

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

IN THE MATTER OF:)
)
PROPOSED SITE SPECIFIC REGULATION) R04-11
APPLICABLE TO AMEREN ENERGY) (Site Specific
GENERATING COMPANY, ELGIN, ILLINOIS) Rulemaking - Noise)
AMENDING 35 ILL. ADM. CODE 901)

NOTICE

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board the Post-Hearing Comments of Howard Chinn, P.E., of the Office of the Illinois Attorney General, and an Amended Resume for Howard Chinn, P.E., copies of which are hereby served upon you.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the State
of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
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BY:



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Dated: March 10, 2004

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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APPLICABLE TO AMEREN ENERGY)	(Site Specific
GENERATING COMPANY, ELGIN, ILLINOIS))	Rulemaking - Noise)
AMENDING 35 ILL. ADM. CODE 901)	

POST-HEARING COMMENTS OF HOWARD CHINN, P.E.,
OFFICE OF THE ILLINOIS ATTORNEY GENERAL,
OPPOSING THE PROPOSED SITE SPECIFIC REGULATION APPLICABLE TO
AMEREN ENERGY GENERATING COMPANY, ELGIN, ILLINOIS
AMENDING 35 ILL. ADM. CODE 901

Howard Chinn, P.E., of the Office of the Illinois Attorney General submits the following comments in opposition to Ameren Energy Generating Company's ("Ameren") proposal for a site-specific rulemaking ("proposal") for its peaker power plant facility in Elgin Illinois ("facility"):

1. The Attorney General's Office has been unable to confirm Ameren's claims that a 12-foot long inlet silencer as opposed to an 8-foot long silencer maximizes sound abatement at its facility. Ameren provided no manufacturer's specifications or design criteria to the Board to indicate the extent of sound attenuation for either of the inlet silencers. In addition, Ameren provided no manufacturer's specifications or design criteria regarding their claims that the lagging and duct structural stiffening is of a quality to maximize noise reduction at its facility. The claims regarding the silencers, lagging,

and duct structural stiffening are unsubstantiated and vague.¹

2. Ameren's claim that the facility's exhaust outlet is equipped with "state of the art" noise abatement is unverifiable because, again, they have not provided any information to the Board in support of this position.² The American Heritage Dictionary's definition of "state of the art" is "the highest level of development, as of a device, technique, or scientific field, achieved at any particular time." Ameren falls far short of demonstrating that they meet this definition.

3. Further, Ameren claims that the silencer panels on the exhaust outlet were designed specifically to attenuate the low frequency of 31.5 Hertz and 63 Hertz octave bands while also providing substantial mid and high frequency noise attenuation.³ If this is true then Ameren should have included copies of the design specifications to the Board for verification. It chose not to.

4. Ameren claims that as part of its proposal, they investigated the technical feasibility and economic reasonableness of seven additional noise abatement measures.⁴ Ameren claims that these measures are unproven and would require

¹ See Tr. at 26-28.

² Tr. at 28.

³ Id.

⁴ Tr. at 31; Ameren Petition at Exhibit E.

extensive research, design or redesigning. However, Ameren has not supplied the Board with a copy of a valid technical feasibility report documenting the technical data upon which they relied on for their conclusions.

5. Ameren's economic reasonableness analysis of those seven noise abatement measures is also invalid. Cost estimates provided by Ameren in their petition are inaccurate and range from -25% to +75%.⁵ In essence, Ameren is speculating on the costs of the seven noise abatement measures.

6. For example, Mr. Smith of Ameren said that the cost estimates do not include the cost of down time at the facility during removal, reconstruction and installation.⁶ However, Ameren provided testimony that their Illinois EPA permit allows them to operate the facility a maximum of 16% of the time on an annual basis.⁷ In other words, the Ameren facility will be idle at least 84% of the time on an annual basis. There will be plenty of additional time for Ameren to install additional noise abatement measures without incurring any additional cost.

7. Mr. Smith testified that one of its additional noise abatement measures would require its emissions stack to be relocated to make room for additional silencers. Mr. Smith also

⁵ Tr. at 31.

⁶ Tr. at 32.

⁷ Tr. at 248.

claimed that this measure would require re-modeling and securing a revised air permit.⁸ Upon questioning, however Mr. Smith and Ameren's attorney Ms. McFawn said that they weren't sure if a permit revision would be needed. Ms. McFawn said that Ameren would have to investigate the possibility of securing a revised air permit.⁹

8. Ameren also proposed an "active noise control system" as an additional noise abatement measure even though they considered it to be completely experimental and not technically feasible. Ameren estimated that this system would cost \$6 million even though they did not provide any information to explain how they arrived at this figure.¹⁰

9. Ameren claimed that additional inlet silencers would degrade unit performance by increased pressure drop through the inlets thus decreasing the economic value of the facility.¹¹ This claim is unsubstantiated and without merit. In his testimony, Mr. Smith referred to Attachment C of Ameren's petition.¹² Attachment C shows a compressor (even though its not

⁸ Tr. at 32-33.

⁹ Tr. at 253-255.

¹⁰ Tr. at 33-34. Ameren also neglected to provide cost breakdowns for its other proposed noise control systems. See paragraph 15.

¹¹ Tr. at 35-36.

¹² Tr. at 26.

identified) that precedes the combustor section. A compressor is used to raise the pressure of the incoming air to a pressure level suitable and adequate for the combustor. This compressor should be able to compensate for any increase pressure drop through the silencers.

10. Ameren's witness Dave Parzych of Power Acoustics, Inc. testified that other prominent noise sources such as the air cooled generator, heat exchangers and transformers cannot be completely enclosed because they need air flow for cooling.¹³ The Attorney General's Office, at the request of Ameren, has provided information to the Board regarding an electric generating plant located in Hillside, Illinois where all the equipment is located in a building without a roof to block noise emissions yet allow for the free movement of air.¹⁴ The walls were effective in directing the sound upwards and away from nearby homes and businesses. At this point, it does not appear that Ameren has investigated the noise reduction system at the Hillside facility.

11. One of the factors that Ameren considered in determining the site specific sound pressure level requirements was information supplied by Siemens Westinghouse that defines the

¹³ Tr. at 61.

¹⁴ See Response to Question Raised at Hearing, filed on February 9, 2004.

equipment sound power levels.¹⁵ This information was not included in the petition filed with the Board. This information is needed to assess the extent of sound attenuation being achieved by the silencers used at the facility.

12. Another Ameren witness, Greg Zak of Noise Solutions, Inc., compared Ameren's proposal with a portion of the Board's general noise limitations. Mr. Zak concluded that the decibel levels in Ameren's proposal are not significant due to the ambient noise present in the surrounding area. In other words, the ambient noise masks the noise generated by the facility. Based on Mr. Zak's testimony, it would appear that Ameren's proposal is moot.

13. Mr. Zak testified that over the past 30 years Illinois EPA has not received any complaints regarding peaker noise. This claim is somewhat misleading because the proliferation of peaker plants was virtually non-existent until a few years ago. This proliferation prompted then Governor Ryan to request the Board to hold informational hearings to address issues regarding peaker power facilities back in 2000.¹⁶

14. Mr. Zak also testified that although most stationery noise sources are not controlled, he provided no facts,

¹⁵ Tr. at 62.

¹⁶ See, generally, In re: Natural Gas-Fired, Peak-Load Electrical Power Generating Facilities (Peaker Plants), R01-10.

references or citations for this claim.¹⁷ Certainly, not all stationary sources of noise need to be controlled if they are already in compliance with the noise rules and regulations adopted by the Board. This claim is ambiguous and without merit.

15. Mr. Parzych testified that the additional cost of noise abatement measures is speculative because Ameren has not determined the exact noise reduction and other engineering requirements.¹⁸ The Attorney General's Office is in complete agreement with this position and are convinced that most of the testimony relating to technical feasibility is also speculative for the same reason.

16. Mr. Parzych also testified that placing the four gas turbines within a building does not appear to be feasible without totally redesigning and re-engineering the facility. He said that the gas turbine units at the facility were designed for outdoor use only.¹⁹ However, other electric generating facilities, such as the one in Hillside, are surrounded by walls, if not totally enclosed. In addition, putting walls around turbines and other prominent noise-producing equipment (see paragraph 10) at Ameren's facility would provide a needed-sound barrier rather than actually changing the setting from outdoors

¹⁷ Tr. at 73.

¹⁸ Tr. at 102.

¹⁹ Tr. at 103-104.

to indoors.

17. In response to my request for additional noise testing at the facility during periods of minimum ambient noise, Mr. Parzych said that the minimum ambient noise level occurs late at night or in the early morning hours and that these times also coincide with minimum power consumption.²⁰ Firing up peaker units during periods of minimum consumption is expensive. Ameren failed to mention that periods of minimum ambient noise may also occur on Sundays and certain holidays (on hot summer days, for example) when power consumption is at a high level. Therefore Mr. Parzych's inflated cost estimates associated with the operation of the facility during noise tests do not appear to be credible.

18. Although Ameren provided many reasons and excuses for not conducting additional noise tests²¹, the Board should keep in mind that Mr. Zak has tested the peaker units at the facility for noise emissions in the past, and he is perfectly capable of doing it again. Ambient noise and weather conditions were factors in Mr. Zak's prior set of noise emissions tests and would have to be factored into future tests.

19. The Board asked Ameren if, prior to construction, it would have been possible to design the facility to meet the

²⁰ Tr. at 106-107.

²¹ Tr. at 107-110.

Board's noise limitations. Mr. Smith said that Ameren would not have built the facility if the land across Gifford Road was Class A, but he did not say if the facility could have been built to have met the Class C land to Class A land noise emission limits.²²

20. Mr. Rao of the Board asked Mr. Smith if Ameren included noise level specifications for turbines when Ameren ordered those turbines from the manufacturer. Mr. Smith responded that Ameren worked with the manufacturer on such specifications, but Ameren never provided those specifications to the Board or the parties on the Service List.²³ This information is necessary to assess the adequacy of the noise attenuation equipment furnished with the turbines.

21. Ameren claimed that a new stack would require full aerodynamic modeling and significant analytical work.²⁴ In response to a question from the Board, Mr. Smith indicated that he did not know if the manufacturer ever did significant analytical work on the existing stack at the facility.²⁵ Therefore the need for the detailed analytical work on a proposed

²² Tr. at 112-113. The Attorney General's Office presumes that the Board's question meant the noise limitations from Class C land to Class A land.

²³ Tr. at 135.

²⁴ Ameren Petition, page 10.

²⁵ Tr. at 146.

new stack is purely speculative.

22. Mr. Smith testified that "disturbances in the downstream flow" could be problematic for NOx burners in the turbines at the facility. Mr. Smith also suggested that problems with the NOx burners could lead to problems with Ameren's Clean Air Act permit for the facility.²⁶ Both of Mr. Smith's statements are unclear, very ambiguous, and should not be given any weight by the Board.

23. In response to questions from the Attorney General's Office regarding the construction of an earthen berm as a noise barrier, Mr. Parzych said that it would work best if it were built close to new homes on the Realen property.²⁷ Mr. Smith said that Ameren representatives had brief conversations with representatives of Realen Homes about construction of a berm but did not recall a "serious discussion" on the topic.²⁸ Earthen berms and fences are common techniques for diminishing noise where industrial areas or expressways are adjacent to residential areas. However, other than brief conversations, Ameren essentially ignored the berm/fence option on the Realen property and never addressed the technical feasibility or economic reasonableness of these options. In addition, Ameren never

²⁶ Tr. at 151-152.

²⁷ Tr. at 165-166.

²⁸ Tr. at 167.

addressed whether an effective berm or fence could be constructed on Ameren's property along Gifford Road.

24. The Board questioned the procedures that Ameren used in the application of the ambient correction factor. There was some concern about applying the ambient correction factor to determine the sound level from one turbine because the ambient may be subtracted more than once. Ameren indicated that one way around this would be to operate all four units at once ²⁹, which is what the Attorney General's Office suggested.

25. Ameren provided testimony that a noise of 80 decibels at 31.5 Hertz would penetrate houses with closed windows. Mr. Zak pointed out that passenger jet aircraft exceed this noise.³⁰ Mr. Zak neglected to say that flight schedules change and that noise from aircraft that are landing is lower than during take off. Mr. Zak also neglected to mention if he took his measurements during a high air traffic period or a low traffic period. Furthermore, Mr. Zak failed to mention if the jet aircraft noise was recorded in the area of the facility, near an airport runway, or at some other location. He also failed to mention how high up such a jet aircraft would be.

26. Mr. Zak testified that, given the extraneous sound and

²⁹ Tr. at 177-182.

³⁰ Tr. at 217. This is within Ameren's proposed noise limits.

ambient noise in the area of the facility, a six to 22 decibel increase is reasonable. However, Mr. Zak also said that, absent extraneous sound and assuming a low ambient noise level, a six decibel increase would be significant and a 22 decibel increase would be extremely significant.³¹ Mr. Zak then conceded that there are days when the ambient and the extraneous noise is lower at the facility such as Sundays and holidays (Christmas and New Year's Day were mentioned).³² These are the same days that many people do not work and would likely be at home. During the summer months, people would likely be outside. It is during these times that people who will living on the Realen property would likely be subject to noise coming from the Ameren facility.

27. Ameren did not mention during the hearings that it and U.S. Can Corporation sued Realen Homes, two municipalities, and others regarding the zoning change for the property that Realen owns.³³ A copy of the amended complaint in that case (without the voluminous attached exhibits) is attached as Exhibit A. The Attorney General's Office has recently learned that all or some

³¹ Tr. at 228-230

³² Tr. at 233-235

³³ See Cook County Circuit Court Case No. 2003-CH-11307: Ameren Energy Development and United States Can Co. v. Dennis M. Nolan, City of Elgin, Realen Homes, Village of Bartlett, Catherine Melchert, Michael Airdo, TL Arends, Sherry Boormann, Thomas Floyd, and John Kavouris. Complaint filed on July 8, 2003. Amended complaint filed on October 15, 2003.

of the parties in this matter have reached or are about to reach an out-of-court settlement involving a sound and light easement on the property now owned by Realen. However, the easement does not excuse Ameren's deficient petition.

28. In the conclusion to a report submitted as support for Ameren's petition, Mr. Parzych wrote, "It is probable that a building would be required over the gas turbines, generators, and inlet ducting to approach the Illinois Daytime Noise Regulations and mitigate the mid frequency issues."³⁴ The Attorney General's Office supports this concept and believes that Ameren should develop the engineering design for such a building incorporating the appropriate acoustical specifications to achieve the required noise attenuation.

29. In conclusion, Ameren's petition should be denied because, *inter alia*,

a. Ameren has not conducted bona fide technical feasibility and economic reasonableness studies of available noise control technologies for the facility.

b. Ameren has not demonstrated that the facility is fundamentally and significantly different than other similar

³⁴ See Analysis and Results of Acoustical Measurements Taken Near the Ameren Elgin, Illinois Power facility During the Operation of the Unit 4 SW501D5A Gas Turbine, Power Acoustics, Inc., David J. Parzych, P.E., June 20, 2003. Submitted as part of petitioner Ameren's documents in anticipation of hearing for Board docket R04-11, December 3, 2003 (written report No. 2).

facilities. The Ameren facility does not deserve a set of site-specific regulations which are more lenient than the Board's generally applicable regulations.

c. Ameren did not provide a responsive answer to the Board's question regarding the possibility of designing the facility to meet the Board's Class C to Class A land use limitations.

d. Ameren did not conduct noise measurements at times when ambient and extraneous noise would likely be at their lowest.

e. A site specific rule for Ameren might set a precedent in that other peaker power plants may petition the Board to be exempt from the Board's generally applicable noise regulations.

f. Generally recognized and accepted engineering designs are currently available for acoustical attenuation systems applicable to the Ameren facility. Ameren should conduct an engineering evaluation of such systems rather than receiving relief from the Board's generally applicable noise regulations.

30. I am submitting an updated and more accurate resume (Exhibit B) which should replace the one that I submitted at the hearing.

Respectfully submitted,

PEOPLE OF THE STATE OF ILLINOIS,
ex rel. LISA MADIGAN,
Attorney General of the State
of Illinois

MATTHEW J. DUNN, Chief
Environmental Enforcement/
Asbestos Litigation Division

ROSEMARIE CAZEAU, Chief
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CHANCERY DIVISION
Attorney Nos. 90219
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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

AMEREN ENERGY DEVELOPMENT
COMPANY, an Illinois Corporation, AMEREN
ENERGY GENERATING COMPANY, an
Illinois Corporation, and UNITED STATES
CAN COMPANY, a Delaware Corporation,

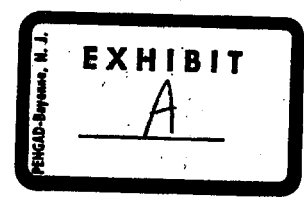
Plaintiffs,

v.

The VILLAGE OF BARTLETT, an Illinois
Municipal Corporation, CATHERINE J.
MELCHERT, Village President, MICHAEL
AIRDO, T.L. ARENDS, SHERRY BORMANN,
THOMAS A. FLOYD, JOHN KAVOURIS, and
DENNIS M. NOLAN, Village Trustees,
REALEN HOMES L.P., a Pennsylvania
Limited Partnership, and the CITY OF ELGIN,
an Illinois Municipal Corporation,

Defendants.

Gen. No. 03 CH 11307



FIRST AMENDED COMPLAINT OF AMEREN ENERGY
DEVELOPMENT COMPANY AND AMEREN ENERGY
GENERATING COMPANY FOR DECLARATORY JUDGMENT
AND OTHER RELIEF

Now come Plaintiffs, Ameren Energy Development Company, an Illinois Corporation,
and Ameren Energy Generating Company, an Illinois Corporation, by their attorneys, Schnell,
Bazos, Freeman, Kramer, Schuster & Vanek and Schiff, Hardin & Waite, and for their Complaint
For Declaratory Judgment And Other Relief against Defendants, The Village of Bartlett,
Catherine J. Melchert, Michael Airdo, T.L. Arends, Sherry Bormann, Thomas A. Floyd, John
Kavouris, Dennis M. Nolan, Realen Homes L.P., and the City of Elgin, state:

PARTIES

1. Ameren Energy Development Company, and Ameren Energy Generating
Company (collectively, "Ameren"), are the owners/operators of an electric power generating

plant located at 1559 Gifford Road, Elgin, Cook County, Illinois, which location is directly east of the property described in paragraph 6 of this Complaint (the "Subject Property").

2. The Village of Bartlett ("Village") is an Illinois municipal corporation with its principal offices located at 228 South Main Street, Bartlett, Cook County, Illinois.

3. The individuals named herein, Catherine J. Melchert, Michael Airdo, T.L. Arends, Sherry Bormann, Thomas A. Floyd, John Kavouris, and Dennis M. Nolan, are the Village President and members of the Village Board of Trustees ("Village Board"), respectively, of the Village.

4. Realen Homes, LP ("Realen") is a Pennsylvania Limited Partnership doing business in the Village, and is the owner of the Subject Property. Realen is in the business of developing, building and selling residential homes to the general public.

5. The City of Elgin is an Illinois Municipal Corporation with its principal offices at 150 Dexter Court, Elgin, Kane County, Illinois, whose boundaries abut the Subject Property, and who appeared and made comment to the Village on the Petition described in this Complaint.

REALEN'S PETITION TO THE VILLAGE

6. The Subject Property is a vacant parcel of real estate approximately 121.6 acres in size, located on the northwest corner of West Bartlett Road and Gifford Road. The Subject Property is legally described in Exhibit A attached hereto, and incorporated herein by reference as if fully set forth.

7. The Subject Property constitutes a portion of the property formerly proposed for use as a balefill operation by the Solid Waste Agency of Northern Cook County ("SWANCC").

8. On or about October 16, 2002, Realen submitted a petition to the Village requesting that the Village (a) annex the Subject Property and rezone it from the ER-1 Estate Zoning District (the district to which it is automatically zoned upon annexation) to the PD Planned Development Zoning District; (b) grant a special use permit for a Planned Unit Development for multi-family and single-family housing on the Subject Property to be developed

in accordance with a Preliminary Plat and Preliminary PUD Plan; and (c) approve a Preliminary Plat of Subdivision for the Subject Property (the "Petition").

9. At the time the Petition was filed with the Village, the Subject Property was located in unincorporated Cook County, and was classified in the I-2 General Industrial District of Cook County.

10. The Village, as required by law and its ordinances, scheduled a public hearing before the Village of Bartlett Plan Commission ("Plan Commission") for the purpose of considering Realen's Petition.

11. The Plan Commission conducted a public hearing on the Petition on February 13, 2003.

12. Following said public hearing, the Plan Commission recommended to the Village Board of Trustees that the Petition be denied.

13. On April 10, 2003, the Plan Commission conducted a second public hearing on the Petition.

14. Following said public hearing, the Plan Commission again recommended to the Village Board that the Petition be denied.

15. On June 3, 2003, the Village Board conducted a public hearing on the proposed annexation agreement concerning the Subject Property (the "Annexation Agreement"). The Annexation Agreement considered at the public hearing conditioned the proposed annexation on the adoption of an ordinance by the Village rezoning the Subject Property from the ER-1 Estate Residence District to the PD Planned Development Zoning District, and granting a special use for a multi-family and single family residential project thereon. The Annexation Agreement also contained a provision requiring the payment of Two Million Dollars (\$2,000,000) from Realen to the Village labeled as an "Annexation Fee."

16. Immediately following the public hearing on June 3, 2003, the Village Board held a regular meeting and took the following actions:

- i) rejected the negative recommendation of the Plan Commission regarding the Petition;
- ii) enacted Ordinance No. 2003 – 61 (a copy of which is attached hereto and incorporated herein as Exhibit B) approving the Annexation Agreement (which is attached to said Exhibit B);
- iii) enacted Ordinance No. 2003 – 62 (a copy of which is attached hereto and incorporated herein as Exhibit C) annexing the Subject Property into the Village;
- iv) enacted Ordinance No. 2003 – 63 (a copy of which is attached hereto and incorporated herein as Exhibit D) rezoning the Subject Property from the ER-1 Estate Residence District to the PD Planned Development Zoning District; granting a special use permit for a Planned Unit Development to be developed on the Subject Property; approving the Preliminary Site Plan and Preliminary Plat of Subdivision for the Subject Property; approving the construction of 210 single family homes and 119 townhome units on the Subject Property; and requiring Realen to pay the Village the sum of \$2,000,000 as an "Annexation Fee".

SURROUNDING LAND USES

- 17. The area immediately surrounding the Subject Property is heavily industrial:
 - a. Ameren's property is to the immediate east of the Subject Property, and is classified for industrial use.
 - b. To the north are the following uses:
 - i) GE Capital Module Space, a storage facility for rental of sales trailers.

- ii) Concrete Specialties, a facility for fabrication of concrete products, with outside storage of products.
 - iii) Bluff City Materials, a quarry and mining operation.
- c. To the east are the following uses:
- i) BFI Waste Systems, a facility for truck repair.
 - ii) Commonwealth Edison high power lines corridor.
 - iii) E, E & J Railroad tracks.
 - iv) Midwest Compost, a waste disposal and yard waste composting site.
 - v) Material Handling, a trucking facility.
- d. To the south are the following uses:
- i) Fru-Con Construction, a construction company and outside storage yard.
 - ii) U.S. Can, a manufacturing facility, with 20 loading docks.
- e. To the west are the following uses:
- i) The remainder of the former SWANCC property, to be utilized for a nature preserve.

18. The predominant industrial character of the area creates heavy truck traffic and other vehicular traffic on Gifford Road and West Bartlett Road. The quarry and mining operation contributes a great number of dump trucks and heavy equipment trucks. U.S. Can's operations contribute many tractor trailer trucks. Gifford Road also serves as an alternative route for vehicle and truck traffic traveling south from Lake Street, Route 20.

19. There are no proximate residential uses to the north, west, or east of the Subject Property. The Subject Property is bounded on the south by West Bartlett Road.

AMEREN'S PROPERTY AND FACILITY

20. The property owned by Ameren is approximately 27.537 acres and is located directly across Gifford Road, to the east of the Subject Property. It is separated from the Subject Property only by Gifford Road, a two lane, non-dedicated right-of-way.

21. Prior to the filing of the Petition, and at all relevant times, Ameren's property has been classified by the City of Elgin within its PI Planned Industrial District for use as an electric power generating facility.

22. At the time that Ameren (a) acquired its property, (b) petitioned the City of Elgin to classify it in the PI Planned Industrial District for use as an electric power generating facility, and (c) constructed such facility, the Subject Property was classified in the I-2 General Industrial Zoning District of Cook County.

23. The electric power generating facility on Ameren's property consists of combustion turbine generator units with a current capacity of 540 megawatts of output (the "CTG Units"); equipment related to the operation of the CTG Units including, without limitation, a generator step-up transformer, diesel fuel generators, generator leads, switch yard and equipment necessary for its operation, turbines, transformers, generators, detention pond, auxiliary power transformer for station services, natural gas pressure regulation metering station, demineralized water storage tank, demineralizer trailer, water pump houses, raw water storage tank, natural gas in line heater, oil water separator, and computerized process control system; and service buildings to provide office space, parts storage, maintenance shop space, electrical equipment room, personnel facilities, and other ancillary equipment and systems needed to operate and maintain the facility.

24. Ameren invested over \$200 million for the purpose of acquiring and developing the Ameren Property.

25. The normal and usual operation of Ameren's facilities generates noise which is subject to the rules and regulations of the Illinois Pollution Control Board (IPCB), which are found at 35 Ill. Adm. Code Part 901.

26. The IPCB rules and regulations provide for different standards and limitations depending on the nature and use of adjacent land, and in particular, set higher standards and limitations when the adjacent land is classified as Class A receiving land which includes land used as "residential," as is the Subject Property, rather than as Class C receiving land which includes land used as industrial.

27. The action of the Village in classifying the Subject Property in a zoning district which allows residential uses, and further, in permitting residential uses thereon, subjects Ameren to the higher standards and greater limitations of IPCB rules and regulations which are applicable to adjacent residential uses, as distinguished from industrial uses. The IPCB noise regulations contain no noise emission limitations for noise emitted from any Class C land to any receiving Class C land. Therefore, the actions of the Village rezoning the Subject Property to a residential use may adversely impact the operation of Ameren's facilities and will unduly infringe upon the ability of Ameren to freely and fully enjoy the use of its property.

**COUNT I
DECLARATORY JUDGMENT**

28. Ameren restates, realleges and incorporates the allegations in paragraphs 1 through 27 as if fully set out in this paragraph 28.

29. The Village's actions in June 2003 in approving Realen's request for the execution of the Annexation Agreement, rezoning of the Subject Property, and the granting of a special use permit for the Subject Property are arbitrary, capricious, and unreasonable and bear no substantial relationship to the public health, safety, and welfare for reasons which include but are not limited to the following:

- i) The Village's actions are (as the Village itself expressly recognizes in Ordinance No. 2003-63 and in the Annexation Agreement) incompatible with and contradictory to the Comprehensive Plan of the Village.
- ii) There is no public need in the Village for the single-family and multi-family uses proposed by Realen and approved by the Village. There are numerous other residential developments in the Village, and there is no public need for additional residential uses at the location of the Subject Property.
- iii) The Village's actions are incompatible with the existing uses and zoning of adjacent and nearby properties.
- iv) The Village's actions are inconsistent with the character and trend of development for the area.
- v) The Village's actions will have a substantial adverse impact on the value of surrounding property, including Ameren's property.
- vi) The Village's actions will cause Ameren to suffer substantial loss in the value of its property by interfering with the use and enjoyment of its property, and, in particular, its ability to fully operate and utilize its electric power generating facility.
- vii) The Village's actions will cause Ameren to suffer substantial loss in the value of Ameren's property without any compensating gain to the public.
- viii) The Village's actions do not promote the health, safety, morals, or general welfare of the public.

- ix) The Village's actions has worked and will continue to work irreversible and irreparable harm on Ameren without due process of law.

30. Ameren lacks any adequate remedy at law.

31. By virtue of the foregoing, a real and substantial controversy exists between Ameren and Defendants herein and pursuant to the provisions of Section 2-701 of the Illinois Code of Civil Procedure, it is just and proper that this Court enter a declaratory judgment setting forth the rights of the parties herein and declaring the actions of the Village in June 2003 approving the execution of the Annexation Agreement, rezoning the Subject Property to the PD Planned Development District, and granting a special use permit for a Planned Unit Development for the Subject Property to be void, unenforceable, and contrary to law.

WHEREFORE, Ameren prays for the following relief:

- a. that this Court find, determine and declare that the June 2003 ordinances of the Village approving the execution of the Annexation Agreement, rezoning the Subject Property, and granting a special use permit for the Subject Property are arbitrary, capricious, and unreasonable, and bear no relationship to the public health, safety, morals, and general welfare, and that said ordinances are therefore unconstitutional, void, and unenforceable;
- b. that this Court preliminarily and permanently enjoin and restrain the Village and Realen and all of their respective officials, agents, and employees from applying or obtaining the benefits under the provisions of the June 2003 ordinances of the Village approving the execution of the Annexation Agreement, rezoning the Subject Property, and granting a special use permit for the Subject Property;

- c. that Ameren be awarded judgment against the Defendants to this Court I for its reasonable attorneys' fees and costs incurred in relation to this Count I; and
- d. that this Court grant such other relief as it deems just and equitable.

**COUNT II
DECLARATORY JUDGMENT – CONTRACT ZONING**

32. Ameren re-states, re-alleges and incorporates each and all of the allegations set forth in Paragraphs 1 through 27 above as if fully set out in this Paragraph 32.

33. The Village Board of Trustees required, as a condition to the annexation and rezoning of the Subject Property, that Realen pay the Village a special "Annexation Fee" in an amount equal to Two Million Dollars (\$2,000,000.00).

34. Said fee was exacted solely and specifically to reimburse the Village for approximately \$2,000,000 in legal fees and other expenses incurred by the Village several years ago in connection with a series of lawsuits opposing the approval and construction by the SWANCC of a balefill operation on the Subject Property (as well as certain property adjacent to the Subject Property).

35. Said fee was not required under any existing Village ordinance, and was not calculated on any uniform or pro rata basis.

36. On information and belief, the Village has charged no other applicant such a large, lump sum fee as a condition for zoning of property upon annexation to the Village.

37. There is no relationship between Realen's current proposal for the development of the Subject Property and the \$2,000,000 fee demanded by the Village; the fee is simply intended to reimburse the Village for the fees and expenses it incurred during the unrelated balefill litigation.

38. The actions of the Village approving the annexation and rezoning of the Subject Property, and granting a special use for the development of multi-family and single-family uses

thereon constitute illegal contract zoning, in that they were undertaken solely for the purpose of collecting said extraordinary fee, and not for proper zoning purposes.

WHEREFORE, Ameren seeks the following relief:

- a. that this Court find, determine and declare that the June 2003 ordinances of the Village approving the execution of the Annexation Agreement, rezoning the Subject Property, and granting a special use permit for the Subject Property are arbitrary, capricious, and unreasonable, and bear no relationship to the public health, safety, morals, and general welfare, and that said ordinances are therefore unconstitutional, void, and unenforceable;
- b. that this Court preliminarily and permanently enjoin and restrain the Village and Realen and all of their respective officials, agents, and employees from applying or obtaining the benefits under the provisions of the 2003 ordinances of the Village approving the execution of the Annexation Agreement, rezoning the Subject Property, and granting a special use permit for the Subject Property;
- c. that Ameren be awarded judgment against the Defendants to this Count II for its reasonable attorneys' fees and costs incurred in relation to this Count II; and
- d. that this Court grant such other relief as it deems just and equitable.

**COUNT III
WRIT OF CERTIORARI**

39. Ameren re-states, re-alleges and incorporates each and all of the general allegations set forth in Paragraphs 1 through 27 above as if fully set out in this Paragraph 39.

40. Ameren seeks review of the Village's decision granting a special use for multi-family and single-family housing on the Subject Property on the basis that:

- i) the Village's decision is contrary to the provisions of law, including without limitation, the Illinois Municipal Code, Section 65 ILCS 5/11-13-1.1, and the requirements of Section 10-13-8 of the Bartlett Municipal Code, and is therefore arbitrary, capricious, and unreasonable; and
- ii) the Village's decision is against the manifest weight of the evidence.

WHEREFORE, Ameren seeks the following relief:

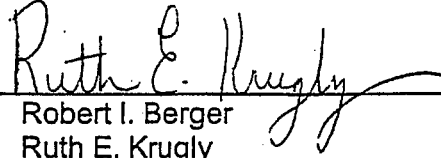
- a. that the decision of the Village be judicially reviewed by this Court on Ameren's application for writ of certiorari;
- b. that this Court find, determine and declare that the decision of the Village granting Realen a special use permit was in contravention of law, was arbitrary, capricious, and unreasonable, and bears no relationship to the public health, safety, morals, and general welfare, and that said decision is therefore unconstitutional, void, and unenforceable;
- c. that this Court reverse and set aside in its entirety the decision of the Village granting a special use permit;
- d. that this Court preliminarily and permanently enjoin and restrain the Village and Realen and all of their respective officials, agents, and employees from applying or obtaining the benefits of the decision of the Village approving the special use permit;
- e. that Ameren be awarded judgment against the Defendants for its reasonable attorneys' fees and costs incurred in relation to this Count III; and

f. that this Court grant such other relief as it deems just and equitable.

Respectfully submitted,

AMEREN ENERGY DEVELOPMENT COMPANY,
AMEREN ENERGY GENERATING COMPANY,
Plaintiffs

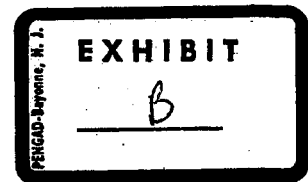
By



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Attorney No. 91508

CH211047131.3



RESUME OF

HOWARD O. CHINN, P. E.

PROFESSIONAL EXPERIENCE

Employed by the Illinois Attorney General's Office in the Environmental Division since April 1971 functioning as an environmental investigator, technical advisor, expert witness, litigation support staff, compliance program analyst, administration of technical consultant contracts, and conducts engineering inspections of industrial and chemical facilities, and other pollution sources.

PROFESSIONAL LICENSES

Licensed by the State of Illinois as a Professional Engineer in 1969 under the Illinois Professional Engineering Practice Act of 1989, 225 ILCS 325.

Also licensed to practice by the State of Indiana, the State of Michigan and the State of Wisconsin.

SIGNIFICANT OR NOTEWORTHY CASES RELATED TO NOISE

1. Assigned to investigate complaints of alleged noise from the Hines Veterans Administration Hospital in the early 1970s. Investigation determined that the source of the noise was emanating from the water cooling towers installed on the roof of the building. A meeting with the hospital's administrators and staff resulted in the installation of sound attenuation equipment on the fans which was the source of the noise.
2. Assigned to investigate the alleged noise from a hospital located in Naperville, Du Page County. The investigation discovered that the source of the noise emission was from a water cooling tower located on the hospital grounds. The agreed compliance plan was to relocate the cooling tower to a different area.
3. Conducted a joint investigation with Mr. Greg Zak, IEPA, of complaints from neighbors of a grain storage facility. The investigation resulted in an enforcement proceeding against Seegers Grain before the Board in docket PCB 88-199. The respondent implemented a noise control program recommended by Mr. Zak pursuant to a stipulation filed with the Board.
4. Investigated complaints of neighbors of K-5 Concrete's asphalt plant located in Elmhurst, Du Page County. The complaints were directed at the alleged source of noise, odors, and dust coming from the site of the asphalt plant. Mr. Greg Zak assisted in the investigation of the noise emissions. A conference with K-5 and their attorneys culminated in a

resolution of the allegations which was incorporated in a consent decree filed with the court in Du Page County. One provision of the consent decree required that K-5 retain an independent noise consultant acceptable to the Attorney General's Office to conduct noise measurements and to make recommendations to K-5 to mitigate the emissions of noise from their site.

5. In a settlement of an enforcement action against the Robbins Resource Recovery Company, a municipal waste incinerator located in the Village of Robbins, the Attorney General's Office developed an extensive and comprehensive engineering compliance program which was incorporated in a consent decree filed in the circuit court of Cook County. One element of this program requires that the facility conduct an acoustical engineering analysis of the potential noise sources and provide a report to the Attorney General's Office and the IEPA for approval. The facility was required to implement the appropriate attenuation measures prior to commencement of operations, and to perform a post start-up noise survey to verify compliance with the applicable emission limits in the noise rules. Robbins, with the concurrence of the Attorney General's Office, retained the firm of Thunder Hearing & Noise Associates to conduct the field noise measurements.
6. Investigation of complaints from neighbors of the Moline Corporation in St. Charles, Kane County, a malleable and gray iron foundry. Complaints alleged the emission of noise, dust and odors from the facility. Mr. Greg Zak assisted in the noise investigation and recommended a number of noise abatement measures to the defendant.
7. Investigated complaints of alleged noise emissions from the Austeel Lemont Company, Lemont, Cook County. Austeel operates a grey iron foundry utilizing arc furnaces with a baghouse to control the emission of particulate matter. The major sources of noise were the arc furnaces and the blower on the baghouse. Following an inspection of the plant facilities and a meeting with the management of the company, the Attorney General's Office recommended that Austeel retain an independent acoustical consultant, acceptable to the Attorney General's Office, to conduct a survey of the facility to identify and characterize the dominant noises within the plant site and off-site locations near the receptor. Austeel, with the concurrence of the Attorney General's Office, retained George Kamperman, P.E. of Kamperman Associates Inc. to conduct the survey and analysis. I was present to witness the on-site plant survey. The plant operated during the night time hours to take advantage of the lower electrical rate. A report of the survey and analysis submitted to Austeel was also provided to the Attorney General's Office for approval. The conclusion of the report indicated that Austeel was not the source of the noise which gave rise to the complaints from the neighbors.
8. Investigated complaints of noise from a skeet and trap shooting club located in Lake County. The Attorney General's Office retained the consulting firm of Thunder Hearing & Noise Associates to conduct noise measurements of the impulsive sound generated from shot guns used in shooting clay targets.

9. Joint investigation with IEPA of complaints from a neighbor of a night club in the Old Town neighborhood . The complainant indicated that the noise level rises as time gets later in the evening. The complainant shares a common wall with the night club. Noise measurements were taken by the IEPA at the complainant's home and also outdoors during the midnight hours during Halloween. IEPA and the Attorney General's Office met with the owners of the night club and recommended that they needed to implement measures that would mitigate the transmission of noise to their neighbor's home and to the outdoors through the vents in the ceiling. The Attorney General's Office received no further complaints.
10. Investigated and inspected the Hillside Quarry, located in the Village of Hillside, in response to complaints from nearby residents alleging impulsive noise emissions and damage to homes from ground vibrations due the blasting operations used in fracturing the rocks at the quarry. The quarry operators modified their blasting procedures using a sequential detonation process and agreed to use smaller charges and more bore holes. The quarry has been closed and the site is now a sanitary landfill. An electric generating plant burning landfill gas is currently in operation at the landfill. The generators, gas compressors and other ancillary equipment are enclosed in a building. The building is without a roof. The noise level inside the building was very noticeable and required hearing protection. Outside the building the noise level was barely audible.
11. Conducted a joint investigation and site inspection with the Cook County State's Attorney's Office in response to complaints of noise from the Vitran Express(formerly Overland Transportation) trucking terminal located in Palatine. See Board docket PCB 98-81. The record of the Board indicated that three expert witnesses testified on behalf of complainants - Greg Zak, Tom Thunder and Roger Harmon. The site inspection discovered that the truck terminal failed to implement the compliance program as required under the PCB 98-81 Board order. IEPA and the Attorney General's Office met with the terminal manager to determine the reason for noncompliance.
12. Testified as an expert witness for the State of Illinois in docket PCB 72-49 , Environmental Protection Agency v Harris and Company (located in Chicago Heights, Cook County). This was an air pollution enforcement case involving a brass and bronze foundry. All hearings were conducted at the John Marshall Law School by the late Professor Melvin B. Lewis, Board Hearing Officer. The report of the Hearing Officer contains the following statement:

“Accordingly, the Hearing Officer reports that Mr. Wolfson was substantially a less credible witness than Mr. Shinn.(misspelled) The Hearing Officer does not believe that Mr. Wolfson's testimony should be rejected in its entirety, but that any conflict between his and that of Mr. Shinn should be resolved in favor of Mr. Shinn.”

13. The Appellate Court of Illinois, First District, Fourth Division rendered an opinion that I was qualified to offer expert testimony in an enforcement proceeding before the circuit court of Cook County. See People v. Steelco, 22 Ill. App. 3d 582; 317 N. E. 2d 729 (1974). Based on the Steelco opinion, I have provided expert testimony in a number of other enforcement hearings before the Board and the Circuit Courts in Illinois. To wit:
- a. In 1977, I was assigned to assist in the litigation of an enforcement case against a hazardous chemical landfill own and operated by the Earthline Corporation located in the Village of Wilsonville in Macoupin County. The trial hearings lasted over a period of one year. The court ruled in favor of the plaintiffs and granted the relief that was requested in the complaint. The court ordered the defendants to exhume the waste buried in the trenches and restore the site to its original condition. The defendants appealed to the appellate court and then to the Illinois Supreme Court. In both cases the courts ruled against the defendants. The case demonstrates prospective nuisance because the pleadings alleged that the landfill would not contain the waste buried in the trenches as claimed by the defendant. The landfill was subsequently acquired by the SCA Services, and then Waste Management Inc. I coordinated the field investigation, conducted site inspections, collected numerous water samples, and coordinated the exploratory excavation of a mine subsidence fracture to disprove the defendants' claim that these fractures tend to heal over time. In addition, I provided testimony on the field investigations, diagramed the trenches depicting the locations of the drums and their contents, and pointed out the potential for commingling of incompatible chemicals. This case is part of a textbook being used in environmental law classes to teach nuisance. I have spoken to environmental law classes on this point.
 - b. I provided expert testimony in an air pollution enforcement case involving a facility located in the Village of Montgomery, Kane County. The facility received, stored and processed anhydrous ammonia into aqueous ammonia. Complaints from a nearby industrial facility resulted in an inspection by the IEPA and an enforcement referral to the Attorney General's Office. My expert testimony presented in the Kane County Circuit Court identified the deficiencies in the equipment and listed recommendations made to defendants to remediate those deficiencies.
 - c. I provided expert testimony in an enforcement case involving a tire grinding and storage facility located in the Village of North Aurora, Kane County. Dense black smoke from tire fires at that facility was visible many miles away. My expert testimony centered on the chemical composition of the emissions from tire fires and the propensity for re-ignition from spontaneous combustion of the oils that exude from the tires from the heat of the fire. My testimony provided the foundation for an IEPA toxicologist to testify on the potential adverse health effects from the emissions of fires involving the incomplete combustion of

rubber.

- d. Provided expert testimony in an enforcement case against Stonehedge, Inc., a de-icing salt storage facility alleged to have exceeded the maximum allowable on-site storage limit of 50,000 lbs. The expert testimony was based on mathematic calculations using estimated dimensions of an irregularly-shaped storage pile (provided by the Mc Henry County Health Department and the IEPA inspector) and the published data on the bulk density and angle of repose of de-icing salt to arrive at the approximate weight of the salt pile. The Mc Henry County circuit court certified me as an expert in Material Handling Engineering. The court and the defendants accepted the results of the calculations without challenge.
- e. Provided expert testimony in an odor nuisance enforcement case initiated by the Attorney General's Office involving a rubber mat manufacturer located in the Village of Genoa in De Kalb County. The De Kalb County court certified me as an environmental engineering expert and allowed my testimony to rebut the testimony of the defendant's consultant. The court found that the defendant, the Humane Manufacturing Company, was the source of the odors that caused an unreasonable interference in the surrounding neighborhood and issued a cease and desist order to stop the odors. The defendant ceased operations in Genoa and moved their manufacturing operations to another plant in Wisconsin. The defendant also paid a penalty to the State.
- f. Conducted a joint investigation and site inspection with the Cook County State's Attorney's Office in response to complaints of noise from the Vitran Express (formerly Overland Transportation) trucking terminal located in Palatine. This site was the subject of citizens' complaint before the Board. The Board issued an order in docket PCB 98-81 for Vitran Express to cease and desist from further violations of the Act and Board regulations and to implement an extensive and comprehensive compliance program to abate the noise from the operations of the terminal. The Board's record indicated that three expert witnesses testified on behalf of complainants; Greg Zak, Tom Thunder and Roger Harmon. A subsequent site inspection by the Attorney General's Office discovered that the truck terminal failed to implement the compliance program as required under the PCB 98-81 Board order. The Attorney General's Office subsequently determined that Vitran was re-locating its Palatine facility.

PRIVATE SECTOR PROFESSIONAL ENGINEERING EXPERIENCE

Vice-President of Sturm Engineers, Inc., Manager of the Mechanical Engineering Dept., and Engineering Project Manager.

Was responsible for the engineering design of the process equipment and systems at the Curtiss

Candy (Standard Brands) plant located in Franklin Park, Cook County. (now owned by Nestle)

Retained by the Kitchens of Sara Lee Bakery in Deerfield to trouble-shoot and correct design deficiencies in their automated bakery operations.

Retained by the Corn Products Company to design the expansion of their corn steeping plant in Kansas City, KS., and received many assignments to provide the engineering design services for their customers to install bulk storage and material handling systems for corn starch and corn sugar.

Retained by the Kellogg Company of Battle Creek, MI to provide the engineering services to design a new cereal plant in Memphis, TN.

Retained by the Masonite Corporation to investigate the cause of frequent fires and explosions in their board plant in Towanda, PA. Submitted a report detailing the cause and recommended changes to the process to mitigate the potential hazards.

CERTIFICATE OF SERVICE

I, JOEL J. STERNSTEIN, an Assistant Attorney General, certify that on the 10th day of March 2004, I caused to be served by First Class Mail the foregoing to the parties named on the attached service list, by depositing same in postage prepaid envelopes with the United States Postal Service located at 100 West Randolph Street, Chicago, Illinois 60601.



JOEL J. STERNSTEIN