

1 BEFORE THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
2 IN THE MATTER OF: PROPOSED)
3 ISSUANCE OF A STATE OPERATING)
 PERMIT FOR ORTEK, INC., MC COOK)

4

5 REPORT OF PROCEEDINGS taken at the
6 hearing of the above-entitled matter, held at
7 7801 Ogden Avenue, Lyons, Illinois, before
8 Hearing Officer William Seltzer, reported by
9 Janice H. Heinemann, CSR, RDR, CRR, a notary public
10 within and for the County of Du Page and State of
11 Illinois, on the 2nd day of May, 2001, commencing
12 at the hour of 7:00 p.m.

13

14 IEPA APPEARANCES:

15 MR. WILLIAM SELTZER, IEPA Hearing Officer;

16 MR. ROBB H. LAYMAN, Enforcement Attorney,
 Division of Legal Counsel;

17

18 MR. HARISH B. DESAI, PE, BOA, Unit Manager,
 Permit Section;

19 MS. TARA T. NGUYEN-EDE, BOA, Environmental
 Protection Engineer;

20

21 MR. GEORGE ORDIJA, PE, BOA, Environmental
 Protection Specialist,

22 MS. MICHELLE TEBRUGGE, Community Relations.

23

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1 HEARING OFFICER SELTZER: Good evening,
2 ladies and gentlemen. My name is Bill Seltzer.
3 I'm an attorney with the Environmental Protection
4 Agency, and I have been asked to be the hearing
5 officer for tonight's hearing, which regards the
6 proposal by Ortek, Inc., to revise its current
7 lifetime operating permit to incorporate a thermal
8 oxidizer into its process in McCook.

9 With me this evening are a number of
10 people from the Environmental Protection Agency.
11 We will start off by asking them to introduce
12 themselves. And then after that I'm going to ask
13 if there is anybody present representing the
14 applicant this evening. If there is, we will ask
15 them to introduce themselves. Following that, the
16 Agency will make a short presentation. And then I
17 understand the applicant may wish to make a short
18 presentation as will one of the elected officials.

19 We have asked you to sign registration
20 cards when you first come in. As long as everybody
21 signs a card, you will also receive a summary of
22 this entire process. A summary will be prepared
23 called a Responsiveness Summary. It will be
24 prepared sometime after the close of the record,

1 and everybody who supplies their name and address
2 will receive a copy of that document.

3 I will also use those cards in the
4 order in which you have come into the room to call
5 upon you to ask your questions or offer your
6 comments after the elected officials have given
7 their statements. I also understand there are some
8 firemen here this evening. They have an obligation
9 with regard to the duties as fire people, and so
10 they will follow early on in the evening.

11 At this time I will ask the members
12 that are present from the IEPA to introduce
13 themselves. Counsel, Robb, would you introduce
14 everybody, please.

15 MR. LAYMAN: Thank you, Bill. I think we
16 will just go right down the line. My name is Robb
17 Layman. I'm an enforcement attorney with the
18 Illinois Environmental Protection Agency, Division
19 of Legal Counsel.

20 MR. DESAI: My name is Harish Desai. I'm
21 from the permit section, division of air pollution.

22 MS. NGUYEN-EDE: My name is Tara
23 Nguyen-Ede. I'm also from the air permit section.

24 MR. LAYMAN: I should note we also have

1 present George Ordija, who is a field engineer for
2 our field operations.

3 MR. ORDIJA: Field operations out of
4 Des Plaines.

5 MR. LAYMAN: George may be chiming in from
6 time to time on any questions or answers that you
7 may feel appropriate. So feel free to ask him any
8 questions. He I think more than anyone else on the
9 panel has been -- more than anyone else on the
10 panel I think George has inspected the facility and
11 been present there throughout the last several
12 years.

13 HEARING OFFICER SELTZER: Thank you. Was
14 Michelle introduced for the record?

15 MS. TEBRUGGE: My name is Michelle
16 Tebrugge. I'm community relations coordinator for
17 the Illinois EPA. Brad Frost is usually the
18 community relations coordinator on this project, so
19 you probably have seen him more than you know my
20 name or my face but Brad is usually the contact
21 person.

22 HEARING OFFICER SELTZER: Thank you. I
23 would like to ask at this time if there is anybody
24 representing the applicant that is present. I would

1 ask that they stand and identify themselves, spell
2 their last name, please.

3 MR. LAPPIN: My name is Frank Lappin. I'm
4 the operations manager of Ortek.

5 HEARING OFFICER SELTZER: Thank you. I'm
6 going to ask also that when members of the audience
7 speak that they come up to the microphone over
8 there to my right.

9 Is there anybody else present from
10 the applicant this evening, or are you the sole
11 person representing the applicant?

12 MR. LAPPIN: Yes.

13 HEARING OFFICER SELTZER: We will begin now
14 by asking the IEPA to make its brief opening
15 remarks and then we will go from there.

16 MS. NGUYEN-EDE: Good evening, ladies and
17 gentlemen. My name again is Tara Nguyen-Ede. I am
18 an environmental protection engineer for the Permit
19 Section who is reviewing this permit. I just want
20 to thank all of you for coming here tonight and for
21 your interest in the environmental issues. I will
22 now be presenting a brief overview of the events
23 which has brought us together tonight.

24 The Ortek facility is located in the

1 Village of McCook and the operation is a
2 re-refinery plant. They basically accept used oil
3 and they utilize a distillation process to produce
4 a distillate lube oil and a distillation bottom.
5 The products are sold for feedstock to produce
6 gasoline and low sulfur fuel oils. The
7 distillation bottoms are used for the roofing and
8 asphalt industry. They also operate a wastewater
9 treatment plant with the oil/water separator.

10 Ortek currently has a lifetime permit
11 for the process equipment at the plant consisting
12 of the distillation towers controlled by a fume
13 incinerator, evaporators, wastewater treatment
14 system, and storage tanks. In August of 1998, they
15 received a construction permit from EPA for the
16 thermal oxidizer to replace the existing old fume
17 incinerator. This was done to more effectively
18 control the process gases, the vapors, and the
19 fumes from the wastewater treatment plant and the
20 distillation towers. Ortek is now applying for
21 revision to the current existing lifetime permit to
22 incorporate the thermal oxidizer.

23 The emissions of all the regulated
24 pollutants from the Ortek facility are below the

1 major source levels. All the emission sources in
2 Illinois must comply with the Illinois Pollution
3 Control Board emission standards at 35 Illinois
4 Administrative Code Subtitle B. The Ortek process
5 controlled by the thermal oxidizer is subject to a
6 specific rule, which is in section 218.302 for the
7 use of organic material in the re-refining process.
8 And also Section 218.141 for the use of organic
9 material in the wastewater in the water separator.
10 Pursuant to these regulations, the facility must
11 achieve at least an 85 percent reduction of VOM
12 emissions. A stack test was performed by Ortek,
13 and it did demonstrate a reduction of over
14 99 percent reduction of the VOM. The Board also
15 has standards for emissions of fuel combustion
16 emission sources. This process complies with all
17 of the applicable board standards.

18 MR. SULLIVAN: Excuse me. If you could --
19 D-O-M, where? What? Wait. We have no idea what
20 you are talking about, DOM, OEM.

21 HEARING OFFICER SELTZER: Let me interrupt
22 you for a minute, sir. Everybody is going to have
23 a chance to ask questions and make comments. And
24 if there is anything you don't understand, I wish

1 you would ask those questions. But we are going to
2 proceed in order this evening.

3 MR. SULLIVAN: She is talking to us, and we
4 have no -- not a clue what she's talking about.

5 HEARING OFFICER SELTZER: I understand.
6 We'll ask her to explain everything.

7 MR. SULLIVAN: What is DOM? What the --

8 HEARING OFFICER SELTZER: No. No. We are
9 going to wait until she is through. In an orderly
10 fashion, we will ask that everything be explained.

11 Please continue.

12 MS. NYUGEN-EDE: After the review of
13 application for the operator permit for the thermal
14 oxidizer, the EPA has made a determination that the
15 company's operations are in compliance with all
16 applicable state and federal regulations and has
17 prepared a draft permit of the revised lifetime
18 operating permit.

19 The conditions of the proposed permit
20 contain limitations and requirements that assure
21 that this facility will comply with all applicable
22 regulations. The permit sets limitations on the
23 amount of oil processed and the amount of natural
24 gas and fuel oil consumed. These limitations are

1 consistent with the capacity of the plant. The
2 permit conditions also establish appropriate
3 compliance procedures including inspection
4 practices, recordkeeping requirements, and
5 reporting requirements. The permittee must carry
6 out these procedures on an ongoing basis to
7 demonstrate that the facility is operating within
8 the limitations set by the permit and is properly
9 controlling emissions.

10 Due to the significant public interest
11 and concerns in this matter, the Director of the
12 Illinois EPA has decided to hold this public
13 hearing to give the citizens an opportunity to
14 become more familiar with operations of Ortek and
15 the environmental regulations governing them.

16 Hence, we are here tonight to receive
17 comments from the public on the draft permit and to
18 answer your questions. Thank you for your time and
19 attention.

20 HEARING OFFICER SELTZER: Okay. Thank you
21 very much. I'm going to go do something I don't
22 normally do, sir. I'm going to ask you to identify
23 yourself for the record. Would you come up here,
24 please, and identify yourself.

1 MR. SULLIVAN: My name is Robert Sullivan,
2 2520 Joliet Avenue, Lyons, Illinois. And you
3 started using initials which we have no idea what
4 you are talking about.

5 HEARING OFFICER SELTZER: Okay. What I'm
6 going to do is I'm going to ask you at this point
7 simply to limit any questions you have to having
8 her respond as far as defining or explaining any
9 terms that were used.

10 MR. SULLIVAN: What is DOM or DHM?

11 MS. NYUGEN-EDE: It's VOM, and that's
12 volatile organic material. It's a regulated
13 pollutant.

14 MR. SULLIVAN: What does to it mean to us?

15 MR. LAYMAN: It means it's one of the
16 pollutants that are emitted as part of Ortek's
17 manufacturing operations, and I think she
18 identified a few of the other pollutants that --

19 MR. SULLIVAN: And one more question. We
20 had this meeting two or three years ago.

21 MR. LAYMAN: Three years ago.

22 MR. SULLIVAN: How many here were on that
23 board at that meeting?

24 MR. LAYMAN: Yes. If I may explain. Tara

1 replaced Jim Cobb, who recently retired from the
2 Illinois Environmental Protection Agency for the
3 permit section. Jim I think accompanied both
4 Harish and I at the last permit hearing and
5 previously had all the experience pertaining to
6 Ortek's operation. Tara I think has been assigned
7 for probably five or six months now. I think she
8 is fully informed and capable of dealing with the
9 permitting matter that she has been assigned to.

10 Before I make just a few opening
11 remarks, there are a couple of extra seats over
12 here for the -- for those of you who are standing
13 or leaning against the wall, if you would be more
14 comfortable sitting down. Otherwise, just to let
15 you know.

16 As I indicated earlier, my name is
17 Robb Layman. I'm an enforcement attorney for the
18 Illinois EPA. I participated in the hearing that
19 took place three years ago on June 3, 1998, I
20 believe it was. This is an informational hearing
21 on the permit application, and it's very similar to
22 the type of public hearing that we held three years
23 ago.

24 At that time the Illinois EPA proposed

1 to issue a construction permit to Ortek to
2 construct, among other things, a new afterburner
3 for its waste oil process operation. The new
4 afterburner was constructed to replace an older
5 fume incinerator that had previously been permitted
6 and by nearly all accounts is expected to operate
7 at a better efficiency and yield more effective
8 results in terms of controlling odors from the
9 operation.

10 The Illinois EPA subsequently issued a
11 construction permit but denied the operating permit
12 for the afterburner until after such time that
13 emissions testing could be completed and analyzed.
14 This hearing is meant to address Ortek's
15 authorization or ability to operate the new
16 afterburner.

17 Having participated in this panel or
18 on this panel at the last hearing, I anticipate
19 that some of you tonight may wish to share your
20 concerns or anxieties about past or continuing
21 odors that may have been caused or allowed by the
22 company through past operation. During the last
23 hearing, we received numerous questions and
24 concerns about the existence of odors that occurred

1 on numerous occasions in 1997 and 1998. As many of
2 you know, those allegations resulted in the entry
3 of an agreed order between Ortek and the Cook
4 County State's Attorney's office in June of 1998.

5 Numerous questions also arose at the
6 last hearing about the Illinois EPA's enforcement
7 process and about what steps to be initiated in the
8 event that further odors were attributed to Ortek
9 at that time in the future. Because of that, I
10 expect that similar questions may be asked of this
11 panel tonight. And so as a result, I think it
12 might be helpful if we informed you at this time as
13 to what developments have occurred over the last
14 year that may not have necessarily been made a
15 matter of public knowledge.

16 In June of last year, the Illinois EPA
17 became aware of a series of incidents in which
18 Ortek was sited by local law enforcement or fire
19 department authorities for causing odors in
20 violation of local ordinance. These incidents
21 occurred on or about May the 21st, May 26th, May
22 the 30th, and June 27th of last year. Following an
23 investigation that was conducted by Mr. Ordija, our
24 field operation section, the Illinois EPA

1 determined that the frequency and the seriousness
2 of the odor complaints, together with certain
3 permitting discrepancies that were identified by
4 Mr. Ordija during the inspection, warranted the
5 initiation of the Illinois EPA's pre-enforcement
6 process that is a fairly codified and structured
7 pre-enforcement process under the Illinois
8 Environmental Protection Act. I should note that
9 there may have been other complaints about odors
10 since that time but not all of those complaints
11 have been attributed or complaints about odors have
12 been attributed to Ortek's operations.

13 Now, in accordance with the several
14 procedural requirements we have under statute that
15 we have to comply with, the Illinois EPA issued a
16 violation notice to Ortek on July 28th of 2000,
17 last year. The violation notice alleged, among
18 other things, that Ortek caused or allowed
19 unreasonable odors on the aforementioned dates and,
20 therefore, violated Section 9(a) of the
21 Environmental Protection Act. In addition, the
22 violation notice alleged that Ortek failed to
23 comply with certain permitting conditions of that
24 construction permit issued in 1998 including

1 failing to timely perform emissions testing within
2 45 days of start-up of the thermal oxidizer, as
3 well as operating the oxidizer beyond the permitted
4 180 days allowed for start-up under the
5 construction permit.

6 Ortek submitted a written response to
7 the violation notice to the Agency on
8 September 13th of the year 2000 and formally met
9 with representatives from the IEPA on
10 October 26, 2000. The Illinois EPA formally
11 rejected the company's proposed compliance
12 commitment agreement on December 17th of the year
13 2000 and issued a notice of intent to pursue legal
14 action to Ortek on January 31, 2001. Again, all of
15 that was necessary and brought about as a result of
16 a need, our intent to comply with Section 31,
17 Procedural Pre-enforcement Review Requirement of
18 the Environmental Protection Act.

19 Another meeting which was provided for
20 by the Act procedures has been held on March 14,
21 2001, just fairly recently. At this time the
22 Illinois EPA is finalizing a formal enforcement
23 referral that will likely be sent to the Illinois
24 Attorney General's office. As we have previously

1 discussed with the company, the Illinois EPA will
2 be recommending that Ortek consider the
3 implementation of compliance measures that will
4 eliminate or minimize odors that were documented in
5 May and June of last year. We will also be asking
6 that any such compliance measures be accompanied by
7 enforceable milestones or completion dates and that
8 the company pay a civil monetary penalty.

9 We have further envisioned that other
10 issues of concern to local authorities, as well as
11 I'm sure local residents, including the status of
12 the odor study, which was required by the agreed
13 order that was entered between Ortek and Cook
14 County State's Attorney's office will be discussed
15 or dealt with as part of this enforcement case.
16 The Attorney General's office frequently invites
17 local state's attorney's offices to join in or
18 participate in enforcement actions that are
19 initiated on behalf of the Illinois Environmental
20 Protection Agency, and given the Cook County and
21 the State's Attorney's past involvement with the
22 company took place in 1997 and 1998, it makes sense
23 that any remaining issues concerning that agreed
24 order be discussed, if not resolved, in conjunction

1 with this enforcement action.

2 I should note that Ortek has been
3 fully cooperative with the Illinois EPA during the
4 pre-enforcement process. The company had
5 eliminated one source of odors that had caused or
6 contributed to the June 27 incident occurring last
7 year, that being a heat exchanger that had been
8 used as an overhead -- or as part of an overhead
9 storage tank on that date in question. The company
10 together with the Illinois EPA's fuel operation
11 section, George Ordija in particular, has also
12 identified some steps that will, hopefully,
13 eliminate or reduce odors from the tank associated
14 with that incident.

15 Now, I mention all of this in passing,
16 again, simply for the benefit of everyone's
17 historical perspective. I will be glad to address
18 any questions you may have about the enforcement
19 action or about the enforcement process either
20 during the course of this hearing or during the
21 break, whichever you prefer. There may be some
22 things I would ask you to understand at this point
23 that I won't be able to discuss at this time so
24 that we don't divulge litigation strategy or

1 otherwise jeopardize settlement discussions that
2 will take place at some point in the future. I
3 would emphasize, though, that these considerations
4 relate only to enforcement and should not be
5 understood to reflect issues that are separate --
6 or they should be understood to reflect issues that
7 are separate and apart from the permitting action
8 that is the basis of this public hearing.

9 I believe that's all I have to say.

10 HEARING OFFICER SELTZER: Thank you,
11 Counsel.

12 One question which may arise, and you
13 just touched on it, I think explained it very well,
14 the question would be something along the order of
15 whether or not these past alleged violations have
16 any impact on whether or not the applicant receives
17 a permit or can file a valid permit application.

18 MR. LAYMAN: Right. That's your question?

19 HEARING OFFICER SELTZER: Well, I'm asking
20 you, Counsel. I will answer it, but --

21 MR. LAYMAN: Typically, no, they do not
22 unless we have -- Unless we are alleging in a
23 particular enforcement action that there is an
24 ongoing or continuing problem that violates either

1 the environmental protection statutes or the
2 Pollution Control Board's rules and regulations.
3 In this case, for all practical purposes, we have
4 proposed the issuance of a permit because at this
5 present time we do not believe there is a basis to
6 deny the permit, meaning there is not a basis to
7 find that there is an ongoing or continuing
8 violation. That's not to say that there wasn't a
9 violation that occurred back in May or June of last
10 year. That's why we are bringing the enforcement
11 action. That's why we are bringing the lawsuit.

12 But I think everyone needs to keep in
13 mind, and it's a subtle distinction but it's one
14 that both the Pollution Control Board and the
15 appellate courts in Illinois have made about what
16 the Illinois EPA's responsibilities are under the
17 Environmental Protection Act; and that is on the
18 one hand we have permitting responsibilities that
19 are governed by one standard; and that is, if the
20 facility in proposing whatever it is they are going
21 to do, are they going to be able to demonstrate
22 compliance prospectively and in the future; and the
23 separate responsibility is to enforce the laws or
24 the regulations that are in place.

1 And again, in this particular case, we
2 are not necessarily dealing with something that we
3 know is going to happen tomorrow, the next day, or
4 at any point in the future, although it may. But
5 what we do know from certainty, again, as a matter
6 of the enforcement case is that there were past
7 violations that were documented from May and
8 June of last year. And that's what we are dealing
9 with in that context. So there is not necessarily
10 an overlap between the two functions.

11 HEARING OFFICER SELTZER: Thank you much,
12 Counsel.

13 At this time I will ask if the
14 representative from Ortek wishes to make a
15 statement.

16 MR. LAPPIN: Thank you. Good evening. My
17 name is Frank Lappin, and I am the operations
18 manager at Ortek. For those in attendance tonight
19 who are not aware of what our facility does, please
20 allow me a few minutes to explain our process.
21 Ortek is a nonhazardous used oil re-refinery that
22 utilizes proprietary distillation technology to
23 produce lubricating base oils from crankcase oils,
24 used oils generated daily by people just like us.

1 The re-refined base oils are blended with various
2 additives to produce passenger car motor oils,
3 hydraulic oils, transmission fluids, and other
4 finished lubricants. Through the company's
5 recycling program, America can reduce both the
6 drilling of its offshore coast and its dependence
7 on foreign oil. Oil re-refining at this site has
8 been ongoing since the 1930's.

9 We are here tonight to receive
10 comments and answer questions regarding Ortek's
11 application for an operating permit for our thermal
12 oxidizer. The approval of this permit has been
13 delayed pending this hearing.

14 On June 3, 1998, many of you may have
15 been here in this very room to discuss Ortek's
16 permit application to install the thermal oxidizer
17 and a lube oil hydrotreater. The recently
18 installed thermal oxidizer was designed to replace
19 Ortek's original waste fume incinerator.

20 On August 7, 1998, Ortek received
21 permission to construct the thermal oxidizer from
22 the Illinois EPA. Following this, on September 28,
23 1998, Ortek received an installation permit from
24 the Cook County Department of Environmental

1 Control. Remediation or a soil cleanup in the area
2 of the construction began several days later so
3 that the new installation would not lie on impacted
4 soil. As a result of the age of the facility and,
5 as many of you are aware, operations by previous
6 owners left sections of the facility with oil-
7 contaminated soil. Ortek over the course of the
8 past few years has been working to address this
9 problem. We are pleased to report that as of the
10 date of this hearing over half of the facility has
11 been remediated and the Illinois EPA has issued a
12 clean closure letter for a significant portion of
13 the site. I would like to note that during our
14 last public hearing on June 3, 1998, Ortek having
15 only owned the facility for six months had already
16 voluntary entered the Illinois EPA's site
17 remediation program. Under this IEPA program and
18 during the course of the past three years, Ortek
19 has successfully cleaned over half the facility.

20 Following completion of remediation in
21 the area of the thermal oxidizer Ortek worked from
22 late fall of 1998 through the summer of 1999 on the
23 physical installation of the thermal oxidizer.
24 Finally, on September 9, 1999, Ortek notified the

1 Cook County Department of Environmental Control
2 that the installation of the thermal oxidizer had
3 been completed.

4 On September 19, 2000, operating at
5 conditions that were representative of maximum
6 performance for the refinery, the emissions from
7 the thermal oxidizer, thermal oxidizer, was
8 measured by an approved independent emission
9 testing firm. Stack testing, as it is called,
10 measures various parameters of the waste gas and
11 emissions of the thermal oxidizer. One of the main
12 parameters tested was volatile organic matter
13 generally referred to as VOM. VOM input to the
14 thermal oxidizer was measured and compared to
15 resulting VOM stack emissions. This comparison is
16 known as destruction efficiency or simply the
17 efficiency of the thermal oxidizer.

18 As stipulated by the Illinois EPA,
19 requirements called for a minimum of 85 percent
20 destruction efficiency. In Ortek's case,
21 independent testing certified Ortek's destruction
22 efficiency to be greater than 98 percent.

23 In closing, Ortek would like to
24 summarize that in the three years of the site

1 ownership we have remediated over one half of the
2 facility addressing problems that dated back to the
3 1930's. We have invested considerable time and
4 resources into the study and installation of
5 state-of-the-art air pollution equipment. And such
6 work continues today and will continue into the
7 future. As an example of this, Ortek has recently
8 contracted that an odor evaluation be conducted at
9 our facility. The goal of this evaluation will
10 help to identify any potential remaining emissions
11 since installation of the thermal oxidizer and
12 comment on how such emissions can be controlled.
13 An independent engineering firm specializing in
14 odor evaluation will also conduct this evaluation.

15 Also, the Illinois EPA representative
16 mentioned another emission source that was
17 identified as a possible emission source by their
18 field representative George Ordija. Ortek plans to
19 reduce emissions from this tank by installing a
20 combination conservation vent along with a
21 granulated activated carbon bed to capture any and
22 all emissions from this tank that was discussed
23 earlier in the meeting.

24 Finally, it is our humble opinion that

1 during the past three years or since the time of
2 the last public hearing Ortek has made considerable
3 progress towards emission control and plant
4 modernization. We would hope that those people who
5 have lived here more than three years and that are
6 familiar with the site would agree with us on this
7 view.

8 Ortek desires to cooperate with the
9 Illinois EPA and the surrounding communities in an
10 effort to become a better neighbor. We will
11 continue to work towards this goal. We wish to
12 thank you for this opportunity to talk here
13 tonight, and Ortek would like to extend an open
14 invitation to anyone that would like to tour our
15 facility. Thank you very much.

16 HEARING OFFICER SELTZER: Thank you for
17 your presentation. I wonder if you would, if you
18 will, supply a copy of your written presentation to
19 the court reporter. It will be helpful.

20 MR. LAPPIN: Yes, sir.

21 HEARING OFFICER SELTZER: We will go on now
22 to the questions and comments from the general
23 audience.

24 Yes, sir.

1 MR. TURLEK: Mr. Lappin, did you make
2 your --

3 HEARING OFFICER SELTZER: Sir, sir, you
4 just want to ask questions now of the gentleman?

5 MR. TURLEK: Yes.

6 HEARING OFFICER SELTZER: You will have
7 your turn to ask questions, but it's not now.

8 MR. TURLEK: You said you are going to have
9 questions.

10 HEARING OFFICER SELTZER: Right. I'm going
11 to call upon people, and one at a time they will
12 ask questions.

13 MR. TURLEK: That's what I put my hand up
14 for.

15 HEARING OFFICER SELTZER: Did you fill out
16 a card, sir?

17 MR. TURLEK: Am I not understanding you, or
18 are you not understanding me?

19 HEARING OFFICER SELTZER: Did you fill out
20 a card like this, sir?

21 MR. TURLEK: Yes.

22 HEARING OFFICER SELTZER: Okay. I'm going
23 to call your name.

24 MR. TURLEK: You said to ask questions.

1 I'm asking questions.

2 HEARING OFFICER SELTZER: I'm going to call
3 your name from this card in the order in which
4 people signed the card.

5 MR. TURLEK: Oh, come on, you now damn well
6 questions are fresh in a person's mind after
7 somebody has spoken. You want me to have a
8 secretary here, say, "Hey, would you make sure I
9 ask these questions"?

10 HEARING OFFICER SELTZER: Well, you raise a
11 point that I will address right now. And the point
12 is this that you are raising, I understand what you
13 are saying, tonight's proceeding is going to be
14 recorded in a transcript. That -- Let me finish,
15 sir, please. That transcript is going to be put on
16 the Internet, the Agency's web site. Anybody that
17 wishes a copy we can e-mail you a copy.

18 MR. TURLEK: I don't care about your web
19 site.

20 HEARING OFFICER SELTZER: The record of
21 this proceeding will stay open for a period of time
22 after tonight's hearing. We are going to welcome
23 your written comments. All that will be considered
24 by the permit people in making their decision.

1 Now, sir, we are going to have an
2 orderly proceeding tonight, so I'm going to ask you
3 to sit down.

4 MR. TURLEK: Will you give me one comment
5 to you?

6 HEARING OFFICER SELTZER: No.

7 MR. TURLEK: On January 3 the hearing
8 officer allowed us to ask questions of Mr. Lappin.
9 You are denying us. Why?

10 HEARING OFFICER SELTZER: Sir, you are just
11 taking up our time. We are not going to proceed
12 until you sit down and let me proceed in an orderly
13 way.

14 MR. TURLEK: Sir, I want to make sure you
15 make a note of this. I take exception to the way
16 this meeting is being conducted. I am making a
17 statement here that the hearing officer seems to be
18 favoring Mr. Lappin and questions that may arise
19 that are in people's minds now. Please state that.

20 HEARING OFFICER SELTZER: Okay. At this
21 time the first people we will call upon are, first
22 of all, the elected officials. And we have
23 Mr. Benedik. Am I pronouncing it correctly?

24 MR. BENEDIK: Yes.

1 HEARING OFFICER SELTZER: Would you stand
2 up, please, identify yourself.

3 MR. BENEDIK: Good evening, everyone. The
4 name is Gary Benedik, trustee in the Village of
5 Lyons here.

6 I understand the semblance that you
7 are trying to take here. I was wondering if I can
8 concede this time right now to Mike Turlek prior to
9 my statement.

10 MR. TURLEK: Thank you.

11 HEARING OFFICER SELTZER: Sure. Sir, I'm
12 going to ask that you come up to the microphone.

13 MR. TURLEK: Oh, sure.

14 HEARING OFFICER SELTZER: And identify
15 yourself and spell your last name, please.

16 MR. TURLEK: My name is Mike Turlek. I
17 live at 4603 Custer Avenue, Village of Lyons. Now,
18 I'm going to use this to make questions. I have a
19 presentation.

20 Mr. Lappin, on your reports that you
21 made to the Cook County Department of Environmental
22 Enforcement every two months, did you make those
23 reports?

24 HEARING OFFICER SELTZER: Sir, I'm going to

1 interrupt you again. I'm sorry to do this, but I'm
2 going to explain what the purpose of this evening's
3 hearing is and that is for the people from the
4 audience to ask questions or make comments to the
5 Agency so the Agency can use that in making their
6 permit decision.

7 MR. TURLEK: Then you are the first
8 hearing officer --

9 HEARING OFFICER SELTZER: Now, if, in fact,
10 the applicant who is present tonight wishes to
11 answer the questions, he may do so; but he is not
12 under an obligation to do so.

13 So I will ask at this time, sir, if
14 you are willing to answer the questions that will
15 be asked of you.

16 MR. LAPPIN: I have no problem answering
17 any of the questions asked.

18 MR. TURLEK: Okay. Did you make those
19 reports every two months?

20 MR. LAPPIN: I'm sorry. Could you state
21 that again?

22 MR. TURLEK: Did you make the reports that
23 were required by the Cook County Department of
24 Environmental Enforcement Control? You were to

1 make reports every two months on updating your
2 progress.

3 MR. LAPPIN: I believe all the progress
4 reports were submitted to the Cook County
5 Department of Environmental --

6 MR. TURLEK: Okay. In the progress reports
7 did you indicate that you had failed to implement
8 the use of the odor analyzer as a part of the
9 agreed order?

10 MR. LAPPIN: No.

11 MR. TURLEK: In the report, did you
12 indicate that you had failed to conduct the odor
13 analysis?

14 MR. LAPPIN: I would have to -- You would
15 have to be more specific in --

16 MR. TURLEK: The odor analysis, the site
17 odor analysis.

18 MR. LAPPIN: We do biweekly analysis.

19 MR. TURLEK: No. No. Wait, wait, wait.

20 MR. LAPPIN: If that's what you are talking
21 about.

22 MR. TURLEK: First I'm talking about the
23 odor analysis that you were to make by an outside
24 firm of the whole site.

1 MR. LAPPIN: I believe I addressed that in
2 my speech stating that we have contracted with a
3 company.

4 MR. TURLEK: But did you say in your update
5 that it was made or not made?

6 MR. LAPPIN: I did say in my address to the
7 community here that we have --

8 MR. TURLEK: But did you say --

9 HEARING OFFICER SELTZER: Excuse me, sir.
10 Would you please let him answer? You are asking
11 questions, now give him a chance to answer the
12 question.

13 MR. TURLEK: Oh, sure, certainly.
14 Certainly.

15 MR. LAPPIN: To respond to Mr. Turlek's
16 question, I believe that we did respond that we had
17 contracted with an odor evaluation firm to do an
18 odor evaluation at Ortek.

19 MR. TURLEK: Would I be safe in saying that
20 you did not include that in your update report that
21 you failed to have that accommodation made during
22 the course of your update reports?

23 MR. LAPPIN: No. Because the odor
24 evaluation was not to be made or was to be made

1 within a year of the completion --

2 MR. TURLEK: Was it made?

3 MR. LAPPIN: -- of the thermal oxidizer.

4 MR. TURLEK: Was it made?

5 MR. LAPPIN: We had asked for an extension,
6 yes.

7 MR. TURLEK: Do you have a copy of the
8 request for the extension?

9 MR. LAPPIN: I do not have a copy, but I
10 can certainly produce the copy --

11 MR. TURLEK: When was it made?

12 MR. LAPPIN: -- if that would be --

13 MR. TURLEK: When was it made before
14 Mr. Ordija's inspection?

15 MR. LAPPIN: I can't answer that without
16 looking at my files.

17 MR. TURLEK: You don't want to answer it,
18 sir. Let's cut the crap. Thank you.

19 MR. LAPPIN: I really need -- I really
20 need to --

21 HEARING OFFICER SELTZER: Go off the
22 record.

23 (Discussion outside the record.)

24 MR. TURLEK: I have one more question for

1 you. In June of 1998 and in July of 1998 you sent
2 letters to, one, Mr. Williams of the IEPA and, two,
3 to Mr. Cobb of the IEPA stating that although you
4 didn't agree you were going to do your biweekly
5 odor analysis. Now, you just said you were doing
6 that. Then Mr. Loquercio or Mr. Lagges seems to
7 disagree with you Because I have a letter, which
8 will be presented tonight, where Mr. Lagges says to
9 the Mayor of McCook, "Unfortunately, they did not
10 perform this analysis and keep the records they
11 were supposed to."

12 MR. LAPPIN: That is absolutely totally
13 incorrect because I can produce -- I believe I can
14 produce our odor evaluations for since we signed
15 the order with the Cook County Department of
16 Environmental Control. And I believe I can produce
17 those to Mr. Turlek and any time that he wants, and
18 I really object to the manner of the questioning
19 because I'm trying to answer his question. And I
20 can tell you that we have been doing biweekly gas
21 testing in accordance with the agreed order that
22 was entered with the Cook County Department of
23 Environmental Control in 1998. We have been doing
24 that for since 1998, continued to do that in the

1 refinery on a biweekly basis. We also, besides the
2 monitoring on a biweekly basis, we also have a leak
3 protection. We look for leaks and things of that
4 nature.

5 MR. TURLEK: You have been doing this?

6 MR. LAPPIN: Yes.

7 MR. TURLEK: Why would Mr. Lagges say it
8 wasn't done?

9 MR. LAPPIN: I couldn't begin to tell you.
10 You would have to ask Dr. Franik, and he's in the
11 back room. And you would have to ask him, because
12 I'm sure if I ask Dr. Franik if he had any
13 knowledge that we weren't doing this --

14 Dr. Franik, am I correct?

15 HEARING OFFICER SELTZER: No, no, no.
16 Okay. That's enough. Sir, you said you had one
17 more question. You will have your chance later.
18 We are going to go on now.

19 MR. TURLEK: Go ahead.

20 HEARING OFFICER SELTZER: Mr. Benedik.

21 MR. BENEDIK: Thank you. Benedik, trustee
22 of the Village and liaison to the environmental
23 quality program.

24 Mr. Lappin, one question, I would like

1 you to let the audience know how long you have been
2 operation manager at the site and aboard at the
3 site.

4 MR. LAPPIN: I was hired by Motorola
5 Refining Company as a young engineer in December of
6 1976, and I have been with the facility since. I
7 operated as a plant engineer from 1976 to
8 approximately 1985 when I became the plant manager.

9 MR. BENEDIK: We heard your explanation of
10 the odor analysis. I'm going to go through the
11 court order. And at the time of the writing and I
12 think the IEPA just received the memo March 13th of
13 this year on your analysis so I just want to let
14 everybody know it didn't happen two years ago or
15 three years ago, it happened this year when they
16 received information.

17 But the court order, first of all, on
18 June 16, 1999, Ortek of McCook entered into an
19 agreed order with Cook County Department of
20 Environmental -- and I'm just going to say CCDEC
21 for Cook County Environmental -- Environmental
22 Commission from now on just to shorten the
23 speech -- but they were to install a thermal
24 oxidizer as a measure for a more complete burn of

1 process gases and odor control.

2 But you know, odor problems have
3 plagued our residents for decades here. The court
4 order contained four major requirements; the
5 installation of the thermal oxidizer, which was
6 completed at the time; the utilization of portable
7 odor analyzers and biweekly tests; and the
8 maintenance records of these tests during the
9 construction period for detection of leaks and odor
10 problems were not done. They were -- Ortek
11 failed to comply on this. One year after start-up
12 of the thermal oxidizer Ortek was to use an outside
13 firm and conduct a complete -- a site odor
14 analysis. This was not done. Ortek failed to
15 comply. And No. 4, Ortek was to provide CCDEC, Cook
16 County, with progress completion reports every two
17 months. Ortek failed to comply.

18 Now, Ortek apparently and deliberately
19 willfully chose to disregard three out of these
20 four major requirements of the Cook County's court
21 order. We saw nothing in recent communications of
22 any citations issued or intent to pursue to the
23 State's Attorney's office. In fact, the McCook
24 letter states that McCook agrees with Cook County

1 Department of Environmental Control that the
2 outside firm site odor analysis is not necessary.
3 We totally and emphatically disagree with Cook
4 County. As will be seen, Ortek has done nothing to
5 help locate and determine odor problems which
6 McCook states occur when oil is transferred from
7 one tank to another.

8 We urge Mr. Lagges to fully enforce
9 their agreed order, which occurred when Cook County
10 verified Lyons residents' complaints. The evidence
11 for need of the site odor analysis is there and,
12 hopefully, they will be continued.

13 The possibility is very frightening.
14 But if it were not for the persistent efforts of
15 Lyons residents to notify authorities of obnoxious
16 odors including the June 2000 release and the
17 subsequent IEPA site inspections, Ortek's
18 violations may not have surfaced. And they may to
19 this point or later have applied for the thermal
20 oxidizer operating permit. The operator permit,
21 the application of, is on the onus -- it should be
22 on the applicant's. The IEPA in August of '98
23 construction permit itemizes very clearly six major
24 special conditions; the thermal oxidizer, which was

1 complied; equip the thermal oxidizer with
2 minute-to-minute temperature recorder, that was not
3 done; continue to utilize odor analyzer for
4 biweekly tests and maintain records, that was not
5 done; construction permit allowed for 100 days of
6 operation for start-up, that wasn't done; conduct
7 specific pollutant emission tests within 45 days of
8 start-up, that was not completed; and No. 6, Ortek
9 shall comply with all provisions of the Cook County
10 court order. And you heard me earlier state that
11 only three -- only one out of the four conditions
12 were met.

13 Ortek willfully and deliberately
14 failed to comply with five of the six special
15 conditions and three out of the four major
16 provisions of Cook County's agreed order. Ortek's
17 deliberate actions raise serious concerns and
18 questions as to their integrity and credibility.
19 This further shows itself in Robb Layman's
20 conversation with Mr. Turlek during the course of
21 application for the IEPA operating permit. Ortek's
22 plant manager, Mr. Lappin, stated that Ortek's last
23 two citations for odor complaints were dismissed.

24 Lyons has been contacting the Village

1 of McCook when odor complaints are recorded. Prior
2 to that time Lt. Wolf of the McCook Police
3 Department notified Chief Nord of the Lyons Fire
4 Department that Ortek was, indeed, cited. They
5 were dismissed. These citations were dismissed.
6 The Village of McCook had failed to notify any of
7 the Lyons officials of the issuance of the citation
8 or the hearing dates. As such, we could not
9 appear. We suggest Mr. Lappin supply the IEPA with
10 a record of those particular dismissals.

11 We also suggest the IEPA look very
12 carefully at prior and future Ortek project updates
13 and/or reports that are taken at face value. For
14 further reason, I personally was at an Ortek site
15 tour for the Lyons EQCC back in April of 1998. We
16 were told of a voluntary clean-up program and that
17 soil contamination per IEPA plants did not exceed
18 five feet because the facility is on bedrock. Yet,
19 I am advised that Greg Dunn, IEPA geologist who
20 conducted soil tests back in January of '93,
21 reported contamination up to 18 feet in depth, oil
22 spots, and three PCP contaminations on site.

23 Lyons has requested the continued
24 utilization of odor analyzers for biweekly site

1 inspections. It was the only way that we could
2 determine any continual efforts by Ortek.
3 Perimeter odor detectors would be useless. Ortek
4 could dismiss responsibility by stating "not our
5 odor." Ongoing efforts and true, believable data
6 would be meaningful. We ask the IEPA and Cook
7 County to take the full measures required to
8 enforce compliance with provisions that Ortek has
9 refused to comply with.

10 In closing, the fine residents of
11 Lyons have endured years of hardships due to the
12 Ortek facility. The residents deserve a healthy
13 environment in which to live. The Village of Lyons
14 in good faith with those residents cannot agree to
15 the issuance of an operating permit. The audacity
16 of Ortek's most recent antics and their prior
17 record of noncompliance clearly suggests the
18 facility be shut down or face severe court actions
19 and penalties.

20 Thank you for your time.

21 HEARING OFFICER SELTZER: Thank you.
22 Before we started this evening, we had a
23 conversation and you gave me I think prepared
24 testimony along with some attachments.

1 (Document marked as Exhibit No. 1
2 for identification as of 5/2/01.)

3 HEARING OFFICER SELTZER: We have marked
4 that as Exhibit No. 1 and that entire exhibit now
5 is part of the record.

6 (Document marked as Exhibit No. 2
7 for identification as of 5/2/01.)

8 HEARING OFFICER SELTZER: At this time I'm
9 going to introduce Exhibit 2 into the record.
10 Exhibit 2 is a letter from the Village of McCook
11 signed by Mayor Emil Sergo. It reads as follows:
12 "The Village of McCook is opposed to the issuance
13 of any permits for the Ortek, Inc. facility until
14 such time as Ortek, Inc. operates their facility in
15 compliance with the Illinois Cook County and McCook
16 pollution control standards. The Ortek facility is
17 a constant source of odor emission complaints, and
18 these complaints need to be addressed before
19 additional processes are added to this facility."
20 Very truly yours.

21 Now, I'm going to go to the cards;
22 but before I do that I understand we have some
23 gentlemen here from the fire department that have
24 to have some other obligations. So do you want to

1 come forward and state your name for the record,
2 spell your last name.

3 MR. NORD: Gordon J. Nord, Jr. I'm
4 speaking on behalf of the Lyons Fire Department and
5 some of the concerns that we faced over the years
6 with the Ortek facility. Most residents in the
7 village are well aware of the natural gas type odor
8 that we get periodically from that area. I want to
9 explain some of the impact that it puts on our
10 department. Every one of these calls we get an
11 odor complaint requires us to go to the site and
12 meter the air. Okay? If we get an odor complaint
13 in the 7700 block of 47th Street, we will go there,
14 meter the air, and try to find out the source of
15 where it's coming from. This is not always easy.
16 You have to take into consideration wind direction
17 and many other reports that we get throughout the
18 village.

19 Very seldom do we get one report in
20 one location. We usually get a systematic
21 reporting from the point of release in our village
22 as it goes through our town with the wind direction
23 that is in effect that day. Every time we do this
24 we have to check out every call. So if we get a

1 call at 7700 47th, the first engine is committed
2 there. If we get a subsequent call, for example,
3 at Prescott and 66th, we have to send another
4 vehicle there. If we get one now in Joliet and
5 Ogden, we have to send another one there. We don't
6 have an unlimited fire department. We don't have
7 unlimited resources. This ties up our fire
8 department. It's a very serious situation.

9 The second concern that we have --
10 And we have been receiving cooperation with the
11 Village of McCook. When we do notice that the odor
12 may be coming from this location, we always request
13 a representative of McCook to come to the place to
14 meet with us. This is not in our village, so it's
15 hard for us to do anything else other than get the
16 village that we believe the source is coming from
17 involved in. So that's another problem we have.

18 The third concern I have, and this is
19 a very serious one, for years everyone has smelled
20 this natural gas type odor in that area. God
21 forbid there is an actual leak because people
22 aren't going to call on it. That's a big concern
23 that we have.

24 Our fourth concern is the amount of

1 wear and tear on our vehicles and the impact
2 financially on our village with the payment that we
3 have to make for our personnel to be responding to
4 these calls. Every time we receive this call, it's
5 an emergency call. We can't go, well, you know, we
6 get this gas complaint and this odor complaint
7 here, we are going to take these other calls not as
8 an emergency. We don't do that. We treat every
9 call as an emergency. So every time we are out
10 there our personnel are risking their lives about
11 the situation.

12 So the only thing I ask in closing --
13 and I hope I have given everybody a little bit of a
14 background of what we face with these odor
15 problems -- is please take into consideration
16 everything we have said and the impact it has on
17 our village and fire department and do whatever you
18 can to help minimize that. And you know my
19 feelings, I have met with you many times over the
20 years, sir. But thank you for your time.

21 HEARING OFFICER SELTZER: Thank you.

22 Elliot Nesvig.

23 MR. NESVIG: I would like to pass.

24 HEARING OFFICER SELTZER: Paul Mayerhofer.

1 MR. PAUL MAYERHOFER: Currently I'm
2 chairman of the Environmental Quality Control
3 Commission here in Lyons. Actually I have been
4 more on air for the last two years. And the reason
5 I actually joined the committee was when I moved
6 back to Lyons Ortek was putting out their natural
7 gas oily type odor, and at that time they used to
8 do it at about 11 o'clock on a Sunday night. And
9 you would go to sleep at 11:00 with your windows
10 open, and you would wake up about 1:00, 1:30 with
11 like an oil flavor in your throat. And at that
12 point there was a commission and I came in to one
13 of their meetings, and then eventually I got
14 involved. And at this present time I'm now
15 chairman of the committee.

16 Ortek has been -- Just like Gary and
17 Chief Nord was saying, there has been numerous
18 violations besides the few that have been mentioned
19 on a few dates. Lyons takes the calls. And I urge
20 any residents in here if you have any odor
21 complaints to call your police department because
22 they do get documented. So there is a lot more
23 odor citations from Ortek that we have that I hope
24 have made it to the EPA.

1 And then I would like to go back to
2 the 5-26 complaint. And this is a McCook Police
3 Department narrative. Actually this complaint that
4 day involved Robinson School, Washington School,
5 RB High School, St. Hughes. So all these different
6 schools called their either fire department or
7 police department because of the odor or the
8 natural gas smell. I'm just going to read you this
9 narrative. "Lyons fire units investigating a smell
10 of natural gas requested one of our units to meet
11 them at Ortek on 47th Street. The fire department
12 advised that they were called and were responding.
13 Upon arrival an oily type odor was detected outside
14 Ortek."

15 So this time it wasn't natural gas, it
16 was an oily type odor. "Fire department advised
17 that we are going to do a walking tour of the plant
18 to determine what was causing the odor. At 1030
19 hours Fire Chief Myrick advised that Ortek was
20 running a Maguel thermal oxidizer and that its
21 attempt to burn off gases between 1412 and 1450
22 degrees. Fire Chief Myrick advised that the
23 oxidizer could have cooled somewhat as the
24 temperature was at 412 when it was tested, thus

1 resulting in the excess gas not being burnt off."

2 Now, a citation was issued to Frank
3 Lappin of Ortek. I got some chapter titles,
4 section. "And it caused the emission into the open
5 air of offensive smells and odors thereby
6 committing a nuisance." Now, they were ticketed
7 for that.

8 Now, that had nothing to do with their
9 thermal oxidizer that they installed. Am I right?
10 That was some kind of transfer.

11 MR. LAPPIN: No. That was on -- I believe
12 the transfer that we had admitted to was in June,
13 I believe, 26.

14 MR. PAUL MAYERHOFER: Yes. This is
15 June 26.

16 MR. LAPPIN: Oh, you are speaking of
17 June the 26th?

18 MR. PAUL MAYERHOFER: Right.

19 MR. LAPPIN: Yes. That was the date of the
20 transfer.

21 MR. PAUL MAYERHOFER: So that was not from
22 your thermal oxidizer that you received a permit to
23 build, that was a whole other kind of transfer that
24 you do and these gases were let out and they

1 permeated through our village all the way to RB.

2 I would like to know if the EPA could
3 tell us what was in them gases and what harm our
4 children were in in the school.

5 That wasn't even being protected
6 through your oxidizer. And I would like to know if
7 you could tell us what you are doing about that
8 kind of release. Because I know there is other
9 releases besides your thermal oxidizer that is
10 supposed to be cleaning up your way of doing
11 business. So that's from 5-26. And that's a
12 concern that this went through the schools in our
13 neighborhood, and we still don't even know what it
14 was.

15 And then this is the other one that
16 really was upsetting. And this was on 6-27-2000.
17 And this is from the Lyons Police Department,
18 "Numerous callers on emergency and nonemergency
19 report a gas odor in the area." It says "CO Pruski
20 contacted the fire department via ringdown and they
21 request a tone out to investigate. Lyons 1301,
22 1311 report. The area checks clear of any natural
23 gas, and the origin seems to be Ortek on 47th
24 Street. McCook Fire Department was advised and

1 enroute. Lyons 1301 request that the IEPA be
2 contacted. Commanding officer reports Angela Tin
3 from the IEPA was advised of the situation and will
4 forward the information. Lyons reports incident
5 turned over to McCook on the scene at 2318 hours.
6 Fire department advises that they will be checking
7 on a subject at 7921 46th Street who was very
8 nervous and concerned about the odor."

9 Now, at that time there was a lot of
10 people very concerned about the odor. I knew where
11 it was coming from. So I went over to Forest Lanes
12 and I seen the officer at -- it might have been,
13 yes, Charlie Wright and Chief Nord was there. And
14 I was talking to them. And this gentleman walked
15 up and nervous isn't what you could even express
16 what he had on his face. He was just -- He didn't
17 know what to do with his wife. He was very, very
18 upset. And the whole thing, this night, it wasn't
19 a natural gas odor. This was some kind of oil,
20 sludge-type odor that me knowing all the odors that
21 are around here, I could never even -- I never
22 detected this one from Ortek before. So I don't
23 know if you can in the record tell us exactly what
24 happened that night. But that odor would not leave

1 our house for three hours with our windows open.

2 And that night -- Let me just finish
3 this. I just wanted to stop there because that
4 man's look in his eyes of terror when he arrived
5 at -- to talk to the police was just something to
6 see.

7 "Fire department advises they will be
8 checking on the subject." Okay. Okay. "At 2400
9 hours Brookfield Fire Department inquired in our
10 response as they are now receiving numerous calls
11 of the odor in Brookfield. CO continued to receive
12 calls about the odor, and they were advised as to
13 the source and that the IEPA had been contacted.
14 Paul Mayerhofer," which is me, "called back to
15 report he contacted the environmental crimes and
16 they request someone from the fire or police
17 department to contact them as they wouldn't respond
18 based on a private citizen's complaint. So the
19 commanding officer advised Chief Nord, who said it
20 wouldn't hurt to advise them of this situation and
21 request that we contact the Cook County EPA.
22 Commanding officer reports Environmental Crimes was
23 advised, no answer was received from the number we
24 have listed for the Cook County EPA. Commanding

1 officer contacted Pleasantview Fire Department that
2 they have the Cook County air pollution number,
3 which no one answered either that night."

4 There are just a list of names of
5 people on here that called. But that night my wife
6 was -- And we've experienced a natural gas, we
7 lived through the oil that smells like somebody is
8 burning oil in their house. But this night was
9 just -- It was -- It's indescribable. And it was
10 a coincidence, I talked to a lady the next day
11 about this. And because it -- What happened was
12 in the morning when you got in your vehicle with
13 your windows closed it was till in your vehicle at
14 7 o'clock in the morning.

15 And somebody from the other side of
16 town actually thought it was her husband that had
17 some bad boots in the car. So I hope you can tell
18 us exactly what happened that night. And this had
19 nothing to do with the thermal oxidizer either.
20 It's just -- I would like to see -- I just -- It
21 seems like there is so many empty promises. And I
22 just hope that if you are going to issue Ortek a
23 permit -- and I strongly am against it -- but if
24 for any reason it is, I think it should be done

1 with some kind of provisions that Ortek is
2 monitored like on a probation for the next couple
3 years and don't give them the world because I think
4 they are a company that really needs to be watched
5 by the EPA. Thank you.

6 HEARING OFFICER SELTZER: Thank you,
7 Mr. Mayerhofer.

8 In a little while we will take a short
9 five-minute recess. At the beginning of the
10 hearing this evening counsel for the EPA explained,
11 gave the audience some information concerning
12 enforcement actions that have been taken against
13 the applicant. And I'm going to ask -- First let
14 me explain that in making its permit decision the
15 Environmental Protection Agency is limited to a
16 certain box, and that box is set forth in a statute
17 called the Environmental Protection Act and also in
18 regulations that were adopted by a sister agency
19 called the Pollution Control Board.

20 Those regulations were adopted
21 pursuant to authority granted in the statute that
22 is the Environmental Protection Act. In making its
23 permit decision, the Agency must in following the
24 law look to those regulations and to the statute,

1 compare that to the application, and based upon
2 that make its decision. The Agency is legally
3 incapable of acting outside its legal authority in
4 making a permit decision. With that in mind,
5 Counsel for the Agency here this evening is much
6 more familiar with the particulars than I am. And
7 I'm going to ask him to explain not the particulars
8 but to reiterate the degree to which some of the
9 information that we have learned this evening will
10 or will not apply to the Agency in making its
11 permit decision.

12 MR. LAYMAN: Well, it seems like the
13 hardest questions I'm getting tonight are from you
14 rather than from members of the audience; but I
15 will go ahead and try as best I can to answer that.

16 The reason for the Agency's proposed
17 issuance of a permit in this particular case I
18 think is attributed to a couple of legal
19 considerations as well as some practical
20 considerations. I anticipated this question so I
21 wrote down a few notes to be sure to try to
22 articulate so that everyone could understand why it
23 is that just because the facility may be violating
24 an agreed order that was entered into with Cook

1 County from a couple of years ago why that's not
2 going to serve as a basis for the Agency to act in
3 denying a permit application.

4 So let me explain if I may just
5 briefly. For the Illinois EPA to possess adequate
6 authority to impose conditions, any kind of
7 conditions in the permit, such as in this case the
8 completion of an odor study, we are always required
9 to ensure that the condition relates to some
10 requirement in the Environmental Protection Act or
11 the Pollution Control Board's rules and
12 regulations. In other words, it has to be
13 necessary to achieve compliance with the Act and
14 the regulations thereunder.

15 In this instance, the Illinois EPA
16 opposed the agreed order permit condition that
17 Mr. Turlek I believe spoke to as well as others
18 since. We chose to impose that condition in order
19 to be responsive to public concerns that were
20 expressed at the last public hearing as well as by
21 the State's Attorney's office, who I believe at
22 that time had specifically requested from the IEPA
23 that the administrative order be made a part of the
24 company's obligation under the construction permit.

1 The only thing that arguably justifies
2 the permit condition in this case is Section 9(a)
3 of the Act, which for some of you who may know, for
4 those of you who don't, it generally prohibits
5 odors that unreasonably interfere with the
6 enjoyment of life and property. In my legal
7 opinion, we would have some difficulty at this
8 juncture in denying or I should say in defending a
9 permit denial or in denying a permit based solely
10 on the company's failure to comply with the agreed
11 order where we have not otherwise received evidence
12 or documented the presence of unreasonable odors
13 since sometime in last year. I say that because we
14 have to judge, as I said earlier, Ortek's permit
15 application based on what impacts its afterburner
16 will have prospectively or in the future and not
17 based on their past odor problem.

18 Secondly, I should note this, that
19 both the Pollution Control Board and the appellate
20 courts in Illinois have recognized that the IEPA's
21 permitting authority is not absolute as Bill just
22 mentioned. We are somewhat limited or constrained
23 in what we can and cannot do in terms of our
24 permitting authority. And they have recognized

1 that the permitting process cannot be used as a
2 substitute for enforcement. The IEPA cannot simply
3 deny a permit because the permitted source violates
4 a prior or existing permit condition.

5 The Board and the courts have instead
6 directed or instructed the IEPA to pursue
7 enforcement in those types of instances. As a
8 practical matter, we believe that the company's
9 failure to comply with the agreed order, in this
10 case arguably having failed to conduct or perform
11 the odor study in a timely manner, we believe that
12 can and perhaps should be addressed as part of the
13 IEPA's enforcement case. Again as I said earlier
14 in my opening statement, we anticipate Cook County
15 will want to participate in the case. And we
16 anticipate the agreed order and possibly other
17 compliance-related issues will be the topic of
18 discussion in this collective process.

19 And lastly, I should note that there
20 is probably a good reason why we would rather
21 have -- the IEPA would rather have the agreed order
22 dealt with in the context of the enforcement
23 action; and that is because those requirements that
24 were incorporated into the construction permit that

1 the Agency issued a few years ago, those
2 requirements derived from or originated with local
3 authorities, with Cook County Environmental
4 Department of Control, as well as the Cook County
5 State's Attorney's office. So there is a very good
6 reason at least in our mind why those authorities
7 should if not necessarily take the lead they should
8 at least be involved in the process for shaping
9 compliance or in this case Ortek's continuing and
10 future compliance with the remaining terms of that
11 agreed order.

12 Now, Bill did that --

13 HEARING OFFICER SELTZER: I think it was
14 excellent.

15 MR. LAYMAN: -- answer your question. Does
16 anyone have any -- I don't want to interrupt the
17 format that we are dealing with, but I would ask if
18 anyone else has any questions that you would like
19 to clarify my response with respect to --

20 MS. MAREK: I had a question.

21 MR. LAYMAN: I don't want to make this a
22 big deal.

23 HEARING OFFICER SELTZER: I'm glad you made
24 that suggestion, Robb, because it will help. All I

1 will ask is you stand up and identify yourself for
2 the record and spell your last name.

3 MS. MAREK: Lorraine Marek, 4434
4 Fishermans. I have a question going back a few
5 sentences. You were mentioning something about the
6 type of odor. You didn't use the word obnoxious.
7 What was Ortek's word that --

8 MR. LAYMAN: I don't believe I used the
9 word obnoxious.

10 MS. MAREK: No, you did not. You used
11 another descriptive word and I would like to --

12 MR. LAYMAN: Unreasonable?

13 MS. MAREK: Probably. What do you consider
14 unreasonable?

15 MR. LAYMAN: Well, I think the question of
16 what is or is not reasonable is going to be shaped
17 or determined by whatever the facts of the case
18 are.

19 MS. MAREK: Okay. Would you consider being
20 outdoors and you are trying to enjoy the fresh air,
21 as fresh as we can get in this area, and all of a
22 sudden here comes this fume and odor, you can't
23 stay outdoors and enjoy the weather, you have to go
24 in. And even indoors it isn't much different than

1 being outdoors if your windows are open. So how
2 would you classify unpleasant? To what degree
3 would you have to go?

4 MR. LAYMAN: I think that's a very good
5 issue. And in fact, in other cases that the Agency
6 has either brought on behalf of citizens or brought
7 on behalf of the state that have involved odors,
8 the board or the Pollution Control Board have
9 oftentimes looked to those type of factors that you
10 just mentioned. Is it the type of odor that drives
11 people indoors on a Sunday afternoon from a
12 barbecue? Does it drive them from their house?
13 Does it cause them to shut off their air
14 conditioners, close their windows, or whatever the
15 case may be, those are the types of facts that tend
16 to make it easier to determine that, in fact, an
17 odor is unreasonable and, therefore, would be
18 actionable or a violation of Section 9(a) of the
19 Act.

20 And let me go on to say that with
21 respect to the four incidents that I believe I
22 mentioned earlier, in particular the June 27, 19 --
23 I'm sorry -- 2001, it was last year, June 27, I
24 think all four of those incidents that we have

1 alleged in the pre-enforcement process and which
2 we'll refer to the Attorney General's office were
3 in our view unreasonable.

4 MS. MAREK: What about people who have
5 asthma and emphysema and little kids and animals
6 and the birds in the air and everything else?

7 MR. LAYMAN: I'm sorry, ma'am. It's an
8 objective standard, though. While you may have a
9 particular weakness or perhaps you may have more
10 sensitive olfactory senses than everyone else, the
11 standard of one is objectiveness. It's one of
12 reasonableness. Even though you may be more
13 sensitive to it, everyone else is not --

14 MS. MAREK: I'm not speaking about myself
15 right now. I'm speaking about the community in
16 general.

17 MR. LAYMAN: I'm just using that as an
18 example but go on.

19 MS. MAREK: That's all I have to say.

20 HEARING OFFICER SELTZER: Robert Sullivan,
21 4520 Joliet Avenue. Would you as an attorney
22 define obnoxious to unpleasant for us for the lay
23 person?

24 MR. LAYMAN: Quite frankly, I'm not

1 accustomed to those particular terms because those
2 are --

3 MR. SULLIVAN: You don't know what
4 obnoxious means?

5 MR. LAYMAN: I know what they are, but I'm
6 not necessarily going to give you an explanation of
7 what their legal definition is because the
8 Environmental Protection Act speaks in terms of
9 unreasonable odors. That's the standard I'm
10 accustomed to.

11 MR. SULLIVAN: What would be obnoxious to
12 the Village of Lyons.

13 HEARING OFFICER SELTZER: What Counsel is
14 trying to explain --

15 MR. LAYMAN: Again, I'm not going to be
16 argumentative with you.

17 MR. SULLIVAN: No. That's okay.

18 MR. LAYMAN: I'm just telling you that it's
19 probably not much different in terms of legal
20 standards than an unreasonable odor. It may be
21 worse than that I suppose. But the terms obnoxious
22 or noxious are oftentimes going to accompany local
23 ordinance violations, which may be where some of
24 the references that I'm hearing of that term arise

1 from. Perhaps McCook or Lyons, perhaps their
2 ordinance violations or their ordinance
3 requirements are written in that type of
4 phraseology. But like I said, I'm more accustomed
5 to the language in terms of that is set out in the
6 Environmental Protection Act.

7 MR. SULLIVAN: Should we change our
8 ordinance to the word obnoxious or unreasonable?

9 MR. LAYMAN: No.

10 MR. SULLIVAN: Okay.

11 MR. LAYMAN: Again, I don't know that it
12 really makes a difference, if there is that much
13 distinction.

14 MR. SULLIVAN: I think if you look in the
15 dictionary you will see one hell of a difference.

16 MR. LAYMAN: Yes, but you are asking about
17 in terms of a legal standard.

18 MR. SULLIVAN: I'm talking about the
19 Village of Lyons.

20 HEARING OFFICER SELTZER: Okay. We have
21 killed this subject. We have talked enough about
22 it.

23 Sir, would you identify yourself,
24 please.

1 MR. KUCHARCHUK: Yes. My name is George
2 Kucharchuk. Before I start, I would like to know
3 if you are going to call me off the card or do I
4 have to wait or could I speak now?

5 HEARING OFFICER SELTZER: No. I'm going to
6 call everybody off the card in the order in which
7 the card was signed.

8 MR. KUCHARCHUK: I will wait until you call
9 my name then.

10 HEARING OFFICER SELTZER: I appreciate it.
11 Thank you very much.

12 MR. LAYMAN: I guess at this point does
13 anyone else have any further clarification on my
14 statement?

15 MR. BOKSA: Greg Boksa, 814 West 44th
16 Street. I'm also a trustee in town. I also was
17 the lead person, the chairperson, for the EQCC
18 during the last hearing that we had here. One of
19 the problems that we -- was brought up before, and
20 this is a legal problem, is this company is not in
21 our town. It directly affects the residents of
22 this town. We asked the last time about the legal
23 ramifications of not being able to enforce things
24 that happen to the residents of our town from a

1 company that's outside the village jurisdiction.

2 You said that the conforming -- and I
3 won't put it on you exactly -- but it was said that
4 the conforming laws are the IEPA's laws. The laws
5 at that -- Well, the conforming laws for the state
6 or the Illinois state EPA laws are the laws that
7 have to be figured. Correct? They have to be
8 followed?

9 MR. LAYMAN: Right.

10 MR. BOKSA: Okay. Our jurisdiction laws,
11 we cannot have an ordinance on odor that's emitted
12 from another town.

13 MR. LAYMAN: Correct.

14 MR. BOKSA: We have to rely on Illinois EPA
15 to do this. This is a critical thing of last time.
16 There was no resolve. There was no answer on how
17 your Agency was going to protect our citizens.

18 MR. LAYMAN: Actually, I think there was an
19 answer.

20 MR. BOKSA: Well, evidently --

21 MR. LAYMAN: Maybe it was an answer no one
22 here cared to hear or wanted the answer of.

23 MR. BOKSA: That's not what I'm hearing
24 tonight because I'm hearing that you are

1 segregating the IEPA's position from the Attorney
2 General --

3 MR. LAYMAN: From the agreed order.

4 MR. BOKSA: Right. From the legal agreed
5 order. Now, if the agencies of the state can't get
6 together when it comes to a permit issuance, what
7 is the Village of Lyons supposed to do to protect
8 their residents from the IEPA I guess?

9 MR. LAYMAN: Well, I don't think it's a
10 question of us not being able to get together. I
11 think it's a question of what is within the legal
12 authority of the Agency to act upon or the manner
13 in which we act upon in this particular permit
14 application.

15 You mentioned something else, but --
16 that I would have liked to have made a point to but
17 now it escapes me as to what that particular issue
18 was. I think -- Well, if it comes to me, I will
19 approach you either during the break --

20 MR. BOKSA: It's just the cooperation
21 between agencies that I'm concerned about.

22 MR. LAYMAN: And I think this is something
23 that we have anticipated would be more likely to
24 arise in the context of our enforcement action than

1 it would in the context of our permitting action.

2 MR. BOKSA: Excuse me, but there was an
3 agreed order that was entered by a state Agency.

4 MR. LAYMAN: There was.

5 MR. BOKSA: And you are a state Agency.

6 MR. LAYMAN: Which we were not a signatory
7 to that order.

8 MR. BOKSA: I understand.

9 MR. LAYMAN: If we were, it would be a
10 different story I assure you.

11 MR. BOKSA: I guess then the resolve or the
12 question I'm going to ask right now is why wouldn't
13 you -- why wouldn't you, the IEPA, agree with two
14 other state agencies?

15 MR. LAYMAN: You mean at the time the
16 agreed order was entered into historically?

17 MR. BOKSA: Right.

18 MR. LAYMAN: I think we had attempted to
19 lay out the response to that in our comments to
20 that last public hearing. And if I remember right,
21 I think we had decided at the time we had
22 complaints that were being levied against the
23 company, odor complaints in late 1997, early 1998.
24 Because we responded late and because the State's

1 Attorney's office responded more promptly than we
2 did we allowed them to proceed or take the lead and
3 resolve those issues through the agreed order.

4 I think at the last public hearing we
5 indicated, much to I think a number of people's
6 chagrin, that we were not going to be taking an
7 enforcement action based on those 1997 complaints
8 but rather we would monitor and assess the
9 situation. And if odor complaints continued in the
10 future, especially those that might be related to
11 the afterburner that we were permitting in 1998, we
12 would likely have not considered enforcement
13 against the company, which is exactly what we have
14 done I think.

15 MR. BOKSA: Then the next thing I have to
16 ask, and it's been brought up tonight, that late
17 night and weekend complaints go unanswered from
18 your department.

19 MR. LAYMAN: From whose department?

20 MR. BOKSA: I believe it was brought up in
21 Mayerhofer's statement that nobody was able to be
22 reached from your department.

23 MR. LAYMAN: I'm sorry. I don't know if
24 that would be the Illinois Environmental Protection

1 Agency's department or Cook County's environmental
2 protection.

3 MR. BOKSA: I think he mentioned both of
4 them. I could be wrong. We can go back and check
5 the record but why can -- You know, what are the
6 numbers that we can call, where can we get the late
7 night complaints filed, and where can we get the
8 weekend complaints filed? That's something that
9 your Agency will have to provide for us so that we
10 can give you these figures and give you these
11 complaints. Thank you.

12 MR. LAYMAN: All right.

13 HEARING OFFICER SELTZER: Ma'am, would you
14 stand up and identify yourself.

15 MS. KRUEGER: Sure. My name is Patty
16 Krueger. Evidently it seems like legally your
17 hands are kind of tied when it comes to issuing
18 permits. Would it behoove the village residents to
19 call upon our state representative and our state
20 senator to ask them to try to pass tougher
21 ordinances?

22 MR. LAYMAN: I don't think it's a question
23 of tougher ordinances.

24 MS. KRUEGER: Well, something --

1 MR. LAYMAN: If you believe that the Agency
2 should have a different scope of authority --

3 MS. KRUEGER: Authority.

4 MR. LAYMAN: -- in the permitting context,
5 I guess it would be your legislature in
6 Springfield.

7 MS. KRUEGER: But from what you said your
8 hands are really tied that even by you have a whole
9 room here of people that are suffering because of
10 the fumes and because of this company but, yet,
11 legally your hands are tied.

12 MR. LAYMAN: Right.

13 HEARING OFFICER SELTZER: Let me just add
14 that our hands are only tied to the extent that
15 you're interested in right now. And you are
16 talking about giving the Agency a degree of
17 authority it doesn't have. The Agency can't
18 independently grant that authority. But if you and
19 your citizens feel we should have that authority,
20 certainly talk to your state legislature.

21 MS. KRUEGER: But that would also be a way
22 to go about it?

23 HEARING OFFICER SELTZER: Yes.

24 MS. KRUEGER: Okay. Thank you.

1 MR. LAYMAN: And I'm going to follow up
2 with the concern you had expressed here just
3 recently. I don't have the number on me. I don't
4 know that anyone else here on our behalf does have
5 that 1-800 emergency number or the hot line. I
6 know there is one in existence for chemical
7 releases that are oftentimes required to be
8 reported to either the Illinois Emergency
9 Management Agency or the Illinois EPA pursuant to
10 state law. We will provide some type of phone
11 number, if you will --

12 Well, this is to report an oil or
13 hazardous material emergency, call the Illinois
14 FEMA, which is the Emergency Management Agency. I
15 don't think that would probably be governed by this
16 particular type of circumstance.

17 But I mean clearly there has not been
18 a hesitation on the part of local authorities to
19 complain to local authorities, whether it be Lyons
20 or McCook, and in particular to police department
21 or fire department authorities. I think at the
22 last public hearing we were asked a question as to
23 how that process should continue, and I think our
24 response to that was to the extent that it has

1 worked thus far, you continue to maintain contact
2 or to call local authorities, that's fine. You are
3 certainly free to contact George Ordija or the
4 Illinois EPA's field operations section now located
5 in Des Plaines, Illinois. You are certainly free
6 to contact me in Springfield. And I will get the
7 word out through the Agency that something is being
8 reported.

9 MR. BOKSA: I will take your pager number.

10 MR. LAYMAN: Well, I say this because, like
11 I said I don't think there has been any hesitation
12 or reluctance on the part of citizens to --

13 MR. BOKSA: I just want the ability to
14 reach you on a 24-hour basis.

15 MR. LAYMAN: Okay. All right.

16 HEARING OFFICER SELTZER: Sir, did you have
17 a question?

18 MR. TOM MAYERHOFER: Yes. Well, I just
19 kind of -- They kind of covered what I was going
20 to talk about.

21 HEARING OFFICER SELTZER: Identify
22 yourself.

23 MR. TOM MAYERHOFER: Yes. My name is Tom
24 Mayerhofer. One thing if I get this straight, so

1 what you are saying is you are the EPA yet as long
2 as Ortek today in a sense fills the legal whatever
3 it is at -- that you have to by law give them that
4 permit even though they have numerous violations in
5 the past, that you can't -- you can't say no
6 because of something in the past. Is that what you
7 are saying?

8 MR. LAYMAN: What we are required to do is
9 enforce those violations that have occurred in the
10 past. The only basis we would have to deny a
11 permit would be if those violations were occurring
12 today or likely to occur tomorrow and the next day
13 as a result of whatever is being sought at for the
14 permit; in other words, the afterburner. If we
15 knew based on all the documentation we have had
16 through our field inspections or through
17 information submitted by the applicants that that
18 afterburner is not going to work effectively, that
19 something is wrong with it or that it didn't test
20 out properly or whatever the case may be, we would
21 have an obligation to deny that permit.

22 But I don't think we can say now any
23 more than we could have said three years ago when
24 we issued the construction permit that there exists

1 as of this date or likely not as of the date that
2 we are required to take action on the permit that a
3 violation of the Pollution Control Board's rules or
4 the Environmental Protection Act will exist.

5 Again, that isn't to say it didn't exist in the
6 case. And that's what the enforcement case will be
7 about.

8 MR. TOM MAYERHOFER: When do you deny a
9 permit? Do you ever deny a permit?

10 MR. LAYMAN: Yes, we do.

11 MR. TOM MAYERHOFER: And under what basis
12 would that, what would -- You know, I mean you are
13 just saying that. Say this thing doesn't work a
14 month from now after you give the permit, what
15 happens then?

16 MR. LAYMAN: Well, I can give you an
17 example that if someone comes to us and they
18 propose -- and they are subject to certain
19 regulations and those regulations require them to
20 have an afterburner on their operation to control
21 emissions and they don't have an afterburner, or
22 they have an afterburner that either hasn't been
23 tested properly or has never been tested, we would
24 have a basis to deny the permit. And I won't say

1 we do so routinely but it's not uncommon that we
2 would deny a permit for failure to comply with the
3 applicable requirements.

4 MR. TOM MAYERHOFER: Thank you.

5 MR. LAYMAN: I believe the woman in the
6 back.

7 MS. PARKER: Toni Parker. I have a card
8 in, so do many other people here. I just want to
9 request that from this point on that when you call
10 people -- I have a card in here. Many people
11 around me have cards. They have been patiently
12 waiting while people went out of order. Many of
13 these questions in other hearings I've been to like
14 the one in LaGrange last year on Material Service
15 as far as the Agency's power of authority,
16 etcetera, were answered in the written responses.
17 So could we proceed to the questions on the card
18 and the testimony on the card because certain
19 people may have to leave at a reasonable hour.

20 HEARING OFFICER SELTZER: Yes. We will do
21 it right now. Let's take a short recess for five
22 minutes, and we will go back to the cards.

23 (Whereupon a recess was had.)

24 HEARING OFFICER SELTZER: We will go back

1 on the record. A letter was handed to me from
2 State Representative Eileen Lyons submitted today.
3 It's dated today, submitted today. And it's a one-
4 page document, and we will mark it as Exhibit 3 and
5 accept that into the record.

6 (Document marked as Exhibit No. 3
7 for identification as of 5/2/01.)

8 HEARING OFFICER SELTZER: Next person, next
9 card, is Jackie Mullen.

10 MS. MILLER: Hi. My name is Jackie
11 Miller. Sorry, I wasn't writing very plain.
12 I'm a principal at Robinson Elementary School
13 District 102. So I just come before you to remind
14 you that I don't live here in the city of Lyons,
15 but I do feel like I have the responsibility of
16 protecting and safeguarding the lives of all of our
17 young treasures. I have 251 students at Robinson.
18 On a couple of occasions, we have had the gas
19 smell. We do not have an air-conditioned building,
20 so we have the windows open. And we have had
21 difficulties and with the windows open that smell
22 will come and permeate the whole building. It's a
23 block building. So that then even when we do close
24 the windows, it's kind of trapped inside. So we

1 have had to have the Fire Chief Nord out on several
2 occasions to check. And my fear is what if there
3 is a gas leak and we pass it off as an Ortek smell.
4 Or you know, what do I do to evacuate, keep the
5 safety of my 251 students foremost in mind.

6 I would just like to also ask, when I
7 have a problem child who has not followed the
8 rules, I set up a behavior plan for that child and
9 they have consequences for each of their offenses.
10 So once we have an offense here, we have a
11 situation where we have a problem child, if you
12 want to call it that, and there has been several
13 offenses, what is our behavior plan or modification
14 plan, and how do we go about then intervening and
15 what interventions do we use? And we would like to
16 ask your assistance as the plant manager and yours
17 as the board of issuing the permits, we would like
18 to know what to do to keep our children outlying
19 safe and sound. Thank you.

20 HEARING OFFICER SELTZER: Thank you.

21 Mr. Turlek. Please identify yourself
22 again for the record.

23 MR. TURLEK: Sure. My name is Mike Turlek.
24 I live at 4603 Custer Avenue in the Village of

1 Lyons. I would like to say I'm in some degrees a
2 little confused. Is Mr. Ordija still here?

3 MR. LAYMAN: He's out in the hallway.

4 MR. TURLEK: Okay. Mr. Lappin, I take it,
5 is a graduate engineer. Yet back in 1992 it may
6 have been Mr. Ordija who pointed out to him that
7 their clay press operation was a source of odors.
8 That thing went on I think until 1997 when they
9 finally got rid of that. Now I'm hearing again
10 that IEPA comes down and says, "This is a source of
11 odor, that's a source of odor," and I don't
12 understand this. I don't understand this.

13 Now, I am going to ask several things
14 here. But the first thing I do want to point out
15 for Dr. Franik and Mr. Lappin here, this is a
16 letter from Mr. Lagges to Mayor Sergio.
17 "Unfortunately, Ortek failed to perform an
18 evaluation study to characterize and quantify
19 potentially significant odor sources associated
20 with the plant as stated in the agreed order. Our
21 department is currently working with Cook County
22 State's Attorney to determine the necessary said
23 action."

24 That is part of the letter and that

1 is the source of my comments on that. If you have
2 got the records, I would like to see them. I'm
3 going to ask, one, that is there anything in your
4 permitting process that would show if there is a
5 preponderance of misinformation -- brackets, why,
6 question mark -- that would allow you to deny a
7 permit. Think about it. Take it back with you.

8 We have seen here, I mention that clay
9 press operation. I have got documentation in here,
10 and some that I don't have that I promised Mr. --

11 What's his name there?

12 MR. LAYMAN: Layman?

13 MR. TURLEK: No, not Layman. That Indian
14 guy. Desai?

15 MS. NYUGEN-EDE: Desai.

16 MR. TURLEK: I would send it to him.

17 That's a letter that Mr. Layman had sent to then
18 Senator Carol Mosley Braun explaining to her how
19 there were no emissions from that plant because
20 this is a closed system.

21 Now, prior to that, he had been
22 informed of that clay press operation, which to me
23 was part of the system. And yet, from my
24 understanding of what IEPA found is that there was

1 no place for this stuff to vent but outside of the
2 building that the oil was in. These are the kind
3 of things that we have seen go on and on and on and
4 on.

5 HEARING OFFICER SELTZER: Let me interrupt
6 you for a second and ask you, you are stating that
7 the application filed with the Agency is false or
8 parts are false?

9 MR. TURLEK: I'm stating that, yeah. In
10 the application that was made the letter from
11 Mr. Lappin states only one thing, that we have made
12 the emission test. And there is a report from R.K.
13 Associates of Elgin, an interesting report that
14 states also that their client had advised them that
15 they didn't make that test because they felt it
16 wasn't necessary. And they said, "Well, we think
17 he's right because if you take this mathematical
18 process and figure this times this times that, he's
19 right."

20 But in his analysis, he uses the word
21 "should" very frequently.

22 HEARING OFFICER SELTZER: Who is he?

23 MR. TURLEK: The representative of R.K.
24 Associates that did the testing. He uses that in

1 relationship to particulate trapping. The purpose
2 of the testing would be to ensure that all of this
3 is done, all of it's done. They further go on to
4 sort of challenge their own statement by saying
5 they conducted that test on September something
6 2001. Typo? These people are dealing in a
7 business where they are saying you should accept
8 their explanation because they felt it wasn't
9 necessary, and they can't even give you the right
10 date.

11 We have a letter here from
12 Mr. Loquercio to Mr. Lagges saying, "Hey, thanks
13 for letting me sit in on a meeting with the State's
14 Attorney's office. I agree with you, there is no
15 need for that odor analysis test. And it was nice
16 to see your assistant --" Those aren't the exact
17 words. "-- your assistant debate the state's
18 attorney and convince him that there is no legal
19 action necessary. You have to give them time to
20 complete it."

21 I looked at that and I said, "What?"
22 This is insanity. This is the kind of thing that
23 goes on. I have to thank Mr. Mayerhofer and the
24 Environmental Quality Control Commission, Gary

1 Benedik, and all -- and all these people, our
2 elected officials, that for the past nine years
3 have made not Ortek but the environment a place for
4 Lyons to sit back and say, "It's getting better,
5 and we are going to keep it better."

6 I am going to give you my comments on
7 here. And many of them do lead to -- You have got
8 two letters, as I mentioned, from Mr. Lappin saying
9 "We will do the odor analysis every two weeks. We
10 will have the site analysis made. Here our the
11 specifications, we will use --" If these things
12 weren't done, is that true? The letter of
13 application that's -- Is it an omission or
14 commission, that, "Yeah, I had the test done but,
15 damn it, we got -- we are going to court because of
16 this, that and the other thing." You are the
17 permitting department.

18 I ask you that, and I'm going to ask
19 Mr. Bush the same thing, to have him see if he can
20 get the federal people to take a look. Recently
21 people in here may have seen a CHA director, ex-
22 CHA director -- I forget what his name is -- was
23 convicted for giving false testimony on a loan
24 application. I don't know if he was in default or

1 not. False testimony on a loan application, and
2 he's going to go to jail or pay a hell of a fine.
3 My God, if that can be done there, why should any
4 organization be allowed through omission or
5 commission and to me Ortek's credibility and
6 integrity if it ever was existent is completely
7 dead.

8 I would suggest when you go back to
9 the IEPA, and I mention that to the engineer I
10 talked to, take whatever reports these people have
11 given you, have your own people go over them,
12 verify them at the place. Or take them all and
13 throw them in the wastebasket because that's about
14 all they are worth. You have heard person and
15 person come up and say we get empty promises. But
16 here you have got IEPA telling a graduate engineer
17 "This is where your source is."

18 Mr. Loquercio also mentions in his
19 letter, and he goes on to criticize himself and
20 saying "You don't need the odor analysis," he goes
21 on in the letter to say "But Ortek employees tell
22 us that when they transfer from tank to tank they
23 have odor problems. But because there are so many
24 transfer points, we don't know where they are." If

1 he made tests every two weeks like he said,
2 wouldn't this show up? Wouldn't you want to get
3 out there and find out?

4 I mean let's look at reality for what
5 it has. We have got people out there -- and I'm on
6 the end of town that doesn't get much of their
7 problems, and I thank God for that -- but we have
8 got people out there. I would hate like heck to
9 live there and have my home up for sale because I
10 would say, "Damn it, that place pops today, and I
11 have got a prospective buyer, I'm screwed." I
12 would hate to live here and be that man that
13 Mayerhofer described that was almost in sheer
14 terror. These are not lies. These are not lies.

15 But I'm asking you to go back, take a
16 look at these applications. I will leave this with
17 you. I just want to take and put that in sequence
18 that I had it in, and look at it very carefully.
19 Thank you for your time. I appreciate it.

20 HEARING OFFICER SELTZER: The package of
21 documents that you have, sir, the package of
22 documents you have --

23 MR. TURLEK: I will give them to you as
24 soon as I -- You can have it. Just take the time

1 to put Exhibit 3 where it should be.

2 And if you would give that to the
3 gentleman I spoke with. Here you are.

4 HEARING OFFICER SELTZER: This document is
5 41 pages, and it will be marked as Exhibit No. 4.

6 (Document marked as Exhibit No. 4
7 for identification as of 5/2/01.)

8 HEARING OFFICER SELTZER: Next is Patrick
9 Burelle.

10 MR. BURELLE: Good evening. I'm Patrick
11 Burelle, building code director for the Village of
12 Lyons. My department has not been involved in this
13 issue primarily because we felt the EPA was
14 handling it or Cook County was handling it and
15 really not within our jurisdiction. The village
16 recently adopted ordinances that may tie us into
17 the jurisdictional system now where we might have
18 jurisdiction. It's not our purpose to enforce this
19 issue. We believe it's best handled by an agency
20 equipped to handle it, which would hopefully be the
21 EPA.

22 But I would like a clarification,
23 because what I'm hearing tonight is you are saying
24 that -- basically you are acknowledging that there

1 has been some violations in the past that should be
2 enforced, are being enforced. To issue this permit
3 you are within this little statutory box that
4 says if certain elements aren't there or aren't
5 alleged you have to grant the permit, is that
6 correct?

7 MR. LAYMAN: Yes. That's correct.

8 MR. BURELLE: Now, are these elements
9 established by statute?

10 MR. LAYMAN: Yes.

11 MR. BURELLE: Or are they the regulations
12 of the Pollution Control Board?

13 MR. LAYMAN: The standard is set forth in
14 the Section 35(a) of the Environmental Protection
15 Act. For anyone who wants to look it up in the
16 actual law book, it's referenced as 415 Illinois
17 Revised Statutes 5-39(A) I believe.

18 MR. BURELLE: And I haven't had time to
19 really look at it but what I have seen in the Act
20 is that the Pollution Control Board has a lot of
21 authority to set regulatory standards in granting
22 permits.

23 MR. LAYMAN: That's correct.

24 MR. BURELLE: And I guess what I'm trying

1 to clear up is if one were to look at the state law
2 would it be in there in state law that says these
3 are the elements for granting a permit, or are
4 those the regulations established by the board?

5 MR. LAYMAN: Well, some of the constraints
6 that I talked about earlier such as the permitting
7 process or the permitting function of the IEPA
8 cannot be used as a substitute for enforcement,
9 that has been derived from case authority
10 established by the Pollution Control Board and by
11 the appellate court. That case authority is from a
12 body, an adjudicating body, ruling on in that
13 particular case the Agency's denial of the permit.
14 And I believe they said in not just one or two
15 cases, I think federal cases where they have said
16 the Agency's authority to grant permits or deny
17 permits is separate from the Agency's authority to
18 enforce the act of regulations. That's --

19 I guess my point is it's not directly
20 language you can find in the Environmental
21 Protection Act, but that conclusion that the board
22 and the appellate courts reached was based on their
23 interpretation of what the Act requirements are for
24 the Agency.

1 MR. BURELLE: So what's being enforced is
2 largely interpretation from case law and from board
3 standards?

4 MR. LAYMAN: Well, not so much what's being
5 enforced, what is at issue for the Agency's denial
6 or grant of a permit.

7 MR. BURELLE: Correct.

8 MR. LAYMAN: That's what we are dealing
9 with.

10 MR. BURELLE: Enforcement would be a wrong
11 term. The decision to grant or deny is based on
12 the things we just spoke about.

13 MR. LAYMAN: Right.

14 MR. BURELLE: So it's really not the
15 legislature that would change the standards unless
16 they rewrote the law that say specific standards
17 shall be adhered to.

18 MR. LAYMAN: No. I think it would be the
19 duty or the province of the legislature to overturn
20 judicial precedent by modifying or changing the
21 law.

22 MR. BURELLE: Correct, but what I'm stating
23 is that right now is, absent some type of court
24 decision, the Pollution Control Board has a lot of

1 leeway to set certain standards; is that correct?

2 MR. LAYMAN: Well, the Pollution Control
3 Board actually adopts or enacts or promulgates
4 regulatory requirements for environmental standards
5 if you will. Subtitle A of the Pollution Control
6 Board rules, for instance -- I'm sorry subtitle B
7 of the Pollution Control Board's rules are all air
8 pollution standards or emission-related
9 requirements that the board has adopted.

10 MR. BURELLE: And the section that you are
11 reciting tonight that you say would be the only
12 basis from a violation standpoint in denying this
13 permit would be the existence of odors that
14 unreasonably interfere with people's lifestyles or
15 I'm not quoting accurate or --

16 MR. LAYMAN: No. That's essentially what I
17 said, that's correct.

18 MR. BURELLE: And what we are hearing
19 tonight are things that happened two years ago, so
20 you are discounting that because of the length of
21 time that it happened?

22 MR. LAYMAN: Well, we are not discounting
23 it because we are, after all, initiating an
24 enforcement action based on those same events.

1 MR. BURELLE: But for purposes of the
2 permit.

3 MR. LAYMAN: Exactly. We are saying that
4 those don't count as much as what is likely or what
5 will happen prospectively once we issue the permit.
6 And maybe I can clarify any confusion by simply
7 reading directly from the statute the standard for
8 the Agency issuance of a permit.

9 "When the Board has by regulation
10 required a permit for the construction,
11 installation, or operation of any type of facility,
12 equipment, vehicle, vessel, or aircraft, the
13 applicant shall apply to the Agency for such permit
14 and it shall be the duty of the Agency to issue
15 such a permit upon proof by the applicant that the
16 facility equipment, vehicle, vessel, or aircraft,
17 will not cause a violation of this Act or the
18 regulations hereunder."

19 I believe that's pretty much the basis
20 for some of my earlier statements as well as
21 rulings by the appellate court and the Pollution
22 Control Board in interpreting what that means and
23 what it means for us in our permitting context.

24 MR. BURELLE: Well, the problem I have with

1 the whole thing is -- and I have been in code
2 enforcement for 15 years or more -- is that you're
3 describing a scenario I have encountered many times
4 where you have something that is largely
5 interpretive or set by a regulatory Agency, and it
6 just seems to me that the focus is really not on
7 taking care of the problem, it's getting this out
8 of the way, getting it approved, moving on. You
9 are not concerned with enforcement tonight. You
10 are not concerned with the conditions that are
11 there and are still there. You are just concerned
12 with hearing the public opinion and then making a
13 decision based upon events that you have no choice
14 but you have to plan it. And my experience in code
15 enforcement tells me you have a lot more latitude
16 than what you are stating tonight.

17 And lastly I guess, what would be
18 relevant? And if it's not relevant two years ago
19 and the conditions are still present that are
20 violating the court order violating the things that
21 were described back then, conditions are still
22 there, what's relevant then? It's now two years
23 ago. Would last week be relevant, six months ago?
24 What's the standard? What would this Board

1 consider to be relevant if it won't consider two
2 years ago?

3 MR. LAYMAN: I think --

4 MR. BURELLE: Did --

5 MR. LAYMAN: Did you want an answer to
6 that?

7 MR. BURELLE: Yes, please respond.

8 MR. LAYMAN: I think with respect to the
9 permitting obligation the more recent the
10 occurrence of the noncompliance we would be dealing
11 with the better off we would be.

12 I think because of the nature of the
13 past violation that we are bringing in the
14 enforcement case because we had not been made aware
15 of any more recent incidents, well, since I think
16 June of last year, I just don't see there being a
17 basis for us to sustain a permit denial of this
18 type of proceeding.

19 But like I said, I think the issue
20 that we are concerned about apart from this permit
21 hearing, and that is the compliance with the
22 construction permit, compliance with Section 9(a),
23 where even though it's based on the past we are
24 concerned about what they are going to continue to

1 do or what they can do to eliminate those odors,
2 all of that I think is meant to be addressed and we
3 intend to address it as part of the enforcement
4 action.

5 MR. PAUL MAYERHOFER: I do have documented
6 complaints.

7 HEARING OFFICER SELTZER: Wait, wait, wait.
8 Sir, please, you know the process here.

9 MR. PAUL MAYERHOFER: I'm just saying it
10 would affect it.

11 HEARING OFFICER SELTZER: Off the record.

12 (Discussion outside the record.)

13 HEARING OFFICER SELTZER: L. A. Marek.

14 MS. MAREK: Lorraine Marek, 4434
15 Fishermans. I just wanted to confirm what Fire
16 Chief Nord stated about the phone complaints he had
17 received. I don't know if he even thought about a
18 percentage, but I would think that percentage of
19 phone calls he received would probably be like 3
20 percent of the people that are affected because
21 other people have just accepted the odor. They
22 know that maybe tomorrow it will not be there.
23 Heaven forbid if there ever is a serious gas odor
24 in the area the people will just take it as one of

1 those usual gas offensive odors. And I'm hoping
2 that something will be done to eliminate the
3 situation.

4 HEARING OFFICER SELTZER: Thank you.

5 George Kucharchuk.

6 MR. KUCHARCHUK: My name is George
7 Kucharchuk. Mr. Lappin and I go back a long time.
8 He knows me. Fifteen years. First time we met I
9 walked into his place, he said it's very clean.
10 Parking lot, I had to get a brand-new pair of shoes
11 because they are saturated with oil. This is why
12 everything goes down there that far into the ground
13 because the entire area is polluted like it was
14 stated.

15 Mr. Lappin he only said that the
16 people here tonight only lived there a couple
17 years. Out of all the people that were here,
18 people that left, I know three quarters of them
19 personally. I was and I held a title in this town
20 for 28 years after I resigned and went to another
21 village to do another job, I worked and I headed
22 and I started the whole system that is working now
23 against you and your organization.

24 You did a fantastic job and you went

1 up through the ranks for Ortek. How? By making
2 them money and poisoning the minds and the people
3 in the Village of Lyons, McCook, Stickney, and
4 Forestview. And you did a very good job. And I
5 wonder how many of them you put in the cemetery
6 personally with your works. And practically all of
7 these people here they lived in Lyons more than a
8 couple years. I would say more than half of them
9 lived here at least a minimum of 40 years.

10 Again, I'm going to make this short
11 because there were people better than me that took
12 over my position that did a better job I just found
13 out this evening. I would like to thank Trustee
14 Benedik, Mr. Turlek, and Paul Mayerhofer for the
15 fantastic job, and the fire chief, what they have
16 done with this situation. One of the things that
17 they missed, I live on the corner of Center Avenue
18 and 47th Street, a neighbor to this gentleman here.
19 There are times in the morning my alarm clock goes
20 off at 4:15, that's when I start getting up and go
21 to work. There is times in the morning I got a
22 little mist in my windshield, I turn on my
23 windshield wipers, I get an oily mist when the
24 windshield wipers go on.

1 You know, I have been listening
2 tonight and I have been hearing everybody say,
3 "Odor, gas." But whenever there is odor and gas, I
4 always wonder why I got that film on my windshield.
5 There has to be elements in the air also. I meet
6 once a month with about 25 other towns, Health
7 Inspectors Association, State of Illinois. We have
8 different people speaking to us. One of the main
9 people that spoke to us, they were shocked to find
10 out was that in the villages of Lyons, McCook,
11 Summit, and Forestview, there were more cancer
12 people dying of cancer than anyplace else. And
13 this is from the American Cancer Society.

14 One of the things they stated is the
15 elements in the air. Sure, Mr. Lappin over there
16 will say that has nothing to do with us. But let's
17 go back a little ways, and let's think about
18 Standard Oil and their testing laboratories where
19 the scientists are supposed to be cleaning and
20 nothing can happen in there. How many of them are
21 getting cancer of the brain for some unknown reason
22 or unknown reasons whatsoever? Now, here they are
23 confining it, testing it, and watching it so
24 nothing goes wrong. Here we are, they are

1 spreading it all over into the air and we are
2 breathing it. Why does the American Cancer Society
3 say we have more deaths in this area than anyplace
4 else?

5 I thank you, gentlemen. I hope you
6 think the right way and vote the right way on this
7 matter. I know you have got a small window to look
8 at, but sometimes that window is large. You get
9 home in the morning, think about it. I would
10 appreciate it greatly.

11 HEARING OFFICER SELTZER: Thank you.

12 The next card, the last name is
13 Gaym -- I can't read the rest of it. Nobody here?
14 Okay.

15 Toni Parker or Parkin.

16 MS. PARKER: Parker. I will be bringing
17 this up. First name is Toni. Last name is Parker.
18 4614 South Warsaw Avenue, Lyons, Illinois. I grew
19 up in this town, moved back here in 1994, the end
20 of 1994 to take care of my elderly mother. I have
21 been a chemist employed in the coating industry
22 since 1978. So that's kind of a long time. It
23 kind of dates me. Not to hide behind false
24 pretenses, everybody or a lot of people here think

1 I'm a big bad environmentalist so I'm strutting my
2 colors. I do have some questions on this permit.
3 And I will have some written comments also to
4 submit. Unfortunately, the permit document was
5 unavailable at the Lyons library for a period of
6 time, and so my time to prepare for this was very
7 short.

8 The thermal oxidizer, first of all,
9 will remove a substantial portion of the smelly
10 materials which are carbon based, your carbon-based
11 materials. The natural gas things that everybody
12 smells are called mercaptans. Natural gas is what
13 the gas company puts in the mercaptan, which the
14 Merck Manual says is objectionable, so that you can
15 then test it.

16 Clarifying that, I would like to refer
17 to the operating temperature of this, which you are
18 giving it 1200 degrees Fahrenheit. And then to the
19 EPA-CICA Fact Sheet on thermal incinerators where
20 they state that typical design conditions needed to
21 meet greater than equal to 98 percent control or
22 20 parts per million by volume compound exit
23 concentrations are 870 degrees centigrade. That's
24 1600 degrees Fahrenheit combustion temperature.

1 They give a residence time, which the permit does
2 not mention, and they specify proper mixing.

3 Basically, and correct me if I'm
4 wrong, and I guess I'm talking to Mr. Lappin and
5 any of the technical experts here, what this will
6 do is take the carbon-based compounds and any
7 compounds that have sulfur will be oxidized to
8 sulfur oxide, any compound that has nitrogen will
9 be oxidized to nitrogen oxide, Phosphorus to acid
10 gas, etcetera. Is this correct? Anybody?
11 Mr. Lappin?

12 MR. DESAI: Ma'am, can you repeat that
13 question, please?

14 MS. PARKER: Yes. Okay. This thermal
15 oxidizer, first of all, the purposes I gather from
16 the permit, from the EPA Sector Notebook on
17 Petroleum Refinery Industry and from the EPA-CICA
18 Fact Sheet on Air Pollution Technology under
19 thermal incinerator, the purpose of it is to
20 oxidize most carbon-bearing compounds to carbon
21 dioxide. And there will be a small amount of
22 carbon monoxide produced. But any sulfur atoms
23 will be oxidized to sulfur dioxide, any nitrogen
24 atoms to nitrogen oxide, phosphorous to acid type

1 gases. Is this correct?

2 MR. DESAI: That is correct.

3 MS. PARKER: Okay. You know that this area
4 already has an extreme burden of sulfur oxides from
5 the Vulcan lime slagger. They were supposed to
6 have the scrubber up and running December 1. As of
7 today, I don't believe it's up and running; is it,
8 George?

9 MR. ORDIJA: Not yet.

10 MS. PARKER: So what kind of increased
11 emission of the sulfur oxidization are we talking
12 about if this is approved versus what exists
13 without this technology?

14 MR. DESAI: The amount of sulfur dioxide
15 that is emitted by Ortek's thermal oxidizer is an
16 insignificant amount or very small amount.

17 MS. PARKER: But are we getting -- I know
18 we would be getting, which is a very good thing, a
19 decrease in the amount of hydrocarbons, which are
20 the oily smell compounds. Hopefully, the mercaptan
21 smells would be gone so people wouldn't be worrying
22 about natural gas leaks in the community. But the
23 sulfur oxides and the nitrogen oxides have proven
24 documented detrimental impacts on health, on

1 property, on the environment in other forms. So
2 are we -- Is the oxidizer increasing those
3 significantly over what would be occurring if this
4 permit were not approved and the prior use
5 technology had to be reinstated? Which is what I
6 assume would happen.

7 MR. DESAI: In my opinion, the use of
8 thermal oxidizer is necessary in this particular
9 process. The amount of sulfur dioxide or NOx
10 emitted by Ortek is such a small amount that it
11 will not cause any other air pollution. This area
12 is -- The Illinois EPA on a continuous basis is
13 monitoring this area for specified contaminants
14 such as particulate, sulfur dioxide, nitrogen
15 oxide, carbon monoxide, and ozone. And this area
16 is designated as attainment area for sulfur
17 dioxide.

18 MS. PARKER: All right. You mentioned here
19 in the permit application about HAPS, Hazardous Air
20 Pollutants, shall be less than 10 tons per year.
21 Any single HAPS 25 tons per year, any combination
22 of such HAPS? What HAPS are we talking about here?

23 MR. DESAI: That condition is a general
24 condition we put in.

1 MS. PARKER: Do we know the identity of the
2 likely HAPS or HAPS that have been emitted in the
3 past?

4 MR. DESAI: HAPS represents the Hazardous
5 Air Pollutants.

6 MS. PARKER: Yes, sir. That's the term we
7 all use in the industry.

8 MR. DESAI: This condition has been put in
9 in all the permits being issued as the minor
10 sources.

11 MS. PARKER: I must be unclear because I
12 asked the identity of what HAPS will be likely or
13 have been monitored to have come from this
14 facility.

15 MR. DESAI: No. We are not monitoring this
16 facility for hazardous air pollutants.

17 MS. PARKER: So you don't know?

18 MR. DESAI: The hazardous air pollutants,
19 HAPS, that we know that this is likely to emit
20 would be the hydrogen chlorides. And the amount of
21 hydrogen chloride that is emitted is less than one
22 ton per year.

23 MS. PARKER: I think we both know the
24 physiological consequences of hydrogen fluoride,

1 and we won't go into them now. I have here on
2 page 41 of the USEPA Sector Notebook Petroleum
3 Refining, Exhibit 15, typical material output from
4 selected petroleum refining processes.

5 And in your summary description, you
6 say that Ortek utilizes atmospheric and vacuum
7 distillation to produce a petroleum lube oil
8 distillate, etcetera, etcetera. For those
9 processes, air emissions, of course, are as
10 mentioned, carbon monoxide, sulfur, and nitrogen
11 oxide, hydrocarbons, particulates. Process
12 wastewater, which no one has touched on, we have
13 ammonia, which I assume, and hydrogen sulfide,
14 which can be extremely deadly. And it's when you
15 stop smelling it that it's at dangerous
16 concentrations. We have the mercaptans, which of
17 course are natural gas odors that we smell. We
18 have chloride. We have phenol and elevated pH.

19 How is this oxidizer going to address
20 the wastewater problem?

21 MR. DESAI: I believe the emissions coming
22 from the wastewater treatment facility are
23 aggregate to the thermal oxidizer and the mercaptan
24 or hydrogen sulfide present in exhaust gas coming

1 from those would be converted to sulfur dioxide.

2 MS. PARKER: And so at this point we are
3 getting additional sulfur dioxide at a time when we
4 are getting a substantial burden from Vulcan.

5 MR. DESAI: I'm sorry. A substantial
6 burden of what?

7 MS. PARKER: Of sulfur dioxide from the
8 Vulcan 19500 lime slugging oven.

9 MR. JOHN MAYERHOFER: It's another company
10 near.

11 MS. PARKER: I'm talking about the total
12 area burden of sulfur dioxide. And nitrogen
13 oxides, a colleague of mine who is very familiar
14 with thermal oxidizers, worked for a company where
15 they had quite a bit of nitrogen oxide emission and
16 mentioned that they had made a burner modification
17 so that nitrogen gas primarily was emitted. I
18 would beg that you people look into the cost
19 effectiveness of this type of a modification given
20 the nonattainment status of this area and the
21 overall burden of air pollutants on the population
22 and on property. I'd also like to see if we have
23 continuing problems that the EPA consider secondary
24 seals on storage tanks or reduction of number of

1 storage tanks. This is in Sector Notebook of
2 Petroleum Refining, USEPA, pages 70 and 71, over
3 minimization tactics.

4 Also, I spoke with Mr. Ed Bukowski a
5 few weeks ago and with John Kelly of Region 5 USEPA
6 Friday night. Chief Nord is entirely correct, it
7 is a burden, particularly the mercaptan odors have
8 placed, and because of the problem of fugitive
9 emissions as a source from the water treatment,
10 which is not addressed in this permit, I think it
11 is appropriate we only have 10,255 people according
12 to our web site. The average income of this town
13 is approximately 50,000. I doubt very much the
14 average value of homes in this town approaches
15 200,000. We are not a well-to-do community. We do
16 not have a large tax base of McCook, the offending
17 community. It costs us substantially on our
18 revenues to keep on answering these calls, yet they
19 must be answered in letting public safety. And
20 people do become attenuated. They feel foolish,
21 they cease calling. There are substantial public
22 safety considerations.

23 In light of this, if we have continued
24 reports after this oxidizer is up and running, and

1 we would ask also that either on site or off site
2 there be some type of monitoring for HAPS, but we
3 would ask that a performance bond be required so
4 that the town could recoup its expenditures in
5 answering calls and complaints on mercaptans and
6 other possibly hazardous compounds. We don't know
7 the date of overflow whether or not there was
8 benzene. We don't know -- Which is a carcinogen.
9 And we are talking about exposures to people with
10 no warning. Failing -- The fact that George has
11 to come from Des Plaines now. And often these
12 things are transient and dissipated. Failing that,
13 we would ask for grants or funding to train our
14 emergency personnel and supply them with
15 Drager-type monitoring. Somewhat effective, they
16 are canaries in the mine. And they will serve to
17 identify hazardous components so that appropriate
18 action can be taken by town authorities and by the
19 population.

20 I would like to see this thermal
21 oxidizer permitted. I think it will resolve many
22 of our problems, but it will not address the
23 fugitive emissions. It will exchange one type of
24 problem for another. Putting an acid gas scrubber

1 on it, we all know is economically infeasible to
2 deal with the oxide problems. But I would also
3 like to see that the town does not suffer
4 unnecessarily if the problems are not addressed and
5 met in a timely fashion. And having dealt with
6 Material Service and with the quarries and that,
7 you know, I think sometimes the best incentive is a
8 financial incentive to comply. Thank you very
9 much.

10 HEARING OFFICER SELTZER: Thank you.

11 John Cusek?

12 Edwin Bush? Maybe.

13 MR. BUSH: Yes. I work for
14 Congressman Lipinski. My name is Ed Bush. I work
15 for Congressman Lipinski. B-u-s-h, 5832 South
16 Archer Avenue in Chicago. I was invited here by
17 Paul, I believe, he called me on the phone. I'm
18 just here to listen. I don't really have anything
19 to say so I won't take anybody's time.

20 HEARING OFFICER SELTZER: Thank you.

21 I have a card here from John
22 Mayerhofer.

23 MR. JOHN MAYERHOFER: I have heard many
24 different things. And to tell you the truth, I'm

1 not exactly sure if you know what the cause is, if
2 he knows what the cause is. It seems like
3 Mr. Turlek has some information. It seems like
4 Trustee Bennett -- Benedik has some information. I
5 would hope you would weigh these, the facts, not
6 opinions, of what's been measured, what's been
7 talked about. And an odor that's a nuisance for
8 one is objectionable. Is it unreasonable? Is
9 it -- What is it? You said -- What did you say,
10 was the odor --

11 What is your name, sir?

12 MR. LAYMAN: Mr. Layman.

13 MR. JOHN MAYERHOFER: Mr. Layman?

14 MR. LAYMAN: Yes. And I want to tell you
15 right from the start, I'm not going to be
16 argumentative with you.

17 MR. JOHN MAYERHOFER: I don't want you to
18 be argumentative. I would like you to explain that
19 this odor is what, unreasonable? What is it?

20 MR. LAYMAN: Well, the odor is unreasonable
21 in accordance with Section 9(a) of the Illinois
22 Environmental Protection Act.

23 MR. JOHN MAYERHOFER: Okay.

24 MR. LAYMAN: That's the way the legal

1 standard is defined. I'm not going to sit here and
2 tell you that unreasonable isn't a fair
3 characterization of something that you may consider
4 to be noxious or obnoxious or whatever the case may
5 be. I mean those are subjective characterizations.
6 What I'm concerned about in the legal context as a
7 lawyer is what the standard is for our ability to
8 act on either the permitting matter or the
9 enforcement matter.

10 MR. JOHN MAYERHOFER: Okay.

11 MR. LAYMAN: And like I said --

12 MR. JOHN MAYERHOFER: Very good.

13 MR. LAYMAN: So in that context, it's
14 framed in terms of unreasonable odors. All right?

15 MR. JOHN MAYERHOFER: Okay. So if it was
16 unreasonable in your estimation, would it be a
17 violation of the Clean Air Act of a state statute?
18 What would it be?

19 MR. LAYMAN: Yes. That's the whole --

20 MR. JOHN MAYERHOFER: What would it be?

21 MR. LAYMAN: Exactly. That's why I say --

22 MR. JOHN MAYERHOFER: I wasn't sure about
23 that. I didn't know you realized that it actually
24 is a violation.

1 MR. LAYMAN: Right.

2 MR. JOHN MAYERHOFER: Not a subjective view
3 on smell.

4 MR. LAYMAN: Let me try to clarify this.

5 MR. JOHN MAYERHOFER: Okay.

6 MR. LAYMAN: Because you mentioned this and
7 someone over here I believe had mentioned this
8 earlier. Section 9(a) of the Environmental
9 Protection Act provides as follows: "No person
10 shall: (A) Cause or threaten or allow the
11 discharge or emission of any contaminant into the
12 environment in any State" -- in this case the State
13 of Illinois -- "so as to cause or tend to cause air
14 pollution in Illinois,..."

15 Air pollution, in turn, is defined in
16 Section 3.02, and it speaks to the following: "Is
17 the presence in the atmosphere of one or more
18 contaminants in sufficient quantities and of such
19 characteristics and duration as to be injurious to
20 human, plant, or animal life, to health, or to
21 property, or to unreasonably interfere with the
22 enjoyment of life or property."

23 When the Board or the appellate court
24 looked to this language of air pollution, and in

1 particular when they look to the second component
2 of what air pollution is defined as, the
3 unreasonably interfere with the enjoyment of life
4 or property, that's my focus, that's what my
5 reference is to unreasonable odors. It's based on
6 that language right there.

7 MR. JOHN MAYERHOFER: And this would be
8 possibly eliminated by this device, or does that
9 have another function? And I don't mean to rehash
10 things, but I'm not clear about this thermal
11 whatever.

12 MR. LAYMAN: Oxidizer.

13 MR. JOHN MAYERHOFER: Would that be
14 Mr. Lappin, would that -- in not your estimation --
15 in your scientific knowledge that you would have
16 maybe an outside company or other people that have
17 knowledge of this, would they state in writing that
18 this would remove the odor, this device?

19 MR. LAPPIN: Earlier I had mentioned that
20 on September 19th of 2000 an independent testing
21 firm tests the emissions from the stack and found
22 that destruction efficiency of the thermal oxidizer
23 was 98.4 percent.

24 MR. JOHN MAYERHOFER: So in their

1 estimation it would eliminate this odor, or do we
2 know that this oily odor is that?

3 MR. LAPPIN: Well, the purpose of the
4 thermal oxidizer is to burn the noncondensables
5 that are generated during the re-refining process.

6 MR. JOHN MAYERHOFER: Okay. But again, you
7 said it removed 98 percent of something. Would it
8 remove this oily -- Do you know what this oily
9 obnoxious odor is, I mean what the possible
10 chemical components or what causes this? Is it
11 what the young lady said about this natural gas
12 additive so that you can smell it? Is that what it
13 is, sir?

14 MR. LAPPIN: Well, let me just go back to
15 my notes here that I took.

16 MR. JOHN MAYERHOFER: See the EPA --
17 Excuse me. This panel here needs objective
18 information. They don't need somebody saying,
19 "Well, I'm upset about a chlorine odor." No. They
20 need some kind of measurement so that they could
21 rule on it. And I have no problem with
22 objectivity, because that's an area that I work in,
23 too. And that's why I'm being very specific about
24 these things. Because that's the little window

1 that they must look at. And I don't mean to
2 digress too much but go ahead.

3 MR. LAPPIN: No. Mrs. Parker was right in
4 that in the thermal oxidizer any hydrogen sulfide
5 that is present is converted to sulfur dioxide.
6 But as Mr. Desai stated and the testing results
7 from the independent emission firm that tested the
8 outlet of the stack found the sulfur dioxide levels
9 in de minimis quantities below board levels.

10 MR. JOHN MAYERHOFER: Okay.

11 MR. LAPPIN: And she was right to state
12 that in natural gas there is a mercaptan, otherwise
13 you would not smell natural gas.

14 MR. JOHN MAYERHOFER: Right. Right.

15 MR. LAPPIN: And SO₂ is a mercaptan.

16 MR. JOHN MAYERHOFER: Okay.

17 MR. LAPPIN: And the olfactory level of SO₂
18 is in the parts per billion range.

19 MR. JOHN MAYERHOFER: I understand.

20 MR. LAPPIN: So you can smell SO₂ in very,
21 very small quantities.

22 MR. JOHN MAYERHOFER: Small quantities,
23 yes. Yes.

24 So we are going to go to another part

1 that was talked about, but I would like
2 clarification. I was part of the village, I was on
3 one of the boards. I remember Trustee Drogas was a
4 trustee during the '80s mentioned that he visited
5 your facility, maybe it wasn't your facility, you
6 weren't part of it at that time. But anyhow, he
7 was astounded by the level amount of oil that was
8 on the ground, just like Mr. Kucharchuk said. It
9 was incredible.

10 And the reason I bring this up is, and
11 you can tell me if this is related, you read in the
12 paper about gas stations contaminating their ground
13 with fuel oil. Okay? Now, maybe this oil is a
14 little bit different. And maybe you could explain
15 to me what this oil is, so then you can tell them
16 if that is similar to the oil that contaminates the
17 ground and then has to be remediated. Okay. Maybe
18 that's unfair, but maybe you can take a shot at it.
19 What I'm getting at is you hear or you read with
20 great attention to the problem of soil
21 contamination by fuels. Okay. This site
22 supposedly has a vast contamination, maybe possibly
23 throughout the whole site.

24 Now, it was brought up by Trustee

1 Benedik that a man conducted a test and found that
2 contamination was beyond what was thought of. Now,
3 what are we going to do about that? Does that
4 violate an IEPA code? If it does, should we take
5 this information that this man has and review it
6 before we make a decision? Does the soil have to
7 be remediated? And not only that, does the EPA,
8 IEPA -- that's a lot of letters there -- require
9 testing of the whole site but especially in the
10 area that was thought to be contaminated beyond
11 what was tested or stated, you know, are they --
12 Are you as a board required to look over extensive
13 soil contamination? And then what do you do about
14 it? Do you say "test here, test here"? What? You
15 know, maybe you could give me a report on that, how
16 the IEPA does that. I would really be interested.
17 But that's another -- That's another part of this.

18 But I bring up the point is because we
19 are not just talking about emissions here. We are
20 talking about possible other violations that does
21 affect the environment. Whether it evaporates into
22 the air, I don't know. But you hear all this talk
23 about soil contamination of gas stations and all
24 this attention to it. And I'm thinking, my God,

1 this is a huge possible gas station, huge. And I
2 don't know what your responsibility is in that
3 manner. So that's why I bring it up.

4 Okay. Now, we go on to the next part
5 here. Ms. Nguyen, you talked about testing like.

6 Do you have a log of those biweekly
7 tests, a log, you know, a record?

8 MR. LAPPIN: Most definitely.

9 MR. JOHN MAYERHOFER: Who, who did the
10 tests? What are the quantities? What did they
11 measure? That would be interesting to see because
12 you did state it so it would be interesting to see
13 it.

14 MR. LAPPIN: As stated, the biweekly
15 monitoring is done and has been done since the
16 agreed order was signed with the Cook County
17 Department of Environmental Control.

18 MR. JOHN MAYERHOFER: Okay.

19 MR. LAPPIN: Twice weekly a representative
20 of the refinery walks around with the hydrogen
21 sulfide monitor and a PID, which is a photo
22 ionization detector, looking for hydrogen sulfide
23 and possible hydrocarbon emissions.

24 MR. JOHN MAYERHOFER: Very good. Very

1 good.

2 This is to the board. If the Agency
3 can only act based on the current law, what effect
4 does proven violations -- And you can answer this
5 quickly if this has been rehashed. I don't want to
6 rehash this stuff. I really don't. I respect your
7 time, your effort. Okay? Again, if the Agency can
8 only act based on the current law, what effect does
9 proven violations have on issuing a permit? What
10 violation, if any, are you aware of at this time?
11 And I don't mean to set you up. I mean what do you
12 know as a possible violation, either ground
13 contamination, air problem? You know, what do you
14 know? And if you do know this, I would like again
15 this in writing. Or I would like to have access to
16 it.

17 HEARING OFFICER SELTZER: Wait. So you are
18 saying we should respond in the responsiveness
19 summary, you want to see it in writing.

20 MR. JOHN MAYERHOFER: If you have this in
21 summary, you don't have to rewrite it. I will get
22 a copy of the summary, if this is in the summary.

23 HEARING OFFICER SELTZER: The summary
24 hasn't been written.

1 MR. JOHN MAYERHOFER: Soil contamination
2 with numerical amounts.

3 HEARING OFFICER SELTZER: The summary isn't
4 written yet. Your questions will be part of the
5 record.

6 MR. JOHN MAYERHOFER: Very good. Very
7 good.

8 MR. LAYMAN: Well, let me add something.
9 If there is a copy machine available here tonight,
10 I can make you a copy of some of the questions and
11 some of the Agency's responses to those questions
12 that were made at the last public hearing because
13 some of the concerns that were expressed at that
14 time by local residents concerned land
15 contamination issues. And it turned out I know
16 that Ortek and Mr. Lappin can probably provide more
17 detail on this particular area than what I can,
18 they have been ongoing or they have been performing
19 an ongoing voluntary site remediation project that
20 is overseen by the Illinois EPA's Greg Dunn, the
21 project manager for the Bureau of Land.

22 MR. JOHN MAYERHOFER: Okay.

23 MR. LAYMAN: That's been ongoing for a
24 number of years. I know for a fact that the Agency

1 has issued a no further remediation letter for at
2 least a third of the site. I believe Mr. Lappin
3 would represent tonight that they have completed
4 remediation, which the Agency has overseen, of at
5 least half the site. Thus, I think that leaves the
6 remaining half the site yet to be addressed. I can
7 make a copy of some of the issues that were dealt
8 with like I said at that last hearing. And as Bill
9 had mentioned, we will be going through the
10 comments and the questions of this hearing and
11 preparing a similar responsiveness summary in the
12 next few weeks. And so we will provide further
13 enlightenment there if you would like as well.

14 MR. JOHN MAYERHOFER: Very good. Very
15 good. This gets back to the odors.

16 HEARING OFFICER SELTZER: I apologize to
17 interrupt you, but I'm going to interrupt you and
18 take a short break.

19 (Whereupon a recess was had.)

20 MR. JOHN MAYERHOFER: I'm not sure if I got
21 a response to this. And again, if there is a
22 response, you can make it very short. Is the EPA
23 aware of any current violations? Is that in the
24 summary? I missed that.

1 MR. LAYMAN: Not current violations.

2 MR. JOHN MAYERHOFER: For air quality, no.
3 For soil contamination, no.

4 MR. LAYMAN: I can't speak definitively to
5 the soil violations. I don't believe the Agency's
6 Bureau of Land has any ongoing enforcement issues
7 or thing that they consider to be violations
8 outstanding with respect to the company.

9 MR. JOHN MAYERHOFER: Okay. You talked
10 about measuring unreasonable odors. Okay? I
11 believe it was you. How do you do that
12 objectively? What does the EPA ask for, a battery
13 of complaints right up to the issuance of the
14 permit? What do they ask for?

15 MR. LAYMAN: Well, first of all, I would
16 distinguish between the type of matter that we are
17 dealing with, whether it be an enforcement matter
18 or for a permitting matter.

19 MR. JOHN MAYERHOFER: Okay.

20 MR. LAYMAN: It's easier for me to speak in
21 terms of enforcement matter because we brought a
22 number of actions based on odors in the past before
23 the Pollution Control Board. And the Board as well
24 as the appellate court I think has pretty much

1 provided guidance, if you will, as to what facts
2 should be considered in determining whether an odor
3 on any particular instance or occasion is to be
4 considered unreasonable. And it's probably not any
5 different from any number of other ordinance
6 requirements or nuisance statutes, if you will.

7 What you use to support the case that
8 a violation of unreasonable odors or section
9 violation of 9(a) has occurred are supporting
10 testimony or testimonies, if you will, from
11 complainants. You oftentimes would rely or we
12 would prefer the complainants who have experienced
13 odors document those odors. The Agency has
14 historically used the practice and have made
15 available to the public odor logs, which are
16 essentially forms that can be filled out by a
17 complainant identifying the time, the date, the
18 wind direction, the velocity, all of those kind of
19 factors.

20 MR. JOHN MAYERHOFER: Right.

21 MR. LAYMAN: So I guess to answer further
22 we would use that type of evidence. We would use
23 any medical evidence, doctor's reports, diagnosis,
24 whatever the case may be, should there have been

1 physical impact or harm. It's by no means just a
2 bright line because what you may consider to be
3 unreasonable I may consider to be perfectly
4 harmless.

5 MR. JOHN MAYERHOFER: Right. That's why I
6 asked.

7 MR. LAYMAN: That's why we typically will
8 not bring an enforcement action for a violation of
9 9(a) if we have just one person on one afternoon in
10 a given month of a year make a complaint. I mean
11 we will monitor it and we'll assess it but
12 typically our cases, what we bring for a violation
13 of section 9(a), are those cases at which we
14 receive a large number or a fair number of
15 complainants of complaints that occur not
16 necessarily on one day but in which there have been
17 some frequency. That's why I indicated earlier
18 that the ordinance violations that were cited to in
19 May and in June of last year were of the type that
20 we considered to be sufficient to sustain an action
21 based on 9(a).

22 MR. JOHN MAYERHOFER: And you haven't
23 reviewed such complaints or similar complaints from
24 that point to today?

1 MR. JOHN MAYERHOFER: We are not aware.
2 Now that's not to say there haven't been
3 complaints.

4 MR. JOHN MAYERHOFER: Who -- If these
5 complaints were made available to you, logs, time,
6 type of odor, wind direction, would you consider
7 them in your decision between this time when you
8 issued a -- what was that again in '80 -- a couple
9 years ago that was actually a violation? What was
10 that you were just talking about?

11 MR. LAYMAN: The violation notice letter?

12 MR. JOHN MAYERHOFER: Yes.

13 MR. LAYMAN: Okay.

14 MR. JOHN MAYERHOFER: That was based on
15 something.

16 MR. LAYMAN: Right. It was based on an
17 investigation by our field operation section after
18 they heard of or were made aware of complaints by
19 local residents.

20 MR. JOHN MAYERHOFER: Right. What I'm
21 getting at is it's important that you consider the
22 time that that complaint was made by your staff or
23 somebody through the IEPA and the time now in
24 comparing it. Because you have to make a judgment.

1 This is part interpretation, obviously. When you
2 are talking about what is reasonable, what's
3 unreasonable, what's objective. I mean I'm hearing
4 mixed messages here. I'm hearing some documented
5 measurement. And then I'm hearing -- Well, I
6 don't know, you know. And you are making a
7 judgment based on some evidence, some physical
8 evidence and testimony. But that's what I'm asking
9 is that you would consider that time period between
10 when the IEPA following some code, following some
11 statutes, issued a violation, whatever -- I'm
12 forgetting what --

13 MR. LAYMAN: Violation order.

14 MR. JOHN MAYERHOFER: Violation order that
15 they would consider the time between that violation
16 order and now very carefully before you issue a
17 permit to do any further modification of the
18 facility. It's very important that you realize
19 that. Because as the woman said, there are some
20 odors that you can't detect but they are still
21 impacting us. And we would like you on our behalf
22 to try to protect us. That's all we are -- We are
23 not asking for anything unreasonable. We are
24 asking you to look at your own methodology and

1 apply it for today really.

2 So that's why I got back to how you
3 measure it. So you brought in -- I don't know,
4 was there any actual field testing? No. Okay.
5 Because that really doesn't apply here.

6 MR. LAYMAN: Well, I shouldn't be so quick
7 to speak. I think some of the portable analyzers
8 that the agreed order spoke to are designed for the
9 purpose of trying to detect the presence of maybe
10 not smell but --

11 MR. JOHN MAYERHOFER: And that's done by
12 the facility itself, not an outside contractor?

13 MR. LAYMAN: Right. Right. But there is
14 no field test or emissions test or anything
15 otherwise that you can use to detect odors that I'm
16 familiar with.

17 MR. JOHN MAYERHOFER: So really it's based
18 on testimony, frequency, and some other factors.

19 MR. LAYMAN: It's based on the facts.

20 MR. JOHN MAYERHOFER: That's why I asked
21 you to look very carefully.

22 MR. LAYMAN: Right.

23 MR. JOHN MAYERHOFER: Between this period.
24 And we pray, we really pray, I am not kidding, if

1 this device works or doesn't work would we still
2 have a problem from odor from them, we would really
3 hope that you would step in quickly and resolve the
4 issue. And you can tell me right now if you could
5 either rescind the issue of the permit or stop the
6 operation. Is that in your power, or don't you
7 enforce? Is that somebody else?

8 MR. LAYMAN: No.

9 MR. JOHN MAYERHOFER: If there is a problem
10 in the future.

11 MR. LAYMAN: I'm not quite sure I
12 understand your question.

13 MR. JOHN MAYERHOFER: What is the capacity
14 of your Agency to deal with violation in ground
15 contamination, air quality? I mean what if this
16 just changes the problem? You now have a sulfur
17 smell that's objectionable. What do you do then?
18 That's what I'm asking.

19 MR. LAYMAN: We have a duty to and the
20 discretion to -- Well, I shouldn't say we have the
21 discretion because it is, I think, considered a
22 duty. We may exercise enforcement discretion in
23 what kind of cases we bring. But clearly I think
24 our mandate under the statute is to enforce the

1 environmental regulations that the Pollution
2 Control Board has promulgated or that otherwise is
3 set forth in the statute.

4 MR. JOHN MAYERHOFER: I see. The Pollution
5 Control Board sets those quantities if you would
6 like to call them.

7 MR. LAYMAN: Or standards.

8 MR. JOHN MAYERHOFER: And standards. There
9 is some not measurables there.

10 MR. LAYMAN: Right.

11 MR. JOHN MAYERHOFER: I see.

12 MR. LAYMAN: And then it's our duty to
13 investigate potential violations of those
14 regulations and/or enforce against noncompliance.

15 MR. JOHN MAYERHOFER: Okay. This is for
16 Mr. Lappin. On 6-27-and 5-26, this thermal
17 oxidizer was not in operation, yet there was gas
18 releases. What was that caused, what was the cause
19 of them?

20 MR. LAPPIN: On May 26, the oxidizer was
21 operational as witnessed by the Village of McCook
22 Fire Department. Also on May 26, the Village of
23 McCook brought in their portable analyzers and did
24 a walk-through through the whole refinery.

1 MR. JOHN MAYERHOFER: Okay.

2 MR. LAPPIN: And they were monitoring for
3 combustibles, H2S and hydrocarbons and found
4 nothing, but yet the facility was ticketed for
5 that.

6 On 6-27 the facility took
7 responsibility of the odor because this tank that
8 we had spoken about earlier that receives this
9 light hydrocarbon during the processing stage, the
10 operator inadvertently put heat on it. When he put
11 the heat on it, it --

12 MR. JOHN MAYERHOFER: Volatiled?

13 MR. LAPPIN: No, it doesn't. What happens
14 is it's a very sulfur-bearing product. So you
15 start to get a very strong mercaptan odor that
16 night. Since that period of time, the steam lines
17 on that exchanger have been removed. We no longer
18 transfer the product any longer. We are in the
19 process of installing a conservation vent along
20 with a granulated activated carbon system to
21 capture any emissions from that tank so that can't
22 happen anymore.

23 MR. JOHN MAYERHOFER: That was on one day.
24 What was the 5-26 result?

1 MR. LAPPIN: I can't explain because there
2 was an odor complaint. Again the McCook Fire
3 Department responded to the odor complaint. They
4 came in, walked through the entire facility with
5 their H2S monitors and their combustibles and their
6 hydrocarbon monitors, yet got no readings. And
7 again they are looking in the part per million
8 range, got no reading, came back and issued the
9 facility a ticket even though there was no readings
10 found within the facility boundary. So I can't
11 answer what happened on 5-26.

12 MR. JOHN MAYERHOFER: See, the problem is
13 you can talk in parts per million and you can say
14 parts per million of a certain chemical is
15 obnoxious or very unreasonable, will make you go
16 into your house, you know, from the outside. So it
17 doesn't necessarily matter what you measure at
18 times. See, it's both objective measurement and a
19 citizen's understanding -- citizen's response to
20 these odors. And that's why it's so critical that
21 again they look, the IEPA looks at the log of
22 complaints, and has to be very careful about
23 issuing any further permits. Because if this thing
24 either -- another odor is generated down the line,

1 what is our recourse as a village? Do we wait
2 another couple years to complain? What is our
3 recourse? Do you know?

4 MR. LAYMAN: I don't think you should wait
5 a couple years to --

6 MR. JOHN MAYERHOFER: No. I mean what
7 would it take to alter things? I know this is
8 hypothetical, but this is a concern of the village.
9 We have smells here that are like this many and
10 that's only the ones that I'm really sure of that I
11 know which direction they are coming from because I
12 drive my bike towards them. I know it. And it's a
13 concern. And I'm not so much saying that I'm just
14 concerned about my health. Obviously, I'm
15 concerned about my health.

16 But I'm also wondering what it takes
17 for you to look at these odors and these
18 objectionable smells and what you do about it. It
19 seems like it just gets drawn back to that. And
20 that's why I'm repeating it so often. Because if
21 that's all we have to base our case on, then you
22 will get a lot of calls and it will be calls. In
23 fact, maybe one of your people when we call the
24 1-800 number should come out and say, "You know

1 what, this person is not dreaming, they are right."

2 And that's why I just keep on returning to it.

3 You might have answered this, but I'm
4 going to go ahead. If the IEPA does not enforce
5 violations of the Clean Air Act -- Is that right,
6 it doesn't enforce those?

7 MR. LAYMAN: No.

8 HEARING OFFICER SELTZER: Environmental
9 Protection Agency. We are an enforcement agency.

10 MR. JOHN MAYERHOFER: You do?

11 MR. LAYMAN: Yes.

12 MR. JOHN MAYERHOFER: Because I thought I
13 heard before that you are not enforcing.

14 MR. LAYMAN: No. We are.

15 MR. JOHN MAYERHOFER: So -- Well, this
16 is -- This is I'm actually asking you what you
17 would base your denial of, but you have to review
18 your information, obviously. So I will leave that
19 up to you.

20 I will pray that you make a good
21 decision that will benefit the Village of Lyons and
22 the surrounding communities. Thank you very much
23 for your time. I appreciate it.

24 HEARING OFFICER SELTZER: Thank you.

1 I have no other cards here. But I
2 want to ask one more time is there anybody else
3 here that would like to make any comments or ask
4 questions; if so, raise your hands.

5 Yes, sir. Please identify yourself
6 for the record.

7 MR. NESVIG: I'm Bud Nesvig. I don't live
8 very close to here. I live in Wilmette. The only
9 reason I would like to make a couple remarks is
10 that I listened tonight to a principal of an
11 elementary school. And I didn't hear anybody come
12 up with any -- telling her what to do when she gets
13 some objectionable odor and it's affecting some 250
14 kids. She can't today put them out on -- to close
15 the school and expect that you can call all the
16 mothers or what have you and they can come pick
17 them up. The mothers may be working. And
18 basically what we did is we let her leave without
19 giving her any instructions of what she is supposed
20 to do. She is in charge of the kids.

21 I would suggest if I were the
22 principal I would get a hold of the next people
23 involved in the city or village that is responsible
24 for safety. I would call the police. But due to

1 the fact that operation is not in Lyons, I
2 understand, it's in McCook, I would call the
3 sheriff's police. And if they didn't want to come
4 because it would probably mean that they would shut
5 down the plant, I would get a hold of the state
6 representative. And if that didn't work, I would
7 get a hold of the governor and I would raise enough
8 ruckus over this thing, I would get the job done.
9 But you can't leave a principal of a school with
10 250 kids. She can't just put them out on the
11 street. I think that's bad.

12 HEARING OFFICER SELTZER: Thank you. Is
13 there anybody else that has any questions or
14 comments?

15 Yes, ma'am.

16 MS. PARKER: I would like to respond.
17 Okay. Toni Parker again. I would like to respond
18 to you because I believe I did address part of that
19 in that when you have a situation -- And I would
20 like to make a comment first to clarify something.
21 With all this talk of odors, it tends to minimize
22 and direct away from the fact that in order for
23 someone to detect a odor a molecule of chemical has
24 to be inhaled and land on an olfactory sensor.

1 That means if that chemical has toxic properties
2 you are going to experience those toxic properties.
3 Unless you can identify what the material is, and
4 that was the purpose of suggesting if there are
5 continuing problems to get the state or whoever to
6 get a grant to provide inexpensive monitoring
7 equipment that could at least identify what you
8 are dealing with. At that point Emergency
9 Management -- and Lyons does have an emergency
10 management center -- should have a plan of action.
11 And that just goes not just for Ortek. But we have
12 Vulcan, we have Aramak, we have the Amoco refinery.
13 There are a lot of places in town that could have a
14 problem. You could have, you know, a chlorine leak
15 for that matter at Cermak pool if it were up and
16 running. So this is something that would benefit a
17 lot of different applications. Without knowing
18 what it is you cannot respond effectively.

19 And someone had mentioned a lot of the
20 problems occurred late at night. I know one night
21 last year, a year ago January, I went out and
22 walked my dog. And I walked ten steps, I smelled
23 hydrogen sulfide and my eyes began tearing
24 uncontrollably. It was like 9:30 on a Friday

1 night. And I started phone surfing, and I
2 eventually hit emergency management with my copy of
3 Dangerous Properties of Industrial Materials on my
4 lap and bulldozed my way till somebody finally came
5 out and did something by saying, "Gee, guys,
6 lacrimation, 200 parts per million, low site lethal
7 level, 500 parts per million. Maybe we should get
8 somebody out here to check this out."

9 But I was able to identify the odor.
10 And most people without spending years in a
11 laboratory, which not all people find fun, you have
12 got to be really masochistic to do it, can't do
13 that it. So we need some way in the community to
14 identify not just in terms of this permit but
15 because we are so inundated with sources.

16 I was looking at EPA "Know your
17 Communities" for McCook and Lyons. 243 sources
18 listed for McCook. One that's very familiar had a
19 bunch of TRI, Toxic Release Inventory, things which
20 I wouldn't have suspected because I have never
21 heard a word about that addressed, it wasn't Ortek.
22 But this is one way that we can deal with this, so
23 that's your answer.

24 HEARING OFFICER SELTZER: Is there anybody

1 else that has any comment?

2 Yes, sir, identify yourself again
3 please.

4 MR. BENEDIK: Gary Benedik. Just a quick
5 question for Mr. Layman. 539(a) that you started
6 to talk about, that statute.

7 MR. LAYMAN: Section 39?

8 MR. BENEDIK: Yes. Do you have the ability
9 to impose certain conditions?

10 MR. LAYMAN: Yes. Correct.

11 MR. BENEDIK: Would that come into play
12 with this permit?

13 MR. LAYMAN: With the permit we are
14 proposing to issue or with the previous
15 construction permit?

16 MR. BENEDIK: The current permit.

17 MR. LAYMAN: The one we are proposing
18 tonight?

19 MR. BENEDIK: Could you impose conditions?

20 MR. LAYMAN: Indeed, I think part of the
21 reason why we hold these type of public hearings is
22 to hear comments or to take and solicit comments
23 from citizens about what type of special conditions
24 would be necessary, would be helpful to impose in

1 the permit, so --

2 MR. BENEDIK: You know, because we do
3 expect the permit to be approved. But we do also
4 expect special conditions to also be put in place,
5 and that's what we are asking.

6 I want to thank Hearing Officer
7 Seltzer and the rest of the staff of the IEPA for
8 coming out tonight and I want to thank the
9 residents also. Thank you very much.

10 HEARING OFFICER SELTZER: Thank you very
11 much. And I will comment that very often as a
12 result of these hearings permits that are issued
13 are issued with many special conditions. There is
14 usually standard conditions that go along with
15 every permit but generally as a result of good
16 input in these kind of hearings special conditions
17 result.

18 And well, before we close, I will talk
19 about the close of the record.

20 Sir, did you have another comment?

21 MR. PAUL MAYERHOFER: I will make it quick.

22 HEARING OFFICER SELTZER: Identify yourself
23 again.

24 MR. PAUL MAYERHOFER: Paul Mayerhofer.

1 This is a question for Frank. On one of the dates,
2 the date you were just mentioning about the fire
3 department coming and checking the plant and it was
4 all good, what was the date on that, do you know?

5 MR. LAPPIN: May 26 I believe.

6 MR. PAUL MAYERHOFER: Okay. So that was
7 May 26, that was the same day that Robinson School
8 called, Washington School called, RB called.

9 MR. LAPPIN: That I don't know. I don't
10 know.

11 MR. PAUL MAYERHOFER: That's that date
12 during the day. Do you think that maybe if they
13 were checking the areas where the people were
14 calling they might have detected something and by
15 then when they got to your plant it already
16 dissipated from your plant and was actually at
17 these other locations? Could that be?

18 MR. LAPPIN: Well, I mean I would hope that
19 they would go to the source before they come to
20 Ortek, the source being --

21 MR. PAUL MAYERHOFER: Well, they probably
22 figured the source was Ortek.

23 HEARING OFFICER SELTZER: I'm going to stop
24 that. That's getting nobody nowhere.

1 MR. PAUL MAYERHOFER: Okay. That's fine.
2 I also have some other -- One thing I want to hit
3 on that Mr. Kucharchuk hit on was about the cancer
4 rate around here. Can I talk about that for a
5 minute? My -- A guy that I grew up with, he lived
6 directly behind Ortek, which is right on 46th
7 Street. I don't know the exact address. But it's
8 directly behind you. And unfortunately, his mother
9 last year died of cancer. She lasted about I think
10 a month after they determined it.

11 And I can remember her telling me how
12 at 11 o'clock at night on a Sunday night she could
13 hear how Ortek would get going and how it would
14 just be permeating. And she said it actually
15 melted her screen on her back door, you know. Now,
16 she could be exaggerating but there are a lot of
17 cases of cancer in our town and a lot of women with
18 cancer. And she was one that lived behind Ortek
19 within I would say 200 yards. And I mean it's hard
20 to prove. But when Mr. Kucharchuk was talking
21 about it, I did think about it. I thought about
22 what she told me years ago.

23 That's it. Thank you.

24 HEARING OFFICER SELTZER: Thank you. Is

1 there anybody else that wishes to make any comments
2 before we close?

3 (No response.)

4 HEARING OFFICER SELTZER: Okay. I want to
5 thank you all for your participation. And I want
6 to point out that the record in this matter will
7 stay open through June 2nd of this year. That
8 means that any comments that are received prior to
9 midnight June 2 and if they are mailed, as long as
10 they are postmarked prior to June 2 of this year,
11 they will become part of this record and will,
12 therefore, be considered by the individuals making
13 the decisions on whether or not this permit should
14 or should not issue.

15 Sometime thereafter a responsiveness
16 summary will be written, which will address all the
17 pertinent questions that have been raised this
18 evening, and also consider all the pertinent
19 suggestions that were raised this evening. And all
20 of you who have supplied your name and address will
21 receive a copy of that responsiveness summary.

22 Again, thank you for your
23 participation. Have a good evening.

24 * * *

1 STATE OF ILLINOIS)
) ss.
2 COUNTY OF DU PAGE)

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I, JANICE H. HEINEMANN, CSR, RDR, CRR,
do hereby certify that I am a court reporter doing
business in the State of Illinois, that I reported
in shorthand the testimony given at the hearing of
said cause, and that the foregoing is a true and
correct transcript of my shorthand notes so taken
as aforesaid.

Janice H. Heinemann, CSR, RDR, CRR
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