

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 LAWRENCE C. SWEDA,)

)

4 Complainant,)

)

5 vs) PCB 99-38

) (Enforcement Noise, Citizens)

6 OUTBOARD MARINE)

CORPORATION and the)

7 CITY OF WAUKEGAN,)

)

8 Respondents.) VOLUME II

9

10

11 The following is the continued transcript of a

12 hearing held in the above-entitled matter, taken

13 stenographically by GEANNA M. IAQUINTA, CSR, a

14 notary public within and for the County of Cook and

15 State of Illinois, before JOHN KNITTLE, Hearing

16 Officer, at 18 North County Street, Room 301,

17 Waukegan, Illinois, on the 20th day of April, 1999,

18 A.D., scheduled to commence at 9:00 o'clock a.m.,

19 commencing at 9:20 a.m.

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21

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23

24

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

2

HEARING TAKEN BEFORE:

3

ILLINOIS POLLUTION CONTROL BOARD,

4

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Suite 11-500

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Chicago, Illinois 60601

(312) 814-6923

6

BY: MR. JOHN KNITTLE

7

LAWRENCE C. SWEDA,

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923 North County Street

Waukegan, Illinois 60085

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Appeared on behalf of the Complainant,

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11 SEYFARTH, SHAW, FAIRWEATHER & GERALDSON,

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Chicago, Illinois 60603

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BY: MS. SUSANNAH A. SMETANA

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Appeared on behalf of the Respondent,

Outboard Marine Corporation,

15

16 DIVER, GRACH, QUADE & MASSINI,

111 North County Street

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Waukegan, Illinois 60085

(847) 662-8611

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BY: MS. HEIDI J. AAVANG

19

Appeared on behalf of the Respondent,

City of Waukegan.

20

21

22 ALSO PRESENT:

23 Mr. Joseph S. Moran, Outboard

Marine Corporation

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1 HEARING OFFICER KNITTLE: This is the
2 second day of hearings for PCB No. 99-38, Lawrence
3 Sweda vs. Outboard Marine Corporation and the City
4 of Waukegan. Today's date is April 20th, 1999, and
5 it is 9:20 a.m. Mr. Sweda is present again as are
6 Heidi Aavang for the City of Waukegan, Susannah
7 Smetana for OMC as well as Joseph Moran --

8 MR. MORAN: Correct.

9 HEARING OFFICER KNITTLE: -- for OMC.
10 Tom Lupo is not attending today. So, Ms. Smetana,
11 are you going to be doing a direct examination?

12 MS. SMETANA: Yes.

13 HEARING OFFICER KNITTLE: Okay. Your
14 witness.

15 MS. SMETANA: We're going to call as our
16 first witness today John Battisfore.

17 HEARING OFFICER KNITTLE: Sir, if you
18 could have a seat right there and the court
19 reporter will swear you in.

20 MS. SMETANA: Do you also have exhibits
21 from yesterday?

22 HEARING OFFICER KNITTLE: I do have all
23 the exhibits from yesterday except the two tapes
24 that were not admitted. I didn't bring those.

1 They're in my trunk, though, if we need them. Do
2 you need one in particular? Here. I'll give you
3 all three of yours.

4 MS. SMETANA: No. I just need Exhibit 2.

5 HEARING OFFICER KNITTLE: Those are the
6 OMC exhibits.

7 (Witness sworn.)

8 WHEREUPON:

9 JOHN BATTISFORE,

10 called as a witness herein, having been first
11 duly sworn, deposeth and saith as follows:

12 DIRECT EXAMINATION

13 by Ms. Smetana

14 Q. Please state your full name for the
15 record.

16 A. John Charles Battsfore.

17 Q. And what's your education?

18 A. I have a bachelor's degree in computer
19 science and an MBA degree.

20 Q. When did you get those degrees?

21 A. I got my bachelor's degree in 1975, and I
22 got my master's degree in 1989.

23 Q. And where are you presently employed?

24 A. I'm employed in the information technology

1 center at Outboard Marine.

2 Q. And how long have you been with Outboard
3 Marine?

4 A. I've been there 24 years.

5 Q. Have you always been in the information
6 technology department?

7 A. Yes.

8 Q. And what is the information technology
9 department?

10 A. Well, we deal with information processing
11 in terms of computer systems, telecommunications,
12 and PCs, and networks.

13 Q. How many employees work in the IT
14 department?

15 A. We have 47 employees right now, plus
16 contractors.

17 Q. And what is your job title?

18 A. Project leader.

19 Q. And for how long have you been project
20 leader?

21 A. Since about 1990.

22 Q. As project leader, what are your job
23 responsibilities?

24 A. Given a specific initiative, I make plans

1 for the project, I monitor progress, I obtain
2 resources as needed, and that kind of thing.

3 Q. And where is the IT department located at
4 OMC?

5 A. It's located --

6 Q. On what portion of the facility?

7 A. It's located directly across from the
8 beach and it is east of that big empty field and
9 south of another part of the big empty field.

10 Q. If I showed you a map of the facility,
11 would you be able to identify it?

12 A. Yes.

13 MS. SMETANA: I'll approach the witness.

14 I'm going to show the witness what's been marked
15 OMC Exhibit No. 2.

16 BY MS. SMETANA:

17 Q. If you could identify on this map the IT
18 building and place your initials next to it.

19 A. It's kind of hard. Right here. Sorry.

20 Q. And then -- do all employees in the IT
21 building -- IT department work in this building?

22 A. All, but one.

23 Q. Where is this building in relation to the
24 rest of the facility?

1 A. There is a plant to the north of us and
2 there is what was called the environmental
3 building, which is directly to the south of us, and
4 then there's another plant to the south of that.

5 Q. And where is the IT building in relation
6 to the vacant land you refer to?

7 A. It is to the east of one part of the field
8 and to the south of another part of the field.

9 Q. Is there a fence between the field and the
10 IT building?

11 A. Yes.

12 Q. What kind of fence is that?

13 A. Cyclone.

14 Q. What is a cyclone fence?

15 A. The wire.

16 Q. How do you get to work in the morning?

17 A. I drive a car.

18 Q. About what time do you arrive at work?

19 A. I arrive usually between 7:00 o'clock and
20 7:30.

21 Q. And what time do you usually leave?

22 A. I usually leave between 4:30 and 5:30.

23 Q. And where do you park your car?

24 A. I park it in the lot.

1 Q. What lot?

2 A. The parking lot that's directly north of
3 our building.

4 Q. Do all IT employees park their car at this
5 lot?

6 A. Yes. As far as I know, yes.

7 Q. Does the lot have a name?

8 A. No.

9 Q. Do you refer to it as the IT lot?

10 A. Yeah, IT parking lot.

11 Q. And which direction in relation to your
12 building is the IT lot?

13 A. Directionally, north.

14 Q. And where is the IT lot in relation to the
15 vacant field?

16 A. We are -- again, the field is to the
17 north. One part is to the north of our building
18 and one part is directly east -- pardon me,
19 directly west of our building.

20 MS. SMETANA: I'm going to show the
21 witness again Exhibit 2, which is the map of OMC.

22 BY MS. SMETANA:

23 Q. If you could take this yellow highlighter
24 and outline the area of the IT parking lot.

1 A. (Witness complied.)

2 Q. About how large is the IT parking lot?

3 A. I don't know the specific dimensions. I'd
4 say it's about 30 yards wide and about 60, 75 yards
5 long.

6 Q. And does the fence of the vacant field
7 border the parking lot?

8 A. Yes.

9 Q. As a project leader, have you had any
10 contact with the environmental department at OMC?

11 A. Yes.

12 Q. And what has that contact been?

13 A. At one point in time when the problem with
14 the sea gulls had gotten bad enough, the
15 environmental department was going to be looking
16 into the matter, and my boss at the time, Ed
17 Frandel, asked me to be kind of a liaison to keep
18 abreast of what was going on for the -- so that
19 people in our department knew what was going on
20 then.

21 Q. Why was that important to have that
22 position?

23 A. Just important to make sure that that --
24 that the problem was being looked into to be

1 addressed.

2 Q. And did you communicate what was being
3 done to your employees?

4 A. Yes. Any developments that were
5 significant, I would pass that information along.

6 Q. And did IT employees ever come to you?

7 A. Yes. There's been times people came to me
8 about it.

9 Q. When were you first aware of the sea gulls
10 on the OMC property?

11 A. Well, I was probably aware of it in '95
12 and '96, but in 1997 it was quite bad. I
13 definitely was aware of it then.

14 Q. Prior to that time in all of your 24 years
15 at OMC, had there been a gull population on OMC's
16 property?

17 A. Prior to that time, I don't recall such.

18 Q. And you said in '96 and '97 it was bad.

19 What do you mean by that?

20 A. Well, in '97, the bird droppings were --
21 there was quite a bit of bird droppings hitting our
22 cars, et cetera.

23 Q. What did the number of sea gulls look like
24 to you? What did you see?

1 A. Well, I couldn't possibly estimate it.

2 There was just -- you know, it looked like
3 thousands of them.

4 Q. And where were the birds in relation to
5 the IT department?

6 A. Well, they were using the field directly
7 to the west of the IT parking lot.

8 Q. Would they fly?

9 A. Yes. They would also fly overhead a lot.

10 Q. During what months of the year in
11 the '96, '97 were the gulls present?

12 A. They would usually come in at about -- by
13 about the 1st of March, maybe a little bit before
14 that.

15 Q. And how did the problem change from '95
16 to '97?

17 A. Just the amount of bird droppings became
18 significantly worse.

19 Q. And where were these bird droppings?

20 A. The bird droppings were on the parking lot
21 itself, they were on our cars, and the people,
22 including myself, have been hit by the droppings.

23 Q. Can you describe the gulls' behavior in
24 1997 around the IT building?

1 A. Well in '97, at different times of day,
2 there would be a lot flying overhead. They would
3 be walking around out in the field. That's the
4 main thing and at times walking in the parking lot,
5 especially when you first got there in the
6 morning. There could be numbers of them walking
7 around the parking lot.

8 Q. And did you see that when you got to work
9 in the morning?

10 A. Yes.

11 Q. And what was your own experience in 1997
12 with respect to the sea gulls?

13 A. Well, two things mainly. I was -- as I
14 said, I was hit by gull droppings on my shoulder.
15 My car was hit on just about a daily basis and
16 sometimes very significantly.

17 Q. When you say your car was hit, what did it
18 look like?

19 A. My car was -- are you referring to the
20 color of the car?

21 Q. No, the droppings on the car.

22 A. Droppings on the windshield, droppings on
23 the hood, on the trunk, on the side windows, on the
24 bumpers.

1 Q. And what did you have to do as a result of
2 the droppings?

3 A. On a daily basis, I would have to take a
4 jug of water, take paper towels, and try to get the
5 bird droppings off my car.

6 Q. Can you describe your car?

7 A. Yes. It's a '94 bluish-green Intrepid.

8 Q. Did you ever take a picture of your car?

9 A. Yes, I did.

10 Q. When did you do this?

11 A. I took a picture of it on a Monday. It
12 was a day when my car got hit even worse than
13 usual.

14 Q. And why did you take a picture?

15 A. Because it was so unbelievably bad that
16 particular day that I just wanted to have a record
17 of it.

18 Q. And do you recall when you had washed your
19 car prior to that?

20 A. I had washed my car the day before.

21 (OMC Exhibit Nos. 4 and 5

22 marked for identification,

23 4-20-99.)

24 MS. SMETANA: I'm going to show the

1 witness what's been marked OMC Exhibits 4 and 5.

2 MR. SWEDA: I object to the exhibit. We
3 don't know that, in fact, it is, in fact, your car
4 and it is, in fact --

5 MS. SMETANA: He hasn't yet identified the
6 exhibit.

7 HEARING OFFICER KNITTLE: I'm going to let
8 her approach the witness and continue to lay the
9 appropriate foundation.

10 MS. SMETANA: I'm going to show the
11 witness first what's been marked as OMC Exhibit 4.

12 BY MS. SMETANA:

13 Q. Can you identify this exhibit?

14 A. Yes. That is my car.

15 Q. Is this the -- again, can you describe --
16 you just previously described what your car looked
17 like. Can you describe, again, the color and model
18 of your car?

19 A. It's a 1994 Dodge Intrepid. It's dark
20 bluish-green in color.

21 Q. And where was this picture taken?

22 A. In my driveway.

23 Q. Again, again, when did you take the
24 picture?

1 A. It was on a Monday after I came home from
2 work.

3 Q. And what does this picture depict?

4 A. It depicts the right-hand side of my car
5 on the side windows and also on the roof.

6 Q. And what does it show on your car?

7 A. Bird droppings.

8 MS. SMETANA: I'm going to ask that this
9 Exhibit 4 be put into evidence.

10 HEARING OFFICER KNITTLE: Mr. Sweda?

11 MR. SWEDA: I have no qualms that it's a
12 picture of a car with bird droppings.

13 HEARING OFFICER KNITTLE: It's admitted.

14 MS. SMETANA: Now, I'm going to show the
15 witness what's been marked Exhibit No. 5.

16 BY MS. SMETANA:

17 Q. Could you identify that?

18 A. Yes. That's the roof of my car on the
19 same date.

20 Q. And why did you take a picture of the roof
21 of your car?

22 A. Because there was such an extreme amount
23 of bird droppings on it.

24 MS. SMETANA: I'm also going to move to

1 admit Exhibit No. 5 into evidence.

2 HEARING OFFICER KNITTLE: Mr. Sweda?

3 MR. SWEDA: I have no qualms that it's a

4 picture of a car with bird droppings on it.

5 MS. SMETANA: And I'm also going to ask

6 that the witness initial each of these photographs

7 to show that he took the pictures and they're his

8 car.

9 BY THE WITNESS:

10 A. (Witness complied.)

11 BY MS. SMETANA:

12 Q. Thank you.

13 HEARING OFFICER KNITTLE: Exhibit No. 5 is

14 admitted.

15 BY MS. SMETANA:

16 Q. How often do you wash your car or in 1997

17 how often did you wash your car?

18 A. In 1997, I would probably wash it every

19 week, but, again, on a daily basis, I would have to

20 take the spots off, you know, wipe them off

21 individually I guess I'd say.

22 Q. And what did you wipe them off with?

23 A. I used water, paper towels.

24 Q. And at what point in the day would you

1 wipe off the spots?

2 A. When I'd get home. I'd try to do it while
3 they were still -- if there was still some wet, I
4 guess.

5 Q. Did you ever wipe the spots off before you
6 got home?

7 A. I'm sure there were occasions I did, yeah.

8 Q. Has there been any other damage to your
9 car?

10 A. There is discoloration in a few different
11 spots on my front hood, and I know of no other
12 reason than these droppings for doing that.

13 Q. Have you had this discoloration repaired?

14 A. No.

15 Q. Why not?

16 A. Well, I haven't had it repaired for --
17 well, my personal reason is that I don't like to
18 get paint jobs done unless it's really absolutely
19 necessary due to you don't always get the exact
20 consistency of color. It's just a personal
21 preference.

22 Q. Is there any other reason why you have not
23 gotten the paint redone?

24 A. Well, there would be cost to do that

1 obviously.

2 Q. And how much would it cost, do you know?

3 A. No. I don't have a fixed cost. I don't

4 know.

5 Q. Have other employees -- have you noticed

6 other employees in the IT department have similar

7 droppings on their cars?

8 A. Absolutely.

9 Q. And do they all also wash their cars?

10 A. Yes.

11 Q. Have you seen employees wash their cars

12 after work in the lot?

13 A. I cannot specifically say that I have, no.

14 Q. Have other employees mentioned to you this

15 damage or discoloration?

16 A. Yes.

17 Q. About how many employees in the IT

18 department?

19 A. Two that I know of that specifically have

20 told me that it's damaged their paint.

21 Q. Have you had any other experience with the

22 gulls?

23 A. Personally, once the chicks hatch, you do

24 have to drive carefully around the parking lot.

1 You never know if they're underneath your car. I
2 know of other people being hit. I know of people
3 being --

4 Q. Hit by what?

5 A. Droppings.

6 Q. I'm sorry. Go ahead.

7 A. So people hit on the head by droppings,
8 people hit on their clothing. The birds dive-bombing
9 people when the chicks are around.

10 Q. And why are chicks a concern to you?

11 A. Well, the chicks, they get stuck in the
12 fence there when they try to crawl into the parking
13 lot. They get hit by cars. So you've got their
14 carcasses laying around. That's the main things.

15 Q. Why are you concerned about their
16 carcasses laying around?

17 A. Well, it's not really a healthy situation
18 I don't think to have those kind of things laying
19 around. Also, in the parking lot the bird
20 droppings, at one point it gets to be so bad that
21 you can hardly walk without stepping in it.

22 Q. Are you aware of any efforts to address
23 this gull problem?

24 A. Yes.

1 Q. Have you been involved in any of these
2 efforts?

3 A. Yes.

4 Q. Are you aware of the efforts used by OMC
5 to address the problem?

6 A. Of the methods?

7 Q. Yes.

8 A. What are these methods?

9 A. Air cannons, bird distress signals,
10 pyrotechnics.

11 Q. And how are you aware of these efforts?

12 A. I'm aware of it because, as I say, I was
13 initially brought in as a liaison to see what might
14 be the work going on to address it, and I'm aware
15 of them because they are in use today and have been
16 in use.

17 Q. Where are they in relation to the IT
18 building?

19 A. They are out in the field that is directly
20 west of the IT building.

21 Q. I said they. What is that?

22 A. I'm sorry. The air cannons have been out
23 in that field and pyrotechnics used out in that
24 field.

1 Q. And what about the distress boxes?

2 A. That's up on the roof of our building.

3 Q. How far away are the cannons in relation

4 to the IT building, approximately?

5 A. I have not specifically looked in recent

6 days. I hear them. I have not specifically looked

7 for them. So I can't tell you exactly.

8 Q. You say you hear the cannons. When do you

9 hear the cannons?

10 A. I hear them periodically throughout the

11 day.

12 Q. Have you been outside when you've heard

13 the cannons?

14 A. Yes.

15 Q. Have you been outside the IT building when

16 you've heard the cannons?

17 A. Yes.

18 Q. Have you ever spoken to someone outside of

19 the IT building?

20 A. Yes.

21 Q. While you've heard the cannons?

22 A. Yes.

23 Q. Can you describe how you were speaking?

24 A. Pretty much normal, normal tones.

1 Q. And you work inside the IT building?

2 A. Yes.

3 Q. Are you able to hear the cannons inside
4 the building?

5 A. Yes.

6 Q. Has that affected your work?

7 A. No.

8 Q. When was the -- these efforts you
9 discussed about to address the gull problem, when
10 were those implemented, what year?

11 A. They were first implemented in early March
12 of '98 is when I believe they were first
13 implemented.

14 Q. And in 1998, did you notice any difference
15 in the presence of gulls?

16 A. Yes.

17 Q. What did you notice?

18 A. I noticed that they would -- they didn't
19 have such a great presence out in the field, and it
20 varied over time, but for the most part, it
21 lessened.

22 Q. What about the droppings on your car?

23 A. It lessened the amount of droppings on my
24 car.

1 MS. SMETANA: I have no further questions

2 for the witness.

3 HEARING OFFICER KNITTLE: Ms. Aavang, do

4 you have any questions for this witness?

5 MS. AAVANG: I just have one question.

6 DIRECT EXAMINATION

7 by Ms. Aavang

8 Q. Are you aware of any employees using

9 measures to protect themselves from the bird

10 droppings as they were walking?

11 A. I'm aware of one thing, and that is an

12 employee who said he's had to cover his face with a

13 cloth because it would cause kind of an allergic

14 reaction out there.

15 Q. Anyone using hats or things to try and

16 protect their heads?

17 A. I'm not aware of it.

18 HEARING OFFICER KNITTLE: Anything else,

19 Ms. Aavang?

20 MS. AAVANG: That's it.

21 HEARING OFFICER KNITTLE: Mr. Sweda, do

22 you have a cross-examination?

23 MR. SWEDA: Yes, I do, a couple questions.

24 HEARING OFFICER KNITTLE: You can

1 proceed.

2 MR. SWEDA: Thank you.

3 CROSS - EXAMINATION

4 by Mr. Sweda

5 Q. Mr. Battsfore, again, how long have you

6 worked at that particular building? I think you

7 said like --

8 A. Twenty-four years.

9 Q. Twenty-four years.

10 Have you noticed gulls in the

11 presence of that property prior to the '90s since

12 that -- that 20-some odds years?

13 A. I was not really consciously aware of

14 them.

15 Q. You never saw gulls or --

16 A. I can't say I never saw them. I'm saying

17 that I was not consciously aware of them.

18 Q. Okay. I have no problem basically with

19 what you're saying in terms of the photographs.

20 You're saying that people are saying -- also other

21 people said that birds poop on their cars. I know

22 that's not the proper name, but that's an effective

23 way of saying it.

24 Are there any other things that

1 alight or you find on your car that would not
2 necessarily be poop, but are there other things
3 that are on your car that you pick up
4 inadvertently?

5 MS. SMETANA: I'm going to object and ask
6 that you clarify that question.

7 BY MR. SWEDA:

8 Q. Are there any other items that you will
9 find on your car besides bird poop?

10 A. Not that I'm aware of.

11 Q. The only thing you ever find on your car
12 is bird poop?

13 MS. SMETANA: Can you clarify as when
14 you're referring to?

15 MR. SWEDA: I'm clarifying when he has --

16 HEARING OFFICER KNITTLE: I'm going to
17 allow the question.

18 BY MR. SWEDA:

19 Q. In the presence of his car when he drives
20 in in the morning, when he drives home at night, do
21 you -- and during the day when you get out of the
22 car, do you ever notice that there might be other
23 things attached to your car that you may have hit
24 or may have run into or may have dropped from the

1 sky at any time in the 20-some odd years that
2 you've worked at that facility, whether it was this
3 car or some other car?

4 HEARING OFFICER KNITTLE: Mr. Sweda,
5 you've got to allow him to answer the question.

6 MR. SWEDA: Okay. Sorry.

7 BY THE WITNESS:

8 A. If you mean like a splash of mud on the
9 side of my car?

10 BY MR. SWEDA:

11 Q. Anything.

12 A. That would be about the only thing I can
13 think of.

14 Q. Bugs?

15 A. Well, yeah. Okay. Bugs.

16 Q. Bugs, butterflies. Thank you.

17 About how many days do you work at
18 OMC?

19 A. Five days a week.

20 Q. Five days a week.

21 Do you work on weekends then?

22 A. Rarely.

23 Q. Rarely.

24 And your hours again were from?

1 A. It officially starts at 7:30, and I stay

2 until -- I stay until 5:00 or 5:30 usually.

3 Q. So you're not there in the evening or

4 after 4:30, 5:00 o'clock?

5 A. After 5:30, I'm usually not there.

6 MR. SWEDA: Thank you. That's all the

7 questions I have.

8 HEARING OFFICER KNITTLE: Ms. Smetana, any

9 redirect?

10 MS. SMETANA: I just have one question.

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

12 by Ms. Smetana

13 Q. Mr. Battisfore, can you compare the gull

14 droppings on your car to a bug on your car?

15 A. A bug would be very minute. These gull

16 droppings can be pretty large.

17 Q. When you say large, what do you mean?

18 A. They could be sometimes up to six inches

19 in length.

20 Q. And how many of them?

21 A. It can vary. On a very bad day, such as

22 in that photograph, it could have been a couple

23 dozen.

24 MS. SMETANA: I have no further questions.

1 HEARING OFFICER KNITTLE: Mr. Sweda?

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

3 by Mr. Sweda

4 Q. Do you know the size of bugs? Are there
5 small bugs and large bugs?

6 A. There are small bugs. I don't know.

7 Q. Do you know of any large bugs that exist
8 in this area that you may work in or live in?

9 A. There may be. I'm not aware. I really
10 have never consciously thought about it.

11 MR. SWEDA: Okay. Thank you. No other
12 questions.

13 HEARING OFFICER KNITTLE: Anything else?

14 MS. SMETANA: No.

15 HEARING OFFICER KNITTLE: You can step
16 down, sir. I don't see Mr. Zack yet. So if you
17 have another witness.

18 MS. SMETANA: Okay. One minute, please.

19 HEARING OFFICER KNITTLE: Sure. Do you
20 need to go off the record for a second?

21 MS. SMETANA: Yes.

22 HEARING OFFICER KNITTLE: Let's go off.

23 (Discussion had
24 off the record.)

1 HEARING OFFICER KNITTLE: Ms. Smetana?

2 MS. SMETANA: OMC calls its next witness,

3 Terry Fisel.

4 HEARING OFFICER KNITTLE: Ms. -- is it

5 Fisel?

6 MS. SMETANA: Fisel.

7 HEARING OFFICER KNITTLE: I'm sorry.

8 MS. SMETANA: Fisel, with an F.

9 HEARING OFFICER KNITTLE: Thank you. It's

10 hard to hear up here. Have a seat, please. If you

11 could swear her in.

12 (Witness sworn.)

13 WHEREUPON:

14 T H E R E S A F I S E L,

15 called as a witness herein, having been first

16 duly sworn, deposeth and saith as follows:

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

18 by Ms. Smetana

19 Q. Please state your full name for the

20 record?

21 A. Theresa Marie Fisel.

22 Q. Can you spell your last name?

23 A. F, as in Frank, i, S, as in Sam, e-l.

24 Q. And, Ms. Fisel, where are you presently

1 employed?

2 A. At the product development center at OMC

3 corporation.

4 Q. And when did you begin working at OMC?

5 A. May 28th of last year.

6 Q. What was last year?

7 A. 1998.

8 Q. What did you do prior to working at OMC?

9 A. Approximately 20 years of work in the
10 medical field.

11 Q. And what was that work in the medical
12 field?

13 A. It was various between administrative,
14 respiratory therapist, and I was also a dialysis
15 technician.

16 Q. And what is a respiratory therapist?

17 A. You deal in the aid and treatment and
18 assistance with people with respiratory diseases
19 and respiratory malfunctions.

20 Q. And what kind of respiratory diseases?

21 A. Asthma, emphysema, cancer.

22 Q. And were you a respiratory therapist?

23 A. Yes, I was.

24 Q. For how many years?

1 A. For approximately three and a half to four
2 years.

3 Q. When was that?

4 A. In 1970 -- I believe 1977 to 1980,
5 somewhere right in there.

6 Q. At OMC, since May of '98, what has been
7 your position?

8 A. I'm an administrative assistant to the
9 Ficht business unit.

10 Q. And where is that business unit located at
11 OMC?

12 A. It's currently located in the engineering
13 department, which is 300 Sea-Horse Drive.

14 Q. And where is 300 Sea-Horse Drive in
15 relation to the vacant field at the OMC facility?

16 A. South.

17 Q. If I were to show you a map, could you
18 identify it?

19 A. Sure.

20 MS. SMETANA: I am going to show the
21 witness what's been marked OMC Exhibit No. 2.

22 BY MS. SMETANA:

23 Q. If you can identify the building --

24 A. It would be in this building right here

1 (indicating).

2 Q. And take your time.

3 And where is that in relation to

4 plant one?

5 A. It's behind plant one, west of plant one.

6 Q. Can you write the name of the building and

7 put your initials next to it?

8 A. (Witness complied.)

9 Q. And is that the building in which you

10 presently work?

11 A. Presently, yes.

12 Q. Are there more than one -- is there more

13 than one entrance to that building?

14 A. Yes.

15 Q. On what sides are the entrance?

16 A. Pardon me?

17 Q. On what sides are the two entrances?

18 A. There's one on the north side of the

19 building and there's one on the south side of the

20 building.

21 Q. And where is the building in relationship

22 to the lake?

23 A. We're east of the lake, but west of the

24 harbor. The other way around. We're west of the

1 lake and east of the harbor.

2 Q. Presently, where in the building itself is
3 your office?

4 A. In the PDC area directly in the center of
5 the second floor.

6 Q. What entrance do you use to get to your
7 office?

8 A. I use the south entrance.

9 Q. How do you get to work in the morning?

10 A. I drive.

11 Q. And what time do you generally arrive at
12 work?

13 A. Approximately, 8:00 a.m.

14 Q. Excuse me?

15 A. Approximately, 8:00 a.m.

16 Q. And where do you park your car?

17 A. South of the entrance, south of the south
18 entrance.

19 Q. Have you always parked your car in that
20 lot?

21 A. No.

22 Q. How long have you been parking in the
23 south -- I call it the south lot?

24 A. Since June of '98.

1 Q. And where did you park prior to that?

2 A. 200 Sea-Horse Drive, which is in front of
3 the entire building that we're speaking of across
4 the street from the lake itself.

5 MS. SMETANA: I'm going to, again, show
6 the witness Exhibit 2, which is the map.

7 BY MS. SMETANA:

8 Q. Can you label the parking lot where you
9 now park, the south lot?

10 A. Okay. (Indicating).

11 Q. Just put maybe parking lot or something?

12 A. (Witness complied.)

13 Q. How do you get from the parking lot to the
14 building?

15 A. Walk.

16 Q. And how far do you walk?

17 A. It varies. Probably no more than a city
18 block.

19 Q. And is the parking lot covered?

20 A. No.

21 Q. And when you walk from the car to the
22 building -- from your car to the building, what do
23 you see in the morning?

24 A. Sea gulls, bird droppings, feathers.

1 Q. Where do you see the sea gulls?

2 A. Overhead and in the parking lot.

3 (Telephone interruption.)

4 HEARING OFFICER KNITTLE: Hold on a
5 second, please.

6 (Brief pause.)

7 HEARING OFFICER KNITTLE: Just, for the
8 record, the telephone in the courtroom rang, and we
9 are on hold.

10 You can proceed, Ms. Smetana.

11 MS. SMETANA: I'm sorry. Can you again
12 say -- can you just read back what the witness said
13 she saw.

14 (Record read.)

15 BY MS. SMETANA:

16 Q. And what else did you see in addition to
17 the gulls overhead and in the parking lot?

18 A. I'm sorry. I don't quite understand.

19 Q. What else did you see besides the gulls?

20 A. Oh. Feathers and a few dead birds.

21 Q. Where were the feathers?

22 A. On the parking lot, on the vehicles.

23 Q. And where were the dead birds?

24 A. On the parking lot.

1 Q. About how many dead birds did you see in
2 the morning?

3 A. A few, maybe one to three dead birds at a
4 time.

5 Q. And what did the sea gulls look like, how
6 many?

7 A. How many?

8 Q. Describe what you saw.

9 A. Hundreds, hundreds over that particular
10 area of the parking lot.

11 Q. And at what time of the year have you
12 noticed the sea gulls?

13 A. Starting in the spring. This year, I saw
14 them probably around the beginning of March.

15 Q. Do the gulls fly over the lot?

16 A. Constantly.

17 Q. And where do the gulls walk?

18 A. In the parking lot, in the grassy areas
19 outside of the parking lot.

20 Q. And which parking lot?

21 A. The parking lot that I park in as well as
22 the parking lot to the north of the building.

23 Q. And where do you see the bird droppings?

24 A. All over the asphalt, all over the cars,

1 on the side of the building, on the windows of the

2 building.

3 Q. Do you have any health problems?

4 A. Yes, I do. I have asthma.

5 Q. For how long have you had asthma?

6 A. Since approximately 1979.

7 Q. Have you -- prior to 1998, have you taken

8 medication for asthma?

9 A. Occasionally.

10 Q. What is occasionally? What do you mean?

11 A. Usually due to illness or allergic --

12 Q. And what type of medication did you use to

13 take?

14 A. I'll take an inhalant, which is an

15 albuterol drug, and I'll do a nebulizer treatment,

16 which is, again, albuterol usually when I'm sick.

17 Q. This is all before 1998?

18 A. Uh-huh, and occasionally, I'll take

19 Prednisone when it's a severe reaction.

20 Q. Who do you go to for treatment?

21 A. I currently go to Dr. Monahan.

22 Q. What type of doctor is that?

23 A. An internist.

24 Q. Prior to working at OMC, what aggravated

1 your asthma?

2 A. My biggest allergent was in the spring or
3 late spring is cottonwood, which comes like in June
4 around Father's Day.

5 Q. When your asthma is aggravated, what
6 happens?

7 A. I have difficulty breathing.

8 Q. Does it prevent you from doing --

9 A. It prevents me from even walking up the
10 stairs or walking across the room when it's severe.

11 Q. Have animals ever affected your asthma?

12 A. No. I was told that they could.

13 Q. Do you have any animals?

14 A. I have a dog and a cat.

15 Q. Do they affect your asthma?

16 A. No, because we treat them for their
17 dander.

18 Q. What kind of -- what do you mean you treat
19 them for their dander?

20 A. They get special baths to make sure that
21 their dander is not up and that seems to alleviate
22 any problems that I've ever had with them.

23 Q. Are you able to explain dander?

24 A. Dander is just like with a human if you

1 scratch your head, you're going to get the scalp
2 shavings. That's what they call dander, and when
3 animals scratch and when they shed, the dander will
4 go into the air, and some asthmatics have an
5 allergic reaction to that dander, and I've only had
6 one time a reaction to dander, and that was because
7 the house had about -- the house that I was in had
8 about eight cats.

9 Q. You had said that you were told that
10 animals could aggravate asthma. What kind of
11 animals are you aware of that could aggravate
12 asthma?

13 A. I was told by the allergist in '79 that
14 the three main causes of animal allergants would be
15 cats, dogs, and birds, and birds actually being on
16 the top of the list due to the feathers and the
17 fecal droppings.

18 Q. Have you ever had any experience with
19 birds aggravating your asthma?

20 A. No, not until I started working here at
21 OMC.

22 Q. And what happened when you started working
23 at OMC?

24 A. This particular year in March, I

1 started -- when I would go to work I would have a
2 lot of coughing and sneezing. My eyes would be
3 running. I probably endured that for about three
4 weeks and finally went to the allergist -- the
5 internist, and after talking we decided that I
6 wasn't having a problem at home. I was having a
7 problem at work, and the first question out of her
8 mouth was had I had any new pets, and I said no.

9 She said are you sure, no dogs, no
10 cats, no birds, and I said well, unless you want to
11 count all the birds that are at OMC, and after
12 discussing the amount of fecal matter, the amount
13 of feathers that float around at OMC, they decided
14 that that was probably the cause to my somewhat of
15 an allergic reaction.

16 Q. What -- can you describe what your
17 allergic reaction was?

18 A. Well, for about three weeks, I did the
19 coughing, sneezing, and running eyes, and it was
20 very uncomfortable, and then it turned into
21 aggravating the actual breathing, and what would
22 happen is I would go into an asthma attack.

23 Q. Can you describe an asthma attack?

24 A. In the medical sense, an asthma attack is

1 when the inside of your lungs start to swell, and
2 it makes -- and the arteries and vessels around
3 your lungs start to close up on you. So what
4 happens is you can take a deep breath, but you're
5 not getting in near the oxygen that you need.

6 Q. And when did you last experience an asthma
7 attack?

8 A. About a week and a half ago.

9 Q. And where were you?

10 A. Coming home from work in the car.

11 Q. Had you been outside that day?

12 A. Yes, I had.

13 Q. When at work do you have problems?

14 A. When I come in in the morning, if I go out
15 at lunchtime, when I leave at the end of the day,
16 or if they open the bay doors to the boat house on
17 the lower level because I sit where the stairs come
18 up from the lower level. So I'll know immediately
19 when they open those doors.

20 Q. Whether you visited your doctor, did
21 anything change after that visit?

22 A. They put me on Prednisone and a new
23 allergy medication, and I'll be on continuous
24 Prednisone inhalers. Right now, it's indefinite.

1 Q. Can you describe your asthma when you're
2 outside as compared to when you're inside at OMC?

3 A. If I'm outside for -- I have a tendency to
4 be very, very short of breath. For example, coming
5 in in the morning when the asthma is flaring up, it
6 prevents me from even walking up the stairs to the
7 second floor. I have to take the elevator
8 upstairs.

9 Q. Has it prevented you from doing anything
10 else at work?

11 A. I can't go out at lunchtime. I try to
12 avoid that as much as possible. A lot of the
13 employees will try and enjoy some of the weather
14 for a few minutes, and I have not even tried to
15 endure that.

16 Q. Do other employees go out at lunch?

17 A. Uh-huh.

18 Q. What has been your experience with bird
19 droppings?

20 A. They're all over my car. They're all over
21 the -- where we walk. I clean my shoes before I go
22 in the house every day, and they are on my fellow
23 employees from time to time.

24 Q. What kind of car do you have?

1 A. I have a '91 Cavalier, but I'm currently
2 driving an older Oldsmobile because I don't want my
3 Cavalier's paint ruined.

4 MS. SMETANA: I have no further questions.

5 HEARING OFFICER KNITTLE: Ms. Aavang?

6 MS. AAVANG: No.

7 HEARING OFFICER KNITTLE: Mr. Sweda?

8 MR. SWEDA: Yeah. Just one question.

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

10 by Mr. Sweda

11 Q. You indicated -- one of the first
12 questions was one of what do you see when you -- on
13 your walk from your car to the office building.

14 You said it was approximately about a block away.
15 You mentioned a number of things that you see like
16 bird droppings, feathers, occasionally dead birds.

17 Do you see anything else on that
18 walk?

19 A. Cars and fellow employees. I'm not sure
20 what else you're --

21 Q. I'm not asking -- trying to put words into
22 your mouth. I'm just saying on your walk from your
23 car to the place of your office, do you see
24 anything else besides birds flying overhead, bird

1 droppings, and feathers, and an occasional gull,

2 or is that all you see?

3 A. I see the bay -- the harbor to my left.

4 Q. Anything else?

5 A. No, I don't think so.

6 MR. SWEDA: Okay. That's all. No further

7 questions.

8 HEARING OFFICER KNITTLE: You can step

9 down, please. Let's go off the record for a

10 second.

11 (Discussion had

12 off the record.)

13 HEARING OFFICER KNITTLE: Just for the

14 record, pursuant to an oral motion that we granted

15 yesterday, we are allowing Mr. Sweda to reopen his

16 case in chief and call Greg Zack. For that limited

17 purpose only, his case in chief will be reopened.

18 MS. AAVANG: And we just ask that on the

19 record we show our continuing objection as put

20 forth as to his testimony coming at a point outside

21 of the testimony of the direct case and also the

22 motions in limine that have been presented.

23 MS. SMETANA: I would just, for the

24 record, like to add that up to this very moment in

1 time, the respondents have not received from
2 complainant the disclosure of any expert report
3 from any experts he is calling, and to this date we
4 have received nothing.

5 HEARING OFFICER KNITTLE: With those
6 statements being made, Mr. Sweda, would you like to
7 begin? Let's swear in Mr. Zack.

8 (Witness sworn.)

9 HEARING OFFICER KNITTLE: Mr. Sweda, it's
10 your witness.

11 WHEREUPON:

12 G R E G O R Y Z A C K,
13 called as a witness herein, having been first duly
14 sworn, deposeth and saith as follows:

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

16 by Mr. Sweda

17 Q. Can you state your name and address for
18 the record? Then we'll go into other questions.

19 A. My name is Greg Zack, and I reside at 36
20 Birch Drive, Chatham, Illinois, 62629.

21 Q. Your occupation, job title,
22 responsibilities, and duties, reiterate those, if
23 you forget one of those, and describe those, your
24 occupation and job title?

1 A. My job title is noise advisor. I'm also
2 listed as a senior public service administrator on
3 the payroll, which is kind of a general term for
4 virtually all of mid and upper management at EPA.

5 My job responsibilities entail being
6 familiar with all of the Pollution Control Board
7 noise cases from 1973 to the present, measuring
8 sound, noise, vibration, attending America National
9 Standards Institute meetings on the drafting of
10 techniques for measuring noise, answering citizens'
11 complaints by telephone statewide regarding noise,
12 answering questions from attorneys statewide
13 regarding noise, answering industry questions
14 regarding measurement and regulated quantities of
15 noise, performing noise control engineering for the
16 Illinois EPA and a large segment of the state of
17 Illinois departments and agencies.

18 Q. Okay. Approximately, how long have you
19 been doing this at the state and if there were any
20 changes in your title?

21 A. I've had the title since 1987. Prior to
22 that, for five years prior to that, I was the
23 manager of compliance assurance for the bureau of
24 land, and then prior to that I was the regional

1 manager for central southern region of noise
2 pollution, and then prior to being regional
3 manager, I was a field investigator Environmental
4 Protection specialist investigating noise
5 complaints statewide.

6 MR. SWEDA: Okay. At this point, I'd like
7 to -- I don't have any little stickies to attach an
8 exhibit which was provided to respondents earlier.

9 HEARING OFFICER KNITTLE: Do you have any
10 exhibit tags for Mr. Sweda?

11 MS. SMETANA: Yes.

12 MR. SWEDA: Thank you. Send me a bill.

13 MS. SMETANA: That's all right. You can
14 keep those for now.

15 MR. SWEDA: I don't know what exhibit I
16 left on.

17 HEARING OFFICER KNITTLE: I can tell you
18 you were on Complainant's Exhibit No. 8.

19 (Complainant's Exhibit No. 8
20 marked for identification,
21 4-20-99.)

22 MR. SWEDA: It's a copy of his experience
23 and his resume, Mr. Zack's resume and experience.

24 MS. SMETANA: May I --

1 HEARING OFFICER KNITTLE: Yeah. You've
2 got to show this to the respondents first.

3 MS. SMETANA: We recognize the document.

4 MS. AAVANG: No. I've seen it.

5 HEARING OFFICER KNITTLE: Is there any
6 objection? Well, Mr. Sweda, are you offering this
7 as an exhibit?

8 MR. SWEDA: Yes. I'm qualifying him.

9 HEARING OFFICER KNITTLE: Is there any
10 objection to this exhibit?

11 MS. SMETANA: I would just ask that it's
12 clarified for what purpose it's being offered as an
13 exhibit.

14 MR. SWEDA: The purpose is to provide a
15 resume and experience background of qualifications
16 of Mr. Zack in his job title and his occupation.

17 HEARING OFFICER KNITTLE: Any objection?

18 MS. SMETANA: Is there any other purpose
19 besides that?

20 MR. SWEDA: Well, to attend this hearing
21 also.

22 MS. SMETANA: Related to Exhibit 8.

23 HEARING OFFICER KNITTLE: Well, we're --

24 MR. SWEDA: There's nothing on this

1 hearing that's addressed in that.

2 HEARING OFFICER KNITTLE: I'm going to
3 admit this as an exhibit. If you have any
4 objection, I'd be happy to hear them.

5 MS. SMETANA: No.

6 HEARING OFFICER KNITTLE: Exhibit No. 8 is
7 admitted. It looks to be Greg Zack's experience --

8 MR. SWEDA: It's not stapled. So don't
9 lose it.

10 HEARING OFFICER KNITTLE: That's okay.

11 You can proceed, Mr. Sweda.

12 BY MR. SWEDA:

13 Q. Can you explain to this proceeding why you
14 are here today?

15 A. I am here under subpoena.

16 Q. And who subpoenaed you?

17 A. You subpoenaed me to testify in this case.

18 Q. Okay. Have I employed you or retained you
19 or paid you for any of your professional services?

20 A. No.

21 Q. You've indicated some, in your
22 responsibilities and duties, that on an average
23 year, and these questions refer to some of those
24 responsibilities and duties, about how many

1 inquiries about noise complaints are made to your
2 department, is it, or your office?

3 A. Approximately, 2,000.

4 Q. Approximately, 2,000 for the whole state
5 of Illinois?

6 A. For the whole state of Illinois, that's
7 correct, sir.

8 Q. And just a question that occurs to me is
9 how do you deal with that amount of inquiries?
10 What's the normal procedure for dealing with
11 inquiries? These are additional inquiries, not
12 complaints, but just inquiries.

13 A. Okay. On an inquiry, normally an inquiry
14 is from a professional person, either an attorney
15 or an engineer regarding allowable noise limits,
16 how to measure the noise, what type of
17 instrumentation to use, what standards and
18 regulations to refer to.

19 As far as an inquiry from a citizen,
20 rarely do I -- I do get an occasional inquiry from
21 a citizen who will ask about noise, and then as we
22 discuss their inquiry, I realize that they do have
23 a noise complaint, and then I describe my self-help
24 system to the citizen, but normally -- and that

1 will be the extent of inquiries, just what I would
2 call a pure inquiry as opposed to a complaint.
3 Q. That covers the initial inquiries. About
4 how many further along inquiries would turn into
5 complaints or prior to them turning into complaints
6 do you provide further investigation of complaints
7 that are filed and --

8 A. If -- I'm sorry.

9 Q. -- such as noise measurements or how many
10 complaints, noise measurements or other technical
11 data that you may supply.

12 Q. Given my lack of resources, in other
13 words, I am a one-man state noise program, I found
14 that I can provide the most assistance by
15 explaining to others how to handle the problem. As
16 far as taking measurements is concerned,
17 measurement taking is a very time-consuming
18 process.

19 Typically, one set of measurements
20 will take about three working days. So I -- in
21 order to maximize my efficiency, I do everything I
22 can to avoid taking measurements because of the
23 time factor, and further answering your question,
24 as far as taking measurements, typically I would

1 limit taking any measurements to a situation that
2 was going to hearing and in which I was subpoenaed
3 as an expert witness and given the time available,
4 opportunity, and generally a relatively easy to
5 measure noise source, I would take measurements,
6 but those criteria would pretty much have to be
7 met.

8 In other words, if the noise source
9 was, for any reason, weather dependent or difficult
10 to measure from the standpoint of being variable or
11 sometimes there, sometimes not, normally I wouldn't
12 even attempt to measure in a situation like that.

13 Q. So it depends on the individual case is
14 what I hear from you as well as the time
15 constraints that you may actually get involved in
16 terms of measurement --

17 A. That's correct.

18 Q. -- actions being done by yourself.

19 And what kind of testimony do you
20 provide at hearings or court proceedings on noise,
21 and I mention court proceeding because today we're
22 before the Illinois --

23 MS. SMETANA: I'm going to object to
24 explaining the question.

1 HEARING OFFICER KNITTLE: That's
2 sustained. You can ask him a question, Mr. Sweda,
3 but try to keep it to a simple question that he can
4 answer.

5 BY MR. SWEDA:

6 Q. What kinds of testimony do you provide at
7 hearings?

8 A. The testimony is quite varied depending
9 upon the situation. If I have measured the noise,
10 of course I will describe how it was measured and
11 the results. As far as a solution to the noise
12 problem, I would describe in detail along with
13 estimated cost of solution solutions that I have
14 worked up for the problem.

15 I will also, based on descriptions of
16 the noise or testimony of the complainants, render
17 an opinion based on my experience as to whether or
18 not what is being described would in likelihood
19 exceed the allowable noise under Rule 900.102 of
20 the Title 35, Chapter H of the Illinois
21 Administrative Code.

22 Q. So, in other words, you're saying you
23 would --

24 MS. SMETANA: I'm going to object to him

1 putting words into the witness' mouth.

2 HEARING OFFICER KNITTLE: I'm going to let
3 him ask his question and see what he says, and then
4 you can object.

5 MR. SWEDA: I didn't even hear what she
6 said.

7 HEARING OFFICER KNITTLE: She's objecting
8 because you're putting words into the witness'
9 mouth.

10 BY MR. SWEDA:

11 Q. Would your statements or opinions based on
12 your experience include what might be presented for
13 or -- what might be presented in a case of
14 witnesses testifying at hearings?

15 MS. SMETANA: I'm going to object again to
16 leading the witness.

17 HEARING OFFICER KNITTLE: Overruled. You
18 can answer if you can. Do you understand the
19 question?

20 THE WITNESS: No.

21 BY THE WITNESS:

22 A. Mr. Sweda, could you speak up a little
23 bit. I'm a little bit hard of hearing, and you're
24 kind of quiet.

1 HEARING OFFICER KNITTLE: Mr. Sweda, why
2 don't you rephrase that. I don't think that was a
3 question that he could really answer.

4 BY MR. SWEDA:

5 Q. At hearings, do you opinion on facts --
6 excuse me. In hearings, do you opinion on
7 testimony provided by witnesses to noise
8 situations?

9 A. Yes. Given a description of the noise by
10 a complainant, I will evaluate the description
11 based on, again, my experience and knowledge in the
12 noise field and also based upon what is at the
13 present time accepted criteria by the Pollution
14 Control Board for determining whether or not the
15 source appeared to be a nuisance and you give an
16 opinion as to whether or not it would rise to the
17 standard of a nuisance.

18 Q. I would like to say that -- I'm going to
19 say that in your opinion, would --

20 MS. SMETANA: I'm going to object because
21 Mr. Zack has not yet been qualified as an expert to
22 give an opinion.

23 HEARING OFFICER KNITTLE: Mr. Sweda, do
24 you have anything to say?

1 MR. SWEDA: I have another exhibit --
2 objection. I have another exhibit in support in
3 denial of her objection. I have no way of knowing
4 your legalese way to proceed to say that Mr. Zack
5 is --

6 HEARING OFFICER KNITTLE: What are you
7 planning on offering as an exhibit?

8 MR. SWEDA: A case.

9 HEARING OFFICER KNITTLE: A case.

10 Let's -- I'm going to overrule your objection. Let
11 him ask Mr. Zack his questions. If there is a
12 question as to whether or not he's an expert, the
13 Board will decide that, and the Board can view the
14 objections by the way of his testimony. Go ahead.

15 MS. SMETANA: The witness can't and cannot
16 give an opinion as an expert without there being
17 proper foundation laid that he is an expert in
18 whatever he's going to testify to. So it has not
19 been established.

20 HEARING OFFICER KNITTLE: I understand
21 your objection. I'm still overruling it and I'm
22 going to allow him to ask his questions to Mr. Zack.
23 As I said, you can renew these objections to the
24 Board.

1 MS. AAVANG: I'll just also object that he
2 hasn't provided any background as to what material
3 or information that he's relying upon.

4 HEARING OFFICER KNITTLE: I'm hoping that
5 he will do that before he actually starts asking
6 these questions. Mr. Sweda, you're being given
7 some leeway here because you are a pro se
8 complainant. So why don't you take advantage of
9 that and proceed.

10 BY MR. SWEDA:

11 Q. Are you aware of and have knowledge of
12 propane cannons used in animal dispersal
13 techniques?

14 A. I've had a case that I handled about 20
15 years regarding propane cannon use for frightening
16 away coyotes.

17 Q. And what was the purpose and the intent of
18 those cannons in that particular case?

19 A. The purpose of the two cannons was to fire
20 every few minutes and generate a very loud sound
21 during the night, and to some extent during the
22 day, that would frighten or designed to frighten
23 coyotes away from a pig farmer's pigs to prevent
24 the coyotes from eating the little pigs.

1 Q. Did you have personal knowledge of this
2 particular case as an employee of the IEPA?

3 A. Yes. I had -- I was regional manager at
4 the time and received the complaint personally
5 through our complaint system. I handled the entire
6 case by myself as far as contacting the
7 complainant, investigating the case, testifying in
8 court as to the impact of the noise and as to the
9 measurements taken, how the measurements were
10 taken, and up and including the conclusion of the
11 case, so I was involved in the case from beginning
12 to end.

13 Q. In support of what?

14 A. In support of the complaint, the
15 complainant's case. The complainant relied upon
16 my knowledge, and I also dealt with the noise
17 emitter, looked for alternate solutions to the
18 problem, and initially the noise emitter was not
19 willing to solve the problem other than shooting
20 the propane cannons off.

21 I had suggested a fence be used, an
22 electric fence be used in lieu of the cannons, and
23 the case went to circuit court, and the circuit
24 court enjoined the farmer from using the cannons,

1 and the attorney for the farmer had contacted me as
2 to some methodology to reduce the noise from the
3 cannons, and I explained that I didn't think that
4 was appropriate because the cannons were designed
5 to frighten birds or animals and any muffling of
6 the device would -- to the point where it would
7 comply with Illinois regulations would, in my
8 opinion, render it useless for frightening
9 wildlife, and that's based on my experience with
10 wildlife and working in the noise area for the last
11 27 years that typically the wildlife seems to be
12 more tolerant of noise than people do.

13 Q. I have some other questioning in this
14 regard, but I'd like to submit the case that was
15 involved and the proceeds from that case which were
16 provided to the respondents orally and during --
17 writtenly transmitted to the respondents after the
18 deposition being taken of Mr. Zack?

19 MS. AAVANG: Objection. It's irrelevant.
20 It deals with a case in 1979 in a rural area. It's
21 not the same case. I don't see the relevancy, and
22 I think probably he's already testified to the key
23 factors in it, and I think it has more of a
24 possible prejudicial effect than a probative value.

1 MS. SMETANA: I guess I'd like to add that
2 what Mr. Sweda has there is a legal record, it's a
3 public record, and the witness has testified to his
4 experience and involvement in the case. I think
5 that testimony should stand by itself.

6 HEARING OFFICER KNITTLE: Mr. Sweda?

7 MR. SWEDA: My understanding of this
8 particular case today, as well as from the
9 deposition being taken and it was explained that --
10 and as I've read through this that Mr. Zack was
11 heavily involved in this case. He was the leader
12 of the IEPA in proceeding on this case even though
13 it wasn't through the Pollution Control Board as a
14 state employee in the noise division and also the
15 use of propane cannons.

16 HEARING OFFICER KNITTLE: I understand
17 that. As you know, the evidentiary standards for
18 the Illinois Pollution Control Board are different
19 than they are for circuit court. I'm sure you --
20 pardon?

21 MS. SMETANA: Nothing.

22 HEARING OFFICER KNITTLE: If you have
23 something to say, go ahead and say it.

24 MS. SMETANA: No. Sorry.

1 HEARING OFFICER KNITTLE: And so I'm going
2 to admit this. The Board can look at it and decide
3 whether it's relevant or not. Go ahead, Mr. Sweda.
4 You can leave it there for a while, Mr. Sweda. You
5 can go ahead and ask Mr. Zack some more questions.

6 BY MR. SWEDA:

7 Q. Based on your experience -- in your
8 opinion, can effects of noise on people cause
9 them -- cause people not to hear themselves talking
10 with another person close by or not be able to sit
11 in their yard and relax or reading the newspaper
12 while sitting in the yard or in the house?

13 MS. SMETANA: I'm going to object to lack
14 of foundation.

15 HEARING OFFICER KNITTLE: Sustained.

16 Mr. Sweda, try to explain exactly
17 what you're talking about instead of asking such a
18 broad question. Why don't you rephrase that.

19 BY MR. SWEDA:

20 Q. Can things such as trying to sleep at
21 night or wake up in the morning be disturbed and
22 cause a concern in terms of the noise problem?

23 MS. SMETANA: I'm going to object, again,
24 as to relevance. This case does not involve

1 nighttime noises.

2 HEARING OFFICER KNITTLE: I would overrule

3 it. I don't understand the question. I don't know

4 that there's a question here.

5 BY MR. SWEDA:

6 Q. Would someone getting up in the morning

7 who testified or complained that they woke up to

8 cannon noise be something that you would be

9 cognizant of and say that this is possibly a

10 intrusion and a nuisance in terms of what the

11 legislation and acts say?

12 MS. SMETANA: I'm going to again object.

13 It's speculative, calling the witness to draw

14 conclusions.

15 HEARING OFFICER KNITTLE: You have to

16 ask -- sustained. You have to ask him some

17 specific questions, Mr. Sweda. It's just -- I'm

18 not trying to prevent you from asking questions,

19 and I am going to allow you to ask your questions

20 of this witness. However, you're going to have to

21 ask some questions that I think he's capable of

22 answering and understanding and that are relevant

23 to the case.

24

1 BY MR. SWEDA:

2 Q. Based on your experience as a noise
3 advisor for the state of Illinois, would someone
4 saying to you that they're not able to go into
5 their backyard and do gardening because the noise
6 from propane cannons was loud and obnoxious be
7 something that you have run into in the past or
8 would you consider an opinion in terms of your
9 expertise as a noise pollution problem?

10 MS. SMETANA: I'm going to object for a
11 compound question and also lack of foundation.

12 HEARING OFFICER KNITTLE: Yeah. I'll
13 sustain, Mr. Sweda, you have to ask him, like, one
14 question at a time, and you keep running three or
15 four questions together, and it's going to be hard
16 for him to answer those questions.

17 BY MR. SWEDA:

18 Q. Is someone saying to you that they can't
19 go out in their backyard and sit and read a
20 newspaper without being disturbed by propane
21 cannons a possible problem with the noise act?

22 MS. SMETANA: I'm going to, again, object
23 to the lack of foundation.

24 HEARING OFFICER KNITTLE: Overruled.

1 Answer the question.

2 BY THE WITNESS:

3 A. In answering your question about using the
4 backyard to read a newspaper while propane cannons
5 are being fired, normally what we look for would be
6 situations where there is a disturbance of sleep,
7 disturbance of, say, using the telephone, watching
8 television, carrying on a conversation in the home
9 or the yard, but like you stated the newspaper
10 disturbance is honestly not the first time I've
11 heard that one honestly.

12 BY MR. SWEDA:

13 Q. Okay. Other kinds of activities, if I
14 were to say conversing, trying to listen to some
15 music, which would be comparable to talking, trying
16 to have a conversation on the phone, are these the
17 kinds of activities that you would consider to be
18 covered under the Act?

19 MS. SMETANA: Again, I'm going to object
20 as leading, putting words into the witness' mouth,
21 and it's entirely speculative.

22 HEARING OFFICER KNITTLE: Okay. Ms.
23 Aavang, do you have anything?

24 HEARING OFFICER KNITTLE: I'm going to

1 allow him to get through this with Mr. Zack. If
2 you want to have a standing objection to all this
3 testimony based on those objections you just made,
4 I will allow that. I know this is testimony that's
5 subject to dispute not only to the motions in
6 limine, but your previous objections to his
7 testimony, I've allowed that as well, but I am
8 going to allow him to try to get through this with
9 Mr. Zack.

10 Would you like a standing objection?

11 MS. AAVANG: Why don't we do that, your
12 Honor, a standing objection. Mr. Knittle, why
13 don't we do a standing objection --

14 HEARING OFFICER KNITTLE: Yeah.

15 Mr. Knittle is fine.

16 MS. AAVANG: -- as to lack of foundation,
17 relevance.

18 HEARING OFFICER KNITTLE: I don't know if
19 he's even seen the -- listened to the cannons, but,
20 I mean, that's something you're going to get into
21 I'm sure, but I am going to allow Mr. Sweda to
22 continue.

23 So, Mr. Sweda, why don't you try to
24 continue and try to keep the questions simple and

1 easy for Mr. Zack to understand.

2 THE WITNESS: Mr. Hearing Officer, I don't
3 mean to interrupt. He asked me the question, and
4 I'm just not quite sure if we resolved the question
5 or not.

6 HEARING OFFICER KNITTLE: Do you remember
7 the question?

8 THE WITNESS: I was going to ask the court
9 reporter to read it back.

10 HEARING OFFICER KNITTLE: Why don't we
11 have Mr. Sweda start over again. We'll start from
12 the beginning.

13 THE WITNESS: Yes, sir.

14 BY MR. SWEDA:

15 Q. I had asked Mr. Zack if the following
16 types of activities might be, in his expert
17 opinion, activities that would be covered under
18 observable serious nuisances or violations of the
19 Noise Pollution Act, i.e., things such as trying to
20 converse with a person who's close to you, trying
21 to sleep or get up from sleep?

22 MS. SMETANA: I'm going to object.

23 There's multiple questions. I think you need to
24 clarify for the witness.

1 HEARING OFFICER KNITTLE: Sustained.

2 Mr. Sweda, I was trying to get you to
3 ask one question at a time that the witness could
4 answer instead of -- you understand what I'm
5 saying. You do keep providing -- not only
6 providing answers for the witness when you're
7 asking the question, but also providing multiple
8 answers to multiple questions, and that's really
9 not proper, and I'm going to -- like I said, I'll
10 allow you to get through this with Mr. Zack. I
11 know the Board is going to want to hear his
12 testimony on this case. However, I'm going to have
13 to ask you to at least attempt to ask them in a
14 semi-proper way.

15 MR. SWEDA: I'll try, which I have been
16 trying.

17 HEARING OFFICER KNITTLE: I understand.
18 I'm trying to tell you how to ask them in a
19 semi-proper way by asking one question and not
20 providing the answer.

21 BY MR. SWEDA:

22 Q. Would someone trying to sleep be a covered
23 kind of activity under the Act?

24 A. Yes. I think probably one of the most

1 important factors looked at as far as noise being a
2 nuisance is sleep. Sleep disturbance is so
3 important that for nighttime regulation purposes
4 the state of Illinois, the U.S. Government, and,
5 for that matter, most of the country of the world
6 will enact a ten decibel penalty for nighttime
7 noise.

8 It's almost a universal standard, and
9 what that does is to reduce the allowable noise by
10 a factor of 90 percent. So what we see for sleep
11 disturbance is considerable protection built into
12 the various regulations pertaining to that, and any
13 significant occurrence, sleep disturbance due to
14 noise, would, in my opinion, qualify that noise as
15 being a nuisance because it's definitely
16 interfering with the enjoyment of life, which is
17 described in the Board regulations and the
18 Environmental Protection Act.

19 MS. SMETANA: I'm going to --

20 HEARING OFFICER KNITTLE: Ms. Smetana?

21 MS. SMETANA: I'm just going to object on
22 drawing legal conclusions.

23 HEARING OFFICER KNITTLE: Your objection
24 is noted. Mr. Sweda?

1 BY MR. SWEDA:

2 Q. Would the conversing with someone in close
3 proximity also be something that might be covered
4 under the Act?

5 A. Yes. If we look at our -- especially I
6 think what you mean there are the regulations as
7 much as the Act, and we look at the noise
8 regulations. We're looking at a situation there
9 where speech interference is a very important
10 factor in the control of noise and especially in
11 predicting noise being a nuisance problem and,
12 again, we get back into the enjoyment of life area.

13 Q. Okay. I will shift to another area, try
14 anyway.

15 Were you provided a copy of the noise
16 study by Shiner & Associates?

17 A. Yes, I was.

18 MR. SWEDA: I would like to offer such
19 study as an exhibit.

20 MS. SMETANA: I'm going to object to the
21 introduction of that into evidence. There's
22 absolutely no foundation laid.

23 HEARING OFFICER KNITTLE: Sustained.

24

1 BY MR. SWEDA:

2 Q. Do you have a copy of the Shiner &
3 Associates, Incorporated report dated March 23rd of
4 1999?

5 A. Yes, I do.

6 Q. And when did you first become aware of
7 this report, approximately?

8 A. A few weeks ago, I was sent a copy either
9 by yourself or possibly by the counsel to the
10 respondent. I'm not sure which source I got it
11 from.

12 Q. Okay. Was this report, prior to you
13 receiving it, brought to your attention in any way
14 by anyone?

15 A. To the best of my recollection, it was
16 brought up during my deposition by telephone.

17 Q. Approximately?

18 A. A few weeks ago.

19 Q. A few weeks ago.

20 What may have been -- what may have
21 you been asked about this report at that time?

22 A. Well, since I hadn't seen it, I don't
23 believe I was asked any questions specific to that
24 report, but I believe that I may have asked to see

1 a copy of it if there were no objections to my
2 looking it over, and I subsequently received a
3 copy.

4 Q. Were you provided substance from this
5 report over the phone telephonically and asked to
6 comment on it telephonically during your
7 deposition?

8 A. I don't recall. I know it was brought up
9 during the phone conference or the phone
10 deposition, but at this point, I --

11 Q. Any conclusion -- I'm sorry. I was trying
12 to refresh -- see if there's anything -- were there
13 any respondents bringing up any conclusions of the
14 report or summary of the report?

15 MS. SMETANA: Object as to hearsay.

16 HEARING OFFICER KNITTLE: Mr. Sweda, what
17 are you trying to do?

18 MR. SWEDA: I'm trying to establish that
19 there's a relevance of this report to this case.

20 HEARING OFFICER KNITTLE: Are you still
21 trying to submit it into evidence?

22 MR. SWEDA: Yes.

23 HEARING OFFICER KNITTLE: I'm not going to
24 allow it to be submitted into evidence based on his

1 testimony because there isn't appropriate
2 foundation, but I will allow you to ask him
3 questions about the report if he's seen it and
4 reviewed it.

5 BY MR. SWEDA:

6 Q. This report by Shiner & Associates, I
7 don't know if I said that, Incorporated is one of a
8 technical nature and they're called acoustical
9 engineers. They proceeded to -- what did they
10 proceed -- what did the report proceed to do after
11 reading it and looking at it and reviewing it, and
12 how did they do their report basically since it's a
13 noise evaluation study or measurement study?

14 A. The report was an attempt to measure the
15 noise of the propane cannons in the Waukegan area
16 by Mr. Brian Homans of Shiner & Associates. He
17 had, I believe, taken measurements over
18 approximately a two-day period and came to the
19 conclusion that the sound did not exceed the
20 Pollution Control Board regulations for Section
21 901.104.

22 Having reviewed it carefully and
23 being very familiar with 901.104, there were a
24 couple of factors in there that I was not really

1 that surprised about. In order to understand
2 what's happening with impulsive noise, and propane
3 cannons are impulsive noise in looking at Rule 104,
4 the Board allows a one-hour LAQ for the measurement
5 procedure, which Mr. Homans followed and quite
6 correctly.

7 However, an analogy could be drawn to
8 this. As far as measurement is concerned, applying
9 a one-hour measurement to something as short in
10 duration as the impulsive noise from a cannon could
11 be compared to another profession, say, a
12 pharmacist using a five-gallon bucket to measure
13 any quantities of, say, prescriptions. For
14 example, prior to the one-hour LAQ, the vast
15 measurement was used for 104, and in that
16 situation, we used an eyedropper to take the
17 measurements and examine the quantities of noise,
18 the one-hour LAQ through the measurement procedure
19 into what I call the five-gallon bucket category so
20 what we find is that we almost never see a
21 violation of 104.

22 MS. AAVANG: I'm going to object. I just
23 don't even know what question is being answered
24 anymore. I don't think there's a question pending.

1 HEARING OFFICER KNITTLE: Mr. Sweda?

2 MR. SWEDA: I'm asking for his review of
3 the Shiner report in terms of what its conclusions
4 and summary were of which it was purported to be
5 used as measurements of -- for the respondents of
6 noise of propane cannons.

7 HEARING OFFICER KNITTLE: Any response,
8 Ms. Aavang?

9 MS. AAVANG: I would just ask for
10 clarification. Is he asking a critique of that
11 report? I'm not sure what the question is.

12 HEARING OFFICER KNITTLE: If you have a
13 specific question, Mr. Sweda, you know we're not
14 generally going to allow long narrative responses
15 like that. You could pick up with a specific
16 question from where he left off from his
17 testimony.

18 BY MR. SWEDA:

19 Q. Are there -- I already said in my opening
20 statement that I'm not a sound technician. So I'm
21 wading through this, but are there influences on
22 sound being transmitted that might or have to take
23 into account when measuring sounds what kinds of
24 influences influence some transmission?

1 A. In answer to your question, yes, there's
2 some very large factors, especially when we get
3 into a situation like the one you have here in
4 Waukegan where it's my understanding your residence
5 is approximately a mile from the noise source.

6 The controlling factor then is going
7 to be weather, especially wind. The difference in
8 measurements could be as high as 40 decibels
9 depending upon weather conditions and wind
10 direction. In order to accurately assess what
11 would be the worst condition, which would be
12 normally what the Board regulations look for, we
13 would want the wind to be blowing from the propane
14 cannons toward your residence, and, again, with the
15 wind blowing the other way, we could see a
16 measurement up to 40 decibels lower.

17 So it's very, very wind dependent and
18 also somewhat dependent upon the presence or a lack
19 of an inversion. Atmospheric conditions can also
20 have a big effect on measuring this kind of noise,
21 and, again, you asked about the Shiner report --

22 MS. AAVANG: I'm going to object. That's
23 not the question pending.

24 HEARING OFFICER KNITTLE: Sustained.

1 BY MR. SWEDA:

2 Q. In a noise study, where would measurements
3 be taken considering the sources and affected
4 parties?

5 A. In the situation that we have here, there
6 would be, in my opinion, two prime locations.

7 MS. SMETANA: I'm going to object. That
8 wasn't the question.

9 HEARING OFFICER KNITTLE: I think it was.
10 Overruled. Go ahead.

11 BY THE WITNESS:

12 A. In the situation we have here, we have
13 what I would consider two prime locations to take
14 the measurements. One would be at the residence of
15 the complainant or complainants, and the second one
16 would be in the near field of the noise source so
17 that we have both a frequency breakdown in hertz,
18 and so there's a spectrum of the noise source, we
19 know what frequencies to look for, and then at,
20 say, a distance of a mile or thereabouts. We
21 would, again, look for that fingerprint or spectral
22 signature of the noise.

23 BY MR. SWEDA:

24 Q. Does time of day, in terms of taking

1 measurements, is that important to any kind of a
2 noise issue, the time of day that the noise
3 occurred?

4 A. Yes. I think what you're saying there by
5 saying time of day is --

6 Q. Within a 24-hour period.

7 A. Oh, okay. Generally speaking, what will
8 be done is the measurement would be taken
9 preferably when the noise first began in the
10 morning, especially if it ever began before 7:00
11 a.m. because before 7:00 a.m. we're into nighttime
12 standards, which are much stricter than daytime
13 standards.

14 So if we ever have an occurrence
15 before 7:00 a.m., we would definitely want a
16 measurement at that time. In addition, it's common
17 at that time of the morning, depending upon the
18 time of year, it's as close to dawn or right at
19 dawn and that -- because you're at dawn or close to
20 dawn, you likely will have an inversion,
21 temperature inversion, and that will tend to hold
22 the sound levels down at the ground and produce
23 much higher measurements at the complainant's
24 residence than you would expect later in the day

1 when the inversion dissipates and the sound tends
2 to travel upward.

3 Q. What about nighttime?

4 A. Nighttime would be --

5 MS. SMETANA: I'm going to object as to
6 relevance here.

7 HEARING OFFICER KNITTLE: Is there any
8 allegation of nighttime pollution -- noise
9 pollution, Mr. Sweda?

10 MR. SWEDA: Yes. It was mentioned in my
11 notice and in arguments used in my direct testimony
12 of April 1st.

13 HEARING OFFICER KNITTLE: I mean, is there
14 any allegation in this complaint?

15 MR. SWEDA: In the formal complaint, yes.

16 HEARING OFFICER KNITTLE: What is that?

17 MR. SWEDA: On a couple of such days,
18 noise continued past dusk for approximately one
19 hour. Item number seven on page three of the
20 complaint which asks for describe the duration and
21 the frequency of the alleged pollution, and there
22 is another sentence.

23 MS. SMETANA: I object. It hasn't been
24 established when dusk is or that there's been any

1 nighttime interference.

2 HEARING OFFICER KNITTLE: Maybe you could
3 define what you mean by nighttime, Mr. Sweda, for
4 this witness before you ask those questions.

5 MR. SWEDA: Dusk is a ever changing
6 thing. It's defined by when the sun appears on the
7 horizon or disappears on the horizon and it turns
8 to night. At that time of the year, it ranges
9 probably from 6:00 to 7:30, maybe even not until
10 8:00 o'clock or 7:30-ish at night. So past that
11 time will be night.

12 HEARING OFFICER KNITTLE: Is this a
13 question for him or an explanation to me?

14 MR. SWEDA: Explanation about what dusk
15 means. I think that's what you were asking.

16 HEARING OFFICER KNITTLE: Right. I
17 sustained her objection, but I'm going to allow you
18 to ask questions. You just have to explain what
19 you mean by dusk to the witness and see if that's
20 what he's talking about.

21 MR. SWEDA: After 7:00 p.m.

22 MRS. SWEDA: Ask him the question.

23 HEARING OFFICER KNITTLE: Mrs. Sweda --

24 MRS. SWEDA: I'm sorry.

1 HEARING OFFICER KNITTLE: -- I have to

2 advise you --

3 MRS. SWEDA: I'm sorry.

4 HEARING OFFICER KNITTLE: I understand.

5 MRS. SWEDA: I know I don't have any right

6 to speak here.

7 HEARING OFFICER KNITTLE: I know it's a

8 difficult process --

9 MRS. SWEDA: This is painful.

10 HEARING OFFICER KNITTLE: -- for everybody

11 involved. This is how --

12 MRS. SWEDA: This is extremely painful.

13 HEARING OFFICER KNITTLE: I'm sorry you

14 feel that way. We're working our best to make sure

15 it's not. So, Mr. Sweda, if you could ask the

16 question again.

17 BY MR. SWEDA:

18 Q. Would measuring cannon noise after 7:00

19 p.m. also be a routine or recommended procedure in

20 terms of taking noise measurements?

21 A. Yes. And if I could clarify, and tell me

22 if this is not what you're looking for, but the way

23 I understand the question --

24 MS. SMETANA: I'm going to -- he can't ask

1 the witness -- I mean, the witness can't ask a

2 question --

3 HEARING OFFICER KNITTLE: Yeah. You can't

4 ask him what he's looking for, but feel free to

5 respond to the answer as you see fit. If

6 there's an objection, please make it.

7 THE WITNESS: Yes, Mr. Hearing officer.

8 BY THE WITNESS:

9 A. The question that -- the 7:00 p.m. time

10 measurement would especially be appropriate at

11 those times of the year where dusk is occurring

12 around 7:00 p.m., and dusk would be just before the

13 sun disappears over the horizon until it gets dark

14 enough outside to, say, turn the lights on or need

15 illumination to perform the measurement.

16 At that point in time, there is some

17 changes in the atmospheric conditions such that

18 impulsive sound that carries some distance tends to

19 be focused or forced to travel along the ground.

20 There's a refraction of the sound due to

21 temperature layers forming in the atmosphere, and

22 the measured levels at a measurement location will

23 significantly increase at that point in time.

24 MR. SWEDA: Thank you. At this point, I

1 have no further questions.

2 HEARING OFFICER KNITTLE: Do you want to
3 take a break before you cross-examine or do you
4 want to do it right now or do you need some time?

5 MS. SMETANA: Some time would be good.

6 HEARING OFFICER KNITTLE: Let's take
7 five. When we resume, you'll still be on the
8 stand. Let's go off the record for about five
9 minutes.

10 (Break taken.)

11 HEARING OFFICER KNITTLE: Mr. Zack, you
12 are still under oath and you're subject to
13 cross-examination by the respondents. Which of the
14 respondents is going to be starting off?

15 MS. SMETANA: I will.

16 HEARING OFFICER KNITTLE: Ms. Smetana, you
17 can go ahead.

18 MS. AAVANG: If we could just, for the
19 record, make a motion to strike the testimony of
20 Mr. Zack. The basis for that motion is that he was
21 originally disclosed as an expert. He has not
22 given any opinions really in the nature of what
23 broad parameters of what he was indicated as an
24 expert as being. Again, I understand the Board

1 wants to hear his testimony, but I'd like to have
2 it just on the record.

3 HEARING OFFICER KNITTLE: Let me ask a
4 clarification. Is this a motion directed to me to
5 make a decision or are you making this motion for
6 the Board?

7 MS. AAVANG: Well, I take it from what
8 you've told me this -- I have to -- I'm making a
9 motion on the record so at least you can rule on it
10 and say that I have presented it to the Board.

11 HEARING OFFICER KNITTLE: Well, again, on
12 the record, I'm going to deny the motion, and the
13 Board -- if you choose to, you know, appeal my
14 decision to the Board, you can do that at a later
15 point in time.

16 MS. AAVANG: I'm just doing the
17 procedure.

18 HEARING OFFICER KNITTLE: I understand.

19 MS. SMETANA: Can I just clarify? Do we
20 now move to strike what the Board says -- the Board
21 to reconsider your decision?

22 HEARING OFFICER KNITTLE: Either or
23 actually. I think it's your preference. You can
24 do either. I think there's a different regulation

1 that governs both of those, but probably both, but

2 I have denied the motion.

3 MS. AAVANG: Thank you.

4 HEARING OFFICER KNITTLE: And, Ms. Smetana,

5 you can proceed.

6 CROSS - EXAMINATION

7 by Ms. Smetana

8 Q. Mr. Zack, you work with the IEPA; is that

9 correct?

10 A. That's correct.

11 Q. And the IEPA is located in Springfield; is

12 that correct?

13 A. That's correct.

14 Q. And you testified that you live in

15 Chatham, Illinois; is that correct?

16 A. That's correct.

17 Q. And is that close -- that's close to

18 Springfield; is that correct?

19 A. Yes. It's within about 200 feet of

20 Springfield.

21 Q. And you drove up from Springfield today?

22 A. That's correct.

23 Q. You had never met Mr. Sweda until today;

24 is that correct?

1 A. That's correct.

2 Q. And you've never visited Mr. Sweda's
3 property; is that correct?

4 A. That's correct.

5 Q. You've never heard the cannons that are
6 subject to this action; is that correct?

7 A. That's correct.

8 Q. You've never talked to Mr. Neff; is that
9 correct? Do you know Mr. Neff?

10 A. I'm sorry. Mr. Who?

11 Q. You don't know Mr. Neff, John Neff, do
12 you?

13 A. No, I don't.

14 Q. And you have not spent any time in the
15 neighborhood of Mr. Sweda in Waukegan; is that
16 correct?

17 A. That's correct.

18 Q. And you have not spoken to any other
19 residents of Mr. Sweda's neighborhood; is that
20 correct?

21 A. That's correct.

22 Q. If a witness were to testify that he or
23 she was able to speak outside in the vicinity of
24 Mr. Sweda's home in normal tones, would that affect

1 what you've said today about speaking in

2 conversational tones?

3 A. There would be a lot of factors that would

4 go into that.

5 Q. I just -- yes or no?

6 A. No.

7 Q. You had testified earlier if a person can

8 speak at conversational tones, it's unlikely that

9 the noise is interfering with their lives; is that

10 correct? Just a few moments ago that was your

11 testimony.

12 A. I believe it was in a larger context than

13 that.

14 Q. One moment, please.

15 You had testified earlier that speech

16 interference is a factor under, you know, when

17 considering whether a nuisance exists; is that

18 correct?

19 A. I'm sorry?

20 Q. You testified that speech interference or

21 noninterference is a factor?

22 A. Yes, it's a factor.

23 Q. If there's no interference with speech

24 and people are able to speak at conversational

1 tones, that would contribute to that factor?

2 A. That's correct.

3 Q. Did you know that OMC employees of the
4 noise source are able to speak at normal tones?

5 A. No, I did not.

6 Q. Did you know OMC employees at the noise
7 source are able to work without interference from
8 the cannons?

9 A. No, I did not.

10 Q. Did you know that employees in neighboring
11 businesses are able to speak outside without
12 interference from noise from the cannons?

13 A. No, I didn't.

14 Q. Sleep disturbance is not an issue or an
15 allegation here. Are you aware of that?

16 A. No, I wasn't.

17 Q. OMC and the city do not run the cannons at
18 nighttime. Are you aware of that?

19 A. No, I wasn't aware of that either.

20 Q. Okay. You're familiar with the Board's
21 noise regulations?

22 A. Yes.

23 Q. Nighttime is defined as after 10:00 p.m.
24 and before 7:00 a.m.; is that correct?

1 A. That's correct.

2 Q. The only experience that you've had with
3 noise from propane cannons was in the 1970s; isn't
4 that correct?

5 A. That's correct.

6 Q. And in the case you referred to earlier,
7 which I believe is the Coffman case, the propane
8 cannons weren't being used to relocate a colony of
9 sea gulls; isn't that true?

10 A. That's true.

11 Q. And in that case, the cannons were only
12 being used at night; isn't that true?

13 A. No. They were being used both daytime and
14 nighttime, but predominately at night.

15 Q. You testified earlier that the cannons in
16 that case were being used to frighten coyotes off
17 of the property at nighttime?

18 A. That's true.

19 Q. In that case, you spoke -- you testified
20 earlier that you spoke to the emitter about the
21 noise; is that the case?

22 A. That's true.

23 Q. Have you spoken to OMC or the city in this
24 situation about the noise source?

1 A. No, I have not.

2 Q. You're familiar with the Board provisions
3 for the methodology to measure impulsive sound,
4 aren't you?

5 A. Yes.

6 Q. Are you familiar that Section 900.103 of
7 the Board's regulations is the methodology for
8 measuring impulsive sound under the Board's
9 regulations?

10 A. Yes.

11 Q. Are you familiar that Section 900.103
12 references ANSI Standard 1.13 for field methodology
13 for measuring sound?

14 A. Yes.

15 Q. Are you familiar with ANSI Standard 1.13?

16 A. Yes.

17 Q. Are you familiar with the optimal
18 conditions under ANSI Standard 1.13 for measuring
19 sound outdoors?

20 A. No.

21 Q. So you've never read the optimal
22 conditions under ANSI Standard 1.13 for measuring
23 sound outdoors?

24 A. That standard --

1 Q. Just yes or no, have you ever read that
2 standard?

3 A. Yes.

4 Q. Are you aware that that standard states
5 that the optimal conditions consist of atmospheric
6 conditions with no wind gradients?

7 A. No.

8 Q. Mr. Zack, you have not taken sound
9 measurements in this case; is that correct?

10 A. That's correct.

11 Q. If given weather conditions, you cannot
12 tell what the sound measurement will be; is that
13 correct?

14 A. Could you clarify that?

15 A. If you were simply given the weather
16 conditions, the wind and temperature, you are not
17 able to tell what the sound level measurement will
18 be at a particular receiving source from a noise
19 source?

20 A. You're referring to an exact number?

21 Q. Yes.

22 A. Yes.

23 Q. What is your answer?

24 A. No. The answer would be no, I would not

1 be able to give you an exact number.

2 Q. There are many variables that affect
3 impulsive sound; is that correct?

4 A. Correct.

5 Q. And the only way to know whether the sound
6 level for a noise source a mile away is to measure
7 it, is that correct, the specific sound level?

8 A. That's true.

9 Q. And you did not take measurements at
10 Mr. Sweda's property?

11 A. That's true.

12 Q. And you did not take measurements anywhere
13 in Mr. Sweda's neighborhood; is that correct?

14 A. That's correct.

15 Q. Isn't it correct that under Section
16 901.104 of the Board's regulations that sound level
17 measurements are based at measurements taken at the
18 receiving source?

19 A. Yes.

20 Q. In the case you referred to earlier or
21 discussed earlier, the Coffman case, the 1979 case,
22 in that case, isn't it correct that the complainant
23 was less than a mile from the noise source?

24 A. Yes.

1 Q. Isn't it true that the complainant was
2 less than a half mile from the noise source?

3 A. Yes.

4 Q. And isn't it true that the complainant was
5 less than a quarter of a mile from the noise
6 source?

7 A. No.

8 Q. So between a quarter mile and a half a
9 mile?

10 A. Yes.

11 Q. One second.

12 Are you aware, Mr. Zack, that people
13 in the vicinity of the receiving source are able to
14 speak on the telephone without interference from
15 the noise source?

16 A. No.

17 Q. Are you aware that employees at OMC are
18 able to speak on the telephone without interference
19 from the noise source?

20 A. No.

21 Q. Are you aware that many of the employees
22 at OMC are within 100 yards of the noise source?

23 A. No.

24 Q. And are you aware that all 1300 employees

1 at OMC are within a quarter of a mile of the noise
2 source?

3 A. No.

4 Q. And are you aware that all 1300 of those
5 employees are able to speak on the phone without
6 interference from the noise source?

7 A. No.

8 MS. SMETANA: I have no further
9 questions.

10 HEARING OFFICER KNITTLE: Ms. Aavang?

11 MS. AAVANG: Just one or two.

12 CROSS - EXAMINATION

13 by Ms. Aavang

14 Q. Mr. Zack, you testified earlier that
15 important in your considerations are factors
16 including wind and, to some extent, the timing of
17 when the measurements are taken.

18 Wouldn't the location of, let's say,
19 other natural or man-made barriers between the
20 receiving entity, would that have some effect in
21 your calculations also?

22 A. To answer your question, we're talking
23 about a relatively large impulsive noise that is
24 traveling approximately a mile. It would take

1 very, very large barriers such as, say, a cliff,
2 perhaps, 100 feet in height, large barriers that
3 would have some effect on the noise, but, again,
4 normally in a situation like that, different
5 elevations, let's say the noise source is at one
6 elevation and the receiver is at another, would not
7 have very much of an effect.

8 Again, it would take extremely large
9 objects in the neighborhood of 100 feet or more by
10 one dimension in order to have a very significant
11 effect, and they would have to be located either
12 extremely close to the noise source or extremely
13 close to the receiver.

14 Q. Would -- you've indicated -- such as a
15 bluff?

16 A. A bluff is a possibility and depending
17 upon where the bluff is located in relation to the
18 noise source and the receiver, it could either
19 reduce the noise or it could just as easily amplify
20 the noise.

21 Q. And how would a bluff amplify the noise?

22 A. If the noise source was located at the
23 base of the bluff and the receiver was located
24 directly away from the face, the bluff would act as

1 a band shell and tend to direct and focus the noise

2 out in the direction the bluff is facing.

3 Q. And what if I give you the example of the

4 source being at the base of the bluff and the

5 receiver being at the top of the bluff back from

6 the edge of the bluff?

7 A. That would tend to reduce it.

8 MS. AAVANG: Thank you. No further

9 questions.

10 HEARING OFFICER KNITTLE: Mr. Sweda, do

11 you have any redirect?

12 MR. SWEDA: No.

13 HEARING OFFICER KNITTLE: Thank you, sir.

14 You can step down. It's five to 12:00. You've got

15 about two hours. You've got about two hours. You

16 think --

17 MS. SMETANA: Is there -- we have one

18 witness who needs to catch a plane. She's going

19 out of town for work. If there's any way --

20 HEARING OFFICER KNITTLE: When is your

21 flight, ma'am?

22 MS. BONGIOVANNI: 4:15 at O'Hare.

23 HEARING OFFICER KNITTLE: How long do you

24 anticipate her being?

1 MS. SMETANA: A half hour or less.

2 Probably less than half an hour.

3 HEARING OFFICER KNITTLE: Let's squeeze

4 her in then.

5 MS. BONGIOVANNI: Thank you.

6 HEARING OFFICER KNITTLE: Then we

7 get to eat.

8 MS. SMETANA: Can I just have a

9 minute?

10 HEARING OFFICER KNITTLE: Sure.

11 Let's go off for a second.

12 (Discussion had

13 off the record.)

14 MS. SMETANA: OMC calls as its next

15 witness Lisa Bongiovanni. Could you please swear

16 the witness?

17 (Witness sworn.)

18 WHEREUPON:

19 L I S A B O N G I O V A N N I,

20 called as a witness herein, having been first

21 duly sworn, deposeth and saith as follows:

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

23 by Ms. Smetana

24 Q. Please state your full name for the

1 record?

2 A. Lisa Ann Bongiovanni.

3 Q. And could you spell your last name?

4 A. B, as in boy, o-n, G, as in George, i o, V

5 as in Victor, a-n-n-i.

6 Q. And what is education?

7 A. I have a bachelor's degree in

8 environmental engineering from Northwestern

9 University.

10 Q. Where are you presently employed?

11 A. Outboard Marine Corporation.

12 Q. And for how long have you been with OMC?

13 A. About a year and nine months.

14 Q. When did you begin at OMC?

15 A. July of 1997.

16 Q. And in what department do you presently

17 work?

18 A. The product development center.

19 Q. And how long have you been in the product

20 development?

21 A. Since the beginning of January 1999.

22 Q. And prior to that, what department were

23 you with?

24 A. The corporate environmental health and

1 safety department.

2 Q. And what is the -- can you describe the

3 corporate environmental health and safety

4 department?

5 A. That includes a corporate environmental

6 group which assists facilities with environmental

7 work and any remedial work that the company does

8 and also the health and safety department which

9 takes on those responsibilities.

10 Q. What was your job title when you were

11 within the environmental health and safety

12 department?

13 A. Environmental control analyst.

14 Q. And what were your responsibilities?

15 A. I managed projects that dealt with

16 facility regulation issues and permits to some

17 remedial projects and also included the gull

18 relocation project.

19 Q. What is the gull relocation project?

20 A. The gull relocation project was OMC's

21 effort to move the gulls from the coke plant site.

22 Q. Was there anyone else assisting you with

23 the gull relocation project?

24 A. Mark Willis of the corporate environmental

1 health and safety during the time that I was
2 working on the project.

3 Q. And when did you begin working on the gull
4 relocation project?

5 A. I began working on the project in
6 September of 1997.

7 Q. In September 1997, what was the status of
8 the gull relocation project?

9 A. At that time, we were investigating
10 options and basically solidifying some plans to
11 initiate in March of 1998.

12 Q. Why did you have the gull relocation
13 project?

14 A. The project manager there previously,
15 Tricia Sutton, was changing positions within OMC.

16 Q. What was the reason that OMC had a gull
17 relocation project?

18 A. It was due to employee complaints.

19 Q. And employee complaints about what?

20 A. Bird droppings, odor. OMC was concerned
21 about health issues.

22 Q. And how many gulls were there in 1997,
23 approximately?

24 A. Approximately, 5,000.

1 Q. And during what time of year were these
2 gulls presents?

3 A. Typically, from March through August.

4 Q. Where on OMC's property were they located
5 in 1997?

6 A. In 1997, they were located on the coke
7 plant site.

8 Q. I'm going to show the witness what's been
9 marked as OMC Exhibit No. 2. If you could just
10 initial and identify -- the exhibit has already
11 been marked with a red line indicating gull colony
12 from the prior witness.

13 If you can just mark the gull area,
14 the coke plant area and initial it.

15 A. (Witness complied.)

16 MS. SMETANA: The witness is marking the
17 area with a blue pen so we know. Thanks.

18 BY MS. SMETANA:

19 Q. And can you describe the coke plant area,
20 what it looks like?

21 A. It's approximately 30 acres of open
22 field. It contains grasses, some shrubbery.
23 There's a soil stockpile and a designated soil
24 stockpile.

1 Q. Where is there soil stockpiles on the
2 site?

3 A. Previous to my employment, OMC did some
4 drudging in the harbor, and those piles are from
5 that drudging.

6 Q. Is there anything else, the character
7 about the site, why is it called the coke plant
8 site?

9 A. It's a contaminated site, and that's how
10 we refer to it. There previously was manufactured
11 gas at the coke plant site or the facility.

12 Q. Is the coke plant site fenced?

13 A. Yes, it is.

14 Q. What -- on what sides is it fenced?

15 A. It's fenced on the northeast and south
16 sides.

17 MS. SMETANA: I'm going to have the
18 witness mark Exhibit 2, again, with a yellow pen
19 indicating the fence around the coke plant site.

20 HEARING OFFICER KNITTLE: Is she tracing
21 the perimeter with a yellow highlighter?

22 MS. AAVANG: Yes.

23 MS. SMETANA: Just the perimeter where the
24 fence is.

1 HEARING OFFICER KNITTLE: Okay.

2 BY THE WITNESS:

3 A. (Witness complied.)

4 BY MS. SMETANA:

5 Q. On what side is there not a fence?

6 A. On the west side.

7 Q. And what is on the west side, along the
8 west side?

9 A. The Waukegan harbor.

10 Q. What kind of fence is it?

11 A. Chain link fence.

12 Q. Do you know why the fence is there?

13 A. Because it's a contaminated site.

14 Q. You had -- where is the sand pile you
15 referred to on the site?

16 A. It's adjacent to the harbor on the west
17 side of the site.

18 MS. SMETANA: Again, I'm going to have the
19 witness identify the sand pile on the site with a
20 blue pen.

21 BY MS. SMETANA:

22 Q. If you'd just write sand on the sand
23 pile.

24 A. (Witness complied.)

1 Q. In 1997, where on the coke plant site were
2 the gulls located?

3 A. They were located directly east of the
4 sand pile.

5 Q. And prior to 1997, where were the gulls
6 located?

7 A. They were located on top of the sand pile.

8 Q. And what was the -- what was the gulls'
9 activity in this coke plant area?

10 A. It's their nesting area.

11 Q. And can you describe how big the sand pile
12 is?

13 A. It's probably about 100 to 200 yards long.

14 Q. And is there any vegetation on the sand
15 pile?

16 A. Yes, there's some vegetation.

17 Q. In 1996, was there any vegetation on the
18 sand pile?

19 A. No, there was not.

20 Q. And what about 1997?

21 A. Yes. I believe OMC had put a cover over
22 it.

23 Q. And do you know why?

24 A. It was one way of getting rid of the sea

1 gulls is putting a vegetative cover on and make it
2 hard for them to land.

3 Q. Can you describe the birds' activity in
4 the period that they're on the site?

5 A. It's their nesting area. Basically, when
6 they first come, they fly in and out of the site
7 trying to set up territories and build nests, and
8 then later on they lay eggs and sit on the eggs and
9 then take care of the young.

10 Q. When did the gulls first come to the coke
11 plant site?

12 A. The early '90s.

13 Q. And when did the -- did the gull
14 population change on the coke plant site?

15 A. It has grown throughout the time.

16 Q. When was the -- when did OMC first address
17 the growing gull population?

18 A. In 1996.

19 Q. Do you know what was done at that time?

20 A. They began researching and looking into
21 different ways to control the gulls and also put
22 distress calls on the roofs of some of the
23 buildings.

24 Q. And was anything done on the coke plant

1 site?

2 A. Not to my knowledge.

3 Q. After 1996, do you know what OMC did next?

4 A. In the spring of 1997, they put wire grids
5 on the sand pile and the designated soil stockpile.

6 Q. And what were the wire grids intended to
7 do?

8 A. Keep the birds from landing.

9 Q. And how did they do that?

10 A. They're -- the wires are placed about, I
11 believe, a gull's wingspan which prevents them from
12 being able to land.

13 Q. And where did you say that grid was put
14 up?

15 A. On the sand pile and on the designated
16 soil stockpile.

17 Q. And why was it put on those areas?

18 A. Those were the two primary locations of
19 the gulls at that time.

20 Q. And was the gridding effective?

21 A. Yes, it was.

22 Q. And how was it effective?

23 A. It moved the birds off of those two areas.

24 Q. And did OMC consider gridding the entire

1 area?

2 A. Once the birds moved on to a different
3 part of the site, they did consider it, but due to
4 costs and maintenance --

5 Q. Is there any other reason not to grid the
6 area?

7 A. There are some access issues. There's
8 monthly monitoring that needs to be done on the
9 designated soil stockpile.

10 Q. Why do you have to do monthly monitoring?

11 A. It's part of a consent decree from the
12 USEPA.

13 Q. What direction did the gulls move as a
14 result of the gridding of the sand pile?

15 A. They moved east of the sand pile into the
16 flat land.

17 Q. And what direction in terms of the
18 building was that that they were moving towards?

19 A. They were moving closer to the IT
20 building.

21 Q. What else did OMC do to address the gulls?

22 A. In 1997?

23 Q. Yes?

24 A. Throughout that year, they continued to

1 research different ideas. They contacted
2 Dr. Southern and also used a propane cannon for a
3 couple of days to test that to see how well it
4 worked.

5 Q. When was Dr. Southern contacted?

6 A. I wasn't involved at that time. I'm not
7 exactly sure. It should have been early summer of
8 that year.

9 Q. Are you familiar with Dr. Southern and Dr.
10 Southern's work?

11 A. Yes, I am. He gave a report to OMC in
12 July of 1997.

13 Q. How are you familiar with that? How are
14 you familiar with that report?

15 A. I've read the report and used it as a
16 basis for our relocation project.

17 Q. When you started working on the gull
18 project in September of '97, what did you do in
19 your first few months to address the issue?

20 A. In my first few months, I worked with
21 Tricia. She put together a cost estimate for the
22 gull relocation plan and also to put together an
23 actual plan. That was done in the first -- like
24 September, October '97.

1 Q. Did you talk to anyone else besides

2 Dr. Southern about the issue of the gulls on the

3 site?

4 A. OMC did contact several of the agencies,

5 including the U.S. Department of Agriculture,

6 Animal Damage Control, and U.S. Fish and Wildlife.

7 Q. Did any of those departments ever visit

8 the site?

9 A. The Animal Damage Control did.

10 Q. When was that?

11 A. In the summer of 1997.

12 Q. And did they recommend anything?

13 A. They recommended that we apply for a U.S.

14 Fish and Wildlife permit to take some of the sea

15 gulls.

16 Q. What does it mean to take some of the sea

17 gulls?

18 A. Shoot them.

19 Q. Did OMC ever apply for this kind of

20 permit?

21 A. Yes, we did.

22 Q. And who completed the permit application?

23 A. I did.

24 Q. What was requested in the permit

1 application?

2 A. We requested the ability to shoot some of
3 the gulls, to take some of the -- destroy the nests
4 and eggs in conjunction with our non-lethal
5 measures.

6 Q. What kinds of things did the permit
7 application ask for?

8 A. It asked for what other measures we were
9 taking, what the health risks were, as well as what
10 damages and costs have been incurred.

11 Q. And how did the permit application
12 describe the problem of the gulls?

13 A. We described it as far as employee
14 complaints dealing about odor, bird droppings on
15 the cars and parking lots, bird droppings on
16 people. It also talked about the health risk of
17 histoplasmosis due to the birds nesting there for a
18 long time. It also dealt with somewhat having
19 carcasses in the parking lots and the birds and
20 whatnot running around the parking lots.

21 (OMC Exhibit No. 6 marked
22 for identification,
23 4-20-99.)

24 MS. SMETANA: I'm going to show the

1 witness what I've marked Exhibit 6 and a copy was

2 given to Mr. Sweda of Exhibit 6 for his review.

3 BY MS. SMETANA:

4 Q. Can you identify Exhibit 6?

5 A. This is the application that I prepared

6 for the U.S. Fish and Wildlife.

7 Q. And when did you prepare that application?

8 A. In January of 1998.

9 Q. And does this application contain what

10 your prior testimony just stated?

11 A. Yes.

12 Q. Did the application request anything

13 specific as to the taking of gulls?

14 A. I don't remember specifically.

15 Q. Would you like to see it?

16 A. It's been a while. If you could clarify

17 the question.

18 Q. Did the application state -- ask for a

19 certain number of gulls to be taken --

20 A. No, it did not.

21 Q. -- anything specific? Okay.

22 Did the U.S. Fish and Wildlife ever

23 issue OMC a permit?

24 A. Yes, it did.

1 Q. And when did it issue the permit?

2 A. In March of 1998.

3 Q. And what did this permit provide?

4 A. It allowed us to shoot 100 ring-billed
5 gulls and up to 20 herring gulls and also to take
6 or to destroy 500 nests and eggs in conjunction
7 with our non-lethal measures.

8 (OMC Exhibit No. 7 marked
9 for identification,
10 4-20-99.)

11 MS. SMETANA: I'm going to show the
12 witness what's been marked OMC Exhibit 7. Also, at
13 this time, I'd like to move to admit OMC Exhibit 6
14 into evidence. That's the permit application.

15 HEARING OFFICER KNITTLE: Mr. Sweda?

16 MR. SWEDA: No problem.

17 HEARING OFFICER KNITTLE: That's
18 admitted.

19 BY MS. SMETANA:

20 Q. Could you please identify what's been
21 marked OMC Exhibit No. 7?

22 A. This is OMC's Fish and Wildlife permit.

23 Q. And is this the permit that you've just
24 testified to?

1 A. Yes.

2 Q. And does it -- can you tell on the permit
3 how many birds were authorized to be taken?

4 A. One hundred ring-billed gulls and ten
5 herring gulls.

6 Q. And did it authorize anything else?

7 A. The destroying of up to 500 ring-billed
8 and ten herring gull nests.

9 Q. Was this in conjunction to anything?

10 A. The use of pyrotechnics.

11 Q. Did OMC ever take any birds under this
12 permit?

13 A. Yes.

14 Q. How many did it take?

15 A. Twenty.

16 Q. And when was this?

17 A. May 4th, 1998.

18 Q. And why was this done?

19 A. To reinforce the propane cannon and gun
20 fire pyrotechnics.

21 Q. During the time that you submitted the
22 permit application in January '98, what other
23 efforts were taken on as part of the gull -- for
24 the gull -- the 1998 gull season?

1 A. We began planning for using the propane
2 cannons and additional pyrotechnics, and that
3 included preparing a scope of work that was
4 submitted to three consultants to assist us.

5 Q. Generally, what were the recommendations
6 of Dr. Southern?

7 A. The recommendations were to use a minimum
8 of six cannons located throughout the site to scare
9 away the birds along with using the projectile
10 pyrotechnics.

11 Q. Did Dr. Southern raise any alternatives?

12 A. He did raise using the wire grid as well
13 as the vegetation option.

14 Q. Why was gridding alone not sufficient?

15 A. Well, that alone, as before, it's a cost
16 issue and a maintenance issue for OMC as well as
17 being able to access the site.

18 Q. Were you involved in selecting the remedy
19 that was used based on Dr. Southern's
20 recommendations?

21 A. Yes.

22 Q. And who put together the plan to implement
23 the gull project?

24 A. I did.

1 Q. What did that plan state?

2 A. It stated starting with two propane
3 cannons and purchasing pyrotechnics to help
4 reinforce those and then to increase or decrease as
5 we needed.

6 Q. And did OMC, in fact, start with two
7 propane cannons?

8 A. Yes, we did.

9 Q. And when was that?

10 A. That was the end of March 1998.

11 Q. Who implemented the gull relocation
12 project?

13 A. We hired ENCAP to assist us.

14 Q. Who is ENCAP?

15 A. ENCAP is a wildlife management consulting
16 company.

17 Q. Do you know approximately how much it cost
18 to hire ENCAP?

19 A. It was about \$90 per hour.

20 Q. And do you know about how many hours you
21 used them for, if you know?

22 A. I don't know specifically.

23 Q. When was it that the two cannons were
24 first installed?

1 A. It was the end of March 1998.

2 Q. And where were these cannons located?

3 A. They were located -- both of them were
4 located east of the sand pile; one at the foot of
5 the sand pile and then one probably about 100 yards
6 away.

7 Q. Would you be able to identify these if I
8 showed you them?

9 A. Yes.

10 MS. SMETANA: I'm going to, again, show
11 the witness what's been marked OMC Exhibit 2.

12 BY MS. SMETANA:

13 Q. Could you please identify where the two
14 cannons were first located in 1998 using an X?

15 A. (Witness complied.)

16 HEARING OFFICER KNITTLE: Excuse me. Are
17 there any other Xs on that?

18 MS. SMETANA: There are no other Xs on the
19 map.

20 HEARING OFFICER KNITTLE: Okay.

21 BY MS. SMETANA:

22 Q. Are you familiar with how these cannons
23 operate generally?

24 A. Yes.

1 Q. Can you generally explain how the cannons
2 operate?

3 A. They're connected to a propane canister,
4 and when you open up the propane canister, the
5 propane goes into the cannon, which then fills up
6 with bladder. When the bladder reaches the full
7 point, it hits the trigger which then ignites the
8 propane which makes the loud bang.

9 Q. Is there anything coming out of the
10 cannon?

11 A. No.

12 Q. And about how small are the cannons?

13 A. The size?

14 Q. Uh-huh.

15 A. No bigger than this microphone
16 (indicating).

17 Q. Can you just say approximately how many
18 feet?

19 A. About two feet tall.

20 Q. And how long?

21 A. Probably about the same, two feet.

22 Q. How frequently do the cannons go off?

23 A. Anywhere from one every minute to once
24 every hour.

1 Q. And who determines their frequency?

2 A. OMC.

3 Q. Are you able to control the frequency?

4 A. Yes. There is a timer on the cannons.

5 Q. Was anything in addition used besides the
6 cannons in 1997, the beginning?

7 A. In 1997, the beginning, within a few weeks
8 after starting using the cannons, we also installed
9 additional wire grid.

10 Q. And where was that installed?

11 A. To the west of the sand pile.

12 Q. When you say the west of the sand pile,
13 towards what direction?

14 A. Towards the north.

15 Q. Where exactly were the two cannons located
16 again? If you could just repeat where you said,
17 the initial two cannons.

18 A. They were both located east of the sand
19 pile, one at the foot of the sand pile, and one
20 about 100 yards away.

21 Q. Was the one at the foot of the sand pile
22 moved?

23 A. They were both moved during the year.

24 Q. Where were they moved to?

1 A. One was moved north a little bit, and then
2 the one -- the one at the foot of the sand pile I
3 can't recall at this time.

4 Q. When was it that OMC took gulls under its
5 U.S. Fish and Wildlife permit?

6 A. On May 4th, 1998.

7 Q. Again, again, how many gulls were taken?

8 A. Twenty.

9 Q. And how many were you permitted to take?

10 A. One hundred.

11 Q. Are you aware of anyone else in the
12 vicinity that used cannons or pyrotechnics in 1998?

13 A. Yes.

14 Q. Who?

15 A. The waterworks facility.

16 Q. And do you know where their cannons were
17 placed?

18 A. Not specifically, no.

19 Q. And where is the waterworks facility in
20 relation to OMC?

21 A. It is south of our plant one facility.

22 Q. Were the cannons and pyrotechnics
23 effective in what you set out for them to do?

24 A. Yes, they were.

1 Q. How were they effective?

2 A. They prevented the gulls from nesting on
3 the site.

4 Q. And how did you determine their
5 effectiveness?

6 A. We had very few nests that were even
7 built, and by the middle of June, the birds were no
8 longer returning to the site.

9 Q. In 1998 at any time, did OMC ever reduce
10 the number of cannons it was using?

11 A. Yes, it did.

12 Q. And when was that, the date?

13 A. It was early May.

14 Q. Did OMC ever reduce the hours during the
15 day in which it was operating cannons?

16 A. Yes, it did.

17 Q. And when was that?

18 A. That was at the same time we reduced the
19 number of cannons.

20 Q. And for how long into 1998 did OMC
21 continuing using the cannons?

22 A. Through the beginning of June.

23 Q. And why did OMC turn the cannons off at
24 that point?

1 A. The birds were no longer returning to the
2 site and were not nesting on the site.

3 Q. After June of 1998, what was your
4 involvement in the project?

5 A. I assisted in preparing an annual report
6 to U.S. Fish and Wildlife and assisted in applying
7 for a renewal of our permit.

8 Q. And was the -- when you say renewal of the
9 permit, which permit?

10 A. The U.S. Fish and Wildlife animal
11 deprivation permit.

12 Q. And are you aware if that permit was ever
13 granted?

14 A. Yes, it was.

15 Q. For what length of time does the permit
16 cover?

17 A. One year.

18 Q. And do you know when the permit was
19 granted?

20 A. In March of 1998.

21 Q. And for what year was that permit? I'm
22 talking the renewal permit.

23 A. It will be for 1999.

24 Q. And what did the renewal permit state?

1 A. I believe the same as the previous one,
2 which was the ability to take 100 gulls and destroy
3 up to 500 nests and eggs.

4 Q. In conjunction with any other --

5 A. In conjunction with the non-lethal.

6 Q. And when, again, was this permit issued?

7 A. In March of 1999.

8 MS. SMETANA: I am going to show the
9 witness what we'll mark OMC Exhibit 8.

10 (OMC Exhibit No. 8 marked

11 for identification,

12 4-20-99.)

13 BY MS. SMETANA:

14 Q. Can you please identify what's been marked
15 OMC Exhibit 8?

16 A. This is the animal deprivation permit
17 issued to OMC in March of 1999.

18 Q. Is this the permit which you were just
19 testifying to?

20 A. Yes.

21 MS. SMETANA: I'm going to move that OMC
22 Exhibit No. 8 and also No. 7 be admitted into
23 evidence.

24 HEARING OFFICER KNITTLE: Mr. Sweda, do

1 you have an objection to OMC No. 7, which is the
2 U.S. Fish and Wildlife permit? That's the previous
3 one. That's not the one you're looking at now.

4 MR. SWEDA: No.

5 MS. SMETANA: I also move to admit Exhibit
6 No. 8.

7 HEARING OFFICER KNITTLE: I understand.
8 I'm doing it one by one. Okay. No. 7 is admitted.

9 Mr. Sweda, do you have an objection
10 to OMC No. 8, which is a permit issued in 1999.
11 What is the permit for?

12 MS. SMETANA: It's a -- the witness
13 testified that it's a renewal of the 1998 permit
14 and provides for essentially the same thing that
15 the '98 permit provided for.

16 HEARING OFFICER KNITTLE: It's also U.S.
17 Fish and Wildlife?

18 MS. SMETANA: Yes.

19 HEARING OFFICER KNITTLE: Mr. Sweda, do
20 you have an objection to OMC No. 8 being admitted?

21 MR. SWEDA: No.

22 HEARING OFFICER KNITTLE: Both of those
23 are admitted.

24

1 BY MS. SMETANA:

2 Q. When OMC reduced the number of cannons
3 being used, how many were being used prior to the
4 reduction?

5 A. Three cannons.

6 Q. And when was the third cannon added?

7 A. It was purchased in the middle of
8 April 1998.

9 Q. And it was used beginning when?

10 A. Around within a week after its purchase,
11 so around the same time.

12 Q. And so in May 1998, what exactly was the
13 reduction?

14 A. We turned off the additional propane
15 cannon we had purchased.

16 Q. The additional is the --

17 A. The third.

18 Q. The third.

19 And so after May of 1998, how many
20 cannons were you using?

21 A. Two.

22 Q. And that continued until what day?

23 A. Until the beginning of June.

24 Q. Are you aware of cannons being used this

1 year?

2 A. Yes.

3 Q. Are they located in similarly the same

4 spots as last year, if you know?

5 A. As far as I can tell.

6 Q. And who -- are you still involved in the

7 program this year?

8 A. Only when they seek advice.

9 Q. You're now in a different department?

10 A. Yes.

11 Q. And who has taken your position?

12 A. Tony Montemurro.

13 Q. Okay. Have you ever heard the cannons

14 while at OMC's property?

15 A. Yes.

16 Q. Have you ever had a conversation outside

17 while the cannons have been going on?

18 A. Yes.

19 Q. In what tone did you speak?

20 A. Normal.

21 Q. Do you work inside the building at OMC?

22 A. Yes.

23 Q. And do you speak on the phone?

24 A. Yes.

1 Q. And has noise of the cannons ever

2 interfered?

3 A. No.

4 MS. SMETANA: I have no further questions.

5 HEARING OFFICER KNITTLE: Ms. Aavang, do

6 you have any questions?

7 MS. AAVANG: Nothing.

8 HEARING OFFICER KNITTLE: Mr. Sweda, do

9 you have a cross-examination.

10 MR. SWEDA: Yes.

11 HEARING OFFICER KNITTLE: You may

12 proceed.

13 MR. SWEDA: I'll make it short.

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

15 by Mr. Sweda

16 Q. One question, Ms. Bongiovanni, is there

17 any records of infection of any employees or

18 anybody of histoplasmosis on this site?

19 A. Not to my knowledge.

20 MR. SWEDA: Thank you. That's all I

21 have.

22 HEARING OFFICER KNITTLE: Any redirect?

23 MS. SMETANA: No.

24 HEARING OFFICER KNITTLE: You can step

1 down. Let's take a half hour for lunch and meet

2 back here at 1:00 o'clock.

3 (Whereupon, further proceedings

4 were adjourned pursuant to the

5 lunch break and reconvened

6 as follows.)

7 MS. SMETANA: OMC calls its next witness,

8 Daniel Hirsch?

9 HEARING OFFICER KNITTLE: Birch or

10 Hirsch?

11 MS. SMETANA: Hirsch. I'm sorry. I can't

12 hear anything. Mr. Hirsch, have a seat and the

13 court reporter will swear you in.

14 (Witness sworn.)

15 WHEREUPON:

16 DANIEL HIRSCH,

17 called as a witness herein, having been first

18 duly sworn, deposeth and saith as follows:

19 DIRECT EXAMINATION

20 by Ms. Smetana

21 Q. Please state your full name for the

22 record?

23 A. My name is Daniel Hirsch.

24 Q. Can you spell your last name?

1 A. H-i-r-s-c-h.

2 Q. Mr. Hirsch, where do you live?

3 A. 527 North Sheridan Road.

4 Q. And what cross street is that

5 approximately at Sheridan Road?

6 A. My house is the first house south of

7 Franklin.

8 MS. SMETANA: I'm going to show the

9 witness what has been marked previously as OMC

10 Exhibit 1.

11 BY MS. SMETANA:

12 Q. If you could, on this map, write in your

13 address, where it's located, and then put your

14 initials next to it.

15 A. Sure. (Witness complied.)

16 Q. Would you also put your address on there

17 too?

18 A. Oh, sure. Sorry. Just the number?

19 Q. The address, whatever, the number and the

20 street name.

21 A. Okay.

22 MS. SMETANA: Let the record reflect the

23 witness is writing his address and initials on the

24 exhibit marked No. 1, which is a map of a portion

1 of Waukegan.

2 BY MS. SMETANA:

3 Q. What is your education, Mr. Hirsch?

4 A. I have a bachelor's degree in engineering
5 from the University of Illinois from Champaign. I
6 have a master's degree in business from the
7 University of Chicago in Chicago. I'm a
8 registered -- licensed professional engineer in the
9 state of Illinois.

10 Q. Are you currently employed?

11 A. Yes.

12 Q. And for whom do you work?

13 A. I work for a company I own myself. It's
14 Lakewise, Incorporated.

15 Q. And what do you do?

16 A. We design and market products.

17 Q. Where do you work?

18 A. I work in my home.

19 Q. Do you have an office in your home?

20 A. Yes.

21 Q. And what hours of the day do you work?

22 A. All. Roughly, 7:00 a.m. to probably 6:00
23 p.m.

24 Q. And do you work -- at home, do you work

1 anywhere besides in your office?

2 A. No.

3 Q. How would you describe the area in which
4 your house is located?

5 A. It's primarily a residential area, a fair
6 number of trees. It's not very high density. A
7 couple of characteristics of the neighborhood are
8 Sheridan Road is a relatively heavily traveled
9 street. Behind my property, which extends about
10 600 feet from Sheridan Road, there's Amstutz
11 Highway. It looks sort of like a limited access
12 expressway.

13 Q. What side of Sheridan Road are you
14 located?

15 A. I'm on the east side of Sheridan Road.

16 Q. Is there any industrial facilities near
17 your --

18 A. Directly --

19 Q. -- house?

20 A. Directly behind my house, in other words,
21 due east of my house and maybe a little bit to the
22 south National Gypsum has a plant where they -- I
23 believe they process limestone into basically
24 drywall.

1 Q. Is there any other industries in the
2 vicinity?

3 A. Larson's Marine has a boat yard over there
4 to the north of the National Gypsum plant. There's
5 also a marine terminal where they off-load
6 limestone and they off-load portland cement.

7 Q. Any other industries?

8 A. Then there's Outboard Marine, of course.

9 Q. Are you familiar with Outboard Marine?

10 A. Only to the extent that I know where it
11 is. I've seen its building. I've seen some of
12 their test facilities, and I spend a lot of time in
13 and around there, but I don't have any connection.

14 Q. Where is Outboard Marine in relation to
15 your house?

16 A. Approximately, 900 yards east, southeast.

17 Q. And how do you know it's approximately 900
18 yards?

19 A. After having had some conversations about
20 this question, I went and looked at a software
21 program that's available on my computer and I
22 plotted out the location of my residence and the
23 location of the center of the site where these
24 birds are nesting, and there's a measuring device

1 in there, and it told me it was 900 yards.

2 Q. Is there a train that runs through

3 Waukegan?

4 A. Yes, there is.

5 Q. And where are you -- I assume there's rail

6 tracks for that train.

7 Where are you in relation to the rail

8 tracks?

9 A. The railroad was built in the 1890s

10 through what used to be part of the particle I now

11 live on, and it is approximately 800 feet east of

12 my home.

13 Q. And what does --

14 A. So it lies -- it lies between my home and

15 all those facilities I just described.

16 Q. And so what direction is OMC from your

17 home?

18 A. East, southeast.

19 Q. Where is Sheridan Road in relation to --

20 are you familiar with the street North County

21 Street?

22 A. Yes.

23 Q. How long have you been a resident of

24 Waukegan?

1 A. I moved to Waukegan in August of 1993. So
2 almost six years.

3 Q. And where is North County Street in
4 relation to Sheridan Road?

5 A. It's one block to the west.

6 Q. Are they on the same elevation?

7 A. I would estimate within four or five feet,
8 yes.

9 Q. And is Sheridan Road on the same elevation
10 as the lakefront front?

11 A. No, it's not.

12 Q. What is the difference, if you know?

13 A. On my property, the difference in
14 elevation from the Sheridan Road side to the east
15 end of the lot is approximately a 40 foot
16 vertical. In other words, the back end of my
17 property is approximately 40 feet lower than the
18 front end of my property.

19 Q. And the back of your property ends where?

20 A. Well, 700 yards from OMC.

21 Q. What's the boundaries back there?

22 A. Basically, it's the right of way for the
23 Amstutz.

24 Q. And is your property fenced?

1 A. The back is.

2 Q. And what type of fence?

3 A. It's a galvanized fence that is maintained

4 by the state to isolate the Amstutz.

5 Q. About how high is that fence?

6 A. Five feet.

7 Q. Do you have any outdoor space in your

8 house -- outside your house?

9 A. We have a fairly large deck, and we also

10 have built terraces in the backyard that we tend to

11 entertain on. We also have a hammock in the

12 backyard, and we also have a little gazebo that is

13 about 150 feet from the eastern border of our

14 property.

15 Q. And where is your yard in relation to your

16 house?

17 A. It's to the east.

18 Q. And how far would you say your yard is

19 from OMC?

20 A. The eastern edge of my property is about

21 700 yards from OMC, and the western edge is about

22 900 yards.

23 Q. And where is your deck located in relation

24 to your house?

1 A. It's attached on the eastern side of the
2 house.

3 Q. Do you ever spend time in your yard?

4 A. As much as I can.

5 Q. During what time of the year are you
6 outside your yard?

7 A. I would say that we're in the yard
8 probably every month of the year. December,
9 January, February, March we tend to spend less time
10 in the yard, but we're probably in the yard at
11 least, during those months even, once or twice a
12 week.

13 Q. And what do you generally do when you're
14 in the yard?

15 A. We do everything from tobogganing to yard
16 work to just recreation, recreate with the
17 neighbors, play bocci ball, things like that.

18 Q. What kind of recreation with the neighbors
19 do you do?

20 A. A lot of bocci ball, a lot of sitting
21 around and telling stories, just people hanging out
22 with people.

23 Q. In the spring and summer, would you do
24 these activities in the yard?

1 A. Oh, sure.

2 Q. Except tobogganing.

3 Do you have a bird feeder?

4 A. I have three bird feeders.

5 Q. And where are they located?

6 A. They're located at the eastern edge of my
7 deck.

8 Q. Are there many birds?

9 A. Yes. We have many different birds. I've
10 got everything from finches. I've got some
11 woodpeckers. I've got some starlings.
12 Unfortunately, we have some blackbirds. We have
13 the usual sparrows, robins. I've got some red --
14 let's see, redheaded woodpeckers. I've got I think
15 it's called a thistle in our backyard -- not a
16 thistle. It's a -- I forget what it's called, but
17 we have a wide range of birds.

18 We've seen humming birds. We've seen
19 orioles. We've got cardinals. We've got them all.

20 Q. Where are you when you see these birds?

21 A. In my living -- in my family room. I can
22 see them out of my office. I see them on the deck.

23 Q. So when you're outside you can see the
24 birds?

1 A. Yes.

2 Q. Is there any other wildlife in your yard?

3 A. Plenty of squirrels. We have seen a lot
4 of deer. We've even had deer come up the hill. We
5 watched a family of three deer. I assume it was a
6 family if that can be properly applied to deer, but
7 they had an offspring, a fawn, and they were
8 running around our yard from time to time.

9 I've seen turtles. I've seen what we
10 think were coyotes, raccoons, skunks. There's a
11 lot of wildlife back there.

12 Q. In the past year, have you noticed
13 anything different about this wildlife in their
14 behavior?

15 A. No, not really. Last year was the year
16 that the deer did their family affair thing.

17 Q. Do you have a boat?

18 A. Yes.

19 Q. Where do you keep your boat in the summer?

20 A. In the summertime, I'm in the south harbor
21 of Waukegan.

22 Q. And where is the south harbor of Waukegan?

23 A. Basically, there is the break wall that
24 separates the old harbor from what we call the

1 south harbor or the new harbor, and I am on the
2 south side of that break wall that projects from a
3 spot I think it's just off the extension I think of
4 Madison.

5 Q. And do you keep your boats somewhere else
6 during the winter?

7 A. In the wintertime, we pull it out of the
8 water, and we keep it at Larson's Marine.

9 Q. And how often do you spend time on your
10 boat?

11 A. In the winter, way too often, but I'm
12 probably on the boat a total probably 25 times
13 through the course of the winter.

14 Q. In winter, what do you do on the boat?

15 A. Work, work, work.

16 Q. And where is it that you're working on the
17 boat?

18 A. Sometimes I'm inside the boat. Sometimes
19 I'm on top of the boat. In the past, my boat has
20 been stored outside. This year I decided to have
21 the boat stored inside and, like I said, you spend
22 a lot of time on it.

23 Q. Is the new harbor the only harbor in
24 Waukegan?

1 A. The only one where boats are more
2 regularly.

3 Q. Is there another harbor?

4 A. There's the old harbor, which is basically
5 the one that OMC sits on.

6 Q. And can you describe the old harbor?

7 A. I'm not quite sure with where to start.
8 Basically, what it consists of is a channel of
9 varying widths with a couple of legs, one of which
10 runs to the northwest, another which runs north and
11 then juts east between Larson and Outboard Marine.

12 Q. What kind of activity takes place in the
13 old harbor?

14 A. You occasionally have very large ships
15 coming in and they deliver what I believe is
16 portland cement or they deliver crushed limestone,
17 and that's off-loaded. The crushed limestone is
18 unloaded by using conveyor belts. The portland
19 cement is unloaded using pneumatic conveying
20 systems.

21 Q. Do you ever hear these large ships?

22 A. Yes.

23 Q. What do they sound like?

24 A. Well, normally you'll hear them --

1 probably the most noticeable sound is their horn.
2 They have to sound a warning, I believe, as they
3 come into the harbor and they sound a warning as
4 they exit the harbor. I do believe it's four long
5 blasts on their horn.

6 When they're off-loading the
7 limestone, they have, as I've mentioned, a long
8 conveyor, and you can hear the limestone hitting
9 the top of the pile. You can hear the machinery
10 that is moving the conveyor, and you can also
11 hear -- they use a Caterpillar tractor to move the
12 piles of limestone around, and you can hear its
13 back-up alarm when it backs up.

14 Q. And where are you when you hear these
15 sounds?

16 A. In my house, on my deck, in my yard, on
17 my -- well, not on my boat, but generally in my
18 area, in my home.

19 Q. And what time of day do you generally hear
20 these sounds?

21 A. Oh, whenever they're unloading.

22 Q. The daytime?

23 A. Generally, they run their operations
24 pretty much in the daytime. I don't think I've

1 heard too often in non-daylight hours.

2 Q. In the harbor, have you ever seen sea
3 gulls?

4 A. Yes.

5 Q. Do you expect to see sea gulls in the
6 harbor?

7 A. Especially in the Waukegan Harbor, yes.

8 Q. What do you mean by that?

9 A. Well, I've been to a lot of different
10 harbors in my lifetime, and I've seen sea gulls,
11 and then in Waukegan, we have a whole other level
12 of sea gulls. There's an incredible concentration
13 of these birds. When I'm in the boat yard, I can
14 hear the birds. It's the only sound you hear
15 almost all day long when I'm working on my boat, on
16 top of my boat, inside of my boat, when I'm working
17 on top of my boat outdoors or indoors, inside my
18 boat outdoors or indoors you can hear it.

19 Q. What does it sound like?

20 A. Well, to characterize it, it's not the
21 sound of the calls of maybe a couple score of
22 birds. I would liken it to the sound you hear if
23 you go to a luncheon in a very large room where
24 they have 1,000 or 1500 people all sitting and

1 talking loudly, it's that roar type of sound, only
2 it's not human voices, it's the calling and calling
3 of sea gulls.

4 Q. Can you hear these birds anywhere else
5 from besides your boat?

6 A. I can hear them lying in my bed.

7 Q. When did you notice the bird population
8 got so big?

9 A. I think it was about -- I think three
10 years ago was the first year I noticed it was
11 getting bad. I primarily noticed it because I had
12 to do -- I was having a -- I was doing body work on
13 my boat, and so I ended up spending more time on my
14 boat, and I suddenly noticed I had a headache, and
15 I couldn't figure out why, and it suddenly dawned
16 on me the reason I had a headache was because after
17 listening to the sound of those birds for eight
18 hours, it just gave me a headache.

19 Q. Have you ever had any other experience
20 with the birds besides the noise?

21 A. Well, normally in the wintertime -- well,
22 at any time of the year, if you park your car near
23 the Waukegan Yacht Club, which basically lies
24 between the harbor I mentioned earlier, you know,

1 the new harbor and OMC, you will pick up some
2 detritus from the sea gulls that has to be cleaned
3 off.

4 I have been hit with sea gull
5 droppings. One day I was mowing my lawn and I do
6 believe it was a sea gull that dropped the head of
7 a fish next to me.

8 Q. Do you know anything that is being done to
9 relocate the sea gulls?

10 A. I'm aware of the fact that Outboard Marine
11 has a program right now that they're trying to get
12 the sea gulls to move.

13 Q. Do you know what the program involves at
14 all?

15 A. They are making loud noises in an effort
16 to frighten the birds during their nesting time so
17 the birds will go nest somewhere else.

18 Q. Where are you when you hear these noises?

19 A. I can hear them on my deck. I can hear
20 them occasionally in my house. I can hear them on
21 my boat. Almost anywhere I can hear the sea gulls
22 I can hear the noises. I can state that.

23 Q. During what time of the year did you hear
24 the noise in 1998?

1 A. In 1998?

2 Q. Uh-huh.

3 A. I believe it was the second or third week
4 in March when I noticed the noises, and I was
5 actually at the yacht club. We were sailing in the
6 harbor on a Sunday afternoon in the wintertime, and
7 I commented to someone I was with about the noise,
8 oh, yeah, that's OMC trying to chase the birds
9 away. I remember at that time my thought was well,
10 that's -- that will be a good thing.

11 Q. What does the noise sound like? Can you
12 describe it?

13 A. It sounds like probably a small arm's
14 discharge. Sometimes it sounds like a small
15 firecracker in the distance.

16 Q. Did the noise -- this noise interrupt
17 anything you were doing?

18 A. No.

19 Q. When you were outside and heard this
20 noise, were you able to speak at a normal
21 conversational tone?

22 A. Yes.

23 Q. And when is it that you have occasion to
24 speak to others outside in your yard?

1 A. Basically, when I'm working in my
2 backyard, when I am entertaining and enjoying time
3 with my family and my neighbors in the backyard.

4 Q. And last spring and summer, did you do all
5 those activities in your backyard?

6 A. Yes.

7 Q. And did you speak in normal voices?

8 A. Yes.

9 Q. Okay. Do you ever talk on the phone
10 outside?

11 A. Yes.

12 Q. Did this noise ever interfere with, the
13 noise from the cannons, interfere with your ability
14 to talk on the phone?

15 A. I never even noticed it.

16 Q. Did the noise prevent you from doing
17 anything outside?

18 A. No.

19 Q. Do you ever work outside?

20 A. Yes.

21 Q. Does the noise prevent you from that?

22 A. Generally, when I'm working, I make a lot
23 of noise, power tools and all, but it's never
24 affected me. Now, the sea gulls have given me

1 headaches.

2 Q. Were you able to hear the noise of the
3 cannons inside your house ever?

4 A. Yes.

5 Q. When you're talking inside the house, did
6 anything interfere with that?

7 A. No.

8 Q. When you are watching television in your
9 house, did anything interfere with that?

10 A. No.

11 Q. When you're listening to the radio, did
12 anything interfere with that?

13 A. Normally, if I'm in the house, the only
14 time I can hear these sounds are when nothing else
15 is making noise. So if I'm listening to the radio,
16 if I'm watching TV, if I'm having a conversation
17 with someone, the sound of the discharges at OMC
18 basically are lost.

19 Q. Has the cannon noise ever made you jump?

20 A. No.

21 Q. What other noises do you hear from your
22 house aside from the cannon noise which you've
23 mentioned?

24 A. Well, besides the sea gulls, I hear --

1 which probably is the most prominent sound I hear,
2 I hear a lot of sound from the railroad. I hear a
3 lot of highway noise from the Amstutz. The
4 railroad is probably the loudest. When these guys
5 are shifting their -- when they're taking up the
6 slack from the trains or whether they're doing some
7 switching, that's very loud. The first Tuesday of
8 every month they sound the civil defense siren, and
9 when that goes off, you cannot even talk.

10 Q. How would you compare all those noises to
11 the noise from the cannons?

12 A. Those are considerably louder and they're
13 more disruptive.

14 Q. Do you know Mr. Sweda, the complainant in
15 this matter?

16 A. The only way I know Mr. Sweda is he called
17 me up last November on the phone one day.

18 Q. Prior to that, had you ever spoken to him?

19 A. I did not know him.

20 Q. And why did he call you?

21 A. Well, at the time, he called me up and
22 asked me if the sound of the cannons bothered me.

23 Q. Did you get involved in any conversation?

24 What did you tell him?

1 A. Well, I asked him -- I said no. Why? And

2 if I recall, he said well, he thought it was --

3 Q. Just testify what you said.

4 A. Well, okay. I told him no, that it did

5 not bother me, and I thought it was a good thing

6 because it was intended to reduce the noise from

7 the sea gulls.

8 MS. SMETANA: I have no further questions

9 of this witness.

10 HEARING OFFICER KNITTLE: Is Ms. Aavang

11 coming back?

12 MS. AAVANG: I have no questions. Thank

13 you.

14 HEARING OFFICER KNITTLE: Okay. Mr. Sweda,

15 do you have a cross-examination.

16 MR. SWEDA: Yes. I have a couple

17 questions

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

19 by Mr. Sweda

20 Q. Are you employed by either the city in any

21 way? You're an independent businessman, I assume.

22 Are you employed -- do you have any --

23 MS. SMETANA: Wait. Can you answer yes or

24 no? I'm sorry.

1 BY THE WITNESS:

2 A. I have no commercial relationship of any
3 kind with the city other than I pay taxes.

4 BY MR. SWEDA:

5 Q. What about Outboard Marine Corporation?

6 A. The only contact of any kind I've ever had
7 with Outboard Marine is they transferred a
8 neighbor, who was a friend of mine, to Atlanta, but
9 I have no commercial relationship whatsoever with
10 them. I don't even use their products.

11 Q. Do you have any -- do you serve on any
12 boards, commissions of either OMC voluntarily as a
13 citizen or anything else as to OMC or the City of
14 Waukegan?

15 A. The only thing I do for the City of
16 Waukegan is vote.

17 MR. SWEDA: Okay. Thank you. That's all.

18 HEARING OFFICER KNITTLE: Redirect?

19 MS. SMETANA: No, nothing.

20 HEARING OFFICER KNITTLE: I'm going to
21 assume Ms. Aavang does not want a redirect since
22 she's not here. You can step down, sir.

23 Do you have another witness?

24 MS. SMETANA: Yes, we do.

1 HEARING OFFICER KNITTLE: You can call
2 your next OMC witness.

3 MS. SMETANA: OMC, as its next witness,
4 will call Jerry Larson.

5 HEARING OFFICER KNITTLE: Mr. Larson, have
6 a seat, please.

7 THE WITNESS: Thank you.

8 HEARING OFFICER KNITTLE: Would you swear
9 him in?

10 (Witness sworn.)

11 WHEREUPON:

12 G E R A L D L A R S O N,
13 called as a witness herein, having been first
14 duly sworn, deposeth and saith as follows:

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

16 by Ms. Smetana

17 Q. Mr. Larson, could you please state your
18 full name for the record?

19 A. My name is Gerald Larson.

20 Q. And where do you work?

21 A. I'm the president of Larson Marine Service
22 in Waukegan.

23 Q. Does your family own that business?

24 A. Yes.

1 Q. For how long have they owned that
2 business?

3 A. It's been in the family for over 60 years.

4 Q. And what kind of business is Larson
5 Marine?

6 A. We are a boat dealer and somewhat similar
7 to a car dealer in a boat business. We sell and
8 service boats. We winter-store boats. We repair
9 boats primarily.

10 Q. About how many boats are stored at your
11 facility?

12 A. We have over 700 in the wintertime.

13 Q. Are these boats stored outside?

14 A. About 60 percent are outside and 40
15 percent inside.

16 Q. How many employees do you have?

17 A. Approximately, 50.

18 Q. And do your employees work outside?

19 A. At this time of year, a large number do.

20 Q. And what time of the year do they work
21 outside?

22 A. Starting in March through -- basically
23 through November.

24 Q. Where is Larson Marine located in

1 Waukegan?

2 A. We're at the very north end of the north
3 harbor or what's referred to as the old harbor on
4 Sea-Horse Drive.

5 Q. And where is this in relationship to --
6 how about this. Are you familiar with the OMC
7 facility?

8 A. Yes.

9 Q. Where is Larson Marine in relation to the
10 OMC facility?

11 A. We are directly north of the facility
12 that's on the harbor.

13 MS. SMETANA: I am going to -- I'm going
14 to first show the witness what's been marked as
15 Exhibit 2.

16 BY MS. SMETANA:

17 Q. Are you able to identify on this map where
18 Larson Marine is located? It's kind of -- it's
19 upside down. This is north going that way
20 (indicating).

21 A. Okay. We're located -- let's see. We're
22 right over here.

23 Q. And can you draw a circle where Larson
24 Marine is located and maybe write Larson on it so

1 we know?

2 A. (Indicating).

3 Q. The witness is indicating on Exhibit 2 the
4 location of Larson Marine?

5 HEARING OFFICER KNITTLE: Can I ask him,
6 for the record, to explain exactly where that is.

7 MS. SMETANA: Oh. I think he already did,
8 but can you again explain --

9 HEARING OFFICER KNITTLE: He said it was
10 right here.

11 MS. SMETANA: Oh.

12 BY MS. SMETANA:

13 Q. Can you explain where Larson Marine is
14 located in relation to the Waukegan Harbor?

15 A. Well, we're at the very north end of
16 Waukegan Harbor, the old harbor or north harbor.

17 Q. And where is Larson Marine located in
18 relation to the OMC facility?

19 A. OMC has a facility on the north end of
20 Waukegan Harbor, and we are directly north of their
21 facility.

22 Q. Are you aware of the vacant piece of land
23 at the OMC facility?

24 A. Yes.

1 Q. Where is Larson Marine located in relation
2 to that piece of land?

3 A. It would be directly north of that.

4 Q. Can you describe the old harbor?

5 A. Yes. It runs -- well, it runs two
6 directions. The entrance channel runs east and
7 west between Madison Street and Clayton Street in
8 Waukegan, and then from that point it runs north
9 and south approximately a half a mile.

10 Q. What kind of activity goes on at the old
11 harbor?

12 A. There's a lot of commercial activity and
13 some private boating activity. The boating
14 activity would be there are slips for private boats
15 within the harbor near the yacht club area, and
16 when you go north of there, you have the, what they
17 call, slip number one, which has two commercial
18 operations, one being Cement Circles and the other
19 National Gypsum Company.

20 Across the way, Outboard Marine has
21 an engineering place where they test motors and
22 boats, and then north of that is the vacant
23 property referred to, and north of that is already
24 Larson Marine.

1 Q. Are there any sea gulls in this harbor?

2 A. There has been a lot of them.

3 Q. Don't you expect to see sea gulls in the
4 harbor?

5 A. You expect to see sea gulls, but not in
6 the quantity we've had at Waukegan Harbor in the
7 recent years.

8 Q. When you say in the recent years, when has
9 the quantity of sea gulls grown?

10 A. I would say it's become a problem, a
11 serious problem, in the last four or five years.

12 Q. What do you mean by a problem?

13 A. Well, the number of birds that are there
14 create a problem both from the noise and the fact
15 that they deposit their droppings all over the
16 area.

17 Q. Have the sea gulls been a problem for your
18 business?

19 A. Yes, they have.

20 Q. How so?

21 A. The fact that they tend to fly in flocks,
22 and a flock might be two or 300 birds, and they
23 will take off and fly across the area. They were
24 landing on one of our roofs, and then they would

1 sit there and they would take off again as a flock,
2 and if you were outside the area of that building
3 and they flew over you, you'd better run for cover
4 or they're going to deposit some droppings on you
5 for sure. Also, the noise, as the previous witness
6 testified to, the noise is substantial from the
7 birds.

8 Q. What does the noise sound like?

9 A. Well, it's kind of a squawking noise I
10 guess would be the best way I could describe it,
11 loud.

12 Q. Are you able to speak normally over the
13 noise of the sea gulls?

14 A. I would say if you and I were the distance
15 we are apart and we're talking, we'd probably have
16 to talk above normal voices to talk.

17 Q. And how far apart would you say we are
18 right now?

19 A. Twenty feet.

20 Q. You said the birds sit on the roofs of
21 your building. Have they done anything on those
22 roofs?

23 A. Yes. The one building has had some
24 damage. It's a metal roof, and it's caused the

1 roof to decay or rust.

2 Q. Do you know what has caused the roof to
3 decay or rust?

4 A. Sea gull droppings I'm sure is a part of
5 it.

6 Q. Do you -- have you repaired the roof?

7 A. We have an estimate to repair it, and we
8 plan to do it this summer after the birds leave,
9 and it's costing approximately \$15,000.

10 Q. Have you had any other problems to boats
11 in your business due to the birds?

12 A. Well, they also deposit their droppings on
13 the boats in the area, and, therefore, we're
14 continuously washing the boats when the sea gull
15 population is high.

16 Q. Normally, how often do you have to wash
17 the boats?

18 A. Under normal conditions, you might do it
19 once a week, and now, you know, if you cleaned it
20 today for a customer tomorrow, you might have to
21 clean it the next day also. You just never know
22 for sure.

23 Q. Do you have to wash anything else besides
24 the boats?

1 A. It's on cars, both our employees' cars and
2 customers' cars.

3 Q. Now, where are the boats put into the
4 water?

5 A. Well, again, at our location at the north
6 end of the Waukegan Harbor.

7 Q. Is it a dock?

8 A. It's a series of docks.

9 Q. Do you have any problems on the docks
10 because of the birds?

11 A. Again, before there's a lot activity on
12 the dock, they basically white out the dock.

13 Q. Excuse me. They --

14 A. They cover the dock, again, with their
15 droppings so it looks like, you know, if you've
16 seen a lot of bird droppings, it's covered in kind
17 of white. So they do cover that. Now, when the
18 activity picks up, they tend to stay away from the
19 docks themselves because there's people there, but
20 before there were a lot of people there, they had
21 the docks pretty well covered.

22 Q. And do you have to do anything about that?

23 A. You have to wash them because it's
24 slippery when it's wet. It's slippery. Plus we

1 can't track it on the boats. So, therefore, we

2 have to wash the docks.

3 Q. Are those docks part of the Larson Marine
4 facility?

5 A. Yes, they are.

6 Q. Have any of your employees -- have you
7 talked to any of your employees about the sea
8 gulls?

9 A. Sure.

10 Q. Have any of them talked to you about the
11 sea gulls?

12 A. Yeah. They've complained about all the
13 continual squawking noise that goes on all day
14 long --

15 Q. Do you have any concerns --

16 A. -- and the dirt they make, yes.

17 Pardon me?

18 Q. Do you have any concerns about the sea
19 gulls being there?

20 A. Well, we're concerned about the health
21 standpoint. I don't know how - exactly how serious
22 of a problem that is. The fact that the sea gull
23 dirt has been around in large -- fairly large
24 quantities, I'm sure there's somewhat of a health

1 hazard.

2 Q. Are you aware of any efforts to relocate
3 these sea gulls and address the problems?

4 A. Yes.

5 Q. And what is your knowledge?

6 A. Well, OMC for the past two springs has had
7 these cannons on the property directly to the south
8 of ours going off on I assume a timer on a fairly
9 constant basis.

10 Q. When you say -- when you say the past two
11 springs, do you include this spring?

12 A. Yes.

13 Q. So when did the cannons begin, which
14 spring?

15 A. Last year.

16 Q. Okay. Can you hear these cannons from
17 Larson Marine?

18 A. We can hear them if we're outside.
19 Personally, in my office, which isn't very far
20 away, I don't hear them.

21 Q. About how far away is your office from
22 where the cannons are?

23 A. Three or 400 yards.

24 Q. When you hear the cannons, have you ever

1 spoken to people outside?

2 A. Sure.

3 Q. Can you speak at normal tones?

4 A. Yes.

5 Q. Have any employees complained to you about
6 the noise from the cannons?

7 A. No, they have not.

8 Q. And how far away is your outside boat yard
9 from the cannons?

10 A. You can -- from some of our areas, you can
11 actually see the cannons, and I'd say the closest
12 point -- as a matter of fact, I went and looked
13 during the lunch hour to see how close the closest
14 one was, and I'm going to say it's about 150 yards
15 away.

16 Q. In 1998, did you notice any change in the
17 sea gulls as a result of these efforts?

18 A. 1998?

19 Q. Yeah. The last --

20 A. Yes. After they had this campaign -- the
21 program going for a while, the sea gulls definitely
22 did leave the immediate area. They moved over to
23 what was the gypsum company or is the gypsum
24 company.

1 MS. SMETANA: I have no further questions

2 for this witness.

3 HEARING OFFICER KNITTLE: Ms. Aavang?

4 MS. AAVANG: Nothing.

5 HEARING OFFICER KNITTLE: Mr. Sweda, do

6 you have a cross-examination.

7 MR. SWEDA: Just a couple.

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

9 by Mr. Sweda

10 Q. Mr. Larson, do you serve on any boards or

11 committees of the City of Waukegan?

12 A. I'm on the board of the Waukegan Yacht

13 Club and on the committee for the improvement of

14 Waukegan downtown.

15 Q. Do you -- you're an independent

16 contractor, you're a businessman. Do you have any

17 independent contracts with the City or Outboard

18 Marine Corporation?

19 A. No.

20 MR. SWEDA: Thank you. That's all I

21 have.

22 HEARING OFFICER KNITTLE: Redirect?

23 MS. SMETANA: No.

24 HEARING OFFICER KNITTLE: Ms. Aavang?

1 MS. AAVANG: Nothing.

2 HEARING OFFICER KNITTLE: Do you need some
3 additional time?

4 MS. SMETANA: No. I was just waiting for
5 Ms. Aavang to return. We're ready for our next
6 witness. As its next witness, OMC calls Bill Noff.

7 HEARING OFFICER KNITTLE: Have a seat,
8 sir.

9 (Witness sworn.)

10 HEARING OFFICER KNITTLE: It's your
11 witness, Ms. Smetana.

12 WHEREUPON:

13 W I L L I A M N O F F,
14 called as a witness herein, having been first
15 duly sworn, deposeth and saith as follows:

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

17 by Ms. Smetana

18 Q. Please state your name for the record.

19 A. My name is Bill Noff.

20 Q. Mr. Noff, are you employed?

21 A. Yes, I am.

22 Q. And where are you employed?

23 A. I'm a real estate broker with Century 21.

24 Q. And what type of work do you do there?

- 1 A. I manage real estate office.
- 2 Q. What type of real estate do you work in?
- 3 A. Residential.
- 4 Q. And how long have you been in residential
5 real estate?
- 6 A. Eleven years.
- 7 Q. And what days of the week do you work?
- 8 A. It could be seven days a week.
- 9 Q. What time do you leave for work generally
10 in the mornings?
- 11 A. Usually around 8:30.
- 12 Q. And what time do you generally return
13 home?
- 14 A. Between 5:30 and 7:00.
- 15 Q. And where do you live?
- 16 A. 928 North County.
- 17 Q. Excuse me?
- 18 A. 928 North County.
- 19 Q. And what is the cross street there?
- 20 A. It's just north of Ridgeland and County
21 Street -- south. I'm sorry. South.
- 22 Q. And how long have you lived at 928 North
23 County Street?
- 24 A. Seven years.

1 Q. And how long have you lived in the City of
2 Waukegan?

3 A. Ten years.

4 Q. And prior to living at 928 County Street,
5 what area did you live in?

6 A. I lived a little further west on Grand
7 Avenue.

8 Q. Are you familiar with the area around your
9 home?

10 A. Yes.

11 Q. And how are you familiar with that area?

12 A. Well, I've been there for seven years.

13 Q. Are you familiar with Stewart Avenue?

14 A. Yes.

15 Q. About how far away is that from your
16 house?

17 A. It's a block north.

18 MS. SMETANA: I'm going to show the
19 witness what's been marked as Exhibit 1.

20 BY MS. SMETANA:

21 Q. If you could mark on this -- Exhibit 1 is
22 a map of the relevant area of Waukegan which has
23 been previously identified.

24 Can you mark your address on the map

1 and then initial it and maybe put a square for

2 where your house is?

3 A. (Witness complied.)

4 Q. On what side of the street are you located

5 on?

6 A. That's the west side of the street.

7 Q. And can you actually put your address on

8 there and maybe an arrow to the square.

9 A. (Witness complied.)

10 MS. SMETANA: The witness has put a square

11 on the map where his house is located and an

12 address.

13 BY MS. SMETANA:

14 Q. And are you able to identify where 923

15 County Street is, North County Street?

16 A. That should be across the street.

17 Q. And can you put --

18 A. Just to the right.

19 Q. -- a square approximately where 923 north

20 County Street is and also an arrow?

21 A. (Witness complied.)

22 Q. And can you identify one last thing, where

23 Stewart Avenue is? Where is that descriptively in

24 relation to 928 where you live, County Street?

1 A. It's approximately a block north.

2 Q. And can you just put your initials on
3 Stewart Avenue?

4 A. (Witness complied.)

5 Q. Okay. Thank you.

6 Where is North County Street in
7 relation to Lake Michigan?

8 A. It's about a mile west of the lake.

9 Q. And is North County Street the same
10 elevation as Lake Michigan?

11 A. No. It's higher.

12 Q. Do you know about how much higher?

13 A. One hundred feet.

14 Q. How would you describe the neighborhood in
15 which you live?

16 A. It's residential.

17 Q. Do most of the houses have outdoor space?

18 A. Yes.

19 Q. Is there -- what's the traffic like on
20 North County Street?

21 A. Moderate. It could be heavy in the
22 morning and the afternoon.

23 Q. Is there -- are there -- what are the kind
24 of streets nearby, the traffic patterns like on

1 those streets?

2 A. The nearby streets?

3 Q. Yeah. What is the, I guess, the biggest

4 street near North Country Street?

5 A. Sheridan Road.

6 Q. About how far away is that from North

7 County Street?

8 A. One block east.

9 Q. And what's the traffic like on Sheridan

10 Road?

11 A. Moderate to heavy depending on the time of

12 day.

13 Q. Do people in your neighborhood have dogs?

14 A. Yes.

15 Q. How do you know they have dogs?

16 A. I hear them. I see them.

17 Q. When do you hear these dogs?

18 A. Well, there's some dogs that bark

19 constantly, and there's other people that walk

20 their dogs. I see them on a regular basis.

21 Q. And how frequently do you hear the noise

22 from dogs?

23 A. Frequently enough to remember it.

24 Q. Are you familiar with the harbor at

1 Waukegan?

2 A. Correct.

3 Q. Yes?

4 A. Yes.

5 Q. How far away from your neighborhood is the
6 harbor?

7 A. About a mile.

8 Q. Again, on what side of North County Street
9 do you live?

10 A. On the west side.

11 Q. Can you describe the lot on which your
12 house sits?

13 A. It's about 50 by 150. The house sits up
14 toward the east side of the property, and there's a
15 yard in the back.

16 Q. And what is at the rear property line of
17 your backyard?

18 A. Hall Court.

19 Q. And how far away are you from Gillett
20 Avenue?

21 A. Gillett is about a half a block south.

22 Q. Do you spend time in your yard?

23 A. Yes.

24 Q. During what time of the year are you in

1 your yard?

2 A. Mainly in the spring and summer, the warm
3 months.

4 Q. What activities do you do and enjoy in
5 your yard?

6 A. We entertain and barbecue. I do yard work
7 when necessary.

8 Q. Last spring and summer, did you entertain
9 in your yard?

10 A. Yes.

11 Q. When you entertain people in your yard, do
12 you talk to them?

13 A. Yes.

14 Q. At what tone of voice do you talk with the
15 people you entertain?

16 A. Normal conversation.

17 Q. Are you aware of sea gulls in the harbor?

18 A. Yes.

19 Q. How are you aware of that?

20 A. I've seen them when I've been down there.

21 Q. How would you describe the sea gulls in
22 the past year or so, the past two years?

23 A. Since I'm not down there that much, it
24 would be hard for me to give you a really good

1 idea.

2 Q. Would you --

3 A. I would say I've seen a lot of them.

4 Q. A lot of them?

5 A. But I don't know what I would be basing

6 that against.

7 Q. How long have you lived in Waukegan?

8 A. Ten years.

9 Q. About, I don't know, eight years ago, what

10 would you describe the sea gulls like?

11 A. Not quite as many.

12 Q. Do you know of anything that's being done

13 with respect to the sea gulls?

14 A. I believe OMC is in the process of trying

15 some things.

16 Q. Do you know how they're trying to do some

17 things with respect to the sea gulls?

18 A. They're using the cannons.

19 Q. Have you ever heard these cannons?

20 A. On occasion.

21 Q. Where were you when you heard the cannons?

22 A. I could be in the house or in the yard.

23 Q. Do you remember when you first heard the

24 cannons?

- 1 A. A year or a specific date?
- 2 Q. No, just, I mean, in general.
- 3 A. Probably last year.
- 4 Q. Do you remember when last year?
- 5 A. Probably in the springtime.
- 6 Q. What does this noise from the cannon sound
7 like when you're in your yard?
- 8 A. Like popping a paper bag.
- 9 Q. Has the noise ever made you jump?
- 10 A. No.
- 11 Q. Last spring and summer, did the noise
12 prevent you from doing anything outside in your
13 yard?
- 14 A. No.
- 15 Q. Did the noise ever interfere with speaking
16 outside?
- 17 A. No.
- 18 Q. When you're outside, do you ever talk on
19 the phone?
- 20 A. Sometimes.
- 21 Q. And have you been able to talk on the
22 phone last spring and summer outside?
- 23 A. Yes.
- 24 Q. Did the noise ever interfere with your

1 ability to talk on the phone?

2 A. No.

3 Q. Do you have a bird feeder?

4 A. Yes.

5 Q. Did birds come to your feeder last spring

6 and summer?

7 A. Yes.

8 Q. Did you notice anything different in the

9 behavior of the birds at your feeder?

10 A. No.

11 Q. Do you have any other wildlife or animals

12 in your backyard?

13 A. The squirrels, raccoons.

14 Q. Have you -- last spring and summer, did

15 you notice anything different in the squirrels'

16 behavior?

17 A. No.

18 Q. When you're outside your house, do you

19 hear any other noises?

20 A. Yes.

21 Q. What kind of noises do you hear?

22 A. Boom boxes, traffic, dogs barking --

23 Q. And what time -- I'm sorry.

24 A. Music from other buildings.

1 Q. And what time of the year do you hear boom

2 boxes?

3 A. You pretty much hear that year-round.

4 Q. And where is that noise coming from?

5 A. It's usually off the street.

6 Q. And could you compare the noise of the

7 boom boxes to the noise from the cannons?

8 A. The boom box is much more irritating.

9 Q. Do your neighbors to the north have a

10 yard?

11 A. Yes.

12 Q. Do they spend time outside?

13 A. Occasionally.

14 Q. Do your neighbors to the south have a

15 yard?

16 A. Yes.

17 Q. Have you seen them outside?

18 A. Yes.

19 Q. Do you notice anything different in the

20 amount of time they spend outside?

21 A. No.

22 Q. Do you know the complainant in this

23 matter, Mr. Sweda?

24 A. Yes.

1 Q. How do you know him?

2 A. He's a neighbor across the street.

3 Q. Have you ever spoken to Mr. Sweda?

4 A. Maybe ten years ago I said hi when he was
5 in the real estate business.

6 Q. You knew Mr. Sweda when you were in the
7 real estate business?

8 A. Right.

9 Q. Since that time, have you had occasion to
10 speak to Mr. Sweda?

11 A. No.

12 MS. SMETANA: I have no further questions.

13 MS. AAVANG: I have nothing.

14 HEARING OFFICER KNITTLE: Mr. Sweda?

15 MR. SWEDA: I have nothing.

16 HEARING OFFICER KNITTLE: Thank you, sir.

17 You can step down.

18 (Break taken.)

19 HEARING OFFICER KNITTLE: Just for the

20 record, we're going to allow the City of Waukegan

21 to call one witness who has a time constraint

22 before OMC finished their case in chief, and

23 there's no objection by Mr. Sweda.

24 MR. SWEDA: No objection.

1 MS. SMETANA: No objection.

2 HEARING OFFICER KNITTLE: No objection
3 from OMC. So, Ms. Aavang, you can proceed.

4 MS. AAVANG: Thank you. The City of
5 Waukegan would like to call Dan Chamernik.

6 (Witness sworn.)

7 WHEREUPON:

8 DANIEL CHAMERNIK,
9 called as a witness herein, having been first
10 duly sworn, deposeth and saith as follows:

11 DIRECT EXAMINATION

12 by Ms. Aavang

13 Q. Would you please state your name and spell
14 your last name for the record?

15 A. Sure. My name is Daniel Chamernik,
16 C-h-a-m-e-r-n-i-k.

17 Q. And, Mr. Chamernik, where do you live?

18 A. I live in Lindenhurst, 529 White Bridge
19 Road.

20 Q. And where are you currently employed?

21 A. I'm currently employed at Middlehurst
22 School in Wadsworth and during the summertime, I
23 work for the City of Waukegan working the park
24 district and the Waukegan beach.

1 Q. How long have you worked at the beach?

2 A. I believe this is my sixth year or fifth

3 year. I think it's my sixth year.

4 Q. And are you a lifeguard or another title

5 besides lifeguard?

6 A. I'm in charge of all the lifeguards and

7 overseeing the grounds and everything like that.

8 Q. What time of year do you actually start

9 being present down at the beach?

10 A. We typically begin in May, the latter part

11 of May, and we work through the Labor Day weekend

12 and then one more week usually just to get things

13 finished.

14 Q. When would it be safe to say that you are

15 physically at the beach yourself every day, the end

16 of May?

17 A. Yeah. We officially open Memorial Day

18 weekend. We're there a week prior to that just for

19 preparation. After that, we're open seven days a

20 week beginning roughly in June, the first weekend

21 in June. So we're open Memorial Day. Then we're

22 off for a couple of days. Then we come back and

23 we're open seven days a week until Labor Day.

24 Q. What hours are the lifeguards actually

1 present on the beach?

2 A. 10:00 a.m. until 6:00 p.m., but many times
3 we're there earlier and later depending on the
4 volume and the weather and other things like that.

5 Q. I take it if there's bad weather, you may
6 not be there that long. If the weather is good and
7 you've a lot of people, you may be there later?

8 A. Yeah. We extend our hours if needed just
9 for the safety of the swimmers and stuff like
10 that. Weather, we just wait and see and we have a
11 checkpoint time according to our policy that the
12 Waukegan Park District and the City have, and if
13 it's still raining, there's no use staying so we go
14 home.

15 Q. Now, you've been at the beach now you've
16 indicated five or six years working as a lifeguard;
17 is that correct?

18 A. Working at the beach, yes.

19 Q. And during that time, have you noticed any
20 gulls being present on the beach?

21 A. Oh, yes.

22 Q. And was there a change in the gull
23 population at some point since you've been down
24 there?

1 A. Each and every year, you could tell that
2 it was increasing. Then after the 1997 season,
3 last winter -- summer, it wasn't as bad as it has
4 been the previous years.

5 Q. And you haven't been down there yet this
6 year to see what the gull population is; is that
7 correct?

8 A. Well, I went down there for one day after
9 we had a meeting just to get things going for the
10 summer with my boss, and they were all over the
11 place pretty much.

12 Q. Was it as bad as '97?

13 A. No. Nothing was as bad as '97, no.

14 Q. Does 1997 stick out in your mind as a bad
15 year?

16 A. Oh, yeah. We -- yes.

17 Q. What made 1997 a bad year for you at the
18 beach?

19 A. Well, first of all, the weather was very
20 hot that year. So we were busy a lot, and the
21 population of the sea gulls had risen to such a
22 point where the babies themselves, after they were
23 born, they were all over the place. We had to call
24 animal control sometimes to get them either just

1 taken away because they were injured and there came
2 a point in time where we were scooping up anywhere
3 between ten to 13 dead sea gulls, not necessarily
4 all babies, a day from the Sea-Horse Drive from
5 cars hitting them, from OMC, us, you know, our
6 visitors to the beach, you know, police officers,
7 whoever just traveled up and down that road, and
8 there were dead sea gulls on the beach. There were
9 dead sea gulls in the water, and it was a pretty
10 messy time, and that was just for the sea gulls.

11 We also actually closed many times.
12 Each morning, the Waukegan Health Department or the
13 Lake County Health Department comes down and takes
14 a fecal reading for bacteria, and the fecal matter
15 for some reason during that time period in the area
16 that we patrol for lifeguarding was higher than
17 what they allowed, and we had to close it down due
18 to high bacteria.

19 Q. Why don't we stop there a minute.

20 You mentioned high bacteria. I take
21 it you don't have any specialized training. You're
22 just a lifeguard, correct? I mean --

23 A. Oh, no.

24 Q. -- you're not --

1 A. I have some.

2 Q. Did you or did any -- did you formulate an
3 opinion personally as to why the fecal count was so
4 high in 1997?

5 A. Well, I would have contact with the health
6 department. I didn't do the actual water testing,
7 but we would discuss problems, you know, why is
8 this. Typically, the bacteria will be high after a
9 very heavy rain due to just overrun of water from
10 the streets and stuff into the lake.

11 Our swimming area is unique because
12 it's a rather shallow area. It's enclosed to the
13 north by OMC -- an old OMC pier and the south by
14 the harbor wall. So the water itself, you know,
15 even though it's open comes in, but there's not as
16 much movement as it is anywhere else along the lake
17 in our general area, and for that reason, you know,
18 the water is a little bit warmer, it's shallower,
19 and it's much, much calmer.

20 Q. Did you formulate or did anyone provide
21 you information that indicated the gulls, the
22 increase in the gull population, was a factor in
23 the increase in the bacteria?

24 A. Yeah. It was suggested by the Lake County

1 Health Department because, you know, we could not
2 understand why day in day out we were constantly
3 being closed for high bacteria, and was it ever
4 proven, I don't know if it was, but we had just
5 said, you know, well the reason we're being closed
6 was because of fecal matter, and I know we have a
7 lot of swimmers, but I don't think they were the
8 cause of that, and so we just came to the
9 conclusion that it was from the bird droppings in
10 the water that would stay in the water area.

11 Q. Now, you had indicated earlier that in
12 1997 you and your crew ended up picking up a pretty
13 constant number of dead sea gulls from the beach
14 and the walkway area.

15 A. Uh-huh.

16 Q. Had -- was that a larger number than what
17 you had experienced in prior years in terms of dead
18 gulls?

19 A. Oh, yes. Even last year, we had maybe ten
20 the whole season. The years prior to that, you
21 know, it would be between ten and 20. You know,
22 some of them they just die, the older ones die, and
23 you pick those up, but I never seen so many dead
24 baby gulls.

1 Q. As you did in 1997?

2 A. Dead and adult gulls. The population was
3 just so big. It was like survival of the fittest,
4 and the older stronger ones got the food and the
5 other ones starved and went wandering to look for
6 it and ended up getting hit by cars.

7 Q. Now, in your experience as a lifeguard at
8 the beach, have you had any experience of the gulls
9 swooping down on humans?

10 A. Oh, yes. You know, people come down and
11 picnic, you know, picnic lunches, and there they
12 are like as soon as your back is turned, they'll
13 make their attempt to get, you know, a little piece
14 of food or come right up to picnickers, and they're
15 in the garbage cans, you know, digging for food,
16 and myself, I jog on a regular basis, and one just
17 flew and hit me right in the chest as I was jogging
18 down the beach.

19 Q. In 1997, you indicated it was a bad year.
20 Last year, was there an improvement in the
21 condition?

22 A. Yeah. I mean, there were still some gulls
23 around. We were closed for bacteria just a minimal
24 number of times. I want to say maybe only six for

1 the whole summer. There weren't as many sea gulls
2 in our beach area or even pretty much to the north
3 of the OMC pier, which is also used by sunbathers
4 and boaters and, you know, picnickers and stuff
5 like that.

6 Q. You indicated earlier the beach is kind of
7 an area between the old OMC pier and I believe you
8 had another landmark you used. What was that?

9 A. It was the harbor entrance wall.

10 Q. And how big of a beach area are we talking
11 about that you and your guards patrol?

12 A. I never measured it out. I'd have to say
13 that it's probably a third of a mile long, if not
14 longer than that, maybe even a half mile, maybe
15 even a half mile, and that's the beach area. Maybe
16 not a half mile, about a third of a mile, but we
17 only patrol -- we have an enclosed swimming area,
18 and then we patrol beyond that with a little boat
19 that we have just for the safety of jet skiers and
20 sail boaters and power boaters and stuff.

21 Q. In that area you patrol, you indicated you
22 would be cleaning up gulls both off of the beach
23 and off of the walkway, correct?

24 A. And the water, yes.

1 Q. And in the water also?

2 A. And in the water, yeah.

3 Q. Would that be gulls that either washed up
4 on the shore or ones that you actually are out in
5 that boat that you see and pick up?

6 A. It would -- yeah, both. You know, even
7 dead gulls are in the swimming area. You know,
8 some of the kids come out and they're kids and they
9 don't know and here they have a dead sea gull in
10 their hands. You know, it's like, you know, mom or
11 dad comes over, what's that, and send them up to
12 wash their hands. We just get rid of the carcass.

13 Q. When you and your crew go around picking
14 up the carcasses, do you do it with bare hands?

15 A. No. We wear gloves. We have shovels and
16 we disinfect them with bleach when we're done.

17 Q. Have you had any individuals that you know
18 of coming and complaining, either citizens using
19 the beach or anyone else complaining, about being
20 ill from the gulls?

21 A. Directly from the sea gulls, no, but the
22 health department does close the beach down when
23 the fecal matter is high. So they must have a --
24 they definitely have a concern about the water

1 quality in that area.

2 Q. In 1998, you indicated there were less
3 gulls?

4 A. Yes.

5 Q. At least in the immediate beach area.

6 Did you -- there was still a gull
7 population?

8 A. Oh, yeah. There was a smaller one that
9 was still on our beach, but some mornings back
10 in '97 when I'd come down there to begin the
11 clean-up process, I mean the whole entire beach
12 area would be white, and that was not necessarily
13 from the droppings. It was just from the gulls
14 just standing, you know.

15 We have a machine that drives along
16 the beach and picks up the sand and takes the
17 garbage out and returns the sand, and, you know,
18 you could tell -- well, you could see the numerous
19 droppings, you know, in that area. Since then,
20 there's still a population down there further north
21 along the other beach that isn't patrolled or isn't
22 patrolled by lifeguards, but yet we still patrol
23 it, and it's still used by a smaller number of
24 people. It seems like they've moved north, north

1 of where the old Sea Hag concession stand used to
2 be and where the Commonwealth Edison power plant is
3 in that area.

4 Q. Now, you indicated your season actually
5 doesn't start until the end of May. When you were
6 down there, though, either at the end of May or in
7 early June, did you ever hear any noise like
8 cannons firing or gun fire from the OMC plant?

9 A. No. I've never actually heard it, or if
10 I have, it hasn't registered. I mean, there is
11 noise down. There's boat traffic, you know, people
12 playing and screaming and yelling and laughing and
13 stuff like that, but I've never actually heard it
14 to where I said oh, that's the OMC cannons that are
15 being used.

16 Q. In 1997, did anyone ever -- any citizens
17 who were using the beach ever come to you and
18 complained about the number of gulls or the mess
19 that was being made?

20 A. Oh, yes. Yeah. I even called a few
21 people in July to try to find answers to what we
22 can do with them.

23 Q. You mean the people or the gulls?

24 A. The gulls. I'm sorry. Not the people.

1 And, you know, I had called up like the Illinois
2 Conservation people, and they directed me to the
3 Lake County chapter and then to the McHenry chapter
4 and then down to Springfield and all over the
5 place, and basically, you know, once animals become
6 overpopulated, I know certain times they come out
7 and rid the animals, and I inquired about that, and
8 they said that's probably not what they would do,
9 but they said that if you disturb the nesting
10 areas, you can do that. It's sort of like what
11 they do with geese on golf courses these days, but
12 I have to do down there. I'm not going to go shake
13 eggs.

14 Q. I was going to say did any of the
15 lifeguards try to undertake to disturb the nests?

16 A. No, no. It's too numerous. You know, I
17 mean, our duties are to protect lives of people
18 that are swimming and to maintain the cleanliness
19 of the area, and by doing that, we're still putting
20 in ten hour days. So we never attempted to do
21 anything.

22 Q. And you indicated in 1998 there seemed to
23 be an improvement?

24 A. Yes.

1 Q. Do you still have gulls that are nesting
2 on the beach area?

3 A. I haven't seen any this year. I've only
4 been down there one time. I'm not sure if they're
5 even nesting at this point in time yet.

6 Q. What time were you down there?

7 A. I just went down a couple days ago, but
8 we'll start going down there in about three weeks
9 to begin cleaning up from the winter.

10 Q. And generally by that time normally would
11 there already be nests when you would go down?

12 A. Yes. They would be in the nests probably.

13 MS. AAVANG: I have nothing further.

14 HEARING OFFICER KNITTLE: Anything from
15 OMC?

16 MS. SMETANA: No questions.

17 HEARING OFFICER KNITTLE: Mr. Sweda, do
18 you have any?

19 MR. SWEDA: No.

20 HEARING OFFICER KNITTLE: Sir, you can
21 step down.

22 THE WITNESS: Thanks.

23 HEARING OFFICER KNITTLE: Thank you.

24 I take it we're going to resume with

1 OMC's last witness?

2 MS. SMETANA: Yes. I'd like to wait for

3 Ms. Aavang.

4 HEARING OFFICER KNITTLE: Ms. Aavang, are

5 you going to be a while?

6 MS. AAVANG: No. Just go right ahead and

7 start.

8 MS. SMETANA: For its next witness, OMC

9 calls Brian Homans.

10 (Witness sworn.)

11 WHEREUPON:

12 BRIAN HOMANS,

13 called as a witness herein, having been first

14 duly sworn, deposeth and saith as follows:

15 DIRECT EXAMINATION

16 by Ms. Smetana

17 Q. Mr. Homans, please state your name for the

18 record.

19 A. My name is Brian L. Homans.

20 Q. And what is your occupation?

21 A. I'm an acoustical engineer.

22 Q. What is an acoustical engineer?

23 A. I work for a firm. We specialize in the

24 measurement and analysis of noise. I'm involved in

1 design of noise abatement measures for clients. My
2 particular specialty area is environmental
3 acoustics dealing with noise outside. The
4 specialty of our firm is dealing with building
5 acoustics; that is, the effect of buildings on
6 noise.

7 Q. And how long -- what is the name of the
8 firm you're with?

9 A. Shiner & Associates, Incorporated.

10 Q. And how long have you been with Shiner &
11 Associates?

12 A. Since 1982.

13 Q. And what did you do prior to working for
14 Shiner & Associates?

15 A. Prior to that, I was with IIT Research
16 Institute from 1980 until 1982.

17 Q. What type of research?

18 A. Dealing in acoustics or noise control.

19 Q. And prior to being at IIT, where did you
20 work?

21 A. I was with the City of Chicago from 1978
22 until 1980.

23 Q. And what did you do for the City of
24 Chicago?

1 A. I was an environmental engineer working
2 exclusively in the field of noise answering
3 complaints and dealing with complainants and trying
4 to resolve the problems that they had with
5 industrial sources and things like that.

6 Q. In that position, did you take field
7 measurements as well, sound measurements?

8 A. Yes.

9 Q. And prior to being with the City of
10 Chicago, what did you do?

11 A. I was with the U.S. Army Construction
12 Engineering Research Laboratory in Champaign.

13 Q. What is that?

14 A. That's a Corps of Engineers research
15 laboratory in Champaign, and I was with the
16 acoustic section there.

17 Q. And what did you do for them?

18 A. From the period of 1973 until 1978, we
19 dealt with measurements and analysis of noise
20 sources as it affected army bases and the civilian
21 population outside of army bases.

22 Q. What is your formal education?

23 A. I have a BS in physics from Ohio
24 University.

1 Q. And when did you receive that degree?

2 A. 1973.

3 Q. What do you currently do to keep up on the
4 advances in your field?

5 A. I do quite a bit of reading and talking
6 with colleagues.

7 Q. Reading of what?

8 A. Magazines and journals.

9 Q. Related to?

10 A. Acoustics and noise control.

11 Q. Are you involved in any professional
12 societies?

13 A. Yes. I'm a member of the Chicago Regional
14 Chapter of the Acoustical Society of America at
15 this point.

16 Q. And have you held any leadership positions
17 in the past in this society?

18 A. Yes. I was president of the local chapter
19 of the Acoustical Society, and I've also been
20 president of the Midwest Acoustics Conference in
21 the mid '80s.

22 Q. And what did these societies
23 and conferences involve?

24 A. Midwest Acoustics Conference puts on a

1 one-day seminar every year or two to inform

2 professionals about various aspects of acoustics.

3 Q. And do you attend these conferences and

4 seminars?

5 A. Yes. The group has been dormant for about

6 five years or so.

7 Q. The other professional society that you

8 are active in?

9 A. The Acoustical Society of America. Yes.

10 I attend local meetings. Usually, there's --

11 always there's a guest speaker to talk about

12 various aspects of acoustics and also, you know, an

13 opportunity to interact with my peers.

14 Q. And can you describe generally the parties

15 who retain your services?

16 A. We are retained by developers, building

17 owners, contractors, private citizens, private

18 residents, architects, mechanical engineers.

19 Q. Have you ever been retained by the

20 government?

21 A. Certainly, yes.

22 Q. What government bodies have retained your

23 services?

24 A. Certainly, the State of Illinois

1 Department of Transportation dealing with roadway
2 noise. I've various jobs for the federal
3 government in the past, not a whole lot, and with
4 the tollway commission.

5 Q. What do you consider to be your areas of
6 specialization?

7 A. My personal area, as I stated before, is
8 environmental acoustics; that is, dealing with the
9 noise and its effects outdoors, and for this I deal
10 with developers in terms of measurement and
11 prediction of noise levels as it relates to outdoor
12 noise sources. This could range from trains,
13 highways, sirens, and the design and mitigation of
14 systems to reduce noise from these sources.

15 Q. And what expertise do you have in taking
16 sound measurements?

17 A. I have completed seminars put on by
18 manufacturers groups on measurement of sound and
19 vibration.

20 Q. And what about your actual experience in
21 the field?

22 A. That's on-the-job training, hundreds of
23 sound level measurements.

24 Q. In a year, how many sound measurements

1 would you say you take?

2 A. In the course of a year, probably on the
3 order of 100 sound level readings.

4 Q. What is the basis of all -- of this
5 expertise?

6 A. In terms of my practical training and
7 educational experience.

8 Q. And how many years of experience do you
9 have?

10 A. Since 1973 until the present working
11 exclusively in noise.

12 Q. So approximately 25 years?

13 A. Yes.

14 Q. Does your experience include field testing
15 of impulsive sound?

16 A. Yes, it does.

17 MS. SMETANA: At this point, I'd like to
18 offer Mr. Homans as an expert.

19 HEARING OFFICER KNITTLE: Mr. Sweda?

20 MR. SWEDA: No qualms.

21 MS. AAVANG: No objection.

22 HEARING OFFICER KNITTLE: So admitted.

23 MS. SMETANA: Can you just -- just so the
24 record reflects.

1 HEARING OFFICER KNITTLE: I've already
2 said it.

3 MS. SMETANA: Oh, you have. Okay.

4 HEARING OFFICER KNITTLE: Did you get
5 that?

6 THE REPORTER: Yes.

7 HEARING OFFICER KNITTLE: Okay.

8 MS. SMETANA: Sorry.

9 BY MS. SMETANA:

10 Q. Mr. Homans, are you familiar with the
11 Outboard Marine Corporation?

12 A. Yes, I am.

13 Q. Are you familiar with the Outboard Marine
14 Corporation's operation of propane cannons to
15 disturb the sea gulls nesting in Waukegan,
16 Illinois?

17 A. Yes, I am.

18 Q. And how are you familiar with this?

19 A. I had the procedure described to me by
20 several people and also observed the operation of a
21 cannon at close range.

22 Q. What people described the procedure?

23 A. That would be Roger Crawford who described
24 at great lengths what OMC is doing to disturb the

1 sea gulls.

2 Q. Where is Roger Crawford employed?

3 A. He's employed by OMC in the environmental

4 division.

5 Q. And can you generally describe the propane

6 cannons, what they look like and how they operate?

7 A. Yes. They are relatively small devices

8 about two and a half to three feet high. They

9 contain a tube about two to three inches in

10 diameter, and the tube is mounted on a tripod. The

11 whole apparatus is connected to a propane cylinder,

12 the same kind of cylinder that you'd use for a

13 backyard barbecue grill.

14 The propane powers the cannon.

15 There's no electrical connections or batteries or

16 anything like that. It's my understanding that

17 the -- and from what I observed that the propane

18 fills up a bladder and this cocks a trigger. At a

19 certain point, the trigger fires as an electric

20 crystal which generates a spark and that, in turn,

21 ignites the propane and creates the blast or the

22 noise. After the cannons discharge, they rotate to

23 a random position.

24 Q. Did you see these cannons in operation?

1 A. Yes, I did.

2 Q. And when did you see them in operation?

3 A. That was on March 4th of this year.

4 Q. Do you know if they were operating the
5 same when you saw them on March 4th as they were
6 last year in 1998?

7 A. Yes. It's my understanding that they
8 were.

9 Q. Was it the same cannons?

10 A. Yes, the same cannons, the same exact
11 cannons that were set up.

12 Q. What did OMC retain you to do?

13 A. I was requested to measure and assess the
14 noise from the cannons at a point near Mr. Sweda's
15 residence and to compare those results with the
16 Illinois EPA standards.

17 Q. Standards for what?

18 A. For noise.

19 Q. Can you describe how you went about doing
20 this generally?

21 A. Yes. I located a measurement site close
22 to Mr. Sweda's residence, and the site was between
23 his house and the OMC coke plant site, about the
24 same distance from Sheridan Road as the rear of his

1 property so that the measurement position was

2 closer to the OMC site than his residence.

3 Q. And what were you -- what standard were

4 you measuring for?

5 A. I was measuring for impulsive noise part

6 901.104.

7 Q. Okay. And why did you measure it at

8 the -- near Mr. Sweda's property? Why did you

9 choose a location near his property?

10 A. I wanted to be as close as possible to his

11 property without disturbing him and be about the

12 same distance from Sheridan Road.

13 Q. Is that required somewhere that you be

14 close to his property?

15 A. Yes.

16 Q. Where is that required?

17 A. I believe it's stated in the standards

18 that you should be at or near the complainant's

19 property.

20 Q. Would you refer to that property as the

21 receiving source?

22 A. Yes.

23 Q. You say you selected the property, and

24 where exactly was the property in relation to 923

1 North County Street?

2 A. I was located on the north side of Gillett
3 in the front yard of 226 Gillett actually between
4 226 and 218 Gillett.

5 Q. And on what day was this?

6 A. This was on March 4th.

7 MS. SMETANA: Can I -- I'm going to have
8 the witness identify on Exhibit 1 where he stood on
9 March 4th.

10 BY MS. SMETANA:

11 Q. Can you put a little square approximately
12 where that was and then also date it. Mark the
13 date you were there and put your initials too.

14 A. (Witness complied.)

15 Q. Thank you.

16 What kind equipment do you use for
17 this type of testing?

18 A. For this equipment, I used a spectrum
19 analyzer, which is a sound level meter that has the
20 ability to measure frequency bands also. I used a
21 microphone and preamp with an extension cable
22 and everything was mounted on a tripod. The
23 microphone and preamp were mounted on a tripod and
24 protected with a wind screen.

1 Q. And how did you select this equipment?

2 A. This is equipment that we commonly use for
3 measurement of environmental noise and it complies
4 with the standards set forth in the EPA
5 regulations.

6 Q. When you say EPA regulations, are you
7 referring to the pollution -- the Board
8 regulations?

9 A. Yes.

10 Q. Are you trained to use this equipment?

11 A. Yes, I am.

12 Q. And for how many years have you been using
13 this type of equipment?

14 A. We have owned this type of equipment for
15 approximately 12 years.

16 Q. Can you briefly describe your training in
17 using this kind of equipment?

18 A. Yes. I've attended several manufacturer
19 seminars on the operation of this equipment.

20 Q. And how frequently do you use this
21 equipment?

22 A. Two to three times a week.

23 Q. Again, did you conduct noise readings of
24 OMC's operations of propane cannons?

1 A. Yes, I did.

2 Q. On what days?

3 A. That was on March 4th as I've already
4 described, and then I returned on March 15th.

5 Q. And did you follow this methodology you
6 just described when you took these measurements or
7 do you want to describe your methodology further
8 after selecting the site?

9 A. I will at this time, yes. I set up the
10 equipment, including the analyzer, which I placed
11 in my car and connected to the microphone and
12 preamp on a tripod. I placed the tripod and
13 microphone on the parkway on the north side of
14 Gillett approximately 15 to 20 feet away from my
15 car.

16 It was cold that day, on both days
17 actually, and so I remained in my car with the
18 windows down and my coat on and bundled up and my
19 head sticking out of the window.

20 Q. Were the windows open in your car?

21 A. Absolutely.

22 Q. Does the equipment you use, is it a
23 recording device?

24 A. Yes, of sorts. It's a digital recording

1 device in that it measures the sound levels so that
2 the sound levels can be recalled at a later time.

3 Q. Can you listen to the recording of that?

4 A. No, you can't. Again, the equipment only
5 measures the sound levels and retains those.

6 Q. And what do you do once you have the
7 digital recording?

8 A. Once I have the data files contained in
9 the analyzer, I download those to my personal
10 computer in my office into an Excel spreadsheet and
11 from there look at the result and graph them.

12 Q. And under the standards of 901.104, what
13 kind of sound level is it you're measuring for?

14 A. There's -- the Pollution Control Board
15 standards are written in terms of time and day and
16 also land use of both the source and the receiving
17 property. For this situation, the coke plant site
18 is land use C and residential is land use A. It's
19 my understanding that the cannons were only fired
20 during the daytime between 7:00 a.m. and 10:00 p.m.
21 So that would be a daytime --

22 Q. You're defining daytime, not the time the
23 cannons were actually used?

24 A. I'm sorry.

1 Q. What you just said, 7:00 a.m. to 10:00

2 p.m., does that define daytime?

3 A. Yes, official Pollution Control Board

4 daytime as they define it, and their level -- their

5 standard is 55 DBA, and I should explain that

6 that's averaged over a one-hour period -- 56 DBA.

7 I'm sorry.

8 Q. And how -- I'm sorry. Over what period of

9 time is it measured?

10 A. That sound level is to be averaged or

11 energy averaged over a one-hour period.

12 Q. And where is that referenced?

13 A. That is stated in the Pollution Control

14 Board standards.

15 Q. And does anything else have to be done in

16 that 60-minute period?

17 A. Yes. You're permitted to exclude

18 extraneous events from your measurements.

19 Extraneous events include aircraft fly-overs, for

20 example, people talking to you during the

21 measurements, dogs barking, cars passing directly

22 on the street where you're at.

23 Q. How do you know when these extraneous

24 events occur while you're out there taking your

1 measurements?

2 A. I'm there, I'm listening, and I'm taking

3 notes.

4 Q. And do you mark down when these extraneous

5 events occur?

6 A. Yes. I should explain that I set up the

7 instrumentation to sample 30 second blocks or

8 periods so that every 30 seconds the analyzer would

9 record the results and store the results to memory

10 and reset and begin sampling again for another 30

11 seconds. I also kept a log in which every 30

12 seconds I wrote down how many cannon blasts I heard

13 and what other types of noises I heard.

14 Q. And were you there the entire time --

15 A. Yes.

16 Q. -- during the measurements --

17 A. Yes.

18 Q. -- on both March 4th and March 15th?

19 A. Absolutely.

20 Q. What was the set up of the cannons on

21 March 4th and March 15th when you took the -- the

22 day you took your measurements?

23 A. They're identical for both days. There

24 were three cannons on OMC property and one cannon

1 set up on City of Waukegan property at the
2 waterworks.

3 Q. Is it your understanding that these
4 cannons were set up the same as they were in
5 1998 --

6 A. That's my understanding.

7 Q. -- for purposes of your test?

8 A. Yes.

9 Q. Do you know where the end of Mr. Sweda's
10 lot is in relation to where you were on March 4th
11 to take your test?

12 A. From what I could observe from Gillett and
13 also from Ridgeland to the north, it appears that
14 his property ends about halfway between County
15 Street and Sheridan Road.

16 Q. So for purposes of sound measurements, is
17 the site that you were at representative of any
18 noise heard on Mr. Sweda's property?

19 A. Yes. I tried to be due south of his
20 property line.

21 Q. And were you as close -- I mean, could you
22 have been any closer to his property?

23 A. Not without intruding on somebody else's
24 property, no, I could not have been.

1 Q. After you set up your equipment on March
2 4th, can you describe the methodology and what you
3 did?

4 A. Certainly. I set the equipment up and
5 began sampling on March 4th. I started at
6 approximately 4:00 o'clock and remained there until
7 about 4:15. At this point, traffic was increasing,
8 and I was getting calls from various people.

9 Q. You were making phone calls?

10 A. Yes.

11 Q. Did you speak on the phone?

12 A. Yes, I did.

13 Q. Were you able to speak on the phone with
14 the other noise going on --

15 A. Yes.

16 Q. -- at normal conversation?

17 A. What do you mean by other noises? I'm
18 sorry.

19 Q. You said there was traffic and the cannons
20 and there were other noises while you were speaking
21 on the phone.

22 A. Yes. I did have to interrupt the sound
23 level measurements when people called.

24 Q. What did the noise from the cannons sound

1 like to your naked ear?

2 A. To my ear, the cannons sounded like

3 distant rifle fire, low caliber rifle fire.

4 Q. And how do you know what that sounds like?

5 A. Certainly I've taken readings in the past

6 of rifle range -- rifle fire from sportsmen's

7 clubs.

8 Q. And on March 4th, can you describe what

9 the weather was like?

10 A. On March 4th, the temperature was close to

11 freezing and the wind direction was out of the

12 northeast at about five to ten miles an hour.

13 There was no rain or snow.

14 Q. How did you know the direction of the

15 wind?

16 A. I was right by a flagpole which clanked a

17 little bit every time the wind blew, and I had to

18 exclude those readings. That was another

19 extraneous noise source. I also observed the

20 smokestacks on the lake.

21 Q. And how did you know the speed of the

22 wind?

23 A. I measured it with a volumeter, which is a

24 device that measures wind speed.

1 Q. What are the appropriate conditions for
2 measuring sound under the relevant noise standards?

3 A. I would reference ANSI S 1.13 which talks
4 about optimal conditions for sound measurement, and
5 these are no wind gradient, and this means that
6 there's no wind, and a negative temperature
7 gradient, and that means no temperature inversion.

8 In other words, the temperature decreases as
9 altitude increases from the Earth's surface.

10 Q. Is this ANSI Standard 1.13 referenced in
11 the Pollution Control Board regulations?

12 A. Yes, it is.

13 Q. Where is it referenced? Is it part of the
14 methodology --

15 A. Yes, it is.

16 Q. -- you were testing for?

17 A. Yes, it is. I don't know the exact
18 section number.

19 Q. Were the conditions on March 4th
20 appropriate under this standard?

21 A. There was a slight crosswind in relation
22 to the noise source to the receiver. Not entirely
23 optimal, no.

24 Q. After you -- how long -- actually, how

1 long were you out there on March 4th?

2 A. About an hour and ten minutes, an hour and
3 15 minutes or so. Traffic was increasing, and I
4 felt that people had to go home at OMC, and I was
5 concerned about the continued operation of cannons.

6 Q. Again, approximately what time did you
7 begin testing on March 4th?

8 A. About 4:00 o'clock.

9 Q. And about what time did you end?

10 A. About 5:10, 5:15 or so.

11 Q. After you finished your testing, what did
12 you do?

13 A. I neglected one thing. When I was
14 conducting the measurements, prior to taking
15 measurements, I did check the calibration of the
16 equipment, and that also occurred after the
17 measurements to make sure that everything was in
18 working order and that the sound level had not
19 drifted.

20 Q. When you're taking measurement, do you
21 take any notes?

22 A. Yes. Every 30 seconds I took notes.

23 Q. What were those notes of?

24 A. Those were of sounds I heard in the area

1 including the number of cannon blasts I heard.

2 Q. And where are those notes documented?

3 A. Those are in the back of my report.

4 Q. As part of what?

5 A. They're tables A and B in the back of my

6 report.

7 Q. What else is included on those tables?

8 A. Those are the awaited sound levels and

9 those would be --

10 Q. What is the source of the information on

11 the table A which is entitled raw data from March

12 4th in your report?

13 A. The source?

14 Q. The information where the -- what's the

15 source of the information in that table?

16 A. That came from my readings on March 4th

17 from the analyzer that I was operating.

18 Q. And how did you get the readings? How did

19 you analyze the reading that you took?

20 A. I used an Excel spreadsheet to look at the

21 readings and to graph them and also to -- yes.

22 Q. Can you explain over what intervals you

23 took the measurements?

24 A. Every 30 seconds the analyzer with some --

1 pardon me. Every 30 seconds, the analyzer averaged
2 the sound levels in the area and wrote those to
3 memory every 30 seconds and reset them and began
4 sampling again.

5 Q. You mentioned awaited sound. Can you
6 explain what is awaited sound?

7 A. Awaited sound is a waiting network that is
8 used to approximate the human ears' response to
9 sound because there are sound -- our ears are not
10 linear and do not respond to sound in a linear
11 fashion to noise, in other words, by frequency.

12 We don't hear low frequency sounds
13 very well. We don't hear extreme high frequency
14 sounds very well. We hear mid-frequency sounds
15 very well, and that corresponds to the speech
16 range.

17 Q. And why did you measure for awaited sound
18 levels?

19 A. That's specified in the Illinois Standards
20 Part 104.

21 Q. What is that standard for again?

22 A. That's for impulsive noise.

23 Q. Are the results of your measurements in
24 this Table A you're referring to?

1 A. They are.

2 (OMC Exhibit No. 9 marked

3 for identification,

4 4-20-99.)

5 MS. SMETANA: I'm going to show the

6 witness -- I'm going to show the witness what's

7 been marked as Exhibit -- OMC Exhibit No. 9.

8 BY MS. SMETANA:

9 Q. If you could first identify this exhibit?

10 A. Yes. This is a copy of the report that I

11 issued on March 23rd of this year.

12 Q. A report of what?

13 A. Of acoustical measurements of OMC cannon

14 noise.

15 Q. Does this report contain the

16 information -- does this report contain the

17 information -- you can have a seat -- from the

18 March 4th and March 15th sound readings --

19 A. Yes, it does.

20 Q. -- that we've just been discussing?

21 A. Yes, it does.

22 Q. And does this report contain the data and

23 spreadsheets you've just been discussing?

24 A. Yes, it does.

1 MS. SMETANA: I'm going to ask that this
2 report be entered into evidence, Exhibit No. 9.

3 HEARING OFFICER KNITTLE: Mr. Sweda?

4 MR. SWEDA: No problem.

5 MS. AAVANG: No objection.

6 HEARING OFFICER KNITTLE: It's admitted.

7 MS. SMETANA: I'm going to direct the
8 witness' attention to Table A, which we've just
9 been discussing on page six of the report.

10 BY MS. SMETANA:

11 Q. Mr. Homans, can you explain to me under
12 the first column of Table A what that represents?

13 A. The very first column, the extreme
14 left-hand column, is the start time, and that's the
15 start time of every 30-second block.

16 Q. And how many 30-second blocks were there
17 on March 4th?

18 A. There were 137.

19 Q. And what does the second column represent?

20 A. The second column are my notes from the
21 field that I typed into the spreadsheet.

22 Q. Notes of what?

23 A. Notes of what I heard at the site. The
24 numbers refer to the number of cannon blasts that I

1 heard, and if there's a notation after the number,

2 it's --

3 Q. What kind of notations are you referring

4 to?

5 A. This would be a notation such as quiet or

6 medium or loud, and this refers to the -- it's a

7 relative notation that I used.

8 Q. Relative to what?

9 A. Relative to the cannon blasts themselves

10 and to nothing else.

11 Q. And what else is notated in this second

12 column in the parentheses?

13 A. There are also -- inside the parentheses

14 are the extraneous events that I heard, and these

15 would include car door slams, for example, house

16 door slams, people talking, cars passing by

17 directly on Gillett, but not on Sheridan Road.

18 Q. And why do you document extraneous noise?

19 A. We are permitted to exclude those from the

20 analysis.

21 Q. And, lastly, what is in the very far right

22 column of Table A, the raw data, what does that

23 column represent?

24 A. That represents the awaited sound level.

1 Q. And at the very -- turning to page eight
2 of the report, at the very -- and why did you
3 generate a series of awaited sound levels over
4 30-second intervals?

5 A. Yes. This was a result of the
6 measurements, the information that the analyzer
7 produced.

8 Q. Over the course of what period?

9 A. Over the course of the 137, 30-second
10 blocks.

11 Q. And for purposes of determining compliance
12 under the standard, what number do you look at?

13 A. The standard requires 60 minutes of data,
14 and --

15 Q. Is it an average or a sum?

16 A. It's an energy average of the awaited
17 levels over the 60-minute period. I should explain
18 that because I did not have enough data in the
19 roughly, what, an hour and 15 minutes that I was
20 there that there was not enough data left after
21 taking out the extraneous events to leave 60
22 minutes worth of sound levels.

23 Q. What was the -- absent taking out --
24 without taking out the extraneous sound levels,

1 what was the average awaited level based on your
2 March 4th readings?

3 A. For the first 60 minutes, it was 55 DBA.

4 Q. And where is that stated in this table?

5 A. That's in the extreme lower right-hand
6 corner, and the number there displayed is 55.3.

7 Q. And what is the standard for impulsive
8 sound?

9 A. Fifty-six DBA daytime between land use C
10 and A.

11 Q. And can you explain again why this data
12 you said it is not reflective under the standard?

13 A. We are -- well, it's data on the site, but
14 it also includes noise from cars and airplanes and
15 other events which are not indicative of the
16 ambient environment or of the cannons.

17 Q. So why was there not enough data on March
18 4th?

19 A. Because we were not there for long
20 enough. I was not there for -- I was only there
21 for an hour and ten minutes, an hour and 15
22 minutes.

23 Q. Why is an hour and ten minutes not long
24 enough?

1 A. Because when I excluded the extraneous
2 events, I did not have 60 seconds worth of data, 60
3 minutes worth of data that did not include the
4 extraneous sources.

5 Q. After March 4th, did you take any
6 additional measurements?

7 A. Yes, I did. Because these measurements
8 were taken, well, during rush hour, I requested to
9 go back and to conduct another test on another day.

10 Q. Was there another reason why you went back
11 on another day?

12 A. Yes. I was --

13 Q. In terms of the data you needed.

14 A. Well, certainly. I wanted to get more
15 data so that I would have 60 minutes worth of good
16 data without the extraneous events.

17 Q. And is removing extraneous events, is that
18 the requirement of the standard?

19 A. It's permitted, yes, it is, as is a
20 correction for ambience, the ambient noise in the
21 area.

22 Q. So when did you return to take additional
23 measurements?

24 A. That was on March 15th of this year in the

1 morning. I started measurements a little before

2 9:00 a.m.

3 Q. And did you select the same location that

4 you were at on March 4th?

5 A. Yes, just a few feet north.

6 Q. And why were you a few feet north?

7 A. Well, I had problems on the 4th with the

8 noise from the clanking lanyards on the flagpole,

9 and so I moved a few feet north, 15 or 20 feet

10 north. So I was in front of 226 Gillett.

11 Q. When you say problems with the flag, what

12 do you mean?

13 A. Well, the wind on the 4th occasionally

14 would cause the metal lanyards on the flagpole to

15 clank and this created a noise, and I had to

16 exclude those noises from the analysis.

17 MS. SMETANA: I'm going to show the

18 witness what has been marked Exhibit 1.

19 BY MS. SMETANA:

20 Q. If you can identify by putting a circle

21 where you were on the second day and putting the

22 date there as well.

23 A. These points are almost coincident.

24 (Witness complied.)

1 Q. And, again, where was the location you
2 were at on March 15th in relation to Mr. Sweda's
3 property?

4 A. That was due south of his property on the
5 north side of Gillett.

6 Q. And how close to his property was it?

7 A. His home is about mid-block between
8 Gillett and Ridgeland.

9 Q. Was the sound you would hear where you
10 were located on March 15th representative of the
11 sound that would be heard at 923 County Street --
12 North County Street?

13 A. Yes, or, in fact, it would have been a
14 little louder since it was closer to the noise
15 source.

16 Q. Did you follow the same methodology on
17 March 15th that you did on March 4th in terms of
18 setting up the site?

19 A. Yes, I did.

20 Q. And were the cannons located in the same
21 spot as they were for your prior test?

22 A. Yes. I did observe the cannons on that
23 date from a distance. I was not at close range.

24 Q. What was the weather on March 15th?

1 A. On March 15th, it was warmer.

2 Q. And what was the wind on that day?

3 A. There was practically no wind. There were
4 occasional puffs of air out of the west.

5 Q. How did you know that the wind was calm?

6 A. I both stood outside for a while and also
7 measured the wind with my volumeter. I also
8 observed the smoke coming from smokestacks as I
9 drove from OMC up to the site on Gillett. The
10 smoke was going straight up.

11 Q. Were these conditions appropriate for
12 taking sound measurements?

13 A. Yes. They were optimal according to S
14 1.13. As far as I know, there was no temperature
15 inversion at that hour.

16 Q. And was there any -- what other, if any,
17 difference between March 4th and March 15th?

18 A. It was in the morning instead of the
19 afternoon. So certainly traffic from Sheridan Road
20 was much diminished at this hour.

21 Q. And did you -- for how long were you
22 present on March 15th?

23 A. For approximately an hour and a half. I
24 believe I stated before before 9:00 o'clock, and I

1 misspoke. I started around 10:00 o'clock and was
2 there until about 11:30 or so.

3 Q. And did you take any notes during your
4 testing?

5 A. Yes, I did.

6 Q. And what did these notes report?

7 A. Those were the same type of notes that I
8 took on March 4th. These were the events that I
9 heard summarized every 30 seconds.

10 Q. And when you say the same types of events,
11 how would you describe those events?

12 A. Those events would be the noise from the
13 cannon blasts, noise from extraneous events in the
14 area such as airplanes.

15 Q. And why was documenting these extraneous
16 events significant?

17 A. It's important to me to be able to
18 correlate the results with a graph that I see.
19 It's also permitted under the Illinois standards to
20 exclude extraneous events.

21 Q. After taking your measurements on March
22 15th, did you analyze the data that you collected?

23 A. Yes, I did in similar fashion that I did
24 on --

1 Q. Where is that raw data documented?

2 A. That's in Appendix B of my report.

3 Q. Is that referred to as Appendix B --

4 A. It says Table B. I'm sorry.

5 MS. SMETANA: I'm going to show the

6 witness, again, Exhibit 8, page nine.

7 BY MS. SMETANA:

8 Q. Is this the beginning of Table B which you

9 were just referring to?

10 A. Yes, it is.

11 Q. Can you read the title of, what, Table B?

12 A. Table B is entitled raw data from March

13 15th, 1999.

14 Q. Did you, again, determine the awaited

15 sound level on March 15th?

16 A. Yes, I did. The awaited sound level for

17 each 30 second block appears in the extreme

18 right-hand column, and for the entire measurement

19 period, which consisted of 181, 30 second blocks, I

20 recorded a sound level 49.4, and just for

21 reference, the first 60 minutes or the first 120

22 blocks of awaited sound level was 49.3.

23 Q. And where on Table B is that information

24 provided?

1 A. That's in the extreme lower right-hand
2 corner of the last page.

3 Q. Can you circle that on -- on what page of
4 the report is that?

5 A. It's on page 12. I've circled both
6 numbers in blue ink.

7 Q. Thank you.

8 And how do these numbers compare to
9 the impulsive sound standard?

10 A. They were lower than the impulsive noise
11 standard.

12 Q. And did you analyze extraneous sound for
13 March 15th?

14 A. Yes, I did. At this point, because I
15 would have 60 minutes of good data left or
16 nonextraneous data, I was able to delete those in
17 the spreadsheet during which extraneous events
18 occurred.

19 Q. And is this the methodology you described
20 before under the Illinois standard?

21 A. Yes.

22 Q. Do you recall what the number was without
23 extraneous events, if you recall the number?

24 A. Yes, I do. It was 45 DBA.

1 Q. I'm going to -- did you document that
2 number in your report which has been marked as
3 Exhibit 9?

4 A. Yes, I did. I believe it's on table
5 three.

6 MS. SMETANA: I'm going to, again, show
7 the witness Exhibit No. 9, and I'll refer him to
8 page four.

9 BY MS. SMETANA:

10 Q. Is that table three on page four which you
11 were just referring to?

12 A. Yes, it is.

13 Q. And can you, with this yellow highlighter,
14 mark the number you just referred to without the
15 extraneous events?

16 A. I can. This is 45 DBA for all noise
17 sources, and in parentheses I said includes cannons
18 without extraneous events.

19 Q. Why is this number significant?

20 A. This represents the sound level due to
21 cannons in the area without the sounds of aircraft
22 and other extraneous events.

23 Q. What would you use this number to show?

24 A. This would be compared directly with the

1 Illinois Pollution Control Board's standards,
2 impulsive standards, part 104.

3 Q. What is the impulsive standards that
4 you're comparing it to?

5 A. The numerical limit is 56.

6 Q. How would you characterize this 45 in
7 relation to the standard?

8 A. It's much lower. There's a rule of thumb
9 with acoustics. Every ten DBA that you reduce a
10 noise source is equivalent to a perceived decrease
11 of loudness of about one half.

12 MS. SMETANA: I'm going to show the
13 witness what has been marked Exhibit 10.

14 (OMC Exhibit No. 10 marked
15 for identification,
16 4-20-99.)

17 BY MS. SMETANA:

18 Q. What does that Exhibit 10 reflect?

19 A. That's table three from my report.

20 Q. Is that -- can you just -- is that the
21 same table that appears on page four of your
22 report?

23 A. Yes, it is.

24 Q. And on Exhibit 10, can you, again,

1 highlight with this yellow marker the measurement
2 without extraneous events? All noise sources
3 including cannons, but without extraneous events,
4 what is that number?

5 A. Forty-five DBA.

6 Q. Does this table reference what -- at the
7 bottom of column 26, this table, the last row, is
8 stated what number?

9 A. I give the section of the Illinois
10 Pollution Control Board code, which is 901.104.

11 Q. What does that section contain standards
12 for?

13 A. That's the impulsive noise section.

14 Q. What number is right above that?

15 A. Fifty-six.

16 Q. So would you compare the 45 to the 56 --

17 A. Yes.

18 Q. -- for purposes of determining compliance?

19 A. Yes, I would.

20 MS. SMETANA: I'm going to ask that

21 Exhibit 10 be admitted into evidence.

22 HEARING OFFICER KNITTLE: Exhibit 10 is
23 admitted. Excuse me. Mr. Sweda, do you have any
24 objection to Exhibit 10?

1 MR. SWEDA: No.

2 HEARING OFFICER KNITTLE: Okay. Exhibit

3 10 is admitted.

4 BY MS. SMETANA:

5 Q. With the sound measurements you took on

6 March 15th, did you do any further analysis?

7 A. No, I did not.

8 Q. Did you look at the ambient noise?

9 A. Yes, I did. Like I said, I misspoke by

10 saying I did not. This is for a reference purpose

11 for me, and the Illinois standards also allow you

12 to correct or normalize for the effects of the

13 ambient environment.

14 Q. And what would the -- what is the ambient

15 environment?

16 A. This is the normal background in the

17 area. For this item, it would be the sound due to

18 the industry in the area and traffic on Sheridan

19 Road.

20 Q. And what's excluded from the ambient

21 sound?

22 A. That would be so-called extraneous events

23 such as brief airplane fly-overs, people walking up

24 and talking to you.

1 Q. Anything else excluded?

2 A. Birds squawking overhead, cars passing
3 directly by you on the street.

4 Q. How do the cannons -- the noise from the
5 cannons qualify with respect to ambient noise?
6 Would those be excluded?

7 A. Your question deals with ambient noise --

8 Q. Yes.

9 A. -- or extraneous noise?

10 Q. Ambient noise. What was excluded from
11 your measurement of ambient noise?

12 A. Those extraneous noise sources were
13 excluded from the ambient measurements.

14 Q. Is the noise from the cannon an extraneous
15 noise source for purposes of sound measurements?

16 A. For purposes of ambient, yes, that was
17 excluded.

18 Q. And what was, for purposes of ambient, the
19 number that you arrived at based on your analysis?

20 A. If could you refresh my memory by showing
21 me the table again.

22 Q. I'm going to show you the table three on
23 Exhibit 10.

24 A. That awaited sound level is 44 DBA.

1 Q. And why is the 44 number significant
2 compared to the 45 number of the noises that
3 included the cannons?

4 A. It's less than the noises of the cannons,
5 although not that much less.

6 Q. So what does that show?

7 A. It shows that there's -- under this
8 measurement procedure, the cannons have a small
9 effect on increasing the ambient. If I may -- if I
10 may restate that. The cannons have a minimal
11 impact on the sound level according to the Illinois
12 standards.

13 Q. Can you generally describe the sound
14 you're listening for when you're taking the
15 measurements?

16 A. You're referring to the sound of the
17 cannons?

18 Q. Yes.

19 A. Yes, I can because I heard the cannon
20 firing at close range. I was able to identify its
21 signature, how it sounded.

22 Q. What did it sound like from when you were
23 at the location of your sound measurements?

24 A. Well, as I stated before, it did sound

1 like distant low caliber rifle fire. It also
2 sounded a little bit like cars passing over a bad
3 expansion joint on Sheridan Road. From time to
4 time, a car would hit the expansion joint just
5 right and produce an impulsive noise that was
6 similar, although not identical to the reports from
7 the cannons.

8 Q. Could you hear the sound well from where
9 you were standing?

10 A. On the 15th -- on March 15th, I could hear
11 it fairly well, but you've got remember with the
12 operation of the cannons that they're pointing in
13 random directions, at least the three OMC cannons
14 are, and so sometimes the noise from the cannons is
15 louder or quieter than at other times.

16 Q. You mentioned before extraneous sounds.
17 What was included in extraneous sounds, examples?

18 A. Again, aircraft, train noise I heard and
19 documented. I had a noisy crow, I believe, on the
20 15th that was right overhead.

21 Q. From where you were standing for your
22 sound measurements, how did the noise of airplanes
23 compare to the noises you heard from the cannons?

24 A. The noise of airplanes was greater than

1 the noise I heard from cannons.

2 Q. And what about you said you heard noise
3 from cars. How did that compare to the noise from
4 the cannons?

5 A. It was much greater since the cars were
6 passing close by.

7 Q. Which was greater?

8 A. The noise from cars.

9 Q. What is the decibel level of normal
10 conversation of human beings?

11 A. Well, this depends on distance naturally,
12 and for an awaited sound level of two people
13 talking, say, at four or five feet away, it would
14 be in the neighborhood of 60 DBA, 65 DBA or so.

15 Q. And how does that number compare to the
16 measurement, the 45 DBA, you took on March 15th,
17 the sound level?

18 A. Well, on an average, energy average basis,
19 it would be about 15 or 20 DB greater than the
20 noise --

21 Q. Which would be greater?

22 A. The noise of conversation between two
23 people about five feet away.

24 Q. Would be greater than what?

- 1 A. Greater than the noise of cannons.
- 2 Q. That you heard when you were where?
- 3 A. On March 15th.
- 4 Q. At what location?
- 5 A. At 226 Gillett.
- 6 Q. Based on your experience, what factors
- 7 affect the way sound is carried?
- 8 A. A number of factors would influence this,
- 9 wind speed and direction.
- 10 Q. How does wind direction affect sound?
- 11 A. In layman's terms, as everyone has
- 12 experienced, receivers downwind from a source
- 13 generally hear sound better than observers upwind.
- 14 This is due to velocity gradients, and that's fancy
- 15 language for meaning that the speed of sound has
- 16 changed in one direction versus another.
- 17 Q. And does wind speed affect sound?
- 18 A. Yes, it does. As the speed picks up,
- 19 generally if you're directly downwind, the noise
- 20 from a noise source is increased up to a point.
- 21 Q. Under what wind conditions does the
- 22 standard require taking down measurement readings
- 23 for impulsive sound?
- 24 A. ANSI 1.13 states that you should not take

1 sound level readings above a wind speed of 13 miles
2 an hour, and that is due primarily to the effects
3 of the wind on a microphone and the wind screen.

4 Q. What are the optimal conditions of wind in
5 terms of taking sound measurements?

6 A. No wind.

7 Q. And what was the wind speed on March 15th
8 when you took your sound readings?

9 A. On March 15th, I could not measure the
10 wind speed.

11 Q. Why not?

12 A. It was calm. There were occasional puffs
13 of air, but it was essentially calm. I could not
14 measure it.

15 Q. Does topography have any affect on sound?

16 A. Yes, it does.

17 Q. How may a 60 to 100 foot bluff in the
18 Waukegan area affect sound?

19 A. Well, it depends on the relationship of
20 the source to the receiver. In this case, I would
21 expect some attenuation of reduction in sound as
22 compared with a flat surface.

23 Q. Where is the noise source in this case in
24 relation to the bluff?

1 A. In this case, the noise is being generated
2 on the coke plant site, which is at approximately
3 the level of the lake.

4 Q. Which is what, what elevation?

5 A. I'm not sure, but it's -- in terms of feet
6 above sea level, but it's about 60 feet lower than
7 the top of the bluff on which 226 Gillett and
8 Mr. Sweda's property are located.

9 Q. So in terms of hearing the sound of the
10 receiving source on top of the bluff, what would be
11 the effect of the bluff in respect to the noise
12 source?

13 A. In my opinion, it would be reduced
14 primarily because you don't have good line of sight
15 between the source and the receiver.

16 Q. And so what is the effect of the bluff?

17 A. It has an effect of shielding or reducing,
18 attenuating the noise coming from the cannons.

19 Q. When you took the sound measurements on
20 both March 4th and March 15th, how long were you
21 there each time?

22 A. About an hour and 15 minutes actual
23 recording time on the 4th and a little over an hour
24 and a half on the 15th.

1 Q. Were you alone?

2 A. Yes, I was.

3 Q. Did you speak to anyone at either time?

4 A. Yes, I did. When you're taking sound

5 level readings, you desire it to be as quiet as

6 possible, and it's Murphy's law, I guess, that

7 someone always comes up and asks you what you're

8 doing, and that's another reason why I try to

9 remain in my car so I'm not visible, but people see

10 the microphone and they always come up and ask what

11 I'm doing.

12 Q. When you spoke to people, what tone of

13 voice did you speak to them at?

14 A. Normal tone of voice.

15 Q. This was while the noise from the cannons

16 was occurring?

17 A. Yes.

18 Q. When you were in the neighborhood of the

19 receiving source on March 4th and March 15th, did

20 you notice anyone acting differently when the noise

21 from the cannons occurred?

22 A. No, I did not.

23 Q. When you took the test on both March 4th

24 and March 15th, you observed OMC set up the

1 premises?

2 A. On the 4th only.

3 Q. Well, how many cannons were used at that

4 time?

5 A. Three cannons on OMC property and one on

6 the City of Waukegan property.

7 Q. And how was it determined how many cannons

8 were to be used?

9 A. It's my understanding that they wanted to

10 replicate the conditions when the complaint was

11 filed in 1998.

12 Q. And to the best of your knowledge, were

13 these conditions replicated on March 4th and 15th

14 when you took your sound readings?

15 A. As far as I know, yes.

16 Q. And on March 15th, the cannons were set up

17 the same way as they were on March 4th?

18 A. Yes, they were. I did not observe them at

19 close range as I did on the 4th, but I did drive by

20 and see them and also hear them.

21 Q. If there were two cannons instead of four

22 cannons, how might that affect the sound level

23 measurements you took based on your opinion?

24 A. That may reduce the sound level as much as

1 three DB.

2 Q. If the cannons were fired at less frequent
3 intervals than they were on March 15th, how may
4 that, based on your opinion, affect the sound
5 measurement readings?

6 A. That would reduce the awaited sound level
7 over a 60-minute period, and this is due to the
8 amount of energy that the cannons are contributing.

9 Q. So if the cannon only went off once in a
10 60-minute period, how would that affect the
11 measurements taken over that 60-minute period?

12 A. The sound level should be very much
13 reduced because one cannon blast would be averaged
14 over the 60-minute period as is required by the
15 Pollution Control Board standards.

16 Q. Do you know when you're taking your sound
17 level readings approximately how many times the
18 cannons -- you heard the cannons go off during that
19 60-minute period?

20 A. I would estimate, perhaps, 25, 30 times,
21 although those are listed in my notes.

22 Q. So your notes mean the raw data?

23 A. Yes, and Tables A and B of the report.

24 Q. So if that number -- if that frequency of

1 cannon shots was reduced, what would be the effect?

2 A. That would reduce the awaited sound level

3 that was measured.

4 MS. SMETANA: I have no further questions

5 for this witness.

6 HEARING OFFICER KNITTLE: Ms. Aavang, do

7 you have any questions?

8 MS. AAVANG: Nothing.

9 HEARING OFFICER KNITTLE: Mr. Sweda, do

10 you have a cross-examination?

11 MR. SWEDA: Yes, I have some questions.

12 HEARING OFFICER KNITTLE: Proceed.

13 MS. SMETANA: Could I, for the record,

14 clarify? I'd like to, if I haven't, move to admit

15 Exhibit 10 into evidence. I don't recall.

16 HEARING OFFICER KNITTLE: That's already

17 been admitted.

18 MS. SMETANA: Thank you.

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

20 by Mr. Sweda

21 Q. Mr. Homan?

22 A. Homans with an S.

23 Q. Oh, I'm sorry. Homans.

24 Do you recall the total real-time

1 that you recorded the sound during measurements

2 both on the 4th and the 15th?

3 A. Yes. On the -- a little over an hour, an

4 hour and 15 minutes or so on the 4th, and closer to

5 an hour, hour and a half on the 15th.

6 Q. I'm interested in the question about part

7 of your report on the first page.

8 MS. SMETANA: May I give the witness the

9 report for him to look at it?

10 HEARING OFFICER KNITTLE: Would that help,

11 Mr. Sweda?

12 MR. SWEDA: I'm sorry. What?

13 MS. SMETANA: Would it help if the witness

14 had a copy of a report in front of him?

15 MR. SWEDA: I assumed he had it.

16 MS. SMETANA: He doesn't.

17 MR. SWEDA: Oh.

18 MS. SMETANA: Let me get a copy.

19 HEARING OFFICER KNITTLE: Do you need the

20 report to testify?

21 THE WITNESS: I haven't heard the question

22 yet.

23 MS. SMETANA: Well, we'll hear the

24 question first.

1 HEARING OFFICER KNITTLE: I can hand it to
2 him.

3 BY MR. SWEDA:

4 Q. Do you remember the basis for your
5 statement that in paragraph -- the second paragraph
6 from the bottom that this is the approximate
7 interval being used during the complaint period?

8 A. Yes. That's what was stated to me by the
9 people running the test from OMC.

10 Q. Okay. Thank you.

11 A. And as I recall, this is on the order of
12 ten minutes for each cannon.

13 Q. Whatever -- yeah. What you said is
14 adequate. You indicated in your testimony -- I
15 can't remember where it was. I couldn't understand
16 most of it because it's highly technical, but I
17 enjoyed it.

18 Might wind be -- you mentioned
19 smokestacks. My question is to you is might winds
20 be different from the smokestacks that you saw than
21 at the site of the receiving --

22 A. Certainly they may, and that's why I was
23 outside my car and also trying to conduct wind
24 measurements at that time, and there was no wind

1 speed to measure when I was outside the car.

2 Q. Might the readings that you took at the
3 site, you took, be different than the readings if
4 you took them, the same readings, even at the same
5 time from my property or the property of Mr. Neff's
6 on Stewart Avenue?

7 MS. SMETANA: I'm going to object in that
8 this has already been asked and answered. The
9 witness has testified that the location of where he
10 took the measurements was representative of the
11 receiving source.

12 HEARING OFFICER KNITTLE: Overruled. You
13 can answer the question.

14 BY THE WITNESS:

15 A. As I understand your question, from where
16 I took the measurements on Gillett as compared to
17 your property, because we were closer to the noise
18 source, if anything, it would be a little less,
19 although not much less than what the sound level
20 would be on your property.

21 BY MR. SWEDA:

22 Q. Are there differences in the
23 characteristics of the site that you used versus my
24 property in terms of extraneous material or is

1 there anything different about my property in terms
2 of its location?

3 A. Well, I was not on your property, but from
4 what I could observe from Gillett and also -- well,
5 from Gillett that there were certainly at least one
6 row of houses on Gillett between my measurement
7 position and your property. I don't recall if the
8 topography was any different in your backyard.

9 Q. Do you know how deep my backyard is?

10 A. I believe it runs halfway between County
11 and Sheridan.

12 Q. And is that backyard location comparable
13 to the location that you took your measurements on
14 in terms of street-wise?

15 A. Yes. It's due south. It looks like the
16 traffic on Gillett is a little bit less than on
17 County, but I was closer to Gillett than your
18 backyard is to County. However, I was able to take
19 out the extraneous events on Gillett.

20 Q. Okay. Are there any other places in terms
21 of the study that you took noise measurements on
22 those dates or any other dates?

23 A. No.

24 Q. Was there anything that determined the

1 time or the dates that you would take these
2 measurements or did you determine them yourself?
3 A. The March 4th date I had to coordinate
4 with OMC by getting there. I also wanted a date in
5 which there was no rain or snow falling on that
6 date. So this date was selected in conjunction
7 with OMC, but it was closely after I was -- after
8 the period that I was retained. On the 15th, I
9 requested to go back and, as I recall, I set the
10 date.

11 Q. Who did you request on the 15th? You said
12 you requested to go back.

13 A. Yes. I requested that from the people at
14 OMC.

15 MR. SWEDA: Okay. Thank you.

16 MS. SMETANA: I just have -- are you
17 finished?

18 HEARING OFFICER KNITTLE: Are you
19 finished, Mr. Sweda?

20 MR. SWEDA: Yes.

21 HEARING OFFICER KNITTLE: Go ahead,
22 Ms. Smetana.

23 MS. SMETANA: I just have a few questions
24 for you on redirect.

1 REDIRECT EXAMINATION

2 by Ms. Smetana

3 Q. The measurement sites that you were at on
4 March 4th and March 15th, approximately how close
5 were you to Mr. Sweda's property, his backyard?

6 A. Within a half block, less than a half
7 block.

8 Q. Is Mr. Sweda's house private property?

9 A. Yes.

10 Q. Did you have access to Mr. Sweda's
11 backyard?

12 A. No, I did not.

13 Q. Between Mr. Sweda's backyard and where you
14 were standing, was there anything but private
15 property?

16 A. That's correct. It was only private
17 property. There was no alley.

18 Q. And where was the site at which you took
19 your measurements on March 15th, what direction was
20 it from Mr. Sweda's property?

21 A. Due south of his east property line.

22 Q. And where was this site that you took the
23 measurement in relation to OMC's facility?

24 A. It was --

1 Q. Was it closer or further away from

2 Mr. Sweda's property?

3 A. It was closer.

4 Q. Closer to what?

5 A. To OMC than Mr. Sweda's property by about

6 a half block.

7 MS. SMETANA: I have nothing further.

8 HEARING OFFICER KNITTLE: Ms. Aavang?

9 MS. AAVANG: Nothing.

10 HEARING OFFICER KNITTLE: Mr. Sweda?

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

12 by Mr. Sweda

13 Q. My question is did you actually measure

14 where the cannons were on both of those dates and

15 then measure to make the statement that you just

16 did back to where your site was when you were

17 taking the noise measurements to, in fact, then

18 compare them to my property line to come up with

19 your statement that it is approximately a half a

20 block?

21 A. In terms of measurement by pacing or

22 measurement of sound levels? I don't understand

23 your question.

24 Q. By distance, how did you measure the

1 distance?

2 A. No, I did not measure. I observed a map.

3 Q. Okay.

4 MS. SMETANA: I guess -- I would like

5 to -- would you clarify that question.

6 MR. SWEDA: My question was --

7 HEARING OFFICER KNITTLE: Hold on. What's

8 wrong with his question? I mean, number one, the

9 witness has already answered it, but if you have an

10 objection, I'd be happy to let you state it.

11 MS. SMETANA: I object. I think it was a

12 compound question. It just wasn't clear to me.

13 HEARING OFFICER KNITTLE: Did you

14 understand the question, sir?

15 THE WITNESS: I believe I did, yes.

16 HEARING OFFICER KNITTLE: Mr. Sweda, was

17 his answer sufficient?

18 MR. SWEDA: It was sufficient.

19 HEARING OFFICER KNITTLE: Do you have any

20 redirect on that question?

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

22 by Ms. Smetana

23 Q. Were you at your site of measurement when

24 you took the measurements?

1 A. Yes, for the entire period.

2 Q. And did you observe Mr. Sweda's property?

3 A. Yes. I could see Mr. Sweda's property,

4 perhaps, not from my van, but when I stepped out of

5 my car.

6 Q. Did you have occasion to walk down County

7 Street to Gillett?

8 A. Yes.

9 Q. And how do you know the length of half a

10 block?

11 A. I've driven past. I did not walk past

12 Mr. Sweda's property, but I drove past. His house

13 is five or six houses north of where I was.

14 Q. So from your observation, it was half a

15 block?

16 A. Yes.

17 MS. SMETANA: Thank you.

18 HEARING OFFICER KNITTLE: You can step

19 down, sir.

20 THE WITNESS: Thank you.

21 HEARING OFFICER KNITTLE: Are there any

22 other witnesses for OMC?

23 MS. SMETANA: No.

24 HEARING OFFICER KNITTLE: Okay. Thank you

1 very much. We're going to move on to the City of
2 Waukegan's case.

3 How many witnesses do you have?

4 MS. AAVANG: I've got two here right now

5 and I've got one more coming. I told him 4:00

6 o'clock, which turns out to be pretty accurate, and

7 he should only be like ten minutes. Mr. Pfister,

8 who's over here, will probably be ten to 15.

9 HEARING OFFICER KNITTLE: Do you need some
10 time before we get started?

11 MS. AAVANG: No. I can hit the road and
12 get us going.

13 HEARING OFFICER KNITTLE: Let's call your
14 first witness then.

15 MS. AAVANG: The City of Waukegan -- well,
16 it's the second witness actually.

17 HEARING OFFICER KNITTLE: That's true. My
18 error.

19 MS. AAVANG: The City of Waukegan will
20 call Mark Pfister.

21 HEARING OFFICER KNITTLE: Mr. Pfister, you
22 can have a seat.

23 (Brief pause.)

24 HEARING OFFICER KNITTLE: We're ready to

1 go. You can call your second witness.

2 MS. AAVANG: Would you please state your
3 name and spell your last name for the record?

4 MR. PFISTER: My name is Mark Pfister.

5 HEARING OFFICER KNITTLE: Excuse me. Have
6 you sworn him in?

7 THE REPORTER: No.

8 HEARING OFFICER KNITTLE: Let's swear him
9 in. I didn't know if she had done that or not. Can
10 you swear him in, please?

11 (Witness sworn.)

12 WHEREUPON

13 MARK PFISTER,
14 called as a witness herein, having been first
15 duly sworn, deposeth and saith as follows:

16 DIRECT EXAMINATION

17 by Ms. Aavang

18 Q. Mr. Pfister, where do you reside?

19 A. I reside in Waukegan, Illinois at 1006
20 Rogers Court.

21 Q. Thank you.

22 And who are you employed by?

23 A. I'm employed by the Lake County Health
24 Department which is in Waukegan, Illinois.

1 Q. What is your position with the Lake County
2 Health Department?

3 A. My job title is aquatic biologist.

4 Q. What do your responsibilities include?

5 A. I'm the supervisor of the lakes management
6 units, which oversees all the freshwater resources
7 in Lake County.

8 Q. Would that include the beaches?

9 A. That includes nine Lake Michigan beaches
10 along our 26 miles of Lake Michigan waterfront.

11 Q. Turning your attention to particularly the
12 Waukegan area, there's two beaches in the Waukegan
13 area; is that correct?

14 A. Correct, Waukegan South and Waukegan
15 North.

16 Q. Which beach would be immediately across
17 from the OMC facility and the Waukegan water plant?

18 A. Immediately across would be Waukegan
19 South.

20 Q. As to that beach, what are your
21 responsibilities or your department's
22 responsibilities?

23 A. Our department is contracted by the City
24 of Waukegan to monitor the Waukegan North and

1 Waukegan South beach from Memorial Day to Labor Day
2 from Thursday through Sunday. That's four days per
3 week for fecal coliform bacteria, which is an
4 indicator organism of other potential pathogens
5 that may cause gastrointestinal illness.

6 Q. And when the health department does that
7 monitoring just in addition to collecting the data,
8 do you do anything else other than collect the
9 data?

10 A. Well, certainly when the staff is on site
11 at the bathing beaches, we make observations with
12 regard to wind, wind speed, rainfall from the
13 previous day, or just conditions at the bathing
14 beach, whether there's algae present or just
15 conditions such as gull feces.

16 Q. Does your department make the
17 determination whether a beach will be opened or
18 closed for a particular bathing day?

19 A. Yes, because we follow the Illinois
20 Department of Public Health bathing beach standards
21 with regard to closure of bathing beaches, and the
22 fecal coliform standard is 500 organisms per 100
23 milliliters. So if a sample has a coliform
24 concentration higher than that, then we would

1 recommend closure of that bathing beach.

2 Q. Has that standard changed at all, let's
3 say, from 1990 to the present?

4 A. No. The fecal coliform standard has
5 remained the same.

6 Q. Has there been a difference in
7 standards -- a change in standards as to when a
8 beach will be closed?

9 A. What has transpired is in 1998 was rather
10 than the previous closure warning system from IDPH
11 used to be that if there's a sample higher than
12 500, then we would place the beach on warning.
13 Then if the next day sample was higher than 500,
14 then we would close the beach, but in 1998, we
15 changed our recommendation so that if there was a
16 sample higher than 500, then we would recommend
17 immediate closure.

18 Q. What generated that change?

19 A. Well, what generated that change was a
20 change in the state standards.

21 (City of Waukegan Exhibit No. 1
22 marked for identification,
23 4-20-99.)

24

1 BY MS. AAVANG:

2 Q. Showing you what I've marked as City of
3 Waukegan Exhibit No. 1 for identification it's six
4 pages, and I'll show it to Mr. Sweda.

5 MR. SWEDA: What is it?

6 MS. AAVANG: It's a fecal count.

7 MR. SWEDA: I object because I've never
8 seen this before. This is a new -- it's a surprise
9 on me.

10 HEARING OFFICER KNITTLE: I'm going to
11 overrule the objection. As long as she lays the
12 appropriate foundation, I'll let this into
13 evidence.

14 BY MS. AAVANG:

15 Q. Showing you what I've marked as City of
16 Waukegan Exhibit No. 1, can you tell me what that
17 document is?

18 A. Yes. This is a summary document of the
19 fecal coliform concentrations for 1997 for Waukegan
20 North and South beaches and also for Lake Bluff and
21 also for 1998 Waukegan North and Waukegan South and
22 Lake Bluff.

23 Q. And the data generated on that, is that
24 data from your office?

1 A. Yes, it is.

2 Q. And is that, indeed, a document that your
3 office generated?

4 A. Yes, it is.

5 Q. And are those records that your office
6 would normally keep in the course of what you do
7 for the beaches in terms of fecal count?

8 A. Yes. This would be a record that we would
9 keep, and then we pass this information to all the
10 bathing beach operators.

11 MS. AAVANG: I'd ask that it be admitted
12 into evidence.

13 HEARING OFFICER KNITTLE: Mr. Sweda, do
14 you have a continuing objection?

15 MR. SWEDA: No.

16 MS. SMETANA: No objection.

17 HEARING OFFICER KNITTLE: That will be
18 admitted into evidence.

19 BY MS. AAVANG:

20 Q. Referring to that document, if you will,
21 Mr. Pfister, how many beach closings were there for
22 Waukegan South in 1997?

23 A. Well, in 1997, there was 20 days of
24 closure and 14 days of warning, but by our new

1 system of closure in 1998, there would have been 34
2 closures.

3 Q. Because you would no longer have the
4 warning days?

5 A. Correct.

6 Q. And you indicated on that same page there
7 are two other beaches, is that correct, that you
8 have information from?

9 A. Yes.

10 Q. And what are those other two beaches?

11 A. One is Waukegan North and the other one is
12 the Lake Bluff Sunrise Beach.

13 Q. Where is Waukegan North in relation to
14 Waukegan South beach?

15 A. Waukegan North is just north of the break
16 wall that separates the north and south beaches.

17 So you have the Government Pier and there's two
18 break walls and then at the north side of that
19 break wall is the Waukegan North beach.

20 Q. And where is the Lake Bluff beach located?

21 A. The Lake Bluff beach is located in Lake
22 Bluff, Illinois. Sunrise beach is right in pretty
23 much the center of Lake Bluff.

24 Q. Now, you indicated -- why are those three

1 put together? Is that --

2 A. Well, they're only put together for --

3 because it saves us paper when we print out the

4 data.

5 Q. Now, what were the closures in 1997 for

6 the Waukegan North beach?

7 A. The closures for the Waukegan North, we

8 had six days closed and seven days on warning.

9 Q. And what about the Lake Bluff beach?

10 A. The Lake Bluff beach we had two warning

11 days, but no closures.

12 Q. Mr. Pfister, you're an aquatic biologist;

13 is that correct?

14 A. Yes.

15 Q. And part of your job is to interpret that

16 data; is that correct?

17 A. Uh-huh.

18 Q. Based on your position and your education,

19 do you have any opinion as to why the closure was

20 higher for the Waukegan South beach as compared to,

21 excuse me, Waukegan North and Lake Bluff?

22 A. I'll answer that in two different ways.

23 One is the proximity of Waukegan South and the

24 break water -- the break walls that are positioned

1 there is that there's not as much wave action or
2 wave action to dilute the concentrations of fecal
3 coliform organisms that the water has held inside
4 those break walls. Whereas, at the Lake Bluff
5 beach and the Waukegan North beaches are more open
6 to the lake. So they get more wind and wave action
7 to sweep material back out to the lake.

8 So that's one difference. The second
9 difference is is the Lake Bluff and Waukegan North,
10 when we have been sampling, we have not observed
11 the same population of gulls nor have we observed
12 the same quantity of fecal material on the bathing
13 beaches at those other two locations compared to
14 Waukegan South.

15 Q. So it is your testimony that the gull
16 population is a factor in the entire fecal count in
17 1997?

18 A. Yes.

19 Q. Going back to that document, there's also
20 counts in there for 1998; is that correct?

21 A. That's correct.

22 Q. And for 1998, how many closures were there
23 at Waukegan South?

24 A. At Waukegan South, there was seven

1 closures.

2 Q. And what about Waukegan North?

3 A. There was one closure.

4 Q. And what about Lake Bluff?

5 A. Zero closures.

6 Q. So there is actually a drop in 1998 from

7 1997; is that correct?

8 A. Yes, that is correct.

9 Q. Okay. And do you have any opinion as to

10 what the cause of that drop was?

11 A. Yes. My opinion was that with the gulls

12 being moved from the dune area and OMC property

13 over to the Lafarge Gypsum Hills that it's our

14 believe that we saw less fecal material on the

15 Waukegan South bathing beach in 1998 than we did in

16 1997 due to the movement of the gulls to the other

17 side of the harbor.

18 Q. Have you personally in 1997 and '98

19 observed the gull population?

20 A. Yes, I have.

21 Q. And is that in connection with your

22 position at the health department?

23 A. In -- one in the sense of my position at

24 the health department, but also I spend a lot of

1 time on the weekends down at Waukegan South and
2 Waukegan North bathing beaches walking my dog.

3 (City of Waukegan Exhibit No. 2

4 marked for identification,

5 4-20-99.)

6 BY MS. AAVANG:

7 Q. Showing you City of Waukegan Exhibit for

8 identification No. 2, can you tell me what that

9 document is?

10 A. These are letters that I've -- every year

11 we send a summary of what has occurred on the Lake

12 Michigan bathing beaches to the Illinois

13 Environmental Protection Agency. So these are

14 letters -- summary letters that I've sent to Bob

15 Sharpe.

16 Q. Who is with the IEPA?

17 A. Correct.

18 Q. And is that basically a summary of some of

19 the data that you've already shown us in Exhibit 1?

20 A. Correct. The Illinois Environmental

21 Protection Agency is interested in the bathing

22 beach coliform counts on an annual basis that we

23 collect. So what I do is summarize for the IEPA

24 each year the number of closures or warnings that

1 we've had over the years.

2 MS. AAVANG: I'd ask that Exhibit No. 2 be
3 admitted into evidence.

4 HEARING OFFICER KNITTLE: Mr. Sweda?

5 MR. SWEDA: Okay.

6 MS. SMETANA: No objections.

7 HEARING OFFICER KNITTLE: That's admitted.

8 BY MS. AAVANG:

9 Q. Mr. Pfister, just to clarify, when do you
10 actually start or someone from your office actually
11 start taking samples at the beaches?

12 A. They either -- it's directly before
13 Memorial Day weekend or directly on Memorial Day
14 weekend that we start sampling.

15 Q. And I think you indicated earlier it's
16 four days a week that the sampling is done?

17 A. Right. Thursday through Sunday.

18 Q. Is there a reason that Monday and Tuesday
19 aren't done?

20 A. Only -- yes, and that's staffing.

21 Q. Okay. So it's not anything to do with the
22 readings themselves, just a staffing issue?

23 A. Actually, Monday, Tuesday, and Wednesday
24 are not done, yes.

1 Q. The next question would be then how would
2 we know whether or not a beach should be closed
3 Monday, Tuesday, or Wednesday?

4 A. Unfortunately, we don't.

5 Q. So you may actually have a beach opened
6 during that -- you may actually have a beach opened
7 during a time when the fecal count may be higher?

8 A. Yes.

9 Q. Do you rely -- does your department rely
10 at all upon the lifeguards that are down at the
11 beaches to assist in advising you of conditions
12 that maybe your department should be aware of?

13 A. Yes. Certainly, the City of Waukegan's
14 lifeguards will give us a call if they have, for
15 example, dead gulls on the bathing beach or if they
16 notice something unusual that they would call us
17 and inform us, and then generally what we'll do is
18 we'll go out and sample on that day.

19 Q. Do you recall in 1997 getting any
20 information from any of the lifeguards at the beach
21 that there seemed to be an increased number of dead
22 gulls at the beach site?

23 A. Yes, I do.

24 Q. Okay. And did you receive any similar

1 calls in 1998?

2 A. No, I did not.

3 Q. And I take it you haven't taken any counts

4 yet for this year?

5 A. No, we haven't.

6 MS. AAVANG: I have nothing further of

7 this witness.

8 HEARING OFFICER KNITTLE: Ms. Smetana?

9 MS. SMETANA: I have no questions.

10 HEARING OFFICER KNITTLE: Mr. Sweda, do

11 you have cross-examination?

12 MR. SWEDA: Yes, possibly one or two.

13 HEARING OFFICER KNITTLE: Sure. Go ahead,

14 sir.

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

16 by Mr. Sweda

17 Q. Mr. Pfister?

18 A. Uh-huh.

19 Q. Mr. Pfister, is there any definitive

20 evidence by the health department to support --

21 which supports this fecal count comes from gulls as

22 opposed to other sources of pollution?

23 A. We --

24 Q. Yes or no?

1 A. No.

2 MR. SWEDA: Okay. Thank you. That's

3 all.

4 HEARING OFFICER KNITTLE: Any redirect?

5 MS. AAVANG: Briefly.

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

7 by Ms. Aavang

8 Q. What other items may contribute to a fecal

9 count other than gull fecal matter?

10 A. Fecal coliform organisms are found in all

11 human and animal waste, and so any other source of

12 animals, raccoons, if there was a sanitary sewer

13 overflow, for example, your fecal coliform count

14 may also increase at that time.

15 Q. Okay. And I believe the sanitary sewer

16 issue would only come in if there had been a heavy

17 rainfall and the sanitary sewer -- some accident

18 that made the sanitary sewer dump?

19 A. Correct. To my knowledge during these

20 years, there was no bypasses of sanitary sewer

21 effluent.

22 Q. And Waukegan South being this enclosed bay

23 almost, if you will, would it more likely than not

24 be a catch basin, as you've indicated earlier, for

1 the gull population and any other bird population
2 that might be in that immediate area?

3 A. It would be an area that would receive
4 less dilution which would keep the counts higher.

5 MS. AAVANG: Nothing further.

6 HEARING OFFICER KNITTLE: Mr. Sweda?

7 MR. SWEDA: I've got one question.

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

9 by Mr. Sweda

10 Q. In that same vein, might the -- might
11 anything in that basin contribute, insects, someone
12 going there the night before and partying and going
13 to the bathroom on the beach or in the water
14 contribute to fecal coliform development in that
15 bay because it's, as you said, a slower moving
16 area?

17 A. I think certainly it's possible, but from
18 our observation, that would be --

19 MR. SWEDA: That's all.

20 MS. AAVANG: Nothing further.

21 HEARING OFFICER KNITTLE: You can step
22 down, sir. Thank you very much for your time.

23 Ms. Aavang, do you have another
24 witness?

1 MS. AAVANG: Yes, I do.

2 HEARING OFFICER KNITTLE: Do you want to
3 call him now?

4 MS. AAVANG: The City of Waukegan would
5 call Jeff Musinski.

6 HEARING OFFICER KNITTLE: Thank you, sir.
7 If you could swear in the witness, please?

8 (Witness sworn.)

9 WHEREUPON:

10 JEFFREY MUSINSKI,
11 called as a witness herein, having been first
12 duly sworn, deposeth and saith as follows:

13 DIRECT EXAMINATION

14 by Ms. Aavang

15 Q. Please state your name and spell your last
16 name for the record?

17 A. Jeff Musinski, M-u-s-i-n-s-k-i.

18 Q. And, Mr. Musinski, where do you reside?

19 A. The City of Waukegan.

20 Q. And who are you employed by?

21 A. The City of Waukegan.

22 Q. And what facility or department are you
23 employed by?

24 A. Water division.

1 Q. And what's your title there?

2 A. I'm the director of the water division.

3 Q. How long have you been the director of the
4 water division?

5 A. Since July of '96.

6 Q. And where are your principal -- where is
7 your principal office located?

8 A. At the water treatment plant located at
9 the end of Sea-Horse Drive.

10 Q. How close are you to, for want of a better
11 term, the coke plant site when you're at the water
12 plant?

13 A. The coke plant site being the brown
14 field?

15 Q. Yes.

16 A. Okay. From the facility that I'm at, I
17 guess we would be less than a half of a mile.

18 Q. Since you have been with the city at the
19 water plant since 1996, have you noticed anything
20 about gulls in the area?

21 A. Yeah. They seem -- since I've been there,
22 they seem to be on the uprise as far as population.

23 Q. Have you seen gulls actually on the water
24 plant property?

1 A. Yes.

2 Q. When did you first notice gulls on the
3 water plant property?

4 A. I guess it would be spring of '97.

5 Q. Okay. And about when?

6 A. Right around the nesting time, I guess.

7 That would be, depending on the weather I guess,
8 late February, April, somewhere around there.

9 Q. In 1996, had you noticed any gulls after
10 you started?

11 A. Not really, just migratory, come in and
12 come out, not very many though.

13 Q. In the spring of 1997, how many gulls were
14 you noticing on the water plant property?

15 A. I'd say really no more than, say, a dozen
16 or so nesting pairs, really not that big of a
17 problem.

18 Q. Had you learned that pairs had nested on
19 the water plant property prior to your tenure
20 there?

21 A. Very seldom, not very many. I'd say less
22 than -- you know, each year certainly less than a
23 dozen nesting pairs on the whole facility.

24 Q. In 1997, did you become concerned over the

1 number of nesting pairs?

2 A. Not really. Again, there weren't really
3 that many there.

4 Q. When did you first become concerned about
5 the gulls?

6 A. It was last spring. It just pretty much
7 seemed to be to me, you know, in the space of a
8 week or so our whole sedimentation basin had filled
9 up with nesting gulls to the magnitude of several
10 hundred birds.

11 Q. What is the sedimentation basin?

12 A. Sedimentation basin, it's the second stage
13 of water treatment. We bring the water in from
14 Lake Michigan. We treat it with chemicals to
15 settle out the colloidal matter, and it's in those
16 or the underground basins that that occurs.
17 There's vents on top of there. It's a raised
18 enclosure with grass on top of it with air vents.

19 Q. Okay. So if you walked down the yard, the
20 lawn of the water plant, would you be able to see
21 these sedimentation basins?

22 A. That's right.

23 Q. All right. And where are they in relation
24 to either OMC's parking lot or the closest building

1 from OMC?

2 A. They run parallel with the southernmost
3 OMC building. So it would -- there would be a
4 parking lot between their building and our
5 sedimentation basins returning east west parallel.

6 Q. And how many basins are there?

7 A. It's actually -- it looks like one, but
8 there's three underground basins.

9 Q. And are they lined up in a line going
10 across the property?

11 A. Right. They flow from east to west and
12 they're stacked from north to south, one, two,
13 three.

14 Q. The grid work that is over these basins,
15 how big are the openings we're talking about?

16 A. The air vents?

17 Q. Yes.

18 A. We've got easily a dozen air vents.
19 They've got wire mesh screens, but it's not the
20 size to keep any kind of dust or any other material
21 like that out from entering into the flow.

22 Q. What size -- what type size object could
23 you possibly keep out?

24 A. An insect, I'd say, you know, like a

1 bumblebee size, mesh.

2 Q. At some point, did you become concerned
3 about the gull concentration on the water plant
4 property?

5 A. Yeah. When all those nesting pairs got in
6 there and they, of course, you know, they started
7 trying to nest and --

8 Q. Were any of them nesting on the
9 sedimentation basin?

10 A. Every one of them were.

11 Q. Is there a reason? Is there warm air
12 coming up from there?

13 A. No I guess according to some environmental
14 or sea gull experts, that's a prime area for them
15 to be. It's up. The trees are away. There is no
16 natural predators around there. So that was just a
17 really good place for them to be.

18 Q. And how many nesting pairs were you
19 observing?

20 A. Again, I mean, you if you want to talk
21 pairs, it was over 100, 150 of birds, which would
22 be 300 birds.

23 Q. So that was a significant increase from
24 the numbers you observed before?

1 A. That's right.

2 Q. Did you learn at some -- Strike that.

3 What measures, if any, did you

4 undertake to control the problem?

5 A. When I saw them there, I had contacted OMC

6 to ask them what I could do since they were -- you

7 know, had actively undergone measures to do that.

8 Q. How did you know OMC had undertaken

9 measures?

10 A. I had heard the cannons and the

11 pyrotechnics and screaming of the alarms. They had

12 like a hurt bird alarm. So I called them and they

13 told me that they had an extra stationary cannon

14 that would alleviate my problem. So that's what I

15 did at that time.

16 Q. Where did you place the cannon in relation

17 to the sedimentation basin and OMC?

18 A. I placed the cannon initially on the

19 easternmost portion of the sedimentation basin and

20 pointed the cannon roughly at Larson Marine, which

21 would be north, northwest.

22 Q. Did you at any time move the cannon from

23 that location?

24 A. Several weeks later, not even -- a couple

1 of weeks later I moved the cannon to the center of
2 the sedimentation basin and pointed it due north
3 over the top of OMC.

4 Q. Was there a reason for that move?

5 A. There was some calls, as I understand,
6 concerning the noise, and it was my opinion at that
7 time that if I pointed it due north I wouldn't
8 encounter any kind of sound waves going towards the
9 south, southwest, northwest.

10 Q. By calls, I take it did you personally
11 receive calls or did the City of Waukegan?

12 A. The City of Waukegan did.

13 Q. And at some point, that information was
14 relayed to you and you undertook to remove the
15 cannon?

16 A. That's right.

17 Q. Once you started using the cannon, did you
18 note a change in the gull population?

19 A. A significant reduction. Almost overnight
20 they were gone.

21 Q. Were there any other measures you
22 undertook to get the gulls to move?

23 A. No. Nothing to me at that time was more
24 feasible than that.

1 Q. Why was that the most feasible?

2 A. There was some ulterior methods that
3 just -- either due to the fact that we didn't have
4 the materials. You know, there was a mention of
5 some wire, and we couldn't do that on top of
6 there. There's just not enough way to build some
7 sort of a wire contraption that they described.

8 Q. So you -- over that sedimentation basin,
9 you didn't want -- you couldn't run wires?

10 A. That's right.

11 Q. Do you have to have access to those basins
12 just in case of some type of situation?

13 A. That's right. We get up there all the
14 time.

15 Q. Okay. And do you actually take those
16 vents off sometime during the course --

17 A. Several times during the year, spring
18 included.

19 Q. Okay. Other than, of course, the fact
20 that these gulls are nesting over those vents, what
21 was the concern with the gulls nesting over that
22 area?

23 A. I was primarily concerned with the
24 material there, the hatchings, the fecal matter.

1 It's my understanding that, you know, once the
2 fecal matter dries up, if you emulsify it or put it
3 up into the air, it can cause respiratory problems.

4 My concern as well it was not only
5 for the health and safety of my employees that
6 would have to get up there and mow, but also once
7 they put that stuff in the powder form it being
8 drawn into the sedimentation basin and then into
9 the public water supply.

10 Q. You indicated that the cannons worked.
11 How long did you actually run the cannons at the
12 water plant?

13 A. It seems to me it was sometime
14 mid-April to late May, early June.

15 Q. And what time frame were you running the
16 cannons?

17 A. I would direct the operators at the
18 facility to start the cannons off when they saw the
19 sea gulls coming in roughly 7:30, 8:00 in the
20 morning, something like that. I told them
21 certainly, you know, if you don't see any sea gulls
22 out there, hold off until 8:30 or so, and then shut
23 them down at about 4:30, 5:00 o'clock.

24 Q. Is there a reason for shutting them down

1 at 4:30 or 5:00 o'clock?

2 A. It just didn't seem to me that the sea
3 gulls -- once you've spooked them off for that long
4 that they just didn't seem to me to come in.

5 Q. Okay. And did you run the cannon every
6 day from that April until early June?

7 A. Pretty much so, yes. There was times when
8 we were out of propane and it was out for a day or
9 so, but, you know, pretty much every day.

10 Q. And the cannon that was utilized, was it
11 one that was capable of moving or was it fixed?

12 A. No. It was fixed.

13 Q. And do you know what the setting was, how
14 often it was set to go off?

15 A. It would go off -- it would go off in two
16 and three at a time spaced five to ten minutes. It
17 was the slowest setting that we could get. It
18 seemed to be that, you know, once you spooked them
19 out of there, then you could back off to that
20 point.

21 So the first couple of days it was
22 quite a bit, and then we backed right off to the
23 slowest setting we could get and were successful.

24 Q. Did you consult with anyone at OMC on any

1 other method that the water plant might utilize to
2 control the gull problem?

3 A. I spoke with Lisa, I can't pronounce her
4 last name, and she had indicated, of course, the
5 wire method and also suggested that, perhaps, we
6 could use a dog too. At the time, a dog wasn't
7 feasible.

8 Q. And why wasn't a dog feasible?

9 A. Our front gate wasn't working. We had too
10 many holes in the gate. It was just -- we just had
11 too many things going on at once to acclimate
12 ourselves to bringing an animal to the facility.

13 Q. How big of a parcel of land is the water
14 plant on?

15 A. Roughly eight acres.

16 Q. And of those eight acres, how much was
17 actually the gull, quote, unquote, territory they
18 were using?

19 A. Oh, geez. About a third of an acre.

20 Q. So it was actually a very small portion of
21 the property?

22 A. That's right. That's the area of our
23 primary concern.

24 Q. Had you had gulls nesting anywhere other

1 than on the sedimentation basin?

2 A. There was a few on the very back parcel of
3 property over by Kadinger Marine, but that didn't
4 bother us over there.

5 Q. It was just the one on the sedimentation
6 basin?

7 A. That's right.

8 Q. We're now in 1999. Have you noticed any
9 gulls returning?

10 A. Yeah. They came right back again this
11 year.

12 Q. In the same number as last year?

13 A. It could even be construed as more.

14 Q. What measures are you taking this year to
15 control them?

16 A. I got a dog.

17 Q. Why do you have a dog now?

18 A. Because we got the front gate fixed. We
19 prepared ourselves a little better. Of course, you
20 know, we just can't bring an animal like that into
21 a city facility without, you know, asking the
22 appropriate people.

23 Q. Where is the gull -- Strike that.

24 Where is the dog in relation to the

1 basin where the gulls were nesting?

2 A. Right up on top of it.

3 Q. And is he like -- first of all, is it a he

4 or a she?

5 A. It's a he.

6 Q. Is he limited in what areas he's actually

7 patrolling?

8 A. His range of motion is limited by a wire.

9 We were able to get one wire from one end of the

10 basin to the other, east, west. We put a couple of

11 grommets that limit his motion to keep him from

12 getting tangled up on those air vents, and so

13 really it's about two-thirds of the basin now that

14 he kind of zips back and forth on.

15 Q. And does he seem to be successful?

16 A. One hundred percent.

17 Q. And, again, you're now using that because

18 you now have a gate that's secure so he can't get

19 out, I take it?

20 A. That's right.

21 Q. What -- how long is he out there?

22 A. Dependent on the weather, you know, when

23 it's raining we don't really leave him outside

24 because the gulls they don't like to congregate --

1 they're not that big of a problem over one day, but
2 we let him out there at about 7:30, 8:00 o'clock
3 and bring him back in when it's coming up on 4:30.
4 We'll probably bring him in at 4:30, 5:00 o'clock
5 at night.

6 Q. Okay. Other than the concern with the
7 gulls being on the sedimentation basins, were there
8 any other health concerns or property concerns at
9 the water plant when the large influx of gulls
10 occurred?

11 A. There was some concern about them getting
12 around up on top of our roof as well. They have a
13 tendency, you know, when they come into the area,
14 they have a tendency if they were on the basin
15 sometimes they'd get up on the roof, too, and that
16 would cause a lot of property damage definitely
17 once they get picking at all that.

18 Q. Did you have any employees that had
19 encounters with the gulls?

20 A. Not except for when they were up on the
21 lawn mowing.

22 Q. Would you have problems then with gulls
23 coming after employees swooping down?

24 A. Not that I'm aware of.

1 Q. You've only had the dog for how long?

2 A. This dog we had -- we had this dog for
3 about two weeks. We had another dog before that
4 for about one or two weeks as well.

5 Q. And he worked as well?

6 A. He -- yeah, definitely.

7 Q. But the first time you've used a dog, you
8 were in your trial period; is that correct?

9 A. That's right.

10 Q. Are you doing anything other than having
11 the dog out there?

12 A. No.

13 MS. AAVANG: Nothing further of this
14 witness.

15 HEARING OFFICER KNITTLE: Ms. Smetana?

16 MS. SMETANA: No.

17 HEARING OFFICER KNITTLE: Mr. Sweda?

18 MR. SWEDA: Possibly one.

19 HEARING OFFICER KNITTLE: Go ahead, sir.

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

21 by Mr. Sweda

22 Q. Was there a reason that you surmise that
23 the gulls were suddenly on the City's property as
24 opposed to somewhere else in '98, I guess, it was?

1 A. That the gulls you mean -- I'm having a
2 hard time understanding.

3 Q. Do you know where the gulls came from?

4 A. The influx of gulls, the higher
5 population?

6 Q. Yes. You mentioned that there were only a
7 few and then there was a higher population.

8 A. I assume they would be swept over from the
9 property on the north side of OMC.

10 MR. SWEDA: Thanks. That's all I have.

11 HEARING OFFICER KNITTLE: Redirect?

12 MS. AAVANG: Nothing.

13 HEARING OFFICER KNITTLE: Thank you.

14 Let's go off the record.

15 (Break taken.)

16 MS. AAVANG: The City of Waukegan will
17 call its last witness, Greg Linn.

18 HEARING OFFICER KNITTLE: Could you swear
19 him in, please?

20 (Witness sworn.)

21

22

23

24

1 WHEREUPON:

2 C R A I G L I N N,

3 called as a witness herein, having been first

4 duly sworn, deposeth and saith as follows:

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

6 by Ms. Aavang

7 Q. Could you please state your name and spell

8 your last name for the record?

9 A. Craig Linn, L-i-n-n.

10 Q. And, Mr. Linn, where do you live?

11 A. 915 North Sheridan Road in Waukegan.

12 Q. How long have you lived at that address?

13 A. Since 1986.

14 Q. And what is your profession?

15 A. I'm an attorney in town.

16 Q. And just to clarify for the record, do you

17 do work for the City of Waukegan?

18 A. No. Every case I've ever had has been

19 against the City of Waukegan.

20 Q. And have you handled cases against

21 Outboard Marine Corporation?

22 A. Hundreds.

23 Q. And what is the nature of the cases you

24 handle?

1 A. I specialize in workers' compensation.

2 Q. And you're married to Anne Linn; is that
3 correct?

4 A. Yes. She's my wife.

5 Q. And she also resides at that address?

6 A. Yes.

7 Q. Turning your attention to where you
8 reside, how far is that from Sheridan Road?

9 A. It's on Sheridan Road. My house is on the
10 east side of Sheridan Road.

11 Q. And how far does your property extend from
12 Sheridan Road?

13 A. It goes from Sheridan Road down to the
14 Amstutz Expressway. It's the last row of houses
15 before the lake.

16 Q. And there's the Amstutz Highway behind
17 you; is that correct?

18 A. Correct. Then there's railroad tracks,
19 and then there's another road. I think it's called
20 Pershing Drive, and then it's either the North
21 Shore Sanitary District or Outboard Marine
22 Corporation.

23 Q. Turning your attention to 1997, you
24 resided at your home; is that correct?

1 A. Yes.

2 Q. During 1997, what kind of noise would you
3 hear in your backyard?

4 A. Well, noise from the Amstutz Expressway,
5 freight trains. There's kind of a mournful sound
6 from a lighthouse, and I heard the air cannons
7 also.

8 Q. When did you first notice the air cannons?

9 A. Quite frankly, they kind of blended into
10 everything else. So I don't really have an exact
11 day when I first noticed them.

12 Q. Okay. Was the sound -- how could you tell
13 that there was a new sound? Was it different than
14 some of the other sounds you heard?

15 A. Yes.

16 Q. What would you compare it to? What did it
17 sound like?

18 A. Well, it was -- I mean, it blended in with
19 the other noise as far as I was concerned. When I
20 would stop and actually listen to it, it was kind
21 of like a pow.

22 Q. When you were outside, were there
23 occasions when you and your wife or your children
24 were outside with you when the cannons were going

1 off?

2 A. Yes.

3 Q. Did you ever have any trouble conversing

4 with either your wife or any of your children in

5 the backyard when the cannons were going off?

6 A. No.

7 Q. Did you ever notice the cannons while you

8 were inside your house?

9 A. You know, we've got four French doors

10 right along the back of the house, and I'd have to

11 say yes. At one point, Mr. Sweda called me up and

12 asked me if the sounds were bothering me, and after

13 he did, I paid particular attention to it.

14 Q. And did you notice it then from inside the

15 house?

16 A. Only when I'm -- you know, if all the

17 windows along the backside of the house were open.

18 Otherwise, I wouldn't notice it, no.

19 Q. When the cannon fire was going on, did you

20 notice any change in the wildlife in your yard?

21 A. No.

22 Q. What wildlife do you have in your yard?

23 A. Geez, coyotes, deer. The first fox I've

24 seen in my life was in my backyard, hawks.

1 Q. Do you have any bird feeders in your yard?

2 A. Yes.

3 Q. Did you notice any change in 1998 or '97

4 with the birds that were using your bird feeders?

5 Were they affected in any manner?

6 A. No. In fact, my wife is insistent that we

7 keep the bird feeders into later into the spring,

8 and they're still up and there's still birds there.

9 Q. Have you heard any of the cannon noise

10 this year?

11 A. Yeah. I heard it on Sunday. I was down

12 in my backyard, and you had asked me if I could

13 come over here. So I happened to hear it. So I

14 paid some -- I paid particular attention to it, but

15 it was no different than it's been in the past.

16 Q. Was it such that --

17 A. It didn't disturb me.

18 Q. You weren't distracted from what you were

19 doing?

20 A. No. I was cursing at a lawn mower. It

21 was a Toro.

22 Q. When you've had other individuals over to

23 visit you, have any of them commented on the

24 cannons?

1 A. No one has ever commented on them,.

2 Q. Have any of your neighbors commented to
3 you about the cannon noise?

4 A. Not to me, no.

5 Q. Do you have --

6 A. Well, I take that back. Mr. Sweda, I
7 guess, he lives within three or four blocks of me.

8 Q. And you were contacted by Mr. Sweda at
9 some point; is that correct?

10 A. Yes.

11 Q. Anyone else other than myself contact you
12 regarding the cannon noise?

13 A. No. You contacted me because I was on a
14 witness list of Mr. Sweda's. You asked me if it
15 bothers me, and I said no. You told me I was on
16 his list.

17 Q. Do you have any domestic animals like cats
18 or dogs?

19 A. We have a cat.

20 Q. Have you noticed the cat being affected by
21 the noise from the cannons?

22 A. No.

23 Q. Have you had any personal experiences with
24 the gulls?

1 A. I've seen a few fly over our house.

2 Q. Have you been down to the beach and
3 noticed them?

4 A. I really haven't, no.

5 MS. AAVANG: Nothing further of this
6 witness.

7 HEARING OFFICER KNITTLE: Ms. Smetana, do
8 you have any questions of this witness?

9 MS. SMETANA: No.

10 HEARING OFFICER KNITTLE: Mr. Sweda, do
11 you have a cross-examination?

12 MR. SWEDA: Just a clarification.

13 HEARING OFFICER KNITTLE: Is it a question
14 of the witness or a clarification you're asking
15 me?

16 MR. SWEDA: No. I'm trying to clarify
17 what Mr. Linn said.

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

19 by Mr. Sweda

20 Q. He mentioned that -- you mentioned that I
21 was on a witness list of Ms. Aavang?

22 A. I was on a witness list of yours I think.

23 Q. That was provided to you from Ms. Aavang?

24 A. Ms. Aavang came up and approached me one

1 day in the courthouse and asked me -- she informed
2 me that I was on a witness list that, I guess, you
3 had prepared of people who were aware of the noise
4 from the cannons.

5 MR. SWEDA: That's all I wanted to
6 clarify.

7 HEARING OFFICER KNITTLE: Nothing else,
8 Mr. Sweda?

9 MR. SWEDA: No.

10 HEARING OFFICER KNITTLE: Thank you very
11 much. Any redirect on that issue?

12 MS. AAVANG: Nothing.

13 HEARING OFFICER KNITTLE: Thank you, sir.
14 You can step down.

15 Any other witnesses for the City of
16 Waukegan?

17 MS. AAVANG: No, we do not have any.

18 HEARING OFFICER KNITTLE: Do you need a
19 second to -- do you need a second?

20 MS. SMETANA: No.

21 HEARING OFFICER KNITTLE: Okay. Let's
22 see. We have talked previously, Mr. Sweda and I,
23 off the record. He has an opportunity to provide
24 rebuttal witnesses, and he's stated that he did not

1 have any.

2 Is that still the case, Mr. Sweda?

3 MR. SWEDA: Yes.

4 HEARING OFFICER KNITTLE: We're going to

5 move on to closings then. Why don't we make

6 sure -- are there any motions that we have to

7 address right now before we start off the

8 closings? Mr. Sweda, do you have anything?

9 MR. SWEDA: No.

10 HEARING OFFICER KNITTLE: Is there

11 anything from your side or do you want to address

12 motions after the closings? Are you going to have

13 any motions before we close this hearing that you

14 want to address to the Board?

15 MS. SMETANA: No.

16 HEARING OFFICER KNITTLE: You have an

17 opportunity to make additional motions is what I'm

18 saying.

19 MS. SMETANA: Not at this point.

20 HEARING OFFICER KNITTLE: Let's just move

21 right into closing statements. I take it,

22 Mr. Sweda, you wanted to make one.

23 MR. SWEDA: Yes, a brief one.

24 HEARING OFFICER KNITTLE: Okay. You can

1 proceed.

2 MR. SWEDA: Since it's part of the
3 record.

4 As I stated in my opening statement,
5 the only reason I'm here today before the Illinois
6 Pollution Control Board is to formally present my
7 noise pollution complaint with supporting
8 testimony. The testimony provided by me, the
9 complainant, and another nearby resident, a Mr. John
10 Neff, with an approximate combined total of 50 plus
11 years living in the area between us, Mr. Neff and
12 myself, presented not only our experiences with
13 trying to live our normal daily lives while under
14 the effect of cannon noise in 1998 with an
15 approximate duration from March through May of
16 1998, but also with the cannon noise resumed in
17 March 1999 and for years to come by, as far as we
18 know, the respondents.

19 Myself and Mr. Neff testified to one
20 such period already this year that cannons were
21 going on for 24-plus hours straight. We believe
22 there have been serious violations of IEPA acts and
23 codes as cited in my opening remarks. We believe
24 these violations occurred more than once or a

1 couple of times or once in a while, that is, more
2 than each of those items in the 70-day period
3 approximately in 1998, but that these -- spring of
4 1998, but that these acts and violations have
5 restarted for spring 1998 and are intended to re --
6 I can't read my writing sometimes, intended to
7 continue for years according to testimony by
8 respondents.

9 The vested interest in this matter of
10 myself and Mr. Neff as provided in the testimony
11 evidence and the testimony are rather simple and
12 ordinary. The right to live our daily lives
13 carrying out some ordinary activities such as being
14 outside, et cetera, which were -- I won't go over
15 those activities again, awakened by cannons in the
16 morning, getting out of bed without the possibility
17 or possibility of having to turn on inside the
18 house two fans and the TV to block out the noise of
19 the cannons.

20 These actions by the respondents to
21 consciously cause and sustain such cannon noise
22 with claims of testimony that cannons are used for
23 their ability to use speedy and quick ways to
24 address birds is particularly troublesome. End of

1 statement. Thank you.

2 HEARING OFFICER KNITTLE: Thank you, Mr. Sweda.

3 Ms. Smetana, did you say Outboard Marine

4 Corporation had a closing they wanted to present?

5 MS. SMETANA: Yes.

6 HEARING OFFICER KNITTLE: You may proceed.

7 MS. SMETANA: While respondent, OMC, will

8 set forth its arguments more fully in its

9 post-hearing brief, in closing, we briefly state as

10 follows. The evidence presented during this

11 hearing demonstrates a real problem with the

12 overwhelming population of gulls on OMC's

13 property. As the record has shown, the presence of

14 these sea gulls interferes with the safety, health,

15 and enjoyment of OMC employees and citizens of

16 Waukegan.

17 As the record also shows, OMC has

18 addressed this problem in a gradual and humane

19 way. OMC has used fewer cannons than recommended

20 by its expert, Dr. Southern, limits the use of

21 cannons to daytime hours during a limited period of

22 the year, and in the course of use, OMC had reduced

23 the number of cannons and frequently -- and the

24 frequency of the noise.

1 The testimony of our gull expert,
2 Dr. Southern, has been that this method will
3 generally take a few years to relocate the sea
4 gulls. The benefits have already been
5 demonstrated. There has been no evidence presented
6 during the course of this hearing to support a
7 finding that the noise from the cannons used by OMC
8 and the city to address the overwhelming population
9 of sea gulls resulted in a violation of the numeric
10 standard for impulsive sound, and the evidence is
11 insufficient to establish an unreasonable
12 interference with the enjoyment of life.

13 The complainant's evidence fails to
14 prove either a violation of the numeric standard or
15 a nuisance. First, complainant, Mr. Sweda, has
16 failed to introduce any evidence whatsoever of a
17 violation of the numeric standard for impulsive
18 sound set forth in Section 901.104 of the Board's
19 rules.

20 In fact, unrefuted sound measurements
21 introduced by respondents' expert, Brian Homans,
22 demonstrated no exceedance of the numeric
23 standard. The unrefuted evidence demonstrates that
24 noise from the cannons as measured in accordance

1 with the Board's regulations at the receiving
2 source was 45 DB. These measurements firmly
3 establish that the sound level is well below the
4 applicable 56 DB standard in 901.104. There is
5 unrefuted evidence entered in the record that
6 there's no violation of the impulsive noise
7 standard.

8 Second, the facts introduced
9 throughout the course of this hearing simply do not
10 support a finding that the noise interfered with
11 enjoyment of life and certainly did not demonstrate
12 an unreasonable interference with the enjoyment of
13 life. The standard by which the Board determines
14 whether there has been an unreasonable interference
15 is an objective one. One man's annoyance by a
16 noise alone cannot support such a finding under
17 this standard. Mr. Sweda's testimony simply
18 mischaracterizes the noise in question as evident
19 by the testimony of numerous other witnesses.

20 First, the noise in question is below
21 the numeric standard and does not rise to the
22 degree to characterize it as an interference.
23 Second, despite Mr. Sweda's testimony that the
24 noise bothered him, he still continued during this

1 period in 1998 to enjoy the outdoors, for example,
2 by feeding squirrels, playing with his dog, and
3 spending time outside.

4 Third, the same noise of which Mr. Sweda
5 complains has had no effect whatsoever on the lives
6 of any other individuals and residents of
7 Waukegan. As you have heard during the testimony
8 of these individuals, each has continued to be able
9 to enjoy the outdoors during the relevant time
10 period by speaking in normal tones, talking on the
11 phone, gardening, reading, working, entertaining
12 guests, cooking, and observing nature without any
13 interference from the noise of cannons.

14 One witness, Mr. Hirsch, who lives
15 substantially closer to the noise source than
16 Mr. Sweda and his house is only 900 yards from OMC
17 has testified that he's been able to work at his
18 home both indoors and outside without any
19 interference from the cannons. In addition, he
20 continues to dine, entertain guests, and carry on
21 conversations in normal tones in his backyard
22 without any interference from the noise.

23 Mr. Hirsch has also testified the
24 noise from the sea gulls, trains, and traffic are

1 all louder than any noise from cannons when heard
2 at his house on Sheridan Road. Another witness,
3 Mr. Noff, who lives across the street from
4 complainant, Mr. Sweda, testified that the noise in
5 no way interfered with his enjoyment of life and
6 that he continues to do yard work, entertain
7 guests, and to speak to his guests in normal
8 conversational tones. Mr. Noff also testified the
9 noise from boom boxes in his neighborhood is far
10 louder and more annoying than any noise from the
11 cannons.

12 In addition, the record establishes
13 that employees of OMC, who were located at the
14 noise source, have continued to be able to work
15 without interference or distractions from the
16 noise, to speak on the telephones, and to speak
17 with each other outside. The complainant has
18 failed to establish that the noise from the cannons
19 as heard a mile away is an unreasonable
20 interference with life. Mr. Sweda has
21 characterized as a nuisance the very activity which
22 OMC has put in place to combat the nuisance
23 resulting from an abundant population of sea gulls
24 which threatens the safety, health, and ability to

1 enjoy life of OMC employees and the citizens of
2 Waukegan. Thank you.

3 HEARING OFFICER KNITTLE: Ms. Aavang?

4 MS. AAVANG: Very briefly, if I may. The
5 City of Waukegan would note two things. First of
6 all, as has been already alluded to in OMC's
7 closing statement, the evidence presented by the
8 testimony of Mr. Homans indicates a non-violation
9 in terms of the numeric standard propounded under
10 the Pollution Control Board.

11 Further, the testimony of the
12 witnesses produced by both OMC and the City of
13 Waukegan indicate that there are citizens who find
14 no problem with the noise level that is being
15 generated, and, in fact, as Craig Linn indicated he
16 didn't even notice it until it was brought to his
17 attention because of the large number of other
18 background noises. Again, this is a city, and,
19 unfortunately, when you live in a city, there are
20 noises. This is not a farm community like that
21 dealt with Mr. Zack in his case in 1979. We're a
22 city.

23 We have other noises, and depending
24 on, I think, an individual's personality, one noise

1 may be more noticeable than another. Mr. Neff has
2 testified that he found it troublesome not so much
3 apparently because of the noise, but because of the
4 connotation in his mind that that noise was a
5 gunshot, and yet he admitted during his testimony
6 that he occasionally hears gunshots in his neighbor
7 that are actually gunshots and those are
8 troublesome too.

9 Further, the testimony has been that
10 there is a very real concern about the health and
11 welfare of the citizens of Waukegan, not only in
12 relation to the water plant and the birds utilizing
13 that area, but also with our beach. As the
14 testimony of Mr. Pfister indicated, there was a
15 definite correlation in his mind with the gull
16 colony and an increase of the bacteria count.
17 While the City of Waukegan as to its water plant is
18 currently undertaking a measure utilizing a dog
19 which appears to be working in these short weeks,
20 there's no guarantee, as the testimony of
21 Dr. Southern indicated, that that will continue to
22 work for the next year or two, and our concern is
23 with continuing an effort to rather than eradicate
24 the gulls, to, perhaps, move them to another area

1 where they can nest and not cause the health

2 problem that we see here. Thank you.

3 HEARING OFFICER KNITTLE: Thank you.

4 Mr. Sweda, you have an opportunity to

5 make a final closing argument if you want.

6 MR. SWEDA: No thanks.

7 HEARING OFFICER KNITTLE: I also want to

8 state for the record that there are no citizens

9 here, and so there will be no interest in citizens

10 making any statements, although if they were here,

11 they would have that opportunity. Also, I want to

12 state I'm required to make a credibility statement

13 at the conclusion of the hearing, and based on my

14 legal judgment and the observations I have made at

15 this hearing, I don't find any credibility

16 witness -- excuse me, any credibility issues with

17 any of the witnesses here today or yesterday, which

18 leads us to the briefs. I'm going to go off the

19 record for a second and we'll set up a briefing

20 schedule and we'll come back on.

21 (Discussion had

22 off the record.)

23 HEARING OFFICER KNITTLE: Pursuant to a

24 discussion off the record, we've set up a briefing

1 schedule, which is as follows, and will also be
2 written out in a hearing officer's order, which I
3 will send out at the end of this week.

4 The complainant will have two weeks
5 from the receipt of the completed transcript at the
6 Board's offices to file a post hearing brief if he
7 decides to file. Two weeks after that time period
8 ends, the respondents will have two weeks. I've
9 said that poorly. After Mr. Sweda's two-week
10 period ends, the respondents will have two weeks in
11 which to file a response brief. Mr. Sweda will
12 have two weeks after the response period ends to
13 file a reply if he so chooses.

14 I also want to go over the exhibits
15 one-by-one on the record. Correct me if you think
16 there's been any errors. As far as I'm concerned,
17 I have exhibits from the complainant, first is
18 Complainant's Exhibit No. 1, which is notes of
19 Larry Sweda. Second is Complainant's Exhibit No.
20 2, which is discovery responses to interrogatories
21 filed on 1-13-99, 2-1-99, and 4-4-99.
22 Complainant's Exhibit No. 3 is letter to Donna
23 Shullalah who is the U.S. Department of Health and
24 Human Services Mr. Sweda and also a letter

1 addressed to Mr. Sweda from Kenneth Feith from the
2 USEPA Complainant's Exhibit No. 4 is a letter from
3 Mr. Sweda to William Durkin, the mayor of the City
4 of Waukegan as well as a letter from Mr. Sweda to
5 Dave Jones, president of the Outboard Marine
6 Corporation.

7 Complainant's Exhibit No. 5 is a
8 letter to Mr. Sweda from David Jones dated May 1st,
9 1998. Complainant's Exhibit No. 6 is handwritten
10 tables with data on them intended to denote the
11 sunrise and sunset times for the period of time
12 that Mr. Sweda obtained from the Chicago Tribune
13 web site. Complainant's Exhibit No. 7 were two
14 audio tapes which were not admitted. All the
15 previous exhibits up to this point have been
16 admitted into evidence, but the two audiotapes were
17 objected to. The objection was sustained, and
18 these two tapes were not admitted. Complainant's
19 Exhibit No. 8 is Greg Zack's resume and
20 experience. This was admitted. Complainant's
21 Exhibit No. 9 was a case, files related to a case
22 that Mr. Zack was involved in in the early 1970s.
23 These files were admitted over objection. That is
24 all of the complainant's exhibits. As I recall,

1 there was a Complainant's Exhibit No. 10 which was
2 initially offered and then withdrawn.

3 MS. SMETANA: One point of clarification.

4 HEARING OFFICER KNITTLE: Yes.

5 MS. SMETANA: I recall that in addition
6 when the audiotapes were offered, there was some
7 piece of paper offered with them that also weren't
8 admitted.

9 HEARING OFFICER KNITTLE: You are
10 correct. There were pieces of paper purporting to
11 discuss the -- what was on the audiotapes and the
12 methodology, and those were not admitted either,
13 which takes us to Outboard Marine Corporation's
14 Exhibit No. 1 which is a map of the City of
15 Waukegan. This was admitted. Complainant's
16 Exhibit No. 2 was another map of the lakefront
17 property, a smaller map. It appears to be more
18 specific. That was admitted as well. Both of
19 these maps have markings on them that have been
20 made throughout the course of this hearing from the
21 various witnesses of Outboard Marine Corporation
22 and both are admitted.

23 Outboard Marine Corporation Exhibit
24 No. 3 is a document entitled Recommendations for

1 Discouraging Gulls from nesting on OMC property by
2 William D. Southern, Ph.D. This was admitted. OMC
3 Exhibit No. 4 is a picture of a car with bird
4 droppings on it. This was admitted. No objection
5 to that.

6 Outboard Marine Corporation No. 5 is
7 a picture of the roof of the car, also admitted
8 over no objections. Both of these, just for the
9 record, are not actual pictures, but color copies
10 of pictures. OMC No. 6 is an application for U.S.
11 Fish and Wildlife. This was admitted. There were
12 no objections. OMC No. 7 was a Federal Fish and
13 Wildlife permit. This was admitted. There were no
14 objections. OMC No. 7 -- excuse me, OMC No. 8 is
15 the renewed Federal Fish & Wildlife permit
16 submitted for this year. This was admitted as
17 well. There were no objections to that.

18 OMC number nine is a report of
19 acoustical measures of -- I have it as OMC cannon
20 list, but this is a report by Shiner & Associates.
21 There was no objection to this, and this report was
22 admitted, and Exhibit No. 10 is a table that was in
23 the report, a table three from the report, and this
24 was admitted with no objection. It also bears the

1 mark of the witness. All those were admitted. Any
2 comments on those?

3 MS. SMETANA: No.

4 HEARING OFFICER KNITTLE: And, finally, we
5 have the City of Waukegan's exhibits. Exhibit No.
6 1 is a fecal coliform concentration summary of 1997
7 consisting of --

8 MS. AAVANG: It's also '98.

9 HEARING OFFICER KNITTLE: And '98. Excuse
10 me. It looks to be seven pages -- six pages.
11 Excuse me. I note it because they are not attached
12 to each other. There are six pages of fecal the
13 coliform concentration summary '97 and '98. That
14 was admitted. There was no objection to that.
15 Excuse me. There was an objection initially, but
16 Mr. Sweda withdrew his objection after the
17 foundation was laid, and City of Waukegan Exhibit
18 No. 2, a letter summarizing the data contained in
19 the study which constitutes Exhibit No. 1. This
20 was admitted and there was no objection; is that
21 correct?

22 MS. AAVANG: Actually, there's also some
23 data from prior years in those letters, and there's
24 a broader range of beaches. It's all beaches that

1 the health department monitored.

2 HEARING OFFICER KNITTLE: Thank you very

3 much. With that clarification, this exhibit was

4 admitted as well, and those were all the exhibits I

5 received. I'm not missing anything, am I?

6 MS. SMETANA: No.

7 HEARING OFFICER KNITTLE: I'm not missing

8 anything from OMC or the City of Waukegan?

9 MS. SMETANA: No.

10 HEARING OFFICER KNITTLE: Mr. Sweda, am I

11 missing any of your exhibits?

12 MR. SWEDA: I don't recall anything

13 missing.

14 HEARING OFFICER KNITTLE: Okay. Let me

15 make sure I'm not forgetting anything. No. That's

16 all I have. Thank you all for your time.

17 (Whereupon, these were all the

18 proceedings had in the

19 above-entitled matter.)

20

21

22

23

24

1 STATE OF ILLINOIS)

) SS.

2 COUNTY OF C O O K)

3

4 I, GEANNA M. IAQUINTA, CSR, do

5 hereby state that I am a court reporter doing

6 business in the City of Chicago, County of Cook,

7 and State of Illinois; that I reported by means of

8 machine shorthand the proceedings held in the

9 foregoing cause, and that the foregoing is a true

10 and correct transcript of my shorthand notes so

11 taken as aforesaid.

12

13

14 GEANNA M. IAQUINTA, CSR

Notary Public, Cook County, IL

15 Illinois License No. 084-004096

16

17 SUBSCRIBED AND SWORN TO

before me this _____ day

18 of _____, A.D., 1999.

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Notary Public

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