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1 STATE OF ILLINOIS)

2 COUNTY OF COOK)

3 ILLINOIS POLLUTION CONTROL BOARD

4 DAVID & SUSI SHELTON)

5 Complainants)

6 vs) PCB 96-53

7 STEVEN & NANCY CROWN)

8 Respondents)

9

10 REPORT OF PROCEEDINGS, taken in the

11 above-entitled cause, taken before MS. JUNE EDVENSON,

12 Hearing Officer for the Illinois Pollution Control Board, 13 taken

on the 9th day of December, A.D., 1996 at 100

14 West Randolph Street, 11th Floor Conference Room, at the 15 hour of

10:00 o'clock a.m..

16 APPEARANCES:

17

18 MR. STEVEN KAISER

19 Appeared on behalf of the Complainant

20

21 MR. REESE ELLEDGE

22 Appeared on behalf of the Respondent

23

24

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1 HEARING OFFICER: On the record. Good
2 morning and welcome. We are here to conclude the hearing
3 in the case of David and Susi Shelton versus Steven and
4 Nancy Crown, case number PCB 96-53. And we have a
5 specific agenda for today which was agreed to by the
6 counsel for the parties. We were first going to review
7 exhibits, then identify any proposed transcript
8 corrections. We would then hear other statements by
9 counsel, if any, and then we would identify a briefing
10 schedule for the record and close the hearing record in 11 the
12 case. After that time, we will receive the final 12 transcript and I
13 will issue a hearing report and the
14 parties will go into briefing.

14 All right, we have spent some time 15
16 preliminarily off the record organizing exhibits and I
17 believe we can state at this time that we have all of the 17
18 exhibits in order for the case. Mr. Kaiser, did you have 18 a
19 statement you would like to make about the exhibits? 19

MR. KAISER: Yes. I do believe we do now
20 have all -- we believe we have all of the exhibits.

21 I will note as follows: That I have 22 certain
23 documents in my hands which were located among
24 original Camperman exhibits and as the Board will recall, 24 George
Camperman was an expert retained by Respondents who

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1 offered testimony concerning noise measurement readings.
2 That he personally took analysis of sound measurement
3 readings taken by others and an explanation of the
4 variable fan drives that were constructed on the Crown
5 chiller unit in August of 1996. Madam Hearing Officer,
6 you noted that certain original documents were not part of
7 your file and asked Mr. Elledge and I to look in our files
8 and see if we can find those originals and over the
9 weekend I did that and I found documents that have been
10 identified in the record as, I believe, Exhibits 115
11 through 127 and all of those were documents introduced
12 during the course of testimony before George Camperman. I 13 also
found within my file, intermixed with the Camperman 14 documents,
certain other documents, four in number. The 15 first of which are on
Camperman Associates, Inc.
16 letterhead, for lack of a better word, it's a technical
17 worksheet. The job is described as a Crown job. The date 18 of
the work is described as 5-7-96 and there's a
19 handwritten title which appears, Shiner Test Results. And 20 to
the best I can determine, this document, this one page 21 document, was
authored by George Camperman. There now
22 appears on this document yellow highlighting markings and 23
additional handwriting in red ink which I believe are
24 markings made by Mr. Diver. I have a question whether

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1 this document, and perhaps we should mark it as Hearing
2 Exhibit Number 128 for purposes of identification and I
3 have now marked 128 on the back of this one page document,
4 which this one page document is not, in fact, a part of
5 one of the exhibits marked 115 through 127 which have
6 already been offered and admitted into evidence.

7 HEARING OFFICER: Okay. We will call that
8 exhibit 128 for identification purposes.

9 MR. KAISER: I note that there are -- there's
10 another single page document again on Camperman
11 Associates, Inc. worksheet stationery again indicating job 12 Crown
12 date 8-16-96, sheet 2 of blank and this refers to
13 measurements and discussions with Reese Elledge and
14 contain certain octave band readings which again, to the 15 best I
15 can determine, the original of this document was
16 created by George Camperman in connection with the Crown 17
17 project. Again I note that there is some highlighting 18 markings and
18 some red ink notations which I believe were 19 placed on this one page
19 document which I'm now referring 20 to for purposes of identification
20 as Hearing Exhibit
21 Number 129 and again I have some question as to whether 22 this
22 loose sheet of paper is part of one of the exhibits 23 115 through 127
23 that's already been admitted into
24 evidence. I have a third document which consists of eight

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1 pages of handwriting. The handwriting appears to be that
2 of George Camperman and appears to be a continuation of an
3 exhibit which was admitted into evidence and which Madam
4 Hearing Officer I believe you have in front of you and I'm
5 able to conclude that it was at least originally connected
6 with those documents by virtue of the red Arabic numbering
7 at the bottom of this exhibit.

8 HEARING OFFICER: What document do you think
9 it is related to?

10 MR. KAISER: If I could have -- I know I've 11 passed
forward now the exhibits 115 through 117. Exhibit 12 117 appears to be
a two page or at this point what's been 13 admitted into evidence is a
two page handwritten document 14 with the date of 5-12-96, measurements
today at Crown
15 residence and it appears to me that pages 3 through 11, 16 which I
have now marked for purposes of identification as 17 hearing exhibit
130 appear to be a continuation of Mr.
18 Camperman's notes.

19 Now, as we discussed off the record, 20 the Jeff
Diver Group had requested the Board provide them 21 with the remainder
of the hearing transcript. We were
22 provided with certain volumes, including a volume number 23 7. It
has now come to our collective attention that there 24 are 3 volume 7s.
Two of which I have not had an

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1 opportunity to review. Mr. Camperman's testimony at
2 hearing is contained within the second and third volume 7s
3 that I have not had a chance to review and so I'm unable
4 to at this time determine whether documents 128, 129 and
5 the eight pages which comprise Exhibit 130 whether these
6 are, in fact, part of exhibits which were offered and
7 admitted into testimony. And I note that there's one
8 final exhibit which I will mark as Hearing Exhibit 131, a
9 two page handwritten document dated 10-26-95, Crown AC
10 noise and again appears to be a document authored by Mr. 11
Camperman.

12 HEARING OFFICER: Mr. Kaiser?

13 MR. KAISER: Yes.

14 HEARING OFFICER: Was Exhibit 118 that you
15 just handed back to me a two page document?

16 MR. ELLEDGE: This is what you handed me?

17 HEARING OFFICER: That is what was in the
18 stack that was handed up to me in the first place.

19 MR. ELLEDGE: Yes.

20 HEARING OFFICER: And where is that stack
21 again?

22 MR. KAISER: It is, right.

23 HEARING OFFICER: And would you put that back
24 in the way it was?

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1 MR. KAISER: I have not had a chance, as I
2 stated, to review this transcript of Mr. Camperman's
3 testimony.

4 I'm looking at the notes which you
5 prepared, Madam Hearing Officer, which describes Exhibit
6 118 as a 5-28-96 document which was admitted into evidence
7 8-21-96, but it doesn't describe with any greater
8 particularity the number of pages to that document. So,
9 without reference to the transcript itself, I'm unable to
10 determine whether it should consist of two or 11 pages. 11

 HEARING OFFICER: And then I think we should
12 reserve closing the record until we've identified whether 13 these
documents belong in the record as part of the record 14 that was
admitted into evidence in the prior proceedings. 15 MR. ELLEDGE:
May I respond?

16 HEARING OFFICER: Yes.

17 MR. ELLEDGE: I appreciate the difficulty
18 counsel has in not having to have been able to have
19 reviewed the final full transcripts and I appreciate the 20 fact
that he was not present on the final day. I think 21 enough is enough.
The mere fact that they happen to have 22 with them on the final day
documents copied during
23 the deposition is no indication that they were tendered and 24
offered. I frankly believe they were not tendered and

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1 surely were not part of the exhibits that went into
2 evidence. I think I am prepared to let him review the
3 transcript and try to make a case of those documents.

4 I think that we have at this point all
5 the documents that were offered and among the documents
6 that were just tendered today are documents that were
7 highlighted. That is not the condition in which they were
8 presented if they were. So, I would hope that we can make
9 clean copies of those.

10 Other than that, keeping the record
11 open for him to make his attempt to tender is fine.

12 MR. KAISER: And just if I may also include
13 within the group of exhibits about which I would
14 appreciate the opportunity to review Mr. Camperman's
15 testimony, there were three other documents again found in 16 our
17 file, 3 which appear to be originals of documents
18 authored by Mr. Camperman which may or may not frankly be 18 part
19 of the exhibits.

20 MR. ELLEDGE: Excuse me, counsel. With
21 respect to the one you just marked --

22 MR. KAISER: Yes.

23 MR. ELLEDGE: I know with certainty that that
24 was never reviewed with Mr. Camperman on the stand. I
25 know there was no evidence with respect to that piece of

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1 paper.

2 MR. KAISER: And just so we know what we're
3 referring to, it's a worksheet with Camperman
4 Associates Inc's.

5 MR. ELLEDGE: It's a chart, it's a
6 consolidation chart.

7 MR. KAISER: Dated July 30th, 1996 plotting
8 different noise measurements taken at the Crown and
9 Shelton properties.

10 MR. ELLEDGE: It's a very complex document and
11 it would take a long time for George Camperman to have
12 explained it. He did note it is not offered. He was not 13
examined about it.

14 HEARING OFFICER: For purposes of
15 identification, I will call that Exhibit 132. I do not
16 plan to admit these into evidence today, nor do I plan to 17
receive these today.

18 MR. KAISER: May I also then just for purposes
19 of identification and understanding that the Board will
20 not receive these and that these will remain in my
21 possession until I've reviewed the testimony and can show 22 that
they were part of Mr. Camperman's or Mr. Zak's
23 testimony, a single page document which I've marked as
24 Exhibit Number 133 which is a sketch showing the

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1 relationship between the Crown's chiller unit and the
2 second floor window of the Shelton property dated July
3 30th, 1996. And then the final document that again
4 appeared in our files and appears to have been prepared by
5 Mr. Camperman in connection with the subject matter of the
6 complaint is a four page document appears to be an octave
7 band sound pressure level printout dated July 30th, 1996
8 that I've marked for purposes of identification as exhibit
9 number 134. And that is a four page document.

10 HEARING OFFICER: All right, thank you very
11 much. With that I believe that our examination of the
12 exhibits at hearing is concluded and I would entertain a 13 motion
to supplement the record should any of the
14 identified documents be appropriately in the record and I 15 will
entertain the motion in writing and counsel for
16 Respondent will be given an opportunity to respond to the 17 motion
prior to ruling. The schedule for that will be
18 discussed at the same time we discuss our briefing
19 schedule in a few minutes.

20 At this point in time, I'd like to move 21 onto
the second item on the agenda which is proposed
22 transcript corrections if any. Off the record.

23 (A brief off the record discussion was held.)

24 HEARING OFFICER: Back on the record.

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1 We're back on the record.

2 MR. KAISER: Madam Hearing Officer, I've had
3 a chance to review Volume 1 through 7 of the hearing
4 transcripts. I have not had the opportunity to review
5 Volumes 7 part B and part C, so I can't comment with
6 respect to the final approximately one hundred pages of
7 the hearing transcript. In the main I feel that the
8 transcript was well recorded and that allows the Board or
9 organization decision makers or interested members of the 10 public
to understand the testimony that was adduced at
11 hearing, to make appropriate references to exhibits
12 contained within the hearing record.

13 When I began my review, I had the idea 14 of
offering page by page corrections, but realized frankly 15 that was
just an undertaking that may not be warranted,
16 given the amount of time it would have taken to correct
17 what I would call diminimus type of errors. I will note, 18 for
example, the type of error about which I'm referring. 19 On page 389
of the transcripts at line 12, 11, 12, 13.
20 For instance, there's a question and I believe this was 21 during
the testimony of one of the Complainants, Ms. Susi 22 Shelton who is
here in the hearing room today. The
23 question was, "Where did he" -- referring to their son
24 David -- "where did he sleep during July of 1994?"

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1 Answer: "He slept in the department on a pull out couch."
2 Now I think all of us who attended the hearing know that
3 den was the intended word there and that if we were to
4 correct the record at that point we would urge that den be
5 substituted. As I thought about this over the weekend, I
6 came up with this proposal and that is to the extent Mr.
7 Elledge or I are citing to portions of the record that
8 contain those types of diminimus errors, that we be
9 allowed on our own to correct them or point out in a
10 bracketed fashion what the proper term or words would have 11 been
and offer clarification and in that way so the
12 critical passages, or what we view to be critical passages 13 would
be amended or corrected with the opportunity, of
14 course, for Mr. Elledge to comment on any errors I may 15 make in
offering the correction. So, I offer that as a 16 suggestion to the
Board and frankly look to you for
17 guidance on this issue.

18 HEARING OFFICER: Mr. Elledge, what are your 19
thoughts?

20 MR. ELLEDGE: I would have no objection to 21 doing
that. It does seem practical if during the course 22 of making a
written argument one is quoting or making
23 specific reference to, we can state what it said in the 24
transcript and in brackets should have been and just so

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1 it's clearly marked. Then if I have an objection to your
2 should have been or you have an objection to my
3 correction, we can so note it separately at that time.

4 HEARING OFFICER: That seems reasonable to me.
5 Why don't you bracket and insert the words that you see
6 were incorrectly transcribed.

7 With respect to the transcripts, I've
8 spoken to the court reporter here today and she has agreed
9 that the volume cover pages can be revised so that they
10 will be numbered consecutively without repetitive
11 numbering and so we will have a new numbering of the
12 volumes prior to the briefing period and I will confer
13 with her privately on that. Also, I believe we will get 14 some
additional certification pages signed which were not 15 signed on
copies that were provided to the Board. Should 16 there be any
substantive need to correct the transcript 17 after this point in time,
I will entertain a motion in
18 writing to correct the transcript.

19 At this point we'll go off the record 20 and we
will take an five minute break.

21 (A brief recess was taken.)

22 HEARING OFFICER: Back on the record after 23 recess.
We're back on the record and we've been
24 discussing calendaring the briefing of the case and a

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1 number of related date issues and I think what I'll do now
2 is memorialize that and we'll take any additional comments
3 from counsel. We expect to receive this last portion of
4 the transcript by December 19th. I will issue the regular
5 report by December 27th and in the interim counsel for
6 Complainants will identify any issues with respect to
7 admissibility of exhibits numbered 128 through 134. Those
8 are identified for the record, but not yet admitted into
9 evidence. Mr. Kaiser will provide me with the status of
10 these documents by December 24th and I will be using that 11
information in preparation of the hearing report. If
12 there are issues with those documents, then I think we are 13 going
to entertain those as motions and if we could have 14 efficient filing
on the motion and response, then I can
15 get to it as quickly as possible so that we can try to
16 stay on the briefing schedule we're going to outline here. 17
The agreed briefing schedule is as
18 follows: Complainant's brief will be due January 14th, 19
Respondent's brief will be due February 21st and
20 Complainant reply brief will be due March 7th. We will 21 also
have a phone conference on the timeliness of the
22 submission of a Respondent's motion to dismiss and whether 23 that
can be filed with the briefs. I guess we didn't
24 identify a time for that phone conference. Counsel, what

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1 are your calendars on that? I can do that in a day or
2 two.

3 MR. ELLEDGE: I believe that the only thing
4 that I'm tied up on is unfortunately it's not in this
5 calendar, I think it's tomorrow afternoon that I'm tied up
6 all afternoon.

7 HEARING OFFICER: All right, why don't we have
8 a phone conference on Wednesday?

9 MR. KAISER: Any time after noon would be
10 fine with me.

11 HEARING OFFICER: After noon on Wednesday?

12 MR. KAISER: Yes.

13 HEARING OFFICER: Then we'll have a phone
14 conference on that issue on Wednesday afternoon, December 15 11th
and we'll determine the exact time later.

15 All right. I believe that concludes my
16 comments with regard to the schedule. Any further
17 remarks?
18

19 MR. KAISER: Madam Hearing Officer, we're
20 going to waive any oral closing argument and we'll make 21 our
arguments Complainant's brief and in their reply. We 22 do want to
thank the Board and the people of the State of 23 Illinois for
providing this forum to the Sheltons and we 24 want to thank you for
your efforts and patience and

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1 perseverance over the course of this hearing. Thank you.

2 HEARING OFFICER: Mr. Elledge, any further
3 comments?

4 MR. ELLEDGE: We, too, are waiving any oral
5 closing statements and joined with Mr. Kaiser in his
6 thanks for your patience with us all.

7 HEARING OFFICER: Thank you very much and this
8 concludes our proceedings at 11:40 a.m.

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1 STATE OF ILLINOIS)

2 COUNTY OF COOK)

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4 I, VERNITA HALSELL-POWELL, a Certified
5 Shorthand Reporter and Notary Public within and for the
6 County of Cook, State of Illinois, hereby certify that I
7 reported in shorthand the testimony given at the
8 above-entitled cause, and state that this is a true and
9 accurate transcription of my shorthand notes so taken as 10
aforesaid.

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VERNITA HALSELL-POWELL, CSR NO. 084-001831

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