

1           BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

2

3 ANTHONY and KAREN ROTI,           )  
4 PAUL ROSENSTROCK and           )  
5 LESLIE WEBER,                    )  
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12                                   The following is the transcript of  
13 a hearing held in the above-entitled matter taken  
14 stenographically by GEANNA M. IAQUINTA, CSR, a  
15 notary public within and for the County of Cook  
16 and State of Illinois, before JOHN KNITTLE,  
17 Hearing Officer, at 118 West Cook Avenue,  
18 Libertyville, Illinois, on the 2nd day of  
19 November, 1999, A.D., scheduled to commence at  
20 9:30 a.m., commencing and 9:45 a.m.

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

2 STEVEN P. KAISER & ASSOCIATES,  
3 4711 Golf Road  
4 Suite 708  
5 Skokie, Illinois 60076  
6 (847) 677-7066  
7 BY: MR. STEVEN P. KAISER

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9 Appeared on behalf of the Complainants,  
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Appeared on behalf of the Complainants,

BAIZER & KOLAR,  
513 Central Avenue  
5th Floor  
Highland Park, Illinois 60035  
(847) 433-6677  
BY: MR. JOSEPH E. KOLAR

Appeared on behalf of the Respondent.

14 ALSO PRESENT:

15 Ms. Karen Roti

16 Mr. Paul Rosenstock

17 Mr. Michael Hara

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I N D E X

2

THE WITNESS: GREGORY ZAK

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1 HEARING OFFICER KNITTLE: Hello. My name,  
2 as you all know by this point, is John Knittle,  
3 hearing officer with the Illinois Pollution  
4 Control Board. This is the second day of hearings  
5 for PCB 1999-019 known as Anthony and Karen Roti,  
6 Paul Rosenstock, Leslie Weber versus LTD  
7 Commodities. It's November 2nd, approximately  
8 9:45 a.m., and we are continuing with the  
9 complainants' case in chief. Do you want me to  
10 have him sworn in, Mr. Kaiser?

11 MR. KAISER: You know, what I'd like to do  
12 before we swear him in, I'd like to put up the  
13 easel and hang up some of the aerial photos.

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

16 (Brief pause.)

17 HEARING OFFICER KNITTLE: Your first  
18 witness, I take it, is Mr. Zak?  
19 MR. KAISER: Yes, it is.  
20 HEARING OFFICER KNITTLE: Can we swear him  
21 in, Geanna?  
22 THE WITNESS: No.  
23 HEARING OFFICER KNITTLE: Pardon?  
24 THE WITNESS: Sorry.

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1 HEARING OFFICER KNITTLE: Do you not want  
2 to be sworn, Mr. Zak?  
3 THE WITNESS: No, no. No problem.  
4 (Witness sworn.)  
5 WHEREUPON:  
6 G R E G O R Y Z A K,  
7 called as a witness herein, having been first duly  
8 sworn, deposeth and saith as follows:  
9 D I R E C T E X A M I N A T I O N  
10 by Mr. Kaiser  
11 Q. Good morning, Mr. Zak. Could you please  
12 state your full name and spell your last name for  
13 the court reporter's benefit?  
14 A. My name is Gregory T. Zak and Zak is

15 spelled Z-a-k. I typically go by Greg Zak.

16 Q. And, Mr. Zak, by whom are you employed?

17 A. By the state of Illinois.

18 Q. And what is your position with the state  
19 of Illinois?

20 A. I work for the Illinois Environmental  
21 Protection Agency. My position there is noise  
22 advisor.

23 Q. How long have you worked for the Illinois  
24 Environmental Protection Agency or what we may

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1 refer to as the IEPA?

2 A. Over 27 years.

3 Q. What is your educational background?

4 A. My educational background is three years  
5 of electronics radar, electronics instruction for  
6 the United States Marine Corps, a bachelor's  
7 degree -- a bachelor of science degree in biology,  
8 and a master's degree in public administration.

9 Q. How long have you worked as the IEPA's  
10 noise advisor?

11 A. Since 1987.

12 Q. You're stationed out of Springfield,  
13 Illinois?

14 A. That's correct.

15 Q. And did you get up bright and early this  
16 morning to drive up here to present testimony?

17 A. Yes, 3:30 a.m.

18 Q. I'm sorry?

19 A. 3:30 a.m.

20 Q. And I note that it's now a little before  
21 ten to 10:00. So we appreciate you making the  
22 effort, Mr. Zak.

23 And you're here pursuant to subpoena,  
24 are you not?

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1 A. That's correct.

2 Q. And you're aware that the case that's  
3 presently being heard by the Board is a noise  
4 complaint; is that right?

5 A. That's correct. That's my understanding.

6 Q. And that the complainants include Paul  
7 Rosenstock, who is here attending the hearing  
8 this morning?

9 A. That's correct.

10 Q. And in addition, the complainants include  
11 Leslie Weber and Karen and Anthony Roti?

12 A. Yes.

13 Q. All right. Now, do you recall when you  
14 first got involved with this case?

15 A. Without checking my records, I couldn't  
16 give you an exact date. I would say it's  
17 approximately three years ago.

18 Q. And what was the nature -- how was it that  
19 you came to be involved in this case?

20 A. Mrs. Roti called me on the phone and  
21 explained the problem. My standard procedure,  
22 being a one-person noise program, is to advise the  
23 complainant on methodology to use to work with the  
24 noise emitter to get the problems solved, and I

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1 encouraged her to do that.

2 I also did advise her that I would  
3 always be available to consult with her and assist  
4 her in getting the problem resolved.

5 Q. Now, as a one-person noise program, what  
6 does that mean? Do you essentially have



7 responsibility for all of the state of Illinois?

8 A. That's correct.

9 Q. And you devise -- and you consult with any  
10 number of residents and citizens in the course of  
11 a year; is that right?

12 A. Yes. Right now, it's running close to  
13 3,000 calls a year.

14 Q. All right. I'd like to show you what's  
15 previously been marked and I believe received into  
16 evidence as Complainants' Exhibit 29. It's a  
17 letter from Karen Roti to Mike Hara dated  
18 April 20th, 1988, from Karen Roti, again, to Mike  
19 Hara. I'd ask you to take a look at that letter.

20 A. Yes. I've looked at it.

21 Q. And I don't know if you've seen that  
22 letter before today, but do you recognize the  
23 format of that letter?

24 A. Yes. That's part of the general

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1 information I send out to people who have a noise  
2 problem.

3 Q. And what is your first direction or do you  
4 recall what the first direction was that you gave

5 to Karen Roti in connection with this problem?

6 A. Yes. I advised her to send a letter that  
7 would be constructed in very friendly terms and  
8 seek to resolve the problem with, in this case,  
9 LTD on a neighbor to neighbor, good neighbor type  
10 of basis.

11 If that letter fails to solve the  
12 problem, I will then send information to the  
13 complainant basically describing the applicable  
14 noise regulations and also example letters that  
15 have been done by other folks who have a similar  
16 problem so they can see how to assemble a letter.

17 Q. And did you do that with Ms. Roti?

18 A. Yes, I did.

19 Q. Now, did you become aware sometime after  
20 July 18th of 1998 that, in fact, Karen Roti had  
21 filed a complaint along with Mr. Rosenstock and  
22 Leslie Weber with the Pollution Control Board  
23 citing LTD Commodities for violations of the  
24 Illinois Protection -- Environmental Protection

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1 Act and regulations promulgated pursuant to that

2 Act?

3 A. Yes, I was aware of that.

4 Q. And did you and I go out along with Mr.

5 Kolar to the LTD facility in July of 1999 and view  
6 the LTD facility?

7 A. Yes, we did.

8 Q. And as you sit here today, do you recall  
9 that afternoon when we not only observed the  
10 loading dock activities, but went into the LTD  
11 warehouse area?

12 A. Yes, I remember it.

13 Q. And you remember that Joe Kolar was with  
14 us, right?

15 A. Yes, I do.

16 MR. KOLAR: I think it was June for the  
17 record. I think it was early June.

18 MR. KAISER: Is that your recollection?

19 MR. KOLAR: Yes.

20 MR. KAISER: The summer of 1999.

21 BY MR. KAISER:

22 Q. Now, you see on display here Respondent's  
23 Exhibit 89.

24 Can you see that from where you're

1 seated?

2 A. Yes, just fine.

3 Q. And do you recognize this building  
4 footprint and roof line as being  
5 the -- well, an aerial view of the LTD Commodities  
6 facility in Bannockburn, Illinois?

7 A. It would be appear to be so.

8 Q. Do you have any doubt about that as you  
9 orient yourself on Route 22 running east and west  
10 and the tollway running north and the loading  
11 docks to the north end?

12 A. No. I have -- I don't have any  
13 significant doubt. Just this is the first time  
14 I've seen it from the air, though, as opposed to  
15 seeing it from the ground, but I have been around  
16 on the ground a number of times.

17 Q. Do you recall that when we first arrived  
18 we met in the parking lot just to the northeast of  
19 the LTD building area?

20 A. That's correct.

21 Q. And we spent sometime -- do you recall  
22 that there's a walkway that goes along this truck  
23 staging area and that's above the LTD dock area?

24 A. Yes.

1 Q. And do you recall that we stood on that  
2 walkway with Mr. Kolar and essentially watched  
3 trucks pull into and out of the LTD docks?

4 A. That's correct.

5 Q. And do you recall as you sit here this  
6 morning what types of noise you observed being  
7 generated by dock activities at the LTD facility?

8 A. I specifically remember pneumatic sounds,  
9 for example, air brakes. There was also a small  
10 tractor. I would call it a tractor. It could be  
11 called a number of things, but I would refer to it  
12 as a tractor that was used for moving trailers  
13 around.

14 Q. Now, that tractor, sometimes it's been  
15 called a yard pig. Are you aware that in this  
16 case people have sometimes referred to that  
17 tractor that's used to jockey trailers into  
18 position as a yard pig?

19 A. Yes. That's why I previously said that it  
20 could be called a tractor or another group of  
21 descriptive terms for it.

22 Q. So by using tractor, in some ways that's a  
23 little bit more neutral term, isn't it, than yard

24 pig?

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1 A. Yes.

2 Q. You were trying to be delicate there, but  
3 there's this yard tractor, and, again, did you  
4 observe the function of that yard tractor?

5 A. Yes. It appeared to be to move the  
6 trailers around.

7 Q. And how -- did you note whether there was  
8 any -- well, how would the yard tractor move a  
9 trailer into position?

10 A. The trailer would be jacked up slightly,  
11 and then the yard tractor would couple to it, and  
12 once the coupling was completed, then it would  
13 move the trailer to whatever position they wanted  
14 to move it to, and then at the conclusion of that  
15 uncouple the trailer from the, what I would call,  
16 the tractor.

17 Q. Now, did you notice whether when the yard  
18 tractor coupled with the semitrailer whether there  
19 was any noise generated?

20 A. Yes. There was a metal on metal sound,  
21 impulsive-type sound.

22 Q. And when the yard tractor would disengage  
23 or uncouple from the trailer, did you note whether  
24 that action created any noise?

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1 A. Yes, I believe it did.

2 Q. And do you recall what that sound was?

3 A. Again, it would be along the lines of a  
4 metal contacting metal and an impulsive-type  
5 sound.

6 Q. Now, air brakes, how would you describe  
7 the sound a semi-tractor's brake makes when it  
8 releases air?

9 A. It's almost a small explosion of air.  
10 There's no gradual onset to it. It's just boom  
11 and it's there. So it's a very short duration,  
12 fairly intense sound, and, again, it would be in  
13 my consideration an impulsive-type sound.

14 Q. And when you use that term, impulsive-type  
15 sound, are you using that within its technical  
16 meaning as defined by the Board's noise  
17 regulations?

18 A. That's correct.

19 Q. So both the metal on metal sound of the  
20 tractor coupling and uncoupling with the  
21 semitrailer and the small explosion of air  
22 occasioned by the release of air from air brakes,  
23 both of those noises are in your opinion impulsive  
24 sounds?

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1 A. That's correct.

2 Q. Did you hear any back-up warning beepers  
3 on any trucks or semi-tractors in the LTD dock  
4 area?

5 A. I believe I did. That's the kind of  
6 common occurrence with any operation where you've  
7 got trucks being moved around and backing up and  
8 pulling in, and by trucks, I mean your semi-type  
9 trucks.

10 Q. Are you aware of the function of a back-up  
11 warning beeper?

12 A. Yes. It's described under the OSHA  
13 regulations, the Occupational Specialty Health  
14 Administration regulations, pertaining to vehicles  
15 that have an obstructed view to the rear, and the  
16 regulation requires that they do one of two



17 things, either have an audible warning that is  
18 audible above the ambient sound to warn people the  
19 vehicle is backing up.

20                   It's a safety device for anybody  
21 that's near the truck as opposed to the driver of  
22 the truck, and then in addition rather than using  
23 the back-up beeper, they can always use an  
24 observer according to the same OSHA regulation.

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1 So they have a choice of one or the other.

2     Q.     Are you aware of whether back-up warning  
3 beepers are designed in such a way that the tone  
4 of the beeper will stand out from the background  
5 noises?

6     A.     Yes. That's -- it's designed as a  
7 workers' safety device. It's -- the frequency of  
8 sound coming out of it is rather irritating to  
9 most people. It's fairly sharp in tone, almost a  
10 raucous-type sound, and it's very piercing.

11                   Again, the whole idea is to get the  
12 attention of anybody on the ground who is very  
13 close to the back of a large vehicle that is being

14 backed up to ensure the person will get out of the  
15 way.

16 Q. And has it been your experience that the  
17 noise emitted from back-up warning beepers could  
18 be described as a prominent discrete tone?

19 A. Yes, and I had --

20 MR. KOLAR: Objection. Their complaint  
21 does not allege violations of the prominent  
22 discrete tone provision of the regulation.

23 HEARING OFFICER KNITTLE: Is that correct,  
24 Mr. Kaiser?

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1 MR. KAISER: That is correct, but a  
2 prominent discrete tone could very well be the  
3 basis for a nuisance complaint and could support  
4 the allegations of a nuisance, which we have  
5 leveled against LTD.

6 HEARING OFFICER KNITTLE: Overruled.

7 BY MR. KAISER:

8 Q. Do you recall the question?

9 A. No. Could you repeat it please?

10 (Record read.)

11 HEARING OFFICER KNITTLE: In my ruling on

12 the last objection, I'm going to allow him to ask  
13 this question, but I don't want to get too far  
14 into the definitions of prominent discrete tones  
15 and technical issues because it doesn't seem to be  
16 part of the complaint, but this question is okay  
17 once the warning siren we have going on right now  
18 stops.

19 MR. KOLAR: So you're allowing him to ask  
20 it relating to his nuisance claim?

21 HEARING OFFICER KNITTLE: Correct, but  
22 even relating to the nuisance claim, I don't want  
23 to get too in-depth about the definitions of  
24 prominent discrete tones and what may or may not

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1 be a prominent discrete tone.

2 MR. KAISER: May I ask why?

3 HEARING OFFICER KNITTLE: Because the  
4 nuisance claim doesn't require a prominent  
5 discrete tone. It requires -- you can probably  
6 cite it better than I can, but seeing as how it's  
7 not part of the complaint and not something that  
8 you have to prove up to obtain a finding of a

9 nuisance violation, I don't want to get too far  
10 into it. I don't think it's relevant.

11 MR. KAISER: I would agree that the  
12 definition of the prominent discrete tone is a  
13 rather technical one, but the affect -- and, for  
14 the record, we're listening to a warning siren  
15 that the village of Libertyville is blasting at  
16 the moment, and we're unable to continue the  
17 hearing because of the sound of that warning  
18 horn.

19 Now, prominent discrete tones are a  
20 part of this case and support our claims of a  
21 nuisance, and the fact that we can barely think  
22 and can't effectively continue the hearing while  
23 this prominent discrete  
24 tone --

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1 HEARING OFFICER KNITTLE: Let me  
2 interrupt. I'm not saying that you can't talk  
3 about the sounds themselves and how they may or  
4 may not be a nuisance. I'm saying I don't want to  
5 get technical definitions and technical  
6 discussions about what may or may not be a

7 prominent discrete tone. I don't think it's  
8 relevant, and I'm not going to allow it.

9 MR. KAISER: Thank you.

10 HEARING OFFICER KNITTLE: Let's go off the  
11 record for a while.

12 (Brief pause.)

13 (Discussion had  
14 off the record.)

15 HEARING OFFICER KNITTLE: We can proceed.

16 MR. KAISER: So the record is clear, we  
17 just suspended the hearing because we were hearing  
18 the village of Libertyville's warning siren which  
19 lasted for about five minutes.

20 BY MR. KAISER:

21 Q. Now, Mr. Zak, you've just told us kind of  
22 on the record and sort of off the record that what  
23 we were just hearing from the village of  
24 Libertyville was an emergency warning device; is

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1 that correct?

2 A. That's correct.

3 Q. And you understand that under the Illinois

4 Pollution Control Board's noise regulations there  
5 is an exemption. That noise is not regulated by  
6 the Pollution Control Board, is it, the warning  
7 sound that we just heard from the village of  
8 Libertyville?

9 A. What the Board has done is given that type  
10 of device an exemption from the regulations.

11 Q. And you're familiar with those  
12 regulations?

13 A. Yes.

14 Q. And that's part of your responsibilities  
15 as the IEPA's sole noise advisor to know the  
16 regulations and to help citizens and  
17 municipalities interpret those regulations,  
18 correct?

19 A. That's correct.

20 Q. And have you looked at the question of  
21 whether back-up warning beepers on trucks in  
22 loading dock areas qualify under the Board  
23 regulations as emergency warning devices?

24 A. Yes, I have.

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1 Q. And have you reached an opinion concerning

2 whether the exemption for emergency warning  
3 devices applies to back-up beepers on trucks  
4 operating in loading docks?

5 A. Yes, and largely based upon the case I  
6 testified in a couple years ago. It was a Hoffman  
7 versus City of Columbia.

8 MR. KOLAR: Objection. I think this is a  
9 legal conclusion for the Pollution Control Board  
10 to make.

11 MR. KAISER: I would agree that it is, but  
12 I think Mr. Zak's opinion is relevant and could be  
13 considered by the Board, but it certainly would be  
14 the Board's definitive ruling, although to the  
15 extent he's going to cite us to a previous Board  
16 ruling, I would think that that would be helpful  
17 to the litigants and helpful to the Board as well.

18 HEARING OFFICER KNITTLE: I'll overrule  
19 the objection and allow him to answer this  
20 question.

21 BY THE WITNESS:

22 A. As I was saying, the Board decision on  
23 that particular case on page 17 gave quite a bit  
24 of comment on whether or not the back-up beeper on

1 a truck is an emergency warning device, and the  
2 Board came to the conclusion that it was not, and,  
3 therefore, it was -- it did come under the noise  
4 regulations.

5 BY MR. KAISER:

6 Q. Now, we were -- before we were interrupted  
7 by the warning beeper, we were talking about  
8 prominent discrete tones, and you described such  
9 tones as piercing, frequently irritating, sharp in  
10 tone, raucous.

11 Do you recall your testimony?

12 A. That's correct.

13 Q. And has it been your experience during  
14 your more than 15 years as the Illinois  
15 Environmental Protection Agency's noise advisor  
16 that citizens have frequently complained about the  
17 sounds -- well, about prominent discrete tones?

18 A. Yes, they have. If I could kind of  
19 clarify that a little bit without getting  
20 technical.

21 Q. Please.

22 A. The -- that type of noise is more  
23 irritating than a broadband type of noise, and  
24 that's shown in the fact that under the Board



1 regulations for a prominent discrete tone, the  
2 allowable limits for prominent discrete tones are  
3 lower than they would be for a more broadband  
4 noise.

5 Q. Now, after Joe Kolar, you, and I watched  
6 the trucks move in and out of LTD's dock area, do  
7 you recall that we then went inside the LTD  
8 facility?

9 A. Yes, I do.

10 Q. And, actually, Jack Voight, one of LTD's  
11 officers, gave us a tour of the facility, did he  
12 not?

13 A. Yes, he did.

14 Q. And what do you recall seeing when you  
15 were inside LTD's facility?

16 A. I observed thousands of what I would call  
17 relatively small cardboard boxes being conveyed to  
18 the loading area. Having -- I looked at some of  
19 the boxes as I was curious as to see what was  
20 involved, and it was a variety of items that I  
21 would typically classify as knickknacks myself,  
22 small, relatively inexpensive items that would  
23 typically be given to friends on holidays, things

24 like that.

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1                   It appeared to be a -- the items  
2 themselves were of a -- I thought more of a  
3 personal nature than a business nature.

4                   MR. KOLAR: Objection. I think the  
5 question was what did you observe in the  
6 warehouse, not can you describe the nature of the  
7 merchandise LTD sells.

8                   HEARING OFFICER KNITTLE: Sustained.

9 BY MR. KAISER:

10       Q.       Allow me to show you what's previously  
11 been introduced and received into evidence as LTD  
12 Commodities -- well, Complainants' Exhibits 1 and  
13 2, and there's two catalogues published by LTD  
14 Commodities.

15                  MR. KOLAR: Just for the record, I guess  
16 another objection is that in his deposition he  
17 gave an opinion regarding the classification of  
18 LTD, and now I see what's happening here is he's  
19 going to go through catalogues and try to explain  
20 why -- you know, how things retail or home to home

21 sales, and it would be beyond the disclosure made  
22 for this witness.

23 HEARING OFFICER KNITTLE: I'll note your  
24 objection for the record. I'll also note that if

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1 he did offer a different opinion on this that he  
2 may or may not offer in the future, you can  
3 impeach him on cross-examination.

4 BY MR. KAISER:

5 Q. Mr. Zak, when you toured the LTD  
6 Commodities facility during the summer of 1999,  
7 did you form an understanding about what products  
8 LTD sold?

9 A. Yes, I did.

10 Q. And now you've had a chance to look at  
11 LTD's catalogues. Is the understanding you formed  
12 in the summer of 1999 concerning LTD's product  
13 line confirmed by reference to Complainants'  
14 Exhibits 1 and 2, the LTD catalogues?

15 A. Yes.

16 Q. And you understood when you were in the  
17 warehouse in the summer of 1999 that LTD sold what  
18 you term knickknacks; is that correct?

19 A. That's correct.  
20 Q. And you saw approximately a 350,000 square  
21 foot warehouse filled with knickknacks, right?  
22 A. That's correct.  
23 Q. And you saw people moving those  
24 knickknacks from one part of the warehouse to the

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1 other and putting those knickknacks on trucks and  
2 watching the trucks haul the knickknacks away; is  
3 that right?  
4 A. Yes.  
5 Q. Now, in your capacity as the Illinois  
6 Environmental Protection Agency's noise advisor,  
7 are you -- have you familiarized yourself and  
8 become acquainted with the noise regulations  
9 promulgated by the Illinois Environmental  
10 Protection Act?  
11 A. Yes, I have.  
12 Q. And you're aware that those regulations  
13 impose different numeric limits depending on  
14 whether the land use generating the noise is a  
15 Class A use, a Class B use, or a Class C, or

16 Class, is it, U?

17 A. That's correct, U.

18 Q. So under the state of Illinois' noise  
19 regs, there are essentially four classes that any  
20 given property would fall into; is that correct?

21 A. That's correct.

22 Q. And it's part of your job to determine and  
23 assist citizens and municipalities in determining  
24 the appropriate classification for the land use

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1 that's generating noise that's the subject of  
2 complaint?

3 A. Yes, it is.

4 Q. And have you done that consistently  
5 throughout your 15 years as the noise advisor?

6 A. Well, I've done it consistently throughout  
7 my 27 years with the agency.

8 Q. And have you formed an opinion -- let me  
9 back up.

10 Showing you what I'm marking for  
11 purposes of identification as Complainants'  
12 Exhibit 39.

13 (Complainants' Exhibit No. 39

14 marked for identification,

15 11-2-99.)

16 BY MR. KAISER:

17 Q. It's a copy -- well, I'll show it to you,

18 Mr. Zak. Tell me if you recognize it.

19 A. Yes. It's a copy of the Board's noise

20 regulations.

21 Q. And that's a document you work with

22 virtually every day; is that right?

23 A. That's correct.

24 Q. And is there an appendix to those noise

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1 regulations?

2 A. Yes. There's Appendix A and B. The one

3 that's normally used would be Appendix B.

4 Q. And when you say normally used, that means

5 normally used to determine the appropriate land

6 classification for the noise source; is that

7 correct?

8 A. That's correct.

9 Q. And that Appendix B, do you know where the

10 Board looked to create that Appendix B?

11 A. It was created from the standard land use  
12 coding system of 1969 which was a portion really  
13 of the appendix. Probably the most salient  
14 feature of the appendix would be the land  
15 classifications to the extreme right on each page,  
16 and those were inserted by collaboration of the  
17 Agency and the Pollution Control Board.

18 Q. So the Agency has actually modified in a  
19 significant respect the Standard Land Use Coding  
20 Manual appendix?

21 A. That's correct.

22 Q. It borrowed the appendix from the Standard  
23 Land Use Coding Manual, but then annotated that  
24 appendix. Is that a fair statement?

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1 A. Yes.

2 Q. And in particular, the Board -- correct me  
3 if I'm wrong, but is it your understanding that  
4 the Board took the land classification system that  
5 had been developed by this Standard Land Use  
6 Coding Manual and used that as -- it gave -- that  
7 manual gave descriptive descriptions of land uses,  
8 correct?

9 A. That's correct.

10 Q. And then the Board, in association with  
11 the Illinois Environmental Protection Agency, in  
12 the far right-hand column of Exhibit 39, there  
13 determined which of those land uses would best be  
14 classified as Class A, which are most  
15 appropriately classified as Class B, which are  
16 Class C, and then which are other, Class U; is  
17 that right?

18 A. That's correct.

19 Q. And that classification that the Board in  
20 conjunction with the Illinois Environmental  
21 Protection Agency did, that is something different  
22 and independent of whatever the Standard Land Use  
23 Coding Manual people and the department of  
24 transportation who commissioned that manual were

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1 doing; is that right?

2 A. Yes.

3 MR. KOLAR: Objection, foundation as to  
4 whether he was part of it in 1972 for assigning  
5 the classifications.



6 MR. KAISER: Well, I'll lay a little  
7 foundation.

8 BY MR. KAISER:

9 Q. What's the basis for your knowledge about  
10 how the Agency came to use what we call the SLUCM  
11 code, S-L-U-C-M, and incorporate the SLUCM code  
12 into the noise regulations?

13 A. At the time, I was involved in working  
14 with the appendix, helping to assemble it,  
15 gathering field data to support it, and attending  
16 public hearings where the Board was considering in  
17 what form to adopt it and also involved in the  
18 arena was industry who had input also at public  
19 hearings as far as how the land classifications  
20 would be designated.

21 Q. So you have personal knowledge of the  
22 process by which the Board adopted this SLUCM code  
23 and incorporated it into the noise regulations?

24 A. Yes, I do.

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1 Q. And for 27 years, part of your job has  
2 been to apply those regulations and give guidance  
3 concerning the proper application of those

4 regulations?

5 A. That's correct.

6 Q. Now, on the basis of your experience and  
7 education, have you formed an opinion as to the  
8 proper classifications of the land use for LTD's  
9 Bannockburn facility under the Illinois noise  
10 regulations?

11 A. Yes. I would consider it Class B  
12 property.

13 Q. And what is the basis for your opinion  
14 that under the Board's regulations LTD's  
15 Bannockburn facility would best be classified as a  
16 Class B land use?

17 A. It would be based upon Appendix B and  
18 looking up -- it's largely a warehousing at that  
19 location, and warehousing under the Board's  
20 Appendix B would be considered a Class B land use.

21 Q. Are you aware that LTD Commodities has  
22 argued in this case that it is a Class C facility,  
23 that its principal land use activity is freight  
24 forwarding and not warehousing or sales?

1 A. Yes, I've heard that.

2 Q. And, in fact, I sent you a letter that  
3 Mr. Kolar -- in which Mr. Kolar laid out that  
4 argument to the village of Bannockburn?

5 A. That's correct.

6 Q. Do you agree or disagree with LTD's  
7 position that they are more appropriately  
8 considered a freight forwarding activity and not a  
9 warehouse or sales activity?

10 A. Yes. I disagree and in furtherance of  
11 that, what I have done for the last 27 years was  
12 to do some research on various facilities to  
13 determine as closely as possible what was the  
14 major activity taking place at a certain  
15 facility. In this case here, I went on the  
16 Internet to their home page.

17 Q. Their home page being LTD Commodities'  
18 home page?

19 A. Yes, and read what was on the home page as  
20 far as merchandise and as far as ordering from the  
21 facility. On the initial page of the web site,  
22 they mention that it's a business-to-business-type  
23 of operation, but going into the order forms, I  
24 noticed that the nature of the merchandise was not

1 what I would typically call a business-type  
2 merchandise, but the one factor that led me to  
3 believe that it's not business-to-business  
4 exclusively by any means is the example they use  
5 containing Illinois sales tax, and it's a well  
6 known thing in business, which I'm a small  
7 business owner myself --

8 MR. KOLAR: Objection to his testimony  
9 regarding sales taxes.

10 HEARING OFFICER KNITTLE: Mr. Kaiser.

11 MR. KAISER: If I may without --

12 HEARING OFFICER KNITTLE: Do you want me  
13 to rule on that or do you want to --

14 MR. KAISER: If I may ask some questions  
15 in furtherance and, perhaps, you could hold off on  
16 the ruling until we --

17 HEARING OFFICER KNITTLE: Let's reserve  
18 ruling.

19 MR. KAISER: -- consider the next --

20 MR. KOLAR: I'd move to strike that  
21 testimony regarding sales taxes otherwise it's  
22 going to be left hanging there.

23 HEARING OFFICER KNITTLE: Has he testified  
24 about sales tax yet?

1           MR. KOLAR: He mentioned in my experience  
2 with sales tax. It seems implied from his  
3 testimony that because there's a sales tax,  
4 therefore, it's something other than  
5 business-to-business.

6           HEARING OFFICER KNITTLE: I don't think he  
7 offered that opinion yet, but we can strike the  
8 sales tax sentence until supported by some  
9 foundation.

10          MR. KAISER: Very good.

11                                   (Complainants' Exhibit No. 40  
12                                   marked for identification,  
13                                   11-2-99.)

14 BY MR. KAISER:

15       Q.     I'm showing what you I've marked for  
16 purposes of identification as Complainants'  
17 Exhibit 40. I'd ask you to take a look at that.

18                            Could you describe for us what this  
19 four -- five-page document is, Mr. Zak?

20       A.     Yes. I prepared it.

21       Q.     How did you prepare this document?

22       A.     Last night at the office as I was

23 testifying I went on the Internet and pulled up  
24 the home page for LTD Commodities and began to

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1 read a description of the activities taking place  
2 at the facility. I noticed that in some of the --  
3 I think in the letter from Mr. Kolar had mentioned  
4 that it was a business-to-business type of  
5 operation and in their own web page they mention  
6 it's a business-to-business operation, but a lot  
7 of the -- the way the web page was assembled, it  
8 didn't have that appearance.

9                   For example, they mentioned the  
10 catalogue. You have a picture there of two ladies  
11 sitting at a table in what appears to be a home  
12 discussing -- looking at the catalogue, not what  
13 my experience would be where you have a business  
14 -- a strictly business-to-business type of  
15 operation.

16                   The other thing looked at on the same  
17 web page was how to order from LTD Commodities,  
18 and I went ahead and everything I'm testifying to  
19 I printed off the LTD web page. They list an  
20 order form there, and the items themselves caught

21 my eye. Again, so I'm thinking is this  
22 business-to-business and the example order is for  
23 birthstone bells, and it seemed like an odd thing  
24 for a business to order and also in a relatively

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1 small quantity. I'm talking about quantities of  
2 three and four. The total order is around \$55.00  
3 in their example, and continuing on with the  
4 example and going through from form to form, they  
5 also list Illinois state sales tax, and, again,  
6 based on my experience both working for the state  
7 and in a small business myself, Illinois sales tax  
8 is normally only levied --

9 MR. KOLAR: Objection. He's not competent  
10 to testify regarding when it's appropriate to  
11 charge Illinois sales tax, and he's not an  
12 attorney. He's been with the EPA for 27 years. I  
13 don't think it's within his expertise as well.

14 HEARING OFFICER KNITTLE: Mr. Kaiser,  
15 we're back to where we started.

16 MR. KAISER: Mr. Zak has told us that in  
17 the course of his work for the Illinois

18 Environmental Protection Agency and in his own  
19 capacity, individual capacity, as a small  
20 businessman that he is knowledgeable. Now, I can  
21 go into the foundation of his knowledge.

22 HEARING OFFICER KNITTLE: At this point if  
23 you don't, I'm going to sustain the objection.

24 MR. KAISER: All right.

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1 BY MR. KAISER:

2 Q. Now, Mr. Zak, you've just stated that you  
3 have a familiarity with the laws concerning when  
4 the state of Illinois requires a seller to collect  
5 sales tax; is that true?

6 A. That's correct.

7 Q. And what is the basis for your information  
8 in that respect? How have you acquired that  
9 understanding?

10 A. I have been a tree farmer for the last 12  
11 years, and I run a regular tree farming  
12 operation. When I purchase things for my tree  
13 farm, if I supply the number identifier for my  
14 tree farm, on most items I do not have to pay  
15 sales tax.



16 I never have gone through the trouble  
17 of obtaining a tax number from the department of  
18 revenue. However, if I were to do that, I would  
19 have to pay a sales tax on anything that was going  
20 to be used in the business of producing timber.

21 Q. Did you make any calls to the  
22 representative of the Illinois Department of  
23 Revenue and review with that person the  
24 regulations concerning collection of sales tax in

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1 the state of Illinois?

2 A. I called a CPA who works for the state --

3 MR. KOLAR: Objection, hearsay to anything  
4 that the CPA said.

5 MR. KAISER: Well, let's just hear what he  
6 did, and then we'll see if there's a foundation.

7 BY MR. KAISER:

8 Q. Who was this CPA who works for the state  
9 of Illinois?

10 A. His name is Joe Taylor. He's been working  
11 for the state for about 20 years. He is a  
12 licensed CPA, and he also has a firm as a small

13 business on the side. I ran by him and asked him  
14 for his experience as far as sales tax is  
15 concerned and described the situation I had here  
16 with LTD and asked him for an opinion as a CPA,  
17 and he gave me the opinion that --

18 MR. KOLAR: Objection, hearsay.

19 HEARING OFFICER KNITTLE: I can't see how  
20 this isn't hearsay, Mr. Kaiser, but if you have  
21 something else.

22 MR. KAISER: Well, I think it's --

23 BY MR. KAISER:

24 Q. You did this during the course of your

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1 work as IEPA's noise advisor, correct?

2 A. That's correct.

3 Q. And is it customary while you're working  
4 in your capacity as noise advisor to when you have  
5 a question to talk with other members of the state  
6 government to get information about issues, in  
7 this case, collection of sales tax?

8 A. Yes. It's a regular part of the job  
9 investigating any complaint and to find whatever  
10 resources I can find that can supply reliable

11 information regarding a complaint.

12 Q. And in this case, you had a question about  
13 sales tax and you talked to somebody in a sister  
14 agency or department within the state; is that  
15 right?

16 A. That's correct.

17 Q. And after --

18 HEARING OFFICER KNITTLE: I'm going to  
19 stop you here. I'm not going to allow him to tell  
20 what the CPA thinks about whether it's a sales tax  
21 or not. I don't think it's fair to the other  
22 party not to have that person available for  
23 cross-examination, and we don't know anything  
24 about this person.

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1 However, in regards to the other  
2 instance, I do think you've laid enough foundation  
3 now. You can ask Mr. Zak why he doesn't think  
4 this is a business-to-business situation in terms  
5 of the sales tax.

6 MR. KAISER: All right. Thank you.

7 BY MR. KAISER:

8 Q. Is it your opinion that LTD is not engaged  
9 exclusively in business-to-business sales?

10 A. Yes, it is.

11 Q. And what's the basis for your opinion?

12 A. The basis for it is actually several  
13 things. The tone and demeanor of the catalogue,  
14 of the ordering form, it to me seems to indicate  
15 while there may be some business-to-business  
16 exchange going on that it's largely oriented  
17 toward private individuals.

18 Q. And this document --

19 MR. KOLAR: I would object and move to  
20 strike that as speculative. He says tone and  
21 demeanor of the catalogue seems to indicate, and  
22 this is also an opinion that was never disclosed  
23 in his deposition because it wasn't disclosed in  
24 the written disclosure by Mr. Kaiser that he was

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1 going to get up here and testify how this is  
2 really not business-to-business, it's business to  
3 homes based on his experience selling Christmas  
4 trees. It's completely unfair to LTD, and this  
5 opinion should not be allowed.

6 HEARING OFFICER KNITTLE: I would -- and  
7 I'll let you respond.

8 MR. KAISER: If I may be heard.

9 HEARING OFFICER KNITTLE: Well, why don't  
10 you respond first?

11 MR. KOLAR: My final thing, I guess, and  
12 I'm sorry, Steve, in federal court, you have this  
13 Daubert issue. It's more scientific, but you have  
14 to have a reasonable basis for giving opinions in  
15 federal court and even state court. This would  
16 never pass. Even though it's not a scientific  
17 issue, this would never pass a Daubert analysis as  
18 to whether he has a proper basis for giving an  
19 opinion that LTD is not a business-to-business  
20 company.

21 He can't say seems to indicate and  
22 tone and demeanor of a written document to support  
23 the basis for this opinion.

24 MR. KAISER: I would disagree. I mean,

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1 Daubert is the case that controls so-called junk  
2 science and is there consensus within the

3 community as to what a scientific principle is,  
4 particularly with respect to causation. So I  
5 don't think a Daubert analysis and what a federal  
6 court would do is appropriate here at all.

7                   We're talking about a noise advisor  
8 for the Illinois Environmental Protection Agency  
9 in a noise case talking about how he makes a  
10 decision, whether it's Class B or Class C use, and  
11 I would note that certain of Mr. Zak's opinions  
12 are essentially offered in response to information  
13 that was developed after Mr. Zak's deposition and  
14 that is the opinion testimony of Allen Kracower  
15 that we expect to hear in LTD's case in chief.

16                   So to a certain degree just as we're  
17 being flexible with the order of presentation, Mr.  
18 Zak has driven up here from Springfield today. We  
19 don't necessarily want to have to ask him to drive  
20 back up Friday. So we're trying to get as much  
21 information from Mr. Zak while he's here,  
22 including the basis for this determination that  
23 LTD is a Class B and not a Class C, and part of  
24 that determination goes to this issue of is LTD

1 selling primarily or exclusively  
2 business-to-business or is LTD really more of a  
3 retail sales group, but as it's not a central --  
4 it's part of a central part of the case, but I  
5 don't want to spend a half hour on this frankly.

6                   So what I would propose at this point  
7 is to ask Mr. Zak a few questions about this  
8 document deposition -- Hearing Exhibit 40 and then  
9 move on.

10                   HEARING OFFICER KNITTLE: Mr. Kolar?

11                   MR. KOLAR: But I have a pending objection  
12 to his opinion.

13                   HEARING OFFICER KNITTLE: Yeah, I think  
14 so. Here's how I would see that. Here's how I do  
15 see that as a matter of fact. I am inclined to  
16 let it in. This is an administrative proceeding.  
17 However, I would let it in in terms of the  
18 objection to the testimony and him not having the  
19 appropriate foundation or knowledge.

20                   However, if this wasn't disclosed  
21 during discovery, and it seems like this was the  
22 Schomer issue -- was this issue before you two  
23 when Mr. Zak had his deposition? That's my  
24 question.

1           MR. KAISER: Well, we didn't have  
2           Kracower's opinion or we had a one paragraph  
3           opinion, and then we had three hours of  
4           explication on Kracower's opinion. So...

5           HEARING OFFICER KNITTLE: Was that the  
6           video evidence deposition? Is that the evidence  
7           deposition?

8           MR. KAISER: No. This is a separate  
9           deposition, discovery deposition.

10          HEARING OFFICER KNITTLE: But there's, you  
11          know -- go ahead.

12          MR. KOLAR: On that issue specifically,  
13          what I was going to point out is Michael Hara gave  
14          his deposition on April 16th, 1999, and he  
15          specifically addressed the nature of his business  
16          that it was business-to-business. Mr. Zak gave  
17          his deposition on July 9th, 1999. So the issue  
18          was already made known to Mr. Kaiser, what is  
19          that, three months earlier.

20          HEARING OFFICER KNITTLE: Right.

21          MR. KAISER: That's really not the heart  
22          of their case. They've hired a guy at 285 an hour  
23          to come in here and tell the Board that LTD,  
24          despite the most obvious signs that it's a Class B



1 use, is, in fact, something other than a warehouse  
2 and is a Class C.

3                   Now, I represent citizen complainants  
4 before a citizen board who are relying on the  
5 expertise of the state's agency to try to reach a  
6 just result here, and to use the procedural  
7 maneuverings and to tell me because Mike Hara in  
8 April said something, Mike Hara is not the crux of  
9 their case on whether it's a B or a C. They've  
10 got their expert at 285 an hour who's going to  
11 come in here and try to bamboozle the Board.

12                   HEARING OFFICER KNITTLE: Well, let me  
13 make a ruling. I don't think the Board is quite  
14 that easily bamboozled. However, this is a breach  
15 of the discovery provisions, and I'm not going to  
16 allow it. What I will allow is if you want to  
17 offer it as an offer of proof, it could be before  
18 the Board and they could make a decision on it,  
19 but if this -- this seems to me to have been a  
20 crux of the case prior to the deposition and prior  
21 to your discovery response about the testimony of  
22 Mr. Zak.

23 MR. KAISER: No. We've told --

24 HEARING OFFICER KNITTLE: Hold on. Hold

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1 on. I've already heard what I'm going to hear on  
2 this, and so since I think it was an issue prior  
3 to Zak's disclosure of what he would be testifying  
4 to, I think not to disclose that he would be  
5 testifying to this is not proper. That's why I  
6 wouldn't allow it, but if you want to make an  
7 offer of proof as to what he would testify to if I  
8 allowed it, I would allow that. You could make an  
9 oral offer of proof.

10 MR. KAISER: Let me just point out we  
11 always advised LTD that Mr. Zak would testify that  
12 LTD is a Class B and not a Class C land use. So  
13 there's no surprise and there's no violation  
14 there.

15 HEARING OFFICER KNITTLE: Well, that's  
16 what Mr. Kolar is claiming.

17 MR. KAISER: Well, he's -- that's what you  
18 understand. I don't think that's a fact.

19 HEARING OFFICER KNITTLE: Is that not

20 correct, Mr. Kolar?

21 MR. KOLAR: Is it a warehouse?

22 MR. KAISER: No. You've known from the  
23 minute I disclosed Greg Zak as a potential hearing  
24 witness that Mr. Zak would come here and he would

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1 say LTD is a Class B use.

2 MR. KOLAR: True, but that's --

3 MR. KAISER: The bases have been expanded  
4 because Allen Kracower, the expert, spent three  
5 hours justifying his opinion. Mr. Zak has  
6 reviewed Kracower's opinion and, in part, is  
7 responding to what we're going to hear on  
8 Wednesday or Thursday. Now, that's my point. In  
9 rebuttal, I don't have to disclose these  
10 additional bases. I could bring Mr. Zak back if  
11 he was willing and if the state wants to pay for  
12 him to spend a second day up here we could get him  
13 back on Friday and do it in order and have him  
14 respond to Kracower's opinions.

15 I've tried to speed up the process by  
16 sending Mr. Zak a copy of the Kracower deposition  
17 which, again, the complainants had to spend

18 several hundred dollars to purchase so that we  
19 could present that to Mr. Zak in an effort to have  
20 him up here only once, but if the Board wants us  
21 to, you know, shuttle him back and forth, if he's  
22 willing to do that, we could do it.

23 I don't think it's appropriate. I  
24 don't think it's necessary. I don't think it's

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1 surprise. I think his opinion can be attacked on  
2 cross. He can argue about the weight of the  
3 opinion, but to deny the opportunity to present  
4 his opinion here --

5 HEARING OFFICER KNITTLE: Well, I haven't  
6 denied the opportunity frankly. You're going to  
7 have the opportunity to do it as an offer of  
8 proof, but that is a little bit different than I  
9 understood what was the situation.

10 MR. KOLAR: I acknowledge I knew he was  
11 going to say it was Class B, but the issue is did  
12 I have notice that he was going to come in and say  
13 in my opinion LTD is not business-to-business,  
14 it's business to home. Now, again, Mike Hara gave

15 his dep on August -- excuse me, April 16th, 1999.

16 Steve Kaiser took his dep.

17                   Page 140; question, how would you  
18 distinguish between a distribution house and a  
19 mail-order retail house; answer, well, we're not a  
20 retail mail-order company. We're a  
21 business-to-business mail-order company. We do  
22 not sell retail.

23                   August -- April 16th he knew that  
24 Mike Hara had said that. June 8th, 1999, two

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1 months later approximately, he discloses in  
2 writing what Mr. Zak is going to testify to and  
3 his other opinion witnesses, and there's nothing  
4 in here about that LTD is not a  
5 business-to-business operation.

6                   HEARING OFFICER KNITTLE: What does it  
7 say, though, about Class B versus Class C?

8                   MR. KOLAR: It says Mr. Zak may opine that  
9 LTD is a B classification under the standard land  
10 use coding system. That's it.

11                   MR. KAISER: And then you took Mr. Zak's  
12 deposition on July 9th.

13           MR. KOLAR: Right. On July 9th, I took  
14 his deposition. On July 9th I asked him did you  
15 ever look through LTD's catalogue before? No.  
16 Have you ever looked at LTD's web site before?  
17 No.

18           MR. KAISER: And we didn't offer that.

19           MR. KOLAR: Now, he comes in with pages  
20 from LTD's web site looking over the catalogue  
21 saying now I've looked over the catalogue, and  
22 these are the types of things that people have in  
23 their home and this isn't really  
24 business-to-business.

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1           HEARING OFFICER KNITTLE: Would you allow  
2 -- I mean, would you have an objection if he came  
3 back on rebuttal?

4           MR. KOLAR: No, I wouldn't.

5           HEARING OFFICER KNITTLE: It doesn't seem  
6 like there would be an objection to that.

7           MR. KOLAR: I wouldn't make him drive  
8 back up for rebuttal purposes, but I think the  
9 rebuttal is just a maneuver to try to get around

10 the fact that he didn't comply with your orders or  
11 the Pollution Control Board's orders regarding  
12 disclosure of opinions.

13 HEARING OFFICER KNITTLE: It doesn't seem  
14 as if his opinion was properly disclosed, but he  
15 could, in fact, testify to a significant portion  
16 of this on rebuttal. You see what I mean, Mr.  
17 Kolar? You're going to have somebody come in and  
18 testify why it's Class B and why it's  
19 retail-to-retail -- Class C, excuse me, and why  
20 it's retail-to-retail, correct?

21 MR. KOLAR: Right.

22 HEARING OFFICER KNITTLE: And I think Mr.  
23 Kaiser's argument is that he would have then the  
24 right to bring Mr. Zak back on rebuttal, is that

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1 correct, Mr. Kaiser?

2 BY MR. KOLAR:

3 Q.

4 MR. KAISER: Yes.

5 HEARING OFFICER KNITTLE: You don't  
6 dispute that, Mr. Kolar?

7 MR. KOLAR: Right.

8 HEARING OFFICER KNITTLE: I understand --

9 MR. KOLAR: If he was qualified to give an  
10 opinion on business-to-business.

11 HEARING OFFICER KNITTLE: Right, and I  
12 understand that it seems as if it's an end run  
13 around the discovery provisions, and I am inclined  
14 to agree that it is, but if it's going to save Mr.  
15 Zak the trouble of coming back, I'd allow him to  
16 testify to it and give you a standing objection.

17 MR. KOLAR: Again, I'm not saying he  
18 should come back and do this on rebuttal.

19 HEARING OFFICER KNITTLE: I understand.

20 MR. KOLAR: I'm saying that -- well, I  
21 guess it's an end run, but primarily it's pure  
22 speculation and it's junk science. It's not  
23 science. It's junk business, and it's total  
24 speculation by someone who has no degree in

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1 business. He has a degree in biology I heard and  
2 public administration, and now he's going to give  
3 an opinion on the nature of a business that he's  
4 never been involved with.



5 HEARING OFFICER KNITTLE: I agree, and I'm  
6 hoping that the Board will have the -- well, I  
7 know the Board will have the necessary  
8 intelligence to award the appropriate weight to  
9 Mr. Zak's testimony. I do want to give you a  
10 standing objection, and if, in fact, you wanted to  
11 maintain your objection, I would -- I would  
12 probably sustain that, but he would be allowed to  
13 come back for rebuttal, and we don't want to make  
14 him come back for rebuttal.

15 So this is an unusual procedural  
16 circumstance, but I think it is procedurally  
17 incorrect because his opinions were not disclosed  
18 on discovery. So it puts me in a difficult  
19 position as well because I'm inclined to sustain  
20 your objections. I think they're proper and I  
21 think they're well made. However, I also want to  
22 work with the EPA if I can on this one and allow  
23 him to testify without coming back on Friday.

24 MR. KOLAR: I would have the same

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1 objection if he came on Friday and gave his  
2 testimony on rebuttal --

3 HEARING OFFICER KNITTLE: Right.

4 MR. KOLAR: -- regarding his competence or  
5 his -- no offense. I mean, he's not a person who  
6 analyzes businesses and talks about sales tax.

7 HEARING OFFICER KNITTLE: That I  
8 understand, and if that's the only remaining  
9 objection, that I would overrule and allow that to  
10 come in. So I think we're all on the same page.

11 MR. KAISER: I think you're right.

12 BY MR. KAISER:

13 Q. Mr. Zak, you have in front of you  
14 Complainants' Exhibit 40.

15 A. Yes.

16 Q. And that's a five-page document which  
17 consists of certain screens that you printed out  
18 from LTD Commodities' web page last night?

19 A. That's correct.

20 Q. And these are true and accurate copies of  
21 the screens that you printed out last night?

22 A. That's correct.

23 MR. KAISER: I would move at this time for  
24 admission into evidence of Complainants' Exhibit

1 40.

2 HEARING OFFICER KNITTLE: Mr. Kolar.

3 MR. KOLAR: Well, I would just have the --  
4 since it relates to his opinion as to  
5 business-to-business, I'd have the same  
6 objection. He's not qualified to give that  
7 opinion. So, therefore, that shouldn't come in.

8 HEARING OFFICER KNITTLE: Okay. Anything  
9 further, Mr. Kaiser?

10 MR. KAISER: I think it should come in,  
11 and --

12 HEARING OFFICER KNITTLE: Well spoken.

13 MR. KAISER: That's it.

14 HEARING OFFICER KNITTLE: We'll let it  
15 in.

16 BY MR. KAISER:

17 Q. Now, Mr. Zak, after we got done touring  
18 the LTD interior with Mr. Kolar and Mr. Voight  
19 back on what appears to be July 9th because it was  
20 the same day you gave your deposition, wasn't it?

21 A. That's correct.

22 Q. All right. Do you recall that we then  
23 drove -- no, actually walked through and around  
24 the north -- the fence at the north end of the LTD

1 property and walked through the backyards of the  
2 Rotis, Mr. Rosenstock, and all the way over to  
3 the Weber's house, and while I was doing that, I  
4 was showing you where those homes are located on  
5 Respondent's Exhibit 89?

6 Do you recall Mr. Kolar, you, and me  
7 going through the fence and into the Roti's  
8 backyard and then over to Mr. Rosenstock's and to  
9 the Weber's?

10 A. Yes, I do.

11 Q. Did you make observations -- why did you  
12 do that, in order to see the proximity of the  
13 complainants to the LTD facility?

14 A. That's correct.

15 Q. And then after we did that, we drove to  
16 the village of Bannockburn and you sat and gave  
17 your deposition; isn't that right?

18 A. Yes.

19 MR. KAISER: May we go off the record for  
20 one second?

21 HEARING OFFICER KNITTLE: Sure.

22 (Discussion had  
23 off the record.)

24 (Break taken.)

1 HEARING OFFICER KNITTLE: We're back on  
2 the record after a brief break continuing the  
3 direct examination of Greg Zak.

4 MR. KAISER: Thank you.

5 BY MR. KAISER:

6 Q. Mr. Zak, I'd like to finish up concerning  
7 your opinion that LTD is most appropriately  
8 classified as a Class B land use. I sent you a  
9 copy of Allen Kracower, K-r-a-c-o-w-e-r, Allen  
10 Kracower's deposition transcript, did I not?

11 A. That's correct.

12 Q. And you understand that Mr. Kracower is  
13 LTD's land use planning expert; is that right?

14 A. That's my understanding.

15 Q. And as I understood Mr. Kracower's  
16 opinion, and you correct me if your understanding  
17 of his opinion as a result of having reviewed his  
18 deposition transcript differs, but what I  
19 understood him to say essentially is because the  
20 noise source at LTD is the dock area and the dock  
21 area involves the movement of freight that the

22 appropriate land classification would be for the  
23 freight forwarding and the freight movement  
24 activities and because freight forwarding and

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1 freight moving is a Class C, the entire LTD  
2 operation should be considered a Class C.

3                   Is that, in part, what you understood  
4 Mr. Kracower to be saying?

5     A.     That was my understanding.

6     Q.     And have you given some thought as to  
7 whether or not Mr. Kracower's method of applying  
8 Appendix B of the Board's regulations is  
9 appropriate?

10    A.     Yes, I have.

11    Q.     And what is your opinion?

12    A.     My opinion is that what we've done for 27  
13 years is look at the predominant use of the  
14 facility, and based on the predominant use, that's  
15 how we would classify the land use.

16           MR. KOLAR: And just for the record, this  
17 would be rebuttal testimony I take it?

18           MR. KAISER: Yes.

19           HEARING OFFICER KNITTLE: Okay. Yeah.

20 That is noted and thank you.

21 BY MR. KAISER:

22 Q. I'm sorry. Because of the objection, I  
23 didn't clearly hear your opinion.

24 Could you state it again, please?

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1 A. Yes. Looking at the facility and taking  
2 the way the facility is normally used, the  
3 majority of the facility is normally used, that  
4 would be the basis for determining land  
5 classification, and as you've mentioned, the truck  
6 activity at the north end of the facility is one  
7 of the subsets of the main set of activities  
8 taking place at that facility.

9 I could liken it to -- or the Board  
10 has had a number of cases of large supermarkets  
11 having truck noise as a part of the operation of  
12 the supermarket, and in those situations the land  
13 has still been considered Class B land or  
14 commercial as opposed to industrial.

15 Q. And that's because the dock activity  
16 doesn't define the grocery store. If it's a

17 grocery store, it's businesses selling groceries  
18 and not operating a truck dock; is that right?

19 A. That's correct.

20 Q. And applying that analysis to LTD, do you  
21 understand that LTD's principal business is  
22 selling knickknacks?

23 A. That's my definition, yes.

24 Q. And you haven't seen anything or heard

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1 testimony or read any deposition transcripts that  
2 would lead you to believe that LTD's principal  
3 business operation is dock activities?

4 A. No, I have not.

5 Q. Now, I'd like to show you what I've marked  
6 for purposes of identification as Complainants'  
7 Exhibits 19 and 20. Complainants' 19 is a letter  
8 from Tom Thunder to LTD Commodities dated January  
9 8th, 1998, and Complainants' Exhibit 20 is a  
10 letter from Paul Schomer to David Lothspeich,  
11 L-o-t-h-s-p-e-i-c-h, dated January 26th, 1998.

12 Do you have those in front of you?

13 A. Yes, I do.

14 Q. And these two documents, during the



15 five-minute break that we just took, I showed you  
16 these documents, didn't I?

17 A. Yes, you did.

18 Q. And, in fact, I believe I've sent you  
19 copies of these documents in the past?

20 A. Yes. I've seen them before.

21 Q. Do you recall seeing these previously?

22 A. Yes, I have.

23 Q. And have you reviewed the noise  
24 measurements that are contained in that document?

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1 A. Yes, I have.

2 Q. And to be more precise, I'd like you to  
3 turn in Tom Thunder's letter report of January  
4 8th, 1998, first to Exhibit 1.

5 A. Yes.

6 Q. And you see Exhibit 1 is essentially a  
7 diagram of the dock area?

8 A. Yes.

9 Q. And you see -- and, in fact, this is the  
10 dock area where Joe, Jack Voight, you, and I  
11 walked around back in July of 1999, right?

12 A. That's correct.

13 Q. And up here where there's an X and the end  
14 you see Lake Forest, that X is in the approximate  
15 location of Karen Roti's home; is that right?

16 A. Yes.

17 MR. KAISER: And just for the record,  
18 please note that Karen Roti, one of the  
19 complainants, joined the hearing approximately one  
20 half hour ago.

21 BY MR. KAISER:

22 Q. All right. Now, if we turn to figure one  
23 --

24 MR. KOLAR: Is this Exhibit 19?

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1 MR. KAISER: I thought it was. What are  
2 you showing it as? Nineteen, yeah.

3 MR. KOLAR: Do you have a map of a dock  
4 area attached to your 19? I don't have one  
5 attached to mine. That's all right.

6 BY MR. KAISER:

7 Q. Do you see figure one there? Do you have  
8 figure one in front of you, Mr. Zak?

9 A. Yes, I do.

10 Q. And what do you understand -- what  
11 information do you understand Tom Thunder is  
12 trying to communicate in figure one?

13 A. The type of graph he's presented here is  
14 one that would typically be used for impulsive  
15 noise, and I'm taking that interpretation from the  
16 verbal description he's got above the graph  
17 describing such as heavy truck movement, impact  
18 air brakes, impacts, things like that, and then in  
19 addition, I notice that he's got a linear  
20 integration period of five seconds, which is a  
21 little bit usual.

22 Q. What does that mean, linear integration  
23 period five seconds?

24 A. In the language of the Pollution Control

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1 Board, that would be Leq.

2 Q. Leq?

3 A. And he's basically taking a five second  
4 Leq.

5 On impulsive noise, if you -- in  
6 order to really see a clear sample of the noise,

7 you would normally want the integration period to  
8 be a second or even less than a second.

9 Q. Is it sometimes customary within the field  
10 of acoustics to take a one-eighth second Leq when  
11 you're trying to assess impulsive noise?

12 A. Yes. For the -- from the period of 1973  
13 to 1987, the Agency, following the Board's  
14 regulations, used an integration period of  
15 one-eighth of a second for impulsive noise, and  
16 then in '87, the adoption of the one-hour Leq, the  
17 Board applied that to all the numerical  
18 limitations across the board, including the  
19 impulsive rule, which would be 901.104.

20 Q. And, I'm sorry, what is the appropriate  
21 Leq for impulsive noise after 1987?

22 A. After 1987, it would be one hour.

23 Q. One hour.

24 And what is the effect of stretching

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1 and expanding the Leq from as little as one-eighth  
2 of a second to five seconds up to one hour? What  
3 does that do in effect to impulsive noise?

4 A. Well, starting with the one-eighth of a

5 second, that covers many very quick -- quickly  
6 occurring impulsive sounds. Using up to a  
7 one-second Leq would also cover quite nicely the  
8 longer duration impulsive-type sound, but once you  
9 go beyond a period of about one second, say, to  
10 five seconds, what in effect happens is if, say,  
11 the sound is a second long, the instrumentation  
12 would capture that number and then for the next  
13 four seconds, there would be no sound.

14                   So what the instrumentation would do  
15 on a five-second integration period would be to  
16 average the one second of sound with four seconds  
17 of quiet or no sound into a five-second  
18 calculation that would be significantly less than  
19 what we would have obtained with a one-second  
20 linear integration period.

21    Q.    Is it fair to say that if you use a  
22 five-second linear integration period you're  
23 actually diluting the impact of the impulsive  
24 noise?

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1    A.    Yes.    That would be my opinion.

2 Q. Now, you described the air brake sounds  
3 that you observed at LTD's dock areas in July of  
4 1999 as being sudden like an explosion, no build  
5 up, just an explosion of sound; is that right?

6 A. That's correct.

7 Q. And do you have an opinion as to whether  
8 one could more accurately analyze the noise  
9 generated by the release of air brakes by using a  
10 shorter Leq period?

11 A. Yes. I think that a very short period of  
12 time would give a truer picture of what is  
13 actually being heard by anyone in the vicinity of  
14 where the air brakes are being released.

15 Q. So is it fair to say that in order to  
16 better understand how Karen Roti or Paul  
17 Rosenstock experience the sound of the release of  
18 air from the air brakes, a linear integration  
19 period of one second or one even one-eighth of a  
20 second would be more effective?

21 A. Yes. In my opinion, it would be.

22 Q. Now, I'd ask you to turn to figure three  
23 if you would, please.

24 Are you there?

1 A. Yes, I'm there.

2 Q. And do you understand that in figure three  
3 Tom Thunder has attempted to graph the octave band  
4 frequencies and the A-weighted sound levels in  
5 decibels that were recorded by Roger Harmon on  
6 9-24-97?

7 A. Yes.

8 Q. And do you see that Tom Thunder has chosen  
9 to compare those levels to Illinois' nighttime  
10 limits for Class C to Class A land?

11 A. Yes.

12 Q. And do you have an opinion as to whether  
13 that's the appropriate numeric limit for  
14 comparison?

15 A. Yes. I would say that's inappropriate,  
16 that what he should have compared would be Class B  
17 to Class A.

18 Q. And I'd like to turn your attention to  
19 figure four, and I note that in figure four -- are  
20 you there?

21 A. Yes.

22 Q. I note that in figure four, it appears  
23 that there's now some fast time constant display  
24 time equals one-eighth of a second, and I just

1 note that. I don't know if you're in a position  
2 to explain or interpret that?

3 A. Yes, I could explain that.

4 Q. If you would, please.

5 A. Yes. The fast time constant would be  
6 taking the energy average over a one-eighth of a  
7 second period of time, very similar to a  
8 one-eighth second Leq, although not defined in  
9 exactly the same terms acoustically, but, again,  
10 there's quite a bit of similarity between a  
11 one-eighth of a second Leq and a one-eighth of a  
12 second fast time constant.

13 Q. And so we see, if we were to compare the  
14 results or the representations of the impulsive  
15 noise in figure one with the representation of the  
16 impulsive noise in figure four that those peaks in  
17 figure four are more pronounced, that you have  
18 peaks actually above DBs, at and above 60 DBs, and  
19 in figure one you did not have any impulse noise  
20 measurements approaching 60 --

21 A. That's correct.

22 Q. -- DBs?

23 Now, I know you have the Board's



24 regulations in front of you, and I don't know if

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1 you can tell us offhand what the Board's  
2 A-weighted limit is for impulsive noise during  
3 nighttime hours, but if you can or could by  
4 reference to the regulations, I would appreciate  
5 it.

6 A. Yes. There are several land classes  
7 listed. For land Class B, the daytime limit would  
8 be 50, and the nighttime limit would be 45.

9 Q. And do you see on figure four of Tom  
10 Thunder's January 8th letter, Complainants'  
11 Exhibit 19, that there's a bold line that the key  
12 indicates to be the impulse -- Illinois impulse  
13 limit?

14 A. Yes.

15 Q. And it strikes me that Tom Thunder has  
16 drawn that line at approximately 55 DBs?

17 A. I would call it more like 56.

18 Q. More like 56?

19 A. Yes.

20 Q. Do you know where Tom Thunder -- is there  
21 a limit that's 56? Is that the Class C, Class A

22 nighttime -- daytime limit?

23 A. That's the Class C to A daytime limit.

24 Q. Are you aware that Karen Roti and Paul

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1 Rosenstock have complained principally about  
2 noise from the LTD dock facilities during the  
3 nighttime hours?

4 A. Yes.

5 Q. And, yet, do you see on figure four  
6 anyplace where Tom Thunder compared the impulse  
7 noise measurement levels he obtained with the  
8 Illinois Class B to Class A nighttime limits?

9 A. No, I don't see that, and on figure four,  
10 I notice that in the key there the measurements  
11 were taken in the early a.m., which would be  
12 nighttime, and it's standard policy with the  
13 Agency if the measurements are taken at nighttime  
14 to use the nighttime rule then to graph out the  
15 measurements taken to see if they exceed the  
16 Board's regulations or not. I notice here in  
17 figure four, while they've taken nighttime  
18 measurements, they're comparing it to a daytime

19 limit.

20 Q. And, in fact, they're comparing it to the  
21 least stringent, Class C to Class A daytime limit?

22 A. That's correct.

23 Q. Now, I'd like you to take a look at Paul  
24 Schomer's letter of January 26th, 1998,

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1 Complainants' Exhibit --

2 A. Yes.

3 Q. -- 20.

4 And that, again, that was one of the  
5 documents I showed you during the break, wasn't  
6 it?

7 A. That's correct.

8 Q. And that's a document I've sent you  
9 previously, is it not?

10 A. Yes, it is.

11 Q. And I direct your attention to the top of  
12 page two of Dr. Schomer's letter of January 26th,  
13 1998.

14 Do you see that table or grid up at  
15 the top?

16 A. Yes, I do.

17 Q. An do you see that Dr. Schomer has set  
18 forth the Illinois Pollution Control Board's limit  
19 for Class B to Class A land?

20 A. Yes.

21 Q. And he's broken it out into the eight  
22 different octave bands, has he not?

23 A. I believe it's nine octave bands.

24 Q. Nine octave bands. Excuse me. Thank

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1 you.

2 And based on not only the review that  
3 you've been able to perform in the two minutes  
4 during the break, but also on review of these  
5 documents that you were able to perform down at  
6 your office in Springfield, do you agree with Dr.  
7 Schomer's analysis that if one used for comparison  
8 purposes the Board's Class B to Class A limits  
9 that the results -- noise measurement results  
10 obtained by Tom Thunder and his associate, Roger  
11 Harmon, would indicate exceedances of the Board's  
12 limits at the 500, 1,000, 2,000, and 4,000 hertz  
13 measurement areas?

14 A. Those would be octave bands.

15 Q. Octave bands. Thank you.

16 Would you agree that

17 Dr. Schomer has properly compared Thunder's  
18 results with the, if appropriate, Class B to Class  
19 A limit?

20 A. Yes. I would follow the same methodology  
21 myself if I was doing that type of analysis, and I  
22 agree with that.

23 Q. And you agree with Dr. Schomer's  
24 conclusions set forth in his letter of January

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1 26th, 1998?

2 A. Yes.

3 Q. Now, with respect to the way in which the  
4 human ear perceives sound, when we see 2,000  
5 hertz, that the noise generated by LTD's dock  
6 facilities exceed the Pollution Control Board's  
7 standards by almost or by nine decibels --

8 MR. KOLAR: Objection, just foundation as  
9 to just one particular impulse, what particular  
10 day.

11 MR. KAISER: This is the A-weighted

12 average -- no. This is the --

13 HEARING OFFICER KNITTLE: Maybe you could  
14 lay a little bit more foundation. I'll sustain  
15 that.

16 BY MR. KAISER:

17 Q. Well, you've seen the results set forth in  
18 Thunder's letter of January 8th, 1998, and, in  
19 particular, as expressed in figure three of Tom  
20 Thunder's January 8th, 1998, right?

21 A. Yes.

22 Q. And, for instance, at the 31 hertz octave  
23 band or 32 hertz octave band, we see that Tom  
24 Thunder has reported an A-weighted sound level in

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1 decibels based on the data obtained on September  
2 24th, 1997, 60 DBs.

3 Do you see that?

4 A. I need to correct you a little bit there.  
5 That's not A-weighted. That would be -- he has it  
6 labeled as such, but if that were the case, the  
7 readings would be completely erroneous. I think  
8 what myself and Dr. Schomer would have done is

9 ignore that notation on the left-hand side of the  
10 page about A-weighted sound level. That's  
11 incorrect.

12                   What he did is he didn't A-weight  
13 it. He basically just broke the frequency down  
14 into its components of nine octave bands without  
15 A-weighting because if he had A-weighted it, for  
16 example, the 32 would be 40 decibels lower than we  
17 see it.

18                   MR. KOLAR: Is this figure two?

19                   MR. KAISER: Figure three.

20                   THE WITNESS: Figure three.

21 BY MR. KAISER:

22       Q.       Right, and I believe that would be the  
23 testimony of Tom Thunder.

24                   He did obtain an A-weighted result

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1 that he reports over on the right-hand side of  
2 the --

3       A.       Yes. I noticed that.

4       Q.       -- figure?

5       A.       It's confusing the way he's got it put  
6 together with the A-weighted designation and the

7 vertical area of the graph, and he kind of gives  
8 the impression that everything is A-weighted, and  
9 that's not the case.

10 Q. I'm glad you brought that out, and I think  
11 Tom Thunder or Roger Harmon will make that same  
12 point.

13 Let's look at the results he reports,  
14 that Tom Thunder reports though, for the noise  
15 measurements obtained, again, September 24th,  
16 1997, in the 500 hertz octave band.

17 Do you see those?

18 A. Yes.

19 Q. And does he report LTD reported levels at,  
20 in fact, 41 DB?

21 A. Yes. That's what he reported.

22 Q. And at the 1,000 octave band level, does  
23 Tom Thunder report for the noise measurements  
24 obtained on September 24th, 1997, at the 1,000

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1 hertz octave band a result of 40 DB?

2 A. Yes.

3 Q. And at 2,000 hertz, does Tom Thunder



4 report a result of 39 DB?

5 A. Yes.

6 Q. And at 4,000 hertz, does Tom Thunder

7 report a result of 31 DB?

8 A. Yes.

9 Q. And all of those are for the measurements

10 Thunder and Harmon obtained on September 24th,

11 1997?

12 A. That's correct.

13 Q. All right. Now, by comparison with the --

14 returning now to Dr. Schomer's letter of January

15 26th, 1998, page two, we see that Dr. Schomer has

16 correctly taken the data from Tom Thunder's

17 January 8th, 1998, report and plugged in the LTD

18 reported level in decibels at the 500 hertz octave

19 band 41. At the 1,000 hertz octave band, LTD

20 reported levels of 40. At the 2,000 octave band,

21 LTD reported levels of 39 decibels. At the 4,000

22 octave band frequency, LTD reported levels 31

23 decibels.

24 He correctly took Thunder's data and

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1 put it into this chart, did he not?

2 A. Yes. That's my impression.

3 Q. And did you confirm that Dr. Schomer has  
4 correctly extracted from the regulations the  
5 proper limits for the Illinois Pollution Control  
6 Board that he set forth in the line above?

7 MR. KOLAR: Objection to this whole line  
8 of questioning because it's improper under  
9 Illinois law to have an opinion witness simply say  
10 I agree with the opinion of another opinion  
11 witness. He's supposed to give opinions based on  
12 his own knowledge, experience, et cetera, and not  
13 simply parrot the opinion of another person.

14 MR. KAISER: Well, that's not what he's  
15 doing. I mean, I'm trying to cure a foundation  
16 objection. I wanted Mr. Zak to tell me what it  
17 means when we see that LTD is nine decibels above  
18 the Illinois Pollution Control Board's standard at  
19 2,000 hertz, and I wanted him to tell us what he  
20 knows based on his experience, which is something  
21 nobody else in this hearing is going to do, how  
22 the human ear perceives a nine decibel  
23 difference. Can it distinguish an exceedance of a  
24 numeric standard where the exceedance is one of

1 nine decibels.

2                   Now, we got a foundation objection  
3 which suggested that somehow the numbers Greg Zak  
4 was relying on were in error. They're not. I've  
5 spent ten minutes showing that we took Tom  
6 Thunder's data and that Dr. Schomer properly did a  
7 clerical function, and now I'm about to be ready  
8 to ask it Mr. Zak his own unique opinion about how  
9 the human ear interprets a nine decibel  
10 exceedance.

11                   So this opinion of an opinion is, in  
12 my view, an improper objection and not an  
13 appropriate one given where we're going with  
14 Mr. Zak's testimony.

15                   HEARING OFFICER KNITTLE: Anything further,  
16 Mr. Kolar?

17                   MR. KOLAR: I'm talking about the  
18 questions in your opinion is Mr. Schomer's chart  
19 accurate and show a violation? Yes. In your  
20 opinion, did Mr. Schomer's document show this and  
21 show that? Yes. That's improper.

22                   HEARING OFFICER KNITTLE: If you're  
23 strictly trying to get to that question you want  
24 to ask, I think we can move on to that question.

1 Do you object to that question, Mr. Kolar?

2 MR. KOLAR: I think that was disclosed.

3 HEARING OFFICER KNITTLE: Why don't you go  
4 ahead and ask that question?

5 MR. KAISER: It was certainly part of Mr.  
6 Zak's deposition testimony.

7 BY MR. KAISER:

8 Q. Based on your 27 years experience in the  
9 noise program and based on your education, based  
10 on your reading of the literature within the field  
11 of acoustics and measurements and human  
12 sensitivity to noise, do you have an opinion of  
13 the manner in which the human ear registers a nine  
14 decibel exceedance of a noise standard, and, in  
15 particular, an exceedance of nine decibels within  
16 the 2,000 hertz octave band?

17 A. Yes, I do.

18 Q. And what is that opinion?

19 A. My opinion is that at the 2,000 hertz  
20 octave band, that happens to be the octave band  
21 where the human ear is the most sensitive. So  
22 we've got a frequency band that the ear is very  
23 sensitive to, actually the most sensitive to, and

24 we've got a level that's nine decibels above the

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1 Board regulation, and in terms of how loud that  
2 is, it can be looked at two different ways.

3                   One way to look at it is how the ear  
4 actually responds to it, and to the average ear,  
5 that nine decibels would sound approximately twice  
6 as loud as the same level at the regulation  
7 level. In other words, by having it nine decibels  
8 over the 2,000 hertz limit, it sounds twice as  
9 loud as it should, and other factors to consider  
10 here is the fact that the ear is most sensitive to  
11 the 2,000 hertz band. That does happen to be very  
12 close to the frequency used for the back-up  
13 beepers as kind of a side note on that.

14                   Another thing that was noted in the  
15 reports was some mention of cricket noise, and I  
16 have measured a lot of cricket noise in 27 years,  
17 and I do agree with Schomer when -- you know, I  
18 did catch in the report that it seemed very  
19 strange to me that Thunder was talking about  
20 cricket noise as 1600 hertz and that that was the

21 reason the 2,000 hertz reading was as loud as it  
22 was; whereas, normally cricket noise is found at  
23 4,000 hertz.

24 I took that as being an error in the

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1 Thunder report as far as what caused that 2,000  
2 hertz level to be as high as it is.

3 Q. Now, again, based on your experience,  
4 education, reading in the literature, do you have  
5 an opinion as to the sensitivity of the human ear  
6 to noise in the 1,000 octave -- 1,000 hertz octave  
7 band area?

8 A. Yes. It's nearly --

9 MR. KOLAR: Objection, sensitivity to the  
10 human ear, that sounds like a question more  
11 properly for an audiologist or a doctor.

12 HEARING OFFICER KNITTLE: I'll allow the  
13 question to stand. Objection overruled.

14 BY THE WITNESS:

15 A. Yes. Based, again, on my experience and  
16 familiarity with the literature that's pertinent  
17 to this, at 1,000 hertz, the ear is almost as  
18 sensitive as it is at 2,000, not quite. It's

19 about two decibels down, and we've got a reading  
20 here of five which would sound to the average  
21 person as probably being, say, 50 percent more  
22 than the regulatory limit.

23 BY MR. KAISER:

24 Q. And with respect to the way in which the

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1 human ear responds to sound in the 4,000 hertz  
2 octave band, do you have an opinion as to how the  
3 human ear responds to sounds within that octave  
4 band?

5 A. Yes. That's a fairly high frequency  
6 octave band. Again, a typical noise source that  
7 we would measure in that octave band would be  
8 cricket and insect noise and also noise sources in  
9 general. For example, a lot of the pneumatic  
10 sounds from compressed air being released would be  
11 in the 4,000 hertz band.

12 Q. Would an air brake, in your opinion, would  
13 the sound --

14 A. Yes.

15 Q. -- generate --

16 A. The air brake would have a lot of energy  
17 at 4,000 hertz, and we see a level here of five,  
18 again, which would be perceived by the ear as  
19 being well above what would be normally acceptable  
20 under the regulation.

21 Q. And I do understand it correctly that the  
22 way in which noise is measured, it's not a linear  
23 measurement? That is, if LTD at the 4,000 hertz  
24 is five decibels above the limit of 25 DB or six

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1 above, it's at 31, that's not merely a 20 percent  
2 increase in the noise energy, but that's closer  
3 to -- the human ear perceives that as closer to a  
4 50 percent increase; is that correct?

5 A. Could you read the question? I'm sorry.

6 Q. What I'm trying to get at is the way in  
7 which we talk about sound, sound is not -- if  
8 you're at 30 decibels and you go up to 40  
9 decibels, that's not really an increase of merely  
10 30 percent, ten decibels. It's perceived as more  
11 of a doubling; is that correct?

12 A. It's perceived as a doubling, and when we  
13 look at the energy involved, we're looking at ten



14 times as much energy. So we have a number of  
15 things going on all at the same time. Just  
16 looking at the ear response to it, it would sound  
17 like it's twice as loud.

18 Q. But how is it -- what is the basis for  
19 your statement that there's actually ten times as  
20 much energy?

21 A. The basis for that is the fact that the  
22 decibels are logarithmic. They're based on powers  
23 of ten, and when we go from, I believe your  
24 example was 30 to 40, if we were to put it in

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1 terms of linear units, the 30 would be 1,000  
2 units, and 40 would be 10,000 units. So we would  
3 be actually increasing it by a thousand by a  
4 factor of ten or up to 10,000 by going a distance  
5 of decibels.

6 Q. And that's just the amount of energy that  
7 that sound generates?

8 A. That's correct.

9 HEARING OFFICER KNITTLE: Let me -- I have  
10 a question of clarification you've been referring

11 to the regulation and when a -- the regulations  
12 when it's six decibels over. Are you talking  
13 about Class B regulations or Class C regulations?

14 THE WITNESS: Mr. Hearing Officer, I'm  
15 talking about Class B regulations.

16 HEARING OFFICER KNITTLE: I just wanted to  
17 make sure. I was a little unclear.

18 THE WITNESS: And referring specifically  
19 to the graph on the second page of the Schomer  
20 comment, which would be Exhibit 20.

21 HEARING OFFICER KNITTLE: Thank you very  
22 much.

23 BY MR. KAISER:

24 Q. And at that point, Dr. Schomer has set

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1 forth the Board's nighttime noise limits for Class  
2 B to Class A land uses?

3 A. That's correct.

4 Q. Now, given your familiarity with the LTD  
5 dock operations and the proximity of LTD's dock  
6 operations to Karen Roti's home, Paul  
7 Rosenstock's home, and Leslie and Henry Weber's  
8 home, and given your familiarity now with the

9 results of noise measurements taken by Tom  
10 Thunder's group on September 24th, 1997, do you  
11 have an opinion as to whether reasonable people  
12 living in the Roti's home, Mr. Rosenstock's home,  
13 or Ms. Weber's home would perceive noise at the  
14 levels measured by Tom Thunder during nighttime  
15 hours as annoying or a nuisance?

16 MR. KOLAR: Objection. I think that's a  
17 conclusion for the Pollution Control Board, not a  
18 proper area for opinion testimony, and, second,  
19 it's more properly just addressed with the  
20 complainants.

21 HEARING OFFICER KNITTLE: Mr. Kaiser.

22 MR. KAISER: Mr. Zak has analyzed noise  
23 problems. He's analyzed the human response to  
24 noise. He's talked with thousands of complainants

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1 around the state of Illinois, and I think he's  
2 capable of rendering an opinion as to whether a  
3 reasonable person would be disturbed by levels  
4 such as those recorded by Tom Thunder. Part of  
5 the issue is whether what Karen Roti and Paul

6 Rosenstock and Leslie Weber are complaining about  
7 is whether it's reasonable for them to complain.  
8 They're going to tell you what it's done to them,  
9 but there's this question of whether it's a  
10 reasonable complaint under the circumstances, and  
11 I believe Mr. Zak is capable of offering an  
12 opinion on that.

13                   Mr. Kolar is equally capable of  
14 investigating vesting opinion and the Board is  
15 capable of determining what weight to give to it,  
16 but I believe he's qualified to give this opinion,  
17 and I would like him to have the opportunity to  
18 give such an opinion.

19                   HEARING OFFICER KNITTLE: I'll overrule  
20 the objection. You can answer the question.

21 BY THE WITNESS:

22       A.     My opinion is that given the circumstances  
23 of the homes being where they're located, the fact  
24 that these people are being disturbed late at

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1 night, looking at the measurements that were  
2 obtained by Thunder and reanalyzed by Schomer, and  
3 also given the fact that I'm familiar with the

4 type of noise having heard it myself not only at  
5 this location, but at hundreds of other locations,  
6 that people -- very reasonable people would likely  
7 complain about this type of noise.

8                   It's been my experience that -- I've  
9 had hundreds of complaints, possibly even going to  
10 thousands of complaints, that relate to this type  
11 of noise.

12 BY MR. KAISER:

13 Q.     And this type of noise, you mean noise  
14 generated by truck dock activities?

15 A.     Just the type of noise we're describing  
16 here, the back-up beepers, the pneumatic brakes,  
17 clang and banging, those types of noises would --  
18 and engines being revved up also are typical of  
19 noises that reasonable people complain about.

20 Q.     Now, with respect to the noise generated  
21 by LTD's dock activities, have you given any  
22 consideration as to whether construction of a  
23 noise wall, and, in particular, a noise wall of an  
24 approximate height of 14 feet above grade, running

1 essentially from the western end of LTD's dock  
2 area up along the berm behind the truck staging  
3 area and down around to where this Y fork in the  
4 road with the left fork leading into the dock area  
5 and the right fork leading to LTD's north parking  
6 lot, do you have an opinion as to whether a  
7 properly designed and properly constructed noise  
8 wall would be effective in reducing transmission  
9 and migration of noise from LTD's dock area to the  
10 Roti residence, the Rosenstock residence, and the  
11 Weber residence?

12 A. Yes, I do.

13 Q. And what is that opinion?

14 A. It would be effective, in my opinion, of  
15 cutting the noise probably at least in half from  
16 where it is now which would bring it very close to  
17 being in compliance with the Board's regulations  
18 based on the Thunder measurements.

19 Q. And do you have an opinion as to whether  
20 construction of a noise wall at that location is  
21 technically feasible?

22 A. Yes. Based on experience with many, many  
23 noise walls and noise barriers, that's part and  
24 parcel of the noise control engineering aspect of

1 my job. I don't see any difficulty in feasibility  
2 there. Typically, what's done is a contractor  
3 would be responsible for the pylons or the  
4 foundation for the structure. So I don't see any  
5 limitations when I was there on the site that  
6 would prevent construction of such a structure.

7 Q. And would you view in light of the size of  
8 LTD's operations, not only gross size, but that  
9 size suggested about their revenues, do you have  
10 an opinion as to whether a noise wall costing  
11 approximately \$300,000 would be an economically  
12 reasonable solution to the problem posed by Mr.  
13 Rosenstock, Mr. and Mrs. Roti, and Ms. Weber?

14 A. Again, given the size of the facility, the  
15 area it's located had in, \$300,000 would not seem  
16 to me to be an excessive cost. There are other  
17 alternatives at the same time when we get into  
18 costs, and that would be to go with, say, a wood  
19 wall as opposed to a steel wall, which I believe  
20 you're referring to in the \$300,000 cost.

21 If they were to go with a wood wall,  
22 it would be considerably cheaper than \$300,000.  
23 It would have to be, again, 14 feet high and  
24 absolutely air tight, but noise-wise as long as it

1 was acoustically soft on the side facing the LTD  
2 building, it would work as well as the \$300,000  
3 steel wall.

4 Q. And what do you mean when you use the term  
5 acoustically soft?

6 A. I'm talking about having an acoustically  
7 absorbing material on the wall facing the LTD  
8 facility such as different grades of fiberglass.  
9 It comes in a fiberglass board that's relatively  
10 stiff and relatively waterproof that could be  
11 applied. There's other materials that come with a  
12 vinyl seal around them that could be also used on  
13 a wooden wall.

14 The drawbacks of a wooden structure  
15 with insulation on it -- I should clarify  
16 insulation by saying acoustic absorptive  
17 insulation or any acoustic absorptive material.  
18 The drawback, again, is maintenance. The less  
19 expensive structures lend themselves to periodic  
20 maintenance; whereas, the more expensive  
21 metal-type wall is normally just a one-time  
22 affair. It's put up and maintenance-free and will



23 last for normally well over 20 years.

24 MR. KAISER: Thank you, Mr. Zak. I have

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1 no further questions for you at this time. Mr.  
2 Kolar may.

3 HEARING OFFICER KNITTLE: Mr. Kolar.

4 MR. KOLAR: I've got easily an hour's  
5 worth of cross-examination, and I notice that --

6 MR. KAISER: Our good friend Mr. Harmon is  
7 back.

8 MR. KOLAR: -- Mr. Harmon is here, and I  
9 don't want to go out of order, but Mr. Kaiser is  
10 the one who wanted Mr. Harmon here, and for the  
11 record, Steve -- for the record, Steve asked if we  
12 would voluntarily produce Mr. Harmon as opposed to  
13 him issuing a subpoena. I said we would if he --  
14 if his clients agreed to pay his hourly rate door  
15 to door, and his clients agreed to that, but,  
16 again, I want to do my cross-examination of Mr.  
17 Zak, and I would guess that if we take a lunch  
18 break, we won't get to Mr. Harmon until 3:00  
19 o'clock with a one-hour lunch break.

20 HEARING OFFICER KNITTLE: Let's go off the

21 record for a second.

22 MR. KAISER: Well, if I just may respond  
23 to something that's on the record.

24 HEARING OFFICER KNITTLE: Let's stay on

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1 the record.

2 MR. KAISER: Thank you.

3 In fact, I did issue a subpoena and  
4 put it in the hands of a process server, and they  
5 made numerous efforts to serve Mr. Harmon at his  
6 place of employment and to work with his employer  
7 to get him to cooperate in accepting service, and  
8 Mr. Harmon made it pretty clear that he wasn't  
9 going to make himself available for service of  
10 process.

11 So as a backup, we agreed to pay his  
12 wage for coming down here and offering testimony  
13 at this hearing, but it wasn't by lack of effort  
14 through process that we had to reach this  
15 accommodation.

16 MR. KOLAR: I don't think it's accurate  
17 that he was avoiding service. I agree he didn't

18 get him, and then he asked me if we would produce  
19 him voluntarily.

20 HEARING OFFICER KNITTLE: Right. Well,  
21 we're in the current situation we are. I don't  
22 care how it got there unless it's subject to some  
23 sort of discovery motion for sanctions or  
24 something like that. So let's go off the record

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1 right now and figure out what we're going to do.

2 (Discussion had  
3 off the record.)

4 (Break taken.)

5 HEARING OFFICER KNITTLE: We're back on  
6 the record. Let me remind Mr. Zak, although the  
7 savvy veteran that you are of these proceedings,  
8 you're probably aware that you're still under  
9 oath, correct?

10 THE WITNESS: Yes, I am.

11 HEARING OFFICER KNITTLE: You can proceed,  
12 Mr. Kolar.

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

14 by Mr. Kolar

15 Q. How are you doing, Mr. Zak?

16 A. Just fine.

17 Q. Okay. You have no experience in land  
18 planning, correct?

19 A. Other than involvement with the Board  
20 regulations in the early '70s, no.

21 Q. You've never held yourself out as a land  
22 planner, right?

23 A. That's right.

24 Q. You've never worked for private clients

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1 doing land planning, correct?

2 A. That's correct.

3 Q. And you're not a member of any land  
4 planning groups or organizations, correct?

5 A. That's correct.

6 Q. And you understand based on reading Mr.  
7 Kracower's deposition testimony that there are  
8 people who, for a living, do land planning?

9 A. Yes.

10 Q. You're not a member of the Acoustical  
11 Society of America, correct?

12 A. That's correct.

13 Q. And you're not board certified by INCE?  
14 A. That's correct.  
15 Q. You have some sort of recognition by that  
16 group, right?  
17 A. Well, I am a member, and I have the  
18 membership standing through written examination.  
19 Q. But the board certification requires a  
20 longer examination beyond what you did?  
21 A. That's correct.  
22 Q. And do you recall that you gave your  
23 deposition on July 9th, 1999?  
24 A. Yes, I recall it was about that time.

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1 Q. And was it early June when you were out at  
2 LTD with Mr. Kaiser and myself?  
3 A. It might have been. I had the impression  
4 that the day we went to the facility was not the  
5 date of the deposition. I have the impression  
6 that I worked on another case involving a dog  
7 kennel run by Lucy Huck and that after inspecting  
8 the Huck operation that I went from there to a  
9 deposition.  
10 Q. Again, just to refresh your recollection,

11 let me show you page 41 of your deposition  
12 transcript, lines nine through 13, do you see I  
13 ask this question, calling your attention, again,  
14 to that June 2 or 3 site inspection, is that the  
15 only time you have ever been on the complainants'  
16 properties; answer, yes?

17 A. Yes.

18 Q. So you -- does that sound right that it  
19 was in early June when you toured the LTD  
20 warehouse with me and Mr. Kaiser and went on the  
21 complainants' property?

22 A. Yes.

23 Q. And then you came back for your deposition  
24 in July, and on that date did you go to the

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1 property as well?

2 A. It seems to me that we did very briefly.  
3 At least I believe that Mr. Kaiser and I drove  
4 around the facility there at LTD.

5 Q. And I wasn't present on the time before  
6 your deposition. Is that your recollection?

7 A. Again, you're talking about the same day

8 as the deposition?

9 Q. Right.

10 A. That's correct.

11 Q. And as of your deposition on July 9th,  
12 1999, you had not read any deposition transcripts  
13 of the complainants, true?

14 A. That's true.

15 Q. Have you read any deposition transcripts  
16 of the complainants as of today?

17 A. No.

18 Q. Is the only deposition transcript you read  
19 prior to today that of Allen Kracower?

20 A. Yes, and I basically skimmed that.

21 Q. Did Mr. Kaiser point out areas that you  
22 should read?

23 A. Not really. The only exception would have  
24 been on the first page there was an area that was

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1 highlighted. I think it was not so much the page  
2 of the deposition, but with the letter that he  
3 sent me with the deposition wherein Mr. Kracower  
4 gives an opinion on the warehousing as contained  
5 in the SLUCM code.

6 Q. Well, in the dep transcript, did Mr.  
7 Kaiser take a highlighter and highlight what he  
8 wanted you to look at?

9 A. No.

10 Q. And he had a letter?

11 A. Yes, a cover letter.

12 Q. Do you have that with you?

13 A. Yes, I do.

14 Q. Is it just an enclosure letter saying  
15 here's the transcript?

16 A. Yes.

17 Q. It didn't say anything like please look at  
18 this section?

19 A. No. It's just a letter typed basically  
20 saying here's the transcript and some other  
21 information besides that, and so I just took it  
22 upon myself to kind of skim through it.

23 Q. Do you have it with you? Can you put your  
24 hands on it quickly?

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1 A. Yes.

2 MR. KAISER: For the record, I'm handing



3 Mr. Zak his file on this case.

4 BY THE WITNESS:

5 A. Let me find it for you.

6 BY MR. KOLAR:

7 Q. Okay. Thanks. So what's been clipped  
8 together is an October 27th, 1999, letter from Mr.  
9 Kaiser to you, correct?

10 A. Yes.

11 Q. And the letter says, I am enclosing  
12 documents pertaining to the above-referenced  
13 case. If you have any questions, please do not  
14 hesitate to call, correct?

15 A. Correct.

16 Q. Did he send you the Appendix B, the SLUCM  
17 code?

18 A. Yes, one page from there wherein he  
19 highlighted the paragraph.

20 Q. And did he highlight footnote two for code  
21 637?

22 A. Yes.

23 Q. And it says warehousing and storage  
24 services include only those facilities that are

1 used by or are open to the public, correct?

2 A. That's correct.

3 Q. You understand that LTD's warehouse is not  
4 used by or open to the public, correct?

5 A. That would be my impression from when I  
6 was there, yes.

7 Q. But when you gave your deposition in this  
8 case, you cited the warehouse code provision as  
9 your opinion as to the proper classification of  
10 LTD, right?

11 A. That's correct.

12 Q. I guess, in particular, at your deposition  
13 you said LTD should be classified under codes 6376  
14 or 6379, right?

15 A. I believe so.

16 Q. I'm showing you the land classification  
17 system, code 637 is the three digit code for the  
18 four digit code you cited at your dep, right?

19 A. Yes.

20 Q. And code 637, the category is warehousing  
21 and storage services, right?

22 A. Yes.

23 Q. And it has that footnote two?

24 A. Yes.

1 Q. And that's the footnote that  
2 Mr. Kaiser highlighted and sent to you on October  
3 27th, 1999?

4 A. Yes.

5 Q. He was pointing out to you that the code  
6 you -- the code provisions you cited at your  
7 deposition transcript were inaccurate and should  
8 not apply to LTD?

9 MR. KAISER: Objection, argumentative.

10 BY MR. KOLAR:

11 Q. True?

12 HEARING OFFICER KNITTLE: I'll sustain  
13 that. I don't think it's argumentative. I don't  
14 know how he would know what Mr. Kaiser was  
15 intending to point out.

16 MR. KOLAR: That's true.

17 BY MR. KOLAR:

18 Q. After your deposition, you learned that  
19 codes 6376 and 6379 that you cited at your  
20 deposition transcript couldn't possibly apply to  
21 LTD because LTD is not a public warehouse, right?

22 MR. KAISER: Objection, misstates the  
23 manner in which the Board uses the SLUCM code.

24 HEARING OFFICER KNITTLE: Overruled.

1 BY MR. KOLAR:

2 Q. Is that true, Mr. Zak?

3 A. Well, I wouldn't necessarily say that.

4 What I've historically done over the last 27 years  
5 is choose the SLUCM code that appears to be the  
6 closest to a given situation, and I wouldn't  
7 necessarily say that the footnote there would  
8 change the land classification.

9 The main thing I'm doing with the  
10 SLUCM code is I'm determining what the land  
11 classification is, and I didn't see where footnote  
12 two really changed the land classification to  
13 other than Class B.

14 Q. The footnote, you would agree, footnote  
15 two, is part of the Pollution Control Board's  
16 regulations, right?

17 A. I would say it's part of the SLUCM code.

18 Q. Let me show you. Title 35, Environmental  
19 Protection, Subtitle H, Noise, Chapter One,  
20 Pollution Control Board, you've seen this before,  
21 right?

22 A. Yes, many, many times.

23 Q. Part 900, general provisions, right?

24 A. Uh-huh.

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1 Q. And then we get -- yes?

2 A. Yes.

3 Q. And then we get to Part 901, which has the  
4 numerical provisions, right?

5 A. Yes.

6 Q. And attached to the Pollution Control  
7 Board regulations is the classification document,  
8 the SLUCM code, right?

9 A. Yes.

10 Q. You can see right here it's called  
11 Appendix B, right?

12 A. Yes.

13 Q. And if we go to category 637, again,  
14 warehousing and storage services, it's got  
15 footnote two, right?

16 A. Yes.

17 Q. And then if we go on and find footnote  
18 two, we can see it's code 637 warehousing and  
19 storage services, and it's the same footnote that

20 Mr. Kaiser highlighted and sent to you on October  
21 27th, right?

22 A. That's correct.

23 Q. So based on footnote two at least, you  
24 would agree that the codes you assigned LTD at

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1 your deposition would not be a correct  
2 classification of the LTD operation?

3 A. Based on that alone, I would agree.

4 Q. At your dep, you weren't aware of footnote  
5 two to code 637; is that correct?

6 A. That's correct.

7 Q. Mr. Kaiser advised you of that footnote  
8 when he sent you that document on October 27th?

9 A. Yes.

10 Q. Are you now withdrawing your opinion that  
11 LTD falls under 637 warehousing?

12 A. I wouldn't say I was withdrawing it. I  
13 would like the opportunity to go back and go  
14 through the code, the various codes, and determine  
15 if that or there's another category that might be  
16 closer to -- a closer description of what is  
17 actually occurring at LTD.

18 Q. You made reference to my letter to the  
19 village of Bannockburn where I said that LTD was a  
20 freight forwarding operation?

21 A. Yes.

22 Q. Mr. Kaiser somehow advised you of that  
23 letter, right?

24 A. I received a copy of that letter.

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1 Q. Okay. Well, did Mr. Kaiser give you a  
2 copy of LTD Commodities answers to complainants'  
3 fourth set of interrogatories which were mailed to  
4 him on March 25th, 1999?

5 A. Can I see the document?

6 Q. Sure.

7 A. In answer to your question, I may have  
8 seen this, but it doesn't look especially  
9 familiar.

10 Q. Most of mine are premarked, but this one I  
11 didn't think I would need. Let's mark this  
12 Respondent's Exhibit 32. I think I've got an  
13 opening in that document I gave you.

14 (Respondent's Exhibit No. 32

15 marked for identification,  
16 11-2-99.)

17 BY MR. KOLAR:

18 Q. So Respondent's Exhibit 32 you can see on  
19 page four LTD is stating what it believes would be  
20 the applicable categories for its property, right?

21 A. Yes.

22 Q. I'm not saying you agree with them, but  
23 automobile parking Class C, right? That's what it  
24 says?

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1 A. That's what it says.

2 Q. Other motor freight transportation, Class  
3 C, right?

4 A. Yeah. That's what it says.

5 Q. Freight forwarding services, Class C?

6 A. Yes.

7 Q. Packing services, Class C, correct?

8 A. Yes.

9 Q. And when you were in the LTD warehouse on  
10 that tour by Mr. Voight, you saw, I think I heard  
11 you, thousands of packages on shelves and being  
12 picked off shelves and put on trucks, right?



13 A. That's correct.

14 Q. But none of those packages were opened,  
15 right?

16 A. No, they weren't.

17 Q. You couldn't see these knickknacks that  
18 you referred to when you were in the warehouse,  
19 you just saw boxes?

20 A. I believe that some of them were labeled,  
21 and I did notice that a lot of them were made in  
22 China.

23 Q. I know, but the boxes were not opened so  
24 that you could see what you called these

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1 knickknacks, right?

2 A. That's correct.

3 Q. And you saw LTD employees taking packages  
4 off trucks, putting packages on trucks, right?

5 A. Yes.

6 Q. And the whole warehouse -- 350,000 feet  
7 was assigned to storing all these packages until  
8 they were put on the trucks, right?

9 A. I would say that was part of the

10 operation.

11 Q. So the predominant activity in that LTD  
12 warehouse would be the storage of the packages and  
13 removing packages off the shelves and putting them  
14 on the trucks and taking them off the trucks and  
15 putting them on the shelves, right?

16 A. Yes. I would agree to that.

17 Q. As of your deposition transcript, you had  
18 never looked at LTD's product catalogues, correct?

19 A. That's correct.

20 Q. And as of your deposition -- Strike that.

21 Let me restate that question.

22 As of your deposition on July 9th,  
23 1999, you had never looked at any of LTD's  
24 catalogues?

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1 A. That's correct.

2 Q. And as of your deposition on July 9th, you  
3 had never looked at LTD's web site?

4 A. That's correct.

5 Q. And you yourself have performed no  
6 measurements whatsoever regarding the level of  
7 noise coming from LTD's trucking operations,

8 right?

9 A. That's correct.

10 Q. And you understand as a person with 27  
11 years' experience at the IEPA that the  
12 complainants, if they chose to, could hire their  
13 own noise consultant to make actual measurements  
14 of the LTD trucking operations?

15 MR. KAISER: Objection, calls for  
16 speculation.

17 HEARING OFFICER KNITTLE: Something, Mr.  
18 Kolar? Anything else?

19 MR. KOLAR: No.

20 HEARING OFFICER KNITTLE: I'll overrule  
21 that.

22 BY MR. KOLAR:

23 Q. Can you answer that?

24 A. Yes. I would assume they could.

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1 Q. You have no tape recordings of  
2 measurements of noise at LTD, correct?

3 A. That's correct.

4 Q. And LTD was cooperative in allowing you to

5 tour the facility, right?

6 A. Yes, I would say so.

7 Q. And you went through the original building  
8 and then you went into the 1994 addition on the  
9 south end, right?

10 A. That's correct.

11 Q. You saw a close-up view of the dock  
12 levelers and the trucking bays?

13 A. Yes.

14 Q. You saw the truck staging area?

15 A. Yes.

16 Q. And you -- was it your opinion on that  
17 date that the wooden stops in the truck staging  
18 area were well designed?

19 A. I believe so, yes.

20 Q. And then LTD took you into the office area  
21 and the cafeteria area?

22 A. Yes.

23 Q. And you basically walked wherever Mr.  
24 Kaiser wanted to go?

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1 MR. KAISER: Objection.

2 HEARING OFFICER KNITTLE: How so?

3 MR. KAISER: Misstates the experience.

4 HEARING OFFICER KNITTLE: I'll sustain the  
5 objection.

6 BY MR. KOLAR:

7 Q. You walked through the office and out the  
8 door on the west side of the LTD facility, right?

9 A. Yes.

10 Q. And it's your opinion that LTD is suitably  
11 located at its present location, correct?

12 A. With some noise controls, yes.

13 Q. Well, at your deposition, do you recall  
14 admitting that LTD was suitably located without  
15 any sort of qualification about noise controls?

16 MR. KAISER: Objection, improper  
17 impeachment. He has the dep transcript. If  
18 there's a question and answer in the context of  
19 which it was asked, I think it should be done in  
20 that manner.

21 HEARING OFFICER KNITTLE: Why don't you go  
22 ahead and do it that way, Mr. Kolar? As long as  
23 we have the objection, I'll sustain it.

24

1 BY MR. KOLAR:

2 Q. Page 28 of your deposition transcript,  
3 line three, starting question, so you would agree  
4 that this site is a suitable location for LTD;  
5 answer, that determination is really reserved to  
6 the Pollution Control Board, not to me; question,  
7 well let me back up because you just said, quote,  
8 I would say LTD is suitably located, close quote;  
9 answer, that's a personal opinion; question,  
10 that's your testimony, right; answer, yes.

11 Did I read that correctly?

12 A. Yes.

13 Q. At your deposition, you didn't have the  
14 qualification that LTD is suitably located with  
15 appropriate noise control, true?

16 A. That's true.

17 Q. And the bumper stops that you say are  
18 suitably located, those would be --

19 MR. KAISER: Objection, misstates his  
20 testimony.

21 HEARING OFFICER KNITTLE: I'll sustain  
22 that.

23 MR. KAISER: True. Thank you.

24

1 BY MR. KOLAR:

2 Q. The bumper stops that are well designed  
3 would be the bumper stop or whatever we call it  
4 shown in Respondent's Exhibit 76, true?

5 A. I really can't tell that well given the  
6 picture.

7 Q. Let me show you Respondent's Exhibit 75.  
8 Would you agree that that's a photo of the truck  
9 staging area you saw?

10 A. Yes.

11 Q. And that's where you looked down and saw  
12 the wooden bumper stops for the trailers being  
13 backed into the staging area?

14 A. Yes.

15 Q. And those are the wooden bumper stops that  
16 you said were well designed?

17 A. Yes, although I would qualify that by  
18 saying that the photographs here don't really show  
19 the stop that well that I had said appear to be  
20 well designed.

21 Q. We'll ask Mr. Voight what photo 76 shows,  
22 but 75 does show the staging area?

23 A. Okay.

24 Q. Right?

1 A. Yes.

2 Q. So on the issue of noise from LTD  
3 unreasonably interfering with the complainants,  
4 you would expect LTD's noise to interfere with  
5 anybody living in the Roti home, the Rosenstock  
6 home, or the Weber home, right?

7 A. I would kind of qualify that by saying a  
8 reasonable person, and what I mean by that is I  
9 wouldn't expect every person in all three  
10 residences to be equally disturbed by the noise.

11 Q. As you sit here today, you don't know if  
12 anybody in all three residences is equally  
13 disturbed by the noise, right?

14 A. That's correct.

15 Q. You don't know if the Weber's son is  
16 disturbed by the noise, true?

17 A. True.

18 Q. You don't know if he's a reasonable or  
19 unreasonable person, true?

20 A. True.

21 Q. Have you been told by any of the



22 complainants that the Weber's -- one of their sons  
23 is not bothered at all by the noise from the LTD  
24 operations?

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1 A. I may have been at one time, but I don't  
2 remember it now.

3 Q. Now, I think at one point -- Strike that.

4 You, as an employee of the state,  
5 really view yourself as an independent person in  
6 these noise disputes, right?

7 A. I try to maintain as independent of an  
8 attitude as I can.

9 Q. Do you remember after your deposition did  
10 you get a letter from me dated July 12th, 1999,  
11 asking you for, among other things, your  
12 curriculum vitae and some Pollution Control Board  
13 cases?

14 A. Yes.

15 Q. Did you ever send those to me?

16 A. I don't --

17 MR. KAISER: Objection, relevance.

18 BY THE WITNESS:

19 A. I don't believe I did that, no.

20 HEARING OFFICER KNITTLE: You can respond  
21 before I rule if you want, Mr. Kolar.

22 MR. KOLAR: No response.

23 HEARING OFFICER KNITTLE: Overruled.

24 MR. KOLAR: Let me mark this letter as

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1 Respondent's Exhibit 33.

2 (Respondent's Exhibit No. 33

3 marked for identification,

4 11-2-99.)

5 BY MR. KOLAR:

6 Q. Do you recall getting Respondent's Exhibit  
7 33 on or about July 13 -- 14, 1999?

8 A. Yes, I do.

9 Q. Okay. And did you send me any of the  
10 things listed in Exhibit 33?

11 A. It was an oversight on my part. It was  
12 not a deliberate thing not sending the information  
13 out.

14 Q. And I believe you in that regard, but from  
15 some oversight, I never got these documents from  
16 you, right?

17 A. That's true.

18 Q. Now, on the classification issue in coming  
19 to the conclusion that LTD is a Class B use, did  
20 you read any of Paul Schomer's letters from 1997?

21 A. I believe I did look over some of his  
22 letters, but as far as my classification of that  
23 area, whatever his opinion was wouldn't really --  
24 whether he -- however he considered it to be, I

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1 was still making a completely independent  
2 assessment of what was there and then based on  
3 that designated it as either a Class C or B land  
4 use.

5 Q. Let me show you Respondent's Exhibit 40,  
6 an April 20th, 1997, letter from Mr. Schomer to  
7 David Lothspeich at the village of Bannockburn,  
8 and I've highlighted the second paragraph, first  
9 page. Do you see where Mr. Schomer states that  
10 the applicable limits are for sound transmitted  
11 from Class C, parentheses, industrial land uses to  
12 Class A, parentheses, residential land uses?

13 A. Yes. I thought that was an incorrect  
14 statement when I read it.

15 Q. So you had read that before you came to  
16 your conclusion as to LTD is a Class B?

17 A. I believe from the description of the  
18 residence --

19 MR. KOLAR: Move to strike as  
20 nonresponsive.

21 BY MR. KOLAR:

22 Q. Had you read that before you came to your  
23 conclusion that LTD is a Class B?

24 HEARING OFFICER KNITTLE: By the way, I'll

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1 sustain the motion to strike.

2 BY THE WITNESS:

3 A. I don't remember.

4 BY MR. KOLAR:

5 Q. Respondent's Exhibit 41, a July 10th,  
6 1997, letter from Mr. Schomer to Jack Voight, and  
7 I think he's got the same letter dated July 11th,  
8 which is Exhibit 42.

9 Do you see on the second page it says  
10 the corrected truck yard octave band, et cetera,  
11 and then he cites sound emitted by Class C land

12 uses to Class A land uses?

13 A. Yes, I see that, but, again, I disagree  
14 with the statement.

15 Q. Did you read this July 10th, 1997, letter  
16 or its July 11th counterpart before giving your  
17 opinion or forming the opinion that LTD was a  
18 Class B use?

19 A. To answer honestly, I don't remember  
20 exactly when I came to the conclusion it was Class  
21 B, whether it was before I seen the Schomer letter  
22 or after I seen the Schomer letter, but in any  
23 case, the Schomer opinion would not have swayed me  
24 one way or the other.

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1 Q. You've been with the Illinois  
2 Environmental Protection Agency since 1972?

3 A. Correct.

4 Q. What did you did before that?

5 A. I was in college getting my bachelor of  
6 science degree in biology, and then prior to that,  
7 I was in electronics in the Marine Corps.

8 Q. Did you have any role with the Illinois  
9 Environmental Protection Agency while you were in

10 college?

11 A. No. Well, if I could clarify that, not  
12 when I was getting my bachelor of science degree,  
13 but when I got my master's degree in public  
14 administration, I was an employee of the EPA at  
15 that time.

16 Q. When did get your bachelor's degree?

17 A. 1971.

18 Q. When did you start working for the IEPA?

19 A. 1972.

20 Q. What month?

21 A. May.

22 Q. So before May of 1972, had you had any  
23 experience at all with working with the IEPA?

24 A. No.

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1 Q. Let me show you what Mr. Kaiser marked the  
2 other day as Schomer Deposition Exhibit 2. This  
3 was during his evidence deposition.

4 Have you ever seen that document  
5 before, which I guess for the record is control of  
6 noise from stationary sources report of the task

7 force on noise, state of Illinois Institute for  
8 Environmental Quality, and on the second page, it  
9 says January 1972, and then the back of that page  
10 says March 15th, 1972.

11                   Have you ever seen that document  
12 before?

13     A.     I probably have, but when I had seen the  
14 document, it was probably 25 to 27 years ago.

15     Q.     Based on what you've told us so far, it  
16 would appear you had no role whatsoever in the  
17 preparation of this document. Is that accurate?

18     A.     Yes. That's true.

19     Q.     I thought I heard on direct that you said  
20 you had some role in assigning the classifications  
21 to Appendix B?

22     A.     Yes. From memory having worked on the  
23 noise regulations that were adopted in '73, I had  
24 reviewed a lot of the drafts that were before the

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1 Board regarding regulatory limits and the  
2 appendices and had prepared some noise measurement  
3 reports supporting some of the findings in there  
4 and through that had an input in the final

5 regulation adopted in 1973.

6 Q. Well, did you have any role in actually  
7 sitting down with a ruler and drawing lines on the  
8 right side of the Appendix B to assign a C or a B  
9 classification to land uses?

10 A. No.

11 Q. Okay. Do you know if Mr. Schomer had any  
12 role in that?

13 A. I believe from conversations I've had with  
14 him that he did.

15 Q. Now, you yourself, you have a copy of the  
16 Standard Land Use Coding Manual, right?

17 A. No, I don't.

18 Q. Didn't you at your deposition have a copy  
19 of the Standard Land Use Coding Manual?

20 A. Quite honestly, at this time, I don't  
21 remember if I did or not.

22 Q. Have you ever seen the Standard Land Use  
23 Coding Manual before?

24 A. Yes.

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1 Q. Have you seen it before your deposition?



2 A. Yes.

3 Q. So you understand that the Standard Land  
4 Use Coding Manual goes along with Appendix B which  
5 lists land uses?

6 MR. KAISER: Objection. It may misstate  
7 the evidence, lacks foundation.

8 HEARING OFFICER KNITTLE: Could you  
9 rephrase it, Mr. Kolar?

10 MR. KOLAR: I'll mark mine as 34. I'll  
11 have to make another copy.

12 (Respondent's Exhibit No. 34  
13 marked for identification,  
14 11-2-99.)

15 BY MR. KOLAR:

16 Q. You had looked through the Standard Land  
17 Use Coding Manual prior to today, right?

18 A. Yes.

19 Q. And you recall that it had Appendix B  
20 attached to it, which is the land use designation  
21 document?

22 A. No.

23 Q. Did you consult the Standard Land Use  
24 Coding Manual at all before forming your opinion

1 that LTD was a Class B use?

2 A. I would have referred to -- well, I didn't  
3 form the opinion that it was a Class C use. It  
4 was a Class B use it's my opinion, I got that from  
5 Appendix B of the Board regulation.

6 Q. Right. But did you consult the Standard  
7 Land Use Coding Manual before you formed your  
8 opinion that LTD was a Class B use?

9 A. Are you referring to the portion of  
10 Appendix B, or are you referring to the actual  
11 document itself, and, like I said, I had seen the  
12 document previously. I've even gotten a copy  
13 through our library at EPA there reproduction some  
14 years ago, but at this present time, I don't know  
15 where my copy is.

16 Q. Well, did you consult the manual, not the  
17 appendix, but the manual before you came --

18 A. No, I did not.

19 Q. Let me show you page 63 of your  
20 deposition, line 19; question, do you also have  
21 the Standard Land Use Coding Manual; answer, yes;  
22 do you know the date on the manual that you have;  
23 I believe it was first published in 1969. That's  
24 the only date I can remember. I haven't looked at

1 my particular copy of that in several years.

2 Do I read those correctly?

3 A. That's correct.

4 Q. So as of your deposition, you did have a  
5 Standard Land Use Coding manual, right?

6 A. Not with me at the deposition.

7 Q. You had one in your possession or control,  
8 right?

9 A. Yes.

10 Q. And as of your deposition, you understood  
11 that there was a relationship between the Standard  
12 Land Use Coding Manual and Appendix B which was  
13 ultimately attached to the Pollution Control Board  
14 regulations?

15 A. Yes.

16 Q. Let me show you Complainants' Exhibit 2.  
17 Do you see on the back I guess somebody tore off  
18 the mailing label. Do you know who did that?

19 A. I have no idea.

20 Q. Okay. What does it say here on the order  
21 form as to the business shipping address, computer  
22 department, Quill Corp.?

23 A. Yes.

24 Q. Did I read that correctly?

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1 A. Yes.

2 Q. Do you know what Ms. Leslie Weber does?

3 A. No.

4 Q. Let's look at this catalogue a little bit  
5 here, in particular, the order form documents in  
6 the middle of the document. Do you see here on  
7 step two on the first page it says if the business  
8 mailing address is incorrect or missing, please  
9 print the correct information above. Please do  
10 not change to private residence.

11 Do you see that?

12 A. Yes.

13 Q. Had you read that before forming your  
14 opinion that LTD is not a business-to-business  
15 operation?

16 A. Yes.

17 Q. On the second page of this order form, the  
18 reverse side, do you see up in the top it gives a  
19 box where you're suppose to put name -- business  
20 name and business address, right?

21 A. Yes.

22 Q. Did you look at this before forming your  
23 opinion regarding business-to-business?

24 A. Yes.

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1 Q. And you see it says account number?

2 A. Yes.

3 Q. What would your account number be if you  
4 were going to have something shipped to your home?

5 MR. KAISER: Objection, irrelevant.

6 HEARING OFFICER KNITTLE: Overruled.

7 BY MR. KOLAR:

8 Q. Can you answer that question?

9 A. Oh, it's overruled.

10 From what I picked up on the web  
11 site, I could either contact -- I think contact  
12 the company, referring to LTD by company, and I  
13 believe there was another way also to generate an  
14 account number, but I don't remember exactly how  
15 it worked right now.

16 Q. Okay. And on page eight of this ordering  
17 form section, do you see where it says in bold  
18 blue print note, LTD Commodities will ship to

19 business names and addresses only. Please do not  
20 change your company address to a private  
21 residence.

22 Do you see that?

23 A. Yes.

24 Q. And did you read that before coming to the

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1 conclusion that LTD does not engage in  
2 business-to-business sales?

3 A. I didn't come to the conclusion they  
4 don't, but I came to the conclusion that they  
5 appear to sell to residences and/or businesses.  
6 Basically, my testimony, I believe, was to state  
7 that they apparently sell to both.

8 Q. Did you read on page -- the last page of  
9 this order form where it says is this a new  
10 account, question mark. If so, please check here  
11 and attach your business stationery.

12 Did you read that?

13 A. Yes.

14 Q. Now, when you buy knickknacks, you  
15 typically buy one knickknack, true?

16 MR. KAISER: Objection.

17 BY THE WITNESS:

18 A. I don't buy knickknacks.

19 MR. KAISER: Withdrawn.

20 BY MR. KOLAR:

21 Q. Have you ever purchased a wallet?

22 A. No.

23 Q. You've never purchased a wallet?

24 A. I've never purchased a wallet.

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1 Q. Have you ever purchased a photo album?

2 A. No. I never purchased a photo album.

3 Q. Are you married?

4 A. Yes.

5 Q. Has your wife ever purchased a photo

6 album?

7 A. Yes.

8 Q. Did your wife ever go out, to your

9 knowledge, and buy three or more photo albums at

10 one time?

11 A. Yes, she has.

12 Q. Okay. Have you ever purchased a watch?

13 A. No.

14 Q. Do you have a watch on?  
15 A. Yes. My wife bought it for me.  
16 Q. When she got you that watch, did she give  
17 you three watches or more?  
18 A. No.  
19 Q. And you saw throughout this catalogue in  
20 the upper right-hand corner usually the note that  
21 prices were in lots of three or more, right?  
22 A. That's correct.  
23 MR. KOLAR: I probably have still a way to  
24 go. Do you want to --

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1 HEARING OFFICER KNITTLE: Let's go off for  
2 a second.  
3 (Discussion had  
4 off the record.)  
5 HEARING OFFICER KNITTLE: Back on the  
6 record.  
7 BY MR. KOLAR:  
8 Q. Are you aware that Mr. Schomer testified  
9 that if LTD is classified as a C classification,  
10 then based on Mr. Thunder's report there's no  
11 violation of C to A numerical limits?



12 MR. KAISER: Objection. It may mistate  
13 Dr. Schomer's testimony.

14 BY THE WITNESS:

15 A. I'm not aware of that.

16 HEARING OFFICER KNITTLE: I'm going to  
17 overrule -- hold on a second, Mr. Zak.

18 THE WITNESS: Yes, sir.

19 HEARING OFFICER KNITTLE: That's okay.  
20 I'm going to overrule and let him answer it. If  
21 that's a misstatement of the testimony, I would  
22 hope Mr. Zak would realize that.

23 BY MR. KOLAR:

24 Q. Have you read what Mr. Schomer testified

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1 to last Friday?

2 A. No, I have not.

3 Q. Well, would you agree with that statement  
4 that if LTD is a C class, there would be no  
5 violation of the numerical regulations of the  
6 Pollution Control Board?

7 A. No, I don't think that's correct. From  
8 what I've seen of the Thunder report, there

9 appears to be even a problem in daytime.

10 Q. Now, for Sections 901.102 and 901.104 of  
11 the regulations, a person has to use a one-hour  
12 average, true?

13 A. Yes.

14 Q. And that's something different than the  
15 one second versus five-second interval you talked  
16 about, right?

17 A. Yes.

18 Q. So in determining whether impulse sounds  
19 are in violation of 901.104, you've got to use a  
20 one-hour average for the impulse sounds during  
21 that one hour, right? Let me restate.

22 A. No. I understand the question. There's a  
23 -- depending upon which version of regulations  
24 you've got --

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1 Q. I've got the corrected ones. Your web  
2 site is wrong, isn't it? The Illinois Pollution  
3 Control Board web site has an error on it  
4 regarding the --

5 A. That's not ours. That's the Pollution  
6 Control Board's.

7 HEARING OFFICER KNITTLE: Just for the  
8 record, it's a joint venture between the Pollution  
9 Control Board and the Illinois Environmental  
10 Protection Agency.

11 BY MR. KOLAR:

12 Q. Have you ever looked at the Section  
13 901.104 on the Illinois Pollution Control Board's  
14 web site?

15 A. Yes.

16 Q. And that has an outdated version of that  
17 regulation, true?

18 A. That's correct.

19 Q. It has that fast dynamic characteristic  
20 reference, right?

21 A. That's correct.

22 Q. And it shouldn't be in there?

23 A. That shouldn't be in there.

24 Q. And the one I have here for 901.104

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1 doesn't have that fast dynamic characteristic  
2 reference, right?

3 A. That's correct. Your copy is printed by

4 the Illinois EPA, and that's got the correct  
5 version.

6 Q. So for analyzing impulse sounds allegedly  
7 coming from LTD, you would have to look at all  
8 impulse sounds that happen in a one-hour period  
9 and average those impulse sounds to determine if  
10 there's a violation of 901.104?

11 A. You would use one-hour averaging, correct.

12 Q. And you would do the same thing for  
13 901.102?

14 A. That's correct.

15 Q. So if we look at Complainants' Exhibit 19,  
16 figure two, on the bottom Mr. Thunder shows the  
17 nine octave band limits, right? Strike that.

18 On the bottom of figure two,  
19 Mr. Thunder shows the nine octave band frequencies  
20 in hertz, right?

21 A. Correct.

22 Q. So all figure two would tell us is the  
23 level of a noise at a particular point in time,  
24 right, as opposed to a one-hour average?

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1 A. Could you clarify that question? I'm not

2 quite sure what you mean.

3 Q. Well, I thought I heard with Mr. Kaiser  
4 you went through Complainants' Exhibit 19 and  
5 Complainants' Exhibit 20, which is the Schomer  
6 letter, and explained how they show a violation of  
7 the impulse noise regulations of the Pollution  
8 Control Board.

9 Do you recall that testimony?

10 A. I believe we were looking at the octave  
11 band data.

12 Q. Okay. Well, on Complainants' Exhibit 20,  
13 page two, LTD reported level decibels where Mr.  
14 Schomer has put numbers here taken from apparently  
15 Thunder documents.

16 What do you understand those numbers  
17 to be?

18 A. I understood those to be a one-hour Leq  
19 taken by Tom Thunder.

20 Q. What about on impulse, do you know if Mr.  
21 Thunder had looked at impulse based on a one-hour  
22 Leq when he had prepared his document January 8th,  
23 1998?

24 A. I don't believe he did. I got the

1 impression reading through the document that he  
2 was looking more at either fast response or a  
3 five-second linear averaging rather than a  
4 one-hour Leq.

5 Q. Then going back to Complainants' Exhibit  
6 19, the Thunder report, figure two, what do you  
7 understand this figure two to represent?

8 A. Well, it's the third octave band, and I'm  
9 kind of perplexed as to why it's even there.

10 Q. Well, do you know --

11 A. It's to be expressed in octave bands.  
12 That's one of the reasons I think that I really  
13 hadn't paid a lot of attention to figure two  
14 because what we're dealing with was mainly octave  
15 levels in this situation, again, based on the  
16 Thunder data.

17 Q. Well, with respect to Mr. Thunder's  
18 analysis based on one-hour averaging, it would be  
19 inappropriate for numerical purposes to simply  
20 look at one impulse sound and ask whether that  
21 sound violates the numerical regulations, true?

22 A. Well, with qualifications. If it was a  
23 very robust impulsive sound, one would look at one  
24 individual sound, but to, say, take a one-hour

1 period of time and have one small excursion in a  
2 one-hour period of time, then the impact from that  
3 would be, you know, negligible.

4 Q. I understand. But you can't take one  
5 impulse sound that happened at a particular point  
6 during the one hour and say that impulse sound  
7 that occurred at 2:39 a.m. and 21 seconds was a  
8 violation of the impulse numerical regulations,  
9 true?

10 A. Not entirely. Again, if the sound is very  
11 loud, you could because you would know from the --  
12 even to bring it through a one-hour Leq that  
13 you're going to end up with a number that is above  
14 the regulatory limit, but that's an unusual  
15 situation.

16 The normal situation, you're correct,  
17 would be where you have, say, an impulse, perhaps,  
18 even several impulses over a one-hour period of  
19 time and they're all of short duration, not  
20 extremely high level impulses, and over the  
21 one-hour period of time of averaging they would  
22 average out to a number that would be in  
23 compliance with the regulations.

24 Q. I guess if we only had one impulse sound

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1 during one hour, then the average would be, and  
2 that's not even an average, that particular  
3 impulse?

4 A. Yes, but I may need to qualify that and  
5 say you were talking about a small impulse sound  
6 as opposed to a large one. Basically, I think  
7 what we're dealing with here are small impulse  
8 sounds, but the statement has to be qualified.

9 Q. Would you agree that if you had 20 impulse  
10 sounds during the one-hour period and one of them  
11 was in excess of the numerical regulation for  
12 impulse sounds, you couldn't just focus on that  
13 one that was in excess to determine whether there  
14 was a numerical violation?

15 A. That's true.

16 Q. You'd have to look at all 20 of those,  
17 right?

18 A. Well, not only all 20 of those, but also  
19 the one-hour period of time they all occurred in.

20 Q. Right. You'd have to look at the one-hour



21 period, every impulse sound during that one-hour  
22 period and do the one-hour averaging?  
23 A. Right, and you'd average a lot of  
24 nonexistent sound in there.

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1 Q. And for both 901.102 and 901.104, you'd  
2 have to deduct or subtract ambient noise, right?  
3 A. That's correct.  
4 Q. And in early June 1999 when you went onto  
5 the Roti property, the first thing you heard was  
6 the tollway, right?  
7 A. That's correct.  
8 Q. And then you heard the tollway the whole  
9 time you were on the Roti, the Rosenstock and the  
10 Weber property on that date in early June 1999?  
11 A. That's correct.  
12 Q. And you heard a couple truck noises when  
13 you were on the Roti property, right?  
14 A. It was on one of the properties. To be  
15 honest with you and give you an honest answer, I  
16 can't remember which property we were on when I  
17 heard it.  
18 Q. Well, the Roti property would be the one

19 farthest to the west directly north of the parking  
20 lot. I think that was the one where you heard the  
21 two sounds?

22 A. To answer your question fairly, it was one  
23 of the three, but at what point in time it was,  
24 you know, where I heard the sound I'm not sure.

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1 Q. It would be accurate that when you were  
2 there you only heard two truck sounds during the  
3 time you were on the complainants' properties?

4 A. That could be.

5 Q. That's your recollection?

6 A. Yes.

7 Q. And is it accurate that you do not recall  
8 hearing -- Strike that.

9 You did not hear any truck noise  
10 sounds when you were on two of the three lots on  
11 that day in June 1999, right?

12 A. Yes, I believe so. I didn't.

13 Q. And you have no idea as to the decibel  
14 level of those two sounds you heard on one of the  
15 complainants' properties in early June 1999,

16 correct?

17 A. I wouldn't be able to give you the exact  
18 one-hour Leq level of those sounds, no.

19 Q. Were you at the LTD property this morning?

20 A. No.

21 Q. Would you agree that LTD would not be  
22 responsible for any noise coming from the  
23 Corporate 100 office building and parking lot to  
24 the east?

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1 A. Yes.

2 Q. In any of your visits, did you see a  
3 garbage disposal facility in the northwest corner  
4 of the Corporate 100 parking lot?

5 A. I don't remember that, no.

6 Q. Do you know if a garbage truck, in your  
7 experience, has a back-up warning beeper on it?

8 A. Yes, it does.

9 Q. Okay. And have you seen the roll-out  
10 Dumpsters around the state of Illinois that are  
11 about as big as half the size of a compact car?

12 A. Yes.

13 Q. Okay. And you understand how garbage

14 trucks pick those up?

15 A. Yes.

16 Q. They're elevated into the air, tipped  
17 upside down, and all the garbage falls in the  
18 truck?

19 A. I've seen that type of operation done,  
20 yes.

21 Q. And would you agree that that type of  
22 operation creates impulse sounds, clanking of a  
23 garbage container against parts of the truck?

24 A. It can. A lot depends upon what's in

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1 the -- what type of wreckage they have in the  
2 Dumpster.

3 Q. But I'm talking about the Dumpster itself  
4 clanking against the truck itself, that can create  
5 impulse sounds?

6 A. Yes, it can.

7 Q. And you would agree that a noise while on  
8 LTD's property would in no way protect the  
9 Rosenstock property and the Weber property from  
10 any noises created by the garbage disposal

11 facility?

12 A. That's correct.

13 Q. And you would agree that if Lakeside Drive  
14 is a public road, LTD wouldn't be responsible for  
15 any noise from the public road?

16 A. That's true.

17 Q. And you would agree that if the noise wall  
18 had to stop on the LTD property, that noise wall  
19 wouldn't protect Mr. Rosenstock and the Webbers  
20 from any noise of trucks on the public road,  
21 Lakeside Drive?

22 A. That's true.

23 Q. You would agree that the complainants,  
24 because of their proximity to the tollway and a

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1 commercial development to the south, simply live  
2 in a noisy area.

3 MR. KAISER: Objection.

4 HEARING OFFICER KNITTLE: What's your  
5 objection?

6 MR. KAISER: Leading.

7 MR. KOLAR: It's cross-examination.

8 HEARING OFFICER KNITTLE: Overruled.

9 BY THE WITNESS:

10 A. No, I would not necessarily agree with  
11 that completely. The reason I say that is the  
12 complaints seem to be occurring at the wee hours  
13 of the morning in the early a.m., and I would  
14 expect tollway noise to be down considerably at  
15 that time, and also it's not the customary  
16 practice in my experience of garbage trucks to be  
17 picking up roll-out containers at 1:00 and 2:00  
18 o'clock in the morning.

19 So looking at the period of time  
20 where the complaints are coming in, I wouldn't  
21 characterize that area as being excessively noisy  
22 at that time.

23 BY MR. KOLAR:

24 Q. Would you agree based on your 27 years of

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1 experience that if the wind is blowing from west  
2 to east that the complainants will hear the  
3 tollway more so than if the wind is going east to  
4 west?

5 A. That's correct.

6 Q. Would you agree that if the tollway  
7 pavement is wet that the complainants will hear  
8 noise from the tollway more so than if it was dry?

9 A. That's true too.

10 Q. And you understand just based on a person  
11 who lives in Illinois that the tollway could be  
12 wet during the winter and springs months from rain  
13 and snow?

14 A. Yes.

15 Q. So if you wanted to measure LTD noise on a  
16 day when the tollway was wet, it would be  
17 appropriate to deduct that ambient noise for that  
18 particular day?

19 A. I wouldn't want to measure it when the  
20 tollway is wet. That really wouldn't be the  
21 proper way to do it. It would be proper to  
22 measure when the tollway was dry because that  
23 would be a more normal condition and also to  
24 measure it at the same time that the complaints

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1 are coming in, which would be in the early a.m.

2 Q. Well, have you done any sort of analysis  
3 as to how many days during the year the tollway is

4 wet in the vicinity of the Roti property?

5 A. Based on my experience of living in  
6 Illinois for 28 years, I would say it's dry more  
7 times than it's wet.

8 Q. So would it be wet a third of the year?

9 A. I would say a third or less.

10 Q. Would it be wet 25 percent or 33 percent  
11 of the year?

12 A. I would just -- my own personal opinion  
13 would be to say 33 percent or less and leave it at  
14 that.

15 Q. So it could be 32 percent and it could be  
16 two percent?

17 A. Yes.

18 Q. Do, in your experience, trucks make more  
19 noise when they accelerate than a truck at a  
20 constant speed?

21 A. Yes.

22 Q. Do cars make more noise when they  
23 accelerate than cars at a constant speed?

24 A. Depending on the car. A lot depends on an



1 individual car in a situation like that. I would  
2 say typically, though, all else being equal,  
3 acceleration would be noisier than, say, constant  
4 high speed driving.

5 Q. So then you would agree that cars and  
6 trucks accelerating away from a tollbooth would be  
7 noisier than cars and trucks going at a constant  
8 speed?

9 A. Generally speaking, yes.

10 Q. Do you know if there are any tollbooths in  
11 the vicinity of LTD Commodities?

12 A. I don't know.

13 Q. Well, is that something you would want to  
14 know before giving an opinion as to whether LTD  
15 was violating a numerical regulations or nuisance  
16 regulations?

17 A. Well, yes, and that would be taken care of  
18 by the ambient measurements before any type of  
19 measurements were taken.

20 Q. Now, the wall that you mentioned, the  
21 \$300,000 wall or less, 14 feet high, is it your  
22 testimony that if such a wall is constructed that  
23 then there would no longer, in your opinion, be a  
24 numerical violation by LTD and no longer be a

1 nuisance, an alleged nuisance violation, by LTD?

2 A. I believe the wall would take care of the  
3 -- again, I have to base this all on the Thunder  
4 report. Based on Thunder's measurements, the wall  
5 would bring the -- would solve the numerical  
6 problem and largely solve any nuisance problem  
7 with the one provision in there that after the  
8 wall was up that activities in there would have to  
9 be tailored in such a way as to keep the noise  
10 down as much as possible.

11 Q. Well, but isn't the purpose of a noise  
12 wall that you're recommending so that it would  
13 block any noise from going from the trucking  
14 operations to the complainants' properties?

15 A. No, no. The noise wall will reduce it.  
16 It won't block it.

17 Q. It's your opinion that it will reduce it  
18 below the numerical limits set by the Pollution  
19 Control Board for B to A?

20 A. Yes.

21 Q. And if the noise wall you recommended  
22 would reduce it below limits for B to A, you would  
23 also agree, then, there wouldn't be a nuisance in  
24 that situation?

1     A.     Nuisance is determined in somewhat of a  
2     different way.  So I'm a little reluctant to say  
3     at this point that there would be no potential for  
4     nuisance there, although I do believe the wall  
5     would greatly reduce any possibility of nuisance.

6     Q.     Would you agree that the numeric limits in  
7     901.102 and 901.104 are the limits above which  
8     noise unreasonably interferes with people's lives  
9     and business activity?

10           MR. KAISER:  Objection, foundation.

11           HEARING OFFICER KNITTLE:  Can you read  
12     that back?

13           MR. KAISER:  The state requires a legal  
14     conclusion.

15   (Record read.)

16           HEARING OFFICER KNITTLE:  Do you have a  
17     response to his objection, Mr. Kolar?

18           MR. KOLAR:  No.

19           HEARING OFFICER KNITTLE:  I'm going to let  
20     that stand.  Objection overruled.

21     BY THE WITNESS:

22     A.     I think you're combining the nuisance

23 regulation with the numerical regulation because  
24 under a nuisance, we're looking at an unreasonable

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1 interference.

2 BY MR. KOLAR:

3 Q. That's exactly what I'm doing.

4 A. And to say that if you exceed the  
5 numerical limitations you're necessarily going to  
6 create a nuisance depends on a lot of factors.  
7 One common factor that's been known in Illinois  
8 would be in a lot of areas we've got ambient noise  
9 that's quite high and exceeds the Board's  
10 limitations for numerical noise, and in a  
11 situation like that, I would be reluctant to say  
12 the ambient is creating unreasonable interference.

13 Q. So you're saying in some situations you  
14 can have noise in excess of the numerical limits  
15 of the regulations which is not a nuisance?

16 MR. KAISER: I'm sorry. I didn't hear  
17 that question. Can I have it read back, please?

18 (Record read.)

19 BY THE WITNESS:

20 A. Yes, you could. For example --

21 MR. KOLAR: I would object and move to  
22 strike anything beyond yes, you could.

23 HEARING OFFICER KNITTLE: Yeah. Let's  
24 leave it at that. Do you have a response, Mr.

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1 Kaiser?

2 MR. KAISER: I think it's the prerogative  
3 of the question. I'm obviously going to follow it  
4 up on redirect.

5 HEARING OFFICER KNITTLE: That's your  
6 right to follow it up on redirect.

7 BY MR. KOLAR:

8 Q. Let's save time. Yes, you could. Why  
9 don't you go on?

10 A. I was going to qualify that with a case  
11 before the Pollution Control Board in Aurora  
12 against the Pratt Company where the measurements  
13 potentially exceeded Board standards. However,  
14 the company was not -- was grandfathered in from  
15 those standards, and the Board found in that case  
16 that even though the measurements did exceed one  
17 standard it was not -- it was not a nuisance.

18 Q. Is that the case where it was not a  
19 nuisance because the noise emitter was there  
20 first?

21 A. No, it wasn't. That really wasn't a  
22 factor in the case.

23 Q. Well, was the noise emitter there first in  
24 the Pratt case?

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1 A. The complainant was Scarpino, Scarpino  
2 versus Pratt Company, and the Scarpinos were there  
3 for, like, 70 years, and the company I don't  
4 believe was there that long. I think the  
5 Scarpinos were there first.

6 Q. Well, in this particular case, do you know  
7 what came first, trucking docks or the homes on  
8 the complainants' property?

9 A. I believe, and I'm not positive of this,  
10 but I believe that LTD was there first.

11 Q. Now, that Libertyville emergency warning  
12 device we heard earlier, what was the octave band  
13 of that device we heard?

14 A. Well, of course, it's a guess. I don't  
15 have the instrumentation to measure it with me,

16 but I would say it would fall under the 1,000  
17 hertz octave band.

18 Q. And you concluded sitting in the village  
19 boardroom that that noise we heard was exempt?

20 A. Yes. Air raid sirens, emergency sirens  
21 fall under the exemption under the Board  
22 regulations.

23 Q. Do you know if that was a test siren or if  
24 an actual emergency existed when it went off?

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1 A. I don't know if it was a test or if it was  
2 an actual emergency.

3 Q. Okay. So for back-up warning beepers on  
4 trucks, you understand that the purpose is to warn  
5 somebody that a truck is backing up, right?

6 A. Yes.

7 Q. It could warn that person to get out of  
8 the way of a truck that's backing up, right?

9 A. Yes.

10 Q. So you could envision situations where a  
11 person might be so close to a truck that when the  
12 warning device goes off it prevents him from being

13 injured?

14 A. Yes.

15 Q. Okay. You would agree that if a person is  
16 so close to the trailer that when the tractor  
17 starts to back up and the warning device goes off  
18 that that would be an emergency situation?

19 A. No.

20 Q. So if someone was in imminent danger of  
21 getting hurt by a trailer backing up, you wouldn't  
22 classify that as an emergency?

23 A. No, I wouldn't.

24 Q. What if a person is working on the tires

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1 on a trailer right there by the tires and  
2 unbeknownst to that person the yard tractor hooks  
3 up and is going to back up and he hears the  
4 warning beeper and he gets away from the tire,  
5 would that be an emergency situation?

6 MR. KAISER: Objection, calls for a legal  
7 conclusion.

8 HEARING OFFICER KNITTLE: I'm going to  
9 overrule. I think Mr. Zak has been well qualified  
10 as a noise expert and we will let him interpret



11 the regulations.

12 BY THE WITNESS:

13 A. To answer your question, I don't think  
14 it's an emergency, and the reason I don't think  
15 it's an emergency is I can't imagine a person not  
16 hearing the tractor as you described there couple  
17 up to the trailer, which is a noisy operation.  
18 Also, it will cause the trailer to jerk a little  
19 bit, but somebody working on a tire would be well  
20 aware of the tractor operation hooking up, let  
21 alone before it backed up.

22 BY MR. KOLAR:

23 Q. As you sit here today, can you envision  
24 one circumstance where the back-up warning device

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1 on the LTD yard tractor would warn somebody in  
2 case of an emergency?

3 A. No, I can't.

4 Q. You're aware under the regulations there's  
5 an exemption for vehicles ingressing and egressing  
6 from a highway, right?

7 A. Yes.

8 Q. You would agree that based on the  
9 regulation that the trucks you saw at LTD would be  
10 vehicles?

11 A. Yes.

12 Q. In fact, let's look together here at  
13 901.107(f). You see it says Sections 901.102  
14 through 901.106 inclusive shall not apply to the  
15 operation of any vehicle. Let's break this down.

16 Now, the numerical violations that  
17 the complainants make would be included in that  
18 first phrase, right?

19 A. Yes.

20 Q. And you would agree that the trucks would  
21 be included in the phrase vehicle, right?

22 A. Yes.

23 Q. And you would agree that all those trucks  
24 you saw, except for maybe the yard tractor, are

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1 registered for highway use?

2 A. Yes.

3 Q. And you would agree that those trucks were  
4 being operated within land used as specified in  
5 901.101, right?

6 A. Yes.

7 Q. And you would agree that for those trucks  
8 to get to the land, meaning the LTD land, they  
9 have to come off of Lakeside Drive?

10 A. Yes.

11 Q. And in order to egress the LTD property,  
12 those trucks have to accelerate and then leave on  
13 Lakeside Drive?

14 A. Yes.

15 Q. And then those trucks go onto Route 22,  
16 right?

17 A. I'm not sure where they go from there.

18 Q. Well, they have to leave Lakeside Drive  
19 and go to this east-west road which is south of  
20 LTD, right?

21 A. Yes.

22 Q. Now, the noise wall that you recommend  
23 would not have any impact on tollway noise at the  
24 complainants' property, true?

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1 A. That's correct.

2 Q. Now, what's the case that you cited at

3 page 17 that addresses emergency warning devices?

4 I didn't hear the name of that.

5 A. That would be Dorothy Hoffman versus City  
6 of Columbia, I don't remember offhand which  
7 Pollution Control Board case number that is, but  
8 on page 17, the Board does go into some detail on  
9 how they reached the conclusion they did.

10 Q. And prominent discrete tones you  
11 understand that there's a completely separate  
12 regulation for prominent discrete tones, 901.106,  
13 correct?

14 A. That's correct.

15 Q. And before coming here to testify today,  
16 did Mr. Kaiser in any way tell you that on  
17 April 16th, 1999, Michael Hara claimed that we're  
18 a business-to-business mail-order company?

19 A. No.

20 Q. And during, I think, the first break this  
21 morning -- break in your testimony, you, as Mr.  
22 Kaiser acknowledged, you were talking to Mr.  
23 Kaiser about testimony you were going to give  
24 after the break, right?

1 A. He had showed me a couple of the exhibits  
2 that he was going to refer to written by Schomer,  
3 and I don't recall it, though, being specific as  
4 far as the testimony that was to come afterwards.  
5 I think he was just basically jogging my memory  
6 because I hadn't seen those documents for quite  
7 some time.

8 Q. Now, do you recall there being a large  
9 side yard to the east of the Roti house?

10 A. A large grassy area. Is that what you're  
11 referring to by side yard?

12 Q. Right.

13 A. Yes.

14 Q. So if the Rotis are affected by noise as  
15 they allege at their house, you would expect the  
16 noise to also travel through that grassy side yard  
17 to the north?

18 A. Yes, but I would expect it also to drop  
19 about six decibels in traveling that distance.

20 MR. KOLAR: I'm just checking my notes. I  
21 may be done. Could I just have a minute?

22 HEARING OFFICER KNITTLE: Sure.

23 (Brief pause.)

24

1 BY MR. KOLAR:

2 Q. Have you read any documents prepared by  
3 Mr. Schomer relative to noise from the tollway  
4 affecting Bannockburn residents?

5 A. Not to my memory.

6 Q. Would you agree that when noise is created  
7 and comes onto people's residential property they  
8 complain about the noise, but then when you take  
9 the noise away, they still complain?

10 A. Not normally.

11 Q. Well, you would agree that in some --  
12 Strike that.

13 You're familiar with something that  
14 happened in California years ago where there was  
15 noise along, I think, a highway and they measured  
16 the noise and then put in a row of trees, measured  
17 the noise again, and the noise was the same level,  
18 right?

19 A. That's correct. I believe I told you that  
20 story.

21 Q. Right. And in that case, the people who  
22 were complaining thought it was better after all  
23 the trees were put in?

24 A. Yes, due to the appearance and kind of the

1 old saying of out of sight, out of mind.

2 Q. Okay. So in this particular case, LTD  
3 could put up a noise wall which prevents noise  
4 from going to the complainants' property in excess  
5 of the numerical regulations and the complainants  
6 and future property owners could still complain  
7 about LTD operations?

8 MR. KAISER: Objection, calls for  
9 speculation.

10 HEARING OFFICER KNITTLE: I'll sustain  
11 that.

12 BY MR. KOLAR:

13 Q. Can you guarantee LTD that they'll have no  
14 more complaints from the complainants or future  
15 owners of those homes if they put up a noise wall  
16 like you recommended?

17 A. I'm not really in the business of making  
18 those kind of guarantees.

19 Q. So you could not make that guarantee,  
20 correct?

21 A. That's true.

22 Q. Complainants' Exhibit 29, it's an

23 April 20th, 1998, letter from Karen Roti to Mike  
24 Hara. That's basically your form letter that you

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1 provide people to send to the alleged noise  
2 violator, correct?

3 A. Well, I wouldn't call it so much of a form  
4 letter as there's an example letter in the  
5 package, and what people typically do is take out  
6 bits and chunks that fit their situation and  
7 compose their own letter.

8 Q. Have you ever been involved in a case  
9 where the complainants kept very detailed logs of  
10 every single time they heard noise on their  
11 property?

12 A. Yes.

13 MR. KAISER: Objection, relevance as to  
14 what other complainants did.

15 HEARING OFFICER KNITTLE: Yes. I'll  
16 sustain that.

17 BY MR. KOLAR:

18 Q. In this particular case, have you seen any  
19 detailed logs dating back to November 1996 as to



20 each day when the complainants were allegedly  
21 affected by noise from LTD?

22 A. Not that I remember.

23 Q. And as you sit here today, you don't  
24 remember the complainants giving you any sort of

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1 recording as to the noise emitted from the LTD  
2 trucking operations, right?

3 A. By recording, do you mean -- are you  
4 talking about tape recording or taking  
5 measurements and writing them down? I'm not quite  
6 sure what you mean by that.

7 Q. Tape recording.

8 A. Tape recording. I don't remember any.

9 Q. And if you were to do numerical  
10 measurements as to noise from an operation, would  
11 you do it over more than a one-day period?

12 MR. KAISER: Objection, relevance.

13 HEARING OFFICER KNITTLE: Overruled.

14 BY THE WITNESS:

15 A. Depending upon the nature of the case, if  
16 the measurements were taken and the complainants  
17 said that it was very typical, the noise was very

18 typical that day or that evening so I had a good  
19 set of measurements, I may just go with a single  
20 set of measurements.

21                   If it was a situation where the  
22 complainant says well, the noise is -- this is not  
23 the worst example of the noise, in a case like  
24 that, I might go back and take additional measures

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1 when they felt the noise was at its worst.

2     Q.     Mr. Zak, you have no undergrad or graduate  
3 degree in business, correct?

4     A.     That's correct.

5     Q.     You've never been an employee, an owner,  
6 or any way associated with a business similar to  
7 LTD's business?

8     A.     That's true.

9           MR. KOLAR: I don't have anything else.

10          HEARING OFFICER KNITTLE: Redirect?

11          MR. KAISER: I do, but I note for the  
12 record that Mr. Zak has been going almost without  
13 stop for three and a half hours. Can you go a  
14 little longer?

15 THE WITNESS: Let's go.

16 MR. KAISER: How about the hearing  
17 officer?

18 HEARING OFFICER KNITTLE: I'm perfectly  
19 okay.

20 MR. KAISER: Wonderful.

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

22 by Mr. Kaiser

23 Q. Mr. Zak, one of the questions Mr. Kolar  
24 asked you towards the end of his examination was

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1 whether you observed this empty lot to the east of  
2 the Roti's home and just to the west of  
3 Mr. Rosenstock's home, you said that you could  
4 see that on Respondent's Exhibit 89; is that  
5 right?

6 A. Yes.

7 Q. And the question and really where Mr.  
8 Kolar seemed to be going was well, if there's this  
9 open space and the noise can travel there, where  
10 are these people to the north. Did you kind of  
11 understand that to be the tension of his question?

12 A. Yes.

13 Q. And you told us that you would expect the  
14 noise to travel to the north, but by the time that  
15 it reached the home to the north that the noise  
16 would have been reduced by six decibels. Is that  
17 your testimony?

18 A. Yes.

19 Q. And do you have a rule of thumb that helps  
20 you calculate and equate decibels to distance and  
21 how far the noise has to travel before it drops  
22 off a certain decibel amount?

23 A. Yes.

24 Q. And what is that rule of thumb?

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1 A. It's a rule of thumb that for every  
2 doubling of distance, the sound level is going to  
3 decrease by six decibels just like if you halve  
4 the distance or cut it in half, the sound level  
5 will decrease by six decibels, and the specific  
6 law of physics I'm referring to there is the  
7 inverse square law.

8 Q. And I won't ask you to explain it, but I  
9 appreciate that by way of foundation.

10                   Now, there was some discussion about  
11 the provision of the Board's regulations that  
12 exempt from regulation trucks while they're  
13 ingressing and egressing from a highway.

14                   Do you recall that portion of Mr.  
15 Kolar's cross-examination?

16     A.     Yes.

17     Q.     Do you have an opinion as to whether the  
18 truck traffic and the noise from the truck  
19 operations within the LTD dock area are exempt  
20 under that, what I'll call, the highway ingress  
21 and egress exemption to the Board's regulation?

22     A.     No, I don't think so, and the reason I  
23 don't think so is --

24                   MR. KOLAR:  Objection.  I think that's a

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1 conclusion for the Pollution Control Board and not  
2 a proper area for opinion testimony.

3                   HEARING OFFICER KNITTLE:  Okay.  I'm going  
4 to overrule.  You, sir, can answer the question.

5 BY THE WITNESS:

6     A.     Where the complainants are complaining  
7 about the trucking noise is long after the trucks

8 have either entered the facility or long before  
9 they exited the facility. So I think ingress and  
10 egress exemption is not relevant in this case  
11 because we're looking at activities that are  
12 occurring at the loading docks on the property of  
13 LTD.

14 BY MR. KAISER:

15 Q. And the release of the air brakes, that  
16 doesn't occur on Lakeside Drive, to your  
17 knowledge, does it?

18 A. No. Again, the -- where it would be  
19 extremely audible would be in the north end of the  
20 building there with the building reflecting the  
21 air brake sound into the residential area.

22 Q. And, similarly, that north wall of the LTD  
23 facility would have the -- would reflect the noise  
24 of the back-up warning beeper?

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1 A. Yes. It would also do that too.

2 Q. And I take it that north wall would also  
3 reflect the sound of the slamming as the tractor  
4 and the trailer couple and uncouple?

5 A. Yes, it would.

6 Q. Now, there was some discussion during Mr.  
7 Kolar's cross-examination about the interplay  
8 between the numeric regulations and nuisance  
9 standard, and if I understood the question was  
10 from Mr. Kolar if LTD or any other noise generator  
11 is in compliance with the numeric limits, then as  
12 I understood Mr. Kolar's questioning and his  
13 argument if you meet the numeric limits, you can't  
14 be a nuisance.

15 Did you understand that to be the  
16 thrust of Mr. Kolar's questioning?

17 MR. KOLAR: Objection to the comment the  
18 thrust of Mr. Kolar's question. I don't think  
19 that's proper redirect.

20 HEARING OFFICER KNITTLE: I'll sustain  
21 that.

22 MR. KOLAR: It's leading as well. He  
23 can't lead. I can in cross.

24 HEARING OFFICER KNITTLE: I'll sustain

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1 that. I don't think, just from my own  
2 perspective, that was the thrust regardless, but I

3 don't think it is proper to ask Mr. Zak what the  
4 thrust of his question was.

5 BY MR. KAISER:

6 Q. Have you ever had a situation, Mr. Zak,  
7 where you've observed noise levels that have been  
8 measured and been found to be in compliance with  
9 the numeric standards and yet heard from neighbors  
10 that the noise was a nuisance?

11 A. Yes.

12 Q. And in what situations, if you can  
13 generalize, is it more common for people to  
14 complain about noise even if the noise level is  
15 below the numeric limit, what characteristics of  
16 the noise give it the quality that people perceive  
17 and define as a nuisance?

18 A. Two very common characteristics are either  
19 an impulsive nature or a total or prominent  
20 discrete tone-type feature of the noise, and  
21 especially with the current Board one-hour  
22 impulsive noise measurement, it's quite common to  
23 have people complain about nuisance factors for  
24 impulsive noise that will appear to be in



1 compliance when measured according to the one-hour  
2 Leq standard, but yet the sound will be very  
3 irritating to the residents.

4 Q. All right. And to reiterate, you've  
5 identified noise at the LTD dock area that's both  
6 impulsive and containing prominent discrete tones;  
7 is that correct?

8 A. Yes.

9 Q. Now, with respect to the Board's  
10 regulations and the manner in which the Board  
11 currently requires people to analyze impulsive  
12 noise, that one-hour Leq averaging, if the noise  
13 source were the impulsive noise caused by the  
14 repetitive sound of a dropped forge or some type  
15 of hammering operation that is rhythmic and  
16 repetitive and yet impulsive by nature, do you  
17 have an opinion as to whether the Board's current  
18 impulsive noise measurement protocols and numeric  
19 -- and the way in which you calculate a violation  
20 of the Board's impulsive numeric standard, would  
21 the Board's regulation capture and evaluate that  
22 type of rhythmic, repetitive, impulsive sound?

23 MR. KOLAR: Objection, leading and it was  
24 so long, I just got lost on that question.

1 HEARING OFFICER KNITTLE: Do you  
2 understand the question, Mr. Zak?

3 THE WITNESS: Yes, I do.

4 HEARING OFFICER KNITTLE: I'm going to let  
5 him answer it then. Overruled.

6 BY THE WITNESS:

7 A. The type of situation you described there  
8 would be, say, a forging operation, and the Board  
9 already has a section in the regulations there for  
10 forging noise, and they do use a one-hour Leq for  
11 measuring forge noise, and that's proper because  
12 we're looking at thousands of blows or thousands  
13 of impulsive noises in a one-hour period of time,  
14 and so in a situation like that, the one-hour Leq  
15 works fine.

16 Examples of it breaking down, there  
17 have been gunfire complaints in the past, and it  
18 would take between five and 6,000 shots an hour to  
19 exceed the Board's impulsive limits; whereas,  
20 under the older methodology, it would, in essence,  
21 just take one or two to exceed it.

22 So it's not at all uncommon, like I  
23 say, with impulsive noise to see a situation where  
24 it's measured, it appears to be in compliance,

1 and, yet, we still have a lot of complaints on  
2 it.

3 MR. KOLAR: Can I just have a  
4 clarification as to whether he's talking about the  
5 regulation for prominent discrete tones or was he  
6 talking about impulsive tones?

7 HEARING OFFICER KNITTLE: Mr. Zak.

8 THE WITNESS: Impulsive.

9 BY MR. KAISER:

10 Q. Do the Board's regulations with respect to  
11 numeric violations in connection with prominent  
12 discrete tones also require the one-hour Leq  
13 averaging?

14 A. Yes.

15 Q. And is the same, what I would term,  
16 deficiency that you've observed in the regulations  
17 of impulse noise, are those also present in the  
18 regulations with respect to prominent discrete  
19 tones?

20 MR. KOLAR: Objection. I don't think we  
21 should have to meet regulations which are not in

22 place.

23 HEARING OFFICER KNITTLE: Excuse me. I

24 couldn't hear what you said.

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1 MR. KOLAR: LTD is not responsible for  
2 meeting regulations which are not even in place.  
3 He's claiming the Pollution Control Board  
4 regulations are deficient, and if they were up to  
5 the standard, we would be in violation of the  
6 these.

7 HEARING OFFICER KNITTLE: I'll sustain  
8 that objection.

9 MR. KAISER: You don't want to hear from  
10 me on that one?

11 HEARING OFFICER KNITTLE: Pardon?

12 MR. KAISER: You don't want to hear from  
13 me on that one?

14 HEARING OFFICER KNITTLE: No, I don't.  
15 You can comment on why you think my sustaining the  
16 objection was wrong.

17 MR. KAISER: Well, that's fine. We've got  
18 ground to cover here. Thank you.

19 BY MR. KAISER:

20 Q. With respect to the tollway noise, I mean,  
21 you could see the tollway is relatively close to  
22 the Roti, Rosenstock and Weber homes, right?

23 A. Correct.

24 Q. And it's no secret trucks and cars on the

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1 tollway and entering the tollway and going through  
2 the tollbooth on their way to the tollway make  
3 noise, right?

4 A. Correct.

5 Q. And that's reflected in the -- and we  
6 would term that noise the ambient background  
7 noise?

8 A. That's right.

9 Q. Now, what do you do in a situation where  
10 you have a high ambient background noise and, yet,  
11 you have impulsive sounds and prominent discrete  
12 tones emanating from the LTD dock area? How do  
13 the Board's regulations -- do you have an opinion  
14 as to how the Board's regulations would be applied  
15 in that situation to determine whether the noise  
16 from the LTD dock area as perceived by the Roti,

17 Rosenstock, and Weber residences whether that  
18 noise is a nuisance?

19 A. Yes, I do.

20 Q. And what is that opinion?

21 A. Well, my opinion is that the background or  
22 ambient noises created by the tollway is an  
23 advantage for LTD because it actually brings the  
24 standard up that they have to meet. They don't

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1 have to meet as stringent a standard by having the  
2 tollway there and the background noise from the  
3 tollway.

4                   Thunder made an ambient correction  
5 there and I would also so that LTD is actually  
6 allowed to make more noise than they would be  
7 allowed to make if the tollway wasn't there. So  
8 the tollway noise doesn't really create a  
9 disadvantage. It creates an advantage for LTD.

10                   As far as the nuisance is concerned,  
11 again, what the residents are complaining about is  
12 largely impulsive noise that is occurring at the  
13 LTD facility and they're able to hear it quite  
14 clearly above the background ambient noise.

15 Q. And based on your years of experience and  
16 observation and knowledge of sound and noise, is  
17 that part of the essence of discrete tones and of  
18 impulse noise that they can be heard through even  
19 a high ambient background level of noise?

20 A. Yes. That's one of the characteristics of  
21 a discrete tone is that it is quite audible even  
22 with a lot of background noise, and we have a  
23 situation here where you have the back-up beepers  
24 being both impulsive in nature and that impulsive

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1 noise they're generating is a discrete tone type  
2 of noise that's designed to be a real attention  
3 getter, and that gives it a very irritating  
4 characteristic.

5 Q. Now, there was a portion of Mr. Kolar's  
6 cross-examination where he brought out his copy of  
7 the entire Standard Land Use Coding Manual, and I  
8 believe that's been marked for purposes of  
9 identification as Respondent's Exhibit 34.

10 A. Yes.

11 Q. You saw this.

12                   Now, the Board did not take the  
13 entirety of Respondent's Exhibit 34, the whole  
14 manual, and make that the attachment to the noise  
15 regulations, did it?

16     A.     That's correct. They did not.

17     Q.     And are you aware of any language within  
18 the Board's regulations that says we, the Board,  
19 pledge and commit ourselves to interpret the  
20 appendix which we're borrowing from the Standard  
21 Land Use Coding Manual in the exact manner in  
22 which the Department of Transportation, the  
23 Federal Highway Administration who commissioned the  
24 Standard Land Use Coding Manual in the exact

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1 manner in which the Department of Transportation  
2 would interpret the Appendix B that we're  
3 borrowing?

4     A.     No, I did not.

5     Q.     Do you understand that the Board and the  
6 Agency have essentially handed over the discretion  
7 for applying and determining whether a land use is  
8 Class A, B, C, or U to the Department of  
9 Transportation and given up any ability to



10 independently apply and make those determinations  
11 regarding a property's land use?

12 A. No, they haven't.

13 Q. And from what I understood, one of your  
14 first responsibilities when you began work with  
15 the Environmental Protection Agency was to work  
16 with them, and they took the report, Schomer's  
17 Deposition Exhibit 2, as a starting point for what  
18 became the promulgation and adoption of the noise  
19 regulations back in 1973; is that right?

20 A. That's correct.

21 Q. And it was that process that you were  
22 personally involved with?

23 A. That's correct.

24 Q. Now, Mr. Kolar back in July sent you a

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1 letter and asked you to send him a couple of cases  
2 and a copy of your resume?

3 A. Correct.

4 Q. And you stated that it was an oversight,  
5 and you didn't send him that information?

6 A. That's correct.

7 Q. And did you not send that information  
8 because you wanted to handicap LTD's preparation  
9 of their case and the defense of their case?

10 A. Not in any way.

11 MR. KOLAR: And I'll stipulate that he  
12 didn't try to handicap us.

13 BY MR. KAISER:

14 Q. And approximately how many noise  
15 complaints do you respond to during the course of  
16 a year?

17 A. Right now, about 3,000 a year.

18 Q. And you're the only person within the  
19 Agency who fields those complaints?

20 A. That's correct.

21 Q. And there are some respects with which you  
22 would agree LTD is reasonably well suited to its  
23 location; is that right?

24 A. Yes, as far as the transportation hub

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1 there, they can easily move their merchandise off  
2 onto highways and tollways and expressways.

3 Q. So in that respect, they're suited to this  
4 location?

5 A. Correct.

6 Q. But is it also your opinion that given the  
7 fact that they have a residential subdivision just  
8 to the north and their loading docks are located  
9 on the north end of their property that it would  
10 also be technically feasible and economically  
11 reasonable for LTD to construct a noise wall to  
12 reduce the migration of noise from its dock to the  
13 residences to the north?

14 A. Yes.

15 Q. And at one point in Mr. Kolar's  
16 cross-examination of you, he asked whether you  
17 knew there was a tollbooth in the vicinity of LTD,  
18 and I believe your response was you weren't  
19 certain whether there was or was not?

20 A. That's correct.

21 Q. And now I'm representing to you that on  
22 this aerial photograph what I'm showing here just  
23 to the west of the LTD facility on Respondent's  
24 Exhibit 89 is a tollbooth that cars and trucks

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1 entering the northbound lanes of 294 are required

2 to pass through.

3 Do you see what I'm showing there?

4 A. Yes, I see it.

5 Q. Does the presence of that tollbooth and  
6 the fact that cars and trucks may be accelerating  
7 as they pass through that tollbooth in any way  
8 alter the opinions you expressed during direct  
9 examination where you thought that reasonable  
10 people could perceive the noise from the LTD dock  
11 operations as a nuisance?

12 A. No. I would say that the tollbooth would  
13 have -- I can't see where it would have a  
14 significant affect on the people's complaint about  
15 noise from the LTD facility.

16 Q. And does the fact that you're now aware  
17 that there's a tollbooth just to the west of LTD  
18 affect in any way your recommendation and opinion  
19 that a noise wall would be technically feasible  
20 and economically reasonable?

21 A. No.

22 MR. KAISER: Thank you, Mr. Zak. I have  
23 no further questions.

24 MR. KOLAR: Two quick areas, seriously.

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

2                           by Mr. Kolar

3       Q.     Let me just return to this ingress, egress  
4     exception.  You would agree that the way this  
5     exemption is read that it applies to the vehicles  
6     being operated within the emitter's land?

7       A.     Well, for clarification purposes there, I  
8     think it has to be clarified, and by saying it's  
9     not an exemption for the vehicles that are  
10    operated on the land itself.  It's only an  
11    exemption as the vehicles leave the property or  
12    enter the property.

13      Q.     Well, let's see if that's true.  
14    Subparagraph f, it says that those sections shall  
15    not apply to the operation of any vehicle  
16    registered for highway use while such vehicle is  
17    being operated within any land use as specified in  
18    Section 901.101.

19                   So the land they're talking about  
20    there would be land classified as Class B, Class  
21    C, or whatever the case is in the particular  
22    situation, right?

23      A.     Right.

24      Q.     Okay.  So then applying this in this case,

1 this exemption would apply to the LTD situation to  
2 a tractor-trailer in the staging area all hooked  
3 up ready to accelerate and leave the land and go  
4 onto the highway which is Lakeside Drive, right?

5 MR. KAISER: Objection to the  
6 classification of Lakeside Drive as a highway. It  
7 calls for a legal conclusion.

8 HEARING OFFICER KNITTLE: We've been  
9 scurrying this particular issue for a while. I'm  
10 going to overrule and let him continue as we have  
11 been doing.

12 BY MR. KOLAR:

13 Q. Can you answer that question? Let me back  
14 up.

15 You agree Lakeside Drive, if it's a  
16 public roadway, is a highway as the word highway  
17 is defined in the regulations?

18 A. It appears so, yes.

19 Q. So then given that, the exemption,  
20 901.107(f) would apply to the situation of an LTD  
21 tractor-trailer all hooked up and accelerating out  
22 of the truck staging area onto the driveway that  
23 leads to Lakeside Drive?

24 MR. KAISER: Objection to the

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1 classification of the LTD tractor-trailer. LTD  
2 testified that they've neither owned a tractor or  
3 a trailer. So LTD tractor-trailer is a misleading  
4 phrase.

5 HEARING OFFICER KNITTLE: Do you want to  
6 rephrase, Mr. Kolar? He's correct.

7 MR. KOLAR: He's correct, but I don't  
8 think it matters.

9 HEARING OFFICER KNITTLE: I concur.

10 MR. KOLAR: He's correct, and it doesn't  
11 matter.

12 HEARING OFFICER KNITTLE: Right, but if  
13 you could rephrase the question, that would solve  
14 the problem.

15 Do you understand, Mr. Zak, that it's  
16 not a tractor-trailer owned by LTD?

17 THE WITNESS: Yes.

18 HEARING OFFICER KNITTLE: Does that matter  
19 in terms of you answering this particular  
20 question?

21 THE WITNESS: I don't think it does, no.

22 HEARING OFFICER KNITTLE: Then you can go  
23 ahead.  
24

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1 BY THE WITNESS:

2 A. Again, in answer to the -- historical  
3 interpretation by both the Agency and the Board  
4 for the last 27 years is that this applies only at  
5 the point of ingress and egress.

6 In other words, in this situation  
7 here, right where the trucks either enter the  
8 property of LTD or leave the property of LTD, once  
9 they're on the property and operating on the  
10 property, there have been numerous decisions by  
11 the Pollution Control Board that it then becomes a  
12 stationary noise source as opposed to being  
13 exempted under Section 901.107(f).

14 BY MR. KOLAR:

15 Q. Setting the interpretations aside, you  
16 would agree that reading the text of that  
17 exception, that exemption would cover the  
18 situation of a tractor-trailer in the LTD staging



19 area accelerating and leaving the staging area  
20 onto the driveway that leads to Lakeside Drive,  
21 right?

22 MR. KAISER: Objection. For the record,  
23 it calls for a legal conclusion.

24 HEARING OFFICER KNITTLE: I just want to

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1 note we've had a lot of legal conclusions or  
2 things that could be phrased legal conclusions  
3 from Mr. Zak on both sides. So I'm going to let  
4 them both stand.

5 BY MR. KOLAR:

6 Q. Can you answer that question, please?

7 A. I still read it as the point of entry and  
8 the point of exit as opposed to basically giving  
9 the truck carte blanche to do anything it wants to  
10 on the property as long as --

11 Q. So you disagree with me?

12 A. I disagree with you on that, yes.

13 Q. Okay. The Pollution Control Board will  
14 decide that, right?

15 A. That's correct.

16 Q. Then just finally, when I asked you your

17 opinion regarding if LTD was suitably located --

18 A. Yes.

19 Q. -- when I asked you that question during  
20 your deposition, you at that time understood that  
21 I was using the word suitability as it's used in  
22 Section 33 C iii of the Environmental Protection  
23 Act, true?

24 A. Yes, and that's why I put the qualifier on

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1 there that with noise controls.

2 Q. But I'm talking at your deposition when I  
3 asked you the question of suitability, you knew at  
4 that point in time on July 9th that we are talking  
5 suitability as the word is used in Section 33C of  
6 the Environmental Protection Act, right?

7 A. Yes, but I just wanted to -- keep it --  
8 clarify it when I was answering it.

9 MR. KOLAR: I don't have any further  
10 questions.

11 HEARING OFFICER KNITTLE: Any re-redirect  
12 on those two issues?

13 MR. KAISER: No. Mr. Knittle, no. Thank

14 you very much.

15 HEARING OFFICER KNITTLE: Mr. Zak, thank

16 you very much.

17 THE WITNESS: Thank you.

18 HEARING OFFICER KNITTLE: You can step

19 down. We're taking lunch. It's quarter until

20 2:00. Let's go off.

21 (Whereupon, further proceedings

22 were adjourned pursuant to the

23 lunch break and reconvened

24 as follows.)

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1 (Whereupon, Mr. Hara

2 joined the proceedings.)

3 HEARING OFFICER KNITTLE: We're back on

4 the record after a short break. It's the

5 afternoon session starting at 2:40 for this

6 hearing which is PCB 1999-019. I want to note for

7 the record there are still no members of the

8 public here nor have there ever been members of

9 the public since the commencement of this hearing

10 aside from at times various complainants and, of

11 course, Mr. Hara from LTD who is back with us

12 again today. It's still your case-in-chief. You  
13 can proceed.

14 MR. KAISER: Thank you, Mr. Knittle. The  
15 complainants would call as their first witness  
16 this afternoon Leslie Weber.

17 HEARING OFFICER KNITTLE: Ms. Weber,  
18 you're already seated, so if you could swear her  
19 in, I would appreciate it.

20 (Witness sworn.)

21 HEARING OFFICER KNITTLE: It's your  
22 witness, Mr. Kaiser.

23 MR. KAISER: Thank you, Mr. Knittle.

24

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1 WHEREUPON:

2 L E S L I E W E B E R,

3 called as a witness herein, having been first duly  
4 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 Mr. Kaiser

7 Q. Ms. Weber, would you please state your  
8 full name and spell your last name for the court

9 reporter's benefit?

10 A. Yes. Leslie Ann Weber, W-e-b-e-r.

11 Q. And, Ms. Weber, are you one of the

12 complainants in this matter?

13 A. Yes, I am.

14 Q. Where do you live?

15 A. 1481 West Wedgewood in Lake Forest.

16 Q. With whom do you live at that address?

17 A. My husband Henry and my two sons Scott and

18 Christopher.

19 Q. How old is Scott?

20 A. Scott is 16.

21 Q. How old is Christopher?

22 A. Nine.

23 Q. You live in the vicinity of LTD

24 Commodities Bannockburn, Illinois, facility, do

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1 you not?

2 A. Yes, I do.

3 Q. And up in front of you is an aerial

4 photograph that's been marked for purposes of

5 identification as Respondent's Exhibit 89.

6 Can you see that from where you're

7 seated?

8 A. Yes. I can.

9 Q. Are you able to locate by reference either  
10 to the tollway and Route 22 the outline of LTD's  
11 roof line?

12 A. Yes.

13 Q. And is that essentially this large square  
14 object in the center of the photograph?

15 A. Yes.

16 Q. Now, I see to the north that there's an  
17 area here. Do you know what is located in that  
18 area immediately to the north of the LTD warehouse  
19 facility?

20 A. Those are docks. Those are trucks,  
21 trailers.

22 Q. And I'm now pointing at the residence of  
23 Karen Roti.

24 Do you recognize that?

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1 A. Yes.

2 Q. And Ms. Roti's residence is directly north  
3 of the truck docks?

4 A. Yes.

5 Q. And do you know who lives just to the east  
6 of Ms. Roti?

7 A. Mr. Rosenstock.

8 Q. And that's Paul Rosenstock, one of the  
9 complainants in this matter?

10 A. Yes.

11 Q. And then is your home located then just to  
12 the east of Mr. Rosenstock's?

13 A. Yes.

14 Q. Do I understand it correctly that you  
15 purchased the land on which your home is now  
16 located in roughly July of 1988?

17 A. Yes.

18 Q. And did you, in fact, pay approximately  
19 \$223,000 for the lot without improvements?

20 A. Yes.

21 Q. And can you describe for the Board what  
22 efforts you and your husband made, what areas you  
23 looked in before you decided to purchase the lot  
24 here on Wedgewood Drive in Lake Forest, Illinois?

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1 A. We looked at other lots within Lake

2 Forest. We looked at lots in Long Grove, and I  
3 think that's -- I think we also looked at some  
4 property in Libertyville.

5 Q. And what was it that was attractive to you  
6 about the lot that you eventually purchased on  
7 Wedgewood Drive in Lake Forest?

8 A. We liked the fact that it was a large  
9 lot. We liked the zoning and the fact it was also  
10 wooded.

11 Q. And did you contract with Orren,  
12 O-r-r-e-n, Pickell, P-i-c-k-e-l-l to build a home  
13 on the lot located at 1481 West Wedgewood Drive?

14 A. Yes, we did.

15 Q. And did the cost of construction of your  
16 home, was that cost approximately \$453,000 --  
17 \$453,687?

18 A. Yes.

19 Q. And is it your recollection that you, your  
20 husband Henry, and your sons Scott and Christopher  
21 moved in to your completed home at 1481 west  
22 Wedgewood Drive in January of 1992?

23 A. Yes.

24 Q. Now, in January, February, or March, in



1 fact, the entirety of the year of 1992, were you  
2 in any way adversely affected by noise generated  
3 by the loading docks at the LTD facility?

4 A. No.

5 Q. And throughout the entirety of 1993, were  
6 you adversely affected in any way by noise from  
7 the loading docks at LTD Commodities Bannockburn  
8 facility?

9 A. No.

10 Q. Were you --

11 MR. KOLAR: Did she answer that?

12 THE WITNESS: No. I said no.

13 HEARING OFFICER KNITTLE: She did. You  
14 might want to speak up so everybody can hear you.

15 MR. KOLAR: Sorry.

16 THE WITNESS: All right.

17 BY MR. KAISER:

18 Q. And how about during 1995, were you on any  
19 kind of routine or systematic basis disturbed  
20 while in your home or in your yard on Wedgewood  
21 Drive? Were you disturbed by noise coming from  
22 LTD's dock area?

23 A. In 1995?

24 Q. In 1995.

1 A. No, I was not.

2 Q. And I would like to show you a document  
3 that's previously been marked for purposes of  
4 identification as Complainants' Exhibit 37, and  
5 I'd like you to look at this closely because  
6 there's some -- this one-page document is a  
7 diagram of the vicinity of LTD facilities and it  
8 includes certain representations as to where the  
9 Roti home is, where the Rosenstock and Weber  
10 homes are.

11 Now, I'd ask you to look closely and  
12 tell me if those are accurate or if by chance your  
13 home is set one lot further to the east, if you  
14 know?

15 A. This looks accurate.

16 Q. That looks accurate to you.

17 And if you would with the highlighter  
18 I'm handing you and the black ink pen that I'm  
19 handing you highlight your home and indicate in  
20 your hand that that's the Weber residence.

21 A. (Witness complied.)

22 MR. KOLAR: Can I just see?

23 HEARING OFFICER KNITTLE: Yes. Please,

24 approach.

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1 BY MR. KAISER:

2 Q. All right. And does this diagram  
3 approximately relate the location of your home and  
4 the location of LTD's Bannockburn facility, if not  
5 exactly to scale, it gives some visual --

6 A. It's a relative representation.

7 Q. Relative representation. All right.

8 Thank you.

9 MR. KOLAR: She marked the one farthest to  
10 the right?

11 MR. KAISER: Yes.

12 BY MR. KAISER:

13 Q. Now, in 1996, did you experience a change  
14 in noise levels coming from the dock area of LTD's  
15 Bannockburn operations?

16 A. In 1996, late summer, I noticed  
17 significant noise coming from somewhere.

18 Q. And when you say significant noise, can  
19 you give us a little more detail in terms of in  
20 what way was it significant?

21 A. There was some vehicular noise. It  
22 sounded like a loud diesel engine. There was very  
23 loud booming noises coming from that vicinity to  
24 the southwest of my home. There were other

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1 crashing noises.

2 Q. Had you ever heard these sounds before?

3 A. No.

4 Q. Did you investigate to determine the  
5 source of these new noises?

6 A. I would get up and look out my window and  
7 try to determine if I could see lights or see any  
8 vehicles moving in the parking lot behind my home  
9 and could not. I actually got up in the middle of  
10 the night on some nights and drove around to the  
11 road off 22 to see if I could identify the source  
12 of the noise and saw truck traffic and  
13 tractor-trailer -- J.B. Hunt tractor-trailers in  
14 the parking lot behind LTD and isolated the  
15 noise -- the vehicular noise, the diesel noise, to  
16 what I've subsequently found out is called a yard  
17 tractor or yard pig. It was moving the tractors  
18 to and fro.

19 Q. So as I understand it -- well, let's take  
20 it piece by piece. You're saying in the middle of  
21 the night you got up out of bed, put on a wrap,  
22 got in your car, and went to try to find out where  
23 this noise was coming from?

24 A. That's correct.

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1 Q. And did you leave your subdivision and go  
2 out to Telegraph Road?

3 A. Yes.

4 Q. Down to 22?

5 A. Yes.

6 Q. And did you drive up Lakeside Drive?

7 A. Yes.

8 Q. And did you in your car get to a position  
9 where you were able to observe operations at the  
10 LTD dock?

11 A. Yes. I would drive behind the office  
12 building, and --

13 Q. Is it this office building?

14 A. Yes.

15 Q. And we've been referring to this as

16 Corporate 100. Do you know that office building  
17 as Corporate 100?

18 A. No, I don't know the name of it, but it's  
19 the one directly behind my home.

20 Q. All right. Just north of this detention  
21 pond or lagoon?

22 A. Yes, yes.

23 Q. And where did you go?

24 A. I would swing around and I would park or

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1 position my car so I could kind of get a view into  
2 the freight area, into the dock area.

3 Q. And what did you see as you sat in your  
4 car in the parking lot behind Corporate 100 and  
5 gazed into the LTD dock area?

6 A. I could see the yard tractor moving  
7 tractors and moving vehicles with a sound that  
8 corresponded to the one I could hear from my home.

9 Q. Could you, to the best of your ability,  
10 describe in your words the sound made back in the  
11 time frame of the fall of '96 by the diesel yard  
12 pig or yard tractor that was operating in the LTD  
13 dock area?

14 A. It was a very, very, very loud diesel  
15 engine noise. It was nothing like a  
16 tractor-trailer. It was much louder when it  
17 would -- when it would rev up, it did so with just  
18 a very high volume of noise.

19 Q. And were you able to observe this yard pig  
20 or yard tractor engage with a semitrailer?

21 A. Yes. At the time it would back up and  
22 essentially crash into the semi, it made the  
23 crashing noises that I had heard.

24 Q. And were you able to observe this yard

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1 tractor to disengage from semitrailers?

2 A. Yes.

3 Q. Did you note whether it made any noise  
4 when it disengaged?

5 A. It would make, as I recall, the air brake  
6 release noise, which is kind of a very loud  
7 whoosh.

8 Q. This air brake release noise, does it  
9 build up or is it a sudden type of noise?

10 A. It's a sudden noise.

11 Q. Did you note in the fall of 1996 whether  
12 any of the vehicles operating in the LTD dock area  
13 were using back-up warning beepers?

14 A. I don't recall that in 1996.

15 Q. I'm showing you what's been marked for  
16 purposes of identification as Complainants'  
17 Exhibit 8. It's a letter it appears that you  
18 wrote and sent to David Lothspeich on or about  
19 January 30th, 1997.

20 Do you see that letter?

21 A. Yes.

22 Q. Is this a true and accurate copy of the  
23 letter you sent to David Lothspeich on or about  
24 January 30th, 1997?

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1 A. Yes.

2 Q. Does this letter essentially describe the  
3 incident you just narrated in which you awoke, put  
4 on a wrap, went out and investigated the source of  
5 the noise?

6 A. It identifies one instance. I've made  
7 subsequent trips over to that -- to LTD  
8 Commodities to that area behind the office



9 building to identify the source of the noise.

10 Q. Can you tell the Board approximately how  
11 many subsequent trips you took to investigate the  
12 source of the noise?

13 A. I think I took one before this before my  
14 husband and I did. I have certainly taken ones  
15 after that in subsequent years.

16 Q. Through the writing of the letter January  
17 30th, 1997, approximately how many times had you  
18 gone over?

19 A. Probably five times.

20 Q. And were those in the evening or during  
21 the day or both?

22 A. In the evening.

23 Q. Did you find in the fall of 1996 and the  
24 early winter of 1997 that there was a particular

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1 time of day during which the noise from the LTD  
2 dock area was most disruptive?

3 A. It was most disruptive when it would wake  
4 me up, but it was very loud all during the early  
5 evening hours as well.

6 Q. Is it your testimony that during the fall  
7 of 1996 you were awakened by noise that you  
8 attribute to dock activities at LTD?

9 A. Yes.

10 Q. Do you recall how many times you were  
11 awakened from your sleep in the fall of 1996 by  
12 noise you attribute to LTD's dock activities?

13 A. No, I do not recall how many times I was.

14 Q. Was it more than one time?

15 A. Yes.

16 Q. I note that in your letter to  
17 Mr. Lothspeich of January 30th, 1997, you state in  
18 the bottom paragraph my objective in this matter  
19 is to find a resolution whereby the commercial  
20 property does not impair my or my family's ability  
21 to get a peaceful night's sleep.

22 Was that, in fact, your objective in  
23 January of 1997?

24 A. Yes.

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1 Q. Had you or your family members experienced  
2 disruption to your sleep beyond the one or more  
3 episodes where you were awakened from sleep in the

4 fall of 1996?

5 A. It impaired our ability to get to sleep.

6 Q. How?

7 A. Because you would be hearing the noises as  
8 you were trying to fall asleep, and they were  
9 sporadic and very loud and intrusive.

10 Q. Would you close your windows in an effort  
11 to keep the sound out?

12 A. Yes.

13 Q. Was that effective?

14 A. No.

15 Q. Are you certain as you sit here today that  
16 the noise you were hearing back in the fall of  
17 1996 that was preventing you and family members  
18 from falling asleep and on one or more occasions  
19 awakened you from your sleep originated from the  
20 LTD dock areas and not from car or truck traffic  
21 in the vicinity of Corporate 100?

22 A. Yes. I'm absolutely sure.

23 Q. During the course -- in 1996 -- in the  
24 fall of 1996 and then into the spring of 1997, did

1 you observe any variation in the level of activity  
2 and the level of noise being generated by LTD's  
3 loading docks? Was there a difference between  
4 fall and spring, comparing the fall of 1996 with  
5 the spring of 1997?

6 A. Yes. The noise level dissipated in late  
7 December.

8 Q. And this noise back in the fall of 1996,  
9 how late into the evening would you hear this  
10 noise?

11 A. I typically go to bed between 10:00 and  
12 11:00, and I would certainly hear it as I went to  
13 go to sleep, and then it would sometimes wake me  
14 up or if I happened to wake up, I would hear it at  
15 2:00 o'clock in the morning.

16 Q. What time do you usually -- back in the  
17 fall of 1996 did you get up in the morning to go  
18 to work?

19 A. Between 5:30 and 6:00 a.m.

20 Q. During the early morning hours, and by  
21 that I mean between 5:30 a.m. and 7:00 a.m.,  
22 during the fall of 1996, do you recall whether you  
23 heard noise from the LTD dock area?

24 A. I don't recall that. I don't recall the

1 morning.

2 MR. KOLAR: What time period was that?

3 I'm sorry.

4 HEARING OFFICER KNITTLE: It was the fall  
5 of '96 between 5:30 a.m. and 7:00 a.m. Actually,  
6 it's not that that's bothering him, Mr. Kaiser.  
7 There's a --

8 MR. KAISER: I noticed that. Yeah.

9 That's Joe's concern, the wasp flying above his  
10 head. I'm just catching some backlight here.

11 MR. KOLAR: That's why I didn't hear the  
12 answer.

13 HEARING OFFICER KNITTLE: That's what I  
14 assumed.

15 MR. KOLAR: I'm looking at the wasp.

16 BY THE KAISER:

17 Q. Other than the interference with your  
18 ability to fall asleep and your ability to stay  
19 asleep, during the fall of 1996 did the noise from  
20 the LTD dock interfere with your use and enjoyment  
21 of your property in any other ways?

22 A. Well, we certainly sleep with the windows  
23 shut, and in the early part of the fall, late  
24 summer, early part of the fall, we wouldn't spend

1 any time outside with the lawn furniture on the  
2 patio.

3 Q. Do you have a patio on the south side of  
4 your home?

5 A. We have two decks on the back part of the  
6 home. One is on the southwest corner. The other  
7 is on the south side behind the kitchen.

8 Q. And did the noise from the LTD docks  
9 during the late summer, early fall of 1996  
10 interfere with your ability to use and enjoy the  
11 patios on the south side of your home?

12 A. The outside of the home. We don't have  
13 patios. We have decks.

14 Q. Decks. I'm sorry. The decks?

15 A. Yes, yes.

16 Q. Your answer is yes?

17 A. Yes.

18 Q. I want to quickly show you a letter that's  
19 been marked for purposes of identification as  
20 Complainants' Exhibit 7. It's a letter from David  
21 Lothspeich to Mike Hara dated February 7th, 1997.

22 By the way, you've met Mr. Hara

23 before, have you not?

24 A. No. We've never met.

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1 Q. Is this the first time you've seen  
2 Mr. Hara?

3 A. Yes.

4 Q. And you understand Mr. Hara is the chief  
5 operating officer for LTD Commodities?

6 A. Yes.

7 Q. Now, this Exhibit 7, the February 7th,  
8 1997, letter from Dave Lothspeich to Mr. Hara, I  
9 see that you are CC'd on this letter.

10 Do you see that down at the bottom?

11 A. Yes, I do.

12 Q. Do you recall whether on or about February  
13 7th, 1997, you received a copy of that letter?

14 A. Yes.

15 Q. In February of 1997, did you still  
16 perceive noise from the LTD dock area to be a  
17 problem?

18 A. In February, no, the noise was not  
19 occurring.

20 Q. Did you have any expectation as to whether

21 the noise would return the following fall?

22 A. I was certainly very hopeful that based on  
23 the letters we had sent and Bannockburn's  
24 involvement that it would desist.

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1 Q. And that is there wouldn't be a problem in  
2 the fall?

3 A. Correct.

4 Q. Did you understand at that time, February  
5 of 1997, that LTD's business is somewhat seasonal  
6 and that they employ more workers and have a  
7 greater volume of truck traffic during the months  
8 of September, October, November, and December than  
9 they do during the winter and spring months?

10 A. No. I did not know what LTD did.

11 Q. Okay. If I may just see that letter. I  
12 note that in Complainants' Exhibit 7, Mr.  
13 Lothspeich writes, in addition, I'm forwarding to  
14 you a copy of a January 31st, 1997, letter from  
15 LTD neighbor Leslie Weber voicing their concerns  
16 about your operations. This letter would seem to  
17 reiterate the issues discussed regarding the yard



18 pig slamming into the truck trailers.

19                   Was that one of the noises that you  
20 heard this yard pig slamming into the truck  
21 trailers?

22     A.     I had heard two slamming noises when I  
23 went to take a look at the operation. One was the  
24 yard pig slamming into the trailer. The other was

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1 the tractor-trailer doors as the tractor was  
2 backed into position, frequently the doors were  
3 open, and they would slam shut and slam back open  
4 again.

5     Q.     And that was a noise you could hear while  
6 inside your home?

7     A.     Yes.

8     Q.     I note that this letter of February 7th  
9 references a meeting. As requested by LTD  
10 neighbor Bill Kaufman during our January meeting,  
11 I am forwarding a copy of the noise regulations.

12                   Do you recall whether you attended a  
13 meeting hosted or held by the village of  
14 Bannockburn in January of 1997 during which the  
15 issue of LTD's noise was a subject of discussion?

16 A. There was a meeting at Bannockburn Town  
17 Hall that I attended on this topic, this topic of  
18 the noise generated by LTD.

19 Q. I'm showing you what's now been marked for  
20 purposes of identification as Complainants'  
21 Exhibit 10. It's a letter from David Lothspeich  
22 to Mike Hara dated April 25th, 1997. I see that  
23 your CC'd on this letter.

24 Do you know whether you received a

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1 copy of that letter in the latter part of  
2 April 1997?

3 A. Yes, I recall this.

4 Q. And what was your state of optimism in  
5 April of 1997 about the noise problems being  
6 resolved?

7 A. I was --

8 MR. KOLAR: Objection. I don't think her  
9 optimism regarding the resolution is relevant.

10 HEARING OFFICER KNITTLE: Mr. Kaiser.

11 MR. KAISER: I think it may go to state of  
12 mind or potential bias. I think it gives the

13 Board a flavor of the ups and downs of this  
14 process that's unfolded now over almost a  
15 three-year period. So I think it's helpful for  
16 the board to gauge the point at which people who  
17 are now complainants had some sense that maybe  
18 there would be a solution to this problem outside  
19 of an enforcement action. So I think it would be  
20 helpful in the Board's analysis.

21 HEARING OFFICER KNITTLE: Anything  
22 further, Mr. Kolar?

23 MR. KOLAR: No.

24 HEARING OFFICER KNITTLE: I'm going to

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1 allow it in. I don't know that I will in the  
2 future though. I can't see how relevant it is,  
3 but for this one time, we'll allow the question.

4 BY MR. KAISER:

5 Q. Do you recall the question?

6 A. No. If you can repeat it, I would  
7 appreciate it.

8 Q. It was essentially did you think in  
9 April of 1997 that you were on track to find a  
10 solution outside of the enforcement context?

11 A. Well, given that the second paragraph  
12 which indicates that there wasn't much feedback on  
13 the part of LTD Commodities, I did start to get  
14 concerned that we were going to have recurring  
15 problem in 1997.

16 Q. Now, I'm showing you what's been marked  
17 for purposes of identification as Complainants'  
18 Exhibit 11. It's a letter from David Lothspeich  
19 to Mike Hara dated July 11th, 1997. It states  
20 based upon this letter and conversations with  
21 Mr. Paul Schomer, it's my understanding that the  
22 village and LTD have agreed upon the methodology  
23 for performing the sound analysis in mid-August.

24 Did you receive a copy of that letter

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1 in July of 1997?

2 A. Yes.

3 Q. And were you experiencing -- were you  
4 hearing noise from LTD during July of 1997?

5 A. No.

6 Q. During the fall of 1997, and I use that  
7 term roughly to describe a period beginning

8 September 1st and extending until December 15th of  
9 1997, did you hear anything from LTD's dock area?

10 A. Yes. Starting in late August, we started  
11 to hear the noises, increased activity in the  
12 evening hours.

13 Q. And this increased activity, what type of  
14 activity was that?

15 A. The air brakes, the booming noises of the  
16 dropping of the trailers, the noise of the spotter  
17 or the trailer as it moved the -- the tractor as  
18 it moved the trailer into positions.

19 Q. Did you hear those -- with what degree of  
20 regularity did you hear those noises during  
21 September of 1997?

22 A. You would hear them frequently in the  
23 course of an evening. I didn't time them, but I  
24 would guess it would be somewhere in the nature of

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1 once every ten minutes, once every five minutes.

2 Q. And you would hear noise from LTD that  
3 frequently while you were inside your home --

4 A. Yes.

5 Q. -- during September of 1997?

6 A. Yes.

7 Q. Did your awareness -- well, did the fact  
8 that you were hearing noise from LTD's facility  
9 every 15 or 20 minutes throughout the course of  
10 the evening while in your home during September of  
11 1997, did that in any way interfere with your use  
12 and enjoyment of your home?

13 MR. KOLAR: Objection, leading.

14 HEARING OFFICER KNITTLE: Sustained.

15 MR. KAISER: It doesn't suggest an answer  
16 at all. Did it interfere, yes or no? It can be  
17 answered no as well as yes.

18 HEARING OFFICER KNITTLE: That doesn't  
19 mean it's not a leading question. You are on  
20 direct examination. If he's going to make that  
21 objection, I'm going to sustain it to that  
22 particular question.

23 BY MR. KAISER:

24 Q. Did noise from LTD's operations during

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1 September of 1997 interfere with your use and  
2 enjoyment of your home?

3 MR. KOLAR: Objection, leading.

4 HEARING OFFICER KNITTLE: He's going to  
5 get there eventually. I'm going to allow it to go  
6 in, but Mr. Kaiser do try to be cautious about  
7 asking leading questions on direct examination.

8 MR. KAISER: I'll do my best, but the  
9 allegation is it unreasonably interfered with the  
10 use and enjoyment of the home.

11 HEARING OFFICER KNITTLE: I'm not saying  
12 it's an improper question.

13 MR. KAISER: I'm saying did it interfere  
14 --

15 HEARING OFFICER KNITTLE: I will note for  
16 the record, you know, you've been asking leading  
17 questions off and on on direct examination that  
18 haven't been objected to, and if he wants to  
19 object to leading questions on direct examination,  
20 I have no choice but to uphold those objections.

21 BY MR. KAISER:

22 Q. Do you recall the question?

23 A. Yes, I do, and it interfered with my  
24 activities in the evening, with the quiet I expect

1 in my home in the evening hours.

2 Q. Do you work out of the home during the  
3 day?

4 A. No, I do not.

5 Q. Where do you work now?

6 A. Where do I work now?

7 Q. Yeah.

8 A. I'm employed now by Quill Corporation.

9 Q. And what's your -- when do you begin work  
10 and when do you leave work?

11 A. I typically leave between around 7:30  
12 a.m., and I get home anywhere between 6:00 and  
13 7:30 in the evening.

14 Q. And in the late summer, early fall of  
15 1997, were you working for the Quill Corporation  
16 or any other corporation?

17 A. I was working for another company named  
18 Fel-Pro, F-e-l, dash, P-r-o, Incorporated.

19 Q. What time of day were you leaving the  
20 house and when were you returning to the house  
21 during the summer and fall of 1997?

22 A. I was probably working very similar hours,  
23 leaving the house at 7:30 in the morning and  
24 returning somewhere in the vicinity of 6:30.



1 Q. And just by way of background, what is  
2 your educational background, Ms. Weber?

3 A. I have a bachelor's degree in English and  
4 I have an MBA.

5 Q. From what university did you receive your  
6 degrees?

7 A. Boston College for my bachelor's and  
8 Northeastern University in Boston for my MBA.

9 Q. What was your job title with Fel-Pro in  
10 the fall of 1997?

11 A. I was the director of information systems.

12 Q. What is your current title with the Quill  
13 Corporation?

14 A. I'm the vice-president of information  
15 systems.

16 Q. Are these executive positions?

17 A. Certainly the one I'm in right now is.

18 Q. Is it fair to say you have a fair degree  
19 of responsibility within the Quill Corporation?

20 A. Yes.

21 Q. Have you -- do you have an opinion as to  
22 whether you perform your job for the Quill  
23 Corporation better if you're well rested, or can  
24 you perform equally well if you haven't slept the

1 night before?

2 MR. KOLAR: Objection. It wasn't  
3 disclosed. I don't think that's a -- it's not a  
4 proper opinion question.

5 HEARING OFFICER KNITTLE: Mr. Kaiser.

6 MR. KAISER: This is a person who has sat  
7 for three hours and been deposed by Mr. Kolar, and  
8 Mr. Kolar had every opportunity to ask Ms. Weber  
9 every conceivable question about the way in which  
10 the noise disturbed her.

11 Now, the fact that -- I couldn't  
12 write a list long enough to disclose everything.  
13 He had as much time as he wanted to discover this,  
14 and to argue that it's somehow beyond the scope or  
15 wasn't sufficiently disclosed is, in my  
16 estimation, absurd. He knows because Ms. Weber  
17 has filed a complaint and has been battling LTD  
18 for three years that the noise is a problem and  
19 it's a severe problem or she wouldn't be spending  
20 her time and money to be here.

21 Now, to argue that we can't have her  
22 tell the Board whether disruption of her sleep

23 affects her job performance in a case involving  
24 noise nuisance strikes me as absurd.

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1 MR. KOLAR: Well, I just have a short  
2 reply.

3 HEARING OFFICER KNITTLE: Sure.

4 MR. KOLAR: It's his job to disclose  
5 opinions. I don't even have to take her  
6 deposition if I don't want to. I could just rely  
7 on the opinions he disclosed, and if I don't ask a  
8 particular question at a deposition, he can ask it  
9 himself, but he hasn't disclosed opinions.

10 The second issue is noise at her  
11 home, and unless she's working for Quill  
12 Corporation out of her home, then it wouldn't be  
13 relevant to numerical or nuisance violations  
14 relating to LTD noise from its property to the  
15 Weber property.

16 HEARING OFFICER KNITTLE: I'm going to  
17 overrule the objection. Go ahead and ask the  
18 question.

19 BY MR. KAISER:

20 Q. Do you recall the question?

21 A. No.

22 MR. KAISER: Could you read it back,  
23 please?

24 (Record read.)

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1 MR. KOLAR: Objection, leading.

2 HEARING OFFICER KNITTLE: That was the  
3 question that we had all the objections to that I  
4 overruled. Was there another one there, Mr.  
5 Kolar?

6 MR. KOLAR: Then I added leading to it  
7 after you overruled my other objections.

8 HEARING OFFICER KNITTLE: I can see why  
9 you were having trouble with the wasp above your  
10 head. I'm going to overrule that and let her  
11 answer the question. A lot of this, like I said,  
12 I do think has been leading. They are questions  
13 that he can get to if they're asked in the proper  
14 form.

15 I don't want to lengthen this any  
16 more than necessary. If it's a leading question  
17 that I think is going to be prejudicial or hurtful

18 to either side, I'm going to step in and grant the  
19 objection, but unless I think so, I'm going to let  
20 it go.

21 BY THE WITNESS:

22 A. It certainly impacts my ability to work if  
23 I'm not well rested. I'm called upon to make a  
24 lot of decisions and deal with crises of the day

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1 and manage quite a few people and give them very  
2 crisp direction.

3 BY MR. KAISER:

4 Q. And have you observed whether at any time  
5 from 1996 to the present that noise from the LTD  
6 facility -- have you observed whether the noise  
7 from LTD has disrupted your sleep and affected  
8 your job performance?

9 A. It's disrupted my sleep, but it has also  
10 been annoying to the point where it becomes really  
11 invasive and impacts -- somewhat impacts your  
12 personality. You get very short-tempered and  
13 grouchy in the anticipation that we're going to  
14 have to deal with the noise on a nightly basis.

15 Q. Have you observed that noise from LTD has  
16 caused you to be short-tempered?

17 MR. KOLAR: Objection, asked and answered  
18 or answered already.

19 HEARING OFFICER KNITTLE: Yeah. I'll  
20 sustain that. She just stated that Mr. Kaiser.

21 BY MR. KAISER:

22 Q. Your testimony is that the noise that you  
23 hear from LTD has affected your personality, that  
24 you've become short-tempered and grouchy. Is that

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1 a fair characterization?

2 A. Yes.

3 Q. Are you experiencing those feelings or  
4 that change in your mood or personality now,  
5 November 2nd, 1999, as a result of LTD's dock  
6 operations?

7 A. Yes.

8 Q. Were you experiencing those changes in  
9 mood or personality during October of 1999 as a  
10 result of LTD's dock operations?

11 A. Yes, and then we're going through it again  
12 in October of '99.

13 Q. And did you experience those same feelings  
14 during the fall of 1998?

15 A. Yes.

16 Q. As you sit here today, have you been able  
17 to determine through your own observations whether  
18 LTD's business is seasonal?

19 A. Yes.

20 Q. What have been your observations in that  
21 respect?

22 A. That the peak periods are from mid to end  
23 of August through the second to third week of  
24 December.

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1 Q. Did you and I meet at your home one  
2 evening last week to talk about the hearing?

3 A. Yes.

4 Q. And did I sit with you and your husband  
5 Henry in your living room and talk about what I  
6 expected would happen at the hearing?

7 A. We sat in the family room.

8 Q. That's the family room?

9 A. Yes.

10 Q. Thank you.

11 Did we also walk out onto the deck  
12 just off of the family room?

13 A. Yes, we did.

14 Q. What, if anything, do you recall hearing  
15 as we stood out on the deck sometime last week,  
16 the last week of October 1999?

17 A. We heard the diesel noise. We heard the  
18 air brakes. We heard a beeping. We heard a  
19 thumping noise, and I think those were the  
20 predominant noises that we heard.

21 Q. Now, beeping appears to be a new sound.  
22 That was not one of the sounds you recall hearing  
23 in the fall of 1996; is that correct?

24 A. That is correct. This sound -- this

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1 beeping sound seems to be new this year, this  
2 constant just constant beeping noise. It comes  
3 and goes, but it's more constant than not.

4 (Whereupon, Mr. Weber  
5 joined the proceedings.)

6 MR. KOLAR: I would move to exclude  
7 Mr. Weber while his wife is testifying.



8 MR. KAISER: I note that Henry Weber,  
9 Leslie Weber's husband, has just arrived at the  
10 hearing.

11 MR. KOLAR: I withdraw it. He's a  
12 complainant. I think complaints have a right to  
13 sit in.

14 HEARING OFFICER KNITTLE: Yeah. I think  
15 so.

16 MR. KOLAR: I withdraw it.

17 HEARING OFFICER KNITTLE: Okay.

18 BY MR. KAISER:

19 Q. You were saying this beeping noise appears  
20 to be something new this year?

21 A. Yes.

22 Q. Is that your observation?

23 A. Yes. I recall beeping noises before. I  
24 remember them last year, the back up -- a back-up

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1 alarm, but this is -- seems to be just virtually  
2 continual.

3 HEARING OFFICER KNITTLE: Let me  
4 interject. Is your husband a party to this case?

5 THE WITNESS: No.

6 MR. KAISER: He's not a named  
7 complainant.

8 HEARING OFFICER KNITTLE: Yeah. He's not  
9 a named complainant, and I'd be willing to grant  
10 that motion, Mr. Kaiser.

11 MR. KAISER: I'm not making the motion.

12 MR. KOLAR: I would move to exclude him.

13 HEARING OFFICER KNITTLE: No. I'm just  
14 saying I'll let you make -- do you have a response  
15 you want to make before I do that? Generally, I  
16 allow those.

17 MR. KAISER: No. I have no response.

18 HEARING OFFICER KNITTLE: Mr. Weber, we  
19 hate to do this to you, but can you vacate for a  
20 little bit?

21 MR. WEBER: Sure.

22 HEARING OFFICER KNITTLE: There's a  
23 conference room if you go out here and take a left  
24 and all the way down, take another left and keep

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1 going. There's a little room with a chair and  
2 table you can sit in. Sorry for the interruption.

3 MR. KAISER: That's okay.

4 HEARING OFFICER KNITTLE: I was just  
5 looking at the caption, and I realized he wasn't a  
6 party.

7 BY MR. KAISER:

8 Q. All right. So previously you've heard  
9 something that you would describe as a back-up  
10 alarm?

11 A. Yes.

12 Q. But this beeping sound that you're hearing  
13 now in the fall of 1999, this to your ears is  
14 something new?

15 A. Yes.

16 Q. And, again, are you certain that this  
17 beeping noise that you're hearing -- and do you  
18 hear that in your home?

19 A. Yes.

20 Q. Do you hear that with the doors and  
21 windows closed on your home?

22 A. Yes, you do.

23 Q. Do you hear this in the evening at your  
24 home?

1 A. Yes.

2 Q. Do you hear this after 10:00 p.m. in your  
3 home?

4 A. Yes.

5 Q. Can you hear this as you lie in your bed  
6 and try to fall asleep?

7 A. Yes, and you can hear it in the morning as  
8 well.

9 Q. And is that before 7:00 a.m. in the  
10 morning that you're hearing this beep?

11 A. Yes.

12 Q. Are you sure that you're not hearing the  
13 back-up beeper as the garbage truck picks up  
14 garbage from the Corporate 100 Dumpster?

15 A. I have heard that as well. I can  
16 distinguish between the two.

17 Q. And the noise that you're describing for  
18 the Board now is noise that you are certain is  
19 coming from the LTD facility?

20 A. Yes.

21 Q. It's not coming from car traffic or  
22 construction traffic going to this relatively  
23 newly constructed building to the southeast of  
24 your property?

1 A. No. That construction is completed.

2 Q. During the course of a given hour during  
3 the weekday, that is Monday through Friday, in the  
4 hour from -- in the hours from 9:00 p.m. until  
5 roughly 11:00 p.m., how often would you say you  
6 hear that back-up beeper?

7 A. As I said, you hear it virtually  
8 continually. I was listening to it last week. It  
9 was rather nice out where you could sit outside,  
10 and other than, you know, intermittent time for a  
11 few seconds, perhaps, where it would stop, you  
12 would hear it.

13 Q. Is there anytime during the week when you  
14 can be in your home or in the yard or on your  
15 decks and not hear noise from LTD's truck docks?

16 A. When you say during the week, you're  
17 talking about from Monday through Friday?

18 Q. No. I mean, at any time -- is there any  
19 time? I take off that restriction.

20 A. Saturday evening.

21 Q. Saturday evening.

22 A. Peace reigns on Saturday evening.

23 Q. About what time does peace begin to rain  
24 down?

1 A. Well, I notice it after 3:00, 3:30.

2 Q. How does that feel?

3 A. It feels great. I frequently comment how  
4 peaceful it is when we don't hear the noise.

5 Q. Do you notice any change in your mood when  
6 the noise stops?

7 A. Yeah. You really feel a lot lighter.

8 Q. How long do you enjoy this reprieve from  
9 the noise?

10 A. Through Sunday and Sunday evening.

11 Q. When does the noise from the LTD dock area  
12 return?

13 A. Monday morning.

14 Q. Approximately, what time does it begin on  
15 Monday morning during the fall of 1999?

16 A. Between 6:00 and 6:30.

17 Q. How late into the evening does that noise  
18 continue?

19 A. I've heard it at 11:00 o'clock, between  
20 11:00 and 12:00 I've heard the noise.

21 Q. Friday nights, do you hear noise?

22 A. Yes. Friday night is bad.  
23 Q. And the noise you're hearing on Friday  
24 nights that you described as bad, that's noise

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1 from LTD's docks?  
2 A. Yes.  
3 Q. When you hear the noise from LTD's dock on  
4 Friday night during the fall of 1999, what kind of  
5 mood are you in?  
6 MR. KOLAR: Objection as to mood.  
7 HEARING OFFICER KNITTLE: I've been  
8 looking into that. I'm going to overrule that.  
9 My main reason is Section 23 talks about emotional  
10 health and well-being as being one of the primary  
11 purposes for having the noise regulations in the  
12 first place, but I would allow a continuing  
13 objection to that if you'd like.  
14 MR. KOLAR: Yes.  
15 HEARING OFFICER KNITTLE: That will be so  
16 noted for the record. If my cursory research  
17 proves to be inaccurate, please feel free to file  
18 something with the Board. They would consider  
19 that.

20 BY MR. KAISER:

21 Q. Do you recall the question?

22 A. Yes. Yes, I do, and I think by Friday  
23 night after the stresses of the week and having to  
24 deal with the ongoing noise problem, knowing how

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1 peaceful it can be on a Saturday night is very  
2 frustrating.

3 Q. To what do you attribute that frustration?

4 A. To the fact that we can't get the noise to  
5 stop. After four years of going through this, we  
6 can't seem to make any headway.

7 Q. Are you aware that LTD has implemented  
8 something called their good neighbor policy?

9 A. I've heard of that, but I don't know what  
10 it is.

11 Q. Do you have an opinion as to whether LTD's  
12 good neighbor policy, which they claim to have  
13 implemented as early as the summer of 1997,  
14 whether that good neighbor policy has resulted in  
15 a reduction of noise from the LTD docks?

16 MR. KOLAR: Objection. She said I've



17 heard of the policy. I don't know what it is. So  
18 she shouldn't be able to give an opinion as to  
19 whether some policy she doesn't know about has  
20 reduced noise.

21 HEARING OFFICER KNITTLE: Sustained. Go  
22 ahead.

23 MR. KAISER: Well, if I may, we've heard  
24 testimony in the record from Mr. Hara that LTD

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1 implemented something that they've described a  
2 group of protocols, operational protocols, that  
3 they lumped together and called their good  
4 neighbor policy.

5 Now, whether -- I'm placing before  
6 Ms. Weber the fact that has been introduced at  
7 hearing that LTD implemented a good neighbor  
8 policy as early as July of 1997. I mean, I guess  
9 I could ask the question in a different way, and  
10 I'll do that.

11 BY MR. KAISER:

12 Q. Do you experience any difference in the  
13 quality and intensity and frequency of noise from  
14 LTD's dock area? Can you compare the sound from

15 LTD's dock activities now in November of 1999 with  
16 the dock activities in the fall -- well, fall of  
17 1997? Do you notice any appreciable difference?

18 A. The noise -- the noise still exists, and  
19 the noise is still pervasive. There have been  
20 changes in the noise over the years. This beeping  
21 noise that we're hearing this year seems to be  
22 different than noises we've heard in subsequent --  
23 in prior years.

24 You can still identify noises with

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1 certain activities. The air brake noise is still  
2 the same. I haven't heard the booming or the  
3 crashing of the doors, but you hear the trailer  
4 when it releases. You still hear the diesel  
5 noises, the engines. As the tractors move things  
6 into position, you can still here the yard tractor  
7 as it moves things around.

8 Q. And you hear all of those things while  
9 you're in your home with your doors and windows  
10 closed?

11 A. Yes.

12 (Complainants' Exhibit No. 41  
13 marked for identification,  
14 11-2-99.)

15 BY MR. KAISER:

16 Q. I'm showing you what I've marked for  
17 purposes of identification as Complainants'  
18 Exhibit 41. It's a one, two, three, four,  
19 five-page document consisting of some handwritten  
20 notes. I've within the hour received a copy of  
21 these notes and tendered those to Mr. Kolar. I  
22 want to show you that document and ask you do you  
23 recognize it?

24 A. Yes. This is just some notes I made last

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1 week.

2 MR. KOLAR: For the record, I would object  
3 to this exhibit. During her deposition, I asked  
4 her if she had made a log, and obviously she  
5 hadn't made a log at that time. So I don't think  
6 this is something that was timely produced. She  
7 had three years to prepare a log, and I don't  
8 think I should be or LTD should be surprised with  
9 a log during the middle of the hearing.

10 HEARING OFFICER KNITTLE: Mr. Kaiser.

11 MR. KAISER: If I may. We're asking for  
12 the Board to order LTD to build a \$300,000 noise  
13 wall among other things. We're asking for  
14 injunctive relief. One of the things we're  
15 required to demonstrate is that there's a current  
16 ongoing need for relief.

17 This is not a case about past  
18 violations. If it was just about past violations,  
19 it might very well be mooted. We have the burden  
20 of demonstrating to the Board that there are  
21 current ongoing violations and that a technically  
22 feasible and economically reasonable way of  
23 reducing those and eliminating those violations is  
24 by construction of a noise wall.

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1 If we had rested and not brought in  
2 any evidence beyond the date of Ms. Weber's  
3 deposition, we would be unable to satisfy our  
4 burden. The Board would be right to question  
5 whether there is a current need as of the time of  
6 hearing and a current need to order any remedy.

7 For those reasons, I think it's reasonable -- and  
8 I think it's beyond reasonable. I think it's  
9 important for the Board to have the best possible  
10 understanding of what the current conditions are,  
11 and towards that end, Ms. Weber created a log of  
12 times on October 27th, 1999; October 28th, 1999;  
13 and October 29th, 1999, chronicling when she heard  
14 noise from LTD and what types of noise she heard.

15                   This is the best possible evidence  
16 the Board can have on which to base its decision.  
17 For that reason, I'd ask the Board to accept this  
18 into evidence.

19                   HEARING OFFICER KNITTLE: Mr. Kolar.

20                   MR. KOLAR: It's not an issue of whether  
21 it's good evidence or not. It's an issue of  
22 timeliness, and after I took each complainants'  
23 deposition, I expected them probably that night to  
24 start keeping a log until the hearing, and nobody

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1 did that, and now suddenly last week apparently  
2 Steve says oh, you better start keeping a log,  
3 we'll need that for the hearing and boom here at  
4 about 2:30 on Tuesday of the hearing for the first

5 time I get a log that Ms. Weber started keeping, I  
6 guess, last Wednesday.

7 I think it's unfair to LTD and should  
8 be barred because it's not a timely submission of  
9 relevant evidence.

10 HEARING OFFICER KNITTLE: Mr. Kaiser, when  
11 did you receive the log?

12 MR. KAISER: If Mr. Kolar got it at 2:30,  
13 I received it at 2:25.

14 HEARING OFFICER KNITTLE: Did you know  
15 that the log was being created prior to that  
16 time?

17 MR. KAISER: I had asked that a log be  
18 created, but I didn't know until Ms. Weber  
19 appeared this afternoon and showed me the log  
20 whether it had been.

21 HEARING OFFICER KNITTLE: And, Mr. Kolar,  
22 I take it you didn't receive any amended discovery  
23 responses or anything like that?

24 MR. KOLAR: Correct.

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1 HEARING OFFICER KNITTLE: Mr. Kolar, were

2 you about to say something?

3 MR. KOLAR: I was going to say he also  
4 gave me a log that Mr. Rosenstock prepared during  
5 the same time period. He gave that to me on  
6 Friday at Paul Schomer's evidence dep, but he  
7 didn't say anything like and oh, Leslie Weber  
8 might be preparing a log as well.

9 HEARING OFFICER KNITTLE: Yeah. I'm going  
10 to -- do you have a motion or an objection or what  
11 here, Mr. Kolar?

12 MR. KOLAR: I've got a motion to bar the  
13 use of Leslie Weber's log.

14 HEARING OFFICER KNITTLE: Okay. I'm going  
15 to grant that motion. I'm not going to grant it  
16 for Rosenstock's since you did receive that at  
17 least a little bit before the hearing if it comes  
18 that he tries to submit that into evidence.

19 Both of you, since the ruling is  
20 going one way for one and one way for the other  
21 have -- you should take this up with the Board,  
22 and I think it's a pretty close call and a lot of  
23 times the Board likes to see this. You know our  
24 evidentiary standards are lessened. However, I

1 think that in a discovery issue like this, I think  
2 I'm going to disallow that.

3 MR. KAISER: As a document. I mean,  
4 clearly Ms. Weber can testify as to what she  
5 heard --

6 HEARING OFFICER KNITTLE: Granted.

7 MR. KAISER: -- on the 27th, 28th, and the  
8 29th?

9 HEARING OFFICER KNITTLE: There is no  
10 doubt she can testify to what she heard at any  
11 time. I mean, that's within her realm of  
12 knowledge, and it was also, I'm sure, the type of  
13 thing that was disclosed to Mr. Kolar that she  
14 would be testifying to.

15 MR. KOLAR: Right. I guess I would  
16 request that he take his log back if he's going to  
17 ask her questions.

18 HEARING OFFICER KNITTLE: Right. Well,  
19 I'll keep it if it's been -- I take it you're  
20 going to offer that at some point?

21 MR. KAISER: I will. I'll offer it now  
22 and let you deny it on the record, and then at  
23 least it will be part of the record. I'm moving  
24 -- let me just lay the foundation so it's not a



1 foundation objection, it's a timeliness or  
2 whatever the other basis is.

3 HEARING OFFICER KNITTLE: Sure. I'll  
4 allow that.

5 BY MR. KAISER:

6 Q. Ms. Weber, I take it this document,  
7 Complaints' Exhibit 41, these are your handwritten  
8 notes?

9 A. Yes.

10 Q. And you made these notes -- well, for  
11 instance, page one, 10-27-99 between 9:25 and  
12 9:53, when did you make those notes?

13 A. I made them during that time that they're  
14 stipulated in the notes.

15 Q. So as the event was occurring?

16 A. Yes.

17 Q. On 10-28 between 8:05 and 8:09, again,  
18 were you making those contemporaneous with your  
19 observations?

20 A. Yes.

21 Q. On 10-28 between 9:44 and 10:29 --

22 A. Yes.

23 Q. -- again, were those notes made

24 contemporaneously with your observations?

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1 A. Yes.

2 Q. With respect to the notes made on 10-29  
3 between 6:14 and 6:29, were those notes made  
4 contemporaneously with your observations?

5 A. Yes.

6 MR. KAISER: I'd move for the admission  
7 into evidence of Complainants' Exhibit 41.

8 HEARING OFFICER KNITTLE: Okay. And, Mr.  
9 Kolar, you've already made your objections on the  
10 record. Do you have anything further?

11 MR. KOLAR: I guess besides my objection  
12 as to timeliness and foundation, I don't know  
13 whether this is a.m. or p.m.

14 HEARING OFFICER KNITTLE: Can we clarify  
15 that?

16 THE WITNESS: It was all p.m.

17 HEARING OFFICER KNITTLE: Okay.

18 MR. KOLAR: Including the last page or  
19 October 29th, 6:14, 6:15?

20 THE WITNESS: Yes.

21 HEARING OFFICER KNITTLE: This document,

22 as we've already stated, will be denied for the  
23 reasons previously stated, not because of lack of  
24 foundation, but because of the fact that it wasn't

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1 disclosed during discovery. I understand it's in  
2 the record as, like, an offer of proof.

3 MR. KOLAR: Let's go back on because I  
4 would have a few questions on this relating to an  
5 offer of proof which I think would be relevant  
6 beyond the issue of timeliness.

7 HEARING OFFICER KNITTLE: Yeah. Are you  
8 offering this as an offer of proof?

9 MR. KAISER: I'm offering it into evidence  
10 as a stand-alone document that I think the Board  
11 should receive, and I understand that it's your  
12 determination that you're not going to allow it  
13 into the body of documents.

14 HEARING OFFICER KNITTLE: What I do is I  
15 instruct the Board not to consider this particular  
16 document.

17 MR. KAISER: But nevertheless, I think  
18 it's important for it to be in the Board file as

19 offered.

20 HEARING OFFICER KNITTLE: It will be in  
21 the Board file because if they don't agree with  
22 me, which --

23 MR. KAISER: They'll look at it.

24 HEARING OFFICER KNITTLE: -- occasionally

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1 happens, you know, they'll change their mind.  
2 Generally, we don't allow questions about  
3 something that wasn't accepted, but I'll allow you  
4 to ask her certain questions about this if they're  
5 foundational questions along the lines that Mr.  
6 Kaiser has already asked, but if we ask too many  
7 about it, we're going to get a fact where it's  
8 essentially in anyway, and then I would consider  
9 changing my ruling.

10 BY MR. KAISER:

11 Q. On October 27th, 1999, between the hours  
12 of approximately 9:30 and 10:00 p.m., where were  
13 you?

14 A. I was in my bedroom.

15 Q. What were you doing?

16 A. I was listening to the noise.

17 Q. What noise?

18 A. I was listening to the noise from the LTD  
19 Commodities operation.

20 Q. What did you hear?

21 A. I heard a variety of noise, including  
22 beeping sounds, air brakes, the whooshing noise of  
23 the air brakes being released, thumping noises  
24 that I associated with dropping trailers, and the

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1 noise of diesel engines as they would move around  
2 the facility or leave the facility onto Lakeside  
3 Drive.

4 Q. And is your bedroom located on the first  
5 or second floor of your home?

6 A. Second floor.

7 Q. And is it on the east or the west side of  
8 your home?

9 A. It's in the back. So it faces the south.  
10 It is closer to the east side of the house.

11 Q. Have you observed whether you can hear  
12 noise from the LTD dock operations better on the  
13 first floor or second floor of your home?

14 A. It really doesn't matter. Last year, I  
15 kept a log of activities. I kept a pad of paper  
16 and a pencil in our family room, and I would  
17 frequently read in that room, and I would note  
18 down the noise I would hear from that.

19 Q. And that was in your family room on the  
20 first floor?

21 A. Correct.

22 Q. Now, on October 28th, 1999, between 8:05  
23 p.m. and roughly 8:10 p.m., do you recall where  
24 you were?

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1 A. I was upstairs, again, in the same place  
2 in my bedroom.

3 Q. What were you doing?

4 A. I was trying to read and got distracted.

5 HEARING OFFICER KNITTLE: Hold on.

6 (Brief pause.)

7 BY MR. KAISER:

8 Q. October 28th, 1999, 8:00 p.m., you're at  
9 home and you're trying to read. What, if  
10 anything, did you hear?

11 A. I would hear the noises and become

12 distracted.

13 Q. The noises meaning what noises?

14 A. The noises from the operations of the  
15 facility at LTD.

16 Q. How long did that noise last?

17 A. Well, it would last all night. I have  
18 other things I have to do. I have to get my kids  
19 to bed and get all those kinds of things done. So  
20 I don't -- can't afford to sit and listen to the  
21 noise all night.

22 Q. Has it been your experience or has noise  
23 from LTD's dock activities ever prior to October  
24 28th, 1999, interfered with your ability to sit in

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1 your home and read a book in comfort?

2 A. As I said, that's why I was keeping the  
3 log last year because it would just frequently  
4 become terribly annoying as you were trying to  
5 relax.

6 Q. By any chance, did you bring a copy of the  
7 previous log you maintained with you today?

8 A. No, I didn't, Steve.

9 Q. My apologies. I don't have that at my  
10 fingerprints. I'm showing you what's previously  
11 been marked for purposes of identification as  
12 Complainants' Exhibit 34. It's a complaint --  
13 well, take a look at that and tell me if you  
14 recognize that.

15 A. This is the complaint that the Rotis filed  
16 relative to noise and naming myself and Paul  
17 Rosenstock as well.

18 Q. Did you give Karen Roti permission to add  
19 your name to that complaint?

20 A. Yes.

21 Q. Why did you feel it was necessary to file  
22 a complaint against LTD Commodities with the  
23 Pollution Control Board?

24 A. Because we weren't getting any relief in

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1 the number of years that we had hoped to be able  
2 to achieve it amicably.

3 Q. Is there any reason why you haven't  
4 withdrawn the complaint and you've chosen to go  
5 forward to hearing?

6 A. Because the noise hasn't stopped. I



7 don't -- there's nothing that leads me to believe  
8 that it will desist.

9 MR. KAISER: Thank you. I have no further  
10 questions.

11 HEARING OFFICER KNITTLE: Do you have  
12 cross-examination?

13 MR. KOLAR: Yes. Thanks.

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

15 by Mr. Kolar

16 Q. How are you doing?

17 A. Fine.

18 Q. We met at your deposition?

19 A. Yes.

20 Q. Now, when you were looking at homes prior  
21 to July 1988, you and your husband looked at,  
22 like, five or six other lots before deciding to  
23 buy this one, right?

24 A. We had looked at a number of other lots.

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1 I don't recall exactly how many.

2 Q. Does five or six sound about right?

3 A. That sounds about right.

4 Q. And you looked in other areas of Lake  
5 Forest, Long Grove, and possibly Libertyville?

6 A. Yes.

7 Q. And these other lots that you looked at,  
8 didn't some of them have trees as well?

9 A. Yes.

10 Q. This wasn't the only lot available in Lake  
11 County that had this wooded area that you liked;  
12 is that correct?

13 A. That's correct.

14 Q. But this was the only lot that you looked  
15 at that was adjacent to a commercial office  
16 building, trucking operation, right?

17 A. It was the only one that, as I recall, we  
18 knew there was an office building behind it. I  
19 don't recall realizing there was a trucking  
20 operation because at the time this structure as it  
21 stands now didn't exist.

22 Q. Well, do you recall any of the other lots  
23 that you looked at being adjacent to a warehouse  
24 operation?

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1 A. No.

2 Q. And nobody twisted your arm to buy this  
3 lot versus one of the others that was not by an  
4 office building and warehouse operation, right?

5 A. Correct.

6 Q. You visited the lot six to ten times  
7 before you decided to purchase it, correct?

8 A. Something like that.

9 Q. And as you indicated, you were aware of  
10 the office building before you made the decision  
11 and went forward and actually purchased the lot,  
12 right?

13 A. Yes.

14 Q. You were aware of what you thought was an  
15 FMC building at the time, right?

16 A. Correct.

17 Q. And this was before you decided to  
18 purchase the lot, correct?

19 A. Yes.

20 Q. And you knew at that time that FMC was a  
21 manufacturer of large machinery?

22 A. Yes.

23 Q. So you knew at that time before you  
24 purchased this lot that you were, if you bought

1 this lot, in your mind going to own a lot in  
2 proximity to a manufacturer of large machinery,  
3 right?

4 A. I didn't know that facility was going to  
5 be manufacturing large equipment.

6 Q. But you knew -- at that time, you thought  
7 it was owned by FMC?

8 A. Yes.

9 Q. And you knew FMC was a manufacturer of  
10 large machinery?

11 A. Yes.

12 Q. But you didn't know one way or the other  
13 if manufacturing occurred inside that building,  
14 right?

15 A. I had been over there and hadn't seen any  
16 activity that would lead me to believe that any  
17 manufacturing was taking place at that facility.

18 Q. And before you decided to buy this vacant  
19 lot, you and your husband discussed the impact  
20 noise from these operations to the south might  
21 have on the resale value of your home that you  
22 were going to put on that lot, right?

23 A. Abutting a commercial property, yes, that  
24 we did discuss.

1 Q. Specifically -- before you bought your  
2 lot, your vacant lot, you specifically discussed  
3 with your husband whether noise from the south  
4 would impact your ability to resell your lot,  
5 right?

6 A. Probably more significantly what we were  
7 considering was the fact that we had a parking lot  
8 behind it.

9 MR. KOLAR: I'll object and ask that be  
10 stricken as nonresponsive. I'm asking her about a  
11 conversation --

12 MR. KAISER: How was that nonresponsive?

13 MR. KOLAR: I'm asking her if she had this  
14 conversation with her husband.

15 HEARING OFFICER KNITTLE: Mr. Kaiser, do  
16 you have anything further?

17 MR. KAISER: It just strikes me that while  
18 that's an appropriate objection for a question,  
19 the answer hit my ear as exactly responsive to his  
20 question.

21 HEARING OFFICER KNITTLE: I'm going to not  
22 grant that motion. I think she was at least  
23 attempting to respond to the question. I will

24 grant you that it wasn't the -- she was expanding

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1 a little bit. Were you looking for a yes or no  
2 answer?

3 MR. KOLAR: Yeah, and I don't think I got  
4 it.

5 HEARING OFFICER KNITTLE: You did not get  
6 a yes or a no answer, and I'd allow you to reask  
7 the question.

8 BY MR. KOLAR:

9 Q. The question is before you and your  
10 husband bought this vacant lot in July 1988, did  
11 you and your husband discuss if noise coming from  
12 the south would impact on the resale value of the  
13 house you were going to put on that lot? Yes or  
14 no?

15 A. Yes.

16 Q. And then you and your husband went ahead  
17 and bought the lot, right?

18 A. Yes.

19 Q. You made no investigation as to what  
20 exactly was -- what exact type of business was

21 happening inside that warehouse before buying the  
22 lot, right?

23 A. Correct.

24 Q. So before you bought this lot, you had

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1 some expectation in your mind that there could be  
2 noise that would impact your use of your  
3 residential lot, right?

4 A. Can you ask that question again, please?

5 Q. Before you made the decision with your  
6 husband to buy this lot, you already had in your  
7 mind an expectation that you might be impacted by  
8 noise coming from the south, right?

9 A. Yes.

10 Q. I think we have a mistake regarding  
11 Complainants' Exhibit 37. I could be wrong, but  
12 let's check. On Exhibit 89, your house is, like,  
13 directly south of this roadway that goes from  
14 Wedgewood to the northwest; is that accurate?  
15 This is your house?

16 A. Yes.

17 MR. KAISER: And if you need to get up --

18 HEARING OFFICER KNITTLE: Yeah. I was

19 going to say if you want to get closer, Ms.

20 Weber.

21 MR. KAISER: -- you know, don't hesitate.

22 BY THE WITNESS:

23 A. If this is Oak Knoll -- no. This goes

24 nowhere. This is not a road.

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1 HEARING OFFICER KNITTLE: When she's  
2 finished, Mr. Kolar, could you make it for the  
3 record?

4 MR. KOLAR: Sure.

5 BY THE WITNESS:

6 A. There is a driveway that goes to a house  
7 that used to exist here that was torn down.

8 BY MR. KOLAR:

9 Q. For the record, the house directly --

10 A. That's the Roti's.

11 Q. Let me finish so the record is clear.

12 Okay?

13 HEARING OFFICER KNITTLE: Ms. Weber, I  
14 don't want you to be offended, but there's nobody  
15 here from the Board. So we have to make sure that



16 they can understand when they're reading this.

17 BY MR. KOLAR:

18 Q. They're not going to understand when you  
19 say here or there. You can appreciate that.

20 A. Well, I will. I certainly do try to  
21 appreciate it, but just so maybe we take it off  
22 the record so that I can clarify it.

23 HEARING OFFICER KNITTLE: We can't take  
24 anything off the record at the moment.

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1 THE WITNESS: All right. Then however we  
2 have to proceed.

3 BY MR. KOLAR:

4 Q. How about point to me on Exhibit 89 your  
5 house.

6 A. You have me confused. I have to orient  
7 myself. I'm sorry. This is our house here  
8 (indicating).

9 Q. Take this black pen and circle that and  
10 write above it maybe on the street Weber, please.  
11 Circle the whole house.

12 A. (Witness complied.)

13 Q. Thanks.

14 MR. KOLAR: Now, Exhibit 37, that sketch,  
15 Steve.

16 MR. KAISER: Yeah.

17 BY MR. KOLAR:

18 Q. Now, on the original of Exhibit 37, you  
19 have, if I'm correct, you have put your name or  
20 Weber residence to the house to the right of the  
21 one you circled on the aerial, Exhibit 89, am I  
22 correct?

23 A. If I'm reading this correctly, there are  
24 three homes that are depicted here, and we are the

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1 one to the right most of the drawing.

2 Q. Okay. Well, regardless, you're confident  
3 that the one you circled on Exhibit 89 is your  
4 home, right?

5 A. Yes.

6 Q. Your home was not in existence in 1987,  
7 correct?

8 A. That's correct.

9 Q. It was not in existence in March 1988,  
10 right?

11 A. Correct.

12 Q. 1992 is when it was finished, and you  
13 moved in in January 1992?

14 A. That is correct.

15 Q. Let me put up here Respondent's Exhibit  
16 88, which is -- again, this is a March 27th, 1988,  
17 aerial of the same area.

18 Can you step down here and take a  
19 look, Ms. Weber? Do you see on Exhibit 88,  
20 Respondent's, the LTD building?

21 A. Yes.

22 Q. And this you recognize by the roof before  
23 the '94 expansion to the south?

24 A. From what I can recognize.

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1 Q. Okay. And your home is not shown on this  
2 aerial because it wasn't built yet, right?

3 A. Correct.

4 Q. You would agree that the trees here is  
5 where you eventually built your home?

6 A. Yes.

7 Q. So if I -- can you circle those trees and  
8 where you believe your lot to be and where your

9 home now exists? Why don't you write Weber.

10 A. (Witness complied.)

11 Q. All right. So all of the LTD truck docks  
12 were in existence before you purchased your lot in  
13 July 1988, right?

14 A. I did not go over there. So I can't say  
15 whether they -- where the docks resided.

16 Q. You would agree, though, that Exhibit 88  
17 truly and accurately shows the north end of the  
18 original LTD warehouse from the top?

19 A. Yes.

20 Q. Then you and your husband held your lot  
21 for three years until you built up enough capital  
22 to build your home in probably, what, '91 and then  
23 moved in '92?

24 A. Yes.

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1 Q. And this catalogue, Complainants' Exhibit  
2 2, you got this at the Quill Company, right?

3 A. Yes.

4 Q. And you gave it to Mr. Kaiser?

5 A. Yes.

6 Q. The Quill Company is a business?

7 A. Yes.

8 Q. LTD is a business?

9 A. Yes.

10 Q. In fact, I guess, what did it say on the  
11 mailing label that was ripped off?

12 A. I don't recall.

13 Q. Now, you also knew of the existence of  
14 I-294, the tollway, before you bought your lot in  
15 July 1988, correct?

16 A. Yes.

17 Q. And before you decided to purchase your  
18 lot, you could hear tollway traffic in the  
19 vicinity of your lot, right?

20 A. Yes.

21 Q. And even -- I mean, today the tollway  
22 produces a constant buzz of noise at your property  
23 on certain days, right?

24 A. Yes.

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1 Q. And when the wind blows from the west to  
2 the east towards your lot, you could hear it more  
3 so than if the wind is blowing some other

4 direction?

5 A. Yes.

6 Q. Would you agree that you can hear the  
7 tollway louder -- Strike that.

8 Would you agree that the tollway is  
9 louder on days when the pavement on the tollway is  
10 wet?

11 A. I cannot tell that.

12 Q. You could hear that tollway noise, that  
13 constant buzz, on your property all year long,  
14 right?

15 A. Yes.

16 Q. So when LTD is in its down season and you  
17 don't hear LTD, you can still hear the tollway  
18 noise, right?

19 A. I can hear the tollway noise when I'm  
20 outside during the seasons when LTD is not in full  
21 swing.

22 Q. Well, in fact, when it's quiet at your  
23 home on a Saturday evening and you're outside, you  
24 can hear the tollway, right?

1 A. At times when the wind is blowing from  
2 that direction.

3 Q. You can hear it on Sundays when it's quiet  
4 at LTD, right?

5 A. Yes.

6 Q. Have you ever been crabby or in a bad mood  
7 on a Monday at work?

8 A. Uh-huh, yes.

9 Q. Okay. But you get a good night's sleep on  
10 Sunday because LTD is not in operation, right?

11 A. Sometimes I do and sometimes I don't.

12 Q. So sometimes if you don't get a good  
13 night's sleep on Sunday night it's been for  
14 reasons completely unrelated to LTD?

15 A. Yes.

16 Q. Because you told us LTD does not interfere  
17 at all with your sleep on Saturday nights and  
18 Sunday nights, right?

19 A. Correct.

20 Q. And that's all year long, right?

21 A. That is correct.

22 Q. Have you ever made a written report to  
23 anybody at the Quill Company that noise from LTD  
24 affects your ability to work at the Quill Company?

1 A. No.

2 Q. Have you ever orally said to anybody at  
3 Quill Company I'm sorry, I'm having a bad day, LTD  
4 was really noisy last night?

5 A. I don't know.

6 Q. Have you ever seen a doctor for any sort  
7 of emotional problems or physical illness relating  
8 to noise from LTD?

9 A. No.

10 Q. In Complainants' Exhibit 8, which I also  
11 marked as Respondent's Exhibit 19, this, you  
12 testified, is a letter that you sent on or about  
13 January 20th, 1997, to David Lothspeich, right?

14 A. Yes.

15 Q. Okay. And the only noise from LTD that  
16 you identified in this January 20th letter is a  
17 booming sound from trailer doors slamming against  
18 a trailer, right? Take your time and look at it.

19 MR. KAISER: Objection. The letter speaks  
20 for itself.

21 HEARING OFFICER KNITTLE: Mr. Kolar.

22 MR. KOLAR: No response.

23 HEARING OFFICER KNITTLE: I'm going to let  
24 her testify. We've been going over these letters



1 in pretty significant detail. So the objection is  
2 overruled.

3 MR. KOLAR: Let me actually withdraw that,  
4 and I'll ask a couple of questions --

5 HEARING OFFICER KNITTLE: Ma'am, he's  
6 going to withdraw that question.

7 THE WITNESS: Okay.

8 HEARING OFFICER KNITTLE: So do you still  
9 want her to review that document?

10 MR. KOLAR: Yes. She can just hold it  
11 there because I'll come back to that.

12 BY MR. KOLAR:

13 Q. So in November 1996, you heard what you, I  
14 guess, later found out you thought was a booming  
15 noise from trailer doors slamming against trailers  
16 at LTD, right?

17 A. Yes.

18 Q. And in that same time period, you heard  
19 revving of engines, right?

20 A. Yes.

21 Q. Would you hear air brake noise at that  
22 time as well?

23 A. I believe so. I wasn't as well versed in  
24 some of the activities at that time.

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1 Q. But after hearing noise, eventually you  
2 wrote this January 30th letter to David  
3 Lothspeich, right?

4 A. Yes.

5 Q. And the only noise referred to in this  
6 January 30th, 1997, letter is this booming of  
7 trailer doors against the trailers, right?

8 A. It also talks about a low frequency  
9 machine noise of motorized equipment.

10 Q. But it doesn't say revving of engines?

11 A. No. It's not as specific.

12 Q. Okay. You also say in this letter that I  
13 will assure you that this severely impacted my  
14 sleep and that of my children, right?

15 A. Yes.

16 Q. And you have two sons, one 16 and one  
17 nine?

18 A. Yes.

19 Q. What's the name of the son who's nine?

20 A. Christopher.

21 Q. And he's not affected at all by noises  
22 from LTD trucking operations, right?  
23 A. Correct.  
24 Q. As we can see on these aerials, your lot

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1 is adjacent to the office building lot, right?  
2 A. Yes.  
3 Q. No part of it abuts the LTD property,  
4 right?  
5 A. Correct.  
6 Q. If I heard your testimony correctly, you  
7 believe that you hear sounds from LTD -- Strike  
8 that.  
9                   You believe you hear sounds from  
10 tractor-trailers pulling out of the LTD staging  
11 area and going onto Lakeside Drive to leave the  
12 property?  
13 A. Yes.  
14 Q. And that's something that you've heard for  
15 how long?  
16 A. Since 1996.  
17 Q. Okay. Do you think also when you hear

18 noise that those are trailers coming north down  
19 Lakeside Drive and entering the LTD truck staging  
20 area?

21 A. From my perception, the noise of them  
22 exiting is more prevalent than that of their going  
23 in unless they're revving the engines when they  
24 enter the dock area.

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1 Q. So you hear noise when a truck is  
2 egressing from the LTD truck staging area onto  
3 Lakeside Drive, right?

4 A. Yes.

5 Q. And you understand Lakeside Drive is a  
6 public road?

7 A. Yes.

8 Q. I heard in your direct examination that  
9 you said noise from LTD occurs at all hours of the  
10 night?

11 A. It occurs late into the night.

12 Q. And so if you said all hours of the night,  
13 that was mistaken? It's not all hours of the  
14 night?

15 A. Certainly, I've heard it at 2:00 o'clock

16 in the morning.

17 Q. Have you heard it at 3:00 o'clock in the  
18 morning?

19 A. I believe so during the 1996 time frame.

20 Q. How about in the last three years, have  
21 you heard LTD at 3:30 in the morning?

22 A. I have not heard LTD at 3:30 in the  
23 morning this year.

24 Q. Well, last year, did you hear LTD at 3:30

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1 in the morning?

2 A. I cannot recall.

3 Q. What about 1997, did you hear LTD at 3:30  
4 in the morning?

5 A. I don't remember.

6 Q. In fact, the noise that you believe comes  
7 from LTD does not keep you up all night, right?

8 A. It does not keep me up all night?

9 Q. True?

10 A. Correct.

11 Q. And the back-up beeper noise you hear does  
12 not wake you up very often, correct?

13 A. Correct.

14 Q. And you acknowledged here that there's an  
15 enclosed garbage facility, garbage area at the  
16 northwest corner of the office building parking  
17 lot, right?

18 A. Yes. I know that used to be there. I  
19 don't know if it's still there or not.

20 Q. Well, have you recently looked out your  
21 window at a wooden fenced in area directly south  
22 of your home?

23 A. I can't see it from my home.

24 Q. Let me show you Respondent's Exhibit 55, a

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1 photograph. Do you see that wooden fence-like  
2 structure --

3 A. Yes.

4 Q. -- in the background?

5 A. Uh-huh.

6 Q. Is that fenced in area directly south of  
7 your home on the corporate office building parking  
8 lot?

9 A. It's southwest of my home.

10 Q. So that would be in the northwest corner

11 of the office building parking lot, right?

12 A. Yes.

13 Q. And that exists today, correct?

14 A. Again, I believe so.

15 Q. And that's where you have heard back-up

16 warning beepers from garbage trucks, right?

17 A. Yes.

18 Q. So you would admit that at times you are

19 disturbed at your home by back-up warning beepers

20 from garbage trucks on the office building parking

21 lot?

22 A. Yes.

23 Q. And that garbage truck when it's making

24 that noise is a lot closer to your house than the

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1 yard tractor is when it's operating in the staging

2 area, right?

3 A. It is closer, yes.

4 Q. Does that noise annoy you like the back-up

5 beeper on the yard tractor?

6 A. It does annoy me and has woken me up.

7 Q. Okay. What time did it wake you up?

8 A. I have heard it a couple years ago  
9 probably around 5:00, 5:30 in the morning. I  
10 think in the last year, they changed their  
11 schedule and now come later, closer to 6:00, 6:30.  
12 Q. So the beeper itself woke you up?  
13 A. The beeper and the noise of them putting  
14 the Dumpster back down.  
15 Q. So it's like a big banging noise --  
16 A. Yes.  
17 Q. -- of metal on asphalt?  
18 A. On pavement.  
19 Q. Is there also a noise made when the  
20 Dumpster is lifted into the air and tipped upside  
21 down?  
22 A. Yes.  
23 Q. That's a noise of metal clanging against  
24 metal?

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1 A. Yes.  
2 Q. Have you made any complaints to Corporate  
3 100 about its -- when its garbage is picked up?  
4 A. No.  
5 Q. So is that something that you could hear



6 at your property every day, the garbage truck  
7 coming to Corporate 100 to pick up garbage?

8 A. I didn't hear it every day, but I have  
9 heard it.

10 Q. How many times have you heard it in the  
11 last three years?

12 A. Maybe 100.

13 Q. And is it a loud, piercing, annoying  
14 sound?

15 A. I wouldn't have described it as that.  
16 It's annoying and it's loud.

17 Q. Your house does not shake from LTD truck  
18 operations, true?

19 A. True.

20 Q. Horns from the LTD trucking operations do  
21 not wake you up, true?

22 A. True.

23 Q. And the time when you went to the LTD  
24 property and saw the J.B. Hunt tractor-trailers,

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1 were they in the auto parking lot on the far north  
2 end of the LTD property?

3 A. No. They were down along the docks.

4 Q. In the staging area?

5 A. Yes.

6 Q. Well, have there been times when you saw

7 tractor-trailers maybe a couple years ago up in

8 the auto parking lot?

9 A. Not that I've noticed.

10 Q. But you would acknowledge that that auto

11 parking lot is higher than the truck staging area?

12 A. Yes.

13 Q. So if trucks were up there, that would

14 probably annoy you more than if they were down in

15 the truck staging area?

16 A. I can't answer that.

17 Q. And the noise from LTD's yard tractor is

18 better now in terms of it doesn't bother you as

19 much as it did in 1997, true?

20 A. That is correct.

21 Q. You've also woken up at your home because

22 of sirens from ambulances, right?

23 A. Yes.

24 Q. You do not believe LTD has decreased the

1 value of your home, true?

2 A. True.

3 MR. KAISER: If I may somewhat belatedly  
4 just ask for a clarification. When you say value,  
5 are you talking about the fair market value as in  
6 resale value, not values -- nonmonetary values  
7 that people might attach to their home?

8 MR. KOLAR: Fair market value.

9 BY MR. KOLAR:

10 Q. You would agree that LTD trucking  
11 operations have not decreased the fair market  
12 value of your home? That's your opinion, right?

13 A. Yes.

14 Q. Your husband, Henry, he's on the road  
15 three nights a week, correct?

16 A. He was earlier on. He's not anymore.

17 Q. Is he out on business during the week?

18 A. No, not anymore.

19 Q. Now, this Complainants' Exhibit 41, the  
20 log starting last week, did Mr. Kaiser ask you at  
21 that meeting to prepare a log?

22 A. He asked if we had been maintaining any  
23 logs and suggested that we keep some information.

24 Q. He asked you if you had been maintaining

1 any logs and you and your husband said no?

2 A. Correct.

3 Q. And then you started to prepare a log,  
4 right?

5 A. Yes.

6 Q. At his request?

7 A. Yes.

8 Q. And you testified about the noise you  
9 heard beginning last week on the 27th, 28th, and  
10 29th inside your home.

11 Were your windows open or shut at  
12 that time?

13 A. I think they were slightly open.

14 Q. And at that time, you were making a  
15 conscious effort to listen for noise from LTD  
16 Commodities, right?

17 A. Well, not at the time when I was trying to  
18 read.

19 Q. But then after that, you put down your  
20 book and you would made a conscious effort to  
21 listen for noise from LTD Commodities, right?

22 A. I may -- yes.

23 Q. Now, you said you were at a meeting in  
24 Bannockburn in early -- like January 1997?

1 A. Yes. I attended the hearing for the town  
2 meeting. I don't know what they called it.

3 Q. Was -- were the Rotis there?

4 A. The Rotis did attend that meeting.

5 Q. Was Mr. Kaufman there?

6 A. You know, I don't know. I got there  
7 late. I had talked to Karen after the meeting and  
8 compared notes.

9 Q. Was a Victor Phillipini there, attorney for  
10 Bannockburn?

11 A. I don't recall the attendees.

12 Q. You don't know if Mr. Hara was at that  
13 meeting or not?

14 A. No, I don't.

15 Q. You never made a log of the times when you  
16 felt that you were moody or short-tempered because  
17 of noise from LTD, correct?

18 A. No. I didn't make a log of moodiness.

19 Q. You did make a log of moodiness?

20 A. I did not make a log of moodiness. I made  
21 a log of when I heard the noises.

22 Q. When did you meet with Mr. Kaiser at your

23 home? What day was that?

24 A. I believe it was last Wednesday.

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1 Q. Now, your oldest son, he's 16?

2 A. Yes. He's 16 now.

3 Q. Does having two boys ever cause you to be  
4 moody or short-tempered? I mean, I have two  
5 boys. I'm just curious. Have the two boys ever  
6 caused you to be moody or short-tempered when you  
7 come home from work?

8 A. When I come home from work, no.

9 Q. But after a long day of work, do the  
10 activities of your sons, boys being boys, does  
11 that ever cause you to be moody and/or  
12 short-tempered?

13 A. I get short-tempered at them. So I guess  
14 to answer your question, it would be yes.

15 Q. Now, recently, as you see here on Exhibit  
16 89, another office building was completed to the  
17 southeast of the office building directly south of  
18 your house, right?

19 A. Yes.

20 Q. When did the construction activities for  
21 that office building cease?

22 A. I believe it was late summer of '99.

23 Q. And when did construction activities begin  
24 at that site?

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1 A. I don't recall, but I think it was quite  
2 early in 1999. It may have actually begun last  
3 year. I don't exactly recall.

4 Q. So either '88 or early --

5 A. '98.

6 Q. Excuse me. Either 1998 or early '99  
7 through late summer '99, right?

8 A. Yes, uh-huh.

9 Q. And when that office building was under  
10 construction to your southeast, you could hear  
11 construction noises on your property, right?

12 A. Yes.

13 Q. And those noises also bothered you in  
14 enjoying your property, right?

15 A. I don't recall that it bothered me from  
16 enjoying my property that significantly.

17 Q. Well, you could hear those construction

18 noises on your property, correct?

19 A. Yes.

20 Q. So I guess the noises you could hear on  
21 your property at one time or another would be the  
22 tollway, you claim LTD, the garbage truck,  
23 construction noises, and ambulances, right?

24 A. Yes.

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1 Q. Has your husband prepared any sort of log?

2 A. Not that I know of.

3 Q. To your knowledge, have the Rotis prepared  
4 any sort of log of noises in the last week or so?

5 A. I don't know.

6 Q. Did you meet with Mr. Kaiser with the  
7 Rotis as well and Mr. Rosenstock all at one time?

8 A. No.

9 Q. Just finally, if you're asleep in your  
10 house and you are suddenly woken up, you would  
11 agree that you don't know what was the actual  
12 noise that woke you up?

13 A. Correct.

14 MR. KOLAR: I think I'm done. I just want



15 to find my handwritten -- typewritten notes.

16 BY MR. KOLAR:

17 Q. Have you ever called LTD and tried to have  
18 any of its products delivered to your home?

19 A. No.

20 Q. And your son Christopher, you consider him  
21 a normal nine-year-old boy?

22 A. Yes.

23 MR. KOLAR: I don't have anything else.

24 HEARING OFFICER KNITTLE: Mr. Kaiser,

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1 redirect?

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

3 by Mr. Kaiser

4 Q. With respect to one of Mr. Kolar's last  
5 questions about your experience of being awakened  
6 during the night, and it was almost a  
7 philosophical or metaphysical question, could you  
8 determine what caused you to wake up in the middle  
9 of the night. Do you recall that question?

10 A. Yes, I do.

11 Q. Are you able to form opinions after being  
12 awakened during the night based on the noise that

13 you're hearing in the environment as to what most  
14 likely woke you up?

15 MR. KOLAR: Objection, calls for  
16 speculation. I think he could ask what noises did  
17 you hear after you woke up, but I don't think she  
18 can speculate as to what noise woke her up when  
19 she was sleeping at the time.

20 MR. KAISER: Did she form an opinion and  
21 the basis of her opinion is the noises in the  
22 environment at that time and, again, it goes to  
23 weight, not admissibility.

24 HEARING OFFICER KNITTLE: Well, I don't --

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1 it is fairly metaphysical. I would sustain the  
2 objection. What I'd like you to do is her -- you  
3 know, I think you could ask her if there were  
4 noises that occurred afterwards, and then you  
5 could get back to your question.

6 MR. KAISER: I'll do it that way.

7 BY MR. KAISER:

8 Q. When you've been awakened during the  
9 middle of the night, I take it in the event where

10 sirens awakened you, then the noise in the  
11 environment is the siren proceeding down the  
12 street or up the street and you draw a conclusion  
13 that the siren woke me up; is that right?

14 A. Yes.

15 Q. And with respect to other occasions when  
16 you haven't been awakened by a siren or an  
17 emergency vehicle, have you been able to form the  
18 opinion concerning -- well, what other noise did  
19 you hear in the immediate environment?

20 A. I'm sorry. Can you restate that?

21 Q. I can understand that.

22 MR. KAISER: I mean, here's my problem  
23 with the objection Mr. Kolar is making. He  
24 basically asked the question and said well, you

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1 could hear the garbage truck woke you up, right,  
2 and so he admits to the possibility that you can  
3 determine what wakes you up as long as it's a  
4 siren or a garbage truck, but you can't determine  
5 what wakes you up if it's an LTD noise.

6 I mean, that's really the logic of  
7 his cross-examination, and you can't have it both

8 ways. Either you can hear the garbage truck woke  
9 you up, you can hear the siren woke you up, you  
10 can hear LTD trucks woke you up, or you can't hear  
11 any of them.

12 HEARING OFFICER KNITTLE: I don't -- go  
13 ahead, Mr. Kolar.

14 MR. KOLAR: My objection is to her giving  
15 an opinion as to the noise that woke her up. I  
16 said he can ask her what noises did she hear  
17 immediately after she woke up, and then he could  
18 argue in his trial brief that well, it had to be  
19 LTD truck noises because that's the noise she  
20 heard immediately afterwards.

21 HEARING OFFICER KNITTLE: That wasn't the  
22 exact question that I thought I was sustaining an  
23 objection to. I would let you ask her if she had  
24 an opinion as to what woke her up. That's not the

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1 same thing as whether or not she heard what woke  
2 her up.

3 MR. KAISER: Thank you.

4 BY MR. KAISER:

5 Q. You've testified that you've been awakened  
6 from your sleep. Do you recall that testimony?

7 A. Yes.

8 Q. And as I understood your testimony, you  
9 stated that on occasion you've been awakened  
10 during your sleep by sirens or ambulances.

11 Was that your testimony?

12 A. Yes.

13 Q. And I thought I also heard you tell Mr.  
14 Kolar that on one or more occasions you were  
15 awakened during your sleep by that garbage truck  
16 picking up garbage at Corporate 100?

17 A. Yes.

18 Q. Now, as I understood your direct  
19 testimony, you've also been awakened by noises  
20 that you've attributed to LTD's operations; is  
21 that true?

22 A. Yes.

23 Q. And the follow-up question then is what  
24 was the basis for your conclusion that it was

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1 noise from LTD's docks that woke you up?

2 A. Because just as I did when I was awakened

3 by the siren, at that time I got up and got out of  
4 bed and saw some kind of red light flashing that  
5 indicated to me there was some kind of emergency  
6 vehicle.

7                   On situations where I would get woken  
8 up from my sleep, I've actually gotten into my car  
9 and tried to find the source of the noise that  
10 corroborates with the noise that seemed to have  
11 woken me up.

12    Q.    Okay. Now, you testified that the noise  
13 does not bother your nine-year-old son  
14 Christopher; is that right?

15    A.    That is correct.

16    Q.    Do you have an opinion based on your  
17 observations of your son Scott whether noise from  
18 LTD's operations have ever disturbed him?

19    A.    In 1996, I know the noise from LTD  
20 bothered Scott because we talked about it.

21           MR. KOLAR: Objection, hearsay. I'd ask  
22 that that be stricken.

23           HEARING OFFICER KNITTLE: Mr. Kaiser.

24           MR. KAISER: I asked her whether she had

1 an opinion whether noise bothered her son Scott.  
2 She said yes. Now, the basis may be hearsay, but  
3 I think people are entitled, especially mothers in  
4 relation to their son, are entitled to take  
5 information that they receive from their son and  
6 that that's inherently in this instance reliable,  
7 and, furthermore, it's not hearsay because it  
8 doesn't go to the truth of the matter asserted.  
9 It goes to foundation for Ms. Weber's testimony  
10 and opinion. So in that way, it's an exception to  
11 the hearsay rule.

12 HEARING OFFICER KNITTLE: Anything else?

13 MR. KOLAR: No.

14 HEARING OFFICER KNITTLE: I'll overrule  
15 the objection, and if there was a motion to  
16 strike, not granted.

17 BY MR. KAISER:

18 Q. Now, Mr. Kolar asked you on  
19 cross-examination last week October 27th, 28th,  
20 and 29th when you maintained the noise log, he  
21 asked were you consciously listening to hear LTD's  
22 noise.

23 Do you recall that question?

24 A. Yes.

1 Q. Must you be consciously listening in order  
2 to hear noise from LTD's dock activities in your  
3 home with your windows and doors shut?

4 A. No.

5 Q. Mr. Kolar asked you do you believe that  
6 LTD's dock operations and the noise that those  
7 generate do you have an opinion whether that noise  
8 has decreased the fair market value of your home.

9 Do you remember that question?

10 A. Yes.

11 Q. And your testimony was no, you don't think  
12 it's affected the market value of your home,  
13 correct?

14 A. Yes.

15 Q. Has the noise from LTD's dock operations  
16 decreased any of the other values other than fair  
17 market and mercantile values, the values that we  
18 attribute with our homes, have they been decreased  
19 in any way?

20 MR. KOLAR: Objection, leading. It's  
21 vague. I don't know -- I don't know what  
22 mercantile values means. There's fair market  
23 value. I don't know of any other value.

24 MR. KAISER: Joe, I know you better than



1 that, and I know you know many other values than  
2 fair market value, and I'd be happy to explain  
3 what I'm -- clarify the question.

4 HEARING OFFICER KNITTLE: Please do.

5 BY MR. KAISER:

6 Q. What other values, other than just your  
7 home is worth \$500,000 or \$600,000, does your home  
8 mean something to you more than it's value on the  
9 market?

10 A. My house has a value that is monetary,  
11 what I can sell it for as a value, the land, what  
12 I put into my home has a cost. The value of my  
13 home is that which I make for my family. It's  
14 that which my husband and I supply, and it's  
15 something that is a haven and should provide a  
16 sense of quietude and comfort and solace at the  
17 end of a busy day or a busy week.

18 Q. Have those values that you just described  
19 been affected by LTD's dock operations?

20 A. Yes, it has.

21 Q. In what way?

22 A. In a very overt way we cannot enjoy the  
23 use of our decks after the August time frame. It  
24 also just becomes intrusive in relation to some of

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1 the quiet activities that we can enjoy inside the  
2 home. As I mentioned, I kept a log last year as I  
3 was sitting in the family room just trying to read  
4 and would be disturbed by the noise as we're  
5 trying to play a game, as we're trying to do quiet  
6 activities, which we try to encourage inside the  
7 house.

8 Q. Are quiet activities important to you and  
9 your family?

10 A. Yes.

11 Q. Do you value peace and quite in your home?

12 A. I value piece an quite above many, many  
13 things.

14 Q. What, if any, impact has LTD's dock  
15 activities had on the peace and quiet of your  
16 home?

17 A. From August through the end of December,  
18 the peace and quiet is destroyed. Other than the  
19 Saturday night, we have to bear the burden of the

20 continuous noise through the week.

21 MR. KAISER: Thank you. I have no further  
22 questions.

23 HEARING OFFICER KNITTLE: Do we have any  
24 recross?

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1 MR. KOLAR: Just one area.

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

3 by Mr. Kolar

4 Q. When you and your husband before July 1988  
5 discussed how noise from the south could impact on  
6 the resale value of a home you were going to build  
7 on that lot, at that time did you also discuss  
8 whether that noise would impact on the solitude,  
9 peace, and quiet value of your home?

10 A. Yes.

11 Q. So before purchasing your lot, you were  
12 concerned that noise from the south might  
13 interfere with the quiet enjoyment of your  
14 residential property?

15 A. We were concerned that noise from the  
16 highway could potentially impact our enjoyment.

17 Q. Well, it wasn't just the highway you were  
18 concerned about. It was the commercial uses to  
19 the south that you and your husband discussed,  
20 right?

21 MR. KAISER: Objection, argumentative.

22 MR. KOLAR: It's cross-examination.

23 HEARING OFFICER KNITTLE: I'll let that  
24 one stand. If you can answer that question, you

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1 are directed to.

2 BY THE WITNESS:

3 A. It was the highway noise that we were  
4 concerned with. It was the highway noise that we  
5 explicitly discussed.

6 BY MR. KOLAR:

7 Q. Let me show you page 13 of your deposition  
8 transcript.

9 Do you recall giving your deposition  
10 at my office?

11 A. Yes, I do.

12 Q. And being placed under oath, do you recall  
13 that?

14 A. Yes. Yes, I do.

15 Q. At the bottom of page 13; question, and  
16 the LTD building, some part of it at least, was  
17 already there, correct; answer, yes. There was a  
18 facility there. I think it was FMC at the time;  
19 question, did you and your husband have any  
20 conversation regarding whether you should buy a  
21 lot adjacent to the office building and near the  
22 FMC building; answer, yes we did; question, what  
23 was the discussion? Tell me what was said as best  
24 as you can recall about that decision; answer, we

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1 discussed the impact of noise of traffic, of  
2 lights, and the potential resale issues; question,  
3 these were issues you and your husband -- these  
4 were issues your husband and you discussed in 1988  
5 before deciding to buy the lot; answer, yes.

6 Am I correct? Did I read that  
7 correctly?

8 A. Yes.

9 Q. So the discussion that your husband and  
10 you had before buying the lot was not limited to  
11 the tollway, right?

12 A. It was limited -- it was about the tollway  
13 and the office building that was behind us.

14 Q. Okay. But at that time, you knew that  
15 there was this FMC building?

16 A. Yes.

17 Q. So prior to deciding to buy this lot, you  
18 knew that the tollway and the office building to  
19 your south could create noise that interfered with  
20 your solitude on your property?

21 A. We knew it could create noise and there  
22 could be an impact from lights.

23 MR. KOLAR: Nothing else.

24 HEARING OFFICER KNITTLE: Do you have any

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1 re-redirect?

2 MR. KAISER: Briefly.

3 FURTHER REDIRECT EXAMINATION

4 by Mr. Kaiser

5 Q. Can you describe for the Board the extent  
6 to which the tollway noise has -- do you have an  
7 opinion as to whether the tollway noise has  
8 substantially and unreasonably interfered with the  
9 use and enjoyment of your property?

10 MR. KOLAR: Objection, beyond the scope.  
11 My question was limited to the conversation before  
12 they brought their home -- before they bought  
13 their lot in July 1988.

14 MR. KAISER: The implication of his  
15 question was tollway noise is part and particle of  
16 this problem.

17 HEARING OFFICER KNITTLE: Well, I'm going  
18 to sustain that. You could ask him about -- you  
19 could ask this witness about conversations she had  
20 beforehand, but I do think that was strictly what  
21 the questions were relating to.

22 BY MR. KAISER:

23 Q. Did you and your husband determine whether  
24 noise from the tollway was acceptable to you? The

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1 levels that you observed during your visits to the  
2 site before you purchased the property, did you  
3 make some determination that the levels you heard  
4 would be acceptable?

5 A. We had discussed the level of noise from  
6 the tollway and based on the wind direction

7 whether or not we felt it would impact how we  
8 liked to use the property and the resale value of  
9 our home and what the potential impact of that  
10 would be, yes, and determined that it would not  
11 adversely impact the resale value and that we  
12 could live with it.

13 Q. And you view this complaint and this  
14 enforcement, citizens enforcement action, as  
15 somehow misplaced and confusing tollway noise with  
16 LTD noise, or is this an action in your mind  
17 against LTD and its noise?

18 MR. KOLAR: Objection, beyond the scope of  
19 my cross.

20 HEARING OFFICER KNITTLE: I'm going to  
21 sustain that as well. This is re-redirect.

22 MR. KAISER: All right. That's fine. No  
23 further questions.

24 HEARING OFFICER KNITTLE: Do we have a

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1 re-re-recross?

2 MR. KOLAR: No.

3 HEARING OFFICER KNITTLE: I might have one  
4 too many res in there. Ma'am, you can step down.



5 Thank you for your time.

6 MR. KAISER: We have 13 minutes. We have  
7 Henry Weber. Do we want to get started?

8 HEARING OFFICER KNITTLE: Let's go off  
9 please.

10 (Discussion had  
11 off the record.)

12 (Whereupon, these were all  
13 the proceedings held in  
14 the above-entitled matter.)

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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 \_\_\_\_\_  
15 GEANNA M. IAQUINTA, CSR  
16 Notary Public, Cook County, IL  
17 Illinois License No. 084-004096

18

19 SUBSCRIBED AND SWORN TO  
20 before me this \_\_\_\_\_ day  
21 of \_\_\_\_\_, A.D., 1999.

22

23 \_\_\_\_\_  
24 Notary Public

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