING OFFICER: Mr. Forcade?

11 MR. FORCADE: Thank you.

12 ROGER P. HARMON,  
13 called as a witness herein, having been first duly  
14 sworn, was examined upon oral interrogatories, and  
15 testified as follows:

16 DIRECT EXAMINATION

17 BY MR. FORCADE:

18 Q Mr. Harmon, could you please tell me your  
19 employer and your current employment address?

20 A I do work with Thomas Thunder. It's in  
21 the Palatine Plaza, 233 West Palatine Road. I'm not  
22 certain of the number.

23 Q Okay. Could you give me a brief  
24 background, Mr. Harmon, of your education and

1 professional background?

2 A Yes. I have a bachelor of science degree  
3 in electrical engineering. I'm a registered  
4 professional engineer in the state of Illinois.

5 Is there anything more that you wanted?

6 Q Are you a member of any professional  
7 associations or do you have any professional  
8 affiliations?

9 A Yes. I'm a member of the Acoustical  
10 Society of America.

11 Q Do you have any publications or awards?

12 A I have won some awards for technical  
13 papers involving the setup and calibration of the  
14 noise facility at Underwriters Laboratories where I  
15 was employed.

16 Q When did you graduate from school, please,  
17 Mr. Harmon?

18 A 1963, June.

19 Q And did you commence working shortly  
20 thereafter?

21 A Yes, I did.

22 Q Was your work at that point in the area of  
23 noise or noise related activities?

24 A A minor part was, yes.

1 Q Could you describe your work experience  
2 since that time to the present, please?

3 A Since that time?

4 Q Yes.

5 A I worked at Underwriters Laboratories for  
6 20 years testing burglar and fire alarms, and then  
7 later I was responsible for the installation and  
8 qualification of the reverberation sound facility at  
9 Underwriters Laboratories.

10 Q Have you attended or taught at any  
11 professional technical seminars?

12 A Yes. I work with Thomas Thunder teaching  
13 hearing conversation. Presently -- when I was at  
14 Commonwealth Edison, I did some teaching of a course  
15 on electricity.

16 Q Do you have any prior publications?

17 A I did have an article published  
18 documenting the qualifications of the sound lab in  
19 the -- I think it was Noise News.

20 Q Could you give me an approximate idea of  
21 the number of sound measurement activities that you  
22 have been engaged in since your 1963 graduation?

23 A Well, I measure -- I did some field  
24 measurements at Commonwealth Edison and some

1 measurements within a test chamber of transformers  
2 at Underwriters Laboratories. I did measurements of  
3 range hood ventilating fans and various pieces of  
4 equipment that were brought in for tests at the  
5 facility.

6       Since that time -- since I began working  
7 with Thomas Thunder, we have been doing -- I have  
8 been doing industrial noise measurements in  
9 factories. I have been doing environmental noise  
10 measurements involving various manufacturing  
11 processes and mining and refining -- refinery  
12 operations.

13       (Complainants' Exhibit No. 14 marked  
14       for identification, 5-13-98.)

15 BY MR. FORCADE:

16    Q   Okay. Mr. Harmon, I would like to show  
17 you what we have marked as Complainants' Exhibit  
18 Number 14 and ask you if you would be able to  
19 identify that document, please.

20    A   Yes. This is a resume prepared for the  
21 work that Thomas and I do. This is describing my  
22 qualifications and experience.

23    Q   Is that a true and accurate representation  
24 of your past history?

1 A Yes, it is.

2 MR. FORCADE: Mr. Hearing Officer, at this  
3 time, I would like to tender Mr. Harmon as a  
4 technical expert in the area of sound measurement.

5 THE HEARING OFFICER: Mr. Steger?

6 MR. STEGER: No objection.

7 MR. FORCADE: I'm sorry?

8 MR. STEGER: I don't have any objection.

9 MR. FORCADE: Okay. Thank you.

10 THE HEARING OFFICER: Mr. Harmon is so  
11 designated.

12 BY MR. FORCADE:

13 Q Mr. Harmon, were you retained to conduct  
14 some sound measurements in or around the Charter  
15 Hall Homeowner's Association?

16 A Yes, I was.

17 Q Could you give me a brief background as to  
18 when this originally arose and when you may have  
19 gone to visit the site?

20 A I couldn't speak to when the original --  
21 to when it originally arose, but I was called upon  
22 to make measurements on November the 26th of 1996.

23 Q Did the Charter Hall Homeowner's  
24 Association pay you directly for your services?

1 A No, they did not.

2 Q Could you give me an idea of the type of  
3 equipment that you used when you went to the Charter  
4 Hall Homeowner's Association?

5 A Yes. I used a Breul and Kjaer.

6 Q I'm sorry to interrupt. It may be helpful  
7 if you wouldn't mind spelling it.

8 A Yes. B-r -- wait. B-r-e-u-l, and Kjaer,  
9 K-j-a-e-r.

10 Q Thank you.

11 A It's a brand name of well recognized  
12 acoustical instruments. The instrument I used  
13 business a model or a type 22-21 precision  
14 integrating sound level meter. I used a calibrator  
15 Model 4320 with an output of 94 decibels. I  
16 recorded the output of the meter to a Sony Type D-8  
17 digital audio tape-recorder.

18 Q May I ask when you went to the facility,  
19 how did you set the equipment up?

20 A First I removed it from the car, set up  
21 the tripod and mounted the tape-recorder to be  
22 suspended from the tripod. I mounted the sound  
23 level meter on the tripod. I connected the output  
24 of the sound level meter to the digital audio

1 tape-recorder. I did a brief calibration, and then  
2 I carried it back to the place where the  
3 measurements were made.

4 Q And at that time, did you take sound  
5 measurements?

6 A At that time, I took an A-weighted reading  
7 and spoke into the tape and made the comment at that  
8 particular time there were no activities, and it was  
9 very quiet.

10 Q And what did you do next?

11 A Then I took the calibrator again and did a  
12 second calibration and set it to the 105 full-scale  
13 range --, well left it at that range, which is the  
14 range that I calibrated at, and switched to the  
15 linear scale so that the data that was going to the  
16 tape-recorder would not be A-weighted so we could  
17 analyze it.

18 Q And what did you do next then?

19 A At that time, I left the equipment in  
20 position 15 feet from the fence and exited and left  
21 the site.

22 Q And what happened after that?

23 A I came back later and removed the  
24 equipment and subsequently analyzed the tape.



1 Q Mr. Harmon, are you familiar with the  
2 Pollution Control Board regulations and the ANSI,  
3 American National Standards Institute, procedures  
4 for sound measurement?

5 A Yes.

6 Q Okay. Were the sound measurements that  
7 you took taken in accordance with those protocols  
8 and requirements?

9 A I believe so, yes.

10 Q How long was the sound recording conducted  
11 approximately?

12 A The sound was -- the recording was two  
13 hours in length.

14 Q Two hours in length. And at the end of  
15 that time, what did you do?

16 A At the end of that time, I removed the  
17 equipment and brought it back to the laboratory.

18 Q When you removed the equipment and brought  
19 it back to the laboratory, was there any additional  
20 activity that you performed on the tape?

21 A Not at that time.

22 Q What happened next?

23 A Rewound the tape and connected it to the  
24 Hewlett Packard analyzer, I forget the model number,

1 but adjusted it so that the calibration which was 94  
2 dB showed as 94 dB on the instrument and proceeded  
3 to analyze the data.

4       The result then is a set of readings -- I  
5 forget -- once -- initially it was once every five  
6 seconds which is a fairly considerable amount of  
7 data. We are talking third octave bands from 25  
8 hertz up to ten K, and every second over a period of  
9 two hours -- no, not every second. Every five  
10 seconds over a period of two hours is over 1200  
11 readings.

12    Q   And once -- I'm sorry. I forgot the name  
13 of the device that you used.

14    A   It's a real time analyzer.

15    Q   Once you had processed the information on  
16 the tape through the real time analyzer, what was  
17 the next step for you?

18    A   The next step was to download it to a  
19 computer and to transfer it into a spreadsheet.

20       Then I made annotations regarding the time  
21 and so forth on the spreadsheet and transferred that  
22 to Mr. Thunder.

23    Q   Okay. Was that the last time you went to  
24 the site?

1 A Yes, it was.

2 Q Okay. Were all of the computer  
3 evaluations and subsequent processing steps which  
4 you performed on the tape taken in the field  
5 conducted in accordance with the Illinois Pollution  
6 Control Board and ANSI procedures for treatment of  
7 sound noise of this type?

8 A Yes.

9 Q At a later time, did you have an occasion  
10 in the last few weeks to revisit this tape and to  
11 conduct an initial analysis on this tape in relation  
12 to impulsive noise?

13 A Yes. I took the tape and made a computer  
14 wave -- it's called a wave file and went in with  
15 software by Syntrillium, S-y-n-t-r-i-l-l-i-u-m,  
16 Corporation, and I looked at the various places that  
17 appeared to be peaks, highlighted them, and then  
18 played them for my audio review. And based on that,  
19 I selected certain points in time that the sound  
20 indicated it was a thud or a bump, an impulsive type  
21 of noise.

22 Then I went and, again, connected the  
23 digital audio tape-recorder to the Hewlett Packard  
24 analyzer, calibrated it, and analyzed every

1 one-eighth of a second over a period -- I believe it  
2 was about 12 minutes in length, a particular section  
3 that was of interest to us.

4 Q Did you then prepare some sort of a  
5 document or spreadsheet from that analysis?

6 A Again, I downloaded in the same manner to  
7 the computer and put it into an Excel spreadsheet  
8 and transferred that information to Mr. Thunder.

9 Q If I understand correctly that the  
10 original tape-recording was made some period in the  
11 past, would you have any reason to believe that if  
12 the original tape was recorded months ago that the  
13 analysis performed more recently would be  
14 inaccurate?

15 A No. It would be accurate because as  
16 opposed to an analog tape-recording, this is a  
17 digital recording that contains error checking.

18 Q I think that is the end of my questions on  
19 that particular topic, but I would like at this  
20 point to show you what previously has been marked as  
21 Complainants' Exhibit 11-A, 11, and 11-B comprising  
22 a sound meter, a case, and an instruction sheet and  
23 ask if you would be willing to look at that and  
24 explain to me what you see.

1 A Yes. This is a Radio Shack brand of sound  
2 level meter of the same type that -- I own one for  
3 my own amusement. I shouldn't put it that way. I  
4 bought it not regarding it as a serious instrument,  
5 but just as something to explore.

6 Q Would it be safe to say you are familiar  
7 with such instruments?

8 A Yes, very familiar with.

9 Q I would like to ask your expert opinion  
10 now based upon some presumptions.

11 Based on your knowledge of such  
12 instruments and excluding from that any opinions you  
13 may have heard expressed at hearing today, do you  
14 have an opinion based on a reasonable degree of  
15 scientific certainty whether such a measuring device  
16 is capable of a reasonably reliable measurement of  
17 sound intensity?

18 A Yes. I have checked my own and gone to  
19 Radio Shack with a precision Breul and Kjaer  
20 calibrator, and I have found that they are generally  
21 within a couple of decibels of the true reading.

22 Q And if I could repeat the same question,  
23 do you have any reason to believe that that  
24 particular sound measuring device would be

1 reasonably accurate in measuring sound?

2 A I would expect it to be reasonably  
3 accurate.

4 Q Okay. Thank you.

5 Mr. Harmon, were you here earlier during  
6 the testimony of Ms. Tara Cohen when she described  
7 her use of such instrument to record sound values  
8 from her master bedroom?

9 A Yes, I was.

10 Q Based on your knowledge of such  
11 instruments and assuming that the description of her  
12 technique of using the equipment is accurate and  
13 excluding any conclusions or opinions expressed by  
14 others in this hearing, do you have an opinion based  
15 on a reasonable degree of scientific certainty as to  
16 whether that process of recording noise rendered  
17 reasonably reliable measurements of the sound  
18 intensity at Charter Hall at the time?

19 A I would expect it to render reasonably  
20 reproducible measurements, and if the meter itself  
21 were to calibrate correctly, I would expect the  
22 readings to be reasonably accurate.

23 Q If I could, I would like to switch to a  
24 completely separate topic. One of the issues raised

1 in this proceeding is the request by the  
2 Complainants to seek some form of continuous  
3 monitoring from the Respondents that would allow for  
4 future sound measurement procedures.

5       Based on your expert opinion, your years  
6 of experience in sound measurement, I would like to  
7 ask you if you believe there is a reasonably  
8 inexpensive piece of equipment that can be used to  
9 record noise levels without significant constant  
10 human oversight so that the recorded information  
11 could be later analyzed to show compliance with  
12 either an arbitrarily set standard or with a board  
13 set standard for noise values.

14    A   I believe that there would be some methods  
15 for recording that information that would cost less  
16 than \$2,000.

17    Q   Would you be capable of explaining what  
18 that process is and what the equipment would be and  
19 how it could be utilized?

20    A   One method would be to take the analog  
21 output from a quality microphone, a Radio Shack  
22 sound level meter, or basically any microphone and  
23 do a calibration on that piece of equipment and  
24 connect it to a digital audio tape-recorder and

1 later to analyze that on professional equipment.

2 Q Are you aware of any methods by which that  
3 might be accomplished by using computers?

4 A Yes. There are good quality sound cards

5 by reputable manufacturers that would give

6 reproducible readings within the range of interest.

7 The cost for the professional cards would be in the

8 range of \$400. There are less expensive cards in

9 the range of 60 to \$200. This could be connected to

10 an existing computer and connected to a sound level

11 meter, calibration tone placed on it, and the data

12 or the sounds could be recorded to a computer disk.

13 It would require a large computer disk costing

14 perhaps \$300.

15 Q If such a system were implemented at

16 Overland Transportation, it would not necessarily

17 require that the sound be specifically analyzed as

18 it would collect it, would it?

19 A It could be analyzed at any time in the

20 future.

21 Q And it would be possible to keep such

22 information reliably for a period of time, and then

23 if citizen complaints were registered, the data

24 could be retrieved and analyzed at that time?



1 A Yes, it could. It would also require the  
2 use of a tape backup to remove the data from the  
3 disk and place it onto a tape. It might be perhaps  
4 cheaper to use a DAT recorder. Some brands are  
5 available in the range of \$800 and can record for  
6 four hours at a time. The cost of the tape is in  
7 the range of eight to \$12 per tape, so a 24-hour  
8 recording would require three changes.

9 Q If such --

10 A I'm sorry. It would take six tapes to do  
11 24 hours.

12 Q If such a process were implemented during  
13 the hours when the majority of the noise complaints  
14 have come in, which I will briefly characterize as  
15 between 7:00 p.m. and midnight and between 2:00 a.m.  
16 and 7:00 a.m., would you consider the overall cost  
17 and implementability of this process to be  
18 technically feasible and economically reasonable?

19 A Yes, I do.

20 MR. FORCADE: Thank you. I have no further  
21 questions.

22 (Whereupon, a discussion was held off  
23 the record.)

24 THE HEARING OFFICER: Let's go back on the

1 record.

2 Let the record reflect that we are back on  
3 the record in 98-81, Charter Hall Homeowner's  
4 Association vs. Overland Transportation and  
5 D.P. Cartage.

6 We ended the direct testimony of  
7 Mr. Harmon. Is that correct, Mr. Forcade?

8 MR. FORCADE: Yes.

9 THE HEARING OFFICER: Okay. Mr. Steger, are  
10 you prepared to cross?

11 MR. STEGER: Yes.

12 THE HEARING OFFICER: All right. Mr. Harmon, I  
13 will remind you you are still under oath.

14 CROSS EXAMINATION

15 BY MR. STEGER:

16 Q Okay. First of all, have you ever visited  
17 the Overland Transportation facility itself?

18 A I looked over the fence and I went to the  
19 plaza and I looked from an adjacent property, but I  
20 have not visited the facility.

21 Q You looked over the fence from whose  
22 property?

23 A Mr. Cohen's.

24 Q Okay. And when you say you looked from a

1 plaza could you be more specific? Do you recall

2 which plaza it was?

3 A There is a plaza on Route 14, Northwest

4 Highway, that houses presently the Starnet Internet

5 facility.

6 Q I would like to refer to Complainants'

7 Exhibit 1 which is that blowup. From which plaza?

8 Is it marked on that or not?

9 A Give me a moment.

10 (Brief pause.)

11 BY THE WITNESS:

12 A Yeah. It would be this (indicating.)

13 BY MR. STEGER:

14 Q What is referred to as White Hall?

15 A I believe so.

16 THE HEARING OFFICER: Let the record reflect

17 that the witness has pointed to Complainants'

18 Exhibit 1, the area identified with a handwritten

19 designation White Hall, within that four-corner

20 perimeter of that area.

21 Mr. Steger.

22 MR. STEGER: Okay.

23 BY MR. STEGER:

24 Q You testified that you looked over the

1 fence from Mr. Cohen's backyard?

2 A Actually, I think there was a crack or a  
3 knothole that I looked through. The fence was  
4 rather high.

5 Q Is that where you took the measurements  
6 from?

7 A From Mr. -- at Mr. Cohen's backyard 15  
8 feet from the fence.

9 Q When you looked over the fence, did you  
10 see -- what did you see when you looked over into  
11 Overland Transportation's facility directly on the  
12 other side of the fence, do you recall?

13 A Not very much except that it was a  
14 trucking facility and there were trailers parked. I  
15 don't believe there was any activity at the moment I  
16 looked.

17 Q Did you detect whether there was a berm on  
18 the other side of the fence?

19 A I don't recall.

20 Q What time did you set up the equipment?

21 A I set up the equipment just before  
22 2:00 o'clock.

23 Q About how long does it take you to set up  
24 the equipment?

1 A In the range of about five minutes, about  
2 five or seven minutes.

3 Q And then you testified that you  
4 calibrated?

5 A Yes.

6 Q I'm a little unclear as to how you  
7 calibrated. Could you go through that a little bit  
8 more?

9 A Okay. I started the tape in the record  
10 mode and placed the Breul and Kjaer Model 4320  
11 calibrator onto the microphone of the sound level  
12 meter and turned it on and observed that the tape  
13 was moving and that there was an appropriate  
14 indication on the level indicator. I let it run for  
15 a few seconds, perhaps ten seconds, and then removed  
16 the calibrator.

17 Q Okay. And that sets the tape for what?

18 A That establishes the exact level of the  
19 recording that's going on to the tape. Everything  
20 from that point is referenced to that precise level.

21 Q And that level is in terms of decibels?

22 A On that particular calibrator -- the one  
23 we are using now is 94. That particular calibrator  
24 is 93-8.

1 Q And then you left the equipment in place  
2 and began your recording; is that correct?

3 A Well, then I took the equipment in the  
4 back. Mr. Cohen came out and greeted me, and then I  
5 did another calibration. Then I left the equipment  
6 in place and left the site.

7 Q For how long did you leave the site?

8 A Well, I left the site actually for four  
9 hours. The recording was for two hours.

10 Q Does the tape automatically stop at the  
11 end of two hours?

12 A Yes, it does.

13 Q And does your company go through any chain  
14 of custody requirements in order to determine  
15 whether anything has been tampered with during that  
16 four-hour time period?

17 A The DAT recorder actually records the date  
18 and time on the tape so that if the tape had been  
19 stopped or replaced, it would have appeared.

20 Q I have one more question. When you  
21 testified with respect to the meter, the sound meter  
22 that was used by Mrs. Cohen and Mr. Bergau, you  
23 spoke of or -- I believe Mr. Forcade's question  
24 dealt with sound intensity. Is that reference to

1 the decibel level or the frequency level?

2 A The decibel level.

3 Q And that tells you how loud something is?

4 A In laymen's terms.

5 Q In laymen's terms?

6 A (Nodding head.)

7 Q In your measurements -- how is the

8 measurement corrected for any ambient noise?

9 MR. FORCADE: Objection. How is the

10 measurement what, corrected?

11 BY MR. STEGER:

12 Q How does your measurement technique

13 differentiate between ambient noise and --

14 THE HEARING OFFICER: You are withdrawing the

15 last question and rephrasing it?

16 MR. STEGER: Yes. I'm withdrawing the last

17 question and clarifying it.

18 MR. FORCADE: And if I could impose another

19 objection, the one with the expensive equipment or

20 the one with the Radio Shack equipment that we are

21 talking about?

22 MR. STEGER: These measurements that he did

23 with the sophisticated technique.

24 THE HEARING OFFICER: Have you withdrawn your

1 objection based on those clarifications?

2 MR. FORCADE: Yes.

3 THE HEARING OFFICER: Mr. Harmon, do you now

4 understand the question that Mr. Steger asked?

5 THE WITNESS: I think. So let me repeat the

6 question.

7 THE HEARING OFFICER: Okay.

8 THE WITNESS: As I understand it, you want to

9 know how I differentiate between ambient noise and

10 noise that was generated from Overland.

11 BY MR. STEGER:

12 Q Not how you. How the measurement device

13 differentiates, or does it?

14 A On the basis of level, there is a

15 differentiation between occurrences of noise and

16 background, but the differentiation of what it is is

17 by my ears listening to the tape.

18 Q With respect to your sophisticated

19 measurement techniques, does the measurement

20 technique account for any reflection of sound?

21 A It takes into account the possibility of

22 reflection by removing the microphone from any

23 reflective surface. We were 15 feet from the fence

24 and about the same distance from the patio doors on



1 the house.

2 Q You testified that you visited the site to  
3 take these measurements on November 26th?

4 A Yes.

5 Q Did you conduct an earlier visit?

6 A Yes.

7 Q And what happened at that visit?

8 A We made some tape-recordings at two sites,  
9 Tara's house, and I forget the name of the other  
10 person. I believe we decided not to analyze the  
11 tapes because it was felt that the activity was not  
12 very great that night, and they didn't want to go  
13 through the expense.

14 Q And that decision was made by whom?

15 A I believe it was made by the homeowners.

16 Q Okay. So you testified that once you set  
17 it up at 2:00 a.m., you left for four hours?

18 A Yes, I did.

19 Q So you came back at approximately 6:00 a.m.?

20 A Yes.

21 Q Was there anybody present during the time  
22 that the tape was operating between 2:00 and 4:00  
23 a.m. to note the types of sounds?

24 A I would not know from my own firsthand

1 knowledge. I believe Mr. Cohen was home, but I'm  
2 not certain.

3 Q So how would you able to differentiate the  
4 type of sound you are -- that the tape is recording?

5 A Well, they're basically -- at the time of  
6 year, we didn't have crickets and birds, so there is  
7 only about three or four types of sounds. You have  
8 the sound of a lone car going down Route 14, car or  
9 truck at that time in the morning, overfly of  
10 possibly an airplane, sound of spotter or a truck  
11 moving about the yard, the discharge of the air  
12 brake, the hiss noise, and the impact from coupling  
13 or uncoupling or loading of a trailer.

14 Q So did some person have to go through the  
15 tape and note the types of sounds?

16 A If it's desired to note those sounds, yes.

17 Q So what would you do? You would play the --

18 A Play the tape.

19 Q Have you ever done any measurements from  
20 truck terminals before?

21 A I'm trying to think. Before or  
22 subsequently I know I have.

23 Q Before November of '96?

24 A Let me think.

1 (Brief pause.)

2 BY THE WITNESS:

3 A I think I did some work at an intermodal  
4 facility in Phoenix prior to this.

5 BY MR. STEGER:

6 Q A truck terminal?

7 A Well, it's trucks and railroad cars. It  
8 is a truck -- it's called intermodal because they  
9 are transferring the trailers onto the beds of  
10 specially made railroad cars, so trucks are entering  
11 and leaving and coupling and uncoupling.

12 Q Prior to November of '96, November 26th of  
13 '96, and I understand your prior visit, was there  
14 any other time that you visited Charter Hall?

15 A No.

16 MR. STEGER: Can we go off the record for a  
17 second?

18 THE HEARING OFFICER: Sure.

19 (Whereupon, a discussion was held off  
20 the record.)

21 THE HEARING OFFICER: Let's go back on the  
22 record.

23 We are back on the record in 98-81,  
24 Charter Hall Homeowner's Association vs. Overland

1 Transportation.

2 Mr. Steger, you asked that we go off the  
3 record to clarify what Mr. Thunder was going to  
4 testify to. Do you have any other questions for  
5 Mr. Harmon?

6 MR. STEGER: I have no other questions for  
7 Mr. Harmon.

8 THE HEARING OFFICER: Thank you.

9 Mr. Forcade, do you have any other  
10 questions for Mr. Harmon?

11 MR. FORCADE: I have one last question.

12 REDIRECT EXAMINATION

13 BY MR. FORCADE:

14 Q Mr. Harmon, did you listen to the tape  
15 that was recorded while the device was sitting on  
16 the Charter Hall property?

17 A I listened to the beginning and to the end  
18 and to those points at which noise events occurred.  
19 I did not listen to the whole tape. It was two  
20 hours long.

21 Q Was there any event in those noise periods  
22 which appeared to be unrelated to the types of noise  
23 that have been described by the residents as  
24 banging, thumping, clanging, et cetera?

1 A There -- I did notice at one point toward  
2 the end of the tape that there was an airplane  
3 flyover.

4 Q Was that airplane flyover a part of your  
5 analysis?

6 A It exists as data. What was done with it  
7 subsequent to that is Tom's domain.

8 THE HEARING OFFICER: Mr. Steger?

9 MR. STEGER: Done.

10 THE HEARING OFFICER: Okay. Mr. Harmon thank  
11 you very much.

12 Let's go off the record.

13 (Whereupon, a discussion was held off  
14 the record.)

15 (Whereupon, a lunch recess was taken.)

16 AFTERNOON SESSION

17 THE HEARING OFFICER: Let's go back on the  
18 record.

19 Let's go off the record.

20 (Whereupon, a discussion was held off  
21 the record.)

22 THE HEARING OFFICER: Let's go on the record.

23 Let the record reflect that we are back on  
24 the record, after securing Mr. Forcade's witness, in

1 98-81, Charter Hall Homeowner's Association vs.

2 Overland Transportation.

3       When we left, we had completed the

4 testimony of Mr. Harmon, an expert witness for the

5 Complainant in this case.

6       Mr. Forcade, are you prepared to call your

7 next witness?

8       MR. FORCADE: Yes. At this time, Mr. Hearing

9 Officer, we would like to call Mr. Thomas Thunder to

10 the stand.

11       THE HEARING OFFICER: Mr. Thunder.

12               (The witness was duly sworn.)

13       THE HEARING OFFICER: Mr. Thunder, if would

14 please state your name and spell your name for the

15 record.

16       THE WITNESS: The name is Thomas, D as in dog,

17 Thunder, T-h-u-n-d-e-r.

18       THE HEARING OFFICER: Mr. Forcade?

19

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1           THOMAS D. THUNDER,  
2 called as a witness herein, having been first duly  
3 sworn, was examined upon oral interrogatories, and  
4 testified as follows:

5           DIRECT EXAMINATION

6 BY MR. FORCADE:

7     Q   Mr. Thunder, could you please tell me  
8 where you work and what your address is?

9     A   I'm principal of the firm called Acoustics  
10 Associates, and we are at 233 East Northwest Highway  
11 located in Palatine, Illinois.

12    Q   Could you describe for me your educational  
13 background and any degrees you may have received?

14    A   I have a master's degree in audiology,  
15 which is hearing science, and postgraduate work at  
16 the Illinois Institute of Technology in mechanical  
17 engineering with an emphasis in acoustics.

18    Q   Are you done?

19    A   Yes.

20    Q   Do you have any professional affiliations?

21    A   I have numerous ones. I'm a member of the  
22 American Academy of Audiology, National Hearing  
23 Conservation Association, Acoustical Society of  
24 America, American Auditory Society, the Institute of

1 Noise Control Engineers. I think there are a few  
2 more. I'm currently serving as president of the  
3 Illinois Academy of Audiology and was past president  
4 of the Chicago regional chapter of the Acoustical  
5 Society of America.

6 Q Do you have any registrations or  
7 certifications, sir?

8 A I'm board certified by the American Speech  
9 and Hearing Association to practice in audiology and  
10 board certified by the Institute of Noise Control  
11 Engineering for the practice of noise assessment and  
12 control, and I'm an Illinois state licensed  
13 audiologist.

14 Q Okay. Do you have any publications or  
15 awards?

16 A Most of my publications were in the early  
17 part of my career, but yes, I have several.

18 Q And would it be correct that you completed  
19 your formal education in 1982?

20 A That would be correct.

21 Q What work experience have you had since  
22 then?

23 A Well, actually I completed my master's in  
24 1976. It was in 1982 that I believe I completed



1 work at the Illinois Institute of Technology, so I  
2 have been practicing in the area of hearing and  
3 noise for the better part of 23, 24 years.

4 Q Could you give me an idea of the number  
5 and type of technical seminars that you have either  
6 attended or taught at?

7 A Quite a few actually because the state  
8 requires -- to maintain our certification, we need  
9 to attend 20 hours of seminars over a period of two  
10 years. I have attended numerous seminars in the  
11 area of noise and acoustics early in my career, but  
12 now I do a lot of teaching myself.

13 Q Could you describe any of your teaching  
14 experience, please?

15 A I taught the graduate level courses in  
16 audition acoustics and noise at Northern Illinois  
17 University, and I have taught courses at Harper  
18 College, which is a junior college, and I have  
19 taught courses for the -- for OSHA at the OSHA  
20 training institute and for the Oregon Occupational  
21 Safety and Health Administration.

22 I teach seminars now six times a year.  
23 They are seminars accredited by the counsel for  
24 accreditation in occupational hearing conservation,

1 and we teach that out of Oak Brook, Illinois, in the  
2 top one percent of the country in terms of the  
3 graduates, and I have been serving on the faculty at  
4 Rush-Presbyterian-St. Luke's for the last eight  
5 years teaching the graduate industrial audiology  
6 class.

7 Q Could you give me a brief summary of your  
8 prior experience in sound measurement activities?

9 A Of prior experience?

10 Q Yes, educational and work experience in  
11 sound measurement activity.

12 A I started my career as the director of  
13 audiology at the Charlotte Speech and Hearing  
14 Center, and part of my responsibilities then was to  
15 assess noise mostly for occupational purposes.

16 Shortly after that, about two years, I  
17 returned to the Chicago area to work for a company  
18 by the name of Sargent & Lundy Engineers. I worked  
19 for them for two summers through college in their  
20 noise control division doing noise assessments and  
21 assisting the engineers in doing noise assessments.  
22 This was in the early '70s. The Noise Control Act  
23 was passed, OSHA was passed, and they requested that  
24 I return to the company to exclusively work in the

1 area of noise assessment and control in the power  
2 and refinery industry.

3 I spent maybe four years there and then  
4 worked for several years for Transco, which is a  
5 company downtown that fabricates noise control  
6 products such as barriers, insulation silencers, and  
7 so forth.

8 I also worked for Breul and Kjaer  
9 Instruments, which is a world-wide distributor of  
10 quality sound instrumentation, and I worked as the  
11 Chicago field applications engineer, and then I also  
12 worked for several years as a consultant in  
13 acoustics before beginning my own practice  
14 approximately 11 years ago.

15 Q Could you give me a brief overview of your  
16 prior education and experience in the area of sound  
17 control or the control of sound from sources?

18 A Other than when I went through Illinois  
19 Institute of Technology I took every course that I  
20 could in acoustics and noise abatement even to the  
21 extent of traveling back out to Northern Illinois  
22 University to take some courses. A lot of it is  
23 just learning on-the-job experience. There are very  
24 few programs around the country that offer a program

1 in acoustics.

2 Q And could you give me a brief overview of  
3 your background and experience in the area of human  
4 impact of sound; in other words, the community  
5 response or human impact that sound creates?

6 A Well, my training as an audiologist  
7 prepared me most for that because every audiologist  
8 needs to take course work in the area of effects of  
9 noise on humans.

10 (Complainants' Exhibit No. 15 marked  
11 for identification, 5-13-98.)

12 BY MR. FORCADE:

13 Q If I could, sir, I would like to show you  
14 what has been marked as Complainants' Exhibit Number  
15 15 and ask if you could describe that document for  
16 me, please.

17 A This is a current resume of mine.

18 Q Okay. Could you tell me is it correct,  
19 accurate, and complete?

20 A Yes, it is.

21 MR. FORCADE: At this time, we would like to  
22 tender Mr. Thunder as an expert in the areas of  
23 sound measurement, sound control, and community and  
24 human response to noise.

1 THE HEARING OFFICER: Mr. Steger?

2 MR. STEGER: No objection.

3 THE HEARING OFFICER: He will be so designated.

4 Mr. Forcade?

5 MR. FORCADE: Yes. I'm sorry.

6 THE HEARING OFFICER: That's fine.

7 BY MR. FORCADE:

8 Q Mr. Thunder, were you contacted in some  
9 manner by Charter Hall Homeowner's Association  
10 relative to sound issues?

11 A Yes. Actually, it was through Village  
12 Management at the time who was the managing agent  
13 for the homeowner's association. I believe his name  
14 was Drew Hoying who called us to inquire about our  
15 sound assessment capabilities.

16 Q And were you ultimately retained by them?

17 A Yes, we were.

18 Q May I ask you are you being compensated  
19 for your testimony today?

20 A Yes.

21 Q Is this part of your normal and routine  
22 charges associated with your daily work?

23 A Yes, it is.

24 Q Is there anything extraordinary in the

1 nature of the charges you are receiving for your  
2 testimony today?

3 A No.

4 Q Okay. Thank you.

5 Earlier, there was testimony about the  
6 placement of a sound recording device at Charter  
7 Hall and the recording of information on a tape, the  
8 tape being analyzed and I believe being distilled to  
9 a spreadsheet which I believe was then conveyed to  
10 you.

11 Have I correctly characterized how the  
12 information relative to sound measurements taken at  
13 Charter Hall came to your attention?

14 A Essentially, yes.

15 Q Could you please tell me once you received  
16 the information that you did what you did with that  
17 information?

18 A Roger and I usually carry on some  
19 discussions in how things went in the field, any  
20 peculiar things that need to be noted or that I need  
21 to focus some attention on, but essentially when I  
22 get the spreadsheet, as Mr. Harmon had mentioned,  
23 there are thousand dollars and thousands of pieces  
24 of data, my first task is to take a look at the

1 A-weighted values only and to trace that out in what  
2 we call a time course trace, and we would have done  
3 that for the two-hour period that we had the  
4 tape-recording.

5 From that, I review that and, again, check  
6 for accuracy, look for any odd parts on it. If  
7 there are any spikes or anything that's unusual, we  
8 will want to listen to the tape, listen exactly to  
9 what that noise was, and be able to do an  
10 engineering review.

11 Q When Mr. Harmon takes sound measurements  
12 for you, is it customary that he would operate under  
13 your management and control in taking these sound  
14 measurements?

15 A Yes, generally.

16 Q Are you familiar with the Illinois  
17 Pollution Control Board regulations and ANSI,  
18 American National Standards Institute, procedures  
19 for octave band sound measurement and the  
20 appropriate measurement techniques?

21 A Yes, I am.

22 Q Did you review the material you received  
23 from Mr. Harmon?

24 A Yes.

1 Q Is it your opinion that that material was  
2 collected in a manner consistent with those  
3 procedures and protocols?

4 A It certainly appeared to be.

5 Q As a direct result of your evaluation of  
6 the material, did you prepare any documents or  
7 generate any materials from the analysis you  
8 conducted on the information from Mr. Harmon?

9 A Yes. There would have been a figure that  
10 we prepared that showed the fluctuating A-weighted  
11 level over a period of two hours. Then there would  
12 have been another figure that showed on octave band  
13 spectrum of the ambient noise, background noise, of  
14 the noise with the source operating, and then bars  
15 that show the current or applicable state limits for  
16 noise radiated from type -- or Class C property to  
17 Class A residential property.

18 Q Is it possible that when this information  
19 was compiled that you sent it in a letter to  
20 someone?

21 A Yes. After we generate those graphs and  
22 figures and I have a chance to review them, we  
23 normally then prepare a report that describes when  
24 we were there, the procedure we used, the equipment



1 that we had used, and our findings and results.

2 (Complainants' Exhibit No. 16 marked  
3 for identification, 5-13-98.)

4 BY MR. FORCADE:

5 Q Mr. Thunder, I would like to show you what  
6 has been marked as Complainants' Exhibit Number 16  
7 and ask if you would be willing, please, to identify  
8 that document.

9 A This is a report written by myself dated  
10 December 30th, 1996, addressed to Andrew Hoying of  
11 Village Management regarding the Charter Hall  
12 trucking facility noise levels. It's a two-page  
13 report that contains several attachments.

14 Q Could you briefly describe, sir, the  
15 attachments?

16 A One attachment entitled Figure 1 shows the  
17 plat layout of the Charter Hall Homeowner's. Figure 2  
18 is the time trace showing the A-weighted sound level  
19 reading from 2:00 o'clock in the morning to  
20 nominally 4:00 o'clock in the morning.

21 Figure 3 is what is called a third octave  
22 band chart. We use third octave bands to assess  
23 whether or not there are any prominent discrete  
24 tones in the noise.

1           And the fourth and final figure entitled  
2 Figure 4 is the octave band spectra showing the  
3 trucking noise versus the background noise and  
4 compared with the Illinois nighttime limits for both  
5 Class B and Class C land.

6     Q   Now, sir, directing your attention to  
7 Exhibit 16, Figure 2, is this the A-weighted  
8 ten-second integration time information that you  
9 discussed earlier?

10    A   Yes. When Mr. Harmon set the equipment  
11 up, we set the analysis for the tape up so that it  
12 sent an average level over ten seconds, and then it  
13 would send it to the computer file memory. So every  
14 ten seconds, we were computing an Leq. We were not  
15 missing any data in there. It was not an interval  
16 ever time. That ten-second period was an energy  
17 average. Then we moved on to the next ten seconds,  
18 so basically each dot on there would represent a  
19 ten-second energy average, and that allows us to be  
20 able to assess the fluctuation of noise over time.

21    Q   Okay. Directing your attention to Figure  
22 3 of the same exhibit, would it represent the  
23 one-third octave band frequency of the testing that  
24 was done at Charter Hall on that date?

1 A Yes, it would.

2 Q And finally, directing your attention to  
3 Figure 4 of that chart -- I'm sorry -- of that  
4 exhibit, does that accurately reflect the octave  
5 band frequency of the information that was collected  
6 at the site on November 26th, 1996?

7 A Yes, it does.

8 Q Okay. If we could for just a moment  
9 direct your attention to Figure 4, would it be  
10 possible for you to briefly explain what the  
11 vertical bars that have diamond shapes in them, what  
12 the vertical bars that have no coloration in them,  
13 what appears to be a dotted black line and what  
14 appears to be a straight black line represent on  
15 that chart?

16 A Sure. The top trace or line represents  
17 the trucking noise as averaged logarithmically from  
18 3:00 to 4:00 a.m. in the morning. The bottom trace,  
19 which is a broken line with filled circles,  
20 represents the background noise that we determined  
21 between 2:15 and 2:55 a.m. That background noise is  
22 an estimate. It was a time when the trucking  
23 facility was at a low level, and so we assessed the  
24 background noise to see what contribution that has

1 to the total noise.

2 We then had the vertical columns in there  
3 on the left side which is filled with dots. That  
4 column represents the Illinois nighttime noise  
5 limits for Class B land radiated to Class A land.

6 The higher bar -- higher columns on the  
7 right, which are yellow on my chart because it's  
8 colored but on your chart it probably appears to be  
9 unfilled, represents the Illinois nighttime limits  
10 for Class C land radiated to Class A land.

11 Q Okay. And are there two bars to the right  
12 of the chart that are not connected by any of the  
13 lines?

14 A Yes, and the reason they are not connected  
15 is because those are what we call overall A-weighted  
16 sound levels. Those are the most common measurements  
17 of noise that you would find, for example, on the  
18 Radio Shack sound level meter. The state does not  
19 limit the overall A-weighted noise. They only limit  
20 octave band noise, but we put that there so that we  
21 can compare it with other readings that are taken on  
22 an A-weighted basis.

23 Q Mr. Thunder, did you have an opportunity  
24 within the past week to receive some additional

1 information that was provided relating to impulse  
2 noise which I believe was Monday, if I'm not  
3 mistaken, from Mr. Harmon?

4 A That's correct.

5 Q Was this information taken at the same  
6 time -- I'm sorry -- recorded at the same time as  
7 the original tape from the visit to Charter Hall to  
8 the best of your knowledge?

9 A Yes. What I asked Mr. Harmon to do was to  
10 take our original digital audio tape-recording that  
11 was made and to focus in on several representative  
12 impulsive events and adjust our equipment to a fast  
13 response so we could more closely analyze the  
14 impulsive events.

15 Q Okay. To the best of your knowledge --  
16 well, first, are you familiar with the state of  
17 Illinois regulations and ANSI procedures for  
18 analysis relative to impulse noise?

19 A Yes, I am.

20 Q To the best of your knowledge, were the  
21 sound measurements taken and the analysis conducted  
22 consistent with those sound measurements?

23 A Yes, it was.

24

1 (Complainants' Exhibit No. 17 marked  
2 for identification, 5-13-98.)

3 BY MR. FORCADE:

4 Q Mr. Thunder, I show you what has been  
5 marked for identification as Complainants' Exhibit  
6 17 and ask you if you would please identify that  
7 document.

8 A This is an analysis that Mr. Harmon and I  
9 prepared specifically focusing in on impulsive  
10 noise.

11 Q And can you tell me what do the results on  
12 that chart portray?

13 A It's another time trace that shows the  
14 A-weighted sound level as a function of time, in  
15 this case over a period of only 156 seconds, showing  
16 and identifying at least three impulses that we  
17 reviewed to assess what the impulsive levels were.

18 Q And can you give me the value of those  
19 three that you specifically evaluated?

20 A The first impulse is at 3:04 in the  
21 morning which rose up to a level of 61 decibels; at  
22 3:05:57 a.m. in the morning, another 61 decibel  
23 impulse; and at 3:06:31 a.m. in the morning, an  
24 impulse that rose up to 64 dB.

1 (Brief pause.)

2 (Complainants' Exhibit No. 18 marked  
3 for identification, 5-13-98.)

4 BY MR. FORCADE:

5 Q Mr. Thunder, I show you what has been  
6 marked for identification as Complainants' Exhibit  
7 Number 18 and ask if you would be able to identify  
8 that document, please.

9 A This is a March 8th, 1997, document  
10 written by myself to Sean Foley at PSI Management.  
11 This is a document that is a duplicate of what has  
12 been presented before. This shows octave band  
13 levels for the trucking noise, for the background  
14 noise, and for the Illinois nighttime noise limits  
15 for Class B land.

16 Q Would it be safe to characterize that  
17 document as simply an earlier version of Page  
18 Number 4 of the December letter that you wrote to  
19 the Charter Hall --

20 A Yes.

21 Q -- organization?

22 A That's correct.

23 MR. STEGER: Excuse me. Do you mean Figure 4?

24 MR. FORCADE: Figure 4 of --

1 MR. STEGER: Exhibit 16?

2 MR. FORCADE: Exhibit 16.

3 THE HEARING OFFICER: Complainants' Exhibit 16;

4 is that correct?

5 MR. FORCADE: Complainants' Exhibit 16.

6 THE HEARING OFFICER: Okay.

7 BY MR. FORCADE:

8 Q At this time, I would like to switch to a

9 somewhat different series of questions. I would

10 like to take the opportunity to show you what has

11 been marked as Complainants' Exhibits 11, 11-A, and

12 11-B and ask you if you would be able to identify

13 that for me, please.

14 A This is a Radio Shack sound level meter --

15 THE HEARING OFFICER: Let the record reflect

16 the witness is referring to what has been marked as

17 Complainants' Exhibit 11.

18 BY THE WITNESS:

19 A -- showing a unit that measures A and

20 C-weighting with a slow and fast response.

21 BY MR. FORCADE:

22 Q Based on your knowledge, are you familiar

23 with such instruments generally?

24 A Yes.



1 Q Based on your knowledge of such  
2 instruments and excluding from that any opinions or  
3 conclusions of others that you may have heard today,  
4 do you have an opinion based on a reasonable degree  
5 of scientific certainty whether or not such a noise  
6 measuring devise is capable of reasonably reliably  
7 measuring sound intensity?

8 A Yes, I have an opinion.

9 Q What is that opinion?

10 A That it's reasonably accurate in making  
11 measurements of sound.

12 Q Were you present earlier today during the  
13 testimony of Mrs. Cohen?

14 A Yes, I was.

15 Q Were you present when she was describing  
16 how she used that instrument to record sound  
17 measurements?

18 A Yes.

19 Q Based on your knowledge of such  
20 instruments and assuming the testimony of Mrs. Cohen  
21 to be true and excluding from those facts any  
22 opinions or conclusions expressed by other people  
23 today at hearing, do you have an opinion based on a  
24 reasonable degree of scientific certainty whether or

1 not Ms. Cohen's noise measurements appear to be a  
2 reasonably reliable measurement of the sound  
3 intensity at Charter Hall at that time?

4 A Yes, I do.

5 Q And what is that opinion?

6 A I think the measurements were reasonable,  
7 and I find nothing grossly wrong with them.

8 Q Mr. Thunder, were you present earlier  
9 today when I questioned Mrs. Cohen about some of the  
10 sound measurements that were recorded on Complainants'  
11 Exhibit Number 12?

12 A Yes, I was.

13 Q Let me show you Exhibit Number 12. During  
14 the course of our discussions, I asked Mrs. Cohen if  
15 she could identify a series of events which appear  
16 to have differences in initial and final sound  
17 values of between eight and 12 decibels or more in  
18 periods of 15 to 20 seconds.

19 Are you aware of that?

20 A Yes.

21 MR. STEGER: Objection. I don't think there  
22 was ever a 20-second interval. I believe they were  
23 ten or 15.

24

1 BY MR. FORCADE:

2 Q Based on ten --

3 THE HEARING OFFICER: Mr. Forcade, are you  
4 retracting your previous question?

5 MR. FORCADE: I'm retracting that statement and  
6 modifying it to be ten to 15-second intervals.

7 THE HEARING OFFICER: I will then find Mr. Steger's  
8 objection moot at this time.

9 BY MR. FORCADE:

10 Q Assuming those sound measurements to be  
11 true and the sound differentials to be accurate and  
12 excluding from that any opinions or conclusions of  
13 others expressed at hearing today, do you have an  
14 opinion based on a reasonable degree of scientific  
15 certainty whether a noise intensity or noise  
16 intensity increase of that level would unreasonably  
17 interfere with any of the following activities:  
18 Falling asleep, being awakened from sleep, normal  
19 conversation in a quiet room, entertaining guests on  
20 a patio, or watching television?

21 A Yes, I do.

22 Q And what would be your opinion as far as  
23 whether those noise levels would interfere with  
24 falling asleep?

1 A Well, any time you have a change in noise  
2 level that has a rapid onset of that amplitude and  
3 degree of change, that will cause an interference in  
4 activities, it would deter someone's concentration,  
5 and certainly keep them from falling asleep.

6 Q Would your answer be the same as to  
7 whether it would awaken them from sleep?

8 A It potentially could. It depends on how  
9 deep the sleep is, but if it does not awaken them  
10 from sleep, it can raise them to a lighter stage of  
11 sleep which can also have effects.

12 Q What would be your opinion as to whether  
13 it would interfere with normal conversation in a  
14 quiet room?

15 A Once the levels exceed about 45 decibels  
16 or so, then that adversely interferes with  
17 conversation and watching TV at a reasonable level.

18 Q What would be your opinion as to whether  
19 it would interfere with entertaining guests on a  
20 patio?

21 A That would interfere with speech  
22 communication greatly and, therefore, would reduce  
23 the enjoyment of entertaining on a patio.

24 Q And my last question for that topic is

1 what would be your opinion as to whether that would  
2 interfere with watching television?

3 A Yes, it would. It would force you to turn  
4 the TV up louder in which case other neighbors could  
5 complain that your TV was loud.

6 (Complainants' Exhibit No. 19 marked  
7 for identification, 5-13-98.)

8 BY MR. FORCADE:

9 Q Mr. Thunder, I'm showing you what has been  
10 marked as Complainants' 19 and will suggest to the  
11 hearing officer that this is a file-stamped copy of  
12 the verified complaint that Charter Hall filed  
13 before the Pollution Control Board.

14 A Yes.

15 Q I didn't ask you a question yet.

16 A Okay.

17 Q I would like to direct your attention, if  
18 I could, to Page 7 of that document, and I would  
19 like to further direct your attention to Paragraph  
20 E, Items 1 through 7 and ask if you would be  
21 willing, please, to read and review those briefly.

22 A Okay.

23 Q You need not do them out loud.

24 A Okay.

1 Q Directing your attention to Page 7, Item  
2 Number E-1, which discusses an airtight brick or  
3 wooden barrier, are you familiar with any situations  
4 in which a sound control device such as that has  
5 been used to control sound?

6 A Yes. It's common.

7 Q It's common. Is it your expert opinion  
8 that a device of that type would be effective in  
9 helping to control sound if properly constructed?

10 A Yes.

11 Q Directing your attention, if I could,  
12 please, to Item Number E-2, which talks about  
13 constructing a containing structure, noise  
14 containing structure, are you familiar with any  
15 situations in which devices of that type have been  
16 used to control noise?

17 A Yes.

18 Q In your opinion, would it be an effective  
19 sound control device if properly constructed and  
20 implemented in this case?

21 A If properly constructed, it would be very  
22 effective, yes.

23 Q Directing your attention to Item Numbers  
24 3, 4, 5, and 6, if I could characterize, and counsel

1 is free to object, these appear to be a series of  
2 operational changes that could be implemented at the  
3 facility.

4       Are you aware of any situations in which  
5 operational changes such as these have been  
6 implemented in any other facilities in the United  
7 States?

8     A   I'm not aware specifically of any  
9 situations. I don't see them all as operational  
10 necessarily. Some of them are what I would call  
11 source controls. Maybe it's just semantics, but  
12 these are all attempts to dampen the sound or reduce  
13 the severity of impacts and so forth, yes.

14    Q   Based on your expert opinion, is there a  
15 reasonable probability that these sound control  
16 options, if implemented, would reduce the sound  
17 levels generated by Overland Transportation?

18    A   I would think you would have to implement  
19 all of those elements, 3 4, 5, 6, and 7, to achieve  
20 the overall effective reduction. In other words, by  
21 implementing only one or two of these, I don't think  
22 you would see --

23    Q   I'm sorry. My question was directed to  
24 the seven total. I apologize.

1 A Okay.

2 Well, yes. If it's done in the proper way  
3 and you look at which sources are the prominent  
4 sources, then that is the way I would approach it as  
5 a noise control engineer.

6 Q Okay. Based on your knowledge of noise  
7 reduction techniques and assuming the testimony from  
8 the residents on the noise levels are accurate, do  
9 you have an opinion to a reasonable degree of  
10 scientific certainty as to whether these controls  
11 could be implemented and technically feasible in an  
12 economically reasonable manner at the facility?

13 A Yes.

14 Q What is that opinion?

15 A I think that a barrier could be reasonable  
16 and economic. I haven't studied the costs involved,  
17 but generally that's considered economic to go with  
18 a building-type of approach. It may be higher than  
19 economically feasible for an operation like that,  
20 but again, I haven't reviewed those costs.

21 Q Was that just for the one item, or was  
22 that for --

23 A Well, that was for the items that we  
24 consider path controls. Path controls are a barrier



1 or basically an enclosure. The others relate to  
2 operational, I call them administrative controls,  
3 and others that relate to source controls such as  
4 installing rubber pads on dock plates and so forth.  
5 These things can help, but they are a high  
6 maintenance item where they can help initially, but  
7 then if they are not checked on a regular basis,  
8 then you can get back to the original sound levels  
9 where you were at before. And so those are key  
10 elements in a noise control program is to ensure  
11 that there is proper maintenance on whatever is  
12 decided so that the noise reduction performance  
13 continues to prevail over the years.

14 Q Okay. And I have one last area of  
15 questioning.

16 Based on your knowledge of sound  
17 measurement, do you have an expert opinion of  
18 whether there is a reasonably inexpensive equipment  
19 method that can be used to record noise levels  
20 without significant oversight so that the recorded  
21 tapes could be later analyzed to show compliance or  
22 noncompliance with either existing board noise  
23 regulations or some arbitrarily set remedial level  
24 to establish noise reductions at Overland

1 Transportation?

2 A Yes.

3 Q What is that opinion?

4 A Well, the opinion would be yes, that it  
5 could be economically implemented, particularly if  
6 it's based on A-weighted monitoring as opposed to  
7 individual octave bands to record information on the  
8 tape and then later analyze it. It's also possible  
9 to set out unattended monitors that statistically  
10 monitor the noise levels that can then be downloaded  
11 into a computer for later analysis.

12 Q If you were to describe the best standard  
13 you believe would be appropriate as a remedial  
14 standard to ensure that the noise impacts are  
15 lessened on the residents of Charter Hall, what type  
16 of noise standard would you choose?

17 A Well, I would choose one that uses, as a  
18 minimum, the fast response circuit and to limit the  
19 rise of the noise to something like ten, 15 decibels  
20 on a fast response.

21 Q Do you have an approximate estimate of  
22 what the cost would be to install any of the noise  
23 recording devices that you had discussed earlier  
24 that would be capable of generating data for later

1 analysis that can be measured against this standard?

2 A Yeah. I would think a system could be put  
3 together for under \$2,000 for the recording aspect  
4 of it.

5 MR. FORCADE: I have no further questions.

6 THE HEARING OFFICER: Mr. Steger?

7 CROSS EXAMINATION

8 BY MR. STEGER:

9 Q A quick follow-up on that last area.

10 You indicated it would be approximately  
11 under \$2,000 for recording. Then what other --  
12 there would then be costs associated with the  
13 analysis; is that correct?

14 A That's correct. You would have to have  
15 the tape and submit it to a laboratory and have the  
16 tape run that would go over the entire tape and then  
17 produce a graph or a plot out of that that would  
18 allow you to examine the chart and determine if  
19 there is any exceedances involved.

20 Q And what would the cost of that be, do you  
21 have any idea?

22 A That would probably be under \$500.

23 Q Per tape?

24 A Yes.

1 Q How long are the tapes?

2 A Well, the tapes can be up to four hours in  
3 length which would be appropriate. For an analysis  
4 like that, you have got an engineer that has to set  
5 it up, run a calibration, basically let it run, and  
6 then at the end of the four hours take that data and  
7 then plot it.

8 Q Were you physically present during the  
9 noise measurements on November 26th?

10 A No.

11 Q Have you ever been -- have you ever viewed  
12 the Overland Transportation facility?

13 A Actually, several times because it's just  
14 down the street from my office.

15 Q Have you been around the property, or how  
16 was that?

17 A I have been around the Charter Homeowner's  
18 Association myself, not in the backyards as my  
19 associate was, and on several occasions from the  
20 same parking lot that Mr. Harmon was at I viewed the  
21 facility.

22 Q What has your experience in the past been  
23 with trucking terminals and the analysis of sound  
24 from?

1 A Well, currently we are right now working  
2 with Roadway Package Systems for their new  
3 facilities, and we are working for LTD Commodities  
4 up in Bannockburn on helping them solve and assess  
5 their trucking facility noise.

6 Q And they are a trucking terminal similar  
7 to what you see here?

8 A Yes. In other words, in that situation,  
9 we were retained by the companies.

10 Q Did you personally listen to those  
11 tapes --

12 A Yes.

13 Q -- or the tape? I'm sorry.

14 A As part of my responsibility, once Roger  
15 has turned over what we call the data reduction,  
16 then I do an engineering review, and part of that is  
17 to at least zoom in on certain sections of the  
18 tape. I can't say and I do not remember if I  
19 listened to all two hours of the tape. Seldom I  
20 have time to do that. But after I have plotted the  
21 time trace, I'm specifically inclined to try to  
22 focus in on those bumps and some of the higher  
23 intensity parts, so I fast forward to that section  
24 of the tape and listen to it through stereo

1 headphones, and from that, we are able to identify  
2 extraneous events and so forth.

3 Q When did you listen to that tape, do you  
4 recall?

5 A I don't remember the exact day, but  
6 typically it would take Roger a week to be able to  
7 run his analysis, and then sometime the following  
8 week, I'm usually able to get around to auditioning  
9 the tapes and doing an engineering review.

10 Q And prior to your listening to that tape,  
11 what was your experience with trucking terminals  
12 prior to November, December 1996?

13 A Well, I can't recall specifically trucking  
14 terminals, but I have been in the area of noise  
15 control for some 23 years in working with locomotive  
16 railroads, working with trucking terminals,  
17 intermodal facilities, as Mr. Harmon had mentioned,  
18 working with unit trains and trucking facilities for  
19 power plants and so forth. So I don't recall  
20 specifically any trucking terminal per se, but I'm  
21 sure in that time frame of 23 years that before that  
22 I have been in and around trucking operations.

23 Q Could you explain to me the difference  
24 between Figure 3 and Figure 4 on Complainants'

1 Exhibit 16?

2 A The difference is it's the same data but  
3 represented differently. One is in what we call a  
4 third octave band.

5 Q And which one is that?

6 A That's Figure 3.

7 Q Okay.

8 A And then we took that data and generated  
9 octave band data. As Mr. Harmon explained, in our  
10 analysis, we will normally collect one-third octave  
11 band data as our raw data, and the reason we do that  
12 is so that we can also take a look at that aspect of  
13 the Illinois regulation that pertains -- relates to  
14 prominent discrete tones. For example, if there was  
15 a fan on the roof of Overland that had a constant  
16 drone to it, a humming sound, that would be another  
17 area that we would want to focus our attention on,  
18 and the only way to do that, according to the  
19 standards, is to look at the one-third octave band  
20 data. Basically, that's three times as much data as  
21 Figure 4. It splits each octave band into three  
22 more segments.

23 But the primary section of the standard  
24 calls for simple octave bands, so we take those

1 third octave bands, collapse them down into octave  
2 bands, and so now there is only nine pieces of data  
3 instead of nine times three.

4 Q And on the data then represented on Figure  
5 4, that's an average of that particular octave band?

6 A No. It's not an average. It's taking  
7 each third -- there is three third octaves in each  
8 octave band, and we sum them logarithmically. In  
9 other words, we determine the total sound energy,  
10 and then that becomes the octave band level.

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

12 THE HEARING OFFICER: Any other questions from  
13 Mr. Steger?

14 MR. STEGER: No.

15 THE HEARING OFFICER: Mr. Forcade?

16 MR. FORCADE: I just have one follow-up.

17 REDIRECT EXAMINATION

18 BY MR. FORCADE:

19 Q Earlier, Mr. Harmon had mentioned that  
20 there was the noise of an airplane going by. Did  
21 you account for the noise of the airplane in your  
22 evaluation of the results, and if so, what impact  
23 did it have?

24 A Yes. That was an airplane flyover that



1 occurred fairly late in the recording, and it makes  
2 no difference in terms of the average because you  
3 are averaging sound over a full hour period. That  
4 one minute flyover does not have any impact on the  
5 overall -- in other words, you could subtract that  
6 out of there, and it wouldn't make any difference.

7 THE HEARING OFFICER: Any other questions,  
8 Mr. Steger?

9 RE CROSS EXAMINATION

10 BY MR. STEGER:

11 Q Back to this area, which items are  
12 averaged? I thought you just testified that Figure  
13 4 was a logarithmic calculation.

14 A We are referring to a peak in Figure 2.

15 Q Oh. These are the A-weighted average?

16 A Yes. Before we determine the octave band  
17 levels, we want to essentially edit out extraneous  
18 noise. In other words, we can't hold Overland  
19 accountable for an airplane that flies over from  
20 O'Hare Airport at 2:00 in the morning, and that's  
21 represented by that one peak, and that occurred at  
22 about 3:43 in the morning. Our normal process is to  
23 edit that information out before we combine all the  
24 sound to produce the octave band chart that's shown

1 in Figure 4.

2 THE HEARING OFFICER: Let the record reflect

3 that the witness is referring to Complainants'

4 Exhibit 16 and Figure 4 and Figure 2.

5 MR. STEGER: Okay. Nothing further.

6 THE HEARING OFFICER: Mr. Forcade?

7 MR. FORCADE: (Shaking head.)

8 THE HEARING OFFICER: Any questions from the

9 audience regarding this witness?

10 There being none, Mr. Thunder, thank you.

11 Why don't we take a five-minute recess?

12 You will come back with Mr. Zak, is that correct,

13 Mr. Forcade?

14 MR. FORCADE: Yes. That's the extent of our

15 testimony for today.

16 THE HEARING OFFICER: Okay. Let's take a

17 recess a five-minute recess.

18 (Whereupon, a recess was taken.)

19 THE HEARING OFFICER: Let's go back on the

20 record.

21 Let the record reflect that we are back on

22 the record in Pollution Control Board Docket Number

23 98-81, Charter Hall Homeowner's Association vs.

24 Overland Transportation and D.P. Cartage, Inc.

1       When we left the record, we had just  
2 completed with the testimony of Mr. Thunder.  
3 Mr. Forcade, your next witness, I believe, is  
4 already seated.

5       MR. FORCADE: Yes.

6       THE HEARING OFFICER: I will ask him to please  
7 raise his right hand and be sworn.

8               (The witness was duly sworn.)

9       THE HEARING OFFICER: Sir, would you please  
10 state your full name and spell your last name for  
11 the record?

12       THE WITNESS: My name full is Gregory,  
13 G-r-e-g-o-r-y, T. as in Tom, Zak, Z-a-k.

14       THE HEARING OFFICER: Thank you. Mr. Forcade.

15               GREGORY T. ZAK,  
16 called as a witness herein, having been first duly  
17 sworn, was examined upon oral interrogatories, and  
18 testified as follows:

19               DIRECT EXAMINATION

20 BY MR. FORCADE:

21       Q   Mr. Zak, would you please state your  
22 employer and your business address for me, please?

23       A   My employer is the state of Illinois, and  
24 my business address is the Illinois Environment

1 Protection Agency, P.O. Box 19276, Springfield,

2 Illinois, 62794-9276.

3 Q Thank you.

4 Mr. Zak, we have had an agreement to

5 qualify you as an expert witness, but I would like

6 at least to ask you three short questions, if I

7 could.

8 Could you briefly describe your history of

9 work experience and education in sound measurement,

10 in noise control, and in the impact of sound on

11 human response?

12 A My education and noise control has been an

13 ongoing process for the last 25 plus years. I have

14 authored a number of articles and coauthored a

15 number of technical articles on noise control and

16 the effects of noise on people. I have been

17 involved in well over a dozen, perhaps several dozen

18 noise control engineering projects ranging from a

19 few dollars to over a million dollars. I currently

20 am a part of the working group with the American

21 National Standards Institute for measuring community

22 noise and setting standards for measuring community

23 noise, and my current position with the EPA is noise

24 advisor, and I am the entire state noise program.

1 Q Thank you, sir.

2 (Complainants' Exhibit No. 20 marked

3 for identification, 5-13-98.)

4 BY MR. FORCADE:

5 Mr. Zak, I would ask you if you could

6 please look at and describe to me what has been

7 marked for identification as Complainants' Exhibit

8 Number 30 (sic).

9 THE HEARING OFFICER: Excuse me, Mr. Forcade.

10 Thirty or 20?

11 MR. SIROS: Twenty.

12 MR. FORCADE: Twenty. My mistake.

13 BY THE WITNESS:

14 A Complainants' Exhibit Number 20 is an

15 up-to-date copy of my resume.

16 MR. STEGER: Can we go off the record for a

17 moment?

18 THE HEARING OFFICER: Of course.

19 (Whereupon, a discussion was held off

20 the record.)

21 THE HEARING OFFICER: Back on the record in

22 98-81 PCB Docket Number. Mr. Steger had asked to go

23 off the record. We are back on the record.

24 Mr. Forcade, I believe the last question

1 was what was this document. The witness responded  
2 that it is an updated copy of his resume.

3 BY MR. FORCADE:

4 Q Is it true and accurate to date?

5 A Yes, it is.

6 MR. FORCADE: At this time, we would like to  
7 tender Mr. Zak as an expert witness in this case on  
8 the issue of sound measurement, sound control, and  
9 human response to sound impacts.

10 MR. STEGER: No objection.

11 MR. FORCADE: Okay.

12 THE HEARING OFFICER: He will be so  
13 designated.

14 BY MR. FORCADE:

15 Q Mr. Zak, have you been contacted at any  
16 time in the past by the residents of the Charter  
17 Hall subdivision regarding noise issues?

18 A Yes, I have.

19 Q Have you discussed them over time some of  
20 the issues concerning --

21 THE HEARING OFFICER: Before we go on in the  
22 expert testimony, I have one concern. The resume  
23 will be -- is something you intend to admit as part  
24 of the agreed -

1 MR. FORCADE: Absolutely.

2 THE HEARING OFFICER: I just want to make sure  
3 that we laid some foundation for the area of the  
4 expertise. You had not asked that that be  
5 admitted.

6 MR. FORCADE: I haven't asked that any of the  
7 exhibits for the expert witnesses be admitted yet.  
8 I was intending to do that at the conclusion of  
9 Mr. Zak's testimony. If you would prefer to do it  
10 now, I would be happy to.

11 THE HEARING OFFICER: Well, the other experts  
12 were tendered after a foundation was laid for their  
13 expert qualifications. Here we really haven't laid  
14 any foundation other than through --

15 MR. FORCADE: I would be happy to ask Mr. Zak  
16 about 12 questions.

17 THE HEARING OFFICER: No, no, no. All I'm  
18 indicating -- as far as the exhibit, all I'm asking  
19 is if you intend to introduce that exhibit later to  
20 be admitted.

21 MR. FORCADE: I do.

22 THE HEARING OFFICER: Thank you. That's all I  
23 have asked.

24 MR. FORCADE: I'm sorry.

1 THE HEARING OFFICER: I apologize.

2 BY MR. FORCADE:

3 Q Have you been contacted in the past by

4 Charter Hall residents about noise issues?

5 A Yes, I have.

6 Q And you have had conversations with them

7 over the past -- do you know about when that was?

8 A I would say approximately two years ago.

9 Q Approximately two years ago.

10 Do you have any financial relationship

11 with the Charter Hall residents?

12 A No, I don't.

13 Q Are you being paid in any way for your

14 testimony today or for the discussions you have had

15 with the Charter Hall residents in the past?

16 A I'm only being paid my usual state salary

17 whether I'm in Springfield or in Chicago.

18 Q Okay. Thank you very much.

19 Have you had the opportunity to look at

20 the documents which were identified as Complainants'

21 Exhibit Number 16, Complainants' Exhibit Number 17,

22 and Complainants' Exhibit Number 18 which were

23 authored by Tom Thunder and Associates?

24 THE HEARING OFFICER: Let the record reflect



1 that the witness is reviewing those documents  
2 previously identified as Complainants' 17, 18, and  
3 16. Is that correct, Mr. Forcade?

4 MR. FORCADE: Pardon? Sixteen, 17, and 18, I  
5 believe.

6 THE HEARING OFFICER: Thank you.

7 BY THE WITNESS:

8 A Yes, I have.

9 BY MR. FORCADE:

10 Q Were you present earlier today during the  
11 testimony by Mr. Thunder and Mr. Harmon about how  
12 those documents were prepared?

13 A Yes, I was.

14 Q Based on your review of the documents and  
15 based on your evaluation of the testimony, do you  
16 believe that the information prepared and presented  
17 in those documents was compiled in accordance with  
18 the Illinois Pollution Control Board and the  
19 American National Standards Institute procedures for  
20 noise measurement and evaluation?

21 A Yes, I do.

22 Q Mr. Zak, I would like to show you what has  
23 been identified as Complainants' Exhibits 11, 11-A,  
24 and 11-B and ask if you wouldn't mind looking at

1 it.

2 A Yes, I have looked at it.

3 Q Could you identify that for me, please?

4 A Yes. It's a Radio Shack sound level

5 meter. It has a weighting switch for A or

6 C-weighting, meter response of slow or fast. It has

7 a range of from 50 to 100 -- 126 decibels.

8 Q Are you familiar with such meters?

9 A Yes. I recommended that Mrs. Cohen

10 purchase one to measure the noise with.

11 Q Based on your knowledge of such

12 instruments and excluding from that any opinions or

13 conclusions of others expressed at hearing today, do

14 you have an opinion based on a reasonable degree of

15 scientific certainty whether or not a noise

16 measuring device such as that is capable of

17 reasonably reliably measuring the sound intensity?

18 A Yes, it is. And if I could continue?

19 Q Sure.

20 A I have a calibrator with me. I could

21 check the calibration of the instrument right now

22 and tell you how accurate it is.

23 Q That would be fine with me.

24 MR. STEGER: I don't see the relevance of

1 seeing how accurate it is today because there is no  
2 evidence submitted or being offered as to sound  
3 recordings today.

4 THE HEARING OFFICER: I agree. I think the  
5 calibration might be more appropriate if it was --  
6 if he could determine whether it was calibrated  
7 correctly on the days that the measurements were  
8 taken. I'm not sure how helpful it's going to be to  
9 determine whether the machine is calibrated today.

10 MR. FORCADE: I will stand by my request and  
11 ask, if I could, please, for a ruling.

12 THE HEARING OFFICER: I'm simply asking how  
13 would that be relevant to this proceeding and the  
14 basis of your complaint.

15 MR. FORCADE: The earlier statement that was  
16 made by Mr. Thunder was if such instruments are  
17 accurately calibrated, they are very precise.  
18 Therefore, the question of the calibration of the  
19 device becomes an issue, at least at some level. We  
20 are offering to have the device calibrated.

21 MR. STEGER: But it only becomes an issue when  
22 you are trying to calibrate it when you are going to  
23 take a measurement. The measurements were not done  
24 today.

1 THE HEARING OFFICER: As far as the calibration  
2 of the device today, I guess what -- my concern is  
3 this based on the board's review. If you are  
4 offering it to indicate that the device could be  
5 calibrated correctly but are not offering Mr. Zak's  
6 testimony to somehow corroborate or indicate that  
7 the device was calibrated correctly by Mrs. Cohen --  
8 I'm trying to understand where you are going with  
9 this, Mr. Forcade.

10 MR. FORCADE: Let me perhaps ask a couple  
11 questions, if I could, of Mr. Zak.

12 THE HEARING OFFICER: All right.

13 MR. FORCADE: I could lay a foundation that may  
14 help.

15 THE HEARING OFFICER: As of now, I'm going to  
16 sustain the objection without more.

17 BY MR. FORCADE:

18 Q What has your history been in past attempts  
19 to evaluate the reliability or calibration of Radio  
20 Shack sound meters?

21 A I have calibrated a large number of Radio  
22 Shack sound level meters, and I was also  
23 instrumental in setting up the Illinois EPA's  
24 calibration laboratory 20 years ago. I basically

1 specified the instrumentation to be used for  
2 calibration traceable to the National Institute of  
3 Science and Technology.

4 Q What has been your history of the  
5 likelihood of calibrations changing on sound meters  
6 such as that one over time?

7 A Generally speaking, there is not normally  
8 a lot of drift one way or the other. The purpose of  
9 calibration initially is a check. If the instrument  
10 is reading the correct level, no calibration  
11 adjustment is necessary. If the instrument is off  
12 by more than half a decibel and it's a precision  
13 instrument, then typically the operator would adjust  
14 a small potentiometer within the instrument while he  
15 has the calibrator on the microphone to bring the  
16 instrument into exact alignment with the correct  
17 sound level.

18 Q Let me ask one additional question.

19 If the sound meter were to record a  
20 specific reading during one time frame and either  
21 ten or 15 seconds later record a second sound level,  
22 what impact would calibration have on the difference  
23 between those two if the instrument was correctly  
24 calibrated or incorrectly calibrated: A significant

1 difference or an insignificant difference?

2 A Well, the calibration has no effect on the  
3 instrument. The calibration is simply a check to  
4 verify that the instrument is reading a number  
5 that's a recognized standard.

6 MR. FORCADE: Well, I will repeat my request.

7 If there is a ruling, we will then move on to  
8 whatever is next.

9 THE HEARING OFFICER: Your request is  
10 specifically to have Mr. Zak calibrate the device to  
11 indicate that it is calibrated correctly today?

12 MR. FORCADE: Yes.

13 THE HEARING OFFICER: Mr. Steger, your  
14 response?

15 MR. STEGER: I still don't see the relevance of  
16 whether this thing is accurate today, tomorrow, in  
17 two weeks. The issue is whether it was accurate the  
18 day it was taken.

19 THE HEARING OFFICER: I do not disagree that it  
20 would be more relevant to what is alleged in the  
21 complaint. However, the remedy sought, as well as  
22 the calibration of the device today, would speak for  
23 no more than what it is, i.e., whether it can be  
24 calibrated correctly today. For that purpose and

1 that limited purpose, I will allow Mr. Zak to do  
2 that, and whatever weight that's given by the board  
3 will be determined ultimately by them.

4       So with that limitation, I will allow the  
5 calibration assuming that this is not -- how long  
6 will this process take, Mr. Forcade?

7       THE WITNESS: A few seconds.

8       I have a Breul and Kjaer Model 3420  
9 calibrator similar to the one mentioned in  
10 Mr. Harmon's testimony. The calibrator generates a  
11 tone of 94 decibels at 1,000 hertz. I'm going to  
12 place it over the microphone of the meter, and the  
13 instrument is reading 94 decibels, which is the  
14 output of the calibrator. So this instrument is  
15 accurate.

16       THE HEARING OFFICER: Okay. Let the record  
17 reflect that the witness has place a device that he  
18 has described on top of the sound level meter. As  
19 to what that device is, I will let his testimony  
20 speak for itself. As to what level it is, we will  
21 let the record speak for itself.

22 BY MR. FORCADE:

23       Q   Mr. Zak, in your opinion and based on your  
24 experience with sound meters of that type, what is

1 your expectation that the sound meter calibrated  
2 correctly today would have been calibrated  
3 incorrectly six months ago?

4 A This meter -- in my experience, I have  
5 examined many dozens of these meters. They don't  
6 tend to drift. It's been my experience that if it  
7 calibrates now at 94 dB, which is right on, that  
8 from the time it was purchased it was, in all  
9 likelihood, exactly right on.

10 Q Thank you.

11 If we now could, please, I would like to  
12 switch to a series of questions which I posed this  
13 morning to Mrs. Cohen relating to Complainants'  
14 Exhibit Number 12 which I would show you for your  
15 review.

16 (Brief pause.)

17 BY MR. FORCADE:

18 Q Mr. Zak, were you present this morning  
19 when Mrs. Cohen described how she used the meter to  
20 record those sound values from her bedroom?

21 A Yes, I was.

22 Q Okay. I would like to ask you an expert  
23 question.

24 Based on the knowledge you have of such



1 instruments, based on the calibration you have just  
2 performed, assuming the testimony of Mrs. Cohen  
3 about how the instrument was used is true and  
4 correct and excluding from that any opinions or  
5 conclusions that you have heard from other witnesses  
6 presented to, do you have an opinion based on a  
7 reasonable degree of scientific certainty whether or  
8 not the Cohens' noise records in Exhibit --

9 THE HEARING OFFICER: This is Complainants'  
10 Exhibit Number 12.

11 BY MR. FORCADE:

12 Q Complainants' Exhibit 16 accurately  
13 reflects the noise values that would have occurred  
14 at the time of the recording?

15 THE HEARING OFFICER: So the record is clear,  
16 this is Complainants' Exhibit 12 that he is  
17 referring to now.

18 MR. FORCADE: I'm sorry. Complainants' Exhibit  
19 12.

20 BY MR. FORCADE:

21 Q That the sound values written down there  
22 would accurately record the sound values present  
23 when they conducted those measurements?

24 A Yes.

1 Q And what is that opinion?

2 A The opinion is that the levels, based on  
3 my experience, look reasonable. From her testimony  
4 as to how they obtained the measurements and the  
5 instructions I have given her and she had reiterated  
6 as part of her testimony, I would say the levels are  
7 accurate.

8 Q Further directing your attention to  
9 Exhibit 12, at various times after Mrs. Cohen  
10 discussed that document, I directed her attention to  
11 specific times during which over a ten-second  
12 interval or a 15-second interval the sound values  
13 A-weighted slow could change from ten to, I believe,  
14 15 or more decibels.

15 Were you present during that testimony?

16 A Yes.

17 Q Okay. Assuming the sound measurements to  
18 be true and excluding from your opinion any  
19 conclusions or opinions offered by other individuals  
20 present at hearing today, do you have an opinion  
21 based on a reasonable degree of scientific certainty  
22 whether a noise intensity increase of that type, ten  
23 to 16 decibels, would unreasonably interfere with  
24 any of the following activities: Falling asleep,

1 being awakened from sleep, normal conversation in a  
2 quiet room, entertaining guests on a patio, or  
3 watching television?

4 A Yes.

5 Q And what is that opinion relative to  
6 whether those noise values would unreasonably  
7 interfere with falling asleep?

8 A As far as falling asleep, that amount of  
9 difference between the background sound level before  
10 the impulsive noise occurred versus the level  
11 generated by the impulsive noise would for a person  
12 of normal sensitivity wake them up or prevent them  
13 from sleeping.

14 Q What is your opinion as far as those  
15 levels of noise increasing unreasonably interfering  
16 with normal conversation in a quiet room?

17 A They would greatly interfere with normal  
18 conversation.

19 Q And what is your opinion as far as the  
20 increase in noise levels for those activities as far  
21 as entertaining guests on a patio?

22 A Since they interfere with normal  
23 conversation and also are disturbing to the ear,  
24 they would have a very deleterious effect on having

1 guests on the patio.

2 Q And my last question in that vein is what  
3 is your opinion as to what impact those increased  
4 noise levels would have on watching television?

5 A They would force the person or persons to  
6 increase the volume on the television considerably  
7 in order to listen to the television set.

8 Q Okay. Thank you.

9 Mr. Zak, if I could, I would like to  
10 direct your attention to Exhibit Number 19, which is  
11 I believe, a file-stamped copy from the clerk's  
12 office of the verified complaint that the Pollution  
13 Control Board accepted in this case.

14 THE HEARING OFFICER: Let the record reflect  
15 that the witness is reviewing the document  
16 identified as Complainants' Exhibit 19.

17 BY THE WITNESS:

18 A Yes.

19 BY MR. FORCADE:

20 Q Could I please direct your attention to  
21 Page 7 of that document, more specifically on Page 7  
22 to Paragraph E, Item Numbers 1 through 7 and Item  
23 Numbers F-1 through 5?

24 Relating to Item Number E-1 -- and please

1 let me know if I mischaracterize this. Relating to  
2 the construction of an airtight brick or wooden  
3 barrier, have you ever or are you familiar with any  
4 situation in which a device of this type has been  
5 used as a sound control device at other locations?

6 A Yes, several locations.

7 Q Could you describe where those situations  
8 were and the circumstances surrounding the placement  
9 of that device?

10 A The -- this type of device is commonly  
11 used on the expressway system in Illinois at noise  
12 sensitive locations -- the tollway system at noise  
13 sensitive locations. It was used in Thomas vs.  
14 Carry Companies before the Pollution Control Board  
15 as part of a solution to the noise problem in that  
16 case. In that case, I was -- it was my  
17 specifications that were used to build the barrier.

18 This has also been used from time to time  
19 at locations where large supermarkets will be  
20 receiving truckloads of goods at night in order  
21 to -- and in order to minimize the noise impact on  
22 the neighbors, they will build a fairly high barrier  
23 of airtight construction such as described here.

24 Q Okay. If I could please direct your

1 attention to Paragraph Number E-2, which I will  
2 paraphrase as constructing a sound containing  
3 building or structure to enclose the loading and  
4 unloading, are you familiar in any situations in  
5 which that type of a device has been employed for  
6 sound control purposes?

7 A Yes, in several locations. The most  
8 recent would be in the case of Norman vs. U.S. Post  
9 Office in Barrington before the board. I acted  
10 through an intergovernmental agreement where our  
11 agency was compensated by the federal government to  
12 design a structure to contain a loading dock where  
13 the trucking situation was not dissimilar from the  
14 situation we have here with Overland.

15 This has also been used in situations  
16 where refrigeration of reefer trucks have been a  
17 noise problem, and in order to solve the problem, a  
18 sound containing semi-building rather than I would  
19 call a building was used to enclose the dock area to  
20 prevent the reefers on the trailers from disturbing  
21 the neighbors.

22 Q Would I be correct that the reefer is an  
23 individually air-conditioned truck which is used to  
24 carry produce and meat and, therefore, needs to be

1 chilled? Am I understanding that correctly?

2 A You are close.

3 Q Okay.

4 A The reefer unit typically keeps the truck

5 temperature in the trailer either at a level

6 slightly above 32 degrees Fahrenheit or if they are

7 hauling frozen food at a level of around zero

8 degrees Fahrenheit as opposed to air-conditioning.

9 Q So is the reefer unit then the cooling

10 unit on the truck?

11 A Yes. The reefer unit is normally diesel

12 powered. It's a small diesel engine in which runs a

13 compressor, and it -- the actual unit itself is

14 analogous to a home freezer but on a larger scale

15 wherein it refrigerates the entire trailer or keeps

16 the entire trailer frozen if they are carrying

17 frozen food.

18 Q Earlier today in our discussion of this

19 issue with Mr. Thunder, he indicated that while

20 these devices had been used, that operational

21 maintenance and upkeep was a very important factor

22 in ensuring the continued functionality of such a

23 device. Do you have any comments on whether that is

24 a significant issue?

1 A Very significant. I have dealt with  
2 thousands of noise issues over the last 25 years,  
3 and maintenance of any type of noise solution is  
4 normally such a problem that I will do everything I  
5 can to come up with a solution that does not involve  
6 maintenance so that we can have a permanent type  
7 solution that is not dependent upon periodically  
8 going back every six months, every year, every two  
9 years and replacing components that go bad. It's  
10 much more effective in the long run to design a  
11 system that does not require maintenance. So, for  
12 example, Number 3, replacing the dock plates with  
13 hydraulically cushioned plates, I would have some  
14 reservations as to the long-term effect of this  
15 event.

16 Q Let me ask you generally about Item  
17 Numbers E-3, 4, 5, and 6 and ask whether you have  
18 seen those employed at other locations for the  
19 purposes of sound control.

20 THE HEARING OFFICER: You are referring to the  
21 items in Complainants' --

22 MR. FORCADE: On Page 7 of Complainants'  
23 Exhibit Number 19.

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



1 BY THE WITNESS:

2 A Yes. As a matter of fact, on Item 4 --  
3 E-4, that was the initial attempt by the U.S. Post  
4 Office to solve their noise problem, and it did not  
5 work. That has also been used in other situations.  
6 Usually if it does work, maintenance will not in the  
7 long-term keep it up, so that's not a good  
8 solution.

9 Number 5, padding the interior of the  
10 trailers, again, in this particular case using my  
11 knowledge that I gained over the years of trucking  
12 operations such as Overland where I would assume  
13 they have a lot of trailers going over the road, I  
14 don't think that padding the interior is going to be  
15 very doable. Prohibiting hammering or banging, that  
16 is doable because of the fact that it -- you are  
17 allowing for that to occur in the building to  
18 enclose the activity, and I would encourage on the  
19 solution to this to come up with what I would call a  
20 passive-type system that is maintenance free whereby  
21 the trailers are docked in such a manner that it's  
22 not necessary to hydraulically cushion the dock  
23 plates or install rubber pads because the dock area  
24 and the building are virtually airtight on the same

1 side of the building as the Complainants live.

2 BY MR. FORCADE:

3 Q If I could now direct your attention again  
4 to Complainants' Exhibit 19, Page 7, Item Number  
5 F-1, earlier in the proceeding, there was testimony  
6 regarding the noise of hooking and unhooking  
7 trailers on the west side of the building which I  
8 believe we can use Exhibit Number 1 and identify as  
9 the area in between the truck loading and unloading  
10 area and the residents. Briefly characterizing Item  
11 Number F-1, it is to prohibit any operations on the  
12 west side outside of daylight hours.

13 If such a solution were implemented, would  
14 it be your opinion that it would reduce noise  
15 levels?

16 A Yes.

17 Q Okay. Are there other operational changes  
18 identified in Item Numbers 2, 3, 4, or 5 which you  
19 believe are viable and workable solutions that would  
20 have the effect of reducing noise levels from  
21 Overland Transportation's facility?

22 THE HEARING OFFICER: Are these still under  
23 Subheading F?

24 MR. FORCADE: I'm sorry. Still under

1 Complainants' Number 19, Page 7, Item Number F.

2 THE HEARING OFFICER: Thank you.

3 BY THE WITNESS:

4 A Number 2, correct.

5 BY MR. FORCADE:

6 Q Yes, Items 2, 3, 4, and 5.

7 A Okay. Number 2, ceasing all operations  
8 between the hours of 10:00 p.m. and 7:00 a.m. would  
9 seem to almost in effect close the facility down  
10 between those hours. It is my experience that in  
11 having visited the site that if the facility was  
12 maintained such that the operations from 10:00 p.m.  
13 until 7:00 a.m. were within the building or on the  
14 east side of the building, the -- along with the  
15 wall described in E-1, which I would characterize as  
16 approximately 20 feet high, but in any case being  
17 high enough to break line of sight to the top of the  
18 roofs of the homes. If that were done, I don't  
19 think it would necessarily be absolutely imperative  
20 to cease all the operations between 10:00 p.m. and  
21 7:00 a.m.

22 Number 3, yes, I don't think truck traffic  
23 should use the west side of the facility. When I  
24 was there visiting the site, I noticed that one

1 truck was backing up with the backup beeper going,  
2 and it was quite loud in the Charter Hall  
3 subdivision when that was occurring.

4       Number 4, restrict all trailer switching  
5 operations to east side, yes, I would also agree to  
6 that.

7       As far as getting back to Number 2 again,  
8 I would kind of condition Number 2 in that if they  
9 were going to, say, bring a trailer in and unload it  
10 on the west side with basically a sealed operation;  
11 in other words, airtight, I think that could be done  
12 in compliance with the state noise regulations. But  
13 as far as, say, trailer switching operations, yes,  
14 that should be daytime as opposed to nighttime, one  
15 reason -- one of the main reasons being the backup  
16 beepers on a lot of the over-the road trucks are  
17 going to wake up the residents.

18       And then Number 5, cease parking trailers  
19 along the west side, I would condition that in that  
20 based on my experience that if the 20-foot wall on  
21 the west side were acoustically soft in other words,  
22 an acoustically absorptive wall and at the same time  
23 the terminal building which is made of sheet steel  
24 were acoustically softened, that would kill the

1 current echo effect that you are going to have  
2 between any wall and the building, and with a 20  
3 feet wall, you are going to have a considerable echo  
4 effect. The walls are approximately 16 feet high in  
5 the building. Given that fact, it would be  
6 necessary to treat the walls facing the Charter Hall  
7 subdivision with an acoustically absorptive  
8 material. I would recommend a material with a sound  
9 absorption coefficient of approximately 1.00 and the  
10 same stipulation for the 20-foot wall that would be  
11 to the west of the trucking facility. That being  
12 done, I don't think you would necessarily have to  
13 cease parking trailers along the west side.

14 Q I just have a couple more questions.

15 Based on the questions that I have just  
16 asked you relative to the comments in Exhibit 19,  
17 Paragraphs E and F, as modified by the comments that  
18 you have made, do you think the resulting remedy  
19 would constitute a technically feasible and  
20 economically reasonable method of reducing the sound  
21 level generated by Overland Transportation to levels  
22 likely to be reasonable to the Charter Hall  
23 residents?

24 A Yes. Can I elaborate on that?

1 Q Please do.

2 A When I was at the facility, I looked at  
3 not only a solution but what, in my opinion, the  
4 approximate cost would be for the solution. The  
5 solution certainly appears to be technically  
6 feasible to me, and then, of course, the question is  
7 economically reasonable.

8 The economics involved on the 20-foot  
9 wall, based on my experience with other similar  
10 structures, we are looking at a cost of 50 to \$100  
11 per running foot or linear foot. The material for  
12 sound absorption on the wall would, again, be  
13 included in that price. The material to go on the  
14 side of the building with labor would probably run  
15 about somewhere between two to \$5,000.

16 On item two, the sound containing building  
17 or structure enclosing the loading docks, there is a  
18 lot of methods of doing that. You are by no means  
19 restricted to one method. Probably the least  
20 expensive method would be in the neighborhood of  
21 around \$10,000.

22 I ruled out Number 3, ruled out Number 4,  
23 ruled out Number 5.

24 THE HEARING OFFICER: So it's clear, Mr. Zak,

1 are you referring to 3, 4, and 5 under Subheading E  
2 or F?

3 THE WITNESS: Yes. I'm sorry, Mr. Hearing  
4 Officer, 3, 4, and 5 under E.

5 And Number 6, that could be doable.

6 Again, there would be no cost involved in Number 6.

7 And the rest of the items would not add to  
8 the overall cost. That's my basic conclusion.

9 BY MR. FORCADE:

10 Q I have one brief last line of  
11 questioning.

12 The residents of Charter Hall in their  
13 complaint, which I believe is Exhibit 19, at Page 7,  
14 Item D, have talked about future sound measurements  
15 to demonstrate compliance. In my earlier  
16 examination of Mr. Harmon and Mr. Thunder, I asked  
17 them if there was any reasonable method --  
18 economically achievable method they could describe  
19 for continuously recording sound for subsequent  
20 analysis such that it would be accurate and reliable  
21 and could lead to an evaluation of whether sound  
22 levels have remained the same, increased or  
23 decreased in the future.

24 I would like to reiterate to you the same

1 question of whether you are aware of any mechanisms  
2 by which you think a reasonably reliable method of  
3 sound measurement and recording could be installed  
4 at or near the interface between Charter Hall and  
5 Overland Transportation that would allow the  
6 recording of sound for subsequent analysis in a  
7 manner that would be indicative of human response.

8 A Yes, it could be done. What we would be  
9 looking at here would be an outdoor-type microphone  
10 attached to a preamplifier, attached to an amplifier  
11 and/or a meter system which is weather-proofed, and  
12 that information then, as Mr. Harmon says, is fed to  
13 a computer.

14 It should also be taped, and the reason it  
15 has to be taped is in order to be sure of what was  
16 measured, was it an airplane, a dog, a motorcycle,  
17 or was it Overland, that necessitates some type of  
18 recording device that actually records the sound so  
19 that a human being can play it back, listen to it,  
20 and answer the question is it Overland's noise or is  
21 it some other noise? That does create a problem in  
22 that someone has to analyze that, and the analysis  
23 is going to be an ongoing cost. But the actual  
24 system itself could probably be put together for, as



1 Mr. Harmon said, between one and \$2,000. That's not  
2 including the cost of periodic analysis.

3 Q And would it be correct that it would be  
4 possible to selectively analyze tapes if there were  
5 say, for example, a serious of adverse community  
6 responses on a particular evening to retrieve that  
7 tape and analyze without it without continuously  
8 analyzing every tape?

9 A Yes, it would be possible.

10 Q Then one of the last questions is if you  
11 were to do that, I believe that both Mr. Thunder and  
12 Mr. Harmon indicated that perhaps a more appropriate  
13 mechanism of measurement and one that would minimize  
14 the cost and maximize the reliability of predicting  
15 community response would be an A-weighted fast meter  
16 response.

17 Would you have an opinion on what  
18 mechanism of measurement would be most appropriate  
19 to try and predict the degree of change in community  
20 response that would or would not occur as a result  
21 of the changes that Overland Transportation might  
22 make?

23 A Yes, I do. Having discussed the solution  
24 to the problem from a technical standpoint, I would

1 expect that if the solution as outlined by myself  
2 and in the agreement here were to be implemented,  
3 the facility should be basically in compliance with  
4 what I would call the older Pollution Control Board  
5 standard; in other words, the standard that was used  
6 by the board for approximately 17 -- well, 14 years  
7 which was using A-weighted fast as opposed to a  
8 one-hour Leq. I would think that would be a very  
9 good measurement parameter to use to go with  
10 A-weighted fast, and as the level to achieve to  
11 demonstrate compliance would be to use the current  
12 numbers for impulsive noise. But rather than using  
13 the one-hour Leq, use A-weighted fast.

14 Q Would you see that as having a distinct  
15 benefit over what I perceived to be the earlier  
16 testimony of the fact that a ten to 15-decibel  
17 increase in sound level could wake you up? Would it  
18 be preferable to use a specific numerical value  
19 rather than increase over background?

20 A Yes. In the 14 years that the agency and  
21 the board used the fast meter response to determine  
22 if there was a problem with impulsive noise, we  
23 found that when that standard was met, the problem  
24 was solved.

1       Currently, the present one-hour standard  
2 does not give a reliable indicator as to whether or  
3 not people are going to be awakened by noises  
4 measured with that type of measurement parameter.  
5 Also, the A-weighted fast is much less expensive to  
6 use from a measurement standpoint than the Leq.  
7 It's much more commonly available, and it's much  
8 better understood by most people.

9     Q   If the A-weighted value were used, would  
10 that decrease either your estimate of the cost of  
11 the equipment, which I believe you put at  
12 approximately 1,000 to \$2,000, or your estimate of  
13 the cost of the tape analysis?

14    A   The cost of the tape analysis would  
15 probably remain the same. The instrumentation,  
16 though, would probably be -- would be quite a bit  
17 less expensive for the instrumentation, but on the  
18 analysis portion of it, I wouldn't expect to see a  
19 big change in that. But as you had suggested, if  
20 one were to only analyze those tapes when there were  
21 complaints, that would greatly reduce any cost of  
22 tape analysis.

23    Q   Based on the modifications you have just  
24 suggested to a hypothetical monitoring program, do

1 you have an opinion about whether such a monitoring  
2 program would be technically feasible and  
3 economically reasonable?

4 A I would answer yes to both questions.

5 MR. FORCADE: Okay. Thank you very much. We  
6 have no further questions for this witness.

7 THE HEARING OFFICER: Mr. Steger?

8 MR. STEGER: I have a few questions.

9 CROSS EXAMINATION

10 BY MR. STEGER:

11 Q How many times have you visited that area,  
12 the Charter Hall/Overland Transportation area?

13 A I visited one time on May the 8th from  
14 9:30 a.m. until approximately 10:00 a.m.

15 Q May 8th of what year?

16 A Oh, I'm sorry. This last Friday.

17 Q Is that the only time you have been there?

18 A Yes.

19 Q Did you have a chance to go to the  
20 backyards of Charter Hall property owners --

21 A Yes.

22 Q -- that are located along the west side of  
23 the -- I have my directions all mixed up -- on the  
24 west side of the Overland property?

1 A Yes, I did.

2 Q Specifically, if you look at Exhibit 1,

3 699 through approximately house 627?

4 A Specifically what I did was to walk down

5 between house 605 and 595 and observe the south end

6 of the Overland facility.

7 Q Okay. Were you able to view the west side

8 of the Overland facility up to the fence line?

9 A Yes, I was.

10 Q What was on the other side of the fence

11 line on the Overland Transportation property?

12 A A parking lot.

13 Q Did you view any berms?

14 A I didn't view what I would define as a

15 berm.

16 Q What did you view?

17 A I viewed a fence that -- can I go up to

18 the diagram? It would be easier, I think, if I did

19 that.

20 THE HEARING OFFICER: Mr. Steger?

21 MR. STEGER: That's no problem.

22 THE HEARING OFFICER: Let the record reflect

23 that the witness has approached Complainants'

24 Exhibit 1, which is the blown-up map of the area.

1 BY THE WITNESS:

2 A There is a wooden fence that runs between  
3 the charter subdivision and Overland Transportation.

4 BY MR. STEGER:

5 Q And is that wooden fence -- well, I will  
6 withdraw the question?

7 A The wooden fence was approximately eight  
8 feet high and -- it's a wooden fence, but it has  
9 cracks in it and there are gaps so that  
10 acoustically, it would have very little benefit. I  
11 wasn't quite sure if it was -- if it belonged to  
12 Charter Hall or it belonged to Overland. I  
13 proceeded at the south end over here to walk around  
14 --

15 Q When you say here, could you point to what  
16 on the area?

17 A Yes. If I could, right between address  
18 number 595 and 605, I proceeded in an easterly  
19 direction to a drop-off. The area south of Overland  
20 Transportation is swamp, and with the rain we have  
21 been having recently, I was somewhat inhibited or  
22 prohibited from doing too much walking around. It  
23 was pretty wet back there. But I was able to  
24 observe the facility from this point, which would

1 be -- as the Pollution Control Board is reviewing  
2 this, we are looking at the far eastern point  
3 between the 605 and 595 residences.

4 I then proceeded up out of the subdivision  
5 around and down to the north end of the facility.  
6 There is a large parking lot there that actually  
7 goes up to the fence. It's not shown on the diagram  
8 here, but there is a parking lot that goes up to the  
9 fence. I drove around in there. The gate going  
10 into Overland was -- has a no trespassing sign on  
11 it. I did not want to disregard that no trespassing  
12 sign, so I did not go into the facility.

13 Q Remember, you are under oath.

14 A And I am, and I didn't go in.

15 THE HEARING OFFICER: Let the record reflect  
16 just for the record's purposes that Mr. Zak has  
17 referred to from leaving the area between 605 and  
18 595 going up out of Charter Hall, what appears to be  
19 a drive up to the Northwest Highway, and back down  
20 into the area that has an Overland Transportation  
21 designation. He is referring to what looks to be  
22 the north end of the Overland site when he's  
23 referring to the parking lot to the west of that  
24 building, I believe.

1 THE WITNESS: Yes. There was a parking lot  
2 also -- a parking area to the north, and there is a  
3 TY, TY written up there. In that general vicinity  
4 there, that particular lot -- I'm not quite sure who  
5 it belongs to. It may belong to Overland, but it's  
6 not posted no trespassing because there were a  
7 number of Overland trailers parked in that lot.

8 I then proceeded -- I drove down, looked  
9 at the fence. The fence that Overland has that is  
10 marked with no trespassing is a chain link fence. I  
11 was able to observe the loading docks, the parking  
12 area, the fence. The fence itself sits on what I  
13 would call a dirt curb. I really wouldn't call it a  
14 berm. In my way of looking at things, a typical  
15 berm -- you don't start a berm until it's about  
16 eight to ten feet high. There was maybe a two to  
17 five-foot area of dirt that curved up to the fence  
18 between the two facilities. Very slowly -- I would  
19 stop the car, and very, very slowly I looked at the  
20 entire area with the idea of assessing both noise  
21 impact and looking for a solution to the problem.  
22 One thing I did notice is the area is paved in  
23 asphalt.

24 THE HEARING OFFICER: I'm going to interrupt



1 for a second. You referred to several fences  
2 regarding a berm. I just want to clarify for the  
3 record which fence you are referring to when you say  
4 there is a two to three-foot dirt --

5 THE WITNESS: Dirt curb.

6 THE HEARING OFFICER: Where is that located,  
7 please, with regard to Exhibit 1?

8 MR. FORCADE: We have a whole series of colored  
9 markers here. I would be happy to donate any color  
10 Mr. Zak would choose and he could make markings on  
11 it if that's --

12 THE HEARING OFFICER: Mr. Steger, do you have  
13 any objection to that?

14 MR. STEGER: I would prefer to do that through  
15 my witness tomorrow morning.

16 MR. FORCADE: Your witness tomorrow morning  
17 isn't going to help understand what this witness  
18 today is saying, and I would like to at least have  
19 some record of the physical items that Mr. Zak is  
20 testifying to.

21 MR. STEGER: I would prefer that he not mark on  
22 that exhibit.

23 THE HEARING OFFICER: Well, I just want to be  
24 clear as to what he's referring to as far as the

1 fence is concerned. I want it to be as clear for  
2 the board as possible regarding this dirt incline  
3 whether it be related to the chain link fence or the  
4 fence between the two properties. What is important  
5 to all of us, I would think, is making sure what the  
6 board -- what we provide the board is clear and  
7 specific.

8       Now, I guess what we can do is use two  
9 different color markers, if necessary. Mr. Steger,  
10 it's your question. You have asked this witness to  
11 point these areas out and point these things out as  
12 to exactly what he observed in that area. He is  
13 attempting to do that by referring to this blown-up  
14 diagram.

15   MR. STEGER: Okay.

16   THE HEARING OFFICER: I think it would be --

17   MR. STEGER: Why don't we use red, and if you  
18 would mark the area where you said you drove around,  
19 and then mark with red the dirt -- two to three-foot  
20 dirt -- what did you refer to it as? I apologize.

21   THE WITNESS: A curb.

22   THE HEARING OFFICER: Just so that we are able  
23 to distinguish which curb is with which fence.

24   MR. STEGER: Okay.

1 THE HEARING OFFICER: I want to -- so it's  
2 clear on this diagram or in your testimony at least  
3 to distinguish between the two fences and the dirt  
4 curb, whether it be two feet or whatever it is, I  
5 want to be clear. Hold on.

6 Mr. Steger?

7 MR. STEGER: If you could mark in red the two  
8 to three-foot dirt curb you are referring to and  
9 exactly where it is located.

10 THE HEARING OFFICER: Let the record reflect  
11 that the witness is using the red magic marker and  
12 on the line that was I believe initially drawn by  
13 Mr. Steger regarding the fence between the Overland  
14 Transportation facility and the Charter Hall  
15 Homeowner's Association, just to the east of that  
16 almost -- well, immediately to the east of that line  
17 is a red line that Mr. Zak has indicated is the two  
18 to three-foot dirt curb. Is that correct, Mr. Zak?

19 THE WITNESS: I would call it a curb, yes.

20 THE HEARING OFFICER: Mr. Forcade?

21 MR. FORCADE: Yes.

22 THE HEARING OFFICER: Mr. Steger?

23 MR. STEGER: Yes.

24

1 BY MR. STEGER:

2 Q My next question is could you mark in a  
3 dashed red line the fence that I believe you  
4 observed running east-west that was marked no  
5 trespassing?

6 A All right.

7 MR. FORCADE: Are you talking about the fence  
8 north of the facility or the fence at the south of  
9 the facility?

10 MR. STEGER: I'm talking about the fence at the  
11 north of the facility where he was located.

12 MR. FORCADE: Sure.

13 THE WITNESS: And you want that in a dotted line?

14 MR. STEGER: Dotted red line.

15 THE HEARING OFFICER: Okay. Let the record  
16 reflect that the witness has placed a dotted red  
17 line with the red magic marker on Complainants'  
18 Exhibit 1 to signify a chain link fence at the north  
19 end of the area on Complainants' Exhibit 1 designated  
20 Overland Transportation area.

21 Mr. Forcade, do you agree?

22 MR. FORCADE: I agree.

23 THE HEARING OFFICER: Mr. Steger?

24 MR. STEGER: That's fine.

1 THE HEARING OFFICER: Thank you.

2 Mr. Zak?

3 MR. STEGER: That's all the questions I have in  
4 this area right now.

5 THE HEARING OFFICER: Okay.

6 MR. STEGER: I have just a few more.

7 THE HEARING OFFICER: All right.

8 BY MR. STEGER:

9 Q You testified that you visited there from  
10 approximately 9:30 to 10:00 o'clock on Friday  
11 morning May 8th; is that correct?

12 A That's correct.

13 Q Would you look at what has been marked as  
14 Complainants' Exhibit 16?

15 (Brief pause.)

16 THE HEARING OFFICER: Let the record reflect  
17 that the witness is reviewing Complainants'  
18 Exhibit 16, the document identified as that.

19 BY MR. STEGER:

20 Q Okay. Would you look at Figure 2, as well  
21 as the second paragraph of the cover letter? Do you  
22 see those?

23 A Yes.

24 Q Okay. They reference that the sound

1 measurement was taken about 15 feet from the

2 existing wooden fence; is that correct?

3 A That's correct.

4 Q Are you familiar with the Pollution

5 Control Board regulations on sound measurement?

6 A Yes.

7 Q Okay. How do you reconcile the statement

8 that the sound measurement shall be made no less

9 than 25 feet from a property line noise source with

10 the footage referenced in this report?

11 A That particular reference was put into the

12 regulations in order to ensure that the measurement

13 taken is of a plane wave as opposed to a spherical

14 wave, and it's confusing, and the interpretation has

15 been obscured ever since it was written 25 years

16 ago.

17 What it's saying is you have to be 25 feet

18 from the actual object that is emitting the noise.

19 If we have a truck engine, we need to be 25 feet

20 from the truck engine. If we have something that's

21 clanging and banging, whatever that particular

22 object is, the measurement has to be 25 feet from

23 that particular object.

24 So in a situation we have here with

1 Mr. Harmon was 15 feet from the fence, that would of  
2 itself create a problem as -- the only way that  
3 would be a problem is if the clanging and banging  
4 and the noise he was measuring was not more than --  
5 as long as everything he measured was at least an  
6 additional ten feet from the fence; in other words,  
7 to give a total distance of 25 feet.

8 Did I answer that clearly?

9 BY MR. STEGER:

10 Q Yes, you did.

11 A I can elaborate more if you want me to.

12 Q No. Thank you.

13 You testified that you observed the  
14 eight-foot fence that is in the backyards of the  
15 Charter Hall residents?

16 A I testified that it's approximately an  
17 eight-foot fence.

18 Q Okay.

19 A I didn't measure the fence exactly.

20 Q I'm not asking you about the height of the  
21 fence.

22 A Well, I just wanted to clarify that --

23 THE HEARING OFFICER: Okay. One person can  
24 speak at a time, Mr. Steger, Mr. Zak. Mr. Steger do

1 you have a question?

2 BY MR. STEGER:

3 Q If you took the sound measurement 15 feet  
4 from that fence, would that adequately account for  
5 any reflective sound off that fence?

6 A In my opinion, it would, if anything,  
7 reduce the decibel level of the measurement at the  
8 location described. Basically what I am saying is  
9 if I were to measure that, I would probably get a  
10 little bit higher level because from the description  
11 given by Mr. Harmon, the fence itself would provide  
12 a slight amount of sound reduction as a barrier.

13 Q And have you had any experience in  
14 controlling sound at trucking terminals?

15 A Yes, I have.

16 Q Over the last 25 years, how many  
17 instances?

18 A I'm going to take a little liberty here in  
19 answering your question, and the liberty I'm taking  
20 is there are a number of truck operations that I  
21 would classify as a truck terminal such as truck  
22 stops, large factories that have a number of loading  
23 docks that bring in large numbers of trucks, some  
24 commercial facilities that also bring in large



1 numbers of trucks, other commercial facilities that  
2 bring in refrigerated trucks, and I have had  
3 experience and input into noise control engineering  
4 at those types of facilities numerous times.

5 Q Okay. My question is how many for a  
6 specific trucking terminal such as you see at  
7 Overland.

8 A The terminal at Overland is almost like a  
9 subset of a larger operation -- of larger operations  
10 that I have done in the past. The -- a specific  
11 example of that kind of truck terminal -- in other  
12 words, if you are asking me have you actually  
13 performed noise control engineering on a duplicate  
14 of that truck terminal, no, I haven't. But I have  
15 done it many times where a terminal -- or an  
16 operation of the same size is part of a larger  
17 operation.

18 Am I answering your question?

19 Q Yes. Thank you.

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

21 THE HEARING OFFICER: Mr. Forcade?

22 MR. FORCADE: Yes. I have one matter on  
23 redirect, if I might, and I'm going to ask Mr. Steger's  
24 liberty to review the sole copy I have of 35 Illinois

1 Administrative Code, Part 951. If Mr. Steger feels  
2 for any reason that this is not a true, accurate,  
3 and correct copy, I would certainly acquiesce to him  
4 substituting it for a more accurate version at a  
5 later time.

6       Once Mr. Steger has reviewed it, I would  
7 like to show the witness the existing Illinois  
8 regulations and ask him if he is familiar with the  
9 existing Illinois noise measurement regulations.

10    THE HEARING OFFICER: Let the record reflect  
11 that Mr. Steger is reviewing the document handed to  
12 him by Mr. Forcade.

13    MR. STEGER: I do not know if these are the  
14 current rules. Do you?

15    MR. FORCADE: Yes. Further, I think I can get  
16 the witness to identify them. I would expect the  
17 witness probably wrote them.

18    THE HEARING OFFICER: Is it necessary that the  
19 witness be given a copy of the rules, Mr. Forcade?

20    MR. FORCADE: Well, your Honor, I have got a  
21 diagram I don't think I'm ever going to be able to  
22 describe.

23    THE HEARING OFFICER: I'm just trying to  
24 understand if this is something we can do

1 independent of the rules themselves

2 MR. FORCADE: No. I want to run redirect.

3 Mr. Steger has raised the issue of exactly where the

4 sound meter should be located and what the sound

5 fence measurements are. It's clearly described in

6 the diagrams governing measurement of sound for

7 Illinois Environmental Protection Agency employees

8 which do not apply to that, which nonetheless

9 clearly would be guidance, and I want to put it on

10 the record.

11 THE HEARING OFFICER: All I'm indicating is for

12 the record's sake, we can take judicial notice of

13 what the current regs require and what they state.

14 MR. FORCADE: That would be --

15 THE HEARING OFFICER: I'm just wondering --

16 MR. FORCADE: That would be as difficult as me

17 trying to describe a location on Group Exhibit 1 and

18 then not providing the board with a copy of Group

19 Exhibit 1 so that the board would understand exactly

20 where I was pointing and where I was directing

21 Mr. Zak's attention to.

22 THE HEARING OFFICER: As I have indicated, I

23 was hoping possibly we could do it without referring

24 to the specific regs.

1 Mr. Steger, any objection?

2 MR. STEGER: No, not at this time.

3 THE HEARING OFFICER: All right.

4 (Whereupon, a discussion was held off

5 the record.)

6 THE HEARING OFFICER: We are back on the record

7 in PCB 98-81, Charter Hall Homeowner's Association

8 vs. Overland Transportation and D.P. Cartage, Inc.

9 Mr. Forcade, the court reporter changed

10 her paper. She has indicated that she is ready.

11 Are you ready to proceed?

12 MR. FORCADE: I'm ready to proceed. Thank you

13 very much.

14 (Complainants' Exhibit No. 21 marked

15 for identification, 5-13-98.)

16 REDIRECT EXAMINATION

17 BY MR. FORCADE:

18 Q Mr. Zak, I would like to show you what has

19 been marked for identification as Complainants'

20 Exhibit 21 and ask you if you are familiar with that

21 document.

22 A Yes. I assisted John Paulauskis in

23 writing it.

24 Q Thank you. Could you please briefly

1 describe what that document is?

2 A It's the measurement procedures used by  
3 the agency for taking sound level measurements in  
4 various scenarios. It would be used for monitoring  
5 traffic noise, monitoring facilities such as  
6 Overland Trucking. Any type of noise measurements  
7 the agency would normally take are outlined in this  
8 document which is pre -- this precedes the Leq  
9 change of 1987.

10 Q Am I correct that this is a set of  
11 regulations governing agency personnel conduct, not  
12 the board regulations?

13 A That's correct.

14 Q All right. If I could please direct your  
15 attention, and since you have the only copy, I'm  
16 going to have to borrow it back temporarily, to what  
17 is marked as Page 4465 which consists of three  
18 drawings and direct your attention to the center  
19 drawing in that diagram.

20 Would it be correct to say that that is a  
21 diagram of the placement of noise measurement  
22 equipment and a sound source with a property line in  
23 between them and that it demonstrates a sound meter  
24 being placed less than 25 feet from the property

1 line?

2 A Yes.

3 MR. FORCADE: No further questions.

4 THE HEARING OFFICER: Mr. Steger?

5 MR. STEGER: No questions.

6 THE HEARING OFFICER: All right. Any other  
7 questions for Mr. Zak?

8 MR. FORCADE: No further questions.

9 THE HEARING OFFICER: Let the record reflect  
10 that there are no other questions from any members  
11 of the public or otherwise.

12 Mr. Zak, thank you. You may step down.

13 MR. FORCADE: We have only two minutes left.

14 THE HEARING OFFICER: I'm sorry?

15 MR. FORCADE: Two minutes, and we done.

16 THE HEARING OFFICER: Of testimony?

17 MR. FORCADE: No, exhibits.

18 THE HEARING OFFICER: Okay. We are going to  
19 introduce exhibits?

20 MR. FORCADE: Right.

21 THE HEARING OFFICER: Okay. Two minutes.

22 MR. FORCADE: I'm sorry. I thought you were  
23 planning on taking a break, and I thought we would  
24 be out of here in a shorter period of time.

1 THE HEARING OFFICER: Well, I guess I'm just  
2 trying to figure out where we are going to go from  
3 here. You have indicated what you have left is  
4 introducing the exhibits that we referred to today.

5 MR. FORCADE: We intend to admit the exhibits  
6 we have identified and rest.

7 THE HEARING OFFICER: Okay. Mr. Steger, as far  
8 as your witness' availability today --

9 MR. STEGER: No.

10 THE HEARING OFFICER: All right. So my  
11 understanding is we will start back again tomorrow  
12 at 9:30 in the same room for that witness. We had  
13 all indicated that we were going to be flexible as  
14 far as witnesses, so I don't anticipate any problem  
15 there.

16 Is there any more that you will have as  
17 far as -- I assume you are going to rest at the end  
18 of offering your exhibits.

19 MR. FORCADE: That's correct.

20 THE HEARING OFFICER: All right. Let's go  
21 ahead.

22 MR. FORCADE: At this time, your Honor, we  
23 would like to move the admission of Exhibits 14  
24 through 21 one at a time.

1 THE HEARING OFFICER: Right. Thank you.

2 MR. FORCADE: All right. We would like to move  
3 the admission of Exhibit Number 14, which is  
4 Mr. Harmon's resume.

5 MR. STEGER: Do you want to describe it?

6 THE HEARING OFFICER: I was. Complainants'  
7 Exhibit 14 appears to be a normal resume on Acoustic  
8 Associated, Limited, letterhead, the resume of one  
9 Roger P. Harmon that was referred to during his  
10 testimony marked as C-14 offered by the Complainant  
11 as Complainants' Exhibit 14.

12 Mr. Steger, any objection?

13 MR. STEGER: No objection.

14 THE HEARING OFFICER: It's a one-page  
15 document. Bear with me here. I'm going to mark  
16 these as necessary as I receive them.

17 All right. The document is admitted  
18 without objection.

19 Mr. Forcade?

20 MR. FORCADE: At this time, we would like to  
21 move the introduction to evidence of Complainants'  
22 Exhibit Number 15 which is the resume of Mr. Thomas  
23 Thunder.

24 THE HEARING OFFICER: What I have been handed



1 is what is marked as Exhibit C-15 offered by the  
2 Complainant. It is a one-page document, front page  
3 only on 8-and-a-half-by-11 paper with Acoustic  
4 Associates, Limited, bearing that logo or  
5 letterhead. It is the resume of one Thomas D.  
6 Thunder referred to during his testimony.

7 Mr. Steger, any objection to that document  
8 being admitted?

9 MR. STEGER: No.

10 THE HEARING OFFICER: Let the record reflect  
11 the document is admitted without objection.

12 Mr. Forcade?

13 MR. FORCADE: Yes. At this time, we would like  
14 to move the admission of Complainants' Exhibit  
15 Number 16 which is a December 1996 letter with  
16 accompanying documents from Mr. Thomas Thunder.

17 THE HEARING OFFICER: Okay. Let the record  
18 reflect that Complainants' Exhibit 16 is, again --  
19 well, it is a six-page document, the first page  
20 being, again, the letterhead of Acoustic Associates,  
21 Limited. The first two pages appear to be  
22 correspondence between one -- or correspondence sent  
23 December 30th, 1996, to an Andrew Hoying from  
24 a Thomas D. Thunder. There are four attachments all

1 identified individually as Figure 1, 2, 3, and 4 at  
2 the top looking at them horizontally offered by the  
3 Complainant as Complainants' Exhibit 16.

4 Mr. Steger, any objection to that document  
5 being admitted?

6 MR. STEGER: The only objection I have is to  
7 Figures 2 and 3 as to relevancy.

8 THE HEARING OFFICER: Mr. Forcade, response?

9 MR. FORCADE: Could I briefly find Figures 2  
10 and 3?

11 THE HEARING OFFICER: Of course.

12 MR. FORCADE: Could I please look over your  
13 shoulder?

14 THE HEARING OFFICER: Of course. Let the  
15 record reflect that I am handing Mr. Forcade what  
16 has been marked as Complainants' Exhibit 16.

17 MR. FORCADE: I believe -- yes. We have two  
18 points on that.

19 First, we have a count of unreasonable  
20 interference. One element of that count is how loud  
21 the sound would be. Any evidence tending to make it  
22 more likely than not that we can establish the  
23 loudness level of the noise in the area would  
24 therefore be relevant. We would move admission on

1 that point.

2 THE HEARING OFFICER: Is that Figure 2?

3 MR. FORCADE: Both.

4 THE HEARING OFFICER: Both. Okay.

5 MR. FORCADE: Second -- I'm sorry. Did you say

6 2 and 3?

7 MR. STEGER: Figures 2 and 3 relate to your

8 nuisance noise count?

9 MR. FORCADE: Correct.

10 THE HEARING OFFICER: Mr. Steger?

11 MR. STEGER: Other than that, I have no

12 objection.

13 MR. FORCADE: Are you withdrawing your

14 objection?

15 MR. STEGER: Yes. I withdraw my objection. I

16 understand now.

17 THE HEARING OFFICER: Okay. Objection

18 withdrawn as to Complainants' Exhibit 16. The

19 document will be admitted without objection.

20 Is that correct, Mr. Steger?

21 MR. STEGER: That is correct.

22 THE HEARING OFFICER: Thank you.

23 MR. FORCADE: And just to be correct, then

24 Number 4 is relevant to both the nuisance count and

1 to the numerical count.

2 MR. STEGER: Correct.

3 MR. FORCADE: Okay.

4 THE HEARING OFFICER: Complainants' 16 admitted  
5 without objection.

6 MR. FORCADE: Next, we would introduce  
7 Complainants' Exhibit Number 17 which is a  
8 single-page impulse noise chart prepared by Acoustic  
9 Associates.

10 THE HEARING OFFICER: Okay. What I have been  
11 handed is a one-page 8-and-a-half-by-11 on a  
12 horizontal -- it is horizontal rather than verticle  
13 on the 8-and-a-half-by-11 piece of paper. It is  
14 marked by Exhibit 17 offered by the Complaiant.  
15 It appears to be a graph with the values determining  
16 A-weighted sound level in dB and the bottom values  
17 identified as elapsed time and in seconds.

18 Any objection to that document being  
19 admitted, Mr. Steger?

20 MR. STEGER: Same objection as to 16 related to  
21 relevancy.

22 THE HEARING OFFICER: So it's clear, 16 went in  
23 without objection.

24 MR. STEGER: Correct.

1 THE HEARING OFFICER: But the objection that  
2 you raised during 16 that you withdrew related to  
3 relevancy; is that correct?

4 MR. STEGER: Correct.

5 THE HEARING OFFICER: Okay. Mr. Forcade?

6 MR. FORCADE: I'm confused. Are you raising an  
7 objection to Exhibit Number 17?

8 MR. STEGER: Correct.

9 MR. FORCADE: For what purpose?

10 MR. STEGER: Relevancy.

11 MR. FORCADE: Relevancy to any part of the  
12 complaint?

13 MR. STEGER: Yes. What is it relevant to?

14 MR. FORCADE: It's relevant to establishing the  
15 noise levels that occur at the location. Loudness  
16 of the noise is one element of the count of  
17 unreasonableness. This evidence is material to  
18 establishing --

19 MR. STEGER: Okay.

20 MR. FORCADE: Are you withdrawing the  
21 objection?

22 MR. STEGER: Yes.

23 THE HEARING OFFICER: Thank you, Mr. Steger.

24 Mr. Forcade, Complainants' Exhibit 17 is

1 admitted without objection. Mr. Steger has  
2 indicated that he has withdrawn his objection.

3 MR. FORCADE: Sure.

4 Next, we would admit Complainants'  
5 Exhibit 18, a two-page document including a March  
6 8th letter from Mr. Thomas Thunder relating to  
7 Charter Hall trucking noise and an attached quote  
8 Figure 4.

9 THE HEARING OFFICER: Let the record reflect  
10 that what has been handed to me as Exhibit C-18 and  
11 offered as Complainants' Exhibit 18 is, as Mr. Forcade  
12 described, a correspondence between Mr. Sean Foley  
13 and a Thomas D. Thunder dated March 8th, 1997, with  
14 an attachment Figure 4 which appears to be identical  
15 to the Figure 4 in Complainants' Exhibit 16.

16 Is that correct, Mr. Forcade?

17 MR. FORCADE: Let me find Attachment 4 of  
18 Exhibit 13. I don't believe it is identical.

19 THE HEARING OFFICER: I apologize. It is not  
20 identical. In fact, Figure 4 of Attachment 16 is  
21 similar. However --

22 MR. FORCADE: Similar.

23 THE HEARING OFFICER: -- they are not  
24 identical. I apologize.

- 1 MR. FORCADE: We will go with similar.
- 2 THE HEARING OFFICER: Similar.
- 3 MR. STEGER: No objection.
- 4 THE HEARING OFFICER: No objection to that
- 5 admission. Thank you, Mr. Steger. The document is
- 6 admitted without objection.
- 7 MR. FORCADE: Complainants' Exhibit Number 19
- 8 which is a copy of the verified complaint in this
- 9 proceeding. Any objections, Mr. Steger?
- 10 MR. STEGER: No objection.
- 11 THE HEARING OFFICER: Do we --
- 12 MR. FORCADE: I showed them a document. If you
- 13 would prefer not to have it in, we would be happy to
- 14 withdraw it.
- 15 THE HEARING OFFICER: My concern is this. I
- 16 know that we have dealt with a motion, and I don't
- 17 know if you received my order regarding the
- 18 amendments to that initial complaint. I know they
- 19 were non-substantive.
- 20 MR. FORCADE: They were not only
- 21 non-substantive. They have nothing to do with the
- 22 identified sections which were discussed with the
- 23 witnesses today. At the pleasure of either the
- 24 hearing officer or opposing counsel, I would be

1 happy to withdraw it. I just was not sure how to  
2 identify a document for purposes of witness review  
3 without providing it.

4 THE HEARING OFFICER: Sure. I have no problem  
5 with how it was used. I'm just not sure it's  
6 necessary to be admitted as a document when the  
7 complaint exists within the record as long as it's  
8 clear that this document is the identical verified  
9 complaint.

10 MR. FORCADE: Mr. Hearing Officer, we will be  
11 happy to withdraw Exhibit Number 19.

12 MR. STEGER: In its entirety?

13 MR. FORCADE: The exhibit, not the complaint.

14 THE HEARING OFFICER: May I just verify that  
15 the complaint that you have had the witnesses refer  
16 to is the complaint that was filed with the board on  
17 December 9th, 1997, and now exists with the board?

18 MR. FORCADE: Yes. It is the correct clerk  
19 certified copy and stamped of the complaint. If you  
20 will notice on the first page, there is a clerk  
21 stamp.

22 THE HEARING OFFICER: The document exists.  
23 It's within the record. It is a pleading within the  
24 record. It's been specifically referred to within



1 the testimony and identified as such in the  
2 testimony. My only concern is that it will not be  
3 identified. Let's admit this document, you have  
4 indicated, without objection, Mr. Steger? My only  
5 concern now is that it's Complainants' 19. Maybe it  
6 was referred to in the testimony, and that may not  
7 be as easy to follow for the board. We will admit  
8 the document. Mr. Steger has indicated he has no  
9 objection.

10 Correct, Mr. Steger?

11 MR. STEGER: No objection.

12 THE HEARING OFFICER: I apologize for the  
13 delay. The document is admitted without objection.

14 MR. FORCADE: We would move the admission of  
15 Complainants' Exhibit Number 20 which is the resume  
16 of Mr. Greg Zak.

17 THE HEARING OFFICER: Mr. Steger?

18 MR. STEGER: I have no objection.

19 THE HEARING OFFICER: All right. Let me catch  
20 up here.

21 For the record, Complainants' 19 does  
22 appear to be the identical verified complaint filed  
23 with the board in December 1997.

24 Complainants' Exhibit 20, which Mr. Forcade

1 has offered and what is identified by an exhibit  
2 sticker Exhibit C-20 and offered by the Complainant  
3 as Complainants' Exhibit 20, consists of an 11-page  
4 document that's entitled -- that's on Illinois  
5 Environmental Protection Agency letterhead with the  
6 name Greg Zak INCE, noise advisor IEPA which he  
7 identified as a resume. That document -- Mr. Steger  
8 has indicated you have no objection to that  
9 document's admission.

10 MR. STEGER: I have no objection.

11 THE HEARING OFFICER: The document is admitted  
12 without objection.

13 Mr. Forcade?

14 MR. FORCADE: The last exhibit we would  
15 introduce is Complainants' Exhibit Number 21. This  
16 is a copy, and, your Honor, I'm not sure what  
17 service it's from, of 35 Illinois Administrative  
18 Code, Part 951. These are the Illinois Environmental  
19 Protection Agency regulations on noise measurement  
20 procedures and techniques.

21 THE HEARING OFFICER: Mr. Steger?

22 MR. STEGER: As long as I'm provided a copy of  
23 them.

24 MR. FORCADE: I can get them there eventually.

1 It's the only copy I have, and I'm not sure I can

2 get a copy.

3 THE HEARING OFFICER: What if we did this? Why

4 don't both counsel, after the proceeding, accompany

5 me up to the board? I will have copies made --

6 MR. FORCADE: Sure. That's fine with us.

7 THE HEARING OFFICER: -- for each counsel.

8 That way each counsel will have copies of the

9 document. We will keep the original. You have

10 indicated you have no objection otherwise.

11 Is that correct, Mr. Steger?

12 MR. STEGER: Correct.

13 THE HEARING OFFICER: All right. The document

14 is admitted without objection.

15 Okay. Mr. Forcade, anything further?

16 MR. FORCADE: Complainants rest.

17 THE HEARING OFFICER: All right. Complainant

18 has rested its case in chief. Let the record

19 reflect.

20 Mr. Steger has indicated and we have

21 previously discussed and I believe, Mr. Forcade, we

22 have discussed in previous status conferences some

23 flexibility and being flexible as to witness

24 availability. Mr. Steger has indicated his witness

1 will be available tomorrow. We will start as

2 promptly -- as close to 9:30 as probable.

3 I would indicate for the record there have  
4 been no members of the public. All people in  
5 attendance today have either been witnesses with the  
6 exception of one board member who upon each request  
7 as to whether any questions indicated did not  
8 indicate any request to question any of the  
9 witnesses who testified today. Other than that,  
10 there were no members of the public in attendance  
11 with the exception of Mr. Steger's in-house counsel  
12 for his client.

13 Now, we will proceed promptly at 9:30  
14 tomorrow morning. I would ask that -- yes,  
15 Mr. Forcade?

16 MR. FORCADE: Can we go off the record?

17 (Whereupon, a discussion was held off  
18 the record.)

19 THE HEARING OFFICER: Back on the record. We  
20 are back on the record in 98-81, Charter Hall  
21 Homeowner's Association vs. Overland Transportation,  
22 Inc., and D.P. Cartage, Inc.

23 Mr. Steger has indicated that his witness  
24 will be available at 9:30 tomorrow morning. We will

1 start in the same room at the same location as it  
2 was noticed up in the notice.

3       Is there anything else that we need to  
4 deal with? I'm trying to think of anything as far  
5 as the joint stipulation. We dealt with that.  
6 That's right. Okay. I think we have dealt with  
7 everything.

8       Thank you all very much for your patience  
9 and thank you. Let's go off the record. We are  
10 done for today.

11       (Whereupon, the above-entitled  
12       proceedings were concluded at 4:05 p.m.)

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1 STATE OF ILLINOIS )  
                                  ) SS.  
2 COUNTY OF COOK    )

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4        I, CARYL L. HARDY, a Certified Shorthand  
5 Reporter doing business in the County of Cook and  
6 State of Illinois, do hereby certify that I reported  
7 in machine shorthand the proceedings at the hearing  
8 of the above-entitled cause.

9        I further certify that the foregoing is a  
10 true and correct transcript of said proceedings as  
11 appears from the stenographic notes so taken and  
12 transcribed by me.

13

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17                    CSR No. 084-003896

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19 Subscribed to and sworn to  
before me this \_\_\_\_\_ day  
20 of \_\_\_\_\_, 1998.

21 \_\_\_\_\_  
Notary Public

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