

BEFORE THE ILLINOIS
POLLUTION CONTROL BOARD

IN THE MATTER OF:

JOSEPH & VICTORIA MORRISSEY,)	
)	
Complainants,)	
)	
-vs-)	PCB 2009-010
)	
GEOFF PAHIOS and ALPINE)	
AUTOMOTIVE,)	
)	
Respondents.)	
)	

AFFIDAVIT OF ATTORNEY, JOHN F. O'REILLY

YOUR AFFIANT, John F. O'Reilly, an attorney licensed in the State of Illinois and former attorney of record for the Complainants herein, being first duly sworn, deposes and states that:

1. I was the attorney of record for the Complainants herein for all times relevant to the statements made under oath herein and I have knowledge that all of the statements contained herein are true and correct.

2. On July 22, 2009, I took the deposition of respondent's principal, Geoff Pahios, and conducted an inspection of Alpine Automotive, including photographing the premises.

3. On August 11, 2009, I sent an email to both Mr. Oleksak and Mr. Slivnick, the respondent's attorneys, attaching a copy of Complainant's expert's report and a letter from myself proposing dates for the completion of Complainants' expert, Mr. Greg Zak's, deposition to proceed in Springfield, Illinois at the office of a court reporter of their choice on August 31st, September 9th, 10th, 14th, or 15th, 2009.

4. The attached Exhibit "A" is a true and accurate copy of my August 11, 2009 email to respondent's attorneys, my attached letter to respondent's attorneys and my attached report by Greg Zak, Complainants' expert.

5. Prior to sending my August 11, 2009 letter to respondents' attorneys, I obtained dates from Mr. Zak's office for his availability for deposition and requested that he maintain his availability for those dates to complete his deposition in this case.

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6. In my August 11, 2009 letter to respondent's attorneys, I wrote, "If you intend to take the deposition of Mr. Zak prior to his testimony at hearing in this case, please contact my office to schedule the same at your earliest convenience so that we can confirm a date with Mr. Zak."

7. In my August 11, 2009 letter to respondents' attorneys, I further informed respondent's attorneys that Complainants will not be taking the deposition of Thomas Thunder, Respondent's expert prior to hearing in this case.

8. Following my initial email to respondent's attorneys, I forwarded many emails to respondent's attorneys attaching a complete digital copy of all photographs taken by me at the inspection conducted at the premises of Alpine Automotive.

9. Following my August 11, 2009, neither Mr. Slivnick nor Mr. Oleksak responded to my letter requesting their prompt attention to the scheduling of Complainants' expert witness's deposition, so I contacted them to determine their intentions as to which date they wish to proceed with for the deposition for Mr. Zak.

10. I was informed by either Mr. Slivnick or Mr. Oleksak that they could not proceed on the remaining dates proposed, so I contacted Mr. Zak's office again for new availability dates for his deposition.

11. After attempting unsuccessfully to reach a mutually agreeable date with respondents' attorneys for the deposition of Mr. Zak in early September of 2009, I again requested that my assistant secure additional dates from Mr. Zak's office for his deposition.

12. As a result of our office having imposed various dates upon Mr. Zak's schedule for his availability, his office contacted me by email to confirm the date for his deposition so that he could fill his busy schedule with other matters.

13. The attached Exhibit "B" is a true and accurate copy of the email that I received on August 31, 2009 regarding the imposition of repeatedly proposing availability dates on Mr. Zak's schedule.

14. My office assistant, Alisha Murphy, secured availability dates from Mr. Zak's office for his deposition to proceed on either September 22nd or 23rd, 2009.

15. On September 8, 2009, my office assistant, Alisha Murphy, prepared a letter to Mr. Oleksak and Mr. Slivnick, and after obtaining my review and approval of the letter, she sent the letter via facsimile to both Mr. Slivnick and Mr. Oleksak requesting their confirmation of the deposition date.

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16. The attached Exhibit "C" is a true and accurate copy of my office assistant's September 8, 2009 letter to respondent's attorneys and the facsimile confirmation of for the successful transmission of the same.

17. Despite our multiple efforts to provide multiple dates and to schedule Mr. Zak's deposition, Mr. Oleksak and Mr. Slivnick refused to make any indication of their willingness to schedule and proceed with Mr. Zak's deposition.

18. On the September 18, 2009 hearing, I informed Hearing Officer Halloran that despite our efforts we could not obtain an agreement from respondents attorney to schedule and proceed with Mr. Zak's deposition, but that it was agreed they would speak to their client, determine if they wished to depose Mr. Zak prior to hearing and either complete his deposition or inform us by the next hearing that they do not wish to take his deposition. The next hearing was scheduled for October 22, 2009.

19. Again after Mr. Oleksak and Mr. Slivnick failed to contact me regarding this matter, I finally reached Mr. Oleksak prior to the hearing and he informed me that his client does not wish to proceed with the deposition of Mr. Zak because he does not want to incur the expense of paying his lawyer to travel to Springfield, Illinois.

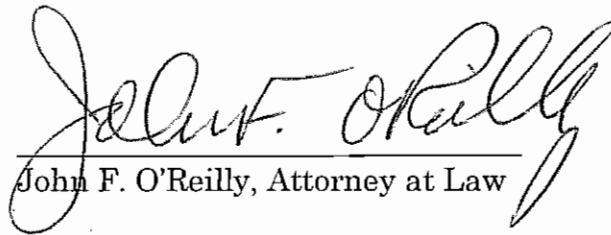
20. At no time did I ever make any statement or suggestion to Mr. Oleksak, Mr. Slivnick, or anyone that Mr. Zak would not be called as an expert witness at hearing in this case.

21. Every time I referenced Mr. Zak to Mr. Oleksak and Mr. Slivnick it was in the context of his serving as Complainants' expert witness at the hearing.

22. In fact when discussing this matter on the telephonic hearing on October 22, 2009, I informed Hearing Officer Halloran that we have been informed that the respondents did not wish to complete his deposition and that we could proceed with scheduling the hearing at that same hearing respondent's attorney indicated his agreement with that representation.

23. At no time did Mr. Oleksak and Mr. Slivnick ever make any statement or suggestion to me or to the Hearing Officer during the October 22, 2009 status hearing on this matter indicating that they believed that I agreed to withdraw Complainants' expert or that they believed Mr. Zak would not be testifying at the hearing in this cause.

24. My client has incurred expense to retain Mr. Zak as an expert witness for purposes of presenting his expert testimony at hearing in this case, it has always been my understanding that Mr. Zak would testify as an expert witness on behalf of the Complainants at the hearing in this matter.


John F. O'Reilly, Attorney at Law

Subscribed and sworn to
before me this 5th day
of February, 2010.



Barbara J. Redderoth
Notary Public

O'REILLY LAW OFFICES, LLC
Attorneys for Complainants
1751 South Naperville Road, Suite 101
Wheaton, IL 60189
Telephone: 630/665-4444
Atty No: 06209668

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(No Subject)

From: **John O'Reilly** (oreillylaw@msn.com)
 Sent: Wed 8/12/09 5:56 PM
 To: bruce@thellerlaw.com; attypjo@wi.rr.com
 Attachments:
 Opinion Letter 3-6-09.pdf (20.0 KB), Ltr to Plaintiff's Attys 8-11-09.doc (31.0 KB)

Mr. Slivnick and Mr. Oleksak,

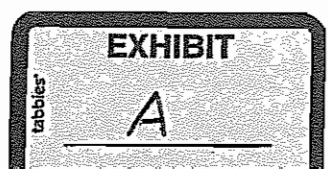
Please see the attached letter and report. Please confirm your receipt and that you could open the attachments. Photographs are being sent via separate emails.

John F. O'Reilly

O'Reilly Law Offices, LLC
1751 S. Naperville Road
Suite #101
Wheaton, IL 60187
Phone: (630)665-4444
Fax: (630)665-4442

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MOLLY M. O'REILLY
JOHN F. O'REILLY

ROGER KEVIN O'REILLY
(1934-2000)

August 11, 2009

SENT VIA EMAIL

Paul J. Oleksak
100 N. Atkinson Road, Suite 110F,
Grayslake, IL 60030

Bruce A. Slivnick
707 Lake Cook Road, Suite 316,
Deerfield, IL 60015

Re: MORRISSEY v. ALPINE AUTOMOTIVE, PCB 2009-010

Dear Gentleman:

Please find attached a copy of the expert report by Greg Zak from Noise Solutions by Greg Zak, Inc. who has been retained to offer expert opinions in this case. I have spoken to Mr. Zak regarding his availability for deposition. His current schedule would permit a deposition to proceed in Springfield, Illinois at the office of a court reporter of your choice on August 31st, September 9th, 10th, 14th, or 15th, 2009. If you intend to take the deposition of Mr. Zak prior to his testimony at hearing in this case, please contact my office to schedule the same at your earliest convenience so that we can confirm a date with Mr. Zak.

At this point in time, it appears that Mr. Morrissey does not wish to proceed with taking the deposition of Mr. Thunder prior to hearing. Consistent with the recent order in this matter, we anticipate that this will complete discovery in this case so that the matter can be scheduled for hearing at the next telephonic court status hearing on September 17, 2009. Also, please allow this correspondence to confirm that I am sending digital photographs to your attention via email under separate email so as to allow electronic transfer. If you do not receive them by the end of the day, please contact me to resend the same.

Very truly yours,

John F. O'Reilly

JFO/am w/ attachment

NOISE SOLUTIONS BY GREG ZAK, INC.

**1800 PROVIDENCE LANE
SPRINGFIELD, ILLINOIS 62711
(217) 698-3507
(217) 698-5666-FAX
E-mail: gregzak@gregzak.com**

March 6, 2009

Mr. & Mrs. Joseph Morrissey
32 S. Chestnut Ct.,
Hawthorn Woods, Illinois 60047
Home phone: 847-726-1377
Cell phone: 847-809-4560
josephrnqr@yahoo.com

RE: Alpine Automotive Noise Impact

Dear Mr. & Mrs. Morrissey:

Noise Solutions by Greg Zak, Inc. was retained by you to advise you how to proceed with a course of action to be taken to obtain relief from the noise emanating from the premises of Alpine Automotive. The facility is located at 1320 Ensell Road, Lake Zurich, Illinois. Their primary functions are auto/truck repair, 24 hour towing service and as police impound facility. In 2007, the owner, Geoff Pahios, moved his business from the heart of an industrial park to a new location adjacent to residential homes with the expressed understanding that it would not have an adverse affect on the residential community. Since the new property is not zoned for outdoor storage or 24 hour towing, a special use permit had to be approved by the village. Alpine Automotive is operating as usual, but they are now adjacent to residential homes. The Morrissey backyard is approximately 200 feet away from the property line of this auto/truck repair facility.

Your particular concern was the noise being emitted to the Morrissey family residence, which has unreasonably interfered with the use of property and enjoyment of life. You and your family lose nightly sleep, as well as awakening in the early hours. In addition, it has damaged your family's emotional and physical health and well being.

You originally contacted us by phone on June 18, 2008 to inform us of the type of noise problem that you and your family were experiencing and what you had used to record the decibel levels. You used a sound level meter which is the IntelliSafe Model: JTS-1357, Serial No. 5970, digital sound level meter that you later sent to us for calibration. Your meter was calibrated with a Larson Davis Model CAL250, Serial No. 0761 precision calibrator traceable to the National Institute of Standards and Technology (NIST) to establish its accuracy. The IntelliSafe Model: JTS-1357 meter meets the international IEC 651 Type II standards. The expected sound pressure level indication on the meter was 109 dB(A) and it read 109 dB(A). Upon testing, the meter was neither reading high nor low, therefore, no correction was needed in any of your measurements. We checked the meter on Slow and Fast meter response and C-weighting and these were also

error free. While following our instructions and those of the sound level meter manufacturer, you recorded measurements as high as decibel levels in the mid-70s. The allowable limits are 61 dB(A) daytime, 51 dB(A) nighttime and 43 dB(A) nighttime for impulsive noise (i.e. air hammers and impact wrenches).

You have provided the following information on the types and frequency of the plant's daytime and at times, nighttime operations that result in the disruption of your activities. Some of the main sources of noise being emitted from this facility, include those from 24-hour towing, truck and auto repair, a ventilation system exhaust fan and truck idling engine noise.

Towing occurs on a daily/weekly basis during normal business hours. However, the worst towing operations are the police impounds that take place mostly from midnight to 3 AM and often on weekends. These are year round and several times a month. Heavy diesel trucks arrive, unhook the vehicle (very loud rattling of heavy chains across a furrowed aluminum bed) and rev the engines to lift then lower the bed. This engine noise is constant throughout the process. The types of noise during the day that are the most annoying involve the repairs portion of the business. These are impact wrenches, ratchets, air hammers, grinders, drills and cutting tools. These operations are loud inside their building, but much worse during the warmer weather, when work is often performed outside, since the building owner has not installed air-conditioning in his building. The ventilation fan exhaust is directed at the residences. An attempt at shielding has been installed, but the fan noise is still very audible year round, with no predictability as to when it starts. The sound is like a small jet engine pointing at the residences. The idling engine noise from trucks may last up to an hour at a time, which occurs each day.

The measurements that were taken by you, and recorded on your sound level meter, began in July of 2007 and continued through February 23, 2009. You have produced these hundreds of recordings by the use of video clips, in which you illustrate the sound levels obtained over that time period. You then sent us this data for us to review and evaluate.

In our opinion, the measurements you have taken and provided to us for review and evaluation indicate both a numerical exceedence of the Illinois Pollution Control Board's regulations, as well as a strong case for the existence of nuisance noise. Specifically, the Illinois Administrative Code, Title 35: Environmental Protection, Subtitle H: Noise, Chapter I: Pollution Control Board, Section 900.102, Sections 901.102 a), 901.102 b), and Section 901.104 address the noise provisions regulated by the State of Illinois. These regulations limit the noise levels allowable from an industrial facility to a residential area for both nighttime and daytime. Additionally, it restricts the levels for highly-impulsive sound. Compliance must be met with these regulations.

Alpine Automotive engaged a noise consultant to measure the noise emissions from their facility. The firm hired was Acoustic Associates, Ltd., owned and operated by Mr. Tom Thunder. Acoustic Associates conducted their noise testing on the afternoon of 5-6-08. You forwarded their report to us for our comments and analysis. The following are the results of our evaluation.

Figure 1 entitled: "Sound Level History at Property Line" graphs the time period tested from 2:29 to 3:22 PM. Although the narrative on page 1 of the report states that "recording began at 2:13 PM and continued it for over one hour," the graph does not support that timeframe. Therefore, a one hour Leq was not obtained, as required by the regulations. In addition, Sections 901.102 a) and b) of the regulations also require that measurements be taken in each of

Mr. & Mrs. Joseph Morrissey, March 6, 2009

Page 3 of 3

the nine octave bands from 31.5 Hz to 8000 Hz. The graph depicts sound levels recorded in dBA, not in each of the nine octave bands. Consequently, there is no way to determine whether Alpine Automotive is in compliance with the octave band levels. In analyzing Figure 1 further, we noted that the testing performed by Acoustic Associates, in all probability, did not include any of the noise emitting sources that you have indicated are all part of your complaint. The references include "shop impacts, an air wrench and loud talking". There is NO reference to the noise from heavy diesel trucks revving their engines, the rattling of heavy chains across the aluminum beds, usually occurring within a few hundred feet, between Alpine and the residences. In addition, no identification of each of the equipment items and their specific sound levels were recorded so no valid conclusion can be made. There is no specific sound level measurement that separately provides a reading for the ventilation fan. This further emphasizes that the noise emissions that you and your family are subjected to cannot be determined by the sound testing performed by Acoustic Associates.

The Acoustic Associates report states that "the greatest noise, however, came from the jets that passed overhead". Since jet flyovers are not common to your neighborhood, their sound emissions are not part of the normal ambient. The jets are not a regular occurrence, so their sounds do not become a contribution to the background (or ambient) levels.

The conclusion cited in the report is that the noise from the shop, in their opinion, does not "appear" to exceed the State noise limits. However, it does point out the "high audibility and abrupt and distinct character" of the impact wrench. It further suggests that this noise could be decreased by hanging clear vinyl strips over the overhead doors, as sometimes seen in car washes. While we disagree that this insufficient attempt at mitigation will reduce the impact from the highly impulsive noise emitted from the daily operations of the facility, we note that even this minimal effort has not been made by the building owner to date.

With the information that you have provided and the data analysis performed, in our opinion, you have a solid case of a noise nuisance violation. Furthermore, we have concluded that the noise emissions emanating from Alpine Automotive are not in compliance with the State of Illinois Noise Regulations.

In our opinion, the noise impact on your residence is unacceptable. As a result of Alpine Automotives' violations, you and your family have been, and will continue to be, prevented from the normal enjoyment of your property and uninterrupted daily activities.

Sincerely,

Greg Zak, INCE

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Deposition for Morrissey Case

From: **patzak@gregzak.com**
Sent: Mon 8/31/09 7:07 PM
To: John O'Reilly (oreillylaw@msn.com)
Cc: Joseph Morrissey (josephmgr@yahoo.com)

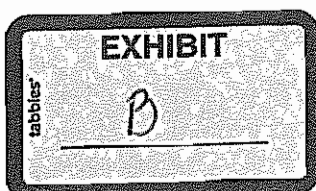
John,

We still have not had any word on the deposition to be scheduled for Greg in mid-September. We gave you two possible dates: 9-22 or 9-23. You indicated that the Alpine attorneys could not schedule the dep for earlier dates that I had given you previously.

Please let us know ASAP as to whether Greg will be deposed or not. We are filling our calendar for September and we need to know what the plans are for this dep.

Thanks,

Pat



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September 8, 2009

VIA FACSIMILE

Paul J. Oleksak
100 N. Atkinson Road, Suite 110F,
Grayslake, IL 60030

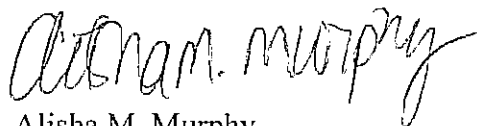
Bruce A. Slivnick
707 Lake Cook Road, Suite 316,
Deerfield, IL 60015

Re: **PAHIOS V. MORRISSEY**
Lake County Case No. 08 CH 5039
Our File No. 595-JFO

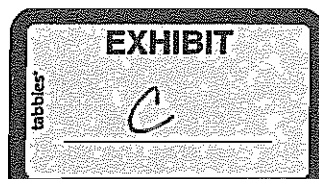
Dear Mr. Slivnick and Mr. Oleksak,

Please be advised that Mr. Zak is available for his deposition in Springfield, IL on either September 22nd or 23rd, 2009. Kindly advise me by tomorrow which date is most convenient for your schedule. I look forward to hearing from you.

Very truly yours,



Alisha M. Murphy,
Secretary to Attorney John F. O'Reilly



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TELECOPIER COVER LETTER

DATE: 9.8.09

TO: Paul Olesak (262) 857-4900
Bruce Sinnick (847) 714-0504

TELECOPIER NUMBER: _____

FROM: Alisha Murphy

TELECOPIER NUMBER: 630/665-4442

RE: Morrissey

COURT FILE NUMBER: _____

YOUR FILE NUMBER: _____

OUR FILE NUMBER: _____

COMMENTS: _____

TOTAL NUMBER OF PAGES BEING SENT (INCLUDING COVER SHEET): 2

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If you do not receive this entire message, please contact the individual below at (630) 665-4444.

Alisha Murphy
Contact Person/Transmitter

Multi Communication Report

SEP-08-2009 11:15 TUE

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Name : OREILLY LAW OFFICES

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Pages : 2

1. Successful

Fax Number	Name
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18477140504	

2. Unsuccessful

Fax Number	Name
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3. Multi Communication Journal

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