

1 S37577

2 THE ILLINOIS POLLUTION CONTROL BOARD
3 BEFORE HEARING OFFICER JUNE C. EDVENSON

4 SARA SCARPINO and MARGARET)
 5 SCARPINO,)
 6)
 7 Complainants,)
 8)
 9 vs.) No. PCB 96-110
 10) Enforcement - Noise
 11 HENRY PRATT COMPANY,)
 12)
 13)
 14 Respondent.)

15 CONTINUED REPORT OF PROCEEDINGS had and
 16 testimony taken at the hearing of the above-entitled
 17 matter, before Hearing Officer June C. Edvenson, in the
 18 Kane County Courthouse, 100 South Third Street, Geneva,
 19 Illinois, on the 11th day of October, A.D. 1996, at the
 20 hour of 10:10 o'clock a.m.

21 PRESENT:

22 HOLLEB & COFF, by
 23 MR. JAN FELDMAN,
 24 MS. ANNE E. VINER,
 Suite 4100
 55 East Monroe Street
 Chicago, IL 60603
 (312) 807-4600

25 appeared on behalf of Respondent.

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1 HEARING OFFICER EDVENSON: On the record.

2 Good morning and welcome. This is the continuation
3 of a contested case hearing conducted by the Illinois
4 Pollution Control Board, Case No. PCB 96-110, entitled
5 Sara Scarpino and Margaret Scarpino versus the Henry
6 Pratt Company.

7 When we last left these proceedings, it was July
8 19th, and we had heard the Scarpino sisters' case in
9 chief, and we were engaged in the cross examination of
10 their witness, Mr. Zak. We will now pick up with the
11 continued cross examination of Mr. Zak, and then we will
12 go forward through Respondent's case in chief.

13 During these proceedings, we would normally refer to
14 witnesses and parties by their last names. Due to the
15 confusion this will cause in the record with the Scarpino
16 sisters, we have obtained their agreement to call them by
17 their first names, Sara and Margaret, so that we know
18 which individual is being addressed and is responding to
19 the question within the context of the hearing
20 transcript.

21 We also have with us today several members of the
22 public, four members of the public, and they have signed
23 a sheet indicating their attendance, and that will be
24 part of the record. Thank you for coming.

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1 All right. Let's have the witness, Mr. Zak, be
2 resworn, and then we will continue with his cross
3 examination.

4 (The witness was thereupon duly resworn.)

5 HEARING OFFICER EDVENSON: Mr. Feldman.

6 MR. FELDMAN: Thank you very much.

7 GREG ZAK

8 re-called as a witness on behalf of the Complainants
9 herein, having been first duly resworn, was examined and
10 testified further as follows:

11 CROSS EXAMINATION

12 BY MR. FELDMAN:

13 Q Mr. Zak, I am showing you what was marked at the last
14 hearing as exhibit -- Complainant's Exhibit, I guess, No.
15 2.

16 I think you identified that that was your resume; is
17 that correct?

18 A That's correct.

19 Q As of the date of July 19, 1996; correct?

20 A Right.

21 Q What is INCE at the top?

22 A Institute of Noise Control Engineering.

23 Q Does that require any kind of certification?

24 A Yes, it does.

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TESTIMONY OF GREG ZAK

1 Q Have you had that certification?

2 A Yes, I have.

3 Q Now, it indicates on this resume that your title is
4 noise advisor.

5 Is that the title of the position that you hold with
6 the Illinois EPA?

7 A Yes, it is.

8 Q Is there a -- how long have you been the noise
9 advisor for the Illinois EPA?

10 A Approximately nine years.

11 Q What is the job description for noise advisor of the
12 Illinois EPA?

13 A The job description would entail handling all manner
14 of noise related matters as far as talking to the public,
15 taking measurements for the agency; taking measurements
16 for the Pollution Control Board or the Attorney General's
17 office; advising other state agencies regarding either
18 noise measurement or noise control engineering, assisting
19 with noise control engineering at various toxic waste
20 cleanup sites; and more recently at solid waste
21 facilities testifying regarding variances and drawing up
22 regulatory changes to be submitted to the Pollution
23 Control Board.

24 Q That's a long job description.

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TESTIMONY OF GREG ZAK

1 Before you became the noise advisor for the IEPA,
2 what other positions did you hold --
3 A Prior to that position --
4 Q -- relative to noise?
5 A -- I was the part-time noise advisor from 1981 until
6 1987.
7 Q With the EPA?
8 A Yes.
9 Q And before that?
10 A Before that I worked in noise full time from 1972
11 until 1981.
12 Q With who?
13 A In the division of noise pollution control.
14 Q At the State of Illinois?
15 A Yes.
16 Q Okay. So it sounds like for the better part of your
17 professional career, you've been working with the State
18 of Illinois in the area of noise; is that right?
19 A That's correct.
20 Q Now, a lot of their job description related to things
21 that are not particularly relevant to this case, such as
22 noise in a toxic waste site, things like that.
23 Which part of your job description would you apply
24 to this case?

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TESTIMONY OF GREG ZAK

1 A Industrial noise measurement and dealing with the
2 public.

3 Q Now, have you taken any courses or is there any
4 training that one goes through in terms of the aspect of
5 your job that involves you in dealing with the public?

6 A 24 years of on the job experience.

7 Q Okay. I notice in the second paragraph of your
8 resume on the first page of Exhibit 2 you state that the
9 ability to work with the public elected and appointed
10 officials and consultants have been a hallmark of Greg
11 Zak's noise program at IEPA; is that right?

12 A That's correct.

13 Q What does that mean, that your ability to work with
14 the public has been a hallmark of your program?

15 A Through the years, I've managed to handle public
16 contacts and complaints and give advice to the point
17 where I am currently handling between 1,000 and 2,000
18 inquiries and complaints, many by the telephone, per
19 year.

20 Q So when you say it's a hallmark of your program, you
21 mean the number of cases that you're able to deal with;
22 is that right?

23 A That's correct.

24 Q On an individual case basis, is there a particular --

TESTIMONY OF GREG ZAK

1 when you first are approached with a noise complaint such
2 as the one in this case, are there particular guidelines
3 that you have as a representative of the Illinois EPA to
4 evaluate a particular complaint?

5 A Yes. I would listen to the description on the
6 telephone as far as how the person describes the noise,
7 and then I'll ask a number of questions as far as the
8 time the noise occurs, how long it lasts and any details
9 the person can give me regarding the noise that is
10 disturbing them.

11 Q I take it -- would you agree with me that some of the
12 cases you hear of that nature are disputes between
13 neighbors?

14 A Some are, but very small percentages, though.

15 Q Well, this isn't the first case you've dealt with
16 where you have one neighbor complaining about noise from
17 another neighbor, is it?

18 A I wouldn't classify this as a neighbor-neighbor
19 complaint. A neighbor-neighbor complaint, as far as my
20 program is concerned, is where we have one residential
21 neighbor complaining about another residential neighbor.

22 When it's an industrial noise source to a
23 residential noise receiver, that is the more -- the more
24 typical situation in probably 90 percent of the complaint

TESTIMONY OF GREG ZAK

1 load I handle.

2 Q Let's go back to what you would characterize as
3 neighbor to neighbor where you have two residential --
4 where you have a complaint about noise from one residence
5 to another.

6 In that case do you try to evaluate the validity of
7 the claim at some point in your investigation?

8 A The validity of the claim tends to come out as the
9 person follows my self-help program.

10 Q Which entails what?

11 A Well, typically on the initial phone call or contact,
12 the person will state that they have a noise problem.

13 I will briefly explain the situation that I am a
14 one-man noise program for the state. Given that
15 limitation, I do have a self-help program, and I will
16 encourage the person to contact the neighbor -- I'm using
17 the one you referred to about a residential to
18 residential. I would encourage the person to contact the
19 next-door neighbor and see if the two of them can work
20 out the problem together and to handle it in as upbeat
21 and friendly a manner as possible.

22 Q Is that part of the written program that you
23 distribute to people who ask for it?

24 A No, it's not; that's the verbal part.

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TESTIMONY OF GREG ZAK

1 There is no written part on the initial contact. I
2 tried that initially in the program nine years ago, and
3 it was too big a load to try and do.

4 Q To encourage people to --

5 A To have a written portion to that. I found that in
6 order to make the program handleable by one person, on
7 the initial contact, it's all verbal.

8 The person then follows up and, let's say, they meet
9 with the neighbor. And I encourage them after they meet
10 with the neighbor to write a letter to the neighbor
11 thanking them for the time to discuss the issue and that
12 hopefully it will be resolved and to send me a copy of
13 that letter. I also encourage them to send the letter by
14 certified mail.

15 Q Okay. So you go down a few of these steps, and there
16 is still a concern between neighbors, the one neighbor
17 says there is still a noise problem.

18 Then they get into your self-help program; is that
19 right?

20 A Well, self-help really starts from the first phone
21 contact.

22 Q But as I understand the self-help program, it
23 indicates how an individual will go around -- will go
24 lodge a complaint, a formal complaint; is that true?

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TESTIMONY OF GREG ZAK

1 A Not really. It's geared mainly to try and get the
2 noise problem resolved between the noise emitter and the
3 noise receiver without any complaints being involved at
4 all.

5 Q Is that done informally between the two parties?

6 A Yes.

7 Q Now, in a case where the noise source is an industry,
8 Pratt, for example --

9 A Yes.

10 Q -- which aspects, if any, of the neighbor-to-neighbor
11 routine do you encourage?

12 A The one I just described.

13 In other words, I would strongly encourage the
14 person complaining to either phone the company and talk
15 to the general manager; if they don't know anybody at the
16 company, to send a very friendly neighbor-to-neighbor
17 type of letter to the company, explaining that they are,
18 in fact, neighbors and asking for either a meeting or for
19 the company to take steps to reduce the noise impact,
20 explain in detail what the noise impact is, what time it
21 occurs and ask the company to please respond in 15 days.

22 Q Now, did you make that recommendation to the
23 Scarpinos in this case?

24 A I believe I did. The reason I can't give you a

TESTIMONY OF GREG ZAK

1 definitive answer is with the current load being up to
2 2,000 contacts a year -- this one goes back to 1991 -- I
3 would -- I am fairly certain I did, but not 100 percent
4 positive.

5 Q Let's say that initial contact doesn't work, for some
6 reason doesn't yield the result that is satisfying to the
7 person who is complaining about the noise. What's the
8 next step?

9 A The person calls me and informs me that the first
10 step didn't work. By that time, I've got a copy of that
11 letter and created a file on their particular case.

12 Given that information, I will then supply them with
13 a letter that describes the relevant statutes for noise,
14 along with some of the board regulations for nuisance
15 noise, along with a couple of examples of Pollution
16 Control Board cases, advise the person to carefully read
17 through the package.

18 And I also include a couple of example letters that
19 other folks with a similar type of noise problem have
20 used in the past, with the advice that the person can
21 copy somebody else's letter and send it to the company
22 advising the company basically as to what the State noise
23 regulations are and again asking that this be resolved in
24 an amicable manner.

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TESTIMONY OF GREG ZAK

1 Q Do you do the same thing if it is a
2 neighbor-to-neighbor dispute?

3 A Yes, I do.

4 Q So the thing that happens next is you send them the
5 regulations that indicate that someone might be liable if
6 their noises exceed certain standards; is that correct?

7 A That's correct.

8 Q Do you indicate to them that the standards aren't
9 relevant in a nuisance case?

10 A Well, to clarify that a little bit, the information I
11 send them is information that is directed strictly for a
12 nuisance-type case. I don't really get into the
13 numerical portion at all because so many people find it
14 confusing. So I will just send enough information to
15 reference nuisance and not get into the numerical part,
16 unless the particular individual requests information on
17 numerical standard, which is a very rare thing, but
18 occasionally it does happen.

19 Q Okay. What's the next step, assuming that doesn't
20 solve the problem?

21 A Assuming that doesn't solve the problem, at that
22 point I will let the person know that the only -- the
23 next recourse they've got would be to refer to the
24 Pollution Control Board.

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TESTIMONY OF GREG ZAK

1 So I will send them a letter that was largely
2 composed by the Pollution Control Board for noise cases,
3 along with a blank form for filing a formal complaint,
4 and also a complete example of a formal complaint that
5 was well done, and then I will -- that's the package that
6 goes out to the individual.

7 I might also add that that doesn't go out unless the
8 person shows me concrete evidence that they had sent the
9 -- all the letters trying to work out the problem on a
10 neighbor-to-neighbor basis prior to my supplying the
11 formal complaint form.

12 Q Okay. Now, the step you just described is the same
13 whether we're dealing with neighbor to neighbor or
14 neighbor to company; right?

15 A It's similar. It's not exactly the same.

16 The difference, though, would be the specific noise
17 source. For example, if the noise source is a dog
18 kennel, the information that that person would get would
19 be a little bit different than the information that,
20 let's say, a person might have who was complaining about
21 a power plant. So it is somewhat specific to the type of
22 problem because I do go to my files and look up any
23 information that I've got regarding the specific kind of
24 noise complaint that a person has complained about and

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1 then customize the letter and information for their type
2 of complaint.

3 HEARING OFFICER EDVENSON: Excuse me. Just a
4 moment.

5 Mr. Zak, in answering the questions, will you try to
6 be as brief as possible in your response.

7 THE WITNESS: All right.

8 BY MR. FELDMAN:

9 Q Now, at that point if they want to file a complaint,
10 then they go ahead and file a complaint; is that right?

11 A Yes.

12 Q And your role at that stage is what?

13 A I will advise the person that either they or the
14 company or the neighbor should feel free to give me a
15 call, and I will do everything I can to help both sides
16 resolve the issue.

17 Q Well, what does that mean? How do you help both
18 sides resolve the issue?

19 A Well, I got quite a few calls from industry
20 describing the nature of the problem and asking if we've
21 had any experience with that type of problem.

22 And in many cases we have, and the solution is
23 relatively straightforward, and I will basically tell the
24 plant engineer what in the past has worked and that kind

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1 of a situation.

2 Q At any time do you attempt to evaluate -- other than
3 I know you said that you look at the letters to make sure
4 they've sent the letters; but apart from that, do you do
5 anything to try to evaluate whether a particular
6 complaint is meritorious, whether it has some validity
7 or, as opposed to that, whether it might be an
8 exaggeration or an instance of excess sensitivity to a
9 sound?

10 A I do from the moment that the person first calls me,
11 and I have very few calls that are of a bizarre nature
12 or, say, when the individual is unusually sensitive. I
13 would say it probably would be much, much less than 1
14 percent.

15 Q From your office in Springfield, how do you know
16 whether a complaint is off the edge or whether it's
17 perfectly reasonable?

18 A Well, I had the one a few years ago where the
19 individual called me and stated that the CIA and the FBI
20 had a noise emitting device and they were trying to kill
21 them with, and they had pursued him across half the
22 world. And he was located in Kankakee, and they were
23 still trying to get him with this device and that they
24 desperately needed help.

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TESTIMONY OF GREG ZAK

1 I advised him that there was really nothing I could
2 do in a case like that.

3 Q I think we all understand that's a case of someone
4 who obviously has some sort of psychological disturbance
5 and it is obviously apparent.

6 I'm speaking of surely there are other cases that
7 are not quite so extreme where neighbors may have ill
8 feelings towards other neighbors and exaggerate the
9 effects of sound. You recognize that that's a phenomenon
10 that happens from time to time, don't you, Mr. Zak?

11 A It can; but it's been my experience when there is a
12 neighbor-to-neighbor type of situation like that, that
13 the Complainant is just simply not -- does not want to go
14 through all the steps necessary to try and resolve the
15 problem. It's been my experience when the complaint is
16 somewhat frivolous that usually the person will drop the
17 complaint.

18 There have been a few that I thought were somewhat
19 questionable, and they went to the Pollution Control
20 Board with it and the board found against the individual.

21 HEARING OFFICER EDVENSON: Mr. Zak, I want to
22 remind you to keep your responses as directly responsive
23 to Mr. Feldman's question as possible.

24 THE WITNESS: Yes, ma'am.

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TESTIMONY OF GREG ZAK

1 BY MR. FELDMAN:

2 Q So at least one of the tests for the merit of a claim
3 that you perceive is persistence, someone keeps at it.
4 That, in your mind, is an indication there is a problem,
5 as opposed to something that is frivolous and might just
6 go away; right?

7 A Yes.

8 Q And another example is the CIA chasing him across the
9 world, some crazy story.

10 That's another instance where you would recognize
11 that there's some exaggeration; right?

12 A Yes.

13 Q Apart from that and these few instances that you've
14 mentioned, the other complaints you have gotten on noise
15 have all had some validity in your mind; is that right?

16 A Yes.

17 Q Do you, in your training and 24 years of experience,
18 ask questions that are designed to ferret out possible
19 oversensitivity to a noise?

20 HEARING OFFICER EDVENSON: The question calls for a
21 yes or no answer.

22 A Yes.

23 BY MR. FELDMAN:

24 Q And what sort of questions have you asked?

TESTIMONY OF GREG ZAK

1 HEARING OFFICER EDVENSON: The question calls for
2 actual questions.

3 A My answer would be I would judge it to a large extent
4 on the person's description of the noise and when it
5 occurs.

6 MR. FELDMAN: I'm going to ask you to elaborate,
7 Mr. Zak, because I don't understand that answer.

8 THE WITNESS: Could you repeat the question,
9 please?

10 (The question was thereupon read by the
11 reporter.)

12 MR. FELDMAN: Do you understand the question, Mr.
13 Zak?

14 THE WITNESS: Yes.

15 MR. FELDMAN: I can rephrase it, if you'd like.

16 THE WITNESS: I think I understand the question.

17 A I would basically ask the person to describe the
18 intensity of the noise, the time it occurs, if it is
19 interfering with any aspect of the use or enjoyment of
20 their property.

21 BY MR. FELDMAN:

22 Q Anything else?

23 A In general, that would be the normal questions I
24 would ask.

TESTIMONY OF GREG ZAK

1 Q Do you ask or would you think it's appropriate to ask
2 when the noise started?

3 A Usually the person volunteers that.

4 Q In a case where it's not volunteered, Mr. Zak, if you
5 don't already have the answer, is that an appropriate
6 question to ask and do you ask it?

7 A No. I usually don't, again, because it's -- I can't
8 even think of an example where the person hasn't
9 volunteered when the noise started. It's just one of the
10 first things they normally say.

11 Q Do you ever ask when the noise started to bother
12 them?

13 A No.

14 Q In this case did you ask either of the Scarpinos --
15 let me strike that and ask you a background question.

16 Before the hearing, had you ever met either of the
17 Scarpinos?

18 A Yes.

19 Q You met them when you went to their house; right?

20 A Yes.

21 Q Did you talk to both Margaret and Sara on those
22 occasions?

23 A Yes.

24 Q Did you ask either Sara or Margaret when the noise in

TESTIMONY OF GREG ZAK

1 this particular instance began?

2 A No.

3 Q Do you know when the noise began?

4 A From their correspondence, I believe it began
5 approximately 1990.

6 Q What happened -- are you familiar with any of the
7 circumstances that gave rise to the noise beginning in
8 1990? That's a terrible question. Let me redo that.
9 That's a bad lawyer's question.

10 Based on the information that you've gotten from
11 conversations and whatever else you know, what happened
12 in 1990 that started this noise?

13 A To the best of my recollection, Sara Scarpino had
14 problems sleeping, and the noise emissions from the Pratt
15 Company would keep her awake.

16 MR. FELDMAN: That's not my question.

17 HEARING OFFICER EDVENSON: Counsel, the purpose of
18 asking Mr. Zak this question?

19 MR. FELDMAN: Judge, I don't think Mr. Zak did a
20 proper investigation in this case, and I think there are
21 some indications that go directly to the issue of
22 nuisance that he did not discover, didn't analyze, didn't
23 investigate. That's where I'm going with this.

24 HEARING OFFICER EDVENSON: Okay.

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TESTIMONY OF GREG ZAK

1 BY MR. FELDMAN:

2 Q Mr. Zak, I didn't ask you when the Scarpinos began to
3 complain.

4 The question is: What information did you have as
5 to when the noise began? Maybe they are one and the same
6 thing. If so, just tell me.

7 A To the best of my recollection, they would be one and
8 the same thing.

9 Q Okay. And that's what you believed to be the case,
10 that the noise started in 1990; is that right?

11 A Approximately.

12 Q Then is it fair to say it would surprise you if the
13 plant noise had been basically consistent, the same
14 levels, same character, for 26 years before 1990? That's
15 a yes-or-no question.

16 A Yes.

17 Q Did you ever contact the company to make any
18 investigation as to when the noise started or when sounds
19 began to be emitted from the Pratt plant?

20 A No.

21 Q In your investigations in this case and in other
22 cases -- strike that.

23 I take it as a representative of the Illinois EPA in
24 noise cases that at least one goal is to promote

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TESTIMONY OF GREG ZAK

1 tolerance among neighbors in connection with noise

2 issues; isn't that true?

3 A Yes.

4 Q Not every issue has to become a lawsuit or proceeding

5 before the Pollution Control Board; isn't that fair?

6 A I hope not.

7 Q Is there any part of your -- strike that.

8 At any time in this case did you explore with the
9 Scarpinos the possibility of promoting more tolerance in
10 terms of the noise or sound level that was coming from
11 the Pratt plant?

12 A No, because I really didn't have that much
13 information on the noise emissions, other than what the
14 Scarpinos had told me.

15 Q Is there anything in your self-help manual or
16 materials, the self-help materials that you give out,
17 that talks about tolerance?

18 A If you could help me out a little bit as far as
19 tolerance is concerned, I'm not quite sure what you mean
20 by "tolerance."

21 Q You don't understand the word "tolerance"?

22 A Well, I'm not quite sure what you mean by
23 "tolerance."

24 HEARING OFFICER EDVENSON: Are we speaking about

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TESTIMONY OF GREG ZAK

1 tolerance to the physical noise --

2 MR. FELDMAN: Right.

3 HEARING OFFICER EDVENSON: -- or are we speaking
4 about an attitude of neighborliness?

5 MR. FELDMAN: No. I mean tolerance to the noise.
6 Let me rephrase it, give you a different question.

7 BY MR. FELDMAN:

8 Q In some cases tolerance of noise in particular
9 communities is the appropriate answer to a complaint;
10 isn't that true?

11 A True.

12 Q If you live in a noisy area, an industrial area, you
13 have to expect there is going to be some level of
14 activity and sound that results from that activity;
15 wouldn't you agree with that?

16 A As long as it's in compliance with the regulations,
17 yes.

18 Q So if it's in compliance with the regulations and its
19 an industrial area, then tolerance is the appropriate
20 route; is that fair?

21 A Yes.

22 Q And so my question is: Is there anything in your
23 materials that talks about how different communities have
24 different sound levels, different background levels,

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TESTIMONY OF GREG ZAK

1 different levels of activity and, therefore, different
2 noise standards might be applicable?

3 A No.

4 Q How would you characterize the community or the --
5 strike "community."

6 How would you characterize the particular area
7 around the Pratt plant, including the Scarpino residence,
8 in terms of whether it's an industrial area or
9 residential area?

10 A It's a residential area abutting an industrial area.

11 Q How is that area zoned; do you know?

12 A I have no idea.

13 Q Would it surprise you to find that it's zoned
14 industrial?

15 A No.

16 Q You don't view it as an industrial area with some
17 residential; you view it as residential with some
18 industrial, or am I mischaracterizing what you said?

19 A I think you're mischaracterizing.

20 I'm not really looking at it as either one. It's
21 simply an area that could be considered
22 industrial-residential, abutting industrial or
23 residential. In other words, I'm not placing one first
24 and one second.

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1 Q Okay. Fair enough.

2 A I'm just describing the area.

3 Q Fair enough.

4 Pratt is not the only industry in that area around
5 the Scarpino residence, is it?

6 HEARING OFFICER EDVENSON: If you don't know, you
7 can say you don't know.

8 A I don't know.

9 BY MR. FELDMAN:

10 Q Did you ever take a walk around the area?

11 A Yes, I have.

12 Q Do you recall seeing any other plants or factories or
13 warehouses of any kind?

14 A I see a number of large buildings, but the exact
15 nature of those buildings I'm not sure.

16 Q Did you notice any machine shops or small engine
17 shops, anything like that.

18 A No, I didn't.

19 Q Is Cleveland entirely residential, from that block of
20 Cleveland across from the plant? Is it all residences?

21 A A large portion of it is. Whether all Cleveland is
22 or not I'm not sure.

23 Q When you say "a large portion," what do you mean? Is
24 it 90 percent, 50 percent, 10 percent?

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1 A I would say the majority of Cleveland on the west
2 side is residential.

3 Q The west side being the side opposite the plant?

4 A That's right.

5 Q Would you expect the sound level, even if you ignore
6 the Pratt plant for the moment -- would you expect the
7 sound level to be -- let me rephrase that.

8 How would you characterize the sound level in that
9 area without regard to the Pratt plant?

10 A It's a relatively quiet area at times I have been
11 there.

12 Q Have you ever been there when the plant is not
13 running?

14 A Not to my knowledge.

15 Q And I think you testified at the last session of this
16 hearing that you were unable to get an ambient level that
17 didn't include the Pratt plant; is that true?

18 A That's correct.

19 Q In this case, have you found any evidence of a
20 heightened sensitivity to noise on the part of the
21 Scarpinos, something that you would consider to be out of
22 the ordinary?

23 A No.

24 Q When you stand -- and I think you testified you

TESTIMONY OF GREG ZAK

1 walked around their home on at least two occasions;

2 right?

3 A Yes.

4 Q Now, you stood on the front yard; right?

5 A Yes.

6 Q And you've listened to the sound from the plant at

7 that location; is that correct?

8 A Yes.

9 Q Have you ever carried on a conversation in their

10 front yard?

11 A Yes.

12 Q Do you have to raise your voice?

13 A No.

14 Q Can you be heard in normal, soft conversational

15 tones?

16 A Yes.

17 Q Were you ever there when -- this may sound like an

18 odd question. Bear with me, Mr. Zak.

19 Were you ever there when a breeze blew through the

20 area, maybe rustled the tree's leaves?

21 I think there is a tree in the front yard; do you

22 recall that?

23 A Yes.

24 Q Were you ever there when a breeze rustled the leaves

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1 in the tree?

2 A Yes.

3 Q Did that sound of the leaves rustling in the trees
4 drowned out the sound of the plant?

5 A No.

6 Q If you can't remember, that's fine.

7 A No. I can remember because I was taking some
8 measurements very close to the tree.

9 Again, to some extent, we check the leaf noise, and
10 the leaf noise when the wind blew through the tree was
11 audible; but it did by no means drowned out the noise
12 from the plant. I would characterize the leaf noise as
13 being of a part of the frequency spectrum that was
14 different than the frequency spectrum generated by the
15 plant.

16 HEARING OFFICER EDVENSON: I'm assuming all this
17 discussion is daytime, counsel?

18 BY MR. FELDMAN:

19 Q I don't think you were there at night, were you?

20 A No, I was not.

21 Q Okay. Is the noise of a character that rattles
22 windows in the Scarpino home?

23 A No.

24 Q If you're inside the house -- were you ever inside

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- 1 the house with the windows closed?
- 2 A Yes.
- 3 Q And could you hear the sound from the plant with the
- 4 windows closed?
- 5 A I don't know.
- 6 Q You were in Ms. Scarpino -- I don't know which one I
- 7 mean.
- 8 You were in the upstairs bedroom; right?
- 9 A Yes.
- 10 Q Is that bedroom carpeted?
- 11 A I'm not sure.
- 12 Q Does it have the typical kind of upholstery you
- 13 expect to find in a bedroom?
- 14 A There is a bed, a night stand, and that's all I
- 15 remember.
- 16 Q Is the sound, if you recall -- you can hear the sound
- 17 of the plant at the window or the screen if the window is
- 18 open; right?
- 19 A That's correct.
- 20 Q Does the sound decrease in volume as you go inside
- 21 the room?
- 22 A Yes.
- 23 Q Any estimate of the number of decibels that the sound
- 24 decreases as you get further inside the room?

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- 1 A No.
- 2 Q Do you think it would be five dB or would you really
3 have no idea?
- 4 A I really have no idea.
- 5 Q You didn't measure that?
- 6 A No.
- 7 Q As you stand in the house at the window, that
8 upstairs window in the bedroom, does the sound of the
9 plant sound like a shrill piercing noise?
- 10 A I couldn't characterize it as that.
- 11 Q Would you characterize it as a loud grinding noise?
- 12 A No.
- 13 Q Have you reviewed the correspondence between Pratt
14 and the Scarpinos that was exchanged during the years
15 1990, 1991 up to the present?
- 16 A Yes, I have.
- 17 Q Did it appear to you that the company was attempting
18 to reduce the sound levels coming from the plant to
19 satisfy the complaints of the Scarpinos?
- 20 A No, it did not, not a serious attempt, anyway.
- 21 Q How would you -- what would be a serious response in
22 this case?
- 23 A A serious response, in my opinion, would be hiring of
24 a noise control engineer to take measurements at that

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1 portion of the plant that abuts the Scarpino residence,
2 identify any major noise sources and then abate those
3 noise sources.

4 Q Your understanding is that the Pratt Company didn't
5 do that?

6 A That's my understanding from the correspondence. It
7 was never mentioned.

8 Q Did you ever call the Pratt Company to ask them what
9 they're doing to abate this noise?

10 A No.

11 Q In a situation where you've gotten involved to the
12 extent to come out to take noise readings, do you
13 typically not contact the party who is responsible for
14 the noise?

15 A I do contact them; and in this case, I did by sending
16 a copy of the report to the Pratt Company of the initial
17 sound level survey.

18 Q That was in what year?

19 A I believe it was this year.

20 Q I think that's an exhibit in this case, isn't it, Mr.
21 Zak?

22 A I think it is. It was done in March.

23 Q So your first contact with the Pratt Company was to
24 send them a letter in March -- well, actually it was May,

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1 I think, of this year.

2 A It could have been.

3 Q I will show you a copy just to refresh your
4 recollection.

5 Is that the letter that you're referring to?

6 A Yes. This is the letter.

7 Q What's the date on the letter?

8 A May 3rd, 1996.

9 Q So prior to May 3, 1996, you had no contact at all
10 with the Pratt Company; right?

11 A Not to my knowledge.

12 Q Did you see any evidence in the correspondence or in
13 your conversations with the Scarpinos that the Pratt
14 Company was in any way oppressing the Scarpinos in this
15 whole situation?

16 A I don't understand the question.

17 Q Well, I take it industry can respond in different
18 ways to complaints from neighbors; they can be friendly,
19 they can be digging their heels.

20 Did you see any indication in this case that the
21 Pratt Company was digging in its heels and not being
22 responsive to the Scarpinos?

23 A Yes; and I based that upon my previous answer to your
24 question as far as the normal approach one would take to

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1 inquiry, do on inquiry as far as potential noise
2 emissions from your plant.

3 Q Did they respond to the requests -- to the complaints
4 that were made in the sense that they called back the
5 Scarpinos when they called or wrote them letters?

6 A Yes; they wrote them letters.

7 Q And did they make phone calls?

8 A I believe so. I believe the phone calls were
9 mentioned in the letters.

10 Q So in that sense, they were responsive?

11 A Yes, they were.

12 Q Did you ever ask the Scarpinos whether they felt that
13 individuals at the Pratt plant treated them with respect
14 and were solicitous of their concerns?

15 A No.

16 Q Did they ever give you any information about that?

17 A Yes. Sara made remarks that -- I will kind of
18 paraphrase her -- that she was getting written responses,
19 but she didn't feel she was getting any action, action
20 was really being taken, serious action taken to abate the
21 noise.

22 Q Do you see anything in this case from the first time
23 a noise complaint was lodged to the present that you
24 would describe as the company crucifying either of the

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1 Scarpinos?

2 A No.

3 Q Mr. Zak, the readings that were taken by you Sara
4 Scarpino -- strike that.

5 I think you testified last time that you instructed
6 Ms. Scarpino to turn the machine on, the Nagra tape
7 recorder, when the noise was the loudest; is that fair?

8 A I would say when the noise bothered her.

9 Q Showing you what's been previously marked as Exhibit
10 4, is that a copy of the times when the noise readings
11 were taken by Ms. Scarpino for that first noise sampling
12 that she did?

13 A Yes, I believe it is.

14 Q Okay.

15 A It's a typewritten version. I think her version was
16 handwritten, but it appears to be the same as the
17 handwritten version.

18 Q So there are no inaccuracies of transcription; right?

19 A Without comparing -- I am assuming there is not,
20 without comparing the documents.

21 Q Now, do you see any times listed here where samples
22 were taken that were in the middle of the night?

23 A No.

24 Q They all seem to be either around 10:00 o'clock at

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1 night or 5:00, 6:00, 7:00 a.m. in the morning?

2 A That's correct.

3 Q I think there is one that is 10:00 a.m. in the
4 morning?

5 A Yes.

6 Well, I'm sorry. It -- there is one at 2:00 p.m.

7 Q Okay. I'm sorry. There is one 8:50 to 9:07 a.m.;
8 right?

9 A Yes.

10 Q The Scarpinos, did they tell you they were having
11 trouble sleeping because the noise was bothering them?

12 A Sara did.

13 Q Did you ask Ms. Scarpino why she didn't take any
14 readings in the middle of the night when she was having
15 problems sleeping?

16 A No.

17 Q I'm going to switch gears a little bit here, Mr. Zak.

18 Last time when you were on the stand in July, I
19 asked you why you didn't take a one-hour reading in this
20 case, why the sound readings were less than one hour.

21 Do you remember that discussion?

22 A Yes.

23 Q You were telling us about the Pollution Control Board
24 regulation that mandates a one-hour reading. Do you

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1 recall that?

2 A Yes.

3 Q And I asked you why that wasn't appropriate in this
4 case. Let me read your response.

5 HEARING OFFICER EDVENSON: What page?

6 MR. FELDMAN: Page 98, Line 3.

7 BY MR. FELDMAN:

8 Q "Because it's my understanding that the Scarpinos
9 have alleged a nuisance violation, which would be under
10 the 900 section, as opposed to the 901 section. And
11 historically, the Pollution Control Board, for example,
12 in their case of Madison versus World Music Theater,
13 accepted a five-minute LEQ as evidence in a case of
14 nuisance, which was -- the allegation in that case was a
15 900.102 violation."

16 I think the court reporter may have -- I think it is
17 Matteson, M-a-t-t-e-s-o-n.

18 A Yes.

19 Q That was a case you testified in, wasn't it?

20 A Yes, it was.

21 Q And your understanding of that case was that a
22 five-minute LEQ was permitted because it was a nuisance
23 case, as opposed to a case alleging a violation of the
24 regulations; is that correct?

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1 A Yes.

2 Q Did you ever read the case?

3 A Yes.

4 Q Have you, based on your understanding of the World
5 Music Theater case, used five-minute readings for a
6 nuisance case as opposed to a one-hour reading other than
7 in this matter?

8 A Could you kind of repeat the question? I think I
9 missed a part.

10 Q Well, you indicate -- and I think you confirmed it
11 right now -- that you understood that case as permitting
12 you to use or anyone to use five-minute readings as
13 opposed to one-hour readings so long as the allegation
14 was nuisance as opposed to a violation of the Pollution
15 Control Board standards, the numerical standards; is that
16 correct?

17 A Yes.

18 Q And based on that understanding, have you then used
19 five-minute readings as opposed to one-hour readings in
20 cases where you understand the allegation to be nuisance
21 as opposed to a violation of the numerical standards?

22 A The question is not one that can be answered just in
23 a very simple manner. The time period for taking the
24 measurement -- this will be brief.

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1 In World Music Theater it was one where the noise
2 was present for a period of five to ten minutes and then
3 there was a period of quiet. In this particular case,
4 the nature of the tape-recording was such that the noise
5 was louder for periods of five or ten minutes, various
6 periods there --

7 BY MR. FELDMAN:

8 Q Excuse me. Which case?

9 A I'm sorry. The Scarpino case.

10 And the nature of the noise being louder and quieter
11 was such that, in my judgment, I would go with a much
12 shorter term LEQ than a one hour, taking measurements to
13 bolster up a nuisance case.

14 Q Is that what you viewed as your task in this case, to
15 bolster up a nuisance case?

16 A If the readings indicate that it's exceeding the
17 limits, yes.

18 Q Exceeding what limits?

19 A The board limits.

20 Q So in your view, if you're exceeding the board limits
21 in a nuisance case, there is a nuisance. If you are not
22 exceeding the board limits, is there no nuisance?

23 A No. There can still be a nuisance even if you don't
24 exceed the limits.

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TESTIMONY OF GREG ZAK

1 Q Mr. Zak, isn't it true that the World Music Theater
2 case, the Matteson case, indicated that -- I'm quoting --
3 "all sound measurements presented to the board be taken
4 on the basis of equivalent sound levels, L, Sub EQ, with
5 a reference time of one hour"? I will show you the case,
6 if you'd like.

7 HEARING OFFICER EDVENSON: If you do not know, Mr.
8 Zak, you can say so. The question otherwise calls for a
9 yes or no answer.

10 MR. FELDMAN: If you know.

11 A The final word on that case called for a five-minute
12 LEQ.

13 BY MR. FELDMAN:

14 Q Let me read on. "The record clearly indicates that
15 the concert sound cannot be classified as continuous and
16 reasonably steady in nature." Then the board goes on to
17 indicate that, "In this case a five minute reading is
18 acceptable."

19 Is that your recollection of the case?

20 A Yes.

21 Q Would you classify the sound that is emanating from
22 the Pratt plant as continuous and reasonably steady in
23 nature?

24 A Not on the tape. There was apparently machinery

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1 going on and off while Sara was making the
2 tape-recording.

3 Q How do you know that?

4 A From listening to the tape and observing the analyzer
5 while the tape was playing.

6 Q And so you would classify the sound coming from the
7 plant as analogous to the sound of a rock music hall
8 where a song plays for five minutes and then there is a
9 break and the sound goes way down?

10 A No, I would not.

11 Q Compared to that, would the sound from the Pratt
12 facility be continuous and reasonably steady in nature?

13 A Yes.

14 Q "Reasonably steady" doesn't mean absolutely constant,
15 does it?

16 A No; that's how I'm assuming you mean by your
17 question.

18 Q Showing you again what was previously marked as
19 Exhibit 5 at the last session of this hearing, that is a
20 copy of your May 3rd, 1996, letter to Mrs. Sara Scarpino;
21 is that true?

22 A Yes.

23 Q And you sent carbon copies of this letter to all the
24 people listed on the second page; correct?

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- 1 A Yes.
- 2 Q Which includes Ms. Edvenson, the hearing officer, Mr.
3 Dave from Pratt Company, the clerk of the Pollution
4 Control Board, Mr. Carlson from the Henry Pratt Company.
5 You sent all those people copies of this Exhibit 5; is
6 that correct?
- 7 A That's correct.
- 8 Q Who is Bill Child?
- 9 A He is my supervisor.
- 10 Q What's his title?
- 11 A Bureau chief, bureau of land.
- 12 Q Who is Scott Phillips?
- 13 A He is our senior attorney for the bureau of land.
- 14 Q And Mr. Child and Mr. Phillips also got copies of
15 this letter; right?
- 16 A That's correct.
- 17 Q Now, in the second sentence you say, "It appears the
18 above-referenced company is emitting noise levels in
19 excess of the allowable numerical limit."
20 I think we ascertained last time that you were
21 referring to the nighttime limits in that sentence; is
22 that true?
- 23 A That's correct.
- 24 Q And you say "allowable numerical limits."

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TESTIMONY OF GREG ZAK

- 1 You now know that sentence is not true, do you not?
- 2 A Not necessarily.
- 3 Q Mr. Zak, you are aware that the company is only
- 4 subject to the daytime standards applicable to this
- 5 particular kind of area; isn't that true?
- 6 A Well, after the last hearing, I gave some thought to
- 7 that, and I believe that if new systems had been added
- 8 since then, they might be subject to nighttime rule. But
- 9 I -- there again, that's just supposition on my part.
- 10 Q That's supposition on your part?
- 11 A Yes.
- 12 Q You have no information whatsoever that new equipment
- 13 has been added that would subject this plant to the
- 14 nighttime standards; isn't that true?
- 15 A That's true.
- 16 Q And you've done nothing to investigate that?
- 17 A That's true.
- 18 Q And you didn't do anything to investigate that at the
- 19 time of this May 3rd, 1996, letter, did you?
- 20 A That's true.
- 21 Q So the statement when it was made was false; isn't
- 22 that true?
- 23 A At the time I thought it was true.
- 24 Q I didn't ask you whether you thought it was true.

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1 A Given the knowledge that I have right now, if I would
2 have known when the plant was established at the time I
3 wrote the letter, I would not have put that phraseology
4 in there.

5 Q These are the regs that I think you described as
6 having had a part in drafting; right?

7 A Yes.

8 Q Now, you said you did some thinking about that
9 particular conclusion about applicable limits since the
10 last hearing; right?

11 A Yes.

12 Q Did you have any communication with the Scarpinos
13 about it?

14 A No.

15 HEARING OFFICER EDVENSON: Since the last hearing?

16 MR. FELDMAN: Yes. I'm sorry.

17 BY MR. FELDMAN:

18 Q Your answer was?

19 A No.

20 Q So you didn't call the Scarpinos and say, "You know,
21 the major conclusion of my May 3rd, 1996 letter, may have
22 been in error"?

23 A No, I didn't.

24 Q As a noise advisor and investigator for 24 years, how

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1 would you think a resident would respond to a statement
2 by a person in your capacity that the noise that they
3 hear violates applicable standards?

4 A In several hundred cases, the attitude to the part of
5 the Complainant is usually one that they're not
6 surprised. It's more one of -- "Well, that bears up what
7 I have been telling you all along," that type of
8 response.

9 Q It's not likely to make the individual who receives
10 that information more tolerant of the sound, is it?

11 A No.

12 Q Would it tend to reinforce their views about the
13 annoyance resulting from this -- from listening to the
14 sound?

15 A Based on my experience, I would say, yes, it would.

16 Q And if you have an individual or individuals who are
17 somewhat highly sensitive to sound, would telling them
18 that the source of the sound is violating the law tend to
19 reinforce them in their position?

20 A If they were told that it violates the law -- which I
21 don't do; I tell them that it may exceed it -- yes, I
22 think you are correct.

23 Q It might make them be even more bothered by the
24 sound; isn't that true?

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1 A Based on my experience, yes.

2 Q If you think you've got a legal complaint, you tend
3 to be more annoyed if the basis of that complaint doesn't
4 cease; is that right?

5 A That's true.

6 HEARING OFFICER EDVENSON: All right. At this
7 point, let's take five minutes as a break for our morning
8 break, and let's come back on the record in exactly five
9 minutes.

10 Off the record.

11 (Whereupon, a recess was had, after which the
12 hearing was resumed as follows:)

13 HEARING OFFICER EDVENSON: All right. We will go
14 back on the record.

15 BY MR. FELDMAN:

16 Q Mr. Zak, I think you said last time -- correct me if
17 I'm wrong -- that the company was in compliance with the
18 daytime standards.

19 A That's correct.

20 Q I don't think you put the daytime standards on any of
21 these, any of your reports, because they were taken at
22 night; is that correct?

23 A That's correct.

24 Q You were under the impression at that time that you

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1 were looking at nighttime standards?

2 A Yes.

3 Q Do you know what the daytime standards are for any
4 particular frequency?

5 A Not exactly. I know it's approximately ten decibels
6 higher than the nighttime standard; but without looking
7 at a sheet of the regulations, I don't have them
8 memorized.

9 Q Well, I'm going to show you a document that we will
10 mark in our case. Just by way of refreshing your
11 recollection, this is a document prepared by our
12 consultant and it shows the daytime and nighttime
13 standards. I'm going to hand you that for you to -- for
14 your reference. Then what I would like you to do, Mr.
15 Zak is to use the July 18, 1996, document and tell us for
16 each particular frequency level how much below the
17 daytime standards the Pratt sound is.

18 HEARING OFFICER EDVENSON: If I might ask you, can
19 you identify what exhibit number Mr. Zak is comparing?

20 MR. FELDMAN: Sure.

21 HEARING OFFICER EDVENSON: Exhibit 5.

22 MR. FELDMAN: No. It's the second one.

23 MS. VINER: It's 9, Exhibit 9.

24 MR. FELDMAN: Exhibit 9.

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1 HEARING OFFICER EDVENSON: Okay. And does your
2 consultant identify the numerical reference to the
3 daytime limits?

4 MR. FELDMAN: Well, maybe Mr. Zak can tell us.

5 BY MR. FELDMAN:

6 Q Where do you find the numerical limits for daytime in
7 the Illinois code? Is that 901102?

8 A Yes. It would be 901102A.

9 HEARING OFFICER EDVENSON: Thank you.

10 BY MR. FELDMAN:

11 Q Now, Mr. Zak, if you have any question about whether
12 those are the applicable limits, let us know. I would
13 like you to go through frequency point by frequency point
14 on the July 17, Exhibit 9 and tell us how much below each
15 of those points in decibels the Pratt Company is.

16 THE WITNESS: If I could, before I answer the
17 question, Madam Hearing Officer, I was instructed last
18 time not to refer to the regulations. I'm not quite sure
19 how to respond to counsel's questions given your
20 instruction.

21 HEARING OFFICER EDVENSON: He is asking you to, I
22 believe, do some simple arithmetic based on the numbers
23 that are entered on his consultant's table. I believe
24 what we've asked is that you not express a legal opinion

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1 with respect to the regulations, so you can answer his
2 question.

3 THE WITNESS: Oh, okay. Thank you.

4 BY MR. FELDMAN:

5 Q Starting now with the 31.6 hertz level and working
6 your way up to 8,000 hertz, can you indicate the extent
7 to which each of those frequency points the Pratt Company
8 is below the applicable daytime standards?

9 A Okay. Again, starting at 31 and a half hertz, the
10 measurement was 54, and the allowable limit for daytime
11 would be, I believe, 75.

12 At 63 hertz, the measurement was 62. The standard
13 is 74.

14 At 125, the measurement was 61. The allowable is
15 69.

16 At 250 hertz, the measurement was 58. The allowable
17 is approximately 63.

18 At 500 hertz, the measurement was 53. The allowable
19 daytime would be 58.

20 At 1,000 hertz the measurement was 48. The limit
21 would be either 51 or 52. I'm not sure from the chart
22 here.

23 HEARING OFFICER EDVENSON: 52.

24 THE WITNESS: Thank you.

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TESTIMONY OF GREG ZAK

1 A (Continuing.) At 2,000 hertz, the measurement was
2 45. The allowable would be, I believe, 48.

3 MR. FELDMAN: I think it is 47, actually.

4 A (Continuing.) And at 4,000 hertz, the measurement
5 was 36, and the allowable would be --

6 HEARING OFFICER EDVENSON: 43.

7 A (Continuing.) 42.

8 MR. FELDMAN: 43.

9 A (Continuing.) 43.

10 And then finally, at 8,000 hertz, the measurement
11 was 29, and the allowable would be 40.

12 BY MR. FELDMAN:

13 Q Thank you. Now, Mr. Zak, why, if you know, is there
14 for some companies an exemption from the nighttime
15 standards?

16 A When the regulations were passed back in 1973, a
17 number of the older companies objected to passage of
18 those regulations and those specific numbers that
19 regulated those companies. A compromise was reached
20 whereby an exemption was granted -- those companies were
21 grandfathered in so they wouldn't have to meet the
22 nighttime standard at that time.

23 Q Is it fair to say that the Illinois legislature
24 decided that as a matter of public policy, it would not

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TESTIMONY OF GREG ZAK

1 require certain companies -- the ones that you described,
2 the older companies, to meet the more stringent
3 standards?

4 A No, that's not correct. It would be the Illinois
5 Pollution Control Board.

6 Q Fair enough.

7 Now, last time in response to the Hearing Officer's
8 questions, you went through the different frequency
9 points and indicated when, in your opinion, certain
10 levels found at the Pratt plant or at the Scarpino
11 property from the Pratt plant facility would be expected
12 to cause annoyance in certain numbers of people.

13 Do you remember that testimony?

14 A Yes.

15 Q And I asked you for a reference to a study that would
16 support your statements that particular numbers of people
17 -- you did it in general terms, I think -- would be
18 annoyed on the certain frequency levels, certain decibel
19 levels at certain frequency points?

20 A Yes.

21 Q I think you told me about a book, which I have been
22 handed, called by Mr. Harris "Handbook of Acoustical
23 Measurements and Noise Control. "

24 I'm handing you a copy of that book, which we will

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TESTIMONY OF GREG ZAK

- 1 not mark as an exhibit.
- 2 A Yes.
- 3 Q Is that the book that you were referring to?
- 4 A One of the books.
- 5 Q Are you pretty familiar with that book?
- 6 A Vaguely.
- 7 Q You are only vaguely familiar with it?
- 8 A That's right.
- 9 Q Okay. If I ask you to point out where in that book
- 10 there is a correlation between decibel levels and
- 11 frequencies and percentage of people who might be annoyed
- 12 at those levels, would you be able to find that in Mr.
- 13 Harris' book?
- 14 A I would have to check the index and probably do quite
- 15 a bit of reading to narrow it down if it's in there.
- 16 Q What's your view? Is it in there or not?
- 17 A I don't know.
- 18 Q Well, that was the one you told me about.
- 19 Is there any other one that you know has it?
- 20 A Short of the documentation for passing the
- 21 regulations back in 1973 -- and to give you a fair answer
- 22 on that, I know it is in some of the larger books on
- 23 acoustics, but I'm not absolutely sure which ones it is
- 24 in and which ones it is not in.

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TESTIMONY OF GREG ZAK

1 Q Well, Mr. Zak, I wish you had given us the one you
2 thought it was in, because that's the one we pulled here.
3 We were unable to find any reference to the kind of
4 studies that you referred to last time.

5 Would that surprise you or do you think that's maybe
6 because it isn't in this book?

7 A It doesn't surprise me, because really the question
8 was -- it was the first time I have ever been asked that
9 question, and the work on octave band noise and impact on
10 people. The documentation our agency uses was pretty
11 much developed up until 1973, and we really haven't used
12 anything to further document since 1973.

13 Q You said there was something like 50 to 100 studies
14 of that nature.

15 Do you remember that?

16 A Yes.

17 Q When you went through in response to the Hearing
18 Officer's questions and indicated that you thought that a
19 particular decibel level at a certain frequency point
20 would be annoying to a significant number of the
21 population, how did you know that that decibel level
22 correlated with some level of annoyance?

23 A Given the -- given the instruction not to refer to
24 the regulations, I didn't refer to regulations; but

TESTIMONY OF GREG ZAK

1 mentally when the number exceeded the regulations, I knew
2 the database was there to support that number and chose
3 those numbers as representative numbers that would
4 normally annoy people.

5 HEARING OFFICER EDVENSON: Counsel, can you
6 identify the page number of your last reference to the
7 transcript?

8 MR. FELDMAN: I'm sorry. I can. It's Page 106.

9 HEARING OFFICER EDVENSON: Thank you.

10 BY MR. FELDMAN:

11 Q So you just looked at the nighttime standards, and if
12 the level exceeded -- the level from the Pratt plant
13 exceeded the nighttime standards, you said that's a level
14 that would annoy a significant number of the population;
15 is that right?

16 A That's correct.

17 Q Those nighttime standards being the ones that do not
18 apply to the Pratt plant; right?

19 A I'm not totally convinced they don't apply.

20 Q Well, assuming that it's an old plant and it hasn't
21 changed, Mr. Zak, then you'd agree with me that the
22 nighttime standards don't apply, wouldn't you?

23 A Yes.

24 Q Did you do anything to determine the contribution

TESTIMONY OF GREG ZAK

1 that the Henry Pratt makes to this area, to the area that
2 it's in?

3 A Could you elaborate on the question a little bit?

4 HEARING OFFICER EDVENSON: Can you make your
5 question more informative?

6 MR. FELDMAN: Sure, I will try.

7 BY MR. FELDMAN:

8 Q Did you do anything to determine, for example, what
9 the yearly payroll was at the Pratt facility?

10 A No.

11 Q Is that relevant to a finding of nuisance?

12 A It is to the board, but not normally to the agency.

13 Q Did you do anything to determine whether the Henry
14 Pratt Company carried on activities of a charitable
15 nature --

16 A No.

17 Q -- or whether it was involved in community
18 activities?

19 A No.

20 Q Are those relevant to a finding of nuisance?

21 A Sometimes.

22 Q It can be relevant?

23 A It can be.

24 Q It's not always determinative, but sometimes it's

TESTIMONY OF GREG ZAK

1 relevant?

2 A Yes.

3 MR. FELDMAN: That's all the questions I have, Mr.
4 Zak. Thank you.

5 THE WITNESS: You're welcome.

6 HEARING OFFICER EDVENSON: At this point I would
7 like to give the Scarpino sisters an opportunity to ask
8 Mr. Zak any further questions that are related to Mr.
9 Feldman's questions.

10 REDIRECT EXAMINATION

11 BY MS. MARGARET SCARPINO:

12 Q The one question I have --

13 HEARING OFFICER EDVENSON: If you could, speak up,
14 Margaret.

15 MS. MARGARET SCARPINO: Pardon?

16 HEARING OFFICER EDVENSON: If you could, speak up.

17 BY MS. MARGARET SCARPINO:

18 Q Oh, the one question that bothers me, when you
19 brought up about the fact that the noise level that one
20 day that you were over, you mentioned that you could hear
21 the noise as you came up the street.

22 HEARING OFFICER EDVENSON: Do you mean in his car?

23 MS. MARGARET SCARPINO: In his car.

24 HEARING OFFICER EDVENSON: Do you have a question

TESTIMONY OF GREG ZAK

1 for Greg related to that?

2 BY MS. MARGARET SCARPINO:

3 Q I'm surprised you didn't bring that out, because as I
4 told you, people come over and they are amazed that --

5 MR. FELDMAN: Your Honor, I have to object. It is
6 the same objection we made last time about out-of-court
7 statements about the character of the noise.

8 HEARING OFFICER EDVENSON: Margaret, you are
9 attempting to create a context for your question, but
10 let's just go to Greg now then and ask him if he can talk
11 about the --

12 MS. MARGARET SCARPINO: I can't hear you.

13 HEARING OFFICER EDVENSON: Let's go to Greg now and
14 ask him if he can talk about that statement that he made.

15 BY MS. MARGARET SCARPINO:

16 Q I, in fact, I think it is the day you brought over
17 that machine when you came in. I said, "Do you hear the
18 noise?"

19 You said, "Yes, I heard it the minute I turned up
20 the street."

21 HEARING OFFICER EDVENSON: Greg.

22 A Yes, that's true. When I -- I had the window rolled
23 down. I was driving very slowly and listening.

24 MR. FELDMAN: Judge, I'm sorry to interrupt. I

TESTIMONY OF GREG ZAK

1 would have to object.

2 The issue in this case is not what Mr. Zak heard
3 when he was driving by the plant. The issue is the sound
4 at the Scarpino residence, and that's the only issue, and
5 I don't think it adds anything as to what the sound is
6 when you're standing next to the building. That's not
7 the issue in this case, and it is not really relevant to
8 that.

9 HEARING OFFICER EDVENSON: Okay. I'm going to
10 sustain the objection.

11 Do you have any other questions, Margaret or Sara,
12 at this point?

13 MS. SARA SCARPINO: No, I don't.

14 MS. MARGARET SCARPINO: No.

15 HEARING OFFICER EDVENSON: Okay.

16 MR. FELDMAN: I have nothing further.

17 HEARING OFFICER EDVENSON: All right. Then I want
18 to thank you, Mr. Zak, for being a witness.

19 (Witness excused.)

20 HEARING OFFICER EDVENSON: At this point in time,
21 let's go off the record and discuss or schedule for the
22 day and whether or not we want to eat lunch.

23 Off the record.

24 (There followed a discussion outside the

1 record.)

2 HEARING OFFICER EDVENSON: We will go back on the
3 record.

4 At this point in time, Respondent's counsel would
5 like to have a couple of follow-up questions with
6 Margaret Scarpino, and so, Margaret, would you please be
7 resworn and try to respond as best you can to the
8 questions.

9 (The witness was thereupon duly resworn.)

10 MARGARET SCARPINO
11 re-called as a witness on behalf of the Respondent
12 herein, having been first duly sworn, was examined and
13 testified as follows:

14 RE CROSS EXAMINATION

15 (Continued.)

16 BY MS. VINER:

17 Q Is it okay if I refer to you as Margaret?

18 A Oh, yes.

19 Q I just have a few follow-up questions from the
20 testimony that you gave in July.

21 First, when did you first live on Cleveland in
22 Aurora?

23 A Oh, I've been there 70 years.

24 Q So 1926?

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TESTIMONY OF MARGARET SCARPINO

- 1 A Something like that.
- 2 Q And is that when your sister Sara first lived there
- 3 as well?
- 4 A Yes.
- 5 Q Are you currently the owner of the property?
- 6 A Yes.
- 7 Q And is your sister Sara a co-owner?
- 8 A Co-owner.
- 9 Q You are both listed on the deed?
- 10 A Uh-huh.
- 11 Q And I believe you used to work for the Aurora Police
- 12 Department; is that correct?
- 13 A Uh-huh.
- 14 Q When did you retire from there?
- 15 A 1990.
- 16 Q Do you remember approximately when in 1990?
- 17 A January 31st.
- 18 A Okay.
- 19 Q And was Sara already retired?
- 20 A Yes.
- 21 Q In your testimony in July, and I'm quoting from Page
- 22 60 of the transcript from that date, you told me, "And
- 23 Sara took my bedroom over before we had the recorder up
- 24 for the noise level because she could not sleep

TESTIMONY OF MARGARET SCARPINO

1 upstairs."

2 A Uh-huh.

3 Q My question for you now is: Where do you currently
4 sleep in the house?

5 A I'm still in the middle bedroom on the first floor.

6 Q Middle bedroom first floor.

7 How long have you been sleeping there?

8 A Six months.

9 MS. SARA SCARPINO: For a long time.

10 A (Continuing.) That's always been my permanent
11 bedroom until I switched with her so she could sleep.

12 HEARING OFFICER EDVENSON: Would you resituate
13 yourself so you are not blocking my view.

14 MS. VINER: I'm sorry.

15 BY MS VINER:

16 Q Could you repeat that?

17 A That was my permanent bedroom until I switched with
18 her for about four months, and then I went back down
19 there because she preferred to be upstairs.

20 Q Which was your permanent bedroom?

21 A Downstairs, uh-huh; and I can hear the noise.

22 Q Okay. Let me get this straight: Usually the many,
23 many years that you have been in the house, you normally
24 sleep downstairs in the middle bedroom?

TESTIMONY OF MARGARET SCARPINO

- 1 A Uh-huh.
- 2 Q And she's slept upstairs in the front bedroom?
- 3 A No, uh-uh.
- 4 Q Okay.
- 5 A Because there were five of us children, and that
- 6 front bedroom was used for some of the other children.
- 7 Sara slept downstairs.
- 8 Q Okay. Was Sara -- in 1991, was Sara sleeping in the
- 9 front bedroom that faces the Pratt Company?
- 10 A Yes.
- 11 Q And in '92 she still was, and she continued to sleep
- 12 in that bedroom until approximately six months ago?
- 13 THE WITNESS: It was last winter, wasn't it?
- 14 MS. SARA SCARPINO: Uh-huh.
- 15 A Yeah, she came downstairs last winter.
- 16 BY MS. VINER:
- 17 Q But now she is back upstairs in the front bedroom?
- 18 A Back upstairs.
- 19 Q And for a short period of time, you just switched
- 20 bedrooms with her and you were in the front bedroom
- 21 upstairs?
- 22 A Uh-huh.
- 23 Q Okay. One more question about your ownership of the
- 24 property: When did you become the owners of the

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TESTIMONY OF MARGARET SCARPINO

1 property?

2 MS. SARA SCARPINO: 1982.

3 A 1981.

4 MS. SARA SCARPINO: '82.

5 A (Continuing.) '82.

6 BY MS. VINER:

7 Q How did that come about?

8 A There were three of us, and we bought my other
9 sister's, who is now deceased, her share.

10 Q Okay. The upstairs front bedroom, the bedroom where
11 Sara currently sleeps and where you slept for a short
12 period, the one that faces the Pratt Company, is that
13 room carpeted?

14 A Yes.

15 Q I assume you have curtains in that room?

16 A Curtains and drapes for winter.

17 MS. SARA SCARPINO: And shades.

18 A (Continuing.) Anything to abut the noise.

19 MS. VINER: I think that's all I have for you.

20 (Witness excused.)

21 MS. SARA SCARPINO: May I say something?

22 HEARING OFFICER EDVENSON: I don't think that
23 you're being asked to respond, Sara, so at this point in
24 time, no. But later you will have an opportunity to say

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1 something further on the case.

2 MS. SARA SCARPINO: All right.

3 HEARING OFFICER EDVENSON: All right. At this
4 point in time, we will take our lunch break.

5 Off the record.

6 (Whereupon, the hearing was
7 recessed until the hour of 12:30
8 o'clock p.m.)

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1 AFTERNOON SESSION

2 October 11, 1996

3 12:45 o'clock p.m.

4 - - - - -

5 HEARING OFFICER EDVENSON: All right. We'll go
6 back on the record. At this point in time, we will move
7 to the Respondent's case in chief.

8 MS. VINER: We are calling Mr. Raj Dave from the
9 Henry Pratt Company as our first witness.

10 HEARING OFFICER EDVENSON: Mr. Dave, will you
11 please be sworn.

12 (The witness was thereupon duly sworn.)

13 RAJENDRA DAVE

14 called as a witness on behalf of the Respondent herein,
15 having been first duly sworn, was examined and testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MS. VINER:

19 Q Can you state your full name for me, please?

20 A My name is Rajendra, R-a-j-e-n-d-r-a, middle initial
21 M, last name Dave. I use it Raj Dave as a short.

22 Q And where are you employed?

23 A I work for Henry Pratt Company.

24 Q And how long have you worked for the Henry Pratt

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TESTIMONY OF RAJENDRA DAVE

1 Company?

2 A I've been with Pratt for a little over 20 years.

3 Q Can you tell me what your positions and
4 responsibilities have been since you've been with the
5 Pratt Company?

6 A I started with Pratt in 1976 as a new product
7 manufacturing engineer. Then later on I moved on and
8 became what we call the corporate manufacturing engineer.

9 Under the new product manufacturing engineer, I was
10 kind of acting as a liaison between engineering and
11 manufacturing to introduce the product to the new
12 marketplace and manufacturability of it, as well as
13 buying the equipment necessary for that, kind of seeing
14 the product go to the manufacturing process.

15 In the corporate manufacturing engineer's position,
16 additional responsibilities I got over and above what I
17 had before was the environmental compliance, and the
18 project work became more highlighted under that position.

19 Then since 1987, I believe, I am in the present
20 position of manufacturing engineer or, rather,
21 manufacturer manager of manufacturing services. In this
22 position over and above what I already had, I have
23 additional responsibility for the plant engineer as well
24 as the maintenance for the Aurora plant, and that pretty

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TESTIMONY OF RAJENDRA DAVE

1 much covers anything that pertains to manufacturing since
2 1976 to now.

3 Q Okay. Through these positions, you would say you
4 have become very familiar with the operations of the
5 plant?

6 A Very much so. Back in 1976 when I started for the
7 company, I had to know what the plant's capabilities were
8 so that I can -- when I'm looking at a new product and
9 how we are going to manufacture that at the plant at that
10 point in time, I do have to know what the existing
11 capabilities were. And with all the different products,
12 I am pretty much involved, sometimes more than what I
13 want to.

14 Q Have you been familiar with the Scarpinos' complaints
15 from 1991 to the present?

16 A Yes, I am.

17 Q How long has the Henry Pratt Company operated at 401
18 South Highland?

19 A Pratt bought the property from a company called
20 Equipto in 1964 -- I want to say '64, I believe, is when
21 the property was purchased, and the operation I believe
22 started in 1965.

23 Q Can you just generally describe for me the operations
24 of the plant, what you do, what you make?

TESTIMONY OF RAJENDRA DAVE

1 A Henry Pratt Company manufactures butterfly valves,
2 and these are rubber-seated butterfly valve.

3 To make it very simple to understand, it is like a
4 butterfly in the carburetor. It is 90 degree of
5 actuation. You have open position or closed position.

6 Q Okay.

7 A We manufacture this type of valves at the Aurora
8 plant.

9 Q Okay. Can you tell me what this product is used for?

10 A Okay. The product is used in the water handling
11 applications. So if I can give the illustration that,
12 you know, if you have a new housing subdivision going on,
13 the underground water lines that you have, some of these
14 valves can be use in that application.

15 Your water filtration plant will have that -- the
16 same type of equipment, or you can measure water
17 transmission lines, pump station, nuclear power plant or
18 general power plant. So these are several number of
19 applications of our products.

20 Q So your customers are who then?

21 A Our customers could be like your local plumbing
22 contractor who is working on the large project; from that
23 to waste water treatment plants or municipalities, and
24 some of the major nuclear power plant facilities within

TESTIMONY OF RAJENDRA DAVE

1 the state, as well as we have several applications where
2 we are overseas, also.

3 HEARING OFFICER EDVENSON: Could you tell me, for
4 the board's information, the range of sizes of these
5 butterfly valves that you make?

6 THE WITNESS: Yes. Actually, we have two plants
7 under Henry Pratt. We have a plant in Aurora, Illinois,
8 and the second plant is in Dixon, Illinois.

9 HEARING OFFICER EDVENSON: At Aurora.

10 THE WITNESS: Aurora and Dixon. In Aurora we
11 manufacture the valve that range from three inch on the
12 small end to 24 inch on the large end, and then the Dixon
13 plant manufactures 30 inch and larger valves.

14 HEARING OFFICER EDVENSON: Okay.

15 BY MS. VINER:

16 Q And you've conducted the same type of manufacturing
17 process, you've made the same products since you began
18 operating at 401 Highland in 1965?

19 A That is correct.

20 Actually, Pratt had a patent on this particular type
21 of product line when they came in from Chicago out to
22 Aurora; but the manufacturing of the butterfly is the
23 primary operation at the Aurora plant.

24 Q Can you tell me how many people are employed at your

TESTIMONY OF RAJENDRA DAVE

1 Aurora plant?

2 A As of right now, we have 193 people working at Henry
3 Pratt Company.

4 Q So what is your annual payroll, if you know?

5 A If I can just take a look at my note, for the most
6 recent 12 months of a payroll was 9,281,000.

7 Q Okay. And can you tell me what type and how much,
8 let's say, annually in taxes you pay at that Aurora
9 plant?

10 A The property tax -- naturally we pay similar taxes
11 that most of the industry entities would pay. The
12 property taxes that we pay every year is 45,000. I would
13 have to take a look at my copy of the thing, but I
14 believe it's one installment of 45, so it should be
15 90,000. But I will double-check, and I will let the
16 court know that.

17 Q All right.

18 A The use tax, which is a sales tax that we pay, that
19 amounts to like 57,000 a year on average, and then the
20 other avenue we collect is sales tax we collect from the
21 customer on the product for State of Illinois. We have
22 been averaging about 45 to 47,000 a year.

23 Q Has the Henry Pratt plant in Aurora ever received any
24 environmental type of awards?

TESTIMONY OF RAJENDRA DAVE

- 1 A Yes, we have.
- 2 Q And can you tell me what those are?
- 3 A We have received the Governor's award, and I have
4 given you a copy of that.
- 5 Q Can you tell me more about this award? I will --
- 6 A That was a reduction or pollution prevention award
7 for the year of 1992.
- 8 With the environmental concern about the chemical
9 emissions, we had been working on elimination of one of
10 the solvents which we were using in our manufacturing
11 process. And our annual consumption, if I remember
12 right, was close to 45 ton, and we changed the
13 manufacturing process, eliminating the use of that
14 particular chemical --
- 15 Q That was a voluntary --
- 16 A -- and it -- right. It was a voluntary reduction.
- 17 Q Actually, elimination, complete elimination?
- 18 A That is correct.
- 19 Q Because you were not required to do that by law, you
20 got this award from the Governor of Illinois?
- 21 A Right. This was the sixth annual Illinois Governor's
22 pollution prevention award in 1992.
- 23 Q This is a copy of the award you made for me?
- 24 A That's correct. The actual award is hanging in our

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TESTIMONY OF RAJENDRA DAVE

1 lobby of the office.

2 (The document was thereupon marked
3 Respondent's Exhibit No. 8 for
4 identification as of October 11,
5 1996.)

6 MS. VINER: I would like to enter this as an
7 exhibit. I think it is Respondent's Exhibit 8.

8 MS. VINER: Did you ever receive any other
9 environmental --

10 HEARING OFFICER EDVENSON: Is there any objection
11 to the introduction of the exhibit?

12 MS. MARGARET SCARPINO: I didn't hear you.

13 HEARING OFFICER EDVENSON: Do you have any
14 objection to the introduction of this?

15 MS. MARGARET SCARPINO: No, I don't.

16 BY MS. VINER:

17 Q Have you ever received any other environmental
18 awards?

19 A Yes. The other award that we have received also is
20 what I would call the US EPA's certificate of
21 appreciation award. That was for participating in what
22 they call the 3350 program that US EPA has.

23 Q Can you tell me what that is?

24 A Under the 3350 program, what the US EPA was looking

TESTIMONY OF RAJENDRA DAVE

1 for was the voluntary elimination of the toxic chemical
2 emissions, and we participated in that particular
3 program.

4 Q Okay.

5 A And I have the certificate for that.

6 Q This is again a commendation you got from the United
7 States Environmental Protection Agency?

8 A That is correct.

9 Q Do you know what year you received this?

10 A That -- I would have to -- I believe it was '93. We
11 would have to go through memory.

12 MS. VINER: I would also like to enter this into
13 evidence.

14 (The document was thereupon marked
15 Respondent's Exhibit No. 9 for
16 identification as of October 11,
17 1996.)

18 HEARING OFFICER EDVENSON: Is there any objection?

19 MS. MARGARET SCARPINO: No, no objection.

20 HEARING OFFICER EDVENSON: That was Respondent's
21 Exhibit No. 9?

22 MS. VINER: Yes.

23 BY MS. VINER:

24 Q If I can back up for a minute, Mr. Dave, the numbers

TESTIMONY OF RAJENDRA DAVE

1 you gave, the number of employees and payroll and things
2 like that, have those numbers been fairly constant since
3 you have been operating? Obviously, payroll probably
4 went up with increases in salaries?

5 A Right. Payroll I'm sure has gone up a little bit.

6 But, in fact, I would venture to say in years past,
7 we used to employ even more people than what we have.
8 Under the present economic condition, everybody has tried
9 to be more efficient with their labor, which we have done
10 so, too. But at one point in time, I would venture to
11 say that our payroll -- we may have employed as many as
12 250 to 300 employees at that particular plant.

13 Q Okay. Mr. Dave, how would you describe the area in
14 Aurora where the Pratt plant is located?

15 A I would say that it would be more of an industrial
16 type of environment.

17 Q Do you know --

18 A Industrial and commercial.

19 Q Do you know if the area -- the plant is in an area
20 that's zoned for industrial use?

21 A Yes.

22 Q And is it?

23 A It is industrial use.

24 Q How do you know that?

TESTIMONY OF RAJENDRA DAVE

1 A It is on the City of Aurora's planning commission's
2 -- what I call a zoning book.

3 Q Is this that zoning book that you are referring to?
4 It's entitled, "Aurora, the City of Lights, 1996 zoning
5 map"?

6 A That's correct.

7 Q And the City planning commission publishes this book?

8 A That is right.

9 Q And can you --

10 A It's on the --

11 Q Can you find the page where it shows the Aurora Henry
12 Pratt plant?

13 A Our -- our plant is Page A21 of the map book.

14 Q Is what I have up here on this board a copy of that
15 page?

16 A That is correct.

17 MS. VINER: I will take that, thank you.

18 MR. FELDMAN: Write the number on it.

19 MS. VINER: Okay. We are going to want to enter
20 this when we get ready, and it will be Respondent's
21 Exhibit --

22 THE WITNESS: 10.

23 MS. VINER: 10.

24 (The document was thereupon marked

TESTIMONY OF RAJENDRA DAVE

1 Respondent's Exhibit No. 10 for
2 identification as of October 11,
3 1996.)

4 BY MS. VINER:

5 Q I'm going to ask you some questions about this map.
6 Can you see from over there? Do you want to move up
7 here?

8 A Let me move up.

9 Q As you can see -- why don't you point out to me where
10 the Henry Pratt plant is on this map.

11 A Okay. We are on the intersection of Highland and
12 Prairie Avenue, kind of northwest corner.

13 Q Okay.

14 A On the map it is shown in green ink. I believe there
15 is an F on part of what is the Henry Pratt plant.

16 Q Can you tell me what the F --

17 A It indicates the factory portion of the plant, the F.

18 Q And this part up here, is that the office area?

19 A Right. The letter O on the map is for the office,
20 which is primarily off of Highland Avenue.

21 Q And just so the record is clear, we have put the F
22 and O designations on the map?

23 A Yes.

24 Q And there is a highlighted parcel in yellow, and

TESTIMONY OF RAJENDRA DAVE

1 there is an arrow with a S.

2 Can you tell me what property that is?

3 A That property would be the Scarpinos' residence.

4 Q Okay. Now there's a big M-2 sort of north on the map
5 from the plant, and I think north of the Scarpinos' house
6 that sort of encompasses the whole area.

7 This is a designation that was put on the map by the
8 zoning board; right?

9 A Correct.

10 Q And do you know what M-2 stands for?

11 A M-2 is industrial, general industry type of zone.

12 Q Now, let's talk about sort of the general community,
13 the neighborhood that the Pratt plant and the Scarpinos
14 are in.

15 There is a parcel sort of below the M-2. It's north
16 of Archer Avenue, north of the plant, and we've indicated
17 that that is an I for an industrial property.

18 Can you tell me if that is, in fact, an industrial
19 property?

20 A Yes, it is. In fact, that building is what belongs
21 to Equipto Company.

22 Q So when Equipto -- when Pratt Company bought your
23 current --

24 A Correct.

TESTIMONY OF RAJENDRA DAVE

1 Q -- plant from Equipto, they just moved behind --

2 A Correct.

3 Q -- into this space.

4 HEARING OFFICER EDVENSON: Counsel, you are
5 suggesting that you put the I on that map, but you did
6 not put the M-2?

7 MS. VINER: No, we did not put the M-2.

8 HEARING OFFICER EDVENSON: Thank you.

9 BY MS. VINER:

10 Q Just south, sort of south of the Equipto parcel then
11 and west of the Scarpinos' residence, it's just north of
12 Prairie Avenue, can you tell me what occupies that
13 parcel?

14 A There is another industrial property. It's Rooney's
15 Ice Cream factory.

16 Q And we have marked that with an I for industrial?

17 A That's correct.

18 Q And across Prairie Avenue to the south, there are a
19 few other I designations on parcels.

20 Can you tell me what those parcels are?

21 A One of that is an assembly plant called Anfinen. I
22 will try to remember the spelling. I think it's
23 A-n-f-i-n-s-e-n Manufacturing Company.

24 Q And they are an assembly --

TESTIMONY OF RAJENDRA DAVE

1 A They are an industrial company.

2 The building next to them I believe recently opened
3 up, but there used to be a factory to that, also, which
4 would be just east of that property.

5 Q Okay. And then just east of those two parcels we've
6 just discussed, where we have placed a C on that
7 property, can you tell me what operates that?

8 A There used to be Dave's Supermarket store, which
9 recently closed; but it is a commercial property.

10 Q Okay. And continuing east, can you describe the next
11 few parcels for me?

12 A Next to Dave's supermarket, or what used to be the
13 supermarket, is a Chinese restaurant called Nu Chung Wah,
14 W-a-h, and it's not bad for lunch.

15 (Laughter.)

16 The property next to it is a Petit's Auto Shop. It
17 is an auto repair shop.

18 Q To the east?

19 A Right.

20 The property east of that is -- it belonged to a
21 Markly Oil, which they recently have converted into like
22 a mini storage, self-store type of facility. So it is a
23 commercial property again.

24 Q Okay. That's the property on the south side of

TESTIMONY OF RAJENDRA DAVE

1 Prairie, basically at the corner of Prairie and Highland?

2 A Well, there is one more commercial property next to
3 the storage, which is a Stroger Metal, and it is a sheet
4 metal -- what I'd call wholesale supply type of facility.

5 Q Okay. Now we go across Prairie Avenue to the north,
6 and we're basically just south of the Pratt plant.

7 The two parcels on the corner of Prairie and
8 Highland, can you describe what these are for me?

9 A Both of those are commercial property. One is
10 another auto repair shop or muffler shop, Mr. Muffler
11 Shop, something like that, and the next property behind
12 that, which would be just south of our property line,
13 that property belongs to Markly Oil.

14 Q If we head north on Highland Avenue, basically the
15 east side of Highland, pretty much across Highland from
16 the Pratt facility, there is another parcel.

17 Can you describe what that is for me?

18 A That's an industrial property. It's a contractor,
19 Houston Contractor.

20 Q We have marked that with an I for industrial?

21 A That used to be Markly Oil's that Houston Contractor
22 bought recently.

23 Q Sort of northeast of that property, can you tell me
24 what this parcel is here?

TESTIMONY OF RAJENDRA DAVE

1 A Northeast of that Houston Contractor is a company
2 called Equipto Electronic Company.

3 Q Okay. And is that an industrial --

4 A That is an industrial facility, also.

5 HEARING OFFICER EDVENSON: Counsel, at this point
6 could you identify the street intersection you're talking
7 about?

8 MS. VINER: Yes. We are now at the portion --

9 THE WITNESS: Marshall Avenue, on the east side of
10 Marshall Avenue.

11 BY MS. VINER:

12 Q And if you continue just sort of north of the
13 Marshall Avenue, sort of east of Archer and north of
14 Marshall Avenue, there is another parcel right there?

15 A Right.

16 Q Can you identify that?

17 A That's another industrial parcel, and that's called
18 Komarck, K-o-m-a-r-c-k.

19 Q They are a manufacturing company?

20 A They are a warehouse type of facility.

21 Q Okay. If we head just northeast of that, there is
22 sort of a large property just straight east of Griffith
23 Avenue.

24 Do you know what is on that parcel?

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TESTIMONY OF RAJENDRA DAVE

1 A That used to be a vending machine company of some
2 sort, which is closed down for a number of years, but
3 that is zoned also in the industrial zone.

4 Q So now I think we've gone sort of a few blocks around
5 the general area of the plant and the Scarpino house.

6 Can you tell me: On the Scarpino street, how many
7 other residences on that street?

8 A Besides their house, there is five more homes, so
9 there is a total of six homes on that street.

10 Q Is there any commercial or industrial property on
11 that street?

12 A Yes, there is.

13 Besides the gas station on the corner of Cleveland
14 after Prairie, there is DeBartlo Heating, I believe, and
15 then there is Eric Midwest, which used to be Valley
16 Supply or Valley Packing, rather.

17 Q What percentage in the neighborhood that we've gone
18 around in -- what percentage are residences in here?

19 A I would say that if you -- if you were to -- I'm just
20 going to make what I call a quick engineering type of
21 guess, and if you take the total occupancy of industry
22 compared to the residence, I would say that you can
23 classify the area as between 85 to 90 percent industrial
24 property with the balance being the residential.

TESTIMONY OF RAJENDRA DAVE

1 HEARING OFFICER EDVENSON: Are you speaking from
2 the perspective of land --

3 THE WITNESS: Correct.

4 HEARING OFFICER EDVENSON: -- or units?

5 THE WITNESS: Square footage.

6 MS. VINER: I think we are done with the map. I
7 would like to enter this into evidence at this time.

8 HEARING OFFICER EDVENSON: Is there any objection?

9 MS. MARGARET SCARPINO: No.

10 MS. SARA SCARPINO: Yes, there is.

11 What has it to do with other industry around? I'm
12 complaining about Pratt, not the other industry around
13 there.

14 HEARING OFFICER EDVENSON: Counsel, would you like
15 to respond?

16 MS. VINER: We are just trying to paint for the
17 board the picture of the neighborhood that you are in.

18 MS. SARA SCARPINO: The noise is coming from Pratt
19 Company.

20 MS. VINER: That's what you have alleged. We are
21 trying to paint what the neighborhood is.

22 HEARING OFFICER EDVENSON: Okay. Thank you. I am
23 going to accept the map into evidence. That will be
24 Respondent's Exhibit No. 10.

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1 (Respondent's Exhibit No. 10 for
2 identification was thereupon received into
3 evidence.)

4 HEARING OFFICER EDVENSON: Off the record.
5 (There followed a discussion outside the
6 record.)

7 HEARING OFFICER EDVENSON: We're back on the
8 record.

9 It's a little hard to hear in the room in certain
10 locations, and I will state again that Respondent's
11 Exhibits 8, 9 and 10 are now entered into evidence.

12 (Respondent's Exhibits Nos. 8 and 9 for
13 identification were thereupon received into
14 evidence.)

15 HEARING OFFICER EDVENSON: Thank you. You may
16 proceed.

17 BY MS. VINER:

18 Q Mr. Dave, we have talked about there are commercial
19 and industrial properties surrounding the Pratt property.

20 Can you tell me if there's activity associated with
21 these properties?

22 A Can you explain what you're --

23 Q Are there cars that come and go from --

24 A Yes, I would say so.

TESTIMONY OF RAJENDRA DAVE

1 Q And there's operations, manufacturing and other --

2 A That would be correct. That would be correct. You
3 know, in some form or fashion, these facilities are being
4 used, and there is traffic to and from those facilities.

5 Q Okay. I believe also on this map, just if I can
6 refer to it one more time --

7 HEARING OFFICER EDVENSON: You are referring to
8 Respondent's 10?

9 MS. VINER: Yes, Respondent's Exhibit 10.

10 BY MS. VINER:

11 Q There is indicated a PL outside of the green area
12 that we've said is the Pratt plant?

13 A Uh-huh.

14 Q Can you tell me what that area is?

15 A The PL on the map represents the parking lot for our
16 employees.

17 Q Okay. I want to be clear that for the record.

18 Are you familiar with a system for classifying
19 properties based on their land use as -- called the SIC
20 code?

21 A Yes, I am.

22 Q And do you know what Henry Pratt's plant in Aurora --
23 what their SIC code is?

24 A Yes. Our SIC code is 3494.

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TESTIMONY OF RAJENDRA DAVE

1 Q What does that mean?

2 A 3494 is used for the fabricated metal manufacturing
3 facilities or class 34 is used for that particular
4 fabricated metal manufacturing. 3494 specifically is for
5 the valves and fittings.

6 Q Okay. Has the Pratt plant had that same SIC land use
7 classification for the entire time from 1965 to the
8 present?

9 A Yes, we do.

10 Q And that's an industrial classification?

11 A Yes, it is.

12 Q Let's talk for a minute about the allegations against
13 Henry Pratt in this case.

14 Were you here for the first part of the hearing in
15 July?

16 A Yes, I was.

17 Q And you heard us go through the history of the
18 Scarpinos' complaints with them at that hearing; is that
19 right?

20 A That's right.

21 Q I think you told me earlier you have been involved
22 and are familiar with the complaints from 1991 to the
23 present?

24 A That is correct.

TESTIMONY OF RAJENDRA DAVE

1 Q Do you recall when specifically the first written
2 complaint was received at Henry Pratt?

3 A The first complaint came to us in March of '91.

4 Q Okay. Do you know if in 1991 -- are you aware if the
5 Illinois Environmental Protection Agency knew of the
6 Scarpinos' complaints?

7 A Yes. I believe in one of those correspondence they
8 had copied Greg Zak.

9 Q I will actually show you -- is this the first letter
10 that she sent?

11 A That's correct.

12 Q The --

13 A That's correct.

14 Q You can actually hold onto that.

15 Did Henry Pratt -- when they received this first
16 letter and understood that the Illinois Environmental
17 Protection Agency knew about the matter, did you hire a
18 lawyer at that time?

19 A No, we did not.

20 Q What did the company do?

21 A We figured that, you know, as a company policy, we
22 tried to be good corporate neighbor.

23 HEARING OFFICER EDVENSON: The question is: What
24 did the company do?

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TESTIMONY OF RAJENDRA DAVE

1 THE WITNESS: Right.

2 HEARING OFFICER EDVENSON: Just answer the question
3 directly.

4 A (Continuing.) Okay. Well, we tried to take some
5 corrective measures.

6 BY MS. VINER:

7 Q Well, then at some point, I think it was in late '95,
8 the Scarpino sisters actually filed a complaint with the
9 Pollution Control Board and you are aware of that?

10 A That is correct.

11 Q And when they filed the complaint, did you hire the
12 lawyers then?

13 A No, we did not.

14 Q And why not?

15 A Well, we were working on the problem, and we thought
16 that we were getting close to a solution here. And at
17 the same time, as long as we are on the right track, we
18 did not see any need to get any attorneys involved at
19 that point in time.

20 Q So the company -- this company's policy was to try to
21 work on the problem and resolve this amicably?

22 A That is correct. That has been the company's policy.

23 Q So you were aware that it was Mr. Zak at IEPA that
24 knew of these complaints?

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TESTIMONY OF RAJENDRA DAVE

1 A That is correct.

2 Q Did you have -- were you ever contacted by Mr. Zak
3 with regard to these complaints?

4 A No.

5 Q To your knowledge, was anyone at the Henry Pratt
6 Company contacted by Mr. Zak?

7 A No. We did not have any contact regarding the
8 subject matter with Mr. Zak.

9 Q Now, in 1991 your responsibilities at the plant, I
10 think you said, included sort of overseeing all the
11 manufacturing services; is that correct?

12 A That's correct.

13 Q And that included being responsible for equipment
14 projects?

15 A That's right, that's right.

16 Q Were there any changes in operation or equipment in
17 March of 1991 when you received her first complaint?

18 A No.

19 Q Were there any major changes in equipment or
20 operation prior to that time, let's say, six months prior
21 to March of '91?

22 A No, I would say not.

23 We had some equipment, which I would call it like
24 office computer type of work or -- I mean, there were

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TESTIMONY OF RAJENDRA DAVE

1 other what I call miscellaneous type of projects, but
2 nothing major that would have any -- there was no major
3 project for the plants.

4 Q So in your mind, nothing major that would have
5 changed the types of sounds being emitted from --

6 A That's correct.

7 Q So that the sounds emitted from the plant would have
8 been of a fairly constant nature from before March of '91
9 until after?

10 A I would say, you know, yeah, that would be a fair
11 statement.

12 HEARING OFFICER EDVENSON: Counsel, don't you mean
13 similar nature?

14 MS. VINER: Yes, thank you.

15 BY MS. VINER:

16 Q So after you received Ms. Scarpino's complaint, did
17 the company make modifications in response to her
18 complaints?

19 A Yes. We tried to work on the complaint that she had
20 about the -- several of the sounds.

21 Q And I believe those sort of the -- all the responses
22 that you made over the years are outlined in a letter
23 that you sent to Sara Scarpino on June 25th, '96. I
24 believe it is the last letter in the stack I've handed

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TESTIMONY OF RAJENDRA DAVE

1 you. It is also a part of what's been previously marked

2 Respondent's Exhibit 6?

3 A Yeah. That is correct.

4 Q Okay.

5 A This particular letter kind of summarizes from the

6 very beginning until that particular date of June 25th

7 what sort of measures that we've -- we took.

8 Q Well, let's run through them, sort of a history of

9 them.

10 A Okay.

11 Q So you received your first complaint in '91.

12 Can you tell me what the first response action that

13 the company took was?

14 A Well, the initial complaint we tried to attack was
15 the noise, which she referred to as sharp droning noise.

16 At that particular time we addressed by changing the
17 exhaust direction of one of our process equipment; as
18 well as there was mention about a blast type of noise.

19 The blast type of noise required redirecting the exhaust
20 off of one of the equipment from our side in the
21 baghouse, which would be a closed chamber, to inside the
22 plant into a separate apparatus and kind of contain the
23 noise.

24 Q Did that -- did those modifications satisfy Ms.

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TESTIMONY OF RAJENDRA DAVE

1 Scarpino's complaints?

2 A Yes. In a phone conversation at that particular
3 point in time, she did indicate that, you know, she was
4 satisfied with those corrections, and things were better.

5 Q But then I assume that then you received another
6 complaint; is that right?

7 A Well, naturally, because this thing has gone on;
8 otherwise, we wouldn't be here.

9 Q All right. So what was the next response action that
10 the company took?

11 A Since then, the next thing that we tried to attack
12 was a circulation fan for our men's restroom area.

13 Q And what did you do with that fan?

14 A And on that particular fan, initially we controlled
15 the operation of the particular fan during the nighttime
16 hours, the sleeping hours; however, with her subsequent
17 complaint, we went and changed the fan.

18 Q And did you replace it?

19 A Yeah, we replaced the fan.

20 Q What did you replace it with?

21 A We replaced it with another fan, which was, you know,
22 supposed to be quieter.

23 Q Okay. And I assume you did not satisfy her
24 completely at that point, either; correct?

TESTIMONY OF RAJENDRA DAVE

1 A That is correct.

2 Q And what was -- what was the next action you tried to
3 take to accommodate her complaints?

4 A Well, if I can go through -- to save the time a
5 little bit, I will go through all of the different things
6 that we've done from the time of the original complaint
7 to now.

8 Q Okay.

9 A That would kind of be a good synopsis.

10 But over the period of years, besides redirecting
11 the exhaust in one of the equipment and this restroom fan
12 and the blast noise, we went and adapted a silencer on
13 four pieces of equipment in the plant to minimize the
14 sound emission out of those equipment.

15 In addition to those changes, one of the equipment,
16 which is a dust collector for the blasting that sits out
17 in our parking lot, we went and put an eight foot barrier
18 wall that would be -- that would prevent the noise from
19 traveling in the direction of Ms. Scarpino's home.

20 We also went and implemented what I would call a
21 preventive maintenance type of a program for that
22 particular outdoor equipment to make sure that it
23 functions the way it is supposed to and does not generate
24 any abnormal noises.

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TESTIMONY OF RAJENDRA DAVE

1 Q And is that sort of the entirety of what the Henry
2 Pratt Company has done over the years to address the
3 complaints?

4 A Yes. That would kind of, you know, be a short
5 synopsis without going into a lot of technical detail.

6 Q Okay. How did you know what to modify, what pieces
7 of equipment to look at?

8 A Well, some of it was I would call the in-house
9 engineering type of knowledge that we have; but at the
10 same time, sound is such a thing that -- you know, it's
11 kind of -- you know, you can't see anything. You are
12 just trying to work on some of these things.

13 So that's the time when we got help from some of the
14 consultants, and we kind of would bring the consultant
15 in, talk to them, explain to them -- you know, show them
16 Sara's letters and kind of work with the consultant and
17 try to attack the different sound spectrum that she was
18 describing.

19 Q Okay. When was the first time you retained a
20 consultant?

21 A The first time we retain the consultant was within a
22 couple months after we had Sara's first complaint, which
23 would be in June or so of '91.

24 Q So it wasn't that you just retained consultants

TESTIMONY OF RAJENDRA DAVE

1 recently for this hearing, but you've been working with
2 consultants the entire --

3 A Yes. We have been working with consultants for the
4 whole duration.

5 Q I believe Ms. Scarpino in one of the letters that
6 we've introduced previously -- one of her letters to the
7 Pratt Company -- she says, "Well, I know you've been
8 doing work, but you do work and then the noises get
9 louder."

10 Can you tell me if there's some type of work that
11 you did that you thought would have made the noises
12 louder?

13 A Well, really that is the frustrating part. If you
14 are working with this thing over a number of years, it
15 gets frustrating from the standpoint that the improvement
16 that you make -- when you are talking about with some of
17 the experts, it's supposed to have gotten -- you know,
18 the situation is supposed to get better. Yet the
19 feedback that we got from her was that, you know, "Well
20 the equipment got louder."

21 And to the best of my knowledge, you know -- any
22 kind of sound attenuation equipment is supposed to be
23 improve the situation, not worsen it.

24 Q For example, the four silencers that you put on?

TESTIMONY OF RAJENDRA DAVE

1 A The four silencers we put on, correct.

2 Q So does that comment confuse you, that you're adding
3 the silencer made the equipment louder?

4 A Well, it was -- it was, you know, very disturbing up
5 to a certain extent that here we are trying to address a
6 problem that she is having, and somehow we're not making
7 any headway.

8 Q Okay. Were there other times that maybe when you
9 were confused by Ms. Scarpino's complaints?

10 A Yeah. I -- I would say, yes.

11 In fact, I don't remember the exact timing of it,
12 but I do know that, you know, at one point in time, she
13 called in the night and said that there was -- the noises
14 were bothering her, and then the next day when we made
15 the contact with her she said that 15 minutes after her
16 phone call, the noise suppressed and noise went down; and
17 we went and checked and found out that, you know, we
18 hadn't done anything.

19 Q You hadn't changed anything?

20 A No. The operation -- the night foreman had not
21 changed anything in the operation, yet, you know, it --
22 you know, she was happy about that. So it kind of gave
23 us mixed signals here.

24 Q And in general, let's talk about this for a second.

TESTIMONY OF RAJENDRA DAVE

1 The sounds that the Henry Pratt Company emits, would
2 you describe them as fairly constant, at a constant
3 level?

4 A Yes. I would say it's pretty much what I would call
5 a low-frequency, steady mechanical noise.

6 Q And you kept Sara and Margaret Scarpino informed of
7 all the actions that we've been discussing?

8 A Yes. We -- that is one thing that I would say, you
9 know, that throughout the conversation -- that, I mean,
10 throughout this whole situation, we have been in, you
11 know, contact with them off and on.

12 There may have been several occasions, you know,
13 where we may not have been quick enough; but for
14 practical purpose, we have tried to communicate with them
15 on a pretty regular basis.

16 Q Would you describe your communication with the
17 Scarpino sisters over the years about this matter -- how
18 would you describe it?

19 A Oh, I would -- I would think that they were pretty
20 jovial.

21 Q Polite conversations?

22 A Polite conversation.

23 Q How much has Henry Pratt spent in response actions
24 that we've discussed today?

TESTIMONY OF RAJENDRA DAVE

1 A Well, I cannot give you the exact number because up
2 until middle of last year, '95, we were not tracking any
3 of these expenses.

4 Q And what is your best estimate?

5 A Best estimate? Since we started to track the
6 expenses from June of '95, not counting the legal fees,
7 because that would really put the number up there,
8 January -- but we are about 20,000 or close to 22,000.

9 (Laughter.)

10 And if I were to go and probably try to estimate
11 prior to that, I would say we should be somewhere between
12 25 and 30,000 on the expenses.

13 Q The 52,000 figure does not include the consultants'
14 fees that you have spent over the years?

15 A Yeah. That's what I meant, you know, that the 22,000
16 includes the recent consulting fees; but prior to June of
17 '95, the consulting fees that we have spent, that is not
18 part of the 22,000.

19 Q Okay. Over the years, have you ever been in the
20 Scarpino home?

21 A Yeah; on several occasions.

22 Q And have you had an opportunity to, let's say, stand
23 on their front porch?

24 A Yeah, I have.

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TESTIMONY OF RAJENDRA DAVE

1 Q And have you stood on the sidewalk in front of their
2 home?

3 A Again, several times, yes.

4 Q I want to read something to you. Sara Scarpino in
5 her testimony at the first hearing made this statement,
6 and this is from Page 13 of that transcript: "The noises
7 are a shrill piercing" -- "the noises are a shrill
8 piercing noise and a loud grinding noise."

9 Would you describe -- you've been outside the plant,
10 you've stood in her home, on her porch, on her sidewalk.
11 Would you describe the noise as a shrill piercing noise?

12 A I -- no, I do not.

13 Q Would you describe it as a loud grinding noise?

14 A Again, no.

15 Q How would you describe --

16 A Those -- like I described a little bit earlier, it
17 will be like what I call a steady, low-frequency
18 mechanical type of noise.

19 Q And when you were in the Complainant's home, did you
20 have to raise your voice to talk to them?

21 A No.

22 Q You could converse at a normal conversational tone?

23 A Yes.

24 Q Even a low tone?

TESTIMONY OF RAJENDRA DAVE

1 A Yeah. We did not ever raise -- neither one of us
2 needed to raise our voices.

3 Q The same question as to the sidewalk outside their
4 home closer to the Henry Pratt Company: Do you have to
5 raise your voice to be heard to talk to someone on the
6 sidewalk in front of her home?

7 A No. The several times where I have had conversation
8 out there with several individuals, no.

9 Q Mr. Dave, how would you characterize Henry Pratt's
10 relationship to the neighboring communities?

11 A I would say that the general relation with the
12 community is pretty good.

13 Q And why do you say that?

14 A Well, we -- over the number of years that we've been
15 there, we haven't really had any, you know, serious
16 complaints. You know, we have -- we have been good
17 corporate neighbor.

18 Q Okay. Does the plant participate in any community
19 project or charities?

20 A Yes, we do.

21 Q And what are those?

22 A We have several times -- at least once a year, if not
23 more than once a year, but the Aurora Blood Bank calls on
24 us, and we have a blood drive, which our employees

TESTIMONY OF RAJENDRA DAVE

1 participate in.

2 Similarly, at Christmastime we participate in the
3 food drive that one of the local charitable organizations
4 S-h --

5 MS. SARA SCARPINO: H-e-s-e-d, Hesed House.

6 BY MS. VINER:

7 Q What is Hesed House?

8 MS. SARA SCARPINO: A shelter.

9 A For the people that are down on their luck.

10 MS. MARGARET SCARPINO: For the homeless.

11 MS. SARA SCARPINO: For homeless.

12 BY MS. VINER:

13 Q Now I'd like to read you a statement that Margaret
14 Scarpino made at the first hearing. She said, "So they"
15 -- and the "they" she is referring to is Henry Pratt,
16 your --

17 HEARING OFFICER EDVENSON: What page?

18 MS. VINER: I'm sorry. Page 61 of that transcript.

19 BY MS. VINER:

20 Q "So they have a serious problem and we're being
21 crucified for it."

22 Mr. Dave, could you give me your view on that
23 characterization, that you and Henry Pratt Company have
24 been crucifying these women?

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TESTIMONY OF RAJENDRA DAVE

1 A Well, I would say that you know, that would be kind
2 of a little exaggeration, from my perspective.

3 It is a little frustrating that we're trying to
4 address the situation, and we have been working on the
5 problem. You know, had we been taking all of her letters
6 and putting it aside and throwing it in the trash basket,
7 it would be one thing. But we have been trying to
8 address the problem; we have been actively working on it.
9 So I would say crucifixion would be probably an over --

10 HEARING OFFICER EDVENSON: Let the record show that
11 the statement was made following the Complainant's cross
12 examination by Respondent.

13 MS. VINER: I don't have anything further.

14 HEARING OFFICER EDVENSON: I have a couple of
15 additional questions of you, Mr. Dave, if you don't mind.

16 THE WITNESS: Sure.

17 HEARING OFFICER EDVENSON: They are strictly for
18 the purpose of clarifying the record and making it more
19 complete.

20 EXAMINATION BY

21 HEARING OFFICER EDVENSON:

22 Q Mrs. Viner referred to the letter of June 25th, 1996.

23 A Yes.

24 Q That includes a list of things that you are involved

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TESTIMONY OF RAJENDRA DAVE

1 in doing?

2 A Right.

3 Q And I had some questions about what a couple of these
4 mean.

5 A Sure.

6 Q Could you describe to me what this one item means
7 that states, "Sound pack silencer model" --

8 A Yes.

9 Q -- "has been adapted to discharge ductwork related to
10 our compressor cooling fan exhaust"? What is that?

11 A Okay. What you have is every industrial plant,
12 manufacturing plant, I should say, requires compressed
13 air to operate air tools, so we have a series of
14 compressors in our plant. Now, these compressors require
15 cooling. As you are compressing the air, you are
16 generating heat, and it requires some mean of cooling.

17 This particular compressor we're talking about here,
18 it's what they call the air cool compressor. So as a
19 result of keeping the compressor cool, you have the hot
20 air that you are trying to exhaust. Now, what we are
21 doing is that when you exhaust that air outside at that
22 particular point in time, without any kind of silencer,
23 the noise of the compressor will travel through this
24 exhausting the hot air.

TESTIMONY OF RAJENDRA DAVE

1 So what we did in this particular case was we
2 adopted or modified the system by adding this particular
3 model silencer to the exhaust to minimize the sound
4 emission from that equipment.

5 Q Okay. Thank you.

6 And I had a question about the eight-foot-high noise
7 barrier wall that's mentioned in this letter, also.

8 A Correct.

9 Q It states that that was constructed around the dust
10 collector of the blast room.

11 How high is the top of the dust collector of the
12 blast room?

13 A The top of the dust collector is approximately -- I'm
14 going from memory again -- 18 -- between 18 and 20 feet.
15 However, the equipment that sits outside, the upper
16 portion -- the upper ten-foot portion of the equipment is
17 just a shell where the air comes through, but on the
18 ground on a concrete pad is an exhaust motor or the
19 blower motor, which is the -- which is the one that
20 generates the majority of the noise, and so that is the
21 thing that we try to dampen by putting that barrier of --

22 Q The top of the motor --

23 A The top of the motor is about three foot.

24 HEARING OFFICER EDVENSON: Okay. Thank you.

TESTIMONY OF RAJENDRA DAVE

1 Then also you stated you hired a number of
2 consultants over the years. I'm wondering, counsel, do
3 we have a list of the consultants that Henry Pratt has
4 hired over the years, who they are, what they were
5 consultants in, what kind of consultants they were, when
6 they were hired and what their expert qualifications
7 were?

8 MS. VINER: We have not prepared such a list,
9 though I believe Mr. Dave can answer the questions.

10 THE WITNESS: We can get the list for you. It's
11 primarily -- the primary one that we have for the
12 majority of the part is a company called Aires
13 Environmental.

14 BY HEARING OFFICER EDVENSON:

15 Q Were these noise consultants?

16 A They are -- I will take a look, but I believe they
17 have the noise and the safety and the hygiene, all
18 composition of them.

19 HEARING OFFICER EDVENSON: Okay. If you wish to do
20 that, I would appreciate it. It would be in the nature
21 of an information order attached to the hearing report;
22 but I would like the details of it if -- I know you are
23 wanting to introduce evidence that the company has
24 engaged in efforts with consultants. I would like to

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TESTIMONY OF RAJENDRA DAVE

1 know who they are, exactly when they were involved, what
2 their qualifications were with respect to noise.

3 THE WITNESS: We can compile the information and
4 forward it to you.

5 HEARING OFFICER EDVENSON: All right. At this
6 point I would like to ask the Scarpino sisters if they
7 have any questions for Mr. Dave about any of his
8 statements that he's made here now; and if you do, then
9 you can ask him.

10 CROSS EXAMINATION

11 BY MS. MARGARET SCARPINO:

12 Q Well, I would. It seems strange that throughout the
13 whole hearing, we never heard about anything that you got
14 a letter from the City of Aurora, Mark Anderson about the
15 noise. It was addressed to Mr. Hermann. And his
16 response, Mr. Hermann, in a letter is that he
17 acknowledged the problem and he would take care of it.
18 But no one has brought that up.

19 HEARING OFFICER EDVENSON: Well, you can -- the
20 purpose at this point, Margaret, would be for you to just
21 ask questions about anything that he did actually say.

22 MS. MARGARET SCARPINO: I can't say anything about
23 what he didn't say?

24 HEARING OFFICER EDVENSON: No.

TESTIMONY OF RAJENDRA DAVE

1 MS. MARGARET SCARPINO: I have nothing to ask.

2 MS. SARA SCARPINO: I don't have anything to say.

3 HEARING OFFICER EDVENSON: All right. Then is
4 Respondent's counsel concluded with this witness?

5 MS. VINER: Yes we are, thank you.

6 (Witness excused.)

7 HEARING OFFICER EDVENSON: Thank you.

8 MR. FELDMAN: May we be permitted a five-minute
9 break before we bring on the next witness?

10 HEARING OFFICER EDVENSON: Yes. Five minutes. Off
11 the record.

12 (Whereupon, a recess was had, after which the
13 hearing was resumed as follows:)

14 HEARING OFFICER EDVENSON: We will go back on the
15 record.

16 MR. FELDMAN: The Respondent would call Thomas
17 Thunder.

18 HEARING OFFICER EDVENSON: Mr. Thunder, have a
19 seat, and will the witness please be sworn.

20 (The witness was thereupon duly sworn.)

21 THOMAS D. THUNDER

22 called as a witness on behalf of the Respondent herein,
23 having been first duly sworn, was examined and testified
24 as follows:

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TESTIMONY OF THOMAS D. THUNDER

1 DIRECT EXAMINATION

2 BY MR. FELDMAN:

3 Q Mr. Thunder, would you state your full name, for the
4 record, and spell your last name.5 A Thomas D. Thunder, just like it sounds,
6 T-h-u-n-d-e-r.

7 Q And what is your business?

8 A I'm principal audiologist and noise consultant for
9 Acoustic Associates, and we are based in Palatine,
10 Illinois.11 (The documents were thereupon marked
12 Respondent's Exhibits Nos. 11 through 13 for
13 identification as of October 11, 1996.)

14 BY MR. FELDMAN:

15 Q Mr. Thunder, I'm showing you what we've just marked
16 as Respondent's Exhibit 13, which is a little bit out of
17 order. I would ask you to identify that document,
18 please.

19 A This is a copy of my current resume.

20 Q Does that indicate your qualifications to testify in
21 this matter?

22 A Yes, it does.

23

24 MR. FELDMAN: Based on exhibit -- Respondent's

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1 Exhibit 13, we would ask that Mr. Thunder be qualified to
2 testify on the implications of the noise that's been
3 alleged in this matter.

4 HEARING OFFICER EDVENSON: Mr. Thunder is permitted
5 to testify. I don't believe the qualification of expert
6 witnesses is any longer conducted.

7 BY MR. FELDMAN:

8 Q Okay. Mr. Thunder, have you reviewed the transcript
9 from the previous hearing in this case?

10 A I've looked it over, yes.

11 Q And I saw you in the back of the room. Have you been
12 here throughout today's proceedings?

13 A Yes, I have.

14 Q Have you reviewed the noise samples that were taken
15 by Mr. Greg Zak, who is sitting behind you there?

16 A Yes, I have.

17 Q And have you taken certain noise samples yourself at
18 the Scarpino property?

19 A We have.

20 Q When you say "we" --

21 A My associate and I.

22 Q You worked with your associate?

23 A That's correct.

24 Q Have you also reviewed studies and some of the

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1 scholarly literature applicable to the effect of noise on
2 individuals and populations of individuals?

3 A Yes.

4 Q You have done that in connection with this particular
5 matter?

6 A That's correct.

7 Q Based on your education and your own experience in
8 this area and the material that you've just described,
9 have you reached a conclusion as to whether the sound
10 levels from the Pratt facility to the Scarpino property
11 constitute an excessive or unreasonable interference with
12 their use and enjoyment of this property?

13 A Yes, I have.

14 Q And what is your conclusion, sir?

15 A I've concluded that all of the plant noise is indeed
16 audible; when nonacoustic factors are taken into
17 consideration, it does not represent an annoyance to the
18 general population and the community as a whole.

19 Q I would like to circle back now and have you put on
20 the record a little more about your background.

21 Where were you educated?

22 A I received a bachelor and master's degree from
23 Northern Illinois University. The masters was in
24 audiology, and I completed postgrad work at the Illinois

TESTIMONY OF THOMAS D. THUNDER

1 Institute of Technology.

2 Q Do you hold any certifications in the area of
3 acoustics or audiology?

4 A I hold the certification granted by the American
5 Speech and Hearing Association as an audiologist and hold
6 certification from the Institute of Noise Control
7 Engineering.

8 Q What's the acronym for that?

9 A INCE.

10 Q INCE?

11 A INCE.

12 Q What is the field of acoustics?

13 A The field of acoustics is the generation,
14 transmission, propagation and reception of sounds.

15 Q And is that different from an audiologist?

16 A An audiologist focuses more on the reception of
17 sounds, impaired hearing, rehabilitation of those that
18 are hearing-impaired and evaluating hearing.

19 Q What is the field of noise control?

20 A The field of noise control really is a branch of
21 acoustics, of professionals that tend to specialize in
22 assessing noise, the effects of noise and how to control
23 the noise.

24 Q Which of these fields is applicable to the matter at

TESTIMONY OF THOMAS D. THUNDER

1 hand here?

2 A The field of acoustics and noise is most applicable.

3 Q Have you been qualified as an expert in other matters
4 in this area?

5 A Yes, I have.

6 Q Have you testified in cases before?

7 A Yes.

8 Q What are the periodicals that are typically read by
9 experts in this field?

10 A Well, if you belong to INCE as a member, you don't
11 have to be a certified member, but if you are an
12 affiliate member, you'll receive bimonthly the journal of
13 the Institute of Noise Control Engineering.

14 Most of us belong also to the Acoustical Society of
15 America, and for that we receive -- now, thank God, it is
16 on CD-ROM every month, as opposed to a thick journal; but
17 we receive that once a month.

18 Typically we'll receive noise proceedings of one- or
19 two-day conferences that are held either here or abroad
20 having to do with noise and its effect.

21 Q Are you a certified member of INCE?

22 A Yes. Board certified member.

23 Q Board certified. What's involved in becoming board
24 certified?

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1 A What's involved is that the individual has to have
2 graduated from an accredited university in an alive
3 field. They need to spend eight years obtaining
4 experience in the field of acoustics and noise. I
5 believe at the time we needed to have three -- excuse me;
6 five -- letters of references of people that worked with
7 us that were -- two were in the field, three may not have
8 been in the field.

9 It also involves taking what's called a fundamentals
10 exam and then, finally, followed up with a day-long
11 professional examination.

12 Once you have gone through this entire process, a
13 board reviews the examination results, the letters of
14 references, your experience, your accreditation, your
15 transcripts and so forth and then they grant you board
16 certification.

17 Q You went through that process with some success?

18 A Yes.

19 Q Are you a member of any other associations in this
20 area?

21 A I'm a member of the American Auditory Society and the
22 American Academy of Audiology, American Speech and
23 Hearing Association, National Hearing Conservation
24 Association. There may be one or two more.

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TESTIMONY OF THOMAS D. THUNDER

1 Q What is the business of Acoustic Associates Limited?

2 A That is a business of consultants in hearing and
3 noise problems, so there is one phase of the practice
4 that is the audiological phase. That's where we see
5 patients, evaluate their hearing, recommend
6 rehabilitative measures, dispense hearing aids and so
7 forth.

8 The other phase is more of a consulting phase, where
9 we work with companies, individuals, attorneys, village
10 boards, zoning boards, and so forth, on matters having to
11 do with occupational hearing loss, community noise,
12 environmental noise, product noise and audibility issues.

13 Q Which of those categories would this matter fall
14 into?

15 A The latter.

16 Q I lost track. Which latter?

17 A The consulting with individuals and companies on
18 assessing environmental noise.

19 Q Okay. So this is an environmental noise issue?

20 A Yes, it is.

21 Q You said that you -- that your company, anyway --
22 works from time to time for village boards.

23 Have you yourself been employed by any governmental
24 entities or organizations before?

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TESTIMONY OF THOMAS D. THUNDER

- 1 A Yes.
- 2 Q Give us some examples of that.
- 3 A Such as Barrington, South Elgin, Village of Western
4 Springs. There is a number of villages that retain us to
5 address noise issues in their communities.
- 6 Q And you've also worked for individuals?
- 7 A That's correct.
- 8 Q And in what kinds of cases or matters have you worked
9 for individuals?
- 10 A Individual homeowners, community groups, park
11 districts, homeowner associations and so forth.
- 12 Q How large a part of your company's work and your work
13 is related to solving noise problems, in other words,
14 finding ways to reduce the sound levels?
- 15 A Of the environmental noise work that we do, probably
16 half of it is progressing further into a second stage of
17 engineering noise control.
- 18 Q Now, in connection with this matter, you indicated a
19 few minutes ago that you had done some samples of sound
20 from the Pratt facility at the Scarpino property; is that
21 right?
- 22 A That's correct.
- 23 Q Showing you what we've marked as Respondent's Exhibit
24 11, which is a three-page document consisting of two

TESTIMONY OF THOMAS D. THUNDER

1 charts, one marked chart one, the other marked chart two,
2 and a document entitled Henry Pratt Company Aurora plant
3 sound levels at 313 Cleveland, do you have that in front
4 of you?

5 A Yes, I do.

6 Q Would you describe for us what this is in connection
7 with, the work you've done in this matter? Let's just
8 start with the first page.

9 A Chart one shows the sound levels that we measured at
10 the sidewalk of 313 Cleveland.

11 Q That's the Scarpino residence?

12 A That's correct.

13 Q Now, you say you measured some sound levels.

14 When did you do that?

15 A That was done in the early part of September.

16 Q Okay. Could you describe the methodology that you
17 used to generate those samples?

18 A We generally tape-record the noise so we have more
19 control over the laboratory analysis. So to accomplish
20 that, we use a precision microphone made by Aco, A-c-o,
21 coupled with a preamplifier to amplify the signals taken
22 from the microphone.

23 We send that into a power supply unit that supplies
24 power to the preamp and the microphone, and then the

TESTIMONY OF THOMAS D. THUNDER

1 signal from there goes into a digital audio tape
2 recorder. There is a Sony tape recorder that digitizes
3 the signal, gives us the highest of quality recording
4 that is currently available. It also produces a time
5 base on the recording so we know second for second when
6 the sounds occur.

7 Once we have this tape, then we bring it back to our
8 laboratory. And I should mention before when we're out
9 in the field, we also use what is called a calibrator.
10 It is a Bruell, B-r-u-e-l-l, and Kjaer, K-j-a-e-r,
11 calibrator. This is a calibrator that has an accuracy of
12 plus or minus less than a half a decibel, where we record
13 a calibration tone onto the tape. It is the only way
14 that you can analyze the tapes in the laboratory
15 afterwards.

16 Once the tape is in the laboratory, we run the
17 calibration tone recorded on the tape and adjust our
18 analyzer. The analyzer that we use is a Hewlett-Packard
19 dual signal analyzer that is around a 23,000 analyzer
20 that breaks up the sound into the different frequency
21 bands and does automatic averaging and so forth.

22 Q It sounds like an stereo system I would like to own.

23 A It is an expensive one.

24 Q We asked you to go out to the Scarpino property and

TESTIMONY OF THOMAS D. THUNDER

1 to take these measurements; is that right?

2 A That's correct.

3 Q What time of day did you take the measurements?

4 A These measurements here were taken at night so we
5 could assess nighttime levels. It was also taken at a
6 time when the Henry Pratt Company would normally take a
7 break around 10:00 o'clock for us to really truly assess
8 what the background noise would be in the area.

9 Q Did you work with anyone at the Pratt Company when
10 you took these measurements?

11 A Raj Dave was our main contact person.

12 Q Go through the procedure you used to take the
13 measurements of ambient and what you call sound due to
14 the plant.

15 My question is: I'd like you to tell us what sound
16 was coming from the plant when you took those two
17 measurements.

18 A I'm sorry. What kind of sound or type of sound?

19 Q Let's start with the sound due to the plant alone.

20 A Okay.

21 Q Let's start with that measurement. What is it that
22 you're trying to measure there?

23 A Well, actually, in order to determine the actual
24 sound coming from the plant, it has to be differentiated

TESTIMONY OF THOMAS D. THUNDER

1 from the normal background sound. So really what you're
2 talking is a sound that's a total sound. That would be
3 the plant, in addition to the background noise.

4 We then assume that during that ten-minute period
5 Mr. Dave had shut off all the equipment and turned
6 everything off. Even though there was some things that
7 would normally be idling, we asked him to shut that
8 equipment off as well so we can take an ambient level.

9 Q You said "I assume." You asked him to do it and he
10 did it?

11 A That's right. We essentially got our background
12 level, and we did that during 10:00 o'clock and 10:10,
13 their normal ten-minute break. That's the typical
14 ambient noise.

15 He then proceeded to turn on all the equipment and
16 get going. We asked him to advise us when the entire
17 plant was up and running and all the equipment was
18 operating. We then were able to take measurements around
19 that period of time as well. That would represent our
20 total plant noise assessment.

21 We then take what I'll call the quiescent background
22 that occurred from our measurements and subtract that
23 from the total noise to find out just what component of
24 the noise is coming from the Henry Pratt Company, and

TESTIMONY OF THOMAS D. THUNDER

1 that's the line on the top. That's what's represented by
2 that line.

3 Q The solid line; is that correct?

4 A That's correct.

5 Q Now, you said you had to subtract out what I think
6 you called the background noise to get a true reading
7 from the plant.

8 Why do you have to subtract out the reading from the
9 background noise?

10 A To understand the contribution of background noise to
11 the measurement. You want to make sure when you are
12 making your measurement you are assessing the noise from
13 the plant and not the combination of the plant and other
14 extraneous noise in the neighborhood.

15 Q The ambient or background levels are indicated by the
16 broken line; is that correct?

17 A That's the ambient measures over that full ten-minute
18 period.

19 Q Well, if you subtract 54 from 61, don't you end up
20 with something real small? Maybe I don't understand how
21 you subtract ambient from --

22 A It's difficult to for a layman to understand.

23 Decibels represent a logarithmic representation of
24 the noise. To put it another way, if you add 60 decibels

TESTIMONY OF THOMAS D. THUNDER

1 and 60 decibels, in acoustics it makes 63.

2 Basically the idea is if the noise is within 10 dB
3 of the total noise you are measuring, you can bet that
4 the background noise has some effect on the total noise
5 that you're measuring. So it's just a matter of trying
6 to subtract that out to get a better estimate of what the
7 plant noise is.

8 Q Off to the right, there is -- before I get to that,
9 you also have white and shaded columns at the various
10 octave band frequencies.

11 What do those represent?

12 A That's just to show the current State of Illinois
13 daytime and nighttime limits.

14 Q Where do you find those limits?

15 A Those are from the Illinois Pollution Control Board
16 rules and regulations.

17 Q All right. So those are the same regs we have been
18 talking about in this hearing earlier today?

19 A That's correct.

20 Q Off to the right you have two other columns, a shaded
21 and an open column and some other points with numbers
22 next to them.

23 Why don't you explain what those are.

24 A Way off to the right?

TESTIMONY OF THOMAS D. THUNDER

1 Q Yes.

2 A That is what we call the A-weighted sound level.
3 These are not levels that are specifically governed or
4 limited by the State; but, rather, it's a level that
5 allows us to get the full effect or to measure the
6 overall noise level, as opposed to breaking it down into
7 individual octave bands that's presented here.

8 Q Okay. So the X relates to the A-weighted measure of
9 the ambient noise; is that correct?

10 A Of the typical ambient noise, that's correct.

11 Q The diamond above that, what is that?

12 A That represents the sound due to the plant alone
13 after being corrected for the quiescent ambient noise.

14 Q That's also A-weighted?

15 A That's correct.

16 Q And then let's take the higher, the unshaded bar.

17 You've got that indicated as Illinois daytime
18 limits; is that correct?

19 A That's correct.

20 Q And the shaded bar you indicate is State of Illinois
21 nighttime limits; is that correct?

22 A That's correct.

23 Q What's the value, the A-weighted value of the sound
24 associated with the Illinois nighttime limits?

TESTIMONY OF THOMAS D. THUNDER

1 A That would be comparable to a 51 decibel level.

2 Q And the A-weighted measurement of the Pratt plant
3 corrected for ambient is what?

4 A 53 decibels A-weighted.

5 Q So A-weighted is -- I subtract 51 from 53 and I get 2
6 dB?

7 A Yes. In other words, 2 dB above the A-weighted
8 level.

9 Q Of the nighttime limits?

10 A That's correct.

11 Q How many dB is it below the daytime limits?

12 A The daytime limit is 61, so that would be about 8 dB
13 below the daytime.

14 Q And it looks like we're 4 dB higher than the ambient
15 level; is that true?

16 A That's correct.

17 HEARING OFFICER EDVENSON: Excuse me. If I might
18 go back for just a moment to the methodology of your
19 measurement which was discussed, did you follow the
20 methodology for measuring that's given in the State's
21 regulations?

22 THE WITNESS: Yes, we did.

23 HEARING OFFICER EDVENSON: And what was the length
24 of time, the span of time during which you were taking

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1 each of the measurements that are reflected here?

2 THE WITNESS: As I mentioned, the background
3 measurement was all of ten minutes because we don't have
4 the luxury of shutting the plant down for an hour.

5 And actually, the time that this line represents
6 after they got all the equipment up and running is
7 probably about five minutes as well. Because the plant
8 is running on a continuous basis and there is no
9 fluctuation of time, that measure can be extrapolated to
10 represent a full hour reference, if one wishes to do
11 that.

12 HEARING OFFICER EDVENSON: Okay. Thank you.

13 BY MR. FELDMAN:

14 Q Mr. Thunder, let's go to the second page, which is
15 chart No. 2. It looks like you've got an additional line
16 on this chart that's labeled IEPA maximum 3/18/96 at 6:40
17 a.m. corrected for ambient; is that right?

18 A That's correct.

19 Q What does that mean? What does that represent, that
20 line?

21 A That's just the line that appeared to be the maximum
22 A-weighted level of the several measurements that Greg
23 Zak had taken and then corrected for the ambient that
24 Greg had taken more recently; and so there are five

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1 different octave bands that appear here. There are
2 others missing simply because the background noise at the
3 time was too high in those bands to accurately determine
4 what the plant noise contribution was.

5 Q Does that mean that the plant noise is under ambient
6 at those frequency points?

7 A At or under.

8 Q And did you introduce an A-weighted number that
9 represents the measurements Mr. Zak took on the
10 right-hand side of chart two?

11 A That's correct. That's taken from the chart as well,
12 which is 54 dB.

13 Q So on an A-weighted basis, he is a dB higher than
14 you; is that right?

15 A That's right.

16 Q You've listened to Mr. Zak's testimony and read his
17 report.

18 Do you have an opinion on whether you're more
19 accurate in assessing the sound coming from the Pratt
20 facility than he is?

21 A I think the instrumentation is fine. The procedures
22 are okay; they're just taken in different time periods.

23 I think we have a better handle on the background
24 noise, simply because we had the ability to shut the

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- 1 plant down for ten minutes, whereas he did not.
- 2 Q So to answer my question, which one is more accurate?
- 3 A This one would, because we had more control over the
- 4 parameters of the plant.
- 5 Q Yours?
- 6 A Yes.
- 7 Q Before we get to the last page, is there a body of
- 8 literature on the effects that sound has on individuals
- 9 in terms of whether it causes annoyance?
- 10 A Yes, there is a body of literature on that.
- 11 Q Are you familiar with that literature?
- 12 A Not all of it, but I'm familiar with some of the more
- 13 recent synopsis of that literature, yes.
- 14 Q I showed Mr. Zak earlier this book which we still
- 15 haven't introduced in evidence, the Harris Handbook of
- 16 Acoustical Measurement and Noise Control.
- 17 You gave me this; right?
- 18 A That's correct.
- 19 Q You are familiar with this book?
- 20 A At \$100 a book, I'm familiar with it.
- 21 Q Is there anything in here that takes specific
- 22 frequency points and decibel levels at specific frequency
- 23 points and correlates them with the percentage of people
- 24 who would be annoyed listening to that kind of a sound?

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1 A Not frequency points, per se, but they take into
2 consideration the overall A-weighted level.

3 Q So they do it on an A-weighted level.

4 But do they do it on a frequency by frequency level?

5 A No.

6 Q I'm showing you what we've marked and handed to the
7 Scarpinos earlier as Respondent's Exhibit 12. I will ask
8 you to identify this document.

9 A This is an article entitled, "Effects of noise on
10 people," written by Henning E. von Gierke and Kenneth
11 McK. Eldred, and it appeared in "Noise News
12 International" in June of 1993.

13 Q Now, what is this article about and what is its
14 relevance to this matter?

15 A Well, this is a document that goes out to all members
16 that are -- that are members of the Institute of Noise
17 Control Engineering, as well as to members around the
18 world that are members of similar types of organizations
19 in Europe and Japan and so forth. It really is presented
20 here as kind of a synopsis of where we are at in the
21 state of analyzing noise and its effect on people.

22 Q And did you use the -- I notice there is a number of
23 tables and graphs and so forth.

24 Did you use the data from the studies in Exhibit 12

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1 in this article?

2 A Yes, I did.

3 Q How did you use those studies? If you can, point to
4 the specific pages that were important to you in the work
5 you did on this case.

6 A Well, basically it's Figure 14 as opposed to 12. I
7 think you had just mentioned -- we use Figure 14, which
8 is really a figure that shows the percent of people
9 annoyed as a function of what's called the day-night
10 average sound level.

11 HEARING OFFICER EDVENSON: Mr. Thunder, counsel was
12 referring to the respondent's exhibit number which is the
13 number assigned to the article. He would like you to
14 refer to the page number that you are looking at.

15 THE WITNESS: That would be Page A1.

16 MR. FELDMAN: Sorry it's confusing.

17 BY MR. FELDMAN:

18 Q On Page 81, would you explain the relevance of Figure
19 14 to this case?

20 A It shows the percent of people that would be highly
21 annoyed if -- not if, but if you had a measure of
22 day-night sound level, you could consult this chart and
23 determine the percentage of people as a whole in a
24 community who was annoyed -- not a specific individual,

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1 but on a community-type basis, a group of people.

2 Q Are there -- in your experience and in the
3 literature, are there differences from community to
4 community in terms of how people typically react to
5 sound?

6 A That's correct.

7 Q Why did those differences exist?

8 A Well, because unfortunately annoyance is not very
9 clean cut. We know that level, obviously, is the primary
10 determinant of annoyance, but we also know there is other
11 factors. There is acoustic and nonacoustic factors.

12 An acoustic factor may be the character of the sound
13 or duration of the sound. But there are nonacoustic
14 factors that are equally important. These factors are
15 based on, for example, the type of neighborhood that a
16 person lives in. If they're in a more industrialized
17 type of neighborhood, they would be expected to have
18 fewer complaints than somebody living on Lake Shore Drive
19 or so forth.

20 It also has to do with the previous exposure of that
21 community toward the noise maker. If that community had
22 -- if the industry has a good relationship with the
23 community and they are a viable part of the community as
24 a whole, people tend to be less annoyed. If a very

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1 adversary type of relationship, they tend to be more
2 annoyed.

3 Q Are there any other factors that affect whether
4 people are annoyed, why one group of people might be
5 annoyed at a particular sound and not others to the same
6 sound?

7 A There are other factors, on an individual basis; but
8 these are the few factors that have been studied and
9 analyzed that seem to be the most important nonacoustic
10 factors in terms of assessing annoyance.

11 Q You mentioned the extent to which people have a
12 favorable view of the facility that's causing the noise.

13 Does the appearance of the facility matter at all?

14 A It might to people, yes. That's a nonacoustic
15 factor, although it's not a factor that I included in my
16 analysis.

17 Q You mean in your analysis of this case?

18 A That's correct.

19 Q For background, how might the visual appearance of a
20 particular noise-maker make a difference, not in this
21 case, but in some other case?

22 A Well, if it's not very well-kept and there is a lot
23 of garbage out in the field, the employees that work
24 there seem to have no respect for the neighbors and so

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1 forth, obviously people are going to be more biased in
2 their response toward that noise-maker. They're going to
3 be more highly annoyed.

4 On the other hand, if it is a nice looking building,
5 it's modern, it's clean, they operate it with good
6 community relationships and there is a lot of respect of
7 the employees towards residents in the area, they would
8 be less annoyed.

9 Q How do you as an acoustician -- do I have that term
10 right?

11 A I have been called that, yes, among other things.

12 (Laughter.)

13 Q As whatever you are, an acoustician, and based on the
14 experience that you bring to this case, how do you factor
15 in those kinds of nonacoustic factors in evaluating a
16 particular noise at a particular location?

17 A I factor it in really based on research models like
18 this.

19 Q "This," meaning what?

20 A The article that I have in my hand that summarizes
21 what these correction factors are.

22 Q And where in this article does it discuss how you
23 correct based on those nonacoustic factors?

24 A There is a Table 8 on Page 79 that talks about

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1 corrections to be added to the measurements to obtain
2 what we call a normalized sound.

3 Q Without going through each and every item here, if
4 you can, summarize for us what this table does and how
5 you used it in this case.

6 A Well, there is a series of four different kinds of
7 correction factors. These are factors where the noise
8 that's measured is actually corrected. One is what they
9 call a seasonal correction. Summer or year-around
10 operation would receive a correction factor of zero.

11 Q Okay. When you say "correction factor," what does it
12 mean to receive a correction factor of zero or minus
13 something or plus something?

14 A It's an adjustment one way or the other in terms of
15 assessing the annoyance.

16 If it's a negative type of correction, for example,
17 it would mean that it would adjust it more to the less
18 annoying side. If it was a plus correction, it would
19 adjust it to a more annoying type of sound.

20 Q The exact same sound level gets adjusted up or down
21 depending upon --

22 A That's right.

23 Q -- these annoyance factors?

24 A That's right.

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1 Q Going now to your exhibit --

2 HEARING OFFICER EDVENSON: 11.

3 BY MR. FELDMAN:

4 Q Going now to Exhibit 11 and looking at the last chart
5 that you have on that exhibit, can you explain how you
6 generated this table based on Respondent's Exhibit 12,
7 the article that you brought here today?

8 A Sure. In this table, I have four rows of
9 information. The first thing I would like to do is just
10 find out what the typical noise environment is and find
11 out what percentage of people I would expect to be
12 annoyed by living in that kind of environment.

13 What I'm looking for is the increment as a result of
14 a plant operating. So the first row is an assessment of
15 the typical background noise. We measured a little of
16 around 49 dB.

17 And our first entry into the chart shows a nighttime
18 penalty. The reason we do that is because this is at
19 10:00 o'clock at night, and as Greg Zak had mentioned,
20 the State has different standards for night than they
21 have during the day, and it happens to be 10 dB. US EPA
22 has a correction factor. Why do we put that there?
23 Noise at night is more annoying than noise during the
24 day. So we add 10 dB because that's nighttime.

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1 Window position is really the seasonal correction
2 that we talked about. We are not going to take off for
3 that because we expect the windows to be open during good
4 weather.

5 The residual noise level, we have not corrected for
6 that obviously. Residual noise level basically means
7 that these studies were taken where they had typical
8 urban residential communities, not near heavily traveled
9 roads or industrial areas.

10 And for previous exposure, we take zero; for
11 character of noise we take zero. In other words, we zero
12 everything out for the purpose of understanding where is
13 our baseline here? We end up with a normalized nighttime
14 level of 59 dB.

15 And then using the same graph in here, that would
16 suggest that roughly 7 percent of the people in a
17 community would be annoyed with just the noise that's out
18 there now. That would be distant traffic and airplanes
19 overhead, some trucks and cars and so forth.

20 Q Can I ask you, without going into too much detail
21 here, what would be the range of percent of people
22 annoyed based on background noise that you might
23 typically experience in a community?

24 Does it range from 7 to accept 7.5 or can you give

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1 me some sense of what range you might experience?

2 A Of people annoyed?

3 Q Yes, at a typical background noise level.

4 A I don't know if I would have an answer for you. I
5 haven't gone out and done social surveys myself, if
6 that's what you are asking, or knocked on doors. So I
7 rely on literature like this because this represents data
8 taken off of the 1,200 data points all over the world,
9 not just the United States.

10 Q Fair enough.

11 What's the next line?

12 A To get an understanding what the State of Illinois
13 nighttime limits are. These limits are not meant to
14 protect 100 percent of the population. There are seldom
15 any regulatory limits that are designed to go to that
16 effort.

17 To gain an understanding there, we know that even
18 though the State doesn't limit the A-weighted level that
19 they -- the summated levels of all these octave bands
20 turns out to be 51 decibels. We add 10 and come up with
21 a normalized nighttime of 61. That would suggest that 8
22 percent would be annoyed. Somewhere around in there is
23 where the State basically has their guideline. It is not
24 protecting 100 percent of the people.

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1 The next row in there is what we call the intruding
2 noise. It is unadjusted. If we don't take any
3 adjustments for it at all. We made a measurements of 54
4 decibels. That is not corrected for background noise.
5 That's not the way the scheme works here.

6 We measure the background noise and measured the
7 noise with the intruding noise. We measured 54 dB.
8 Again, we add our 10 dB nighttime correction. With no
9 corrections, that turns out to be a normalized nighttime
10 level of 64. On that basis, I would think that 12
11 percent of the people would complain or be annoyed.

12 So we see that if it was just acoustic factors
13 alone, there would be annoyance there. But we know that
14 annoyance is not just acoustic factors; it also involves
15 nonacoustic factors. That's why we have the last row
16 down there, which we call intruding noise adjusted.

17 You take the same measured sound level, add 10 dB
18 penalty for nighttime, and here is where it comes into a
19 little bit of trickiness. Under the residual noise
20 level, I gave it a zero dB correction. If I can quote
21 directly out of here, zero dB residual noise level would
22 represent an urban residential community not near heavily
23 traveled roads or industrial areas.

24 Mr. Dave mentioned it is kind of an industrial area,

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1 so really I should be giving it a minus five correction
2 to be fair; but I sort of balanced that with one other
3 thing, and I will tell you about that in a second.

4 The next column, previous exposure, I gave it a
5 minus five correction factor. In other words, that would
6 tend to drawdown or reduce the annoyance. And I can read
7 for you, too. If I were to give it zero correction, that
8 would represent a community that's had some exposure to
9 the intruding noise, and little effort is being made to
10 control the noise.

11 I don't think that that accurately characterizes the
12 Henry Pratt Company. Instead, I believe this entry does,
13 and that states that the community has had considerable
14 exposure to the intruding noise and the noise-maker's
15 relationship with the community are good. And I believe
16 that to be honestly true, so I gave that a correction
17 factor of minus five.

18 Now we move on to the character of noise. The
19 character of noise is one that even the State recognizes.
20 If there is a pure tone involved, it is a more annoying
21 than a broadband noise that's the same level. An example
22 would be a whining of a fan or a screeching sound from a
23 belt that is slipping on a fan. These are inherently
24 more annoying.

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1 In our analysis we found no pure tone. We found no
2 impulsive character, meaning a punch press or somebody
3 banging on steel with a hammer or something like that;
4 but I wouldn't characterize it as just broadband noise,
5 either. It is not like water falling over a waterfall
6 and it is just a soothing type of noise. It is really
7 somewhere in between.

8 But to balance what I did with the residual noise
9 level, I just left it at zero. So really we have a net
10 correction of 59 dB normalized nighttime level, and that
11 gets us back to about 7 percent of the people annoyed.

12 Q And so how ultimately -- the adjusted noise level
13 where you have adjusted it for these nonacoustic factors,
14 the noise from the Henry Pratt facility, how does that
15 compare with typical background noise for State of
16 Illinois nighttime limits in terms of capacity to annoy
17 people?

18 A It would be comparable. There would be no net
19 change.

20 Q It looks to me it is two dB below the state nighttime
21 limits?

22 A If you are looking at two dB, yes. Plus or minus two
23 dB is negligible. I'm willing to state it is essentially
24 the same, that there is no statistical difference.

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1 Q Mr. Thunder, when you were out at the plant -- excuse
2 me.

3 When you were at the Scarpino residence, did you
4 take some time to listen to the sound of the plant?

5 A Yes, I did.

6 Q And would you describe the sound that comes from the
7 Henry Pratt facility as a loud -- excuse me -- as a
8 shrill piercing noise?

9 A I would not characterize it at that time when I was
10 out there, no.

11 Q How about a loud grinding noise? Would you
12 characterize the plant as emitting a loud grinding noise?

13 A No. I wouldn't characterize it that way, either.

14 Q Did you notice a difference or is there a difference
15 in the sound that comes from that plant if it's shut down
16 versus when it's running?

17 A Oh, yes.

18 Q And can you audibly hear that difference?

19 A You can audibly hear that.

20 But audibility does not equate to annoyance.
21 Audibility is a necessary condition for annoyance, but
22 not sufficient.

23 Q If someone said that the sound from the plant
24 continues at the same level when the plant is shut down

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1 as when it's up, how would you evaluate that?

2 A I would find that perplexing. I don't understand if
3 the plant was shut down how the noise could continue.

4 Q What about if someone described the plant as a shrill
5 piercing noise or a loud grinding noise? How would you
6 evaluate that person's ability to accurately characterize
7 the sound from that plant?

8 A I don't know what was heard because that's not how I
9 would characterize it, and the measurements that were
10 made spectrally wouldn't suggest that it was that kind of
11 noise, either.

12 Q In terms of the opinion that you started out with
13 when we first started talking with you today, how do the
14 annoyance factors and the adjustments for nonacoustic
15 factors relate to your opinion that the Pratt facility
16 does not cause an unreasonable interference with the use
17 and enjoyment of the Scarpino residence?

18 A If I look at it as a group-wide statistical measure,
19 I would say it would not conclude an unreasonable
20 annoyance.

21 MR. FELDMAN: Okay. I have no further questions.

22 HEARING OFFICER EDVENSON: I have just one question
23 for you.

24 EXAMINATION

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1 BY HEARING OFFICER EDVENSON:

2 Q The tables indicate that the sound levels were taken
3 at 313 Cleveland, and can you tell me a little more
4 specifically exactly where you were in relation to the
5 residence and how you were situated with respect to the
6 residence during the testing?

7 A Sure. We had the luxury of a nice day, a nice
8 evening, and we situated the microphone and recording
9 equipment on the sidewalk right out in front of the
10 house. That's a fairly close proximity to the property
11 line. I'm assuming that would be a close proximity to
12 it.

13 And so looking across from the house in a
14 southwesterly direction then, we could see the plant,
15 could hear the plant, and we recorded the plant.

16 Q All right. And your equipment was at approximately
17 your height?

18 A Yes. It's normally supposed to be around ear height
19 is what you are really looking for, but you are situated
20 usually five, five and a half feet high.

21 HEARING OFFICER EDVENSON: Okay. Thank you. At
22 this point in time, I'd like to give the Scarpino sisters
23 an opportunity to ask Mr. Thunder any questions that they
24 might like to ask him that are related to the statements

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1 that he has made here today, if you have anything you'd
2 like to ask.

3 MS. MARGARET SCARPINO: I have no questions.

4 MS. SARA SCARPINO: No.

5 HEARING OFFICER EDVENSON: Okay. All right. Then
6 Respondent's counsel is finished with this witness?

7 MR. FELDMAN: Yes.

8 (Witness excused.)

9 HEARING OFFICER EDVENSON: Does that conclude the
10 witnesses that you will call?

11 MR. FELDMAN: Yes, that concludes our witnesses.

12 HEARING OFFICER EDVENSON: All right. At this time
13 then we will entertain closing statements if the parties
14 would like to make closing statements, and let's start
15 with -- I'm sorry. Do you have some other things?

16 MR. FELDMAN: I do. I apologize for not handing
17 this up earlier.

18 HEARING OFFICER EDVENSON: Well, first, we have
19 Respondent's 11, 12 and 13, and is there any objection to
20 the introduction of these into evidence?

21 MS. SARA SCARPINO: No, no objection.

22 MS. MARGARET SCARPINO: No objection.

23 HEARING OFFICER EDVENSON: All right. Then
24 Respondent's 11, 12 and 13 will be entered into evidence.

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1 (Respondent's Exhibits Nos. 11
2 through 13 for identification were
3 thereupon received into evidence.)

4 MR. FELDMAN: Your Honor, the only other thing we
5 wanted to provide the court is a memorandum. This will
6 relate to the closing statement that we intend to make
7 here. It's a memorandum.

8 I have already handed a copy to the Scarpinos. This
9 is discussing the standard of nuisance in the State of
10 Illinois with cases backing it up.

11 HEARING OFFICER EDVENSON: All right. Is this
12 being filed with the board or just filed with me?

13 MR. FELDMAN: I would just ask that it be put in
14 the record of this case. It's in the nature of a legal
15 memorandum with cases behind it.

16 HEARING OFFICER EDVENSON: I think what I would
17 like to do then is accept it as a filing and file it with
18 the board. I will file it with the board then when I get
19 back to the board's offices next week.

20 MR. FELDMAN: Okay.

21 HEARING OFFICER EDVENSON: And have the
22 Complainants been given a copy of the memorandum?

23 MR. FELDMAN: Yes.

24 HEARING OFFICER EDVENSON: All right. At this time

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1 then let's entertain any closing remarks of the parties.

2 Margaret or Sara, is there anything further would
3 you like to say at this point in time?

4 MS. MARGARET SCARPINO: No, I don't have anything.
5 Do you have anything to say?

6 MS. SARA SCARPINO: Yes. I want to bear out that
7 this noise is not my imagination; that it has been going
8 on since 1991. And no matter what they have tried, the
9 noise still exists. What else can I say?

10 HEARING OFFICER EDVENSON: All right. Thank you
11 very much.

12 Mr. Feldman or Ms. Viner, would you like to make any
13 closing remarks?

14 MR. FELDMAN: Yes, thank you.

15 Your Honor and the Pollution Control Board, I take
16 seriously -- and I think Henry Pratt takes seriously --
17 the statement of Ms. Scarpino that the sound exists and
18 that it continues to exist and it has existed since 1991

19 The issue before this board, however, is whether the
20 noise or the sound that is emitted from the Henry Pratt
21 facility and reaches the Scarpino residence constitutes
22 an unreasonable interference with the use and enjoyment
23 of their property. That is the nuisance standard.

24 And I have a great deal of respect for the Scarpinos

1 in coming in here and making their claim before this
2 board. I certainly have found them to be worthy
3 opponents.

4 But the board has to look at this case as a legal
5 matter. This is a nuisance case, and there are objective
6 legal standards that the board has to look at in
7 determining whether the sounds that goes onto that
8 property, though it may be audible, constitutes a
9 reasonable -- an unreasonable interference with their use
10 and enjoyment.

11 Those factors are set out in the memorandum that we
12 just provided. They come from many cases, one in
13 particular from the DeSuza matter, a 1996 matter before
14 the Pollution Control Board, where the board gave five
15 different factors: The character and degree of injury or
16 interference with the protection of health, general
17 welfare and physical property of the people. Mere
18 trifling annoyance or discomfort is not nuisance.

19 Another factor is the social and economic values of
20 the pollution source. Another one is the suitability or
21 unsuitability of the pollution source in the area,
22 including the question of priority.

23 And the last two are technical practicability and
24 economic reasonableness of reducing or eliminating the

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1 sound and evidence of compliance by the sound's source.

2 I think each of these factors weigh in favor of
3 Henry Pratt in this case and argue strongly in favor of a
4 finding of no liability here.

5 The DeSuza case, looking at the first factor, says
6 testimony to the effect that the sound constitutes an
7 interference solely because it can be heard is
8 insufficient to support a finding beyond trifling
9 interference, petty annoyance or minor discomfort.

10 What's the evidence that we have in this case? The
11 sound didn't start in 1991; the complaint started in
12 1991. But this facility has been operating since 1965.

13 Mr. Dave testified uncontroverted that the sound
14 from this plant has been basically the same during that
15 entire period. It is an industrial facility, and it
16 emits sound; there is no question about that. It has
17 done that since 1965.

18 So for something like 25, 26 years, the Scarpinos
19 did not complain about this sound, did not voice any kind
20 of complaint to the Pratt plant --

21 MS. SARA SCARPINO: Excuse me. In 1977 and 1978 I
22 wrote to Pratt about the noise. Now, at that time EPA in
23 Maywood took care of it.

24 HEARING OFFICER EDVENSON: Thank you, Sara. You

1 may continue.

2 MR. FELDMAN: All right. I would just say I'm not
3 aware of what that document is. If there is some kind of
4 a report in 1975, I think we should see it. But in any
5 event, maybe there was one in 1975 that I'm not aware of.

6 MS. SARA SCARPINO: '77, '78.

7 MR. FELDMAN: Okay. For 26 years we have one
8 complaint. I will take Ms. Scarpino at her word. And
9 nothing happens until 1991.

10 Even from 1991 to 1996, the complaints have to be
11 described as erratic. They go on for a period of time,
12 and then there's nothing for a period of months, almost a
13 period of a year.

14 The Scarpinos say that they have been unable to
15 sleep from the sound from the plant. You have to ask,
16 "Why were you able to sleep for 26 years, except maybe
17 for this time in 1978?"

18 There is lots of evidence in this record that this
19 is a situation of a heightened or excessive sensibility,
20 rather than an objectively unreasonable interference with
21 the use and enjoyment of the property. That comes from
22 the Scarpinos' own testimony, which is, at best, erratic.

23 And it also comes from Mr. Thunder's testimony about
24 what the sound really means. He didn't just, in a

1 fashion like Mr. Zak did, go from the night standards to
2 a statement of unreasonable annoyance. He went in and
3 actually looked at the nonacoustic factors that exist in
4 this area.

5 I won't pull out the exhibit, but we produced a map
6 which showed that this place. This area is loaded with
7 industrial facilities, commercial, industrial facilities
8 that have a great deal of activity going on. This is not
9 a quiet residential area. It's not something that
10 existed -- it is out in the country, but it is not a
11 quiet area on any estimation.

12 And so even if the Pratt plant weren't there, there
13 is a certain high level of activity around this -- around
14 the Scarpino home that would exist there even if the
15 Pratt plant weren't in existence. That's a level that
16 they have to put up with on a daily basis. It may be
17 causing their problem. I don't know.

18 Margaret Scarpino describes the noise as a shrill
19 piercing noise and loud grinding noise. There is no
20 witness, including Mr. Zak, who supports that. Every
21 witness who we've read that statement to says, "I
22 wouldn't describe it as a shrill piercing noise or a loud
23 grinding noise."

24 What we are talking about is something from a

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1 distance, a mechanical sound from a plant that is several
2 hundred feet away; not a loud piercing noise, not a loud
3 grinding noise.

4 What does that mean? If they are giving that kind
5 of a characterization, does that indicate that there is
6 some exaggeration going on here? Respectfully, I think
7 there is.

8 We also have testimony that you can carry on a
9 conversation in the front yard; that wind can, to some
10 extent, drowned out the sound from the plant.

11 Ms. Scarpino -- I think Sara -- said the plant is
12 never silent, even when it's not operating. That doesn't
13 make any sense. Actually, that remark didn't make sense
14 to me when I first heard it; but the more I thought about
15 it, it seems to me there may be some basis to it. This
16 is, as we said, an industrial area.

17 And the background levels that Mr. Thunder took, the
18 background levels Mr. Zak took, for that matter, show
19 that this is -- just the background ambient noise is
20 annoying. It's not silent. It's not the Grand Canyon.

21 Some 7 percent of the population, according to the
22 numbers that Mr. Thunder pointed out, would be annoyed if
23 Pratt weren't even in operation. If the nighttime limits
24 were -- if there were sounds at the Illinois nighttime

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1 limits, 8 percent of the people would be bothered.

2 So there is a certain percentage of the population
3 that's going to have a problem with this area, even
4 without Henry Pratt.

5 If you add in the -- if you take account of the
6 nonacoustic factors, as Mr. Thunder did, the sound coming
7 from this plant is no different from the nighttime
8 standards or the background levels. And, you have to
9 take into account those factors.

10 Mr. Zak's approach of comparing a number with
11 basically the nighttime limits is just not fair. This is
12 not -- this is a busy area. This is an industrial area,
13 and you have to take that into account. Otherwise, you
14 are making unreasonable expectations into law.

15 I would like to comment on Mr. Zak's use of the
16 nighttime standards. It's very clear -- and he, I think,
17 acknowledged -- that the State of Illinois, the Pollution
18 Control Board when it enacted the nighttime limits gave
19 companies who had been in existence for a certain period
20 of time an exemption from those limits. The evidence is
21 that this company has been in the same place, done the
22 same kind of operations for all that time, and,
23 therefore, qualifies for that exemption.

24 What Mr. Zak has done is to compare the specific

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1 frequency points and decibel levels with the nighttime
2 limits, and every time the factory is over the nighttime
3 limits at the Scarpino property, he says that would
4 constitute an annoyance to a reasonably large percentage
5 of the population. What he has does is weed out of
6 existence, in one fell swoop, the exemption from the
7 nighttime standards.

8 If you have a nuisance standard that is satisfied
9 every time you have the nighttime limits, what's the use
10 of the exemption? You brought the limits back in through
11 the back door. Any time you exceed the nighttime limits
12 with an exemption, his analysis writes it off the table.

13 I think there are other indications that the
14 Scarpinos are overreacting to this statement that the
15 company is crucifying or has crucified them. It just is
16 not borne out.

17 Mr. Dave testified at length about the effort that
18 the company has gone to to try to resolve the problem
19 voluntarily. It doesn't run out and hire lawyers. They
20 spent \$25,000 or thereabouts to try to deal with the
21 problem. Mr. Zak was unaware of any of that. And yet
22 the company did. It went out immediately and hired a
23 consultant to try to deal with it, and we will provide
24 the board with some more information on that.

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1 I think there is a fair amount of evidence in the
2 record that perhaps Mr. Zak's own involvement in this
3 case may have exacerbated the problem. He comes up with
4 a letter in May of this year that says the company
5 exceeds the applicable limits. It doesn't. And he
6 acknowledged that if you tell people who are beginning to
7 concentrate on a problem that there is a legal issue
8 involved, it's going to be magnified in their minds, and
9 I think that's common sense; I think it made a difference
10 here.

11 I would also like to point out that if we're
12 concerned -- and I think we should be -- with whether the
13 Scarpinos' sleep is affected at night, we shouldn't be
14 looking at the level -- the sound levels that exist at
15 the screen of Ms. Scarpino's bedroom because her ear is
16 not at the screen. She is sleeping inside the room, and
17 as Mr. Zak acknowledged, there is going to be some
18 reduction in the sound level from the screen where he
19 took the measurements or where she took the measurements
20 to where she is sleeping. His analysis that these
21 particular levels would cause or might cause sleep
22 disturbance doesn't really apply because the Scarpinos
23 are not sleeping at the screen. sleeping They're in
24 their beds inside the room.

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1 And I think it's interesting and important to note
2 that the measurements that Sara took, although the
3 instructions were to take it when it is most annoying,
4 those didn't occur in the middle of the night. The
5 allegation is -- or one of the allegations is, "I can't
6 sleep at night," and yet the measurements are taken
7 around 10:00 to 10:15, 10:30 and 5:30, 6:30, 7:30 up
8 until 9:00 o'clock in the morning.

9 Those are not times when people are unable to sleep.
10 That's before you go to bed at night and when you wake up
11 in the morning they are taking levels. I think that's
12 inconsistent with their claim here their sleep is being
13 disturbed.

14 So you have a State investigator who is obviously
15 qualified, who I think may be bolstering, as he put it,
16 bolstering a nuisance case rather than analyzing and
17 objectively evaluating whether there is really a nuisance
18 here and maybe trying to calm people down and promote
19 tolerance rather than running every claim through the
20 Pollution Control Board.

21 The second factor has to do with the social and
22 economic value of the pollution source. There is really
23 no dispute about that in this case. The Henry Pratt
24 Company employs 200 people, at times 400 people; \$9.3

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1 million in payroll every year that it pays out. 200
2 people come to work in that plant every single day.

3 The company is a very good neighbor. It engaged in
4 charitable activities; awards from the US EPA and
5 Illinois EPA for environmental concerns.

6 And I think it showed a lot of consideration and
7 courtesy to the Scarpinos in this matter. It didn't dig
8 in its heels when it got this complaint and say, "Prove
9 it. Go to court and prove it." It went out and hired
10 consultants and tried to fix the problem voluntarily.
11 Lawyers were only brought into this case as the matter
12 was nearing hearing.

13 Is the Pratt plant suitable or unsuitable to the
14 area? Well, the area is zoned industrial; and as Mr.
15 Dave showed, it is very consistent with the surrounding
16 industry and the commercial nature of this area.

17 And I'd like to mention the issue of priority. The
18 Scarpinos have lived -- Sara and Margaret have lived --
19 in this house for some 70 years. They came into
20 ownership of it, however, in 19 -- I think it was 1980 --

21 MS. VINER: '69.

22 MR. FELDMAN: Which was after the Henry Pratt
23 Company came to own the facility. From a technical point
24 of view, Henry Pratt has priority from a legal point of

1 view. Henry Pratt has priority.

2 MS. SARA SCARPINO: Excuse me. Our family owned
3 that house before Pratt came on the scene, the Scarpino
4 family.

5 MR. FELDMAN: Okay. In any event, these two --

6 HEARING OFFICER EDVENSON: Your point was that the
7 Pratt Company was in operation before the sisters --

8 MR. FELDMAN: Came to own the property.

9 HEARING OFFICER EDVENSON: -- came to own the
10 property solely?

11 MR. FELDMAN: Right.

12 And I believe that --

13 MS. MARGARET SCARPINO: We owned it. My family
14 owned it in 1945.

15 HEARING OFFICER EDVENSON: Okay. You can proceed.

16 MR. FELDMAN: I think there is another reason to
17 give Pratt the priority here, and I think the legal
18 reason is there, and I think that ought to be accepted.

19 But I also think there is another reason to give
20 Pratt priority. For 26 years, except for this one
21 instance in '78, which I haven't seen anything on the
22 record -- for 26 years the Scarpinos didn't complain
23 about the noise coming from the Pratt Company. The plant
24 was in operation during that time, essentially the same

1 then as it is today and every year in between, and there
2 were no complaints.

3 Priority is really a question of settled
4 expectations. If you are in an area, used to a certain
5 activity, someone who comes into that area later
6 shouldn't be able to oust you from it and tell you to
7 stop doing it. That's because you have a right to expect
8 that you can continue to do what you've been doing in the
9 past.

10 Well, I think the fact that this plant went on for
11 26 years without complaint gives Pratt that priority,
12 even if technically it's not entitled to it from
13 ownership. And I think there is a good argument that it
14 is entitled to it from a technical legal point of view.

15 HEARING OFFICER EDVENSON: You are referring to a
16 coming-to-a-nuisance type of argument?

17 MR. FELDMAN: Correct.

18 The fourth and fifth factors relate to the technical
19 practicability and reasonableness of reducing the sound
20 source and evidence of compliance by the sound source.
21 Well, both of those also weigh in Pratt's favor.

22 Obviously, Henry Pratt, from the testimony of Mr.
23 Dave, made significant efforts, spent over \$20,000 to try
24 to reduce the sound. It's done a lot of technical things

1 to try to cut down the noise, not sitting back and
2 saying, "Well, prove there is a violation."

3 The company went out and tried to do it and tried to
4 reduce the sound and spent a lot of money doing it. It
5 doesn't seem to have satisfied the Scarpinos. So to that
6 extent, it seems to me that maybe a technical fix is
7 impossible, at least with respect to them.

8 I think that the company has made efforts and has
9 reduced the sound, and that was the testimony that was
10 introduced into this record, and that shows that the
11 company is attempting compliance, and that's a factor.

12 So we're left with a situation where there is no
13 violation of the applicable standards, where there is a
14 good deal of evidence of an excessive sensitivity to the
15 sound, based in part on the fact that for 26 years
16 nothing -- no complaints were voiced.

17 The fact that this plant is a strong contributor to
18 the local economy and is a good neighbor and has made
19 every effort -- I think this is a case where the parties
20 should have been trying to deal with each other
21 voluntarily. This is not a legal dispute in my way of
22 looking at it. I think that not every issue between two
23 neighbors has to be -- to become a liability case. I
24 think that we're in a liability case, so we have to

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1 decide on it at this point. But the factors, the
2 nuisance factors and DeSuza and other Pollution Control
3 Board cases clearly show this is not an unreasonable
4 interference with the use and enjoyment of the property.

5 So we ask the board to issue a finding of
6 nonliability in this case.

7 HEARING OFFICER EDVENSON: Okay. Thank you very
8 much.

9 All right. We will close the hearing at this time.
10 For the record, I have identified no issues of witness
11 credibility in this case.

12 The parties will not be submitting briefs, and the
13 transcript of this proceeding will be received by the
14 clerk of the board in approximately eight working days.
15 At that time I will prepare a report of the hearing,
16 which will be sent to parties and filed with the clerk.

17 Following the closing of the record, the board will
18 be reviewing all of the materials submitted before they
19 make their decision.

20 This concludes our hearing for today. Thank you for
21 your attendance and cooperation in our process.

22 MS. VINER: Will you just send us a copy then?

23 THE NOTARY: Sure.

24 (Which were all of the proceedings

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had in the above-entitled matter,
adjourning at 2:58 p.m.)

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1 STATE OF ILLINOIS)
2 COUNTY OF DE KALB) SS.

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I, Linda D. Hansen, Certified Shorthand Reporter No. 84-3927, Registered Professional Reporter, a Notary Public in and for the County of DeKalb, State of Illinois, do hereby certify that I reported in shorthand the proceedings had in the above-entitled matter and that the foregoing is a true, correct and complete transcript of my shorthand notes so taken as aforesaid.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed my notarial seal this _____ day of _____, A.D. 1996.

Notary Public

My Commission Expires
January 6, 1998.

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