

ILLINOIS POLLUTION CONTROL BOARD

June 6, 2002

STEPHEN G. BRILL, )  
 )  
 Complainant, )  
 )  
 v. ) PCB 00-219  
 ) (Citizens Enforcement - Noise, Air)  
 HENRY LATORIA, individually and d/b/a )  
 TL TRUCKING FOODLINER, )  
 )  
 Respondent. )

STEPHEN G. BRILL APPEARED *PRO SE*; and

PATRICIA M. REISEN, OF KINTZINGER LAW FIRM, P.L.C., APPEARED ON BEHALF OF RESPONDENT.

INTERIM OPINION AND ORDER OF THE BOARD (by S.T. Lawton, Jr.):

This citizen's enforcement action concerns a truck washing facility in Franklin Park, Cook County. Stephen G. Brill (Brill) filed a complaint against the operator of the truck washing facility, Henry Latoria, individually and d/b/a TL Trucking Foodliner (TL Trucking). TL Trucking washes the insides of truck trailers used to carry food-grade materials. Brill alleges TL Trucking's operation has violated Illinois' noise and air pollution standards.

For the reasons provided below, the Board finds that Brill failed to establish that TL Trucking violated the Board's numeric noise limits at 35 Ill. Adm. Code 901.102(a), (b), and 901.104. However, the Board finds that TL Trucking violated the prohibition against noise pollution at Section 24 of the Environmental Protection Act (Act) (415 ILCS 5/24 (2000)) and at 35 Ill. Adm. Code 900.102 by emitting sound beyond its property so as to unreasonably interfere with the enjoyment of life. The Board also finds that TL Trucking violated the prohibition against air pollution in Section 9(a) of the Act (415 ILCS 5/9(a) (2000)) by emitting dust and diesel exhaust fumes beyond its property so as to unreasonably interfere with the enjoyment of life.

Before discussing the merits of this case, the Board will briefly summarize its procedural history address preliminary matters.

**PROCEDURAL HISTORY**

Brill filed a complaint with the Board on June 12, 2000. On September 21, 2000, TL Trucking filed a motion for summary judgment for lack of prosecution, which the Board

denied. Brill v. TL Trucking, Inc., PCB 00-219 (Nov. 2, 2000). Board Hearing Officer Brad Halloran held a hearing on September 26 and November 14, 2001. Brill filed a brief on January 15, 2002, and TL Trucking filed a response brief on February 8, 2002. Brill filed a reply brief on February 14, 2002. The Board also received five public comments on December 12, 2001, from Brill (PC 1), Richard Eckert (PC 2), Drema Harrah (PC 3), Sherri O'Neill (PC 4), and Gertrude Miklasz (PC 5).

### **PRELIMINARY MATTERS**

The Board will address two preliminary matters. First, Brill asserted, not in his complaint, but at hearing and in his post-hearing brief that light from truck headlights at the TL Trucking facility penetrated his home's front windows, greatly limiting use of his living room. Tr. at 6, 62; Comp. Br. at 2, 7, 8. The Board cannot address the substance of this allegation because interference from light is not a cause of action under any of the statutory or regulatory provisions allegedly violated here. See Roti v. LTD Commodities, PCB 99-19, slip op. at 2 (Sept. 3, 1998).

Second, Brill testified that the cyclone fence along the northern edge of the TL Trucking lot is insufficient to protect the safety of children playing in neighboring Robinson Crusoe Park. Tr. at 155. Brill expressed concern that trucks could break through the fence and into the park. *Id.* The Board likewise cannot address the substance of this allegation under the provisions of the Act or Board regulation alleged in the complaint to have been violated.

### **FACTS**

The Board sets forth its findings of fact in three main parts: (1) the physical area and operations; (2) noise; and (3) dust and diesel exhaust fumes.

#### **Physical Area and Operations**

##### **TL Trucking and Vicinity**

Franklin Park is the fifth largest industry base in Illinois. Tr. at 383, 453. TL Trucking, a truck washing operation, moved to its Franklin Park location, 9200 King Street, in 1998. Tr. at 610. Henry and Michael Latoria own and operate TL Trucking, which pays \$38,000 in property taxes each year. Tr. at 610, 725. The TL Trucking site is zoned for restricted industrial use and was previously used by a bus company, a trucking company, and a scrap metal company, the latter of which occupied the site for at least the five to ten years before TL Trucking arrived. Tr. at 386-87, 449-50, 614.

The TL Trucking site is bordered to the south by King Street, to the east by Chicago Die Cast, to the west by an empty lot, and to the north by Robinson Crusoe Park. Tr. at 624-25, 632. A residential area borders the park to the north, east, and west. Brill and his wife Oleta have lived in this area at 9204 Crescent Drive since about 1965. Their home is

approximately 130 feet north of Robinson Crusoe Park and 225 feet north of TL Trucking. Tr. at 11, 59, 63.

The residential area is surrounded mainly by restricted industrial zoning. Tr. at 374, 382, 402, 444-45, 524. North of the residential area is Dean Foods, which operates 24 hours a day. Tr. at 400. South of the residential area are industrial facilities along King Street. Besides TL Trucking, these facilities include Bruner & Lay, Just Manufacturing, Regency, and Belmont Plating. Tr. at 582-83. Each of these facilities uses semi-tractor trailers. Tr. at 39, 584. Bruner & Lay uses a drop forge to manufacture chisels and other products. Tr. at 583.

East of the residential area is River Road, a four-lane highway with a lot of commuter and truck traffic. Tr. at 32; Comp. Exh. 2. For the last year, River Road has been under construction, which includes ripping and laying concrete. Tr. at 131, 447-48. The Rosemont Exposition Center is on the corner of River Road and King Street. Tr. at 32. West of the residential area are railroad track interchanges, about three blocks from the Brill property. Tr. at 35, 585, 602. The main railroad trunk is approximately five blocks west of the Brill property. Tr. at 143, 381. The residential area is located within a few miles of O'Hare airport. Tr. at 36, 415, 586. Because O'Hare changed flight patterns in the last few years, planes no longer fly directly over the residential area. Tr. at 37. Most flights go over Schiller Park, north of Franklin Park. Tr. at 37, 172, 184, 263.

### **Layout of TL Trucking Site**

The TL Trucking site is approximately 175 feet wide and 412 feet long. Tr. at 612. TL Trucking has a building on the southern end of the site with bays for mechanical repairs and for truck trailer washing. Tr. at 612. Two mechanical repair bays face King Street to the south. Tr. at 612-13. Three wash bays face the back of the lot and the residential area to the north. Tr. at 613. The wash bays are approximately 312 feet south of TL Trucking's northern fence. Tr. at 612, 614.

The first wash bay is enclosed by masonry walls, but there is no wall between wash bays 2 and 3. Tr. at 615-16, 709. Each wash bay can be closed off by a door and each has a blower fixed inside it at ceiling height. The blowers are used to dry trailers after cleaning. TL Trucking also has a compressor (referred to by some witnesses as a blower), which had been used outside but which was moved inside at the request of the Franklin Park Building Commissioner. TL Trucking has moved or plans to move the compressor to an enclosed room next to the wash bays. Tr. at 616, 687. Behind the wash bays is a concrete pad that is approximately 100 feet long by 120 feet wide. Tr. at 614. A two-foot high concrete wall surrounds the property, except in front of the building. Tr. at 635. A 5-foot tall slatted cyclone fence forms the northern border of the TL Trucking lot, immediately north of the concrete wall. Tr. at 625, 636. TL Trucking installed concrete parking bumpers five feet from the fence. Tr. at 626-27, 696.

### **TL Trucking Operations**

TL Trucking mainly sterilizes the insides of truck trailers used to carry food grade materials. Tr. at 612. It washes stainless steel or “wet” trailers that mostly carry corn syrups, anabrosis, and invert, as well as aluminum pneumatic or “dry” trailers that haul flour, grits, and granulated sugar. Tr. at 612, 669. Wet trailers are insulated, and consequently block out more sound from inside the tanks. Tr. at 681.

TL Trucking operates 24 hours a day, 7 days a week. Tr. at 666. Latoria testified that TL Trucking tries to clean trailers to allow them to be moved off-site for loading quickly because the Food and Drug Administration mandates that a wash for food trailers is only good for 24 hours. Tr. at 666-68. Dirty trucks enter the lot off of King Street and drive along a 40-foot wide lane on the eastern side of TL Trucking. Tr. at 668. The trailer is then backed into one of the three wash bays. Dry trailers are supposed to have residual food product blown out before arriving at TL Trucking. Tr. 669. TL Trucking washes wet trailers in bay 1, and dry trailers in bays 2 and 3. Tr. at 669-70. Once a trailer is backed into a bay, TL Trucking cleans the inside of the trailer with a “spinner,” which is a stainless steel tool that shoots hot water into two holes on the trailer. Tr. at 670

TL Trucking can wash and dry a wet trailer in 40 to 45 minutes, and a dry trailer in roughly 25 minutes. Tr. at 695. However, actual wash and dry time may be up to 70 minutes. Log at 46. TL Trucking usually cleans trailers within four to five hours after their arrival. Tr. at 671. During a busy season, TL Trucking washes 100 to 125 trailers a day. Once a trailer is clean, it is either parked on-site or immediately driven off-site for product loading. *Id.* Donald Stumbris, a Franklin Park zoning administrator, testified that TL Trucking’s truck washing operations fit the permitted uses allowed in a restricted industrial zone. Tr. at 386.

### Noise

Brill and TL Trucking presented conflicting testimony over the noise generated by TL Trucking and the noise generated in the residential area surrounding Brill’s home.

#### Nature and Occurrence of Noise

**Cleaning Equipment.** Several residents testified that the spinners used by TL Trucking to clean the insides of the trailers are extremely loud. Tr. at 23, 67, 217, 250; *see also* PC2; PC5. Brill described the noise from what he believes is cleaning equipment as loud, bothersome, and similar to former jet engine testing at O’Hare airport. Tr. at 67; Log at 44. Brill kept a noise log for over a year. He logged at least 17 instances of being disturbed by what he described as noise from cleaning equipment (Log at 5, 12, 14A, 17, 29, 32, 38, 42, 44, 46, 55, 70, 71, 72), including instances of being woken from sleep on four different nights (Log at 17, 44, 55). Again, Brill and his wife Oleta Brill live approximately 225 feet north of TL Trucking, with Robinson Crusoe Park between their home and TL Trucking. Tr. at 11, 59, 63. On one occasion, Oleta Brill contacted the police at 2:30 a.m. because of what she believed was spinner noise. Tr. at 21-22, 225.

Richard Eckert describes what he believes is noise from cleaning equipment as a loud motor hum. He and his wife Janet Eckert have lived immediately west of the Brill property since 1984. Tr. at 247-48. Sheri O'Neill testified that the noise from cleaning equipment sounds like a constantly running vacuum cleaner. She lives on property that abuts part of the northern end of TL Trucking and is immediately east of Robinson Crusoe Park. Tr. at 169-70, 217. O'Neill called the police at 11 p.m. and 1 a.m. because of noise from TL Trucking cleaning equipment. She testified that this type of noise commonly occurred very late at night and very early in the morning. Tr. at 21-22, 225.

In contrast to the experiences described by these residents, Brian Homans, TL Trucking's sound expert, testified that wash noises from the TL Trucking lot were inaudible off-site. Homans stated that he knew trailers were being washed because he could see it occurring. Tr. at 568.

**Metallic Sound.** Brill and most of his witnesses testified that they hear sounds like hammering on metal coming from TL Trucking. Brill testified that he has heard a huge clanging sound when watching someone slam a hatch lid shut on a trailer at TL Trucking. Tr. at 62. Oleta Brill testified that she has heard the clanking of hatches. Tr. at 24. Brill logged 37 instances of hearing what he describes as metallic noises, including nine entries reflecting the noise occurring between 4 a.m. and 7 a.m. Log at 3, 6, 7, 9, 10, 11, 12, 13, 20, 22, 23, 25, 26, 27, 32, 34, 40, 42, 43, 45, 47, 56, 58, 60, 62, 64, 70, 71, 74, 82, 83. Brill's log states that several times he witnessed workmen at TL Trucking hammering on trailers, producing what he described as noise echoing through the residential area. Log at 13, 26, 27, 32, 34, 43, 56, 60. Brill's log also refers to him hearing a high pitch metal screeching from a tractor dragging a trailer at TL Trucking (Log at 32) and a heavy pounding sound from trucks bottoming out on potholes at TL Trucking (Log at 25, 47, 71). Brill described the noise as earsplitting. Log at 56.

O'Neill has heard what she describes as a loud clanking noise at night that sounds like banging on a pipe. Tr. at 220. Nancy Gibas, who lives with O'Neill on the property abutting part of the northern edge of TL Trucking, testified that banging sounds from TL Trucking penetrate the storm windows of her second floor bedroom. Gibas testified that the noise sounds like someone is beating on the trucks with a wrench, and that she is sure TL Trucking generates the noise because she has seen the trucks from her driveway. Tr. at 169-70, 174-77.

**Coupling Tractors to Trailers.** Brill and three other witnesses testified about noise described as coming from coupling tractors to trailers. Tr. at 64, 199, 219, 250. Brill testified that, to connect, the tractors back into the trailers with enough velocity to lift the trailers. Tr. at 64. Brill's log refers to the resulting noise as a double crash, with noise from the initial contact followed by noise from the trailer falling into place. Log at 62. O'Neill testified that this connecting process creates horrendous sonic boom-like noises (Tr. at 219), which she hears day and night (Tr. at 218).

Brill logged 22 instances of what he described as noise from connecting trailers, including eight such occurrences between midnight and 7 a.m. Log at 7, 8, 10, 11, 27, 28, 29, 37, 40, 42, 44, 47, 49, 52, 56, 58, 59, 62, 72, 78, 83, 84. His log describes the noise as a loud, sudden, clanging noise, like a car crash (Log at 10, 23, 27, 52, 84), that startles him many times on a given day (Log at 23). Brill's log noted that on one occasion he heard a tractor slam into a trailer five times around 4:30 a.m. Log at 52.

**Truck Engines.** Brill and other residents testified that they are disturbed by truck engine noise from TL Trucking. Tr. at 24, 68, 261; *see also* PC5. They observed trucks park and idle their engines in the TL Trucking lot. Tr. at 68. Brill described the idling noise as a deep, monotonous drumming sound. Tr. at 61-62; Log at 12, 30, 32, 37, 62, 63. Janet Eckert testified that the idling disrupts her sleep around 5 a.m., every day. Tr. at 261. Resident Gertrude Miklasz commented that this noise occurs during late night and early morning hours. PC 5.

Brill logged many instances of hearing what he described as drivers revving their engines in a low gear when moving trucks around the lot, causing a high pitch screaming noise and thunderous roar through the residential area. Log at 5, 11, 13, 19, 21, 42, 47, 56, 59, 81, 83. Brill also logged occasions when this sound was accompanied by what he described as popping exhaust noises (Log at 16, 19, 56, 82) and one time when he heard engine noises over an air raid siren (Log at 17).

**Air Brakes.** Residents testified that they were disturbed by noise from air brakes when drivers maneuvered around the TL Trucking lot. Tr. at 24, 68, 224; *see also* PC 2. On one occasion, Brill heard a driver at TL Trucking play a tune with his air horn. Tr. at 67. Brill documented seven instances in his log of what he considered air brake noise from trucks at TL Trucking occurring between 4 a.m. and 7 a.m. Log at 5, 11, 13, 16, 19, 37, 40. Brill noted in his log that drivers use their air brakes up to six times for each trailer maneuver (Log at 13), and that trucks may make several passes when entering and exiting wash bays during early morning hours (Log at 48). Brill's log also states that he observed a truck roar forward and backward, repeatedly slamming on its brakes at 5:35 a.m. (Log at 5), and a driver moving tractors around the lot at a very fast pace, slamming on the brakes as he maneuvered (Log at 15).

**Air Horns.** The Brills and their neighbors immediately to the west, the Eckerts, testified that air horns from TL Trucking are startlingly loud and have a shattering effect. Tr. at 21, 64, 67, 257; *see also* PC2. Brill's log included at least 42 entries describing instances when he heard what he describes as air horns from TL Trucking, including: 16 verified occurrences between midnight and 7 a.m.; one 4-hour period with 20 air horn blasts; instances of drivers maneuvering trucks and using multiple blasts of air horns to get the attention of persons on-site; and a driver in a stationary truck using his air horn nine times to signal someone at 6:35 a.m. Log at 5, 6, 7, 10, 11, 12, 17, 18, 19, 27, 28, 29, 31-34, 37, 40, 42-47, 55, 56, 67, 68, 72, 78, 83, 84. Brill testified that he heard a driver play "Yankee Doodle" on his horns. Tr. at 721.

Manuel Harrah testified that he hears air horns when he is outside of his home. Tr. at 201. His property is immediately east of the Brill property, but his home is approximately one lot farther north (*i.e.*, away from TL Trucking) than is the Brill home. Tr. at 196, 198. O'Neill and Gibas, who live on property abutting part of the northern edge of TL Trucking, do not hear air horns. Tr. at 179, 224.

**Outside Phone Amplifier.** Residents often hear amplified telephone ringing. Brill believes the ringing noise emanates from TL Trucking and Janet Eckert testified that the ringing became almost constant on weekends after TL Trucking moved into the area. Tr. at 21, 156-57, 254. Oleta Brill testified that she called the police about the ringing, after which the ringing stopped. Tr. at 21. TL Trucking does not use an outside intercom or overhead public announcement system. Tr. at 689-90. However, Bruner & Lay, located west of TL Trucking, and Chicago Die Cast, located east of TL Trucking, both use them. Tr. at 689. Latoria has heard frequent ringing of Bruner & Lay's phones. *Id.* After 5:30 p.m. or 6:00 p.m., calls into TL Trucking are automatically transferred to a central dispatch. Tr. at 690.

### **Impact of Noise on Residents**

**Sleep Disturbance.** Brill and six other residents stated that TL Trucking noise disrupts their sleep. Brill testified that noise from TL Trucking has disturbed his sleep even when he has kept his windows closed and turned on his ceiling fan to dampen sound. Tr. at 68, 145; *see also* Log at 50. Brill recorded 31 dates on which he was awakened from sleep by what he described as noise from TL Trucking, including several dates on which he noted being awakened multiple times, 25 instances between midnight and 7 a.m., and the majority of these instances occurring between 2 a.m. and 5 a.m. Brill described the sources of the noise that awoke him as including engines, metallic clanging, cleaning equipment, air brakes, air horns, truck movement, and coupling trailers. Log at 2, 3, 5, 6, 7, 9, 10, 15, 16, 17, 22, 27, 28, 32, 37, 44, 49, 50, 51, 52, 53, 55, 58, 59, 63.

Brill testified about being startled awake by an air horn at 3:30 in the morning: "if you ever go through that, you will know that's something you never want to go through again." Tr. at 68. Brill noted that the air horns were loud enough to wake him even when he wore ear plugs to bed. Log at 25. Homans, TL Trucking's sound expert, testified that he has measured the sound of truck air horns at another site, and the sound would be approximately 80 A-weighted decibels (dBA) at 75 yards from the source, the distance from the Brill property to TL Trucking.<sup>1</sup> Tr. at 565.

Oleta Brill, who works from about 10 p.m. to 7:30 a.m., was awakened by what she testified to as TL Trucking noises from air horns, air brakes, revving motors, and clanking

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<sup>1</sup> The Board's numeric limits for impulsive sound emitted from an industrial property to a residential property is 56 dBA during the day and 46 dBA during the night. *See* 35 Ill. Adm. Code 901.104.

hatches on top of tankers. Tr. at 24. Richard and Janet Eckert, who live just west of the Brills, explained that noise from TL Trucking has disturbed their sleep and the sleep of a houseguest. Tr. at 260-61; PC 2. Janet Eckert testified that idling engine noise wakes her at around five a.m. every day, even though she now sleeps in a new addition to her home, which is farther away from TL Trucking. Tr. at 257, 260-61. O'Neill and Gibas, who live on a property abutting the northern edge of TL Trucking, also testified that noise from TL Trucking disrupts their sleep. Tr. at 180, 219, 224, 226. O'Neill explained that she is awakened by what she described as the sonic boom of tractors hooking up to trailers. Tr. at 219.

**Vibration.** The Brills testified that TL Trucking noise vibrates through their entire home. Tr. at 16, 61-62; *see also* Log at 5, 19, 47, 50, 55. Brill testified that the lower tones especially “seem to have a drumming effect and will actually cause glasses and things to rattle on [their] shelves.” Tr. at 62; *see also* Log at 5, 50, 59 (several instances of Brill watching glasses shake in the kitchen). Brill logged 9 instances of vibration throughout his home caused by what he believed was truck washing equipment (Log at 29, 30, 32, 38, 51, 55), and observed 7 instances of vibration from engine noise and truck movement (Log at 5, 13, 19, 30, 50, 59). Brill noted in his log that monotonous vibrations continue for hours, and make his home all but unlivable. Log at 30, 32. Janet Eckert also testified that noise from TL Trucking penetrates through her house, even with the windows closed, though the noise is somewhat dampened when she runs the air conditioner. Tr. at 251-52.

Gregory Zak, sound expert for Brill, testified that, based on testimony at hearing and sound measurements taken by Brill (discussed below), it “would make it difficult to sleep or nap with the impulsive nature of the noise present at the trucking facility.” Tr. at 310. He added that the noise would “be very penetrating to a residence of normal construction, which has been described here today.” Tr. at 311.

**Other Disruptions.** Brill and six other residents stated that noise from TL Trucking disrupts their lives. Stephen and Oleta Brill testified that the noise tremendously impacts their daily lives. Tr. at 24, 68. Oleta Brill testified that it is impossible to escape the noise from TL Trucking because it penetrates her home, and that she hates coming home sometimes because she knows it will be noisy. Tr. at 16, 25. She further testified:

Whether it is hot or cold, I have to have a window air conditioning unit running at all times either on the fan or either on the cooling because they wake me up, and its also during the day when I am up, I can't concentrate to read, watch t.v. Sometimes we have to turn the t.v. up louder, and the noise is sharp and startling too. Tr. at 24.

Oleta Brill also testified that she cannot relax in her back yard, on her deck, or on her front porch anymore because of TL Trucking noise. Tr. at 15.

Stephen Brill testified that because of noise from TL Trucking, he often does not enjoy being at home, and the areas of his home for relaxing are greatly limited. Tr. at 67-68, 151.



According to Brill's log, the front four rooms of his home are uninhabitable because of TL Trucking noise, and droning engine noise from the facility has made it impossible for him to concentrate. Log at 25, 59. Brill noted in his log that TL Trucking noise has forced him to leave his yard and go to his basement to try to avoid the noise. Log at 44. Brill stated that "there are no hours we can relax unless we leave our home or neighborhood." Log at 48; *see also* Log at 24, 33 (leaving home for forest preserve to avoid noise). On November 1, 2000, Brill stated in his log that he had to leave the house because the noise became too stressful. Log at 51.

Brill wrote in his log that the noise from TL Trucking made him feel helpless, and that the stress and depression that it caused him and his wife were beyond measure. Log at 43. He also wrote that, "[w]ith no relief from noise in over a year you feel your mind could snap at any time." Log at 42. Brill's log also states that he heard noise from TL Trucking over train whistles and jet airplanes (Log at 34, 72), his television at moderate volume (Log at 12, 53, 61, 64, 72, 75, 80), an air raid siren (Log at 17), and his operating electric lawn mower (Log at 20).

Gibas and O'Neill, who live next to TL Trucking, testified that noise from the facility was constant, though less pronounced on Sunday afternoons. Tr. at 181, 224. Though O'Neill still uses her deck and pool and entertains at her home, she testified that she constantly notices noise from TL Trucking and that the noise disrupts any attempts to quietly relax after work and on weekends. Tr. at 226-28, 231-32, 241. Janet Eckert, who lives just west of the Brills with her husband Richard Eckert, testified that air horns used at TL Trucking are startlingly loud. Tr. at 257, 261. Richard Eckert stated that when he is at home, he cannot escape the disturbances from TL Trucking's noise. PC 2. Resident Gertrude Miklasz stated that noise from TL Trucking is constant and prohibits her from opening her windows, and disturbs her during late night and morning hours. PC 5. Noise from TL Trucking does not disrupt the life of Manuel Harrah, whose property is immediately east of the Brill property. Tr. at 207. However, Harrah's home is located on the northern end of a double lot, and is therefore farther away from TL Trucking than is the Brill home. Tr. at 208.

### **Noise from Surrounding Area**

TL Trucking's witnesses testified that the residential area is filled with loud noise from trains and airplanes, as well as from industrial sites like Bruner & Lay, which uses a drop forge and is west of TL Trucking. Brill and other residents, however, stated that the residential area had been a quiet neighborhood until TL Trucking arrived.

**TL Trucking's Witnesses.** TL Trucking's witnesses described the area in which Brill lives as a "pocket" in an industrial area. Tr. at 402, 524, 600. Donald Stumbris, a zoning administrator for the Village of Franklin Park, testified that there is noise all around King Street, on which TL Trucking and other industrial operations are located. Tr. at 432-33. Latoria, the owner of TL Trucking, testified that he often hears noise from airplanes and trains when he is at TL Trucking, including one occasion of train whistles blowing for over 20

consecutive minutes. Tr. at 691. In a video of the TL Trucking facility, Latoria commented that the wash equipment, when used behind closed bay doors, was barely audible from Brill's property line. Resp. Exh. at 52. No trucks appeared to be idling or moving on the video, and Latoria did not state whether any cleaning equipment was in use. *Id.*

Homans, TL Trucking's sound expert, testified that there was so much noise in the area, including noise from airplanes and trains, that it was difficult for him to identify all of the sounds when he took noise measurements. Tr. at 497-99; Resp. Exh. 1 at 6, 11. He further testified that there "was a great deal of industry in the area and certainly other trucks were arriving to other businesses in the area." *Id.* He estimated that he heard trains about 15 times during the two hours in which he took sound measurements. Tr. at 499.

Mark Kenneth White lives eight lots west of TL Trucking and a little more than one half block west of the Brill property. Tr. at 579-81, 591. White testified that he that does not hear noise specifically from TL Trucking, such as from trailer coupling, slamming trailer hatches, or washing trailers. Tr. at 592-93. He added that he hears noise from trains, airplanes, and other industry in the area. Tr. at 584. The main railroad trunk is about 300 feet west of his home. He testified that train noise, such as whistles and air brakes, is loud and starts at about 5 a.m. Tr. at 585-86. He testified that he hears airplanes fly over approximately every 45 seconds, but the planes are much higher up than they used to be. Tr. at 587. White testified that he hears noise from Bruner & Lay, which uses a drop forge and is closer to his home than is TL Trucking, but that noise stops when Bruner & Lay closes at 3:00 p.m. Tr. at 585.

White further testified that sounds from TL Trucking could be blocked by a large brick wall of the Vernon lights factory, which is adjacent to his property. The wall is between his home and the industries on King Street, including TL Trucking. Tr. at 590-91. There are also eight houses between the White property and TL Trucking. Tr. at 591.

Robert Rasmussen lives approximately five lots west of TL Trucking, on the south side of Crescent Drive. Tr. at 597; Comp. Exh. 2. Rasmussen testified that he hears washing, banging, and repair work from TL Trucking, but it does not bother him much. Tr. at 603. He testified that he is much more aggravated by banging noise from Bruner & Lay, which he said causes his house to vibrate, but that the noise stops at 3 p.m. Tr. at 599. Tr. at 599, 604. Rasmussen also testified that noise from airplanes and nearby trains is much louder than that produced by TL Trucking. Tr. at 602. Rasmussen's lot is about one half block closer to the train tracks than is Brill's property. Comp. Exh. 2. There is a roughly 20 foot high brick structure to the south of Rasmussen's property, between his property and TL Trucking. Tr. at 605-06. Rasmussen has lost 30% of his hearing. Tr. at 607.

Two TL Trucking witnesses described the residential area as a quiet neighborhood. Dan Fisher, field supervisor for the Franklin Park Building Department, testified that the general noise level of the residential area is quiet, even with all of the industry in the area. Tr. at 446. Strumbis, a Franklin Park zoning administrator, testified that he drove by the

residential area a week before the November 14, 2001 hearing, and found it to be pretty quiet. Tr. at 415.

**Brill's Witnesses.** Brill testified that he lives in an old established residential neighborhood that had minimal noise levels until TL Trucking arrived. Tr. at 58, 60. Brill, who has lived in his Crescent Street home since about 1965, testified that before TL Trucking moved in, he occasionally heard thunderstorms, emergency vehicles, and dogs barking, but those noises did not disturb him. Tr. at 70. According to Brill, he used to sit on his front porch and talk with neighbors, activities in which Brill no longer engages because of TL Trucking noise. Tr. at 61. Since Brill purchased his home, there have been many industrial facilities on King Street. Tr. at 126-27. Brill would occasionally hear them, but the noise only rarely disturbed him, primarily because those facilities operated only eight hours during the day and were usually closed on weekends. Tr. at 64.

Brill testified that he hears train whistles from his home, but that the noise is not as startling as air horns from a closer distance. Tr. at 143. Brill asked TL Trucking's noise expert, Homans, to compare the sound of an air horn at 225 feet, the distance from Brill's lot to TL Trucking, with the sound of a train whistle from several blocks away with intervening buildings and trees. Homans testified that the air horn was more likely to startle or wake someone. Tr. at 565.

The testimony of several nearby residents provided a view of the residential area and surrounding noise similar to Brill. They testified that the residential area was quiet and peaceful for years until TL Trucking arrived. Noise from other industrial operations along King Street did not bother them. Tr. at 19, 172, 197, 217, 221, 248, 265. Residents testified that sounds from passing trains and airplanes do not bother them they are gradual and fade away, in contrast to the startling abrupt noise they believe come from TL Trucking. Tr. at 36-37, 172, 184, 227-28, 263, 273.

Residents testified that the type, severity, and timing of noise changed significantly when TL Trucking moved to 9200 King Street. Tr. at 15, 20, 64, 178, 221, 254. They testified that they rarely heard noise from prior operations at the lot. Tr. at 19, 178, 221, 254. Oleta Brill testified that noise from the lot increased when TL Trucking began operating. She testified that the former salvage yard at that site only operated roughly 8 hours a day, and only on weekdays. Tr. at 19-20, 40. Brill testified that "noise from that area accelerated to longer durations, stronger impulses and more of a startling nature because most everything they do at TL Trucking is instantaneous." Tr. at 64.

O'Neill, who lives on a property abutting the northern end of TL Trucking, testified that she never heard the "booms, the banging, [or] the winding of the cleaner" before TL Trucking. Tr. at 221. Eckert, who lives immediately west of the Brills, knew when she bought her home in 1984 that King Street hosted industrial companies and that different industries could locate there. However, she testified that it was only when TL Trucking moved in that she began to hear air horns, air brakes, and trailers hooking up. Tr. at 254,

265. Eckert also testified that she has worked at two locations on King Street in the last 18 to 20 months, and that TL Trucking is the noisiest of the operations along that street. Tr. at 263.

### **TL Trucking Efforts to Reduce Noise**

In response to resident complaints and requests from police and city officials, TL Trucking developed several policies to try to reduce its noise emissions. Tr. at 396, 687, 717. Latoria, the owner of TL Trucking, testified that during the 70 hours he spends at the site each week, he enforces the noise policies. When he is not on-site, a superintendent and two other foremen enforce the noise policies, according to Latoria. Tr. at 712. Brill testified that TL Trucking's noise policies are largely unenforced or ineffective.

**Air Horns.** Latoria testified that TL Trucking's noise policy allows drivers to use air horns only in emergencies to warn of a potential accident. Tr. at 672. A sign at TL Trucking posted on the driver's cafeteria door states in part:

Notice

All Employees

Being located in a semi-residential area, we must always be aware of any excessive noise that may affect the lives of the families living around us.  
PLEASE . . . do not blow air horns while on the lot. Resp. Exh. 6.

Someone crossed out the word "not" on the sign, so that it read "PLEASE . . . do blow air horns while on the lot." Resp. at Exh. 6; Tr. at 720. Latoria also testified that he had air horn signs on the facility's front gate and side fences, but he tore down the gate and fences about a year before the November hearing date. Tr. at 720. Latoria claimed that he plans to repost the signs when the new gate and fencing is installed. *Id.*

Latoria talks with his drivers about the protocol for entering the facility. Tr. at 674. He testified that to enter a wash bay, his policy requires a driver to pull into the yard, park the truck, and walk to the front of the building and through two offices to the dispatch. Tr. at 689. Latoria testified that this is the usual procedure. Tr. at 689. When a worker wants to contact Latoria outside, he is supposed to call Latoria on his cell phone. Tr. at 690.

Brill stated in his log that drivers at TL Trucking are not following the policy on how to use air horns, and instead are blasting them to request access to the wash bays. Log at 5, 11, 32, 68, 83. Brill recorded in his log that he was disturbed by air horns from TL Trucking on 41 different occasions. Brill stated that he observed a truck blast its air horn, a bay door open in response, and the truck move inside. Log at 5. His log notes that no other trucks were moving in the yard. *Id.* As noted, Brill testified that he heard a driver play "Yankee Doodle" on his horns. Tr. at 67, 721.

**Speed Limit.** The speed limit on the TL Trucking lot is 5 mph. However, the speed limit sign on the front gate and side fencing was removed as part of the gate and fence replacement noted above. Tr. at 629, 720. Latoria testified that if TL Trucking finds a driver shifting above second gear, which allows the truck to move up to 10 mph, TL Trucking reprimands the driver. Tr. at 629. He further testified that he recently fired an employee for driving in this manner, but that such driving is not a common occurrence. Tr. at 691. Brill, however, noted in his log many instances of drivers revving their engines (Log at 19, 56, 81), and driving fast around the lot (Log at 5, 15, 21, 30, 31, 36).

**Cleaning and Maintenance.** Latoria stated that he is willing to continue working with drivers to keep the three bay doors closed during trailer washing. Tr. at 703. Latoria testified that TL Trucking cannot wash trailers outside of the bays. He explained that the washing machines, referred to as spinners, cannot reach out of the bays. Tr. at 715. Latoria, at the request of the Franklin Park Building Commissioner, moved a compressor indoors that had been used outside. It is unclear whether TL Trucking has moved the compressor into an enclosed room yet, but if it has not, it plans to do so. Tr. at 616, 687. Latoria testified that TL Trucking performs preventive maintenance at the front of the property, not in the back toward the residential area. Tr. at 619, 692. Latoria claimed that he was not responsible for any maintenance activity on the site. Tr. at 713, 715. Stumbris, zoning administrator for Franklin Park, testified that TL Trucking was told that servicing or washing trucks outside of its building would violate the Franklin Park zoning code. Tr. at 422; *see also* Resp. Exh. 3.

Brill noted in his log that TL Trucking bay doors were open during washing on at least 23 occasions. Log at 6, 7, 13, 15, 17, 18, 22, 26, 27, 29, 30, 31, 32, 33, 55, 63, 72, 81, 83. Brill recorded that on March 28, 2001, he asked a TL Trucking employee why the facility was washing with two bay doors open. Brill wrote that the employee stated the door could not be closed because it was broken, and that TL Trucking was allowed to make noise during business hours. Log at 83. Brill also testified that he observed TL Trucking wash tractors outdoors, and that the spray from washing activities came over the park. Tr. at 67. Eckert, who lives immediately west of the Brill property, testified that she observed clouds coming from a wash bay. Tr. at 259.

**Trailer Coupling.** Latoria testified that recently trucks have had to hit trailers pretty hard to connect because the ground at TL Trucking is not level. Tr. at 692. Latoria expects coupling to be quieter when he finishes paving the lot. Tr. at 693. Currently, according to Latoria, a driver still can make a hook up quieter by first reducing the truck's air suspension to lower it four to six inches, backing the truck underneath the trailer, and then increasing the air suspension to raise the truck so as to couple with the trailer. Tr. at 693.

**Air Brakes.** Latoria admitted that air brakes are often used at TL Trucking, and that they should not be on at that point. Latoria testified that when air brakes are used, TL Trucking reprimands the driver, which occurs on a daily basis. Tr. at 688.

**Engine Idling.** TL Trucking has a sign on the drivers' cafeteria door stating: "if your [sic] going to be here over 5 minutes, shut your engine off, it's the neighborly thing to do!" Resp. Exh. 6. Stumbris, a Franklin Park zoning administrator, testified that idling vehicles at TL Trucking must be limited to the front of the lot, *i.e.*, on the south side of the building, near King Street. Tr. at 396. Latoria stated that trucks had previously idled at 900 rpm in the lot to heat the sleeper births when drivers slept on-site. Tr. at 673. Latoria testified that, in the six months before the November 2001 hearing, drivers were notified that they must now park in the front of the lot or down the street. *Id.* Latoria also explained that every truck in the TL Trucking fleet will automatically shut off its ignition if the driver is away from the vehicle over five minutes. Tr. at 673. Brill made numerous log entries about noise from engines idling, but his log ended approximately eight months before hearing.

### **Sound Measurements**

At or near Brill's residence, both parties measured sound from TL Trucking and the surrounding area.

**Brill's Measurements.** As advised by his sound expert, Greg Zak, Brill used a Radio Shack sound level meter to measure noise from TL Trucking. Brill read the device's operating instructions, which he described as simple. Tr. at 82, 89. Zak also instructed Brill on how to use the sound meter. Tr. at 340. Zak advised Brill that, if the wind speed was over 12 mph, the needle on the meter would fluctuate without any corresponding activity at the facility, and those conditions would mean it was too windy to measure TL Trucking noise. Tr. at 341. Zak also instructed Brill to measure noise emissions only from TL Trucking. Tr. at 342. He instructed Brill to stop measuring if there was an extraneous noise, such as noise from an airplane, and to continue only when the extraneous noise stopped. Tr. at 342-43.

Zak typically recommends this kind of sound meter to complainants who want to know whether noise they hear might exceed Board standards. Tr. at 299. Zak calibrated Brill's sound meter on the day of the hearing, and found that it was calibrated correctly. Tr. at 338. Zak did not calibrate the meter at the time that Brill measured sound. Tr. at 340. However, Zak has used the same type of meter for 20 years, and found that it holds its calibration, *i.e.*, it does not drift. Tr. at 299, 339. Zak stated that "[t]he accuracy is normally within one decibel or less of a precision American National Standards Institute (ANSI) meter." Tr. at 299. Zak stated that, although this is typical, he has previously seen an error of two decibels. Tr. at 337. Zak testified that there is very little likelihood that the calibration of Brill's sound meter would change over time. Tr. at 300.

Brill used his sound meter to measure noise from the following sources at TL Trucking: cleaning equipment or spinners, air brakes, hammering on metal, engine noise, coupling trailers, a load transfer, and other noises at the site. Comp. Exh. 16. Brill set his sound meter to measure "A-weighted" decibels (dBA) with "slow response." He measured sound from TL Trucking that ranged from 52 to 74 dBA. Comp. Exh. 16. He measured spinner noise from 56 to 66 dBA, engine noise from 61 to 64 dBA, and trailer-coupling noise at 74 dBA. *Id.* He

measured TL Trucking noise from his house's doorway at 52 to 58 dBA. *Id.* Brill also measured sound using "C-weighted" decibels (dBC) with "fast response." These measurements of TL Trucking noise ranged from 58 to 84 dBC at Brill's property: noise at 56 to 60 dBC in his home was 78 to 82 dBC outdoors; hammering sound was 56 dBC in his home and 78 dBC outdoors; and noise from cleaning equipment ranged from 72 to 78 dBC. Brill measured air horn noise at 96 dBC in Robinson Crusoe Park. He also measured sound from an airplane overhead at 55 dBC. Comp. Exh. 16. Brill did not list in his log the wind speed or weather conditions for any of his measurements. Tr. at 342.

**Homans' Concerns About Brill's Sound Measurements.** Homans, the noise expert for TL Trucking, questioned whether Brill's sound measurements were accurate. Homans expressed concern over survey grade sound meters, such as the Radio Shack sound meter, and how Brill used his sound meter. First, Homans testified that the Radio Shack sound meter is not equipped with a windscreen or an overload indicator to tell the user of the presence of extraneous noise (like the brief sound of a train whistle). Tr. at 479-80, 486. He testified that the effect of extraneous noise is not easily observed on these sound meters (*e.g.*, the needle swinging all the way to the right), and could overload the meter, producing unreliable results. Tr. at 480. Second, Homans testified that the readings of low frequency sound taken with survey grade meters deviate from those taken with an ANSI Type I or precision instrument by greater than three decibels. Tr. at 482, 510. Third, Homans testified that the sound meter used by Brill lacked the type of microphone that would allow the user's aim to be a little off from the noise source and minimize extraneous noises. Tr. at 482-84. Fourth, Homans testified that one calibration reading at one time does not confirm that all readings are accurate. Tr. at 485. He explained that temperature can cause variation in electric microphones and that someone calibrating the instrument indoors would not see that variation. Tr. at 485.

Homans testified that using a sound meter at the face of a house could increase readings by three decibels because the structure can reflect noise. Tr. at 511-12. Homans testified that if Brill took readings on his front steps, his results could be inflated by noise that reflected off his home. Tr. at 512. Homans also testified that Board regulations for determining compliance with numeric noise standards require sound measurements to be taken for one hour and to be corrected for ambient noise, *i.e.*, background noise that is not produced by the noise source. Tr. at 487-88, 498, 502, 514. Homans explained that he subtracts the ambient noise level, measured when the noise source at issue is silent, from the noise level when the noise source is active. Tr. at 499. Correcting for ambient noise works only when the noise source and ambient noise differ by at least 3 decibels. Tr. at 499.

**TL Trucking's Concerns About Brill's Sound Measurements.** TL Trucking also challenged Brill's background knowledge and methods for reading sound measurements. Brill agreed on cross-examination that he fiddled with the Radio Shack sound meter until he got a read that he liked. Tr. at 83. He stated that he was unfamiliar with Board regulations on protocol for sound testing. *Id.* He could not differentiate between ambient and extraneous noise, and did not know technically how weather affected sound readings. Tr. at 85-86.

Although Brill took measurements of other noise in the area, he was not sure if he documented them in his log. Tr. at 86.

**Zak's Opinion of the Type and Severity of TL Trucking Noise.** Zak testified on the issue of nuisance noise, and not on the Board's numeric noise standards. Tr. at 289. In Zak's opinion, there is a noise problem in the neighborhood. Tr. at 321. Zak testified that the sound measurements recorded by Brill "are typical of the levels that normally would result in a significant amount of interference . . ." with sleeping, listening to television, normal conversation, and using Brill's backyard. Tr. at 309-10. Zak's main concern, after reading the sound measurements and hearing all of the testimony, was with "the impulsive nature of much of the noise [from TL Trucking], which would make it difficult to sleep or nap . . . ." Tr. at 310. Zak testified that the dBC levels measured were quite high, indicating that the "noise would be very penetrating to a residence of normal construction . . ." Tr. at 311. Zak explained that it is not unusual for people to perceive noise differently, but that when several witnesses are similarly bothered by the same noise source, it indicates that there is a noise problem. Tr. at 355-56.

**TL Trucking's Measurements.** Homans measured sound on behalf of TL Trucking. Homans testified that he adhered to Board regulations when taking sound measurements. Tr. at 476. Homans used a Type I ANSI spectrum analyzer, which simultaneously measures sound at several frequencies or octave bands. *Id.* His sound meter was tripod-mounted and equipped with a wind shield and overload indicator. Tr. at 480-81, 491; Resp. Exh. 1 at 2. Homans set up his meter at the curb of Brill's residence, from which TL Trucking was visible. Tr. at 490; Resp. Exh. 1 at 2.

Homans's "analyzer was programmed for one-third octave band filtering, linear repeat averaging with an average time of 30 seconds." Resp. Exh. 1 at 2. During sound measurement, winds were calm, there was no rain, and the streets were dry. Resp. Exh. 1 at 2, Tr. at 526. Homans kept a log of all activities during sound monitoring at 30-second intervals, corresponding to the sampling time. Tr. at 496; Exh. 1 at 2, Table 3. Homans testified that the log helped him identify TL Trucking noise, extraneous sounds (*e.g.*, instances of sounds from airplanes, trains, street traffic), and ambient noise (general long-term background noise in the area). Tr. at 496, 501-02.

Homans identified 30-second periods as extraneous if they included audible events that were not due to TL Trucking. Tr. at 498; Resp. Exh. 1 at 3. He rejected 46% of his measurements because of extraneous events, a very high rejection rate, indicating that much of the noise in the area was from sources other than TL Trucking, according to Homans. Tr. at 504, 545; Resp. Exh. 1 at 3. Homans identified 30-second periods that did not include noise from TL Trucking as ambient noise. Resp. Exh. 1 at 3. Homans testified that he could not correct for ambient noise because the difference between ambient noise and TL Trucking noise was less than three dB at each frequency. Tr. at 505; Resp. Exh. 1 at 3. He noted that under Board regulations, when the difference between the sound level of a facility and the ambient



noise is three dB or less at any frequency, the sound level from the facility is equal to or less than the ambient noise at that frequency. Resp. Exh. 1 at 3.

Homans measured sound from 5:06 a.m. to 7:00 a.m. on Friday, August 31, 2001. Tr. at 490; Resp. Exh. 1 at 2. He chose the timeframe because Latoria told him that most complaints were received in the early morning hours. Tr. at 490. Latoria did not specify a date on which Homans should measure. Tr. at 679. Homans heard engine idling and revving, truck movement, cleaning equipment, trailer coupling, metallic noises, propeller and jet airplanes, and trains. *Id.* TL Trucking washed a dry trailer from 3:10 a.m. to 5:10 a.m., a wet trailer from 5:45 a.m. to 6:15 a.m, and another wet trailer from 5:40 a.m. to 6:29 a.m. Tr. at 679-80, 683-86; Resp. Exh. 66. Latoria testified that TL Trucking washes approximately 18 trailers in an average 24-hour period (Tr. at 684), though he had previously testified that TL Trucking washes about six times that many trailers (*i.e.*, 100 to 125 trailers per 24-hour period) during a busy season (Tr. at 671).

Homans averaged the sound data to arrive at these results:

	# of 30 Second Measuring Periods	Octave Band Center Frequency (Hertz)								
		31.5	63	125	250	500	1000	2000	4000	8000
TL Trucking Noise	120	63 dB	63.6 dB	59.9 dB	52.6 dB	45.2 dB	42.7 dB	38.6 dB	40 dB	32.8 dB
Ambient Noise	34	61.4 dB	63.3 dB	59.6 dB	52.1 dB	44.6 dB	41.9 dB	37.1 dB	40 dB	32.8 dB
Difference Between TL Trucking & Ambient Noise		1.6 dB	0.3 dB	0.3 dB	0.5 dB	0.6 dB	0.8 dB	1.5 dB	0 dB	0 dB
Board Nighttime Numeric Limits— Class C Land Emitting to Class A Land		69 dB	67 dB	62 dB	54 dB	47 dB	41 dB	36 dB	32 dB	32 dB
Extraneous Noise	105	64.7 dB	66.3 dB	63.4 dB	58.4 dB	54.5 dB	49.9 dB	44.9 dB	41.6 dB	35.3 dB

Homans heard a clanging noise once or twice from the wash bays, but did not hear anyone slamming a metal lid near TL Trucking's northern fence. Tr. at 540-41. Homans conceded that slamming lids close to the fence would be much louder in the residential area

than if the slamming took place inside a wash bay with its door closed. Tr. at 541. Homans also did not hear power blowers used in material transfers near the north fence or air horns when he took his measurements. Tr. at 541.

**Zak's Concerns About Homans' Sound Measurements.** Zak questioned whether the activity occurring at TL Trucking when Homans took his measurements was representative of normal operations. Tr. at 324-25, 348. Zak testified that, in his 30 years of experience, "an industrial noise source will do everything they can when the consultant is there to minimize the noise." Tr. at 349. He further testified that, when he worked for the Illinois Environmental Protection Agency, noise levels would drop dramatically when employees of the noise source being monitored saw him. Tr. at 351-52. Homans testified that he did not give TL Trucking advanced warning as to when he would take his measurements. Tr. at 572. However, he said that TL Trucking staff could have seen him, especially when he set up his equipment. Tr. at 544, 564. Homans doubted that he was spotted because a TL Trucking employee was playing loud music in one of the trucks during his measurements. Tr. at 544.

### **Brill's Proposed Noise Abatement Remedies**

**Zak's Suggestions.** Zak opined that a sound barrier wall along the northern edge of TL Trucking would be technically feasible and solve 80% of the problem noise from TL Trucking. Tr. at 319, 323. Zak testified that sound barriers are effective in dampening noise and are the most commonly used noise abatement measure. Tr. at 312-13, 317, 319. Zak specified that the barrier must be airtight to avoid noise leakage. Tr. at 312. According to Zak, TL Trucking could install a barrier wall made of any material that weighed three to four pounds per square foot. Tr. at 316. Zak added that a wall made of wood or corrugated steel would be effective and inexpensive. Tr. at 315-17.

Zak testified that the sound barrier wall must be tall enough to break the line of sight between the noise source and the highest occupied point in Brill's home. Tr. at 318. Zak further testified that the barrier must run 170 feet along the northern boundary of TL Trucking, and would need to be a maximum of 23 feet high for a short distance. Tr. at 312-13, 317. If Franklin Park restricts the height of the sound barrier wall, Zak suggested that TL Trucking could construct a soil berm underneath it to allow an 8-foot wall. Tr. at 314. Zak testified that, in the last 29 years, he has not heard of any situation in which local zoning made it impossible to institute noise control measures. Tr. at 314-15. Zak added that TL Trucking also could abate noise by installing a carport-like structure along the northern edge of the lot or extending the wash bays to accommodate both the tractor and the trailer. Tr. at 315, 318, 324. Extending the bays would eliminate noise from coupling trailers. Tr. at 324.

**TL Trucking's Response to Zak's Suggestions.** Though Homans also recommends building a sound barrier wall, he said that it would have limited effectiveness. Tr. at 556, Resp. Exh. 1 at 4-5. Homans stated that barriers are more effective when they are very close to either the noise source or the property receiving the noise. Tr. at 517, 522; Resp. Exh. 1 at 4. Because Zak's suggested sound barrier wall would be roughly midway between much of

TL Trucking's operations and the Brill property, Homans testified that the wall could not perform optimally. Tr. at 517.

Homans analyzed the effectiveness of an 8-foot tall, sealed sound barrier made of material weighing three pounds per foot. Tr. at ; Resp. Exh. 1 at 4-5. Homans said he chose this height because Franklin Park restricts fence height to eight feet. Tr. at 517; Resp. Exh. 1 at 4. Homans testified that an 8-foot fence would reduce noise from TL Trucking by up to 5 decibels. Tr. at 548. Homans wrote that it would only reduce noise from coupling and uncoupling trailers at the north end of the TL Trucking lot. Resp. Exh. 1 at 4. He stated that the stack on a tractor is a primary noise source, and the stack height exceeds the height of an 8-foot wall. Tr. at 548. An 8-foot wall also would not dampen noise from TL Trucking washing equipment, according to Homans. Resp. Exh. 1 at 5. If the sound barrier wall were 14-foot high, Homans testified that it would reduce more sound at lower frequencies than the 8-foot wall. Tr. at 548. However, Homans testified that a 14-foot wall would obstruct the fire and police departments' view of the site. Tr. at 520; *see also* Tr. at 413-14. Homans testified that a continuous carport-like structure of adequate size along the northern edge of TL Trucking would similarly mitigate noise. Tr. at 557.

Latoria testified that the sound barrier wall Zak suggested is cost prohibitive and not technically feasible. Tr. at 701. He testified that constructing the wall would require TL Trucking to tear up recently-laid concrete. Tr. at 702. Latoria further testified that in order to account for the effects of wind against the wall, TL Trucking would have to place into the ground foundational reinforcements that would be one half to two times the height of the wall. Tr. at 701. Even so, Latoria expressed concern that a wall of the dimensions suggested by Zak would still blow over into Robinson Crusoe Park. Tr. at 702.

Latoria testified that it was not feasible to build either a soil berm or carport-like structure along the northern edge of TL Trucking as Zak suggested. Latoria testified that with the structures, TL Trucking could not operate at the site because the trucks would not have adequate space to maneuver. Tr. at 628. Latoria stated that, when TL Trucking paved a strip along the northern fence with 6,000 square feet of concrete, it had to temporarily relocate 25 trailers. Tr. at 628. Homans testified that TL Trucking would need 40 feet to build a six-foot berm. Tr. at 507. According to Latoria, the berm would eliminate 35% of TL Trucking's trailer parking capacity, which would require TL Trucking to move from the site. Tr. at 695, 702.

Latoria also testified that it was impossible to extend the wash bays as Zak suggested because it would violate protocol for cleaning trailers. Tr. at 693-94. This protocol was established to prevent soot or diesel fumes from contaminating the wash bay when sterilizing a food carrier. Tr. at 694. The protocol also does not allow drivers in wash bays. *Id.*

### **TL Trucking's Noise Abatement Alternatives**

Homans made four recommendations to reduce mid and high frequency noise from TL Trucking. First, he suggested that TL Trucking keep its wash bay doors closed while washing and drying trailers to reduce noise from “the water pump [spinner], blower, water spray on the tank interior and tank hatches.” Tr. at 515-16; Resp. Exh. 1 at 4. He added that closing the bay doors “would require unhooking the tractor from the liquid or dry bulk tanks for every wash.” Resp. Exh. 1 at 4. Homans testified that if noise travels between the wash bays, then all bay doors should be closed when any bay is used. Tr. at 549. Homans recommended that TL Trucking find a way, other than leaving bay doors open, to ventilate the bays, such as a fan. Tr. at 551. Homans warned that closing bay doors would not reduce low frequency sound caused primarily by truck engines. Tr. at 547.

Second, Homans recommended that TL Trucking enclose spinners and blowers, and move the blowers away from their current locations next to the wash bay doors. Tr. at 516; Resp. Exh. 1 at 4. Third, Homans suggested that employees not play radios in their trucks or other vehicles in the TL Trucking lot. *Id.* Fourth, Homans recommended that TL Trucking install a sound barrier wall along the northern edge of its property, while opining on its limited effectiveness:

Acoustical barriers function best when they are close to either the noise source or receiver. As the source or receiver becomes more distant from the barrier, acoustical diffraction (bending of sound waves) by the top of the barrier diminishes the effectiveness of the barrier.

\* \* \*

A wall would not likely attenuate activities to the south, including washing and drying. Resp. Exh. 1 at 4-5; *see also* Tr. at 556.

### **Dust and Diesel Exhaust**

#### **Nature and Frequency of Disturbances**

Brill and several other residents stated that dust and diesel exhaust fumes from TL Trucking roll through Robinson Crusoe Park and onto their properties. Tr. at 16, 17, 26, 63, 174, 200, 217-18, 220, 257; PC 4, PC 5. Oleta and Stephen Brill stated that they could smell and taste dust, even inside their home. Tr. at 24; Log at 32, 41. Brill testified that the dust settled so frequently that it was difficult to paint his house. Tr. at 69. He wrote that his brown windowsills were gray with dust within a couple days. Log at 36. Oleta Brill testified that dust covers her garden and that she cannot keep her home’s windows clean because the dust immediately accumulates after cleaning. Tr. at 25, 49. She also has to wash her car windows before going to work at night. *Id.*

Residents complained that dust landed both on and inside their cars, homes, garages, and personal effects. Tr. at 24, 180, 200, 204, 249, 252; PC 3. Eckert, who lives immediately west of the Brill property, testified that dust coated items that had been cleaned and stored in her garage two days earlier. Tr. at 252. Drema Harrah, who lives immediately

east of the Brills, commented that, if she washes her truck in the morning, dust covers it by afternoon, and that she can write her name in the dust. PC 2.

Stephen and Oleta Brill testified that trucks create dust when driving across the TL Trucking crushed stone lot. Tr. at 17, 34, 63, 129. Brill provided photographs of dust rising from trucks on the TL Trucking lot. Comp. Exh. 21, 25. Stephen and Oleta Brill testified that they observed wind carry clouds of dust from the trucks across their neighborhood. Tr. at 17, 63. Brill wrote that, on one occasion, a truck quickly moved back and forth on the lot until the dust generated nearly obscured his view of the truck. Log at 5.

Residents also testified that wind carries mist or spray from the TL wash equipment into their neighborhood. Tr. at 23, 66-67, 259-60; Log at 28; PC 5. They alleged that the spray emanates from the wash bays (Tr. at 23), and from tractors washed outside on the lot (Tr. at 66-67). Brill wrote that he saw a power sprayer blast road dust high into the air, which was carried by a breeze into the park. Log at 26. Eckert testified that she watched clouds of material puff out of the top of a TL Trucking wash bay, and assumed that a power washer or cleaning device was blowing out dust, grit, or whatever else was inside. Tr. at 259-60. When asked what the material was, Latoria responded that it was probably steam from the high temperature water used in the cleaning process. Tr. at 715.

Residents stated that trucks idling at or moving across TL Trucking create a strong smell of diesel exhaust fumes in the residential area, both outdoors and inside homes. Tr. at 16, 52, 63, 171, 173-74, 202-03, 217-219; Log at 63, 71; PC 2, PC 5. Miklasz wrote that “there are times that the entire playground and surrounding neighborhood is engulfed in dust and fuel fumes.” PC 5; *see also* PC4 (O’Neill). Gibas, who lives on property abutting the northern end of TL Trucking, testified that, in the colder months, the diesel exhaust fumes get worse and her driveway smells like fuel. Tr. at 173. Brill wrote that he has smelled diesel exhaust fumes in his living room. Stephen and Oleta Brill stated that they observed the blue haze of diesel exhaust drift from the stacks of idling trucks to their property. Tr. at 16, 63; Log at 43, 71.

O’Neill, Eckert, and Brill stated that they observed dust clouds or a “fog” from TL Trucking that blew into Robinson Crusoe Park. Tr. at 220, 257; Log at 26. Eckert and Miklasz stated that they saw a dust cloud or fog hang over the park. Tr. at 257; PC 5. O’Neill, who lives on property abutting the northern end of TL Trucking and immediately east of the park, stated that the dust has been so thick that she cannot see across the park. She added that the dust has caused kids to run out of the park and that sometimes it seems like a blanket of diesel fuel exhaust is covering her back yard and the park. Tr. at 220, 234; PC 4.

Residents stated that they cannot get away from the dust and the smell of diesel exhaust fumes. Tr. at 198; PC 2. They testified that it is difficult to breathe. Tr. at 24, 180, 203. Manuel Harrah, who has lived immediately east of the Brill property for 29 years, testified that the excessive dust exacerbates his asthma and allergies, that he cannot spend time outside. He stated that if he sleeps with the window open, he wakes with dust all over him and his bed.

Tr. at 202-03. Other residents also stated that they cannot open their windows. Tr. at 16, 24, 144, 20; PC 2.

Residents stated that the dust and exhaust fumes limit the use of their decks, front porches, and yards. Tr. at 15, 61, 249, PC 4. Oleta Brill testified that she can no longer enjoy gardening. Tr. at 49. Brill testified that he does not cook outdoors when the wind is from the south because the diesel exhaust fumes ruin his appetite. Tr. at 60. O'Neill testified that she cooks outside a couple times a week, and entertains once a week during the summer. Tr. at 231-32. However, she said that because of the diesel exhaust fumes, she stopped jogging in the area and instead joined a health club. Tr. at 26. Although Gibas will bring her grandchildren to Robinson Crusoe Park (Tr. at 184-85), O'Neill avoids it and instead drives the children to other parks in the area (Tr. at 218). Latoria testified, however, that over a three-week period, he saw children in Robinson Crusoe Park constantly. Tr. at 725.

### **Other Sources of Dust and Diesel Exhaust**

Stumbris, a Franklin Park zoning administrator, testified that there is dust and exhaust around all of King Street. Tr. at 432-33. Latoria testified that TL Trucking generates only part of the dust that settles on the residential area. TL Trucking alleged that the dust mainly comes from other industries in the area, construction on River Road, and general truck traffic.

Brill and other residents acknowledged that other industries use tractor-trailers (Tr. at 131, 191), and that they did not know whether all of the surrounding lots were paved (Tr. at 129, 209). Manuel Harrah and O'Neill, however, testified that most of the lots along King Street are paved. Tr. at 209, 236. Residents could not state with certainty that other industries did not contribute to the dust, or give a percentage of dust attributable to TL Trucking. Tr. at 210, 129-30, 269. Gibas, who has lived on the property abutting the northern end TL Trucking since 1976, testified that the dust was not completely created by TL Trucking, but that it added to the problem. Tr. at 191-92. Brill testified that dust from other sources probably mixed with dust from TL Trucking, but that TL Trucking created most of the dust. Tr. at 69, 130.

Residents stated that they knew TL Trucking produced a lot of the dust and diesel exhaust fumes because they observed activity on the lot producing this effect (Tr. at 16, 17, 63, 129-30, 200, 220, 259-60; PC5; Log at 5, 18, 28, 31, 36, 39, 48), and the dust and fumes have increased in the area since TL Trucking arrived (Tr. at 60, 201, 221, 263; PC2). Oleta Brill stated that she did not experience the dust or diesel exhaust fumes before TL Trucking began operating there. Tr. at 26. Brill testified that he has experienced a lot of dust and diesel exhaust fumes since TL Trucking arrived. Tr. at 60. Richard Eckert wrote that he noticed the difference compared to the 17 years he lived in the residential area before TL Trucking arrived. PC2. Janet Eckert testified that she worked with two other industries on King Street over the last 18 to 20 months, and that TL Trucking produces more dust than other facilities. Tr. at 263.

Residents also acknowledged that River Road has been under construction for about a year (Tr. at 131, 192, 208, 235, 268), and that ripping up concrete on the road may contribute to dust in the residential area (Tr. at 131, 192, 208, 235, 269). However, Brill testified that dust from River Road would only travel over his neighborhood on an eastern wind, which is rare where he lives. Tr. at 131.

### **TL Trucking Efforts to Reduce Dust and Diesel Exhaust**

TL Trucking recently paved at least part of its lot. Resp. Exh. 7, 8, 49, 50, 65. Brill testified that if TL Trucking paves its entire lot, dust should not be a problem. Tr. at 166. Latoria testified that in the two years prior to paving, TL Trucking tried to reduce dust by first laying crushed stone to cover the dirt surface, then by spraying calcium chloride on the gravel every few months and watering down the lot a minimum of once to twice each day. Tr. at 661-63. Brill wrote that he observed a man wetting down the lot with a hose, but that it did little to control the dust. Log at 38.

Latoria testified that TL Trucking also took measures to reduce diesel exhaust fumes by reducing the speed limit on the site to 5 mph (Tr. at 629), and prohibiting drivers from sleeping with the engine running in the back lot (Tr. at 673). Homans noted on the day of his testing that trucks appeared to be moving at 5 mph or less. Tr. at 529.

## **DISCUSSION**

The Board first discusses whether TL Trucking violated numeric noise standards under 35 Ill. Adm. Code 901.102(a), (b), and 901.104. It next addresses whether TL Trucking caused air pollution by emitting dust in violation of Section 9(a) of the Act. *See* 415 ILCS 5/9(a) (2000). The Board looks at whether TL Trucking was the main source of dust in the area, and whether the dust injured Brill's health or interfered with his life or enjoyment of his property. The Board then determines whether noise from TL Trucking interfered with Brill's life, in violation of the nuisance noise standards at Section 24 of the Act and 35 Ill. Adm. Code 900.102. Lastly, the Board applies factors in Section 33(c) of the Act (415 ILCS 5/33(c) (2000)) to the alleged air pollution and noise nuisance allegations, and decides whether interference caused by noise, dust and fumes is unreasonable, in violation of Sections 9(a) and 24 of the Act (415 ILCS 5/9(a), 24 (2000) and 35 Ill. Adm. Code. 900.102.

### **Burden of Proof**

Section 31(e) of the Act specifies that the complainant must "show either that the respondent has caused or threatened to cause air or water pollution or that the respondent has violated or threatens to violate any provision of this Act or any rule or regulation of the Board or permit or term or condition thereof." 415 ILCS 5/31(e) (2000).

### **Alleged Numeric Noise Limit Violation**

Brill alleged that TL Trucking violated numeric noise limits for daytime, nighttime, and impulsive sound under 35 Ill. Adm. Code 901.102(a), (b) and 901.104. The Board first defines these numeric noise limits.

### **Regulatory Framework**

The Board established numeric sound limits for daytime and nighttime hours under 35 Ill. Adm. Code 901.102(a) and (b), and for impulsive sounds under 35 Ill. Adm. Code 901.104. Daytime numeric limits are less stringent than limits for nighttime hours, and occur between 7:00 a.m. and 10:00 p.m. local time. 35 Ill. Adm. Code 900.101. The daytime numeric noise limits provide that:

Except as elsewhere in this Part provided, no person shall cause or allow the emission of sound during daytime hours from any property-line-noise-source located on any Class A, B or C land to any receiving Class A land which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property-line-noise-source.

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A Land from		
	Class C Land	Class B Land	Class A Land
31.5	75	72	72
63	74	71	71
125	69	65	65
250	64	57	57
500	58	51	51
1000	52	45	45
2000	47	39	39
4000	43	34	34
8000	40	32	32

35 Ill. Adm. Code 901.102(a)<sup>2</sup>.

This section prohibits the emission of sound from one property to another above certain decibel levels at certain frequencies (hertz). The decibel levels are determined by the type of land where the noise source is located. TL Trucking constitutes a noise source, which is defined as follows:

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<sup>2</sup> The abbreviation for decibel is “dB.” See 35 Ill. Adm. Code 900.101.



Any equipment or facility, in combination thereof, which operates within any land used as specified by 35 Ill. Adm. Code 901.101. Such equipment or facility, or combination thereof, must be capable of emitting sound beyond the property line of the land on which operated. 35 Ill. Adm. Code 900.101.

TL Trucking emitted sound beyond its property line into Brill's yard and home. It is undisputed that Brill's residential property is Class A land (*See* 35 Ill. Adm. Code 901.101(a), 901.Appendix B.), and TL Trucking's noise sources are located on Class C land. *See* 35 Ill. Adm. Code 901.101(c), 901.Appendix B, Slocum Code 422.

The Board defines nighttime numeric limits under 35 Ill. Adm. Code 901.102(b). Nighttime hours occur between 10 p.m. and 7 a.m., local time. 35 Ill. Adm. Code 900.101. The same noise source definition and land categories apply to the limits. Section 901.102(b) specifies that:

Except as elsewhere in this Part provided, no person shall cause or allow the emission of sound during nighttime hours from any property-line-noise-source located on any Class A, B or C land to any receiving Class A land which exceeds any allowable octave band sound pressure level specified in the following table, when measured at any point within such receiving Class A land, provided, however, that no measurement of sound pressure levels shall be made less than 25 feet from such property-line-noise-source.

Octave Band Center Frequency (Hertz)	Allowable Octave Band Sound Pressure Levels (dB) of Sound Emitted to any Receiving Class A Land from		
	Class C Land	Class B Land	Class A Land
31.5	69	63	63
63	67	61	61
125	62	55	55
250	54	47	47
500	47	40	40
1000	41	35	35
2000	36	30	30
4000	32	25	25
8000	32	25	25

35 Ill. Adm. Code 901.102(b).

The Board lastly defines impulsive sound limits under 35 Ill. Adm. Code 901.104, which states that:

Except as elsewhere in this Part provided, no person shall cause or allow the emission of impulsive sound from any property-line-noise-source located on any Class A, B, or C land to any receiving Class A or B land which exceeds the allowable A-weighted sound levels, measured with fast dynamic characteristic, specified in the following table when measured at any point within such receiving Class A or B land, provided, however, that no measurement of sound levels shall be made less than 25 feet from such property-line-noise-source.

Classification of Land on which Property-Line Noise-Source is Located	Allowable A-weighted Sound Levels in Decibels of Impulsive Sound Emitted to Receiving Class A or B Land		
	Class B Land	Class A Land	
		Daytime	Nighttime
Class A Land	50	50	45
Class B Land	57	50	45
Class C Land	61	56	46

“Impulsive sound” is defined as either a sound pressure peak or peaks usually less than one second in duration, such as from a drop forge hammer or explosive blasting. *See* 35 Ill. Adm. Code 900.101. A-weighting measurements attempt to compensate for the fact that generally a sound with a given dB level at a higher frequency seems louder to the human ear than a sound with the same dB level at a lower frequency. *See* Noise Pollution Control Regulations, R72-2, slip op. at 10-11 (July 31, 1973). For a given sound measurement, dBs are either subtracted or added at various frequencies using a scale, then the weighted values for each frequency “are combined to give a single A weighted decibel level for the sound.” *Id.* at 11.

The Board did not develop A-weighted levels for the Section 901.102 daytime and nighttime numeric sound limits in part because “the characteristics of all possible noise sources [are] so varied that the correlation between A weighted sound levels and subjective reaction does not always hold true.” Noise Pollution Control Regulations, R72-2, slip op. at 26. The Board noted in its original noise control rulemaking that impulsive sounds were not easily measured in the field at the various frequencies. However, the Board found that their levels, measured in dBA, did appear to correlate sufficiently well for all types of impulsive sound emitters so that the frequencies were not required. *Id.*

### Measurement Procedures

Board regulations require that specific procedures and instruments be used when taking sound measurements to determine compliance with the numeric noise limits. *See* 35 Ill. Adm. Code 900.103(b), 901.102, 901.104. For example, sound measurements must be: taken at

least 25 feet from the property-line-noise-source; based on an energy average or Leq averaging over a 1-hour period; A-weighted for impulsive sound; and corrected for ambient or background noise. *Id.*

Homans, TL Trucking's sound expert, set up his equipment along the curb of Brill's property, some 225 feet away from TL Trucking. Brill specified that he took some of his sound measurements either inside his home or outside on his property, which would satisfy the 25-foot requirement. *See* Log at 70-75, 80, 82; Comp. Exh. 16. However, among his other measurements, Brill either did not note where he took the measurement (Log at 70-72, 79, 80, 82, 83), or stated that he took measurements in the park without specifying whether he was standing at least 25 feet from TL Trucking. Log at 76.

Homans used Leq averaging over a 1-hour period, but Brill did not. Resp. Exh. 1. Section 901.104 prohibits the emission of impulsive sound to another property in excess of allowable A-weighted sound limits. Homans took A-weighted measurements and his log describes the types of sounds recorded during the two-hour measuring period. Resp. Exh. 1 at 3, 5-14. Brill wrote in his log that some of his measurements were A-weighted. Log at 70, 71, 72, 80, 82 ; Comp. Exh. 16. However, in several instances, Brill either used the C-weighted setting on his sound meter or did not specify which setting he used. Log at 71-76, 79, 82, 83; Comp. Exh. 16.

Strict adherence to provisions in 35 Ill. Adm. Code 900.103(b) is necessary to prove a violation of the Board's numeric noise standards. *See Roti v. LTD Commodities*, PCB 99-19, slip op. at 20 (Feb. 15, 2001); *Discovery South Group, Ltd. v. PCB*, 275 Ill. App. 3d 547, 559, 656 N.E.2d 51, 59 (1st Dist. 1995). The Board finds that Brill did not take measurements in compliance with 35 Ill. Adm. Code 900.103(b) and related Board regulations. For example, Brill used a type III survey grade Radio Shack sound meter instead of the minimum level ANSI Type I meter. He did not state that he took measurements over the course of an hour, and did not correct his measurements for ambient noise. The Board accordingly does not consider measurements taken by Brill in determining whether TL Trucking violated numeric noise limits under 35 Ill. Adm. Code 901.102(a), (b), and 901.104. However, the Board finds that Homans' measurements do comply with the Board's regulations, and analyzes whether his sound measurements indicate that TL Trucking violated applicable numeric noise limits in the next section.

### **Compliance with Numeric Noise Limits**

The Board considers whether measurements by Homans indicate that TL Trucking violated the above alleged numeric noise limits. *See* 35 Ill. Adm. Code 901.102, (a), (b), 901.104. Homans measured TL Trucking noise during nighttime hours, between 5:06 a.m. and 7:00 a.m. The measurements exceed the nighttime numeric noise limits for 1000 to 8000 hertz octave band center frequencies. Resp. Exh. 1 at 4. However, the ambient noise level recorded by Homans was less than three decibels from the sound pressure level of the TL Trucking noise. *Id.* Generally, ambient noise is background noise in an area when the noise

source at issue is silent. Homans stated that “[f]or ambient conditions, all . . . trucks were shut off and washing/drying noise was not audible. Resp. Exh. 1 at 3.

As Homans noted, microphone and analysis instruments cannot differentiate between noises from TL Trucking and those from the ambient environment. Resp. Exh. 1 at 3. For numeric sound limit compliance, Board regulations require sound measurements to be corrected for ambient noise to ensure that noise *not* generated by the noise source being monitored is not attributed to it. See 35 Ill. Adm. Code 900.103(b). However, the Board also requires substantial conformity with ANSI methodology when assessing numeric sound limit compliance. *Id.* The ANSI Sec. 1.13-1971 Field Method provides:

If the increase in sound pressure level in any given band, with the sound source operating, compared to the ambient sound pressure level is 3 decibels or less, the sound pressure level due to the sound source is equal to or less than the ambient sound pressure level, and the two contributions cannot be properly separated with the measurement techniques described in this standard. ANSI S1.13, “Methods for the Measurement of Sound Pressure Levels,” ch. 9.1, p. 24 (1971).

Since the measurements for noise from ambient and TL Trucking sources are within three decibels of one another, the Board finds that it cannot differentiate between the two types of noise in the report. For this reason, the Board finds that Homans’ measurements do not substantiate Brill’s allegation that TL Trucking violated nighttime numeric noise limits under 35 Ill. Adm. Code 901.102(b).

Homans did not provide data on whether TL Trucking violated daytime numeric noise limits under 35 Ill. Adm. Code 901.102(a). He also did not include a specific analysis or explanation as to whether TL Trucking violated impulse sound limits under Section 901.104 of the Board’s regulations. See 35 Ill. Adm. Code 901.104. Since the Board does not have adequate information on these sections, it finds that Brill did not meet his burden of proof in demonstrating that TL Trucking violated the daytime numeric noise limits and impulsive sound limits under 35 Ill. Adm. Code 901.102(a) and 901.104.

### **Air Pollution - Interference**

Brill alleges that TL Trucking violated Section 9(a) of the Act by emitting dust and exhaust from its washing process and trucks driving across its crushed stone lot. Section 9(a) of the Act (415 ILCS 5/9(a) (2000)) provides:

No person shall:

- a. Cause or threaten or allow the discharge or emission of any contaminant into the environment in any State so as to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants

from other sources, or so as to violate regulations or standards adopted by the Board under this Act;

A contaminant is defined as “any solid, liquid, or gaseous matter, any odor, or any form of energy, from whatever source.” 415 ILCS 5/3.06 (2000).

Air Pollution is defined at Section 3.02 of the Act (415 ILCS 5/3.02 (2000)) as:

The presence in the atmosphere of one or more contaminants in sufficient quantities and of such characteristics and duration as to be injurious to human, plant, or animal life, to health, or to property, or to unreasonably interfere with the enjoyment of life or property.

In order to successfully allege a violation of Section 9(a) of the Act, the following must be satisfied:

1. There was an emission of dust and fumes.
2. The dust and fumes were caused by TL Trucking.
3. The emissions resulted in either (a) injury to health or (b) interference with the enjoyment of life or property.
4. The injury or the interference was unreasonable according to the criteria at Section 33(c) of the Act (415 ILCS 5/33(c) (2000)). *See* Gott et al. v. M’Orr Pork, PCB 96-68, slip op. at 12 (Feb. 20, 1997).

### **Emission of Dust and Exhaust.**

The Board finds that there was an emission of dust and diesel exhaust fumes. Brill and several other residents complained that dust was everywhere. Tr. at 24, 204; PC 3. It penetrated their homes and garages, coated their vehicles, and made it difficult to breathe. Tr. at 24, 180, 200, 203, 204, 249, 252; PC 3. Oleta and Stephen Brill smelled and tasted the dust even inside their homes. Tr. at 24; Log at 32, 41. Residents claimed that they could not open their windows. Tr. at 16, 24, 144, 202; PC 2.

Residents bolstered Brill’s allegations of how quickly the dust accumulated in the area. Tr. at 25, 49, 69, 252. Manuel Harrah testified that he wakes up covered with dust if he sleeps with the window open. Tr. at 202. Dust coats Oleta Brill’s plants unless it rains (Tr. at 25, 49), and Drema Harrah wrote that dust covered her car in a single afternoon, accumulating so thick that she could write her name in it (PC2). Dust penetrated Eckert’s garage and coated items cleaned for a garage sale within two days. Tr. at 252.

Brill and several residents also complained of the strong smell of fumes from diesel exhaust, both outdoors and inside their homes. Tr. at 16, 63, 171, 173, 202-03, 217-19; PC 2; PC 5. The cumulative effect of the dust and fumes creates a haze or fog over the park that

has been so thick that it obscured resident's view to the other side and caused children to run from the emissions. *See supra* at 26.

### **Preponderance of Emissions from TL Trucking**

The Board finds that TL Trucking caused a significant increase of dust and diesel exhaust fumes in the area. TL Trucking argued that other sources, such as River Road construction and neighboring facilities, create dust in the area. However, Brill and several other residents presented sufficient evidence that TL Trucking was the source of dust clouds and haze from diesel exhaust emissions that drifted into the neighborhood. They saw dust and diesel exhaust from truck activity at the site blowing through the park, and experienced a marked increase in these emissions since TL Trucking moved onto the site in 1999. Brill presented photographs showing dust from trucks on the lot. The Board takes into consideration that River Road was under construction for about a year at the September 2001 hearing. However, the construction started well over a year after TL Trucking began operating at the site, and the dust started to become an issue.

The Board notes that Section 9(a) of the Act does not require all of the emissions to originate from the source in question. *See* 415 ILCS 5/9(a) (2000). This section specifies that a source can create air pollution "either alone or in combination with contaminants from other sources." *Id.* Although TL Trucking raised the question of whether other sources compounded the problem, Brill and other residents adequately pinpointed TL Trucking as a major source of the dust and fumes in the area.

### **Emissions Resulting in Injury to Health or Interference With Enjoyment of Life or Property**

The third part of the test involves injury to health or interference with the enjoyment of life or property. Although witnesses stated that the dust and fumes made it hard for them to breathe, they did not present any physicians or other health professionals to show a link between the presence of dust and any resulting health problems. The Board finds that there was no injury to health from the dust or fumes.

However, the Board finds that Brill sufficiently demonstrated that dust and fumes from TL Trucking interferes with his life and property. They must keep their windows closed to keep dust and fumes out. Even when their windows are closed, the emissions can penetrate their homes and garages. Stephen and Oleta Brill do not sit outside to enjoy nice weather or have friends over to visit. They can taste and smell the dust, and cannot keep their plants, home, or outdoor furniture clean because of how quickly it settles over everything. Their neighbors also complained that they cannot spend time outside, and limit the use of their decks, front porches, and yards. O'Neill, who still cooks outside and entertains at her home, stopped jogging in the area because of the diesel fumes, and no longer takes her niece and nephews to Robinson Crusoe Park.

TL Trucking argues that the dust emissions were only intermittent. Where dust conditions occurred only intermittently, the Board has not found a violation of Section 9(a) of

the Act (415 ILCS 5/9(a) (2000)) based on interference. *See Trepanier et al. v. Speedway Wrecking Co.* PCB 97-50, (Jan. 6, 2000). The Board notes that the facts in *Trepanier* and the facts in this matter are extremely different. Complainants in *Trepanier* alleged air pollution resulting from a five-week demolition of one building. Complainants there cited two instances of air pollution from the demolition, and one of those complainants chose to walk directly into the dust created from demolition activity. On the other hand, Brill and other residents in this matter do not choose to walk into the dust from TL Trucking; the only way to avoid the dust is to leave their homes.

Brill and other residents also showed that the dust was a recurring problem. Residents said that they cannot escape from the dust, and Brill experienced problems with dust since TL Trucking moved onto the lot. The dust is only abated when rain washes it away. Fumes from trucks idling and routinely moved around the lot also produce constant emissions. O'Neill noticed these fumes when she used to jog by the park in the area. Gibas testified that she smelled diesel fumes in her driveway, especially during the colder months. Brill logged several occasions of seeing or smelling fumes from the trucks at TL Trucking, which corroborate his testimony. For these reasons, the Board finds that the dust and fumes caused an interference with Brill's enjoyment of life and his property. The Board will analyze the interference from dust and fumes to determine if it is unreasonable (and thus a violation of Section 9(a) of the Act) after discussing whether noise from TL Trucking also caused an interference.

### **Nuisance Noise Pollution - Interference**

Brill alleged that activity from TL Trucking generated noise that violated Section 24 of the Act (415 ILCS 5/24 (2000)) and 35 Ill. Adm. Code 900.102.

Section 24 of the Act provides that:

No person shall emit beyond the boundaries of his property any noise that unreasonably interferes with the enjoyment of life or with any lawful business or activity, so as to violate any regulation or standard adopted by the Board under this Act. 415 ILCS 5/24 (2000).

Section 900.102 of the Board's regulations specifies, in relevant part, that no person shall cause or allow the emission of sound beyond the boundaries of his property "so as to cause noise pollution in Illinois . . . ." 35 Ill. Adm. Code 900.102. Noise pollution is defined as "the emission of sound that unreasonably interferes with the enjoyment of life or with any lawful business or activity." 35 Ill. Adm. Code 900.101.

Section 24 of the Act (415 ILCS 5/24 (2000)) and Section 900.102 of the Board's regulations (35 Ill. Adm. Code 900.102) constitute a prohibition against nuisance noise. *See Young v. Gilster-Mary Lee Corp.*, PCB 00-90, slip op. at 8-9 (Sept. 6, 2001); *Zivoli v. Prospect Dive and Sport Shop, Ltd.*, PCB 89-205, slip op. at 8 (Mar. 14, 1991). The Board performs a two-step inquiry to determine whether sound violates the above noise nuisance

provisions. Gilster-Mary Lee, PCB 00-90, slip op. at 8-9. The Board first addresses whether noise from the respondent's property interfered with the complaint's enjoyment of life. *See Furlan v. University of Illinois School of Medicine*, PCB 93-15, slip op. at 4 (Oct. 3, 1996). The Board then considers factors in Section 33(c) of the Act (415 ILCS 5/33(c) (2000)) to determine whether the interference is unreasonable. *See Hoffman*, PCB 94-146, slip op. at 2 (Oct. 17, 1996).

The Board first addresses the threshold issue of whether noise from TL Trucking interfered with Brill's enjoyment of life. *See Furlan*, PCB 93-15, slip op. at 4. Noise must objectively affect the enjoyment of life to be considered interference. *See Roti v. LTD Commodities*, PCB 99-19, slip op. at 24 (Feb. 15, 2001), citing Hoffman v. City of Columbia, PCB 94-146, slip op. at 5, 6 (Oct. 17, 1996). "Testimony to the effect that sound constitutes an interference solely because it could be heard is insufficient to support a finding beyond a 'trifling interference, petty annoyance or minor discomfort.'" *D'Souza v. Marraccini*, PCB 96-22, slip op. at 5-6 (May 2, 1996), citing Wells Manufacturing Co. v. PCB, 73 Ill. 2d 226, 383 N.E.2d 148, 150 (1978).

The Board has held that the following disturbances constitute interference: sleep deprivation, impact on watching television and conversing, and the inability to open windows due to noise from a trucking operation (*see Charter Hall*, PCB 99-81, slip op. at 20; Thomas v. Carry Companies of Illinois, PCB 91-195, slip op. at 13, 15 (Aug. 5, 1993); sleep deprivation and inability to enjoy the use of complainants' patio, porch, or garden because of noise from an adjacent car wash (*see McDonough v. Robke*, PCB 00-163, slip op. at 12 (Mar. 7, 2002)); and noise interfering with complainants' sleep and use of their yard (Hoffman, PCB 94-146, slip op. at 5, 6, 17).

The Board finds that noise from TL Trucking interfered with Brill's enjoyment of life. TL Trucking deprives Brill and other residents of sleep. *See supra* 10-11. Brill recorded 31 instances in his log where TL Trucking sound woke him, twenty-five of which were between midnight and seven in the morning. *See supra* at 11. The noise sometimes woke him multiple times on the recorded dates. *Id.* Brill and other residents were mainly affected by sounds from truck engines and movement across crushed stone, metallic clanging, cleaning equipment, air brakes, air horns, and hitching tractors to trailers. *Id.*

Sounds from TL Trucking activities, such as trucks idling or moving across the respondent's lot, vibrated through Brill's house, and penetrates every room in his home. Tr. at 16. Janet Eckert also testified that the noise travels through her house, even when the windows are closed. Tr. at 252. Zak agreed that sound measurements taken by Brill indicate that the noise would penetrate a home of normal construction, such as Brill's residence.<sup>3</sup> Tr. at 311.

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<sup>3</sup> The Board discusses the validity and weight attributed to Brill's sound measurements later in its discussion about whether the interference caused by TL Trucking noise is unreasonable.



Brill and other residents also alleged that TL Trucking noise disrupted their way of life and prevented them from relaxing in their homes. *See supra* at 12-13. Brill expressed in his log that the stress and depression the noise caused him and his wife was beyond measure. Log at 43. O'Neill constantly noticed the noise, which interrupts any possible quiet relaxation time. Tr. at 226, 228. Stephen and Oleta Brill testified that the noise disrupts their concentration and can be heard above their television at a moderate level. On one occasion, TL Trucking was loud enough that Brill heard noise from the lot above an air siren. Brill and his wife have hated to go home at times because of the noise. *Id.* The noise became so stressful that he needed to leave his house. Accordingly, the Board finds that noise from TL Trucking interfered with Brill's enjoyment of life and property.

### Unreasonable Interference, Section 33(c) Factors

The remaining issue is whether the noise, dust, and fumes from TL Trucking unreasonably interfered with Brill's enjoyment of life. The Act states that the Board must consider all facts and circumstances involved in an enforcement order, including, but not limited to, the factors in Section 33(c) of the Act. 415 ILCS 5/33(c) (2000). The Board considers factors in this section when determining whether an interference is unreasonable. *See* 415 ILCS 5/33(c) (2000); Furlan, PCB 93-15, slip op. at 4, citing Wells Manufacturing, 73 Ill.2d at 233, 383 N.E.2d at 151. Brill is not required to introduce evidence on each of these factors. LTD Commodities, PCB 99-19, slip op. at 25. The Board can find a violation even if does not find against the respondent on every factor. LTD Commodities, PCB 99-19, slip op. at 25; citing Wells Manufacturing, 73 Ill.2d at 233, 383 N.E.2d at 151. Section 33(c) of the Act states that:

In making its orders and determinations, the Board shall take into consideration all the facts and circumstances bearing upon the reasonableness of the emissions, discharges, or deposits involved including, but not limited to:

- i. the character and degree of injury to, or interference with the protection of the health, general welfare and physical property of the people;
- ii. the social and economic value of the pollution source;
- iii. the suitability or unsuitability of the pollution source to the area in which it is located, including the question of priority of location in the area involved;
- iv. the technical practicability and economic reasonableness of reducing or eliminating the emissions, discharges or deposits resulting from such pollution source; and
- v. any subsequent compliance. 415 ILCS 5/33(c) (2000).

The Board will analyze each of the Section 33(c) factors in turn.

### **The Character and Degree of Injury**

The Board assesses the character and degree of injury by determining whether the noise from respondent's facility "substantially and frequently interferes' with the enjoyment of life 'beyond minor or trifling annoyance or discomfort.'" LTD Commodities, PCB 99-19, slip op. at 25, citing Kvatsak v. St. Michael's Lutheran Church, PCB 89-182, slip op. at 9 (Aug. 30, 1999).

Brill did not provide evidence of health effects or property damage caused by noise or air emissions from TL Trucking. However, the Board has found substantial interference from noise in dozens of cases without medicinal evidence, physical evidence, or injury to property. Glasgow v. Granite City Steel, PCB 00-221, slip op. at 31 (Mar. 7, 2002). The Board has also found that complaints about dust are substantial even if no adverse health effects have been alleged. See Granite City Steel, PCB 00-221, slip op. at 31; Thomas, PCB 91-195, slip op. at 15 (Aug. 5, 1993).

**Dust and Exhaust.** The Board finds that the dust and exhaust from TL Trucking's operations were a substantial and frequent interference in Brill's life. As shown in our discussion concerning interference, Brill showed a pattern of dust exposure. The dust, although not constant, consistently fell on Brill's property as well as on and inside homes and garages of nearby residents after TL Trucking moved onto the lot. Brill and other residents watched dust and the haze of diesel fumes from TL Trucking drift into their neighborhood. Although some dust may be attributable to other sources, it is clear that the significant increase in emissions is due to TL Trucking operations.

**Noise.** The Board finds that noise from TL Trucking, as summarized above in the discussion about interference, was substantial and frequent, and objectively interfered with Brill's enjoyment of life and property. Brill testified that the severe and constant noise disrupted his life. Noise from TL Trucking woke him and nearby residents on a consistent basis, broke Brill's concentration, and was heard above his television, lawnmower, jet planes, and an air raid siren. He wrote that "[w]ith no relief from noise in over a year you feel your mind could snap at any time." Log at 42. He attested that the noise was so severe that he had to escape it by driving to a forest preserve.

Brill and several witnesses described the effect of several types of sounds from TL Trucking operations that occur at all hours, which include: metal banging; engines droning and screaming when drivers shift gears; air horn blasts; screeching air brakes; the crashing of tractors hitching to trailers; and sound of the washing equipment, especially when the bay doors are left open. Brill and O'Neill both called the police about the volume of the TL Trucking noise that was occurring at night.

Trucks idling or moving across the lot cause vibration that penetrates Brill's brick home. He wrote on more than one occasion that he watched glasses chatter together in his kitchen. Janet Eckert also experienced the same phenomenon in her home. The Board has recognized that noise that causes residential vibrations is a relevant factor in determining

substantial interference with a complainant's life. Granite City Steel, PCB 00-221, slip op. at 32, citing LTD Commodities, PCB 99-19, slip op. at 25-26 (Feb. 15, 2001); Pawlowski v. Johansen, PCB 99-82, slip op. at 4, 8 (Apr. 6, 2000).

***Noise from the surrounding area.*** TL Trucking claimed that the noise problem experienced by Brill and other residents was due to ambient sound in an extremely noisy area. It argued that some sounds were caused by neighboring industrial facilities and trucks along King Street and River Road. According to White and Rasmussen, who live down the street from Brill, noise from Bruner & Lay overpowered other sounds in the neighborhood until mid-afternoon. Vibration from Bruner & Lay shook Rasmussen's house. He testified that the trains and overflying planes are much louder than TL Trucking noise.

Rasmussen and White corroborated testimony and video by Latoria that trains in the area were extremely loud and disturbing. Homans also recorded in his log that a train whistle was loud when he visited the site to measure sound from TL Trucking. The Board notes that White lives 300 feet from the train tracks, and Rasmussen is also in close proximity to the tracks.

Brill and other witnesses do not agree that the noise comes from other sources. They identified TL Trucking as the source of the noise in Brill's complaint because they repeatedly observed activity that coincided with specific sounds. Residents only started to hear the noise after TL Trucking began operating on the lot. TL Trucking also is one of the few businesses in the immediate vicinity that still operates 24 hours a day, seven days a week. Both White and Rasmussen testified that Bruner & Lay, which was the major cause of their concern, shuts down around three in the afternoon.

Brill and several other witnesses testified that noise from train horns and overhead planes was neither startling nor shattering like TL Trucking noise. They said that they were used to the gradual sounds and did not find them disturbing. The Board agrees that ambient noise from other sources does not diminish the fact that the noise from TL Trucking interfered with Brill's life. It accordingly finds that the interference from TL Trucking was more substantial than the interference from ambient sources.

TL Trucking also argued that nearby residents did not experience the same disturbances from noise generated on their lot. Manuel Harrah, Brill's neighbor, testified that noise was not as much of an issue as the dust, and that it does not interfere with his life. White, who lives down the street from Brill, stated that he hears children playing in Robinson Crusoe Park, but no noise specifically from TL Trucking. Rasmussen claimed that he was not disturbed by noise from TL Trucking.

The Board recognizes that there are variations among witnesses' versions of interference attributed to TL Trucking. Zak testified that it is common in noise cases for people to notice and be disturbed by different types of noise from a facility. Tr. at 355-56. The Board may find unreasonable interference even though there are variations in the way that

each complainant is affected by the noise. LTD Commodities, PCB 99-19, slip op. at 26, citing Discovery South Group, 275 Ill. App. 3d at 554-55, 656 N.E.2d at 57; Hoffman, PCB 94-146, slip op. at 17.

Harrah explained that, even though he is Brill's neighbor, his experience could differ because his home is further back on a double lot. The Board notes that, even though Manuel Harrah is less affected by TL Trucking noise, the majority of the nearby residents corroborate Brill's testimony concerning the types and severity of sound from the lot. Rasmussen and White also agreed that a 20-foot brick structure and several homes between them and TL Trucking helped to block sound from the facility. Rasmussen additionally has 30% hearing loss.

**Sound Measurements.** Brill and Homans took differing sound measurements that bolster each side's perception of the level of noise produced by TL Trucking. It is only necessary to strictly follow the measurement procedures at 35 Ill. Adm. Code 900.103 when proving that a party violated numeric noise limits. See Granite City Steel, PCB 00-221, slip op. at 32; Discovery South Group, Ltd. v. PCB, 275 Ill. App. 3d 547, 559, 656 N.E.2d 51, 59 (1st Dist. 1995). The Board may take note of noise measurements that do not comply with Section 900.103 of the Board's regulations (35 Ill. Adm. Code 900.103) to substantiate the alleged violation of the Board's nuisance noise standards or to determine the character and degree of the alleged violation. LTD Commodities, PCB 99-19, slip op. at 26 (Feb. 15, 2001), citing Detlaff v. Boado, PCB 92-26, slip op. at 7, 9 (July 1, 1993); D'Souza v. Marraccini, PCB 96-22, slip op. at 9 (May 2, 1996). Measurements that do not comply with 35 Ill. Adm. Code 900.103 must be "technically justified". See Charter Hall, PCB 98-81, slip op. at 21 (Oct. 1, 1998).

**Measurements by Brill.** Brill recorded 21 measurements of noise from TL Trucking in his log. See Comp. Exh. 16. Brill wrote the date and time of the measurements, and generally whether he used A or C weighting. On most occasions, Brill also included where he took the measurements and described the sound that he was measuring. Brill said that he read and followed the simple instructions for using the sound meter.

TL Trucking argued that the Board should not consider Brill's measurements because the weight of readings is diminished by the utilization of low-grade equipment and flawed procedure. TL Trucking contends that Brill used a meter that potentially deviates by more than 3 decibels and did not possess a windscreen or overload meter. According to Homans, the meter could experience variation in results because of how the meter handles transient sound, the linearity with respect to the frequency of the sound meter, and the response with respect to orientation to the sound recorded. Tr. at 479; Resp. Br. at 3. He also stated that calibrating the instrument indoors and not immediately before use could falsely indicate that the meter does not drift. Outdoor temperature could affect readings, and calibrating the instrument only focuses on the middle of the sound range, where the meter can most easily measure the noise.

TL Trucking contends that these factors are compounded by the methods used by Brill to measure sound from TL Trucking. Brill did not take 1 hour of constant measurements or average his results with ambient sound levels. Brill was not aware of how wind speed and proximity to his home could affect sound measurements, and agreed with TL Trucking that he basically turned the knob on the meter until he got a reading that he liked. Homans testified that measuring sound was a complicated process that city inspectors even failed to follow during a class on the procedure.

Zak disagreed with Homans' analysis, finding that the meter used by Brill was accurate, and that Brill correctly utilized the meter in accordance with Zak's instructions. After approximately 20 years of experience, Zak found that Brill's Radio Shack meter does not drift. He said that the meters were generally off between zero to two decibels. Zak calibrated Brill's meter on the morning of the September 2001 hearing, and said the drift does not change over time. According to Zak's experience with running a State calibration lab for several years, the more complex the instrument seems, the greater the tendency for it to drift.

Zak also specifically instructed Brill on how to measure sound from TL Trucking. He told Brill not to take measurements when he heard competing noise, and taught him how to perceive when wind affected the meter readings. He contended that Brill utilized the meter in accordance with his instructions by twisting the knob until he got a reading.

Although the Board questions the exact accuracy of Brill's readings, it finds most of the measurements by Brill are adequate to bolster his claim of noise nuisance. Even if his readings deviated by more than three decibels, he took A-weighted readings above 66 and C-weighted readings of 78 to 86 decibels from his front door or outside on his property. Brill recorded C-weighted measurements from inside his house that reached 58 to 60 decibels. The Board notes that Brill's C-weighted measurement of an overflying plane at 55 decibels is generally five to ten decibels *lower* than figures reported by Homans. Zak testified that, in his opinion, the impulsive nature of sound at this level would make it difficult to sleep or nap.

The Board notes that it will not consider measurements taken by Brill on February 26, 2001, in Robinson Crusoe Park to be technically justified because he did not indicate how close he was to the noise source. The remaining readings were taken on his property, which is at least 25 feet from the TL Trucking property line. The Board understands that expert readings taking factors such as deflection of sound and ambient noise into account may possibly provide more accurate figures. However, Brill utilized a type of meter and method of noise measurement that are both similar in nature to what the Board previously found to be acceptable in noise nuisance cases. *See Gilster-Mary Lee*, PCB 00-90, slip op. at 4-6; *Charter Hall*, PCB 98-81, slip op. at 10. The Board accordingly finds that noise measurements by Brill bolster his claim that noise from TL Trucking substantially interfered with the enjoyment of his life and property.

**Homans.** Homans measured sound from TL Trucking between five and seven in the morning on August 31, 2001. Homans followed the Board's protocol for noise measurements

in 35 Ill. Adm. Code 900.103. The resultant A-weighted readings are much lower than figures recorded by Brill. For instance, Homans recorded a loud bang from the wash bay and truck movement at 54 decibels. During this period, the ambient level registered between 50 and 53 decibels.

Zak found Homans' report to be credible, but doubted whether TL Trucking was operating at a normal level on the morning of his measurements. Zak said that, in his 30 years of experience, "an industrial noise source will do everything they can when the consultant is there to minimize the noise." Tr. at 349. Homans agreed that it was possible that TL Trucking employees spotted him setting up his equipment and taking measurements. He said that he could see the employees, and they would have been able to see him as well. However, he doubted that this occurred because he noted one employee playing loud music in one of the trucks. Although Latoria requested that he take measurements during those hours in response to the average time of complaints, Homans did not notify TL Trucking of what date he would be taking his measurements.

Latoria also presented evidence that TL Trucking washed trailers during the period that Homans took sound measurements. He testified that the facility washed four trucks between five and seven in the morning on August 31, 2001. Homans corroborated this testimony by stating that he saw TL Trucking engaged in its operations while he took his measurements. However, when reviewing TL Trucking wash records, the Board notes that two of the trailers that were included in this time period were essentially finished by the time that Homans began his measurements. TL Trucking allegedly washed a dry truck, which produces the most noise, between 3:10 and 5:10 a.m. TL Trucking reported that it washed another wet trailer between 4:01 and 5:00 a.m. The former trailer was nearly complete and the latter was already washed by the time Homans began his measurements. TL Trucking washed the remaining two wet trailers during the time that Homans was monitoring noise from the facility. Latoria stated that, on average, the facility washed six trucks in a bay in a 24-hour period. This would amount to 18 trailers per day. Latoria appears to contradict this testimony by stating earlier in the hearing that, during a busy season, TL Trucking services 100 to 125 loads a day. Tr. at 671.

Homans did not measure many of the types of noises that Brill and other residents allegedly heard from TL Trucking. For instance, Homans did not hear air horns, metal lids slamming near the TL Trucking fence, power blowers, or stone grading equipment. He stated that he did hear banging or slamming on one or two instances from the wash bays, but that this conduct would be louder out in the open near the fence. Homans also did not record sounds from air brakes or fast revving truck engines. Homans estimated that trucks were moving across the lot at five miles per hour. This contradicts Brill's statements that trucks scream their engines while moving quickly around the site. Lastly, Homans testified that he previously measured the decibel level of air horns at another site, and estimated that the sound would register at 80 decibels from 75 yards away. This would be similar to the sound level range recorded by Brill in his log.

While the Board considers the report by Homans to be credible and accurate, it finds that the activity reported at the TL Trucking lot does not appear to be consistent with prior testimony by both Latoria and Brill. This is bolstered by witness testimony that reported disturbances routinely heard around 5:00 a.m. that did not seem to be present on the date of Homans' measurements. This included noise that allegedly woke Eckert every morning, and the loud metallic banging often heard by Stephen and Oleta Brill, Gibas, and O'Neill. For these reasons, the Board finds that the measurements taken by Homans do not accurately portray the severity and frequency of interference experienced by Brill and nearby residents.

**Conclusion.** The Board finds that the dust and diesel exhaust emissions substantially and frequently interfere with Brill's enjoyment of life and property, and weighs this factor against TL Trucking. The Board also finds that noise from TL Trucking substantially and frequently interferes with Brill's life, and weighs this factor against TL Trucking as well.

### **The Social and Economic Value of a Pollution Source**

The Illinois Supreme Court has determined that the number of persons that respondent employs and respondent's prominence in a particular market are relevant to the analysis of this factor. Wells Manufacturing Co., 73 Ill. 2d at 235-36, 383 N.E.2d at 152. The Board has determined that the number of employees and the total wages and taxes paid are relevant. LTD Commodities, PCB 99-19, slip op. at 26 (Feb. 15, 2001) quoting Arendovich v. Koppers Co., Inc., PCB 88-127, slip op. at 6 (Feb. 8, 1990). The Board also finds that respondent's charitable activity in the community is relevant. *See, e.g., Young*, PCB 00-90, slip op. at 17 (Sept. 6, 2001); Madoux et al. v. B & M Steel Service Center, Inc., PCB 90-148 (May 3, 1992).

The Board finds that TL Trucking has social and economic value, and weighs this factor in favor of TL Trucking. The record reveals that TL Trucking provides a time sensitive service of sterilizing food tankers. Their facility also offers substantial financial revenue to Franklin Park as a part of its industrial base. TL Trucking did not provide the number of its employees, its payroll per month, or the number of people drawing a pension. It did state that it pays approximately \$38,000 in taxes per year. TL Trucking contends that the tax revenue and employment opportunities afford residents a lower property tax rate.

### **The Suitability or Unsuitability of the Pollution Source to the Area in Which it is Located, Including the Question of Priority of Location in the Area Involved**

Priority of location is one aspect of suitability, but it is not the sole factor that the Board examines in making a finding for this factor. LTD Commodities, PCB 99-19, slip op. at 27 (Feb. 15, 2001) citing Oltman v. Cowan, PCB 96-185, slip op. at 3, 5 (Nov. 21, 1996). Industry cannot rely on priority of location as a mitigating factor if emissions are substantially increased. Gilster-Mary Lee, PCB 00-90, slip op. at 17, citing LTD Commodities, PCB 99-19, slip op. at 27. This would undermine the priority of location argument. Wells Manufacturing Co., 73 Ill. 2d at 237, 383 N.E.2d at 152.

The Board accordingly examines the suitability of the location of the source, priority of location, and whether emissions have increased when weighing this factor. Gilster-Mary Lee, PCB 00-90, slip op. at 17.

Brill and other residents concede that, when they bought their homes, they were aware of industry along King Street. Most of the residents have lived in the neighborhood for many years. Stephen and Oleta Brill moved into their home about 34 years ago. Janet and Richard Eckert lived in their house since 1984, and Manuel and Drema Harrah bought their home 29 years ago. Gibas has resided at 9147 Crescent Drive since 1976. In this manner, the industrial area predates Brill and the other residents, and extends a general priority of location for facilities that are similar in nature.

**Noise.** Brill and nearby residents argued that TL Trucking significantly changing the type and severity of sound previously generated at the site when it moved into the area in 1999. They characterized the neighborhood as peaceful and very quiet prior to TL Trucking. Brill occasionally heard noises from other facilities, but they were not disruptive. Most business only operated eight hours a day, and closed on weekends. Brill and other residents heard nothing from daily operations of prior owners of the TL Trucking lot, including the metal scrap yard that occupied the site for five to ten years prior to TL Trucking. Oleta Brill testified that the scrap yard only operated on weekdays. She only heard noise when the former company was moving out.

According to Stephen and Oleta Brill, noise in the area increased when TL Trucking opened their business. It generated noise all day, every day, including late night and early morning hours. The noise was startling in nature, unlike the gradual sounds of train whistles and passing planes. Sounds such as air horns, air brakes, and metal banging woke Brill and other residents, and low impulse sounds vibrated through their homes. O'Neill never heard the sonic-boom like noises, banging, or winding of the cleaner prior to TL Trucking. After TL Trucking arrived, Eckert started to hear air horns, air brakes, telephone ringing, and tractors hooking up to trailers.

The type and severity of these sounds marked a departure in what Brill and other residents heard from neighboring industries. Although White and Rasmussen testified that they are disturbed by Bruner & Lay rather than TL Trucking, they are not adjacent to the trucking facility, and they agreed that the 20-foot brick wall and other structures prevent them from hearing TL Trucking noise.

TL Trucking argued that, since it was properly zoned in a restricted industrial area, its operation is not characteristically out of place. It contends that it is unfortunate that Brill lives on property zoned residential that is adjacent to an industrial area, but that he knew this when he bought his home, and that TL Trucking should not now have to compensate for this by reducing noise resulting from its business. See Wells Manufacturing, 73 Ill. 2d at 237, 383 N.E.2d at 152.



The Board would agree if TL Trucking emitted a similar level of noise during like hours as its neighboring facilities. However, the Board finds that TL Trucking greatly increased the level of noise emissions on Brill's property, and that the hours deviate significantly from most other businesses in the immediate area. The Board notes that a business properly zoned in an industrial area does not have a carte blanche license to emit substantially louder and more intense noise that deviates from the hours of its neighbors. The Board accordingly finds that, while TL Trucking is zoned correctly, it is not well suited to the restricted industrial area in which it is located.

**Dust and Diesel Exhaust.** As previously explained in the above section on interference from dust and fumes, the Board finds that TL Trucking significantly increased the amount of these emissions, which carried onto neighboring property owned by Brill and other residents, when it began operating in 1999. The same principle expressed in the previous section on noise applies to air emissions in that TL Trucking cannot substantially increase the amount of fumes and dust in the area because Franklin Park finds that it is zoned correctly. It is telling that the FDA prohibits tractors from being washed with food trailers because of the soot and fumes from the trucks.

**Conclusion.** The Board finds that TL Trucking, as operated, is not currently suitable to the area in which it is located. The Board finds that Brill was aware of industrial activity in the area when he bought his home. However, TL Trucking moved into the area over thirty years after Brill, and created a substantial increase in noise and air emissions from its facility. The Board weighs this factor against TL Trucking.

**The Technical Practicability and Economic Reasonableness of Reducing or Eliminating the Emissions, Discharges or Deposits Resulting from Such Pollution Source**

The Board must examine the record to determine if TL Trucking can employ readily available, practical, and reasonable means to reduce or eliminate noise and air emissions. Incinerator, Inc. v. PCB, 59 Ill. 2d 290, 298-299, 319 N.E.2d 794, 798 (1974); Scarpino v. Henry Pratt Co., PCB 96-110, slip op. at 20 (Apr. 3, 1997). The Board addresses proposed abatement options for noise abatement, and then for measures to reduce the dispersal of dust and fumes .

**Noise.** The parties proposed several options to abate noise from TL Trucking. Noise experts, Zak and Homans, discussed the effectiveness of different types of sound barriers at varying heights. They also suggested other changes to TL Trucking operations to reduce noise emissions. Brill and Latoria gave conflicting opinions about whether TL Trucking could extend wash bays to include both tractors and trailers. Lastly, Homans advised that Brill could insulate his home to dampen sound from TL Trucking and other ambient noise.

**Noise barriers.** Zak testified that constructing a sound barrier along the northern border of the lot would be a key factor and 80% of the noise abatement solution. In his experience, barriers were a successful and common alternative.

Zak presented three main options for a barrier. First, Zak advised that TL Trucking could build a noise wall of solid construction that broke Brill's line of sight at the highest point that he is likely to be in his home. The wall must be approximately 14 feet high to reduce sound at Brill's residence, and 23 feet high for a short distance to dampen noise at O'Neill's home. TL Trucking could construct the wall out of any solid material that weighs three to four pounds per square foot, including wood or corrugated steel to reduce costs.

Homans testified that a sound barrier could not provide optimum performance because it was between the noise source and receiver, rather than very close to either one of the two parties. Homans analyzed the option of an eight-foot wall along the TL Trucking northern border. He stated that, at the lower height, the wall would only block the sound of tractors hitching to trailers, and would not eliminate ambient noise from other sources in the area. Homans agreed that a higher fence would reduce low frequency sound. TL Trucking stated that it could not build a wall higher than eight feet without a variance from Franklin Park. However, TL Trucking never applied for a variance to determine whether it could build a taller structure.

Stumbris, the Franklin Park zoning administrator, said that a fence above eight feet would prevent Franklin Park police and fire departments from effectively monitoring the site. He was concerned that a variance for a higher fence would set a precedent that would discourage companies from operating in Franklin Park. In contrast, Zak testified that, in the last 29 years, he never saw a case where the local zoning authorities prohibited the use of noise abatement measures. Latoria was also concerned that installing the wall would require tearing up recently laid concrete, and that the dimensions of the wall would produce an unsafe structure. However, he did not provide any evidence supporting the latter conclusion.

Latoria argued that a wall would be cost-prohibitive, but did not provide any other information to support this contention. Latoria did not present TL Trucking's current value, annual gross profit or expenses, or elaborate on its economic condition. It did not give any indication that this option was unreasonable, other than vague economic references and a brief unsupported discussion of potential hardship from repaving the lot and sinking in supports for a noise wall.

In the past, the Board has ordered that noise walls and acoustical barriers be built on a case-by-case basis. The Board looks to the facts in each case to determine if a noise wall is a necessary remedy. For example, the Board considered an option to require a respondent to construct a ten to twenty-foot tall by 200-foot long barrier wall with a cost of \$20,000. The Board noted that the respondent would incur considerable costs for this option and instead required that the respondent undertake other noise reduction measures. Madoux v. Straders Logging and Lumber Mill, PCB 90-149, slip op. at 2, 6 (Nov. 19, 1992). In another case, the Board found that the construction of two barrier walls at a cost of \$20,000 was the most economically reasonable and technically feasible of several proposed noise reduction remedies. Tex, PCB 90-182, slip op. at 4, 6-7 (June 17, 1993).

In Hoffman, the Board held that the \$150,000 cost of relocating the respondent's municipal maintenance facility was not "economically reasonable considering the type of interference and the alternative control options." Hoffman, PCB 94-146, slip op. at 19. More recently, the Board ordered a respondent trucking terminal to construct an airtight, one-inch thick, 22-foot tall wooden or brick barrier around the entire northern, western, and southern perimeter of its facility. Charter Hall, PCB 98-81, slip op. at 5-6, 9 (May 6, 1999). At the hearing in Charter Hall, Zak estimated that a noise barrier would cost the respondent anywhere from \$50 to \$100 per linear foot. The Board found that construction of the barrier was technically feasible and economically reasonable. Charter Hall, PCB 98-81, slip op. at 14, 24-25 (Oct. 1, 1998). Furthermore, the Board ordered the barrier built even though it found no violation of the numeric noise limits. The Board finds that, based on the information in the record and past use of such structures under similar circumstances, that a noise wall is economically reasonable and technically feasible.

In contrast to the noise wall, the Board does not find that the other two barriers proposed by Zak are technically feasible. Zak proposed that TL Trucking could construct a building to act as a sound barrier along the fenceline, or combine the use of a six-foot berm with an eight foot fence to avoid requesting a variance for a noise wall over eight-feet in height. However, TL Trucking provided adequate evidence that the imposition of a building or berm would not leave sufficient room to maneuver trucks on the lot. Latoria testified that TL Trucking could not operate under these conditions and would be forced to move to a different location.

**Changes to TL Trucking Operations.** Homans and Zak agreed that TL Trucking could reduce noise emissions by changing the way that it operates. Homans suggested that TL Trucking should keep wash bay doors closed, and find an alternate method to ventilate the bays. Homans said that uncoupling the trailers would create less noise than washing the trailers with open bay doors. Brill and other residents, especially O'Neill and Gibas, contradict this view, contending that noise from hitching tractors to trailers, produces loud and startling noise that disturbs them.

Latoria claimed that TL Trucking already has a policy to keep bay doors closed. However, Brill and other residents observed TL Trucking operating with its doors open. Brill wrote on numerous occasions that TL Trucking was washing trailers with open bay doors, and at times washed tractors outside the building. Brill alleged the noise from cleaning equipment woke him on four different nights, and disturbed him on at least 17 different occasions. In contrast, Homans testified that noise from inside the wash bays was inaudible. The Board finds that, although TL Trucking has a policy in place, that it would be necessary to find a more effective way to enforce it to reduce noise from the cleaning equipment. The Board finds that effective enforcement would be a technically feasible and economically reasonable part of a noise abatement solution.

Zak and Homans also agreed that TL Trucking could reduce noise by enclosing blowers and water pumps, and move them away from the doors. Homans also suggested that drivers could stop playing loud radio music while on the lot. Latoria stated that he plans to move, or

may have already moved a compressor from the floor of a wash bay to its own enclosed space. The Board finds that these would be economically reasonable and technically feasible portions of an overall noise abatement plan.

**Extending Wash Bays.** Brill suggested that TL Trucking could eliminate noise from coupling trailers after cleaning them by extending its wash bays to accommodate both tractors and trailers. TL Trucking makes a compelling argument that cleaning trailers that are still attached to tractors violates industry protocol, which was established to ensure soot or fumes do not contaminate a sterilized food carrier. Expanding the bays would permanently remove space on the lot that is necessary to maneuver trucks. The Board accordingly finds that this option is not technically feasible.

**Insulating Brill's Home.** Homans lastly advises that Brill could insulate his home to block sound from TL Trucking and ambient noise in the area. Homans offered no economic assessment of this alternative. The Board finds that this option would be technically feasible to abate noise inside the house. However, this would require Brill to keep his windows closed, and would not address the disturbances that occur on his porch or in his yard. The Board has no information as to whether this method is economically reasonable.

**Conclusion.** The Board finds that the parties present several noise abatement options that are technically feasible and economically reasonable. The Board agrees that a noise wall would offer Brill and other residents protection from noise emissions, and that strict enforcement of TL Trucking policies could reduce the amount of noise generated on the site. This includes adherence to the policies of closing wash bay doors when cleaning trucks, only sounding horns in an emergency, prohibiting the use of air brakes and drivers idling their engines on the lot, enforcing a 5 mph speed limit, and other noise reduction measures. The Board agrees with TL Trucking that a berm or structure are not feasible because of space constraints on the lot. The Board also does not find that extending the wash bay is technically feasible because it violates industry protocol on sterilizing food trailers. The Board finds that insulating Brill's home is technically feasible, but does not have sufficient information to determine if it is economically reasonable.

**Dust and Diesel Exhaust.** The Board finds that it is technically feasible and economically reasonable to abate dust and diesel exhaust generated by TL Trucking. Brill requested that TL Trucking reduce dust from their operations by paving its lot. The record is not clear as to whether TL Trucking has now paved the entire lot or has done solely what is required by local ordinance. TL Trucking also stated that drivers who must run their engines to keep their cabs warm can no longer park in the lot, and that all trucks in the TL Trucking fleet utilize devices that shut off engines left idling for five minutes when drivers are not present.

### **Subsequent Compliance**

Under this factor, the Board determines whether TL Trucking subsequently came into compliance with provisions of the Act or the Board's regulations that it allegedly violated.

LTD Commodities, PCB 99-19, slip op. at 31, citing Manarchy v. JJJ Associates, Inc. d/b/a The Gotham Nightclub, PCB 95-73, slip op. at 13 (July 18, 1996). The Board first discusses subsequent attempts by TL Trucking to reduce air emissions, and then addresses any efforts to abate noise on the site.

**Dust and Diesel Exhaust.** The Board finds that TL Trucking engaged in some dust and exhaust reduction activities, and accordingly weighs this factor in favor of TL Trucking. The facility originally laid crushed stone over the dirt surface when it moved onto the site. It also alleges that it paved part or all of its lot, which should eliminate most of the dust caused by trucks driving over the stone surface. The Board notes that it does not have proof of the extent of the paving by TL Trucking.

Prior to paving the lot, TL Trucking alleged that it watered down the lot once to twice a day and sprayed calcium chloride as directed to suppress the dust. Latoria also expressed that it reduced the speed limit to 5 mph on the lot, and enforced this limit. Homans corroborated this claim by testifying that trucks were moving at approximately 5 mph across the lot while he was taking measurements. Latoria testified that he had recently fired someone for driving too quickly. Brill and several other residents argue that these methods did little to prevent dust from carrying over the park to their residences. Brill also provided conflicting evidence that drivers were not abiding to the 5 mph speed limit.

TL Trucking also alleged that it established policies to reduce diesel fumes from trucks idling on the site. Latoria stated that, six months prior to the November, 2001 hearing, drivers were instructed that they could not sleep in their cabs on the lot. If they wanted to idle their engines to heat their tractors, then they were allegedly told that they would have to move to King Street or another location. The record does not have information that is recent enough to verify the effectiveness of this policy.

**Noise.** The Board finds that TL Trucking did little to prevent noise emissions at TL Trucking, and enacted ineffective policies to address residents' concerns. Latoria testified that TL Trucking only allows drivers to use air horns in an emergency. However, Brill's log is replete with incidents where drivers utilize their air horns for other purposes, such as playing "Yankee Doodle Dandy" or requesting entrance to a wash bay.

TL Trucking posted signs on the lot to instruct drivers not to blow their air horns. However, it tore down the signs on the lot when constructing the fence and gate about a year prior to the November hearing. Latoria still had not replaced them by the date of the hearing. He claimed that he still had one sign on the site concerning air horns and the speed limit, which TL Trucking submitted as an exhibit. The sign had "not" crossed out, so that it read ". . . do blow air horns."

This poor attitude seemed prevalent in how other problems with noise were handled. Latoria admitted that he works with drivers on a daily basis about the unnecessary use of air

brakes on the lot. Latoria also said that he was not responsible for sounds from maintenance activities that occurred on his lot.

When asked about noise from coupling tractors to trailers, Latoria explained that drivers that were not lazy could lower their trailers to more quietly hitch them to tractors. O'Neill and Gibas provided strong support for Brill's contention that drivers are not routinely taking this precaution. Latoria did state that the recent paving of the lot would facilitate quieter coupling of trailers.

Finally, Latoria attested to moving a compressor inside a building, and establishing the policy that employees must close bay doors when washing trailers. TL Trucking admitted that it previously kept bay doors open for ventilation during warmer months. Brill recorded numerous instances where TL Trucking washed trucks with open bay doors. Latoria alleged that he was willing to continue to work with drivers to keep bay doors closed. Brill argued that employees took a different attitude that they could make noise during business hours, and disregarded this policy.

Brill also argued that TL Trucking washed tractors outside the bays. Stumbris testified that he told TL Trucking that washing trucks outside would violate local ordinances. Brill alleged in his log that a TL Trucking employee told him that they were washing trucks in the yard. Latoria contends that this was not possible because wash equipment does not reach outside the bays.

The Board finds that, while Latoria may have enacted several policies to reduce noise, they have not been effectively enforced or taken seriously by drivers on the lot. The Board accordingly finds that TL Trucking did little to take substantive steps to abate noise from its operations, and weighs this factor against TL Trucking.

### CONCLUSION

The Board finds that noise and air emissions from TL Trucking unreasonably interfered with Brill's enjoyment of life and property, in violation of Sections 9(a) and 24 of the Act and 35 Ill. Adm. Code 900.102. Brill and several witnesses verified the origin of these emissions by observing conduct at TL Trucking that coincided with noises that they heard, and watching dust and exhaust fumes drift from trucks idling and moving around the lot. Noise from TL Trucking interfered in the lives of Brill and nearby residents by depriving them of sleep, breaking their concentration, and disrupting other activities inside and outside of their homes. The dust and diesel emissions interfered with their lives by making it harder to breathe, infiltrating their homes and garages, coating outside furniture and gardens, and restricting their ability to open their windows.

The Board further finds that interference caused by noise and air emissions was unreasonable, upon considering the five factors under Section 33(c) of the Act. *See* 415 ILCS 5/33(c) (2000). The Board reviewed the character and degree of injury from the noise and air

emissions, and found the noise, dust, and exhaust fumes to substantially and frequently interfere with the lives of Brill and several of his witnesses. They routinely experienced interference, which did not occur prior to TL Trucking operations. The Board finds that testimony by several neighbors and Brill's log entries support the type and intensity of the noise and air emissions that occurred 24 hours a day, as well as the cumulative effect that it had on Brill and nearby residents.

The Board also finds that sound measurements by Brill, although not taken in accordance with 35 Ill. Adm. Code 900.103(b), corroborated his testimony about the severity of noise from TL Trucking. The Board finds that the two-hour sound measurements by Homans excluded too many of the types of noise and activity at the TL Trucking site to be truly indicative of the usual interference experienced by Brill and several of his neighbors.

The Board next weighs the social and economic value of TL Trucking in its favor, in that it is part of an industrial base relied upon by Franklin Park. However, the Board finds that TL Trucking, as operated, is not suitable to the restricted industrial area where it is located. By significantly increasing noise and air emissions in the area, TL Trucking negates the effectiveness of any arguments concerning priority of location. TL Trucking introduced new loud sounds that were startling or jarring during nighttime hours in an area where other facilities predominately shut down in the middle of the afternoon or early evening, and generally did not operate on weekends. Brill and other residents also testified that they observed a significant increase of air emissions from visible sources at TL Trucking. The Board finds that policies enacted to reduce dust and exhaust emissions on the lot were not adequately proven to be effective measures as of the September and November hearings. Although TL Trucking is zoned correctly, the Board finds that the significant increase of noise and air emissions in this manner makes it ill suited to an area adjacent to residential property.

The Board finds that several options presented by both parties offer technically feasible and economically reasonable solutions to abate noise and air emissions from TL Trucking. For instance, the parties suggested installing a noise wall, keeping bay doors closed, enforcing policies concerning air brakes and horns, placing a compressor in an isolated room, paving the lot, and ensuring drivers maneuver their trucks more slowly, more carefully hitch their tractors to trailers, and do not idle their truck engines. The Board notes that it requires more information on the cost and specific requirements of these and potentially other abatement measures prior to determining the best alternatives.

Finally, the Board finds that TL Trucking attempted to achieve subsequent compliance for air emissions, but did not make a solid effort to reduce noise emissions at its facility. TL Trucking sprayed the lot once to twice a day with water and used calcium chloride to control dust emissions until it alleged that it paved the lot. The facility also instigated policies to reduce the speed limit on the lot to five mph to cut down on dust from trucks driving across crushed stone, and prohibited trucks from idling in back of the facility.

TL Trucking did not make the same effort to control noise emissions. Although Latoria testified that he enacted several noise policies, his own testimony as well as allegations by Brill and other residents illustrated the lack of enforcement and prevalent attitude at the site. Brill's log bolstered this impression particularly on two occasions where he wrote that employees said that they could make as much noise as they wanted during business hours, and that they were washing trucks outside of the bays. Brill also testified about engines revving and screaming, tunes played on air horns, the common usage of air brakes, tractors repeatedly ramming into trailers for hookups, and other conduct that Latoria claimed was prohibited on the lot. Testimony and public comment complaining of a constant barrage of noise from air horns, air brakes, coupling tractors to trailers, metal banging, wash equipment, and engine noise, shows that the policies failed to reduce noise from TL Trucking's operations.

Although the Board finds that TL Trucking violated the above air pollution and noise nuisance provisions, the Board does not find that Brill adequately demonstrated noise from TL Trucking was above numeric noise limits, in violation of 35 Ill. Adm. Code 901.102(a), (b), and 901.104.

Since the Board requires more information on appropriate abatement measures for air and noise emissions at TL Trucking, it directs TL Trucking to retain a noise expert (or utilize the same expert) and file a report within 180 days, detailing how it will reduce noise and air emissions at the site. The complainant will have 60 days after TL Trucking files its report to respond. If necessary, the Board may require a hearing on the proposed measures after receiving reports from the parties in this matter.

This opinion and order constitutes the Board's findings of fact and conclusions of law.

### **ORDER**

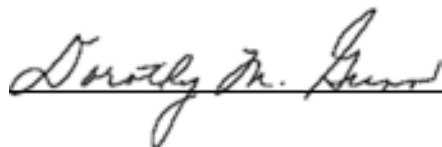
1. The Board finds that TL Trucking violated Sections 9(a) and 24 of the Environmental Protection Act (415 ILCS 5/9(a), 24 (2000)), and Sections 900.102 of the Board regulations (35 Ill. Adm. Code 900.102).
2. TL Trucking is hereby ordered to retain the assistance of a noise expert and prepare a report detailing what steps can be taken to alleviate the noise and air emissions reaching Brill's residence. This will include both technical and financial information on such options. The report must be filed with the Board and served upon Brill by December 3, 2002. Brill may file a response to such a report, with a detailed analysis of the proposal and alternative abatement measures, by February 1, 2003. If necessary, the Board may require a hearing on the proposed measures after receiving reports from the parties in this matter.

IT IS SO ORDERED.

Board Member T.E. Johnson Concurred.



I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on June 6, 2002, by a vote of 7-0.

A handwritten signature in cursive script, reading "Dorothy M. Gunn", written over a horizontal line.

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board