BEFORE THE ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

IN THE MATTER OF: PROPOSED)
ISSUANCE OF A JOINT CONSTRUCTION)
AND LIFETIME OPERATING FOR)
TONYAN BROTHERS)

REPORT OF PROCEEDINGS taken hearing of the above-entitled matter, held at 11915 Price Road, Hebron, Illinois, before Hearing Officer William Seltzer, reported by Paula A. Erickson, CSR, a notary public within and for the County of McHenry and State of Illinois, on the 25th day of February, 2002, commencing at the hour of 7:00 p.m.

APPEARANCES:

MR. WILLIAM SELTZER, IEPA Hearing Officer;

MS. TARA T. NGUYEN-EDE, IEPA Environmental Protection Engineer, Bureau of Air;

MR. HARISH B. DESAI, P.E., IEPA Unit Manager, Permit Section, Bureau of Air.

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HEARING OFFICER SELTZER: Good evening, ladies and gentlemen. My name is Bill Seltzer. I am an attorney with the Illinois Environmental Protection Agency and I have been asked to be the hearing officer for this evening's hearing. This matter is In Re: The proposed issuance of a joint construction and lifetime operating permit for Tonyan Brothers, Inc. In Hebron, Illinois.

The way we will proceed tonight is I will first have everybody from the IEPA introduce themselves and indicate that their position is with the Agency. I'm then going to ask if there is anybody present this evening for the applicant. If there is, I am going to ask that they stand up and introduce themselves and then we are going to go back to the Agency and the Agency will make a short presentation and after that, I will ask if the applicant wishes to make a presentation. If they do, they will at that point in time. If they don't wish to make a presentation, then we will go right to the audience.

When you first came in, you were asked to sign registration cards to indicate

whether or not you wish to offer a comment or ask questions. Now even though you may not have signed the card, I will still when we are all through with the cards ask if there is anybody here who has any comments or questions even though they may not have so indicated on a card.

I want to indicate, too, that everything that happens tonight will become part of the official record to be reviewed by the Agency's permit section. Also, the record of these proceedings will stay open through March 27th of this year. That means that any written comments that are postmarked by midnight of March 27th will also become part of the official record. The transcript of tonight's hearing will be prepared, transcribed and it will then appear on the Agency's web site.

I am going to ask that witnesses before they ask questions or testify that they identify themselves for the record by spelling their last name and I think we will start at this time unless there are any questions as to how we are going to proceed tonight. If not, we will go ahead. Are there any questions? Okay. As I said,

I am William Seltzer and I am going to ask that the other Agency individuals present this evening identify themselves and indicate their position with the Agency.

MR. DESAI: My name is Harish Desai. I am a unit manager in the permit section.

MS. NGUYEN-EDE: Good evening. My name is Tara Nguyen-Ede and that's N-G-U-Y-E-N-E-D-E and I am an environmental protection engineer for the permit section.

HEARING OFFICER SELTZER: Thank you and the gentleman at the front desk when you came in is Brad Frost, F-R-O-S-T. Let me ask now is there anybody present this evening representing the applicants?

MR. TONYAN: Jim Tonyan from Tonyan Brothers.

HEARING OFFICER SELTZER: Sir, I'm sorry. What is your name?

MR. TONYAN: Jim Tonyan from Tonyan Brothers.

HEARING OFFICER SELTZER: Spell your last name.

MR. TONYAN: T-O-N-Y-A-N.

HEARING OFFICER SELTZER: What's your position with the company, sir? Are you the owner?

MR. TONYAN: President.

HEARING OFFICER SELTZER: Is there anybody else present for the company this evening?

MR. HOOKER: I am John Hooker, H-O-O-K-E-R. My name is John Hooker, H-O-O-K-E-R and I am with Seymour International and we are the normal consultants for Tonyan Brothers.

HEARING OFFICER SELTZER: Is there anybody else present for the applicant this evening? We indicate nobody is so -- indicating for the record. Then at this point in time, I will turn the microphone over to the Agency engineers to make a short presentation.

MS. NGUYEN-EDE: Good evening, ladies and gentlemen. Again, my name is Tara Nguyen-Ede and I am the analyst that is reviewing this permit. I just want to thank all of you for coming here tonight and for your interest in the environmental issues. I am just going to be presenting a brief overview of the events that has brought us together tonight.

The proposed Tonyan Brothers-Linden

Lakes Sand & Gravel plant, it represents a typical example of a sand and gravel facility. The sand and gravel is basically mined from pits and they undergo screening, crushing, cleaning and transferring operations. The final products, they are transferred to storage piles and then they are loaded onto trucks for shipment.

At this particular facility, they propose to have 11 conveyors, three crushers and four screens. The principal regulated pollutant that is emitted from this facility will be what we call particulate matter. There are two types of emissions. One is a process and one is a fugitive.

The company does propose to utilize water trucks as needed and concrete sumps and paved roads to reduce their particulate emissions. Linden Lakes has volunteered to -- voluntarily requested to limit their emissions below the rate that is allowed under our rules which is under the 35 Illinois Administrative Code, Section 212.321.

The sand and gravel production will be limited to 786,200 tons per year and the

moisture content of the aggregate should be at least 5 percent by weight and the proposed permit limits of particulate emissions from this plant will be 5.5 tons per year. This plant is subject to the applicable rules found in Title 35 and the rules require the plant to comply with certain operational and emission limitations.

In addition to our state regulations, the plant is also subject to the federal regulations under New Source Performance Standard Subpart 000 which is the standard for a nonmetallic mineral processing plant which requires additional emission restrictions from this facility.

In September of 2001, Tonyan Brothers submitted a joint construction and lifetime state operating permit application to the Bureau of Air for the proposed plant in Hebron. After review of this application, the Illinois EPA has made a determination that the company's operations are in compliance with all applicable state and federal regulations and has prepared the draft of the construction and lifetime state operating permit for the proposed plant which I

believe everybody has a copy.

The conditions of this permit contains limitation requirements to assure that this facility will comply with all applicable regulations. The permit sets limitations on the sand and gravel throughput and the moisture content. The conditions also establish appropriate compliance procedures including inspection practices, record keeping requirements and recording requirements. The permit must carry out these procedures on an ongoing basis to demonstrate that the facility is operating within the limitations set by the permit and is properly controlling the emissions.

Due to the significant public interest and concerns in this matter, the Illinois EPA has decided to hold this public hearing to give the citizens an opportunity to become more familiar with the Linden Lakes operations and their environmental regulation governing them.

I just want to thank you for your time and attention and at this time, Harish Desai unit manager of the Permit Section will also make a brief presentation.

MR. DESAI: Good evening. Hello. Good evening, ladies and gentlemen. Thank you for attending this public hearing. My name is Harish Desai and I have worked with the Illinois EPA for over 20 years as unit manager in Permit Section, Bureau of Air.

The application to construct and operate for the Tonyan Brothers facility has been reviewed by Ms. Tara Nguyen-Ede and she has determined that the plant as proposed will comply with all applicable rules and regulations and, therefore, we have proposed to grant the permit with several restrictions.

Because of the large interest in the project -- in this project by the general public, the director of the Agency has requested to conduct a public hearing. The Agency is conducting an informational hearing which means that we will be gathering information and comments from the general public before we can make take a final action on this project.

Prior to the final action, all of the comments will be reviewed and taken into consideration. I would like to mention at this

time that any application received by the Bureau of Air is either granted or denied strictly on the company's demonstration of compensation with applicable rules and regulations.

This project is subject to 35 Ill. Adm. Code, Section 212.301, 212,.321 and Federal Regulation 40CFR 60 Subpart 000, and the company has demonstrated that it will comply with this regulation. What happens if the company cannot meet their commitment given in the application or exceeds any of the restriction given in the permit? In such cases, the company is subject to enforcement action by Illinois EPA and the attorney general's office.

The attorney general's office based on the evidence in front of them will process further and enforce action with the Pollution Control Board. The Pollution, Control, Board. The Pollution Control Board will decide whether the party that we are suing is at the fault or not and will set up the fine as well as penalties and also make them do a further requirement to control the air pollution, and the company will have to comply with those requirements.

There are over 180 facilities that are doing the same type of business as Tonyan Brothers in the State of Illinois. I am not going to say that they are really clean and causing no air pollution problem. However, just by the nature of the business, the process is dusty and at the same time, there are ways to control the dust generated by the process. These companies have demonstrated that they will contain the dust and this concludes my statement.

HEARING OFFICER SELTZER: Thank you. Let's go off the record for a minute.

(WHEREUPON, a brief recess was had.)

HEARING OFFICER SELTZER: Let's go back on the record. I indicated earlier that the record will stay open through March 27th of this year. I forgot to mention that there will be a responsiveness summary mailed to everybody that has signed a card and given us your mailing address. When you respond to the summary, we will respond to all the questions and comments that have been made of record. Let me ask at this time if the applicant wishes to make a presentation this evening?

MR. TONYAN: No.

HEARING OFFICER SELTZER: At this point in time, first before we go to the cards in general, I see that we have a representative present representing the office of Jack Franks who is a state representative, a Mark Shepherd.

MR. SHEPARD: Yes.

HEARING OFFICER SELTZER: Mr. Shepherd, did you want to make any comments on behalf of the representative?

MR. SHEPHERD: I got a letter that he asked me to read to the group.

HEARING OFFICER SELTZER: Would you come forward spell your name and -- up there, sir. Spell your name for the record and then read the letter into the record.

MR. SHEPHERD: My name is Mark Shepherd. I am a village trustee since 1995 in the Village of Hebron. My last name is spelled S-H-E-P-H-E-R-D. The Honorable Jack Franks has asked me to read a letter that was dated on February 19th. It's in regards to the proposed issuance of the joint construction and lifetime operation permit to Tonyan Brothers, Inc. For a standard gravel processing plant East on Route 173. It's addressed

to: Dear Ms. Cipriano: On January, 2001, Tonyan Brothers, Inc. Submitted its joint application for a construction/operating permit for planned aggregate production facility (Linden Lakes Sand and Gravel) adjacent to Hebron, Illinois.

On February 2, 2001 your Agency issued Tonyan a notice of incompleteness in addition to the information that was submitted by Tonyan on April 2nd. On June 1, 2001, your Agency issued Tonyan a request for additional information listing 10 items necessary to enable the operation to comply with the Illinois Administrative Code.

On September 7, 2001, Tonyan withdrew its permit application. On September 25, 2001, your agency received a second application for the construction/operating permit which nearly quadruples the requested annual throughput.

This second application fails in my opinion to address the following items specifically requested by your agency on June 1, 2001, the request for additional information to Tonyan, a copy of which is attached hereto.

Items 4 through and including Item 10 each of these items becomes more critical

with the substantially increased throughput. Additionally, the applicant has failed to provide a detailed map showing the distance to the nearest school, commercial and manufacturing establishments as requested in Item 2.

Because the applicant has failed to supply the Illinois Environmental Protection Agency with the requested documents, I urge you to deny this permit application. Very truly yours, Jack D. Franks, state representative 63rd District.

HEARING OFFICER SELTZER: Thank you, Mr. Shepherd. Could you leave a copy of that with the court reporter, please?

MR. SHEPHERD: No problem.

HEARING OFFICER SELTZER: We will also supply the court reporter if we can with copies of the statements that were made by the Agencies. Let me ask: Is there any other elected official present this evening?

Sir, you raised your hand and what is your name, please.

MR. McCLELLAN: Bradley McClellan Village trustee for the Village. M-C-C-L-E-L-L-A-N.

HEARING OFFICER SELTZER: Did you wish to make a couple comments this evening?

MR. McCLELLAN: Yes, I did. While I understand the EPA has looked at the broad view of this plant versus the other 180 that are within the Village, did they look at the pollution that's developed by the truck traffic and equipment that is in that pit and will go out of that pit every day?

The amount of truck traffic I believe is very crucial because it is a very significant number of trucks for Hebron. I would imagine that the contents of those emissions from those vehicles will greatly increase in the Hebron area.

The other question that I have is the amount of dust, while it is dust, that's going to settle on outlying areas within the Village especially across Route 173 where they are trying to recreate a habitat that the Conservation Department is working on. What is the significance of that dust settlement or fallout that is going to affect that area and other areas within Hebron?

MR. DESAI: Just about any of the hearing

we go to for any facility who is constructing any type of equipment, the truck traffic has always been an issue; however, in this particular case or any other case, we do not permit any truck -- we do not issue any permits for the truck trafficking. That's only controlled by the Department of Transportation.

So it is definitely not a consideration for the truck going on the roads or coming into the plant; however, once it comes into the plant, dust generated by the truck, that has to be contained within the property.

MR. McCLELLAN: Well, then my question would be if that's got to be contained within the property, how are you going to keep the emissions from those trucks and equipment operating on that property?

MR. DESAI: As I specified before, the company -- there is one of the regulations that requires that should not cause any air pollution beyond the property line and if they do cause any kind of air pollution beyond the property line, that means dust flying out from the property line, then they will be subject for enforcement action

but that will not be the reason for denying the permit or granting the permit.

MR. McCLELLAN: Thank you.

HEARING OFFICER SELTZER: I am going to add a little bit to that as an attorney, not as a technical person, sir. As far as the vehicle emissions, if you are addressing -- your question to the vehicle emissions, the Agency is without power to look at those type of emissions in the application for or the issuance or denial of this permit.

I believe up in this part of the state not maybe trucks but gasoline driven cars and maybe gas driven trucks are subject to the Agency's motor vehicle emissions. You people would know more about that than I would up here. I think this is an area that is regulated by the motor vehicle emissions.

Let me ask are there any other elected officials present this evening? Sir, would you identify yourself for the record, please?

MR. SCHAID: Steven Schaid, Hebron Township Supervisor.

HEARING OFFICER SELTZER: Did you care to

make a statement, Steven?

MR. SCHAID: Yes, I did.

HEARING OFFICER SELTZER: Would you spell your name for the record, please.

MR. SCHAID: S-C-H-A-I-D.

HEARING OFFICER SELTZER: Sir, could you hold the microphone closer.

MR. SCHAID: Dear Hearing Officer: We have reviewed the permit IEPA is proposing to issue in connection with the above matter. On Page 4, Paragraph 11 of the proposed permit Tonyan Brothers is required to maintain monthly records of numerous items including: The amount of sand and gravel processed through each emission unit. Operating logs for water spray equipment and weekly moisture contents performed including date, location and sample.

On Page 5, Paragraph 15 of the proposed permit, Tonyan Brothers is required to provide the required reports and notifications concerning equipment, operation or repairs, performance testing or a continuous monitoring system to IEPA. For whatever reason, the records required to be maintained by Tonyan Brothers in

Paragraph 11 are not required to be forwarded to IEPA in a manner similar to reports and notifications in Paragraph 15. Therefore, there is no means for local governmental authorities such as this township or McHenry County to monitor these very important matters. We believe that the records set forth in Paragraph 11 should be available to the public on a routine basis and request that you modify the proposed permit to require Tonyan Brothers to file the monthly records with IEPA within 14 days of the end of each month.

Additionally, Tonyan should be required to maintain and file with your Agency weekly records of production in order to determine if the calculations submitted with their application with regard to particulate emissions are accurate. Thank you.

HEARING OFFICER SELTZER: Okay. Thank you. Could you leave a copy of that statement with the court reporter since I see it's typed? You don't have to but if you would, it will be helpful.

MR. SCHAID: Yes, I can.

MR. DESAI: Thank you. Any documents that the Agency has, that can be available to the public

any time they want under the Freedom of Information Act and all you have to do is write us a letter and within seven days, that document can be mailed to the interested party. That applies to any reports submitted by Tonyan Brothers or any other company.

HEARING OFFICER SELTZER: Thank you. Are there any other elected officials here this evening that wish to make any comments or ask questions? No one is so indicating so we will go to the cards. The first person is Martha Carver. Spell your name, please.

MS. CARVER: Sure. Martha Carver, C-A-R-V-E-R. I am a resident of Hebron Township and a trustee of the McHenry County Conservation District. The McHenry County Conservation District is an open space body elected by referendum for the citizens of McHenry County in 1971. It has holdings of 15,000 acres owned by the taxpayers in McHenry County and I am speaking on behalf of the district and the trustees about our holding adjacent to this proposed pit across from 173 called the Streets Lake Marsh.

We have a total of 260 acres surrounding Streets Lake Marsh and the adjacent

McKinney parcel along with a bike trail that runs north of the marsh that will be opening this spring. I have a statement.

On December 16, 1996, the Board of Trustees formally declared their opposition to the proposed gravel mining project because of the potential negative impacts of the mining operation on the Streets Lake Natural Area. That opposition was based on a hydrogeologic investigation which was prepared by Waterland, Inc.

On February 21, 2002, the Board of Trustees for MCCD reaffirms this position expressed by the 1996 Board and requests that three requirements be placed on the mining operation.

No. 1, preparation of a groundwater flow model. Preparation of such a model would provide a more exact analysis of the flow regime between the Streets Lake and gravel pit. The approximate amount of decrease in water supply, the exact change in groundwater flow and the amount of water level fluctuations in the marsh would thus be quantified.

No. 2, preparation of a water balance for the marsh. A water balance would be

included in preparation of the groundwater flow model, but on its own would provide another form of quantifying impacts from the gravel pit.

No. 3, preparation of a containment transport model. This model will evaluate the potential of the gravel pit to contaminate groundwater and would assess if contamination could reach the marsh.

All three of these recommended measures would allow for a more focused and informative analysis on the exact impact imposed by this mining operation.

By March 27th, you will receive a packet from the District that will submit our objections in detail along with our analysis of our botanical surveys in the past few years and our waterfowl surveys including the recent one this spring which held six endangered or threatened species of waterfowl. Thank you for this opportunity to state the District's position at this time. I appreciate your attention.

HEARING OFFICER SELTZER: Thank you very much. What date was that when -- You indicated you would make a submission before the close of the

records; is that correct?

MS. CARVER: Yes.

HEARING OFFICER SELTZER: Can you get it in -- As soon as you could get it in would be appreciated. The sooner the better.

MS. CARVER: The end of this week we will try our best.

HEARING OFFICER SELTZER: That would be great. Thank you. Next is Ronald Miller.

MR. MILLER: Good evening. My name is Ronald Miller, M-I-L-L-E-R. I represent Bushnell Manufacturing Company. I am the vice president and treasurer of there. Bushnell is located at 11414 Maple Avenue in Hebron, Illinois. It's on the east end of town on 173 just outside the city limits. We are six-tenths of a mile from the entrance to the proposed gravel pit.

In case you are not familiar with Bushnell, we manufacture high quality hand tools. Basically hammers. You can purchase our products in stores such as Home Depot, True Value, Ace, Menards, Farm & Fleet. If you are not familiar with Vaughn, I am sure you are familiar with Sears and the Craftsman line. We make all of

the Craftsman hammers. We are the oldest continuous supplier to Sears. We just completed our 104th year of supplying Sears with tools. We are a family owned corporation that now has its fifth generation member in our facility.

We are opposed to this gravel pit primarily due to its proximity to our operations. When you manufacture hammers, there is a lot of grinding and polishing in that process. We use 45,000 cubic feet of air a minute in exhausting air outside of our facility. When that air is exhausted out, it's got to be replaced and it comes back into our facility from the surrounding atmosphere.

We are fearful that there will be a high particulate level in the atmosphere primarily due to the truck traffic and the automobile traffic running up and down 173. We are hopeful that the Illinois EPA is considering the particulate matter that will be in the air as a result of traffic on 173.

I happen to live in Crystal Lake. There are a number of gravel pits in the area. There is a large one on Highway

31. You go down that highway and the highway is actually a different color. It's not nice and dark. It is almost white because of the particulate matter on the highway and you can see for a mile -- more than a mile the particulate that's on the highway. Every car that goes up and down that highway stirs up particulate in the air. I thank you for the opportunity to speak to you tonight.

HEARING OFFICER SELTZER: Thank you. Next is Bernard Evans.

MR. EVANS: My name is Bernard Evans. Can you hear me? My name is Bernard Evans. Last name is spelled E-V-A-N-S. I am an engineer with Environmental Resources Management. I am here to speak on behalf of Filtertek, Hebron Township and other affected people within the area of the landfill. We were chartered with the task of looking at the technical data that had been submitted and the subsequent applications by the Tonyan Brothers and to see if we could evaluate could the process as proposed have some impact on the air quality standards. In relationship to that, we reviewed the data and would like to submit

these comments.

Let me hand this statement out here. Just a minute.

HEARING OFFICER SELTZER: Sir, before you proceed any farther, you have handed a letter directed to Mr. Frost dated February 22nd of this year 2002. I am going to make that a part of the record as Exhibit No. 1 and the chart that you have just passed around I will make a part of this record as Exhibit No. 2.

(WHEREUPON, Exhibit Nos. 1 and 2 were marked and dated.)

MR. EVANS: I appreciate it. Our relationship is to try to establish when facilities have an impact on air quality and ways to do that would be to conduct an air dispersion modeling. That was certainly not my responsibility and not the responsibility of some of the petitioners here but we did do a review of the modeling analysis that was conducted for Tonyan Brothers in November of 2000 and that modeling analysis was based upon operating data, emissions data that was presented to the Illinois EPA in their application January of 2001.

This table here, Table 2 presents in the first column some of the operating parameters and then in the subsequent columns some of the modeling inputs and data and predictions. With the first submittal, the operating schedule was proposed to be on the average about six hours a day, a day and a half a week, 35 weeks per year, with the maximum of about eight hours per day, four days a week and 40 weeks a year with the annual throughput being about 40,000 tons per year with the maximum of about almost 200,000 tons per year. The tons per hour was 125 tons and 150 tons per year maximum.

With the submittal by Tonyan Brothers, it had conducted some modeling and at that point in time was predicted that the facility as defined would not exceed the national air quality standards but a lot has changed since then.

Part of this changed in relationship to some inquires by Illinois EPA in relationship to some of the emission factors that were used to create the application. It was defined that the emission factors for a quarry would not represent the emissions from the sand and

gravel operation and so it was requested that they resubmit with the quarry factors replaced by sand and gravel.

In addition, it was pointed out that some of the factors used in predicting emissions from truck traffic was not quite representative. As you can see from the table, there was also some emissions that were not considered in the modeling study. For instance, there was no consideration for the particulate emissions from excavating. There was no emissions from truckload out. There was no emissions from vehicle activity on nonpaved roads. Storage piles were not included.

So in relationship to that particular study, the predicted impacts which show compliance with the National Ambient Air Quality Standards you can understand what I am getting at. In the application that was submitted in September, considerable changes occurred.

The emission factors that we just spoke of have been corrected and those emission factors were in agreement with the Agency and the review process but certainly some changes

in operation have taken place. You might note that the throughput has changed from formerly 200,000 tons per year to on the average 420,000 tons per year. The maximum throughput allowed in the permit is almost 800,000 tons. The tons per hour has doubled on the average and is now almost a factor of four in relationship to the maximum. Those type of changes have affects throughout the facility when shipped particulate matter could be generated.

Also still not quantified although requested by Illinois EPA would have been the emissions from the truck traffic corrected to the proper emission factors and the remainder of the items that you see on the list. We could not repeat a modeling study in relation to our scope but in our review, the interesting thing about dispersion modeling is that if you assume that the emission sources have some similarities and they are located within a reasonable proximity to the original modeling, you can do a proportional analysis and the proportional analysis will give you some indication of what those impacts may be.

We have conducted that proportional analysis and with those impacts at the

bottom of your table there you can see that we have gone from maybe 148 micrograms per meter to an impact of almost 560 on a 24 hour average to compared to a national standard of 150. In addition, the annual standard has gone from in compliance to as much as 101 micrograms per cubic meter and that particular impact would be above the standard as well.

So our conclusion is that with the changes that have occurred in the facility in relationship to throughputs, in relationship to the activity that would result in more truck traffic on the highways, in relationship to the true emissions that will be generated from the various sources that are listed there is that the facility will exceed the standards and I believe that our own rules indicate that we cannot allow a source to be constructed that would have the potential to contribute to the exceeds of air quality standards so with that, I appreciate it. We will submit this thing on March 27th as well with the any additional information you'd like to see. Thank you.

HEARING OFFICER SELTZER: Thank you. Next is Peter Arroyo.

MR. ARROYO: I am not as well prepared as these guys, but I'd just say what I have experienced.

HEARING OFFICER SELTZER: Could you begin by stating and spelling your name, please.

MR. ARROYO: My name is Peter Arroyo, A-R-R-O-Y-O. I live at 10507 Route 173. I am located approximately 1,000 feet from the main -- or excuse me, 2,000 feet from the proposed primary crusher and a thousand feet from the cell 8 -- the proposed mining of cell 8 and 1,000 feet from the entrance approximately.

I'd like to express some of the experiences that I had to date and they haven't even begun officially and I say officially because in my mind's eye what they had been doing is mining for a very long time. I have experienced in February -- throughout the whole month of February, 2001 heavy truck loads of gravel coming out of the proposed Tonyan Gravel Pit in the amounts of approximately 280 trucks per day for a whole month. That's in my opinion already -- that's mining.

I have contacted agencies, the mining agencies, to discuss this with them and they

also agreed with me, yes, that would be mining. I also brought this to the attention of Mr. Bradley Frost who was very helpful in directing me to various agencies, the Department of Mining and Minerals and also to a Linda Holtenbrand who is with the local IEPA here and she was to investigate.

What she did tell me was that all she could do was follow the 10-foot overburden, 10 acres per year schedule and that they would be doing aerial photo observations on July the 30th of 2001. I don't know what happened as a result of that. I could tell you this, that what I experienced during those times when they were building the berms, in conditions where the wind was blowing to the north where I live of that site -- See, I design. I am a designer. I design food service facilities and I work from home.

I set up -- put a little office in the front porch and I would sit there and as the traffic would go through -- not necessarily the traffic, as the bulldozers were bulldozing the berms, these emissions and later on after talking with Bradley calls them fugitive emissions. I

didn't know the glossary of terms that you people are into but I don't know a lot for that matter but as I was sitting there, my eyes would burn, my nostrils would start to run and it was not a very good feeling if this was a harbinger of things to come and they haven't even started.

When the traffic of the 208 trucks that went through in February, they left a silt on the roads and toward the end of the day, I would experience the same thing of some -- I couldn't see it but I could feel it. I could feel it in my eyes. I could taste it in my taste buds and my nose would run and I don't know if I could get into water at this point but as I understand, they had taken out a water permit. They were issued a water permit.

When they built the berms on the northeast end of that property, apparently, they didn't figure on the collection of water that normally would run off of that northeast end. As a result of building that berm, they collected some five acres or so of water. They didn't like it so what they decided to do is to breach the berm and dump it off on their neighbor. They did

subsequently rebuild it but as a result of that, they somehow talked to another neighbor who has a wetland as part of her property and the berms are approximately 125 feet at the base.

They put a 14-inch pipe through that berm and they drained out that five acres onto that wetland and this is a picture of the wetland itself that actually winds up going to a tile that's on 173 and eventually it goes to the Nippersink Creek but what I am trying to say to you is these people are not going to be good neighbors and they have already established that. That's the essence of my comment. I thank you.

HEARING OFFICER SELTZER: Thank you. Roberta Jennings.

MS. JENNINGS: My name is Roberta Jennings, J-E-N-N-I-N-G-S. This is a copy of my resume. I am here to speak on behalf of Filtertek. I have two issues I'd like to address. The first has to do with moisture content and the second has to do with substantial differences in this recent application over what was provided in 1996 to the County.

HEARING OFFICER SELTZER: Before you go any

farther, in order that the record is clear, who or what is Filtertek?

MS. JENNINGS: Filtertek is a nearby industry located fairly close adjacent or -- adjacent to the property in question, the Tonyan property.

HEARING OFFICER SELTZER: What do they do?

MS. JENNINGS: They manufacture filters.

HEARING OFFICER SELTZER: For?

MS. JENNINGS: They would have to explain that. There are people here from Filtertek who can explain what they do better than I can.

HEARING OFFICER SELTZER: Okay. Thank you.

MS. JENNINGS: To go to the first issue regarding moisture content and primary emissions sources, the applicant has failed to provide sufficient information and IEPA and the permit as written fails to ensure continuous compliance. In IEPA condition No. 5 it lists failure not to exceed emission factors based on standard emission factors, high control efficiency for the moisture content and maximum throughput.

Condition No. 6 states the moisture content of the sand and gravel as

processed shall be at least 5 percent by weight plus reduced emissions and particulate matter. The lack of information in the application both the original one and the current one has never supplied any moisture content data of any of the material. There were no tests done or submitted in any -- in either of these applications, nor was there any discussion of how moisture content will be maintained and how this high control efficiency will be maintained.

There are only two references in the entire application to moisture content. In the SECOR cover letter, it states that particulate matter emissions from aggregate processing are controlled by the natural moisture contents of feed stocks or spray systems and in parentheses it says greater than 1.5 percent moisture. There is no explanation of how or why this particular figure would control emissions nor is there any source data for that number. It's just a number that appears.

The second reference states in the application that the material is situated in various groundwater saturated zones and as such,

excavated material will likely have a high moisture content. (5 percent to 20 percent) Again, there is no reference source for that number, and it's also a misleading statement in that based on the original boring laws and data that there is approximately 15 to 25 feet of unsaturated material overlying the water table.

In their particulate matter emission rate estimates, they list the crushing, screening, conveying, wash plants, stone crushers and harp screen. There are other sources of emissions that they failed to identify and failed to discuss. In attachment to efforts to help minimize fugitive particulate matter, they talk about the parking lot. They mention the facility access road and there is nothing for the larger area of the site. There is nothing for the stockpiles with one exception that they will apply best management practices. There is no description of what those best management practices will be and several things are left out in that discussion.

There is no information in the 2001 application regarding how the product is to be transferred from the excavation to the processing

area and by not describing this in their application to IEPA, they have essentially eliminated significant ongoing on-site activities from IEPA's consideration.

Now, in terms of moisture content, moisture content will be fairly constant in the saturated zone as long as the material remains in the saturated zone. Once it's taken out of that, the moisture content will rapidly decrease. In the saturated zone, you can find general moisture content in textbooks. It varies of course from material to material, but it's a given that it will be greater than 5 percent. In the unsaturated zone, typically you will find moisture contents of perhaps 3 to 5 percent but you can get substantially less moisture content as well.

Once the topsoil is taken off of the unsaturated material and it's exposed to the weather particularly during warm and drying conditions, that moisture content will decrease further. When the product is moved and put into stockpiles, the moisture content will decrease even further. In theory, there would be some threshold

moisture content under maximum drying conditions but we don't know what that is. There has been nothing offered in the application. There are no moisture content for the material at this site as there has been no testing and none of this has been offered. It is difficult for any sand and gravel operator to know how to control moisture content if they don't know what to expect to begin with.

In terms of primary emission sources and sources that have not been described, the emission sources are going to consist of any exposed surface areas and also activities upon those areas. The exposed surface areas consist of the excavation area itself, wherever the topsoil is stripped, any unpaved roadways and again, there is not in the application how they will be transferring the material from one place to another to get it to the processing area. It will consist of loads and front end loaders and trucks, however they are moving this material. It will occur at stockpiles at the excavation area and also stockpiles in the processing area.

The activities that occur in these areas include excavation, front end loading

and unloading and on-site vehicular traffic. The stockpiles themselves will vary in moisture content. Even when they are getting the material from below the water table, as I said before, there will be rapid draining and the wettest portion will be in the center of the stockpile, not the exposed surface area to which they are unloading and from which -- to which they are unloading and from which they are loading.

In the July, 1996 application to McHenry County on Page 4, Item 8, they stated that front end loaders from the excavation -- would be used from the excavation to the hopper and the hopper as I understand it is located in the processing area. As you can see from the map contained within the application, there are substantial distances across the site that will be traveled to move that material from various cells to the processing area.

There are no descriptions of roadways, unpaved roadways, how much material will be stripped, how much vegetation will be stripped. We don't really have any information regarding how much surface area will be exposed over the greater

portion of the site, and also this has not -- none of these areas have been addressed in their application.

In the application, there is no description of these areas provided by the applicants. There are no particular particulate matter emission rates given for these areas including the stockpiles. There are no fugitive particulate matter emissions control procedures given for any of these areas other than again, quote, "best management practices" for the stockpiles, and again, we don't know what those are.

There is no moisture content data provided for either the saturated, the unsaturated zone or any threshold zone under maximum drying conditions nor is there any demonstration regarding the and I quote this from the permit the "high control efficiencies for moisture content."

Okay. Finally on this issue, I feel that the permit as written -- the IEPA conditions do not ensure continuous compliance. In condition No. 6, it states the moisture content of

the sand and gravel as processed shall be 5 percent by weight so as to reduce emissions particulate matter. This is unclear. Does as processed include as excavated, as transported from the excavation to stockpiles? Does it include stockpiled? It only says as processed.

Under condition 6A requiring the once per week testing it states that compliance with this requirement may be presumed if the moisture content of sand and gravel as shipped is at least 5 percent. So this suggestion compliance begins at the outdoor and is not for the whole site.

As shipped, I don't understand this presumption because as shipped it depends again on how much water spraying they are doing. If they are not testing until it gets into the truck, then they don't know how much water to add. So consequently as it's being shipped, where do they add the water? I mean, there is no guidance here. There is no description here. Do they add it to the stockpiles? Do they -- They don't describe it and you don't tell them what to do. So it's very unclear and frankly, this is the only

test other than the opacity test which apparently is a one time thing when they get the equipment up and operating, this is the only test that they are required to have and that's as the trucks are going out the door. It leaves it to the operator's discretion as to what day of the week, what hour to test, what truck load, what particular part of the truckload. In essence, you are giving them the discretion if they want all they have to do is spray the truck. It is not sufficient to ensure continuous compliance and the rest of the site -- if there is no assurance for this compliance at all points, then the rest of the site is free to blow dust around the area.

Okay. Under this permit the way it's written, the surrounding properties are not protected from ongoing emissions due to the site activities and exposed surface areas over the greater portions of the site. Condition 6B states that water spray shall be used at each emission unit as necessary to provide moisture that will reduce emissions of particulate matter. Now, that is not clear either. It doesn't specifically state 5 percent. It just says as necessary. It's not

clear whether that's the 5 percent or some other number. Again, the emission units are defined only in the processing area and not over the greater portion of the site and not for the stockpiles.

With respect to the moisture content, only the processing area and the existing loads -- or the exiting loads appear to be regulated at all. The rest of the site is unregulated. Stockpiles are unregulated and significant exposed surface areas are not regulated. In the permit it also states under Section 14 if there is an exceedance of the requirements of this permit, then they are obliged to do certain things, but the requirements of this permit under Section 5 give not to exceed emission factors but there is no allowance for measuring those emission factors. There is no compliance. There is no point of compliance where they can ever demonstrate this so how will they ever know if they exceed it?

The single weekly test for moisture content is not sufficient to guarantee to all these manufacturing neighbors who rely on low dust for their business as they will tell you, I am

not speaking for them, there is really no guarantee that the dust will not be blowing all over the site based on the single once a week test. Okay. I'm done with the moisture content issue.

The other concern I have and I know that this is not necessarily in your territory as air regulators; however, the big problem here is that there is substantially different data submitted with this application that was not available to McHenry County when they made their original ruling on the site and this information changes things tremendously.

As the engineer or I believe someone testified earlier the production rate has gone up significantly. The truck traffic has gone up significantly. When this application went to the County, that's when the public had the opportunity to make statements but now all these things have changed and the people no longer have an opportunity to discuss these things so the single thing that I am addressing from my area of expertise is that in the original application in 1996 Page 4, Item 8, it said there will be no pumping to dewater any area.

The applicant said repeatedly there would be no impact to this, no impact to that, no impact but they never ever provided the data or did the studies to show whether there would or would not be an impact. Now, the problem -- They did not tell us about any pumping at that point. They said any water used would be taken from the ponds and go back to the ponds but they did not give us volumes. They did not give us pumping rates and now with this application, we see that their maximum rate is going to be 300 tons per hour and they are going to be using 200 gallons per ton of water. That pretty much comes out to 60,000 gallons per hour that they will be pumping which comes out to 1,000 gallons per minute which is a very substantial pumping rate.

Now, even if all the water goes back into the ponds, sand and gravel do not drain at that rate. That thousand gallons per minute is going to be sucking the water out of the ponds. It's going to be drawing down around the ponds and even if it recovers, the whole point is that the Streets Lakes Marsh which is directly adjacent to this operation, I don't -- I am not a marsh

expert. It would take a study first of all to determine what the draw-down would be and these studies are done all the time. Secondly, it would take a marsh expert, a wetlands expert to say what kind of impact that's going to have on the wetland.

For example, I know of a case where a water well was pumping only 350 gallons per minute. Now there was no storage like there is in a pond so it's not an applicable situation but nonetheless, there was an impact three-quarters of a mile away of somewhere between four and two feet. I do not know but someone certainly should determine what the impact to that marsh is going to be if you have water levels fluctuating by two feet to four feet or any number of feet. Even a few inches may make a difference, I don't know but the applicant doesn't know either, McHenry County doesn't know either and until someone does those studies, no one will know.

Also, with respect to the marsh and the groundwater issue, they --

HEARING OFFICER SELTZER: Ms. Jennings, and I think you are aware of this by your own testimony, you are going beyond the scope

of this permit and you are raising issues that this permit -- these permit reviewers are not entitled legally to review so I'd appreciate it if you'd direct your comments towards this permit application.

MS. JENNINGS: Okay. I understand. I was concluding in any case but I don't know how one deals with that but the fact is that this -- the whole point of that is this permit -- this application to your division contains information that was never available to the County to review and I believe that that should be somehow problematic. This thing with the traffic, all of that. It's like who reviews that at this stage when none of it was available initially to the County and I believe that should be an issue. Thank you very much.

HEARING OFFICER SELTZER: Thank you, Ms. Jennings. You had started off by turning in your resume I believe.

MS. JENNINGS: Yes.

HEARING OFFICER SELTZER: I haven't been privy to see it. What is your area of expertise?

MS. JENNINGS: I am a consulting

hydrogeologist, both a geologist and hydrogeologist.

HEARING OFFICER SELTZER: Thank you. Your resume will be made Exhibit No. 3 in this record.

(WHEREUPON, Exhibit No. 3 was marked and dated.)

HEARING OFFICER SELTZER: Ron Kay, K-A-Y, is the way you spell your last name, correct?

MR. KAY: That's correct, K-A-Y.

HEARING OFFICER SELTZER: And you are testifying or asking to make comments on behalf of Filtertek?

MR. KAY: Yes. I am the president of Filtertek and I represent Filtertek at this hearing. It probably would have been a little more appropriate to have my comments precede some of these others who have made comments so that you had a little better background on what we are and what we do but since we didn't do that, let me take a few minutes and tell you what we do.

We have been here in the Hebron area for approximately 35 years. We are in the filtration business. We produce -- design and develop, produce products for the automotive,

commercial, industrial and health care business. Naturally, the very thing that we produce filter devices which their whole purpose in life is to remove particulate and eliminate particulate, we couldn't have a worse neighbor than to have a gravel pit sitting next door to us that is a generator of particulate when we are manufacturing the products whose sole objective is to eliminate it.

By way of geography here, our facility is at 11411 Price Road, right up the street here. We are approximately by location about 200 yards from the western border of the Tonyan property so we are very close. I want to focus just for a minute on health care products.

We manufacture some very, very sensitive health care products. We manufacture those in a clean room environment. Some of these you may or may not be familiar with. This is a prebypass filter. It's used in open heart surgery to filter blood. You can well imagine what the impact of contamination might be getting into a product like this that we manufacture that a patient was transfused with during a surgical

procedure to save his life.

We manufacture a luco reduction filter that is again used to clean blood so that when it's retransfused into a patient, all the white cells are removed and the bacteria contamination that exists in the white blood cells are eliminated. This improves the patient's recovery prospects and significantly reduces the hospital stay.

We produce a whole variety of different IV filters. There is one on an IV set that's used for adults. We have a neonatal version that's used for small children. Again, you can well imagine the impact of contamination ending up in those products and being transfused into both adults as well as children.

So this gravel pit frankly is a disaster coming in close by us and it's going to be very, very difficult in their operating environment for us to control the potential levels of emission given their proximity to our facility and it's rather annoying that we picked the location to settle in some 35 years ago and now we are subject to this.

By the way, we are a national producer of these products. We supply these products to people like Baxter, Abbott, Beck & Dickinson, Walkman Hemasure, the American Red Cross, blood centers across this country so we are not supplying to insignificant people or insignificant companies. These are all very well recognized, very large health care institutions that we supply these products to.

We have invested over a million dollars the last three years in increasing the level of particulate control in our facility and that was significantly increased because the level of manufacture of these kinds of products has increased in our facility. Now we have tried to remain here. This gravel pit would probably force us to put in at least an additional $2 million investment and by the way, with zero assurance that that would solve any particulate contamination problem from coming into this facility given the proximity of that gravel pit, and we have had numerous studies that we have undertaken to try and determine that.

You have heard from a number of

third party experts that we have worked with over the last four or five years that there is significant doubt that Mr. Tonyan & Company can satisfy the requirements of the National Ambient Air Quality Standards. We don't believe it. We believe we have provided significant data to the effect that they cannot meet it. We would ask you in your analysis to pay very, very careful attention. You are talking about the livelihoods of a lot of people. You are talking about the health and safety of a lot of patients who use these products.

We believe we have done the prudent things in protecting our facility to the limits that we can protect them. We don't believe it's prudent to go beyond that at this point because we don't know that any other investment might help us. What we are significantly concerned about beyond our own boundaries is during these proceedings earlier on we had a nationally recognized mining safety expert testify and he testified that this school location that we are sitting in tonight is less than a mile from the processing plant of that gravel pit and it's less

than a thousand yards from the outer perimeter of that gravel pit.

There is a disease that can afflict young people called silicosis. That's silica getting into the lungs of developing children. This is an elementary school. You said earlier you didn't worry about truck traffic. Well, we worry about truck traffic.

HEARING OFFICER SELTZER: Sir, it's not that the Agency doesn't worry about truck traffic. The Agency can only operate within the limits of the law. There is somebody here this evening, I don't know if they are still here, that represents a state legislator. A lot of the areas that you are raising are areas that the Agency is not legally permitted to look at, period, with regard to the permit application they are reviewing right now.

Right or wrong that's what the law is and so I would just remind you of that and I would also remind you of the fact as residents of the State of Illinois, various parts of the State of Illinois, we of course as individuals are concerned with the environment just as you are. We

are also concerned with our businesses those that have some enterprises outside of our employment with the state. You are worried about your enterprise right now but I have to insist that we stick to the issues at hand this evening so that we have a record that kind of focuses in on what the Agency can legally look at in its review of this permit application.

MR. KAY: Okay. I will let Mr. Bishop address a couple of those comments in his later commentary. I guess what I want to conclude with is that we have had a pattern of disregard for the community and the neighbors, us, being the neighbors, by Mr. Tonyan since he originally went through the process here. That disregard involves things that Mr. Arroyo testified to and that numerous others have testified to.

Our big concern is what are you going to do to ensure that the proper policing occurs, that the proper recording occurs, that the proper controls exist, so that this environment up here is protected because if we are relying on Mr. Tonyan to do that, it isn't going to happen. He has violated every rule in the book to this

point in time. He has mined gravel illegally. He has transported it out of that site. We talk about particulate and emissions. There is a huge stockpile that sits out there today that has been accumulated over the last couple of months absent any permit.

Now, that is not the kind of neighbor that any of these people in this community want and it's hard for us to understand that he is still trying to come in here. That's the end of my comments. Thank you.

HEARING OFFICER SELTZER: Thank you. Jim Bishop.

MR. BISHOP: Mr. Seltzer, my name is Jim Bishop. I am an attorney. My office address is 550 Woodstock Street, Crystal Lake, Illinois. The last name is B-I-S-H-O-P. I have been a practicing attorney for 36 years and for 35 of those years I have represented gravel pit operators, open pit mine operators, and underground mine operators throughout the State of Illinois. I have taken a number of engineering courses at the University of Wisconsin and I feel that I am more qualified maybe than the average attorney to address many of the

issues which are presented to the EPA this evening.

I have been intimately involved in this particular project since inception back in 1995 or '96. You made mention of the fact that there are 180 or more of these operations throughout the State of Illinois. Perhaps there is no one that knows that better than those of us here in McHenry County because we have more gravel pits in McHenry County than any other county in the State of Illinois.

During my 35 years, I represented material services, Vulcan Materials, Plote, Zimmerman, Elmhurst, Chicago, and many other operators. I hope that the fact that this is one of so many gravel proposals does not in any way limit what I have come to recognize as great efficiency of your agency. I have always found that you look at the materials in most cases very, very conservatively and come out with a ruling based on fact and I trust that that will be the case here.

I do ask that you to take a look at the written history that you have in front of you which includes the first application filed

by Mr. Tonyan and some of the changes that have been referred to by some of the previous testimony that's taken place here.

There has been an inordinate amount of opposition to this particular proposal. Certainly not because of the fact that it's a gravel pit but because of the fact of its location. I wanted to give to you as an exhibit, whatever might be the next exhibit number, an editorial that appeared in our local Northwest Herald, the largest newspaper circulation in McHenry County back in I believe June of '96 which very cogently sets forth the opposition that was pretty much county wide to this particular proposal.

A lot of that opposition, if not all of it, continues today and is based in large part on quantitative data which the objectors in this case have submitted to various agencies. You have received an application which may be typical of gravel pit operators but in my judgment is totally void of the important information which you need in order to make a determination as to whether or not this facility will exceed the National Ambient Air Quality Standards that you are

bound by law to impose and require this operator to meet.

We have residents living literally within a stone's throw of the processing plant, within a stone's throw of the paved on-site roadway that in my judgment and based upon my experience are going to be greatly affected by this operation. I want to make some comments with respect to the application which I will submit in writing to the hearing officer.

By letter dated June 1, 2000 to Tonyan Brothers, the Agency requested additional information in regard to the earlier application which was filed by Tonyan Brothers. This was after significant data had been submitted to the Agency by various people opposing this particular project. The letter of June 1st contains 10 points that you requested. This letter is under signature of Donna Sutton but I believe it was prepared by Tara. It has 10 points and I heard Mr. Franks' letter tonight that was read to you by one of the trustees from the Village of Hebron that it's his belief that seven of those points being Items 4 through 10 were not met at all.

Another trustee Mr. McClellan for the Village of Hebron and Mr. Kay brought up the issue of fugitive emissions from trucks exiting the facility onto Route 173. Point 10, Item 10, of your letter of June 1, 2001 to Tonyan Brothers reads as follows: The trucking out of material onto the public highway needs to be addressed. In quarrying operations we have found that if one area is wet while others are dry, material will be picked up on truck tires and transported onto public roads where it dries and can create a nuisance. This situation would also apply to sand and gravel operations. Please provide information on how the fugitive particulate emissions will be controlled.

That question was legitimate and proper with respect to application No. 1. It is also legitimate and proper as to application No. 2 and apparently is of great concern to many people in this room and simply has not been addressed. I request that you specifically address that issue. I would intend to show aerial photographs which we have taken of other facilities including one operated by Mr. Tonyan in another location in

McHenry County that clearly shows siltation on the highways for distances as far as two and a half miles from the entrance to his facility in Spring Grove. The application is willfully short in other data that you have also requested.

As an attachment to the application is a flow diagram which is the jargon for showing how the product flows presumably from the initial excavation through truck loading and taking off the premises. The flow diagram which has been submitted to you only includes the central processing district. That is but a part of this particular operation. There is a map that also shows the paved road as a separate attachment but the flow diagram is limited to the equipment that will be used with the harp screen, the wet plant, and the jaw crusher located at the main processing plant.

The flow diagram does not show to you fugitive emission points such as at the point where the material is excavated, the surficial soils that have been stripped of overburden and remain exposed to blow around. It does not address what happens to the material

between the point of excavation and its being received at the processing plant.

Now, as the map of the facility shows, it is proposed that there be numerous cells located throughout this property, some great distances from the processing plant. There is not a mention in this application as to the emission factors that are applicable to however that material is going to get from the excavation site to the processing plant. There has been talk that it's going to be trucked and in fact they have been trucking it from the cell that are currently excavating on the southern border of the property to the processing plant building this huge mountain of material. It's being trucked.

It is not being trucked on the paved road that they are so proud of that goes from the entrance back to the processing plant but it's being trucked across ground and that ground is becoming a significant source of fugitive emissions. There is nowhere in the application or in the permit conditions where that issue is addressed. How will that be addressed? I personally don't believe that it will be.

Am I to believe that they are going to have some spray system throughout this facility? It's not mentioned in the application and I don't believe it's our obligation to find out how that's going to work. It's the applicant's obligation to let you folks know. The application fails to list any equipment that's going to be used outside of the central processing area.

Having been around a lot of sand and gravel pits, typically material -- you got material above and below the water table. Material from -- has to be mined above it first. Typically, that's dumped into a hopper, put on a conveyor, conveyed back. There is certainly no mention here and in fact this application limits the number of conveyors present on the site to 11. Specifically all 11 of those are in the central processing district, so, therefore, I believe that based on the application, there are no conveyors going to be used to convey it from the excavation site to the processing plant but that's probably going to be done by truck as it's been being done for the past two months. Those are significant emission points that must be considered.

Mention was just made of a school building. In your letter to Mr. Tonyan dated June 1, 2001, Item 2, you specifically asked for a map that shows the distance of the facility to the nearest residences, schools, and manufacturing establishments. This school was not included. This is a significant elementary school. Why wasn't it included? The two manufacturing facilities that are so close to this facility and that are represented here tonight were not included. It's not our job to tell you how far we are located. It's their job to tell you how far we are from their facility and you asked for that information.

They showed some of the residences that are located immediately north of this facility on the south side of 173. They didn't show any of the residences on the north side of 173. They didn't show residences to the east on 173 and they didn't show residences to the west on 173 or residences on Kemman Road immediately west of the proposed site. The application is incomplete. They didn't even answer your requests of June 1st.

I don't believe that the applicant has given you sufficient data to enable you to make a determination as to whether or not this facility can comply with the standards and measurement requirements set forth in 35 Illinois Administrative Code 243.120 for PM 10. You don't have the data because you are missing so many fugitive emission points.

I have not -- I don't have a copy of Exhibit maybe 2 that was submitted by the engineer. That table lists some or all of the fugitive emission points which are missing in the Tonyan application. Those are the traffic on the public roads, emissions from excavating and conveying to the central processing district which I mentioned, emissions from truckload out.

Anybody that is in this room that knows anything about gravel knows that there is an enormous amount of emissions when the dozer or loader whatever it is takes material off of whatever stockpile and loads it into the trucks that are waiting. Vehicle activities on a nonpaved road -- In my judgment, there are going to be nonpaved roads throughout this facility from one

cell to another. The cells are located throughout. They are going to be mined in the number by which they are numbered starting I guess at 1 and going through whatever the last number is.

There are no emissions from the storage piles and as Ms. Jennings pointed out, to believe that there is a 5 percent water content on the surficial surfaces of stockpiles that are 40, 50, 60 feet tall in the form of a cone, that is pure nonsense. That is the first area and it's a substantial area that dries and creates an enormous source of fugitive emissions.

I do not want to be duplicitous at this point but there is absolutely no support for the statements made by Tonyan Brothers with respect to the moisture content of the material to be excavated. In fact, in my judgment, it is totally incomplete in that they only mentioned the material being excavated from the saturated zones below the static water level. Hey, to get to the water table, we got to take everything off of it. Ms. Jennings says that's 15 to 25 feet of material. What's the water content of that material? They have not provided you with that information.

The spray systems they intend to use, there has been absolutely no data submitted to any governmental agency with respect to what those spray systems are or where they will be used. Will they be used at the excavation site and the transportation modules used to get it from there to the plant just in the processing center, I do not know.

Another very significant inconsistency between the application that has been submitted to IEPA by Tonyan Brothers and the actual McHenry County ordinance that permitted this operation subject to other state permits has to do with hours of operation. Mr. Evans submitted data with respect to tonnages. That's his ball park. Well, I read the application and I have read the ordinance that was passed by McHenry County and they are two different animals.

The application that has been submitted to the IEPA says that this facility is going to operate five days a week, eight hours a day, 40 hours a week. The permit that he has received from McHenry County states that he can operate 12 hours a day from 6:00 to 6:00, Monday

through Friday and from 8:00 to 4:00 on Saturday. That makes a total of 70 hours. So he is giving you production figures based on 40 hours a week when I know, everybody in this room knows, they are going to operate 70 hours a week. That's just not fair. That's a misrepresentation.

The application that's been submitted to you also limits the operation to 43 weeks a year. Well, he started again this year in January, last year February. There is no limitation in the McHenry County ordinances to any number of hours -- any number of weeks or months. Every single operator I know of in the State of Illinois, and we got our share of them here in McHenry County, operates those long hours from the day they can start up to the day they have to close.

I believe that the data that has been submitted to you in the form of the production figures and operating hours substantially underestimates the emissions that are going to result from their production. They are going to be producing more all day long. It's going to generate more fugitive emissions

throughout the site. That should be considered and I think the data that they have given to you is unreliable because they are not using the proper hours.

I will submit to you a copy of the McHenry County ordinance so you can see for yourself the differences that exist between what was permitted and some of the statements in the application made to you.

Lastly, I believe that the proposed operating permit fails to provide any of the local authorities with the ability to monitor what is taking place on this particular facility. In reading your permit, there were terms used, notifications, records, other terms that were used, some are required to be sent to IEPA. Some are not. There is no obligation on the part of the operator to send to you, for instance, production records. Well, how is anyone to monitor production if records aren't available through your agency or some other local agency? We would request that that be considered. That information should be available to those affected by this operation through Freedom of Information requests.

The way your permit is currently drafted, certain records are available and I'd have to look at it. I will put it in my letter to you, but certain records must be filed with you, therefore, they'd be subject to the Freedom of Information request. Other records he has only got to maintain ostensibly so when your inspector comes out, you can see them but the public, our local authorities should be able to have that information available to them through Freedom of Information.

With that said, other comments made here tonight, I believe that you really have no alternative at this point but to either request significant additional data from the applicant that can be reviewed by yourself and those of us that have an interest here or deny the application. Thank you very much for your attention. I am here to answer any questions if you have any.

HEARING OFFICER SELTZER: Thank you. Your replication of the editorial appearing in the Northwest Herald on June 2nd of 1997 is made part of the record as Exhibit No. 4.

(WHEREUPON, Exhibit No. 4 was marked

and dated.)

HEARING OFFICER SELTZER: Next is Toby Behrens. Sir, would you spell your name for the record. I'm sorry if I got it wrong.

MR. BEHRENS: Actually, you did well. Thank you. Toby Behrens, B-E-H-R-E-N-S. Address 197202 St. Alden Street. Not official comments. I was coming as a concerned citizen and a member of the community as many of us are. I came with questions and I don't see them as being answered. I feel that we need more information given. I believe the applications have not been complete. The information is not all there. I am very uncomfortable looking at a large pile of gravel which is not supposed to be mined yet and I also live and work here in town.

My wife works for the school system. I have children in town and I seen clouds of dust permeating from the premises when there is not supposed to be activity there, so I believe that we have not been treated honestly and fairly. I don't see it changing quickly. It makes me nervous and it scares me. As a lifetime member of the community, I want everybody to remember Hebron

as the town with a tower. I don't want it to be the home of the gravel pit. It's too close. I have no objection to gravel pits. I grew up next to one as a child but this is not the time or the place for this pit. Thank you.

HEARING OFFICER SELTZER: Thank you, sir. Milton Hansen.

MR. HANSEN: My last name is Hansen, H-A-N-S-E-N. My residence is 10417 Highway 173 and my property is adjacent to the Tonyan property. The back of my lot backs up to their property and I have lived at that address for the last 29 years and I am hoping that I will expire on that piece of property.

I have a health condition. It's known as interstitial lung disease and for about two and a half years, I was on supplemental oxygen. My condition has improved somewhat with the use of inhaled steroids and I am very concerned that the dust conditions emanating from the property will deteriorate my health condition again.

My home is 1,250 feet from the stockpile that's back there now. The processing

plant is approximately 1,250 feet from my property and this is measured across the field. The plant entrance is approximately 850 feet from my home and Highway 173 passes right in front of my home. My home is 40 feet from the highway which, again, the particulate matter from the trucks is a concern for me.

There has been problems with particulate matter on the highway all the way down in front of my home and there is also blowage from the trucks. As they go down the highway, particulate matter and small stones come off the trucks and cell 7 and 8 which are on the northern portion of the Tonyan property are approximately 300 feet from my home.

Another consideration is the fact that the particulate matter on the property is pounded into smaller and smaller pieces by the traffic passing over it and as it gets into smaller and smaller pieces, it travels farther and farther on the wind and with the air movement created by the traffic. Also, I have a video that was taken from my property during the time they were constructing the berms at the back of our property

and I would like to submit that as an exhibit.

HEARING OFFICER SELTZER: It will be so accepted. Thank you.

MR. BEHRENS: And it does show fugitive emissions crossing our property and the next-door neighbor's property. It does show fugitive emissions from trucks pulling onto the highway. I thank you very much for your time and for listening.

HEARING OFFICER SELTZER: Thank you very much. The video will be made part of the record as Exhibit No. 5.

(WHEREUPON, Exhibit No. 5 was marked and dated.)

HEARING OFFICER SELTZER: I don't have any other cards that people signed indicating they wish to make comments or ask questions so let me ask for a final time if there is anybody else here this evening that wishes to make any comments or ask any questions. Come forward, sir.

MR. SENN: My name is Ted Senn, S-E-N-N. My address is 10419 North Route 173. Milt is luckier than I am. I got the berms on two sides. My wife has severe allergies to dust and I don't

know if we can tighten our house up enough to stay there. I'd hate to have to move. I'd appreciate you all checking it out and seeing what you can do to protect us. Thank you.

HEARING OFFICER SELTZER: Thank you. Yes, sir?

MR. HANSEN: Can I make one more comment?

HEARING OFFICER SELTZER: Yes. Identify yourself again.

MR. HANSEN: I am Milton Hansen from 10417 Highway 173. The property that you see the dust blowing across in the video is Mr. Senn's property to put it in perspective.

HEARING OFFICER SELTZER: Okay. Thank you. Is there anybody else that would like to make any comments, ask questions? Let me see if there is anybody else that hasn't come forward yet. Anybody else? Okay. Sir, identify yourself again, please.

MR. McCLELLAN: Bradley McClellan. I guess one of the questions that I do have for the IEPA is if you are the governing authority on the air quality in the State of Illinois, other than getting submitted forms and inspection report done by gravel pits, how else do you gather information

on whether a production pit is operating at the levels that the EPA would like them to?

MR. DESAI: The Illinois EPA has several sections. We are from the permit section. We normally review the paperwork and determine compliance and issue the permit or deny the permit based on what is being presented to us. We also have other sections. One of the sections is the field operations section. They do come out and visit each facility and inspect them and also going to their operating regarding what rate they are operating, and if they find that they are being in violation in any of those violations given the permit, they are sent a violation notice and according to the enforcement, action depending upon the forms we get from the company.

MR. McCLELLAN: My second question would be with regards to the way that you keep fugitive particulate from leaving that plant. I understand that one of the ways is to water these trucks down or spray them with water to keep the dust from blowing off site; is that correct?

MR. DESAI: Correct.

MR. McCLELLAN: I have been in just about

every gravel pit in McHenry County taking gravel out. I have never been at any one of those pits that have any spray facility that sprays a truck down, Mr. Tonyan's included; although he does have a sprinkler system out on the road. It doesn't last very long. That's why he got two miles of trail.

If all of these pits are governed by the IEPA and somebody is supposed to be regularly checking them to make sure that everybody in this room and everybody in this county -- in this state has a quality of air that would sustain life, who is not checking because I have been in these pits and I have never been watered down, ever and I don't know how with all of these things in place, we deal with these issues every day, it wouldn't be out on the street. They'd be getting watered down but it's not. There is no facility.

You have like Mr. Bishop talked about the mined material that's stacked up in piles. It's not watered. When the water drains out of it toward the base, any wind that comes across it moves particulate matter right off of the site and I don't understand. If Mr. Tonyan is

required to submit information that says that's being taken care of, why is he mining now when the particulate matter is coming off. Nobody is checking it. You can't put that information on a piece of paper and I guess my question would be: How does the IEPA deal with that? When he gets running down here, who is going to police that? If nobody is doing it in the other pits who does it now?

HEARING OFFICER SELTZER: Well, I think as Mr. Desai said before, the Agency has field operations inspectors. We wish we had 10 times the amount of people working for the Agency doing that than we have and they have a regular route of inspection. Some facilities are inspected quite often because they are a perennial problem, an annual problem. Others are inspected maybe only once a year.

In addition to the regular route of inspections, they respond to complaints and they do both those activities as best they can. Now, if a violation is found, as was stated earlier, a notice of violation is sent out, the parties are called in, we try and negotiate a

solution to the problem. If we can't or if we feel the problem was severe enough for us to take another step, we will prepare a lawsuit and refer to the attorney general for prosecution.

MR. McCLELLAN: My last question would be then since there has been no permit issued on this particular mining operation, what steps does the EPA plan to take with regards to the mining that's been going on there for the last year?

HEARING OFFICER SELTZER: Well, first let me respond as an Agency attorney and my response right now is I will look into it. I don't have an answer right now.

MR. DESAI: Even though there is no permit issued at this particular facility, if I remember correctly, we had received some complaint when they were building up the berm and this facility was inspected two times in the year of '97 and also two times in the year of '98. Since then according to my record, we have not received any complaint for regarding this facility.

MR. McCLELLAN: I think there has been a number of complaints tonight already and the reason that you probably haven't received as many

complaints as there were when the berms were being made is because you could see the mining operation. Now there is berms so you can't see the mining operation.

HEARING OFFICER SELTZER: Okay. Thank you. Is there anybody else here this evening that wishes to make any comments or ask questions?

MR. NICOLAI: I would. I probably don't need the microphone but I will do it anyway. My name is Ron Nicolai, N-I-C-O-L-A-I. I have a couple of questions and I may be wrong. When this first came up for proposal, we were told I believe that this was supposed to be a 15-year pit and now somebody has said they have applied for a life-long permit and secondly, since the quantity is going up four times, if my math serves me right, this pit should close in less than four years since it was originally told to us it was a 15-year permit.

MR. DESAI: See if I can understand your question properly. Your questioning whether is it a lifetime permit; is that correct?

MR. NICOLAI: Yes.

MR. DESAI: We issue three types of permit application -- operating permit application. One

of them is a Title 5 application which normally applies to the very large facility whose emissions are over 100 tons per year based on their actual operation. Then there are federally enforceable state operating permit which has -- who has taken the restrictions to meet their emissions to be below the Title 5 emission rate and there is a third kind is the lifetime permit. Those applies to any other one who are on neither Title 5 or lifetime operating -- or federally enforceable state operating permit and those are strictly based on the amount of emission that is being given in a permit.

MR. NICOLAI: So does that still mean that the pit will close in 15 years?

MR. DESAI: Oh, I don't know how long the pit will be open. The permit that they have is for -- The permit that we issue is not for the mining. The permit that we issue is for the emission unit. In this particular case, the emission unit happens to be the crushers, screening operations, conveyors. The permit is issued for the conveyors and screening operation. If the company decides that they want to install another

crusher, then they need to come for a permit again.

MR. NICOLAI: Thank you.

HEARING OFFICER SELTZER: Is there anybody else this evening that has any comments or questions?

MR. ARROYO: Could I ask one more question, please?

HEARING OFFICER SELTZER: Sure. Identify yourself for the record again, please.

MR. ARROYO: Peter Arroyo. It concerns me that you are not going to do anything about what they have done so far and that you have already -- It's a foregone conclusion these people are going to get a permit no matter what we say or we are going to be disregarded. That's my true feeling. This is what I am perceiving now.

MR. DESAI: At this moment, the permit is not an issue. This is an informational hearing and we are conducting this hearing to gather the information, not necessarily to decide whether to issue or deny the permit. We can't answer the question whether it will be granted or denied. We will definitely review all of the comments that everybody had and make a final decision.

HEARING OFFICER SELTZER: In addition to that, I want to explain that the way the Bureau of Air operates is that they like to issue what they call a draft permit before one of these public hearings are held. The feeling being that if a permit were granted at that point in time before there has been additional input from the public, that that's what the permit would read like and we feel that's important for the public to have at hand because it helps them to understand where the Agency's thinking is at a particular point in time and, therefore, you can focus your comments as you best see fit.

The Agency is not obligated to issue a draft permit or draft denial or anything like that but the feeling is that helps the public focus in on the things that the Agency is looking at and what may not have been mentioned tonight is in addition to the Agency's option to grant a permit or deny the permit, the Agency can also grant a permit with more stringent conditions, for example, than may appear in the draft letter that you are looking at.

MR. FROST: This is Brad Frost. I am with

the EPA for the record. I think there are a couple misconceptions here tonight and I think that Harish talked about these but they were far enough back that we should go over them again.

First of all, the actions that they have been taking at the site up until now are not regulated by the Illinois EPA. They are regulated by Department of Mines and Minerals so the scraping of the topsoil and the taking of sand and gravel from the site they are currently doing at the site is regulated by the Department of Mines and Minerals.

What we regulate is the machinery that they want to put on the site for -- crushing activity for crushing and screening and those are the sources of emissions that are regulated by this permit and some of the other things that were -- One of the things that was mentioned was fugitive emissions and complaints. If you do see fugitive emissions crossing the property line, you should address those to our Des Plaines office. The address of that is on the notice that we were handing outside and the phone number is (847) 294-4000. Tell them what area you

are from and that you see fugitive emissions coming from the site and we will send an inspector out.

What we need is we need to have an inspector go out and see those emissions so that we can regulate those. If our regulator does not see the emissions, it makes our -- a legal case for us to bring against the company much more difficult to bring. Would that be true?

And then one other thing was mentioned about complaints and the berm and vision. We don't regulate visual nuisance so once the berms were up, it was mentioned that maybe complaints would go down then. Well, we don't regulate visual complaints. We regulate fugitive emissions coming off the site so if you are going to call and make a complaint to our office, it has to be based on those fugitive emissions coming off the site.

HEARING OFFICER SELTZER: Thank you. Mr. Frost gave a phone number which is in the public notice but let me just read it again for the folks here. It's area code (847) 294-4000 and that's our local office here that staffs our field inspection folks.

Before we conclude, I want to

mention again that the record of this proceeding will close on March 27th of this year so any written comments submitted that are postmarked by midnight of March 27th will become part of the record. Again, after that point in time, a final summation will be prepared by the Agency and that will be mailed to everybody that has been here this evening that signed a card and gives us your mailing address.

In addition if there is somebody that wasn't here this evening that wishes to receive our responsiveness summary, they can notify the Agency and they will receive one also. I want to thank you all for your participation tonight and wish you a safe trip home. Thank you.

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(Which were all the proceedings had in the above-entitled cause.)

STATE OF ILLINOIS)
) SS:
COUNTY OF McHENRY)

I, PAULA ERICKSON, a Certified Shorthand Reporter of the State of Illinois, do hereby certify that I reported in shorthand the proceedings had at the hearing aforesaid, and that the foregoing is a true, complete and correct transcript of the proceedings of said hearing as appears from my stenographic notes so taken and transcribed under my personal direction.

_____
Certified Shorthand Reporter
License No. 084-003899