

ILLINOIS POLLUTION CONTROL BOARD

BONITA SAXBURY and RICHARD
SAXBURY,

Complainants,

No. PCB 04-79

ARCHER DANIELS MIDLAND, HULL,
ILLINOIS DIVISION,

Respondent,

Proceedings held on October 6th, 2004,
at 9:30 a.m., at the City Hall Council Chambers,
215 N. Monroe Street, Pittsfield, Illinois,
before Carol Sudman, Chief Hearing Officer.

Reported by: Beverly S. Hopkins, CSR, RPR
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A P P E A R A N C E S

Bonita Saxbury and Richard Saxbury
Claimants

ARCHER DANIELS MIDLAND COMPANY
By Lee R. Cunningham, Esq.
Corporate Environment Counsel

ADM/QUINCY
G. W. Dimmitt, Manager of Quincy Elevator and
Operations

ARCHER DANIELS MIDLAND COMPANY
Mike Klauke, Plant Manager

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1 HEARING OFFICER SUDMAN: Good morning. My name is Carol
2 Sudman. I'm the hearing officer with the Pollution Control
3 Board. This is PCB 04-79, Bonita and Richard Saxbury vs. Archer
4 Daniels Midland, Hull Division. It is Wednesday, October 6,
5 2004, and we are beginning at 9:30 am.

6 I will note for the record that there is one member of the
7 public present. Members of the public are allowed to provide
8 public comment if they so choose.

9 In this case, the complainants are alleging noise
10 violations at respondent's grain elevator in Hull, Pike County.

11 You should know it is the Pollution Control Board and not
12 me that will make the final decision in this case. My purpose is
13 to conduct the hearing in a neutral and orderly manner so that we
14 have a clear record of the proceedings. I will assess the
15 credibility of any witnesses on the record at the end of the
16 hearing.

17 This hearing was noticed pursuant to the Act and the
18 Board's rules and will be conducted pursuant to Sections 101.600
19 through 101.632 of the Board's procedural rules.

20 At this time I would like to ask the parties to please make
21 their appearances on the record. Mrs. Saxbury, you are here on
22 behalf of yourself?

23 MS. SAXBURY: Yes.

24 HEARING OFFICER SUDMAN: Okay. And Mr. Saxbury is here as

1 well.

2 MR. CUNNINGHAM: I'm Lee Cunningham, Corporate Environment
3 Counsel, Archer Daniels Midland Company, and here on behalf of
4 that company.

5 HEARING OFFICER SUDMAN: Okay. Thank you very much. Are
6 there any preliminary matters to discuss on the record?

7 MR. CUNNINGHAM: No.

8 HEARING OFFICER SUDMAN: Okay. Mrs. Saxbury, would you
9 like to give an opening statement? You do not have to but you
10 may.

11 MS. SAXBURY: Basically I just like to state a few facts.
12 There were no problems -- there was noise at the elevator before
13 ADM took over ownership, but it was not to the point to where we
14 had to leave our home because of the noise.

15 In 2000, excuse me, I started contacting people at ADM and
16 -- and the -- at the time it wasn't the Pollution Board, it was
17 the EPA, and of course they have no one now, and was getting no
18 response. I -- I was instructed to write a letter to -- and I
19 believe that was to Mr. -- let me check, I believe that was to
20 Mr. Dimmitt that I wrote the first letter. And -- No, I'll take
21 that back. Let me correct that. I believe he probably got a
22 copy but it went to -- to the head of ADM. And they -- I was
23 told to ask for, you know, a response to how they were going to
24 fix the problem like in 15 days, was totally ignored. And from

1 then on out it's just been one thing after another. It's -- it's
2 just we've been basically ignored.

3 HEARING OFFICER SUDMAN: Okay. Mrs. Saxbury, just so you
4 know, you were not under oath when you made that statement.

5 MS. SAXBURY: Yes.

6 HEARING OFFICER SUDMAN: So you -- you can call yourself as
7 a witness, in other words, make a statement on your own behalf
8 and we will put you under oath and you can -- you can tell, you
9 know, you can flush out that story if you like, okay.

10 MS. SAXBURY: Okay.

11 HEARING OFFICER SUDMAN: Mr. Cunningham, do you have any
12 opening statements?

13 MR. CUNNINGHAM: Sure. Not too surprisingly I agree with
14 some of what was just said. And I think we will have testimony
15 demonstrating that question. There are some fans that create
16 some noise at the elevator. Those fans are a necessary part of
17 the operation of that elevator. The elevator does have social
18 and economic value to the area in which it's located. It's
19 suitably located in that area. That the company, rather than
20 ignoring Mrs. Saxbury, has brought to its attention, has taken a
21 number of steps over the last few years to try to minimize the
22 noise and the impact of that noise on all of its neighbors. And
23 they just aren't sure what -- that there isn't anything more that
24 they can do to get the noise than is now.

1 HEARING OFFICER SUDMAN: Okay. Thank you. Mrs. Saxbury,
2 you may present your case. You may call your first witness.

3 MS. SAXBURY: Well, Richard, why don't you come up and tell
4 your -- take an oath and tell what you know.

5 HEARING OFFICER SUDMAN: Mr. Saxbury, if you wouldn't mind
6 sitting in this chair over here. The court reporter will swear
7 you in.

8 (The witness was sworn.)

9 HEARING OFFICER SUDMAN: And would you please state your
10 name for the record?

11 A. I'm Richard Saxbury. I'm Bonita's brother. Where do I
12 start?

13 DIRECT EXAMINATION

14 QUESTIONS BY MS. SAXBURY:

15 Q. All right. Just start where it all started.

16 A. Well, I guess when you signed the formal complaint,
17 right, and then the telephonic conferences. What I want to talk
18 about is when they was going to fix in three month's time before
19 harvest, and you got it partly fixed and it's still making the
20 noise. Do you still say there's nothing you can do about it?

21 MR. CUNNINGHAM: It's your turn to testify.

22 HEARING OFFICER SUDMAN: Yeah.

23 Q. (By Ms. Saxbury) You can't ask questions right now.

24 HEARING OFFICER SUDMAN: Just make a statement, state

1 whatever facts you would like to put into the record. Mrs.
2 Saxbury can ask --

3 A. We're still getting the noise at first. It was a loud,
4 horrendous noise. It come right through the house. Now it's
5 changed to something else. It sounds like it is part jet and
6 part cement mixer. And when they move it up and down the line
7 there, you can still hear it. It is piped into the silo closest
8 to the street. Because when they moved that tube back and forth,
9 they -- to the other silos, we still get the racket. I measured
10 the distance between our house and where it enters the first silo
11 and it's 113 feet and seven inches. I don't know what their
12 figures are. I don't think anybody ever measured it before the
13 way I did from the center of the house.

14 Q. Was it 113 feet, Richard, or 213?

15 A. 113 feet and seven inches.

16 Q. Okay.

17 A. I stood on the sidewalk and poked the tape measure over
18 and hooked it on to that opening.

19 HEARING OFFICER SUDMAN: Now what is that? That's the
20 distance from your house to the --

21 MS. SAXBURY: To the vending machine.

22 HEARING OFFICER SUDMAN: Okay.

23 A. To the machine.

24 Q. (By Ms. Saxbury) Before ADM took over, was there a lot

1 of noise from the elevator?

2 A. There was noise, yes. But since about 2004 when you --
3 when they started what I used -- what I call the green machines,
4 they started pumping air in the bottom of them, I guess. That's
5 when it really got bad.

6 Q. Was that 2004 or before? This is 2004.

7 A. I don't remember when they started it. It was two,
8 three or four years ago. After all that noise, I began looking
9 around to see where it was coming from. They moved -- they used
10 to move them around. They're portable. I think they were,
11 excuse me, sir, they are in a fixed position. I've never been to
12 a hearing before.

13 HEARING OFFICER SUDMAN: That's okay.

14 A. They're in a fixed position now as far as I know. The
15 one that comes in behind the -- the office over there is
16 tolerable. It doesn't bother at all. You can tell when it's
17 turned on and when it's turned off. But the other one isn't. I
18 believe if I had my way, I would trade this noise, the present
19 noise, for the one we did have.

20 Q. (By Ms. Saxbury) What did you and Mr. Thompson talk
21 about when he came over to talk to you and run the fan?

22 A. After G. W. left the day before, I think --

23 Q. Yes, it was.

24 A. -- Kent tested the fans the next day and he come over

1 and told me that that was about all he could do. In fact, I
2 think he was over twice. And he did something over there and
3 come back to see if it made any difference, and it didn't. I
4 couldn't tell a difference at all. And Kent stood on my porch
5 and looked either on the porch or right beside of it and looked
6 across there and said I can see where that would be a problem.

7 Q. The day before when Mr. Dimmitt came over to our home
8 and talked --

9 A. G. W. came over the day they tested them, the day
10 before, after they got through testing them and told you that
11 that was all they could do. To tell them what you want. And as
12 I understand it, he went back over there and they did some more
13 testing. Well, we left because we had to go to town. I didn't
14 know he was coming back. He didn't tell me he was coming back.
15 But I've heard that they did do some more testing. And he come
16 over to talk to us and we were gone.

17 Q. Do we have to leave our home a lot of times?

18 A. We've left home several times when that was running bad.
19 And it also wakes you up of a morning too, especially upstairs.

20 Q. What about the pictures that have been taken that Mr.
21 Cunningham's --

22 A. I don't know what kind of a camera they use to take them
23 pictures. I don't know how my house got moved back that far
24 without obstructing the neighbors property in that picture that I

1 seen. The other houses, I won't dispute Mr. Culgrove (phonetic)
2 because he may be closer than we are, but he's not the one that
3 filed the complaint. He says it doesn't bother him.

4 Q. Were the fans running on Christmas Eve day?

5 A. Yes.

6 Q. Did you leave the house on that day?

7 A. We left on Christmas Eve. It was just like any other
8 day.

9 Q. Did it run all day?

10 A. I don't remember that. I just notice it more in the
11 evening, afternoon.

12 Q. What about the decibels that they were putting forth?

13 A. I don't know about those decibels. Seems to me like you
14 got your hand on the throttle, you can make them decibels about
15 whatever you want. I don't believe in them any way. And I'd
16 like to know where the three lawn mowers were running at that day
17 that they tested the fans. And I would like to know if they
18 tested them lawn mowers before they tested the fan or if they
19 tested them altogether or whether they tested them afterwards. I
20 don't recall any lawn mowers that day, but --

21 Q. Does it seem unusual that the day -- that the day the
22 decibels were taken that there were three lawn mowers running at
23 the same time?

24 A. It seemed kind of unusual. I think that's more of a

1 coincidence. I know there's a lot of lawn mowers around there.
2 Got a couple of them myself.

3 Q. Do you remember the first letter that -- that you and I
4 put down to Mr. Andres (phonetic) of ADM?

5 A. Well, I've seen it, yes. I seen the letter.

6 Q. You signed the letter, right?

7 A. Yes. That's when you were talking about that was
8 totally ignored, right? Excuse me. I guess I'm not supposed to
9 ask her a question too.

10 Q. There you go.

11 HEARING OFFICER SUDMAN: Well, you can ask her a question
12 for clarification. That's okay. Go ahead. You're doing fine.

13 A. Well, I'm not an attorney, ma'am.

14 HEARING OFFICER SUDMAN: That's fine. You're doing fine.

15 Q. (By Ms. Saxbury) That's when we asked for the 15 days
16 and we were totally ignored, do you remember that?

17 A. Do I have to comment on this?

18 Q. If you want. I was just refreshing your memory. What
19 about the times we called
20 G. W., Mr. Dimmitt, I'm sorry?

21 A. I don't remember all the times that he --

22 Q. Do you remember the time I called him on a weekend day?

23 A. Yes.

24 Q. And at home because of the noise?

1 A. And I remember -- I remember what the telephone said.
2 It said I don't know what you're hearing but the elevator isn't
3 open. I looked out the window and seen Kent's truck sitting over
4 there. I believe he called G. W. on that.

5 Q. Yes.

6 A. And he said, well, he must be there then or something.
7 I don't rightly know. I don't really remember that.

8 Q. Okay. If you have anything else to say about it, that's
9 -- that's all.

10 A. I guess not. Not at this time any way. Well, there is
11 one other thing. And Mr. Cunningham asked for, what,
12 approximately three months to get this fixed or have we been into
13 that?

14 Q. Go ahead. It's all right. Go ahead.

15 A. To get it fixed before the 15th of July, which I think
16 he meant the harvest. Well, I'd like to know why it took three
17 months if ADM claims there isn't no noise, there isn't enough to
18 bother anyone, if there wasn't a problem there, what was they
19 trying to fix in them three months.

20 HEARING OFFICER SUDMAN: Are you finished, Mr. Saxbury?

21 A. I believe that's it, ma'am.

22 HEARING OFFICER SUDMAN: Well, hang on, hang on. Mr.
23 Cunningham gets to ask questions.

24 MS. SAXBURY: Sit down. He gets to ask.

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CROSS-EXAMINATION

QUESTIONS BY MR. CUNNINGHAM:

Q. You said that you had to leave home several times, when was the last time that occurred?

A. I don't have those dates written down.

Q. Was it this year?

A. This year?

Q. Was it this year?

A. Yes, this year, several times.

Q. Several times this year?

A. This year, yes.

Q. How long have you lived in your present residence?

A. Lee, I don't hear very well. I'll do the best I can.

Q. How long have you lived in your present residence?

A. Soon be 47 years.

Q. So that would be since about 1957 or 8?

A. About '58, I think in February.

Q. And did you ever make any complaint about noise to ADM prior to the filing of your complaint?

A. I've never -- Until this started, I never made no complaints to EDM -- ADM, excuse me.

Q. Now you said you've been awakened by the noise?

A. Oh, yes.

Q. Is that -- What time of day would that have happened?

1 A. Usually it's early of a morning.

2 Q. And by early, six o'clock, seven o'clock, eight o'clock?

3 What do you mean by early?

4 A. You mean what time I get up of a morning?

5 Q. What time are you awakened by the noise?

6 MS. SAXBURY: What time are you awakened by the noise?

7 A. Well, whenever the fan starts.

8 Q. (By Mr. Cunningham) And what time is that?

9 A. I'm not sure.

10 Q. Do you know if you've ever heard that noise before seven

11 o'clock in the morning?

12 A. No, I don't think so.

13 Q. Have you ever heard any noise after 10 o'clock at night?

14 A. On occasion it has happened, yes.

15 Q. And when you say it has happened, has that happened in

16 the last year?

17 A. I don't remember that. Don't remember it happening in

18 the last year.

19 Q. Do you know if it's happened in the last three years?

20 A. Yes.

21 Q. Can you tell us about how many times you would have

22 heard it at night in the last three years?

23 A. Oh, maybe two or three.

24 Q. And did it ever awaken you those times?

1 A. Not when I get sound asleep it doesn't wake me, no.

2 Q. Are you aware of improvements -- You mentioned that
3 there are some things that ADM has done to try to improve the
4 noise?

5 A. Well, sure, I see them big tubes you put in over there.
6 Kent Thompson told me that you spent more than just a few bucks,
7 as I recall, to fix that and I'm sure you did.

8 Q. And did that make things better?

9 A. It makes the one behind the office better. It -- No
10 problem at all. I don't think it's much of a problem for Kent
11 either.

12 Q. Are there different types of fans that you hear, have
13 heard?

14 A. It's the ones on the ground. The ones up on top, don't
15 bother. Kent tested one of them one day and I listened. No
16 problem. It's just the ones on the ground. The ones that you
17 put that big tube into and snake it around and stick it in one of
18 those boxes that goes into those silos. Them's the babies that
19 makes the noise. And that one machine that you fabricated or
20 whatever, that you -- it was one of the grain machines, I
21 believe, and you tucked it back between a couple of them back
22 there. You don't hear much out of the machine but you hear the
23 noise when it goes into the elevator, when it goes into the silo.
24 When you take it out of there and snake it around and put it one

1 of the others, the noise is still there.

2 Q. You referred to the top fans, do -- the top fans used to
3 be louder than they are now?

4 A. They did.

5 Q. And did those fans used to bother you?

6 A. When there was a big one up there that was there when
7 Baries was the manager under Quincy Soybean, made lot of racket.

8 HEARING OFFICER SUDMAN: Mr. Saxbury, could you repeat what
9 you just said. The court reporter didn't hear you.

10 A. About Mr. Baries, B-A-R-I-E-S, he was, I believe, the
11 manager before Kent. He worked for the Quincy Soybean Company.
12 When ADM took over, Kent took over, right? Excuse me.

13 Q. (By Mr. Cunningham) So you're saying that those top
14 fans used to be a lot noisier than they are now?

15 A. Well, yes. Because they don't have no noise that
16 bothers us now.

17 Q. So the only noise that currently bothers you is when
18 they have the portable fan hooked up to the bin closest to your
19 house?

20 A. That's what I thought until I was looking a couple days
21 ago or maybe a day or so. They haven't been run much the last
22 few days, I know that. But they were turned on maybe yesterday
23 for a short while. And when they're turned around and poked into
24 another silo, I still get the same amount of noise, or it sounds

1 to me like it. I thought it was just the one next to the silo
2 but anywhere I think you tuck that baby into one of them silos in
3 that driveway, the north driveway, whatever you want to call,
4 where the north fan between there and north, up through there,
5 any of those silos, I think I could get the racket from any of
6 them. I'm sure of it because it was tucked in maybe the second
7 one from the north side of that double road yesterday.

8 Q. Whose idea was it to file a complaint against ADM?

9 A. Jointly.

10 Q. You both came up with it out of the blue at the same
11 time?

12 A. Only after we tried a few other avenues. We had talked
13 to G. W. She had talked to an attorney, my sister Bonita, had
14 talked to this other attorney. I don't know his name. Do you?

15 MS. SAXBURY: I don't know what you mean, Richard.

16 A. The one in Decatur that told you what you had to do.
17 There wasn't nothing they could do about it.

18 MS. SAXBURY: Oh, oh, oh, Mr. Smith. Let's try this way.
19 I tried to talk to Mr. Smith.

20 A. After a few of them, well, we filed the formal
21 complaint. We threatened to. I think we even told G. W. that we
22 were going to do that. And he said something to the effect, if
23 that's the way you're going to pursue this or something and
24 trailed off. I don't remember what it was. ADM had -- had

1 warning that we was going to do this. Undoubtedly somebody was
2 listening.

3 Q. And why do you say that?

4 A. Well, there was somebody at the other end of them calls.

5 Q. Okay. You wear a hearing aid, don't you?

6 A. Yes, and I don't hear very well with it. I just as well
7 take it off now.

8 HEARING OFFICER SUDMAN: Well, why don't you leave it in
9 until we're done with you.

10 Q. (By Mr. Cunningham) You said that you would trade this
11 noise for what you had before?

12 A. The one when we first complained, do you remember how it
13 was last spring, let's see, yeah. When -- No, it was not last
14 spring but when you came down that day and you tested them and
15 then we had the meeting in Quincy that afternoon. You were
16 there, Lee. You were out in front of my house. Wasn't that just
17 the green machine, nothing had been done to it then, had it?

18 Q. I can't answer questions right now.

19 A. I'm sorry, Lee. I'm not an attorney.

20 Q. I'm just asking if the noise -- sound is less now than
21 it was before?

22 A. Yeah. It isn't exactly the same but it is just as bad.

23 Q. Can you hold a conversation in your front yard while all
24 the fans are on?

1 A. Well, if you stand close enough and talk loud enough.

2 MR. CUNNINGHAM: I think I'll leave it at that.

3 HEARING OFFICER SUDMAN: Okay. Mrs. Saxbury, would you
4 like to ask Mr. Saxbury any questions to clarify anything he said
5 to Lee?

6 MS. SAXBURY: Let me check my notes if I have just a
7 minute.

8 HEARING OFFICER SUDMAN: Okay.

9 REDIRECT EXAMINATION

10 QUESTIONS BY MS. SAXBURY:

11 Q. I do want to clarify when Mr. Dimmitt was over there and
12 came in our home, sat down on the couch, said nothing more could
13 be done.

14 A. Yes.

15 Q. Said -- And I informed him we were going to have a
16 teleconference. I believe that was within that couple of days?

17 A. Yes.

18 Q. He said tell them what you want?

19 A. Yes.

20 Q. And said nothing to us about coming back, moving the
21 fans or nothing, right?

22 A. That's it.

23 Q. Okay. And then in transcript, or something to Lee, he
24 said that he came over and we had left?

1 A. Well, am I allowed to talk yet, ma'am?

2 HEARING OFFICER SUDMAN: Yes.

3 A. Kent came over the next day and asked me about that and
4 told me that he'd come over to see us and we were gone, right?

5 Q. (By Ms. Saxbury) But Mr. Dimmitt had written a note or
6 something to Mr. Cunningham and said that they moved the fans or
7 something and he came over and we weren't home. They knocked on
8 the door and evidently they looked in the garage and we were
9 gone?

10 A. Right.

11 Q. We were not told they were coming back; is that right?

12 A. No, I had no knowledge of anybody coming back.

13 Q. And do remember when I talked to Mr. Smith and tried --
14 tried to -- to make --

15 A. Yes.

16 Q. -- motions towards -- without filing, right?

17 A. He wanted to look at that there letter that you had
18 written to somebody else and you sent him a copy of it.

19 Q. Yes, yes, I did. And he looked it over and he told us
20 there wasn't nothing they could do about it.

21 A. And --

22 Q. He said do what you have to do, right?

23 A. He didn't say it very nice either.

24 Q. No, we haven't had very good relationship since we

1 started this. And therefore, that was when the complaint was
2 filed, Lee. And we didn't file a formal complaint until all
3 avenues were closed that we felt, right?

4 A. Right. Everywhere you went, it was negative, nothing
5 more could be done. And nothing could be done. Now it's nothing
6 more can be done since you did this work last spring as far as
7 summer. But it was just flat no, nothing more -- nothing can be
8 done.

9 Q. And let's clarify one more thing. In the last couple of
10 weeks, and I know it's harvest season, there's other machines
11 running, but now there's not only the fan running?

12 A. Oh, there's augers.

13 Q. Augers and some other -- some other machine, right,
14 making noise?

15 A. I don't know what the other machine. Seems like there
16 is another noise coming in there but I don't know what it would
17 be. But them augers make an awful lot of noise and the vac that
18 you have in there sucking those bins out the other day.

19 MS. SAXBURY: I think that's it.

20 A. That will curl your hair too.

21 HEARING OFFICER SUDMAN: Recross?

22 RECCROSS-EXAMINATION

23 QUESTIONS BY MR. CUNNINGHAM:

24 Q. Yeah, do you remember -- I guess I better pull this out.

1 Do you remember receiving a series of questions from me that you
2 answered is called an interrogatory?

3 A. Well, are you talking to me yet?

4 Q. Yes.

5 A. All right. She takes care of that, my sister does. I
6 remember the -- you're talking, excuse me, I caught something
7 from her I guess. The discovery questions, right?

8 Q. Yes.

9 A. I remember the --

10 MS. SAXBURY: We went over them together, right?

11 A. Right.

12 Q. (By Mr. Cunningham) Do you remember being asked what
13 the particular pieces of equipment that caused the noise of which
14 you were complaining?

15 A. I don't remember all of them. I would have to look at
16 it, I guess, again. I've looked at them.

17 Q. Question six and your answer.

18 A. Well, she is the one that answered them. She said there
19 was two or three of them -- or three or four of them or something
20 that was basically asking the same thing and you just worded it a
21 little bit different. She wrote the same as above or same --

22 Q. Okay. Look at number six?

23 A. Do you know what particular piece of equipment caused
24 the noise of which you are complaining. Well --

1 Q. And what's the answer?

2 A. The fans that dry the grain.

3 Q. Okay. So it was only the fans that you made reference
4 to?

5 MS. SAXBURY: That was at that time. This is -- this has
6 happened within the last -- last week or even the last two weeks.

7 A. I -- I wouldn't complain about the augers. That's just
8 a temporary thing any way. I understand that.

9 Q. (By Mr. Cunningham) Okay.

10 A. These fans are liable to be more than temporary.

11 Q. And you understand that fans are necessary for the
12 operation of the elevator as well, don't you?

13 A. Well, yes.

14 MR. CUNNINGHAM: I don't have any more questions.

15 HEARING OFFICER SUDMAN: Okay. Do you have anything you'd
16 like to clarify just about the questions Mr. Cunningham just
17 asked?

18 MS. SAXBURY: I would like to clarify that --

19 HEARING OFFICER SUDMAN: Or that you like to ask Mr.
20 Saxbury. You'll have an opportunity to make your testimony.

21 MS. SAXBURY: Okay. I will ask one question.

22 REDIRECT EXAMINATION

23 QUESTIONS BY MS. SAXBURY:

24 Q. When we receive any letters or -- or we have any

1 communication with any of ADM or any of these questions that he
2 just showed you, you and I sit down and go over everything
3 together, right?

4 A. Right.

5 Q. It isn't just me?

6 A. That's right. It's both of us. We're in it.

7 Q. I just wanted to make that clear.

8 A. Okay.

9 HEARING OFFICER SUDMAN: Is there anything further for this
10 witness?

11 MR. CUNNINGHAM: No.

12 HEARING OFFICER SUDMAN: Okay. Thank you Mr. Saxbury.

13 MR. SAXBURY: Thank you, ma'am.

14 HEARING OFFICER SUDMAN: Mrs. Saxbury, you may call your
15 next witness.

16 MS. SAXBURY: I would like to -- I have a few questions for
17 Mr. Thompson.

18 HEARING OFFICER SUDMAN: Okay. Would you please swear in
19 the Mr. Thompson.

20 (The witness was sworn.)

21 MS. SAXBURY: Just have a couple questions for you.

22 HEARING OFFICER SUDMAN: Excuse me. Your name is?

23 A. William Kent Thompson.

24 HEARING OFFICER SUDMAN: Thank you.

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DIRECT EXAMINATION

QUESTIONS BY MS. SAXBURY:

Q. I just want to verify when you came over to test the fans on July 8th, 2004, what --

HEARING OFFICER SUDMAN: Excuse me, Mrs. Saxbury. What is your position?

A. I'm the manager of the elevator at Hull.

HEARING OFFICER SUDMAN: Okay. Thank you. Please continue.

Q. (By Ms. Saxbury) Okay. I just wanted to verify this, Kent --

A. Okay.

Q. -- Mr. Thompson. He works right across from us so he knows us. When you came over to test the fans on July 8th of this year and you told Richard that you could see that would be a problem, is that a direct statement?

A. Yes, we were standing outside as Richard testified.

Q. All right.

A. And from the porch you can see down along the bin where the fan is. It comes right down the street. And I think I was testing the top fans maybe at that time too and asking him whether they were okay.

Q. Probably so, yes.

A. And he said yeah. But I don't know if I'm supposed to

1 add anything. Where the fan sits, it also had a direct line to
2 Mr. Culgrove's house. And no matter where we put the fans, they
3 have a direct line to the houses so their house is no exception
4 to the other four or five neighbors as far as that goes. We can
5 place them anyplace.

6 Q. Okay. Can you see this fan here?

7 A. I don't have my glasses with me. Lee, can you get my
8 glasses.

9 HEARING OFFICER SUDMAN: I'll note that Ms. Saxbury is
10 showing Mr. Thompson a -- is that a photo?

11 MS. SAXBURY: Yes, it is. Okay. Mr. Cunningham has copies
12 of these.

13 HEARING OFFICER SUDMAN: Okay.

14 Q. (By Ms. Saxbury) You see this right here?

15 A. Uh-huh.

16 Q. This is our yard, okay. Is this not pointing directly
17 up our yard at our home?

18 A. Yes.

19 Q. The fan sits right there and is a straight line with the
20 yard and so our house is -- it points -- comes right up directly
21 to the center of the house, right?

22 A. I don't -- I can't say the center. I would have to
23 look.

24 Q. Okay.

1 A. But it's at your yard, yes.

2 Q. Okay.

3 A. It might be your front yard or --

4 Q. All right.

5 HEARING OFFICER SUDMAN: Now, Ms. Saxbury, are you planning
6 to introduce that photo as an exhibit?

7 MS. SAXBURY: I may.

8 HEARING OFFICER SUDMAN: Okay.

9 MS. SAXBURY: Yes.

10 Q. (By Ms. Saxbury) Has there been any other communication
11 between us -- between Richard -- mostly Richard talks to you I
12 know that?

13 A. Yeah, I see him out in the yard and talk to him.

14 Q. Has there been any other communication about the fans?

15 A. Besides the top fans, I can't remember. I mean, we talk
16 once in a while and the fans are mentioned.

17 Q. Uh-huh. And the other fan that was, I guess there was a
18 problem with, was moved behind your office, right?

19 A. Yes. We had a -- a fan that used to set right out by
20 the office that we turned on, and we decided, we done some work
21 and so on and moved this fan behind the concrete block building
22 behind the silos. And it pretty well took care of the noise then
23 from dispersing anyplace. It just kind of holds it all in one
24 place and makes it bearable.

1 Q. And, yes, and well -- well, did -- did both of us not
2 tell you that the only thing that we could hear was just turned
3 on and off, otherwise we didn't hear that fan behind your office;
4 is that right?

5 A. Uh-huh.

6 Q. Afterwards?

7 A. Uh-huh.

8 Q. Okay. Haven't you been concerned about the noise over
9 there so that sometimes you move your truck over in front of the
10 fans?

11 A. Yeah, I try to help you guys out.

12 Q. Try to block it?

13 A. Uh-huh.

14 Q. And also you've put plywood over there in front of it?

15 A. Around one fan. We built what we call a doghouse and
16 insulate it around fan number two.

17 Q. Okay. And also there was some kind, I want to say foam
18 rubber but it isn't, Styrofoam, right, you Styrofoamed one of
19 them?

20 A. That's the same one I talked about.

21 Q. Did any of those work?

22 A. It did help as far as right there at the office. It cut
23 the noise because I was a lot closer than you are.

24 Q. Uh-huh, sure.

1 coming right to the Saxbury's house. I mean, the noise can
2 disperse anyplace, but like the picture shows, you can see -- you
3 can see the tubes from their house from the front yard.

4 Q. Okay. But did you mean to say that you thought that the
5 noise was particularly loud or --

6 A. No, not that -- no. Not particularly loud but you can
7 hear it but --

8 Q. And you can hear the noise from the Saxbury's yard,
9 can't you?

10 A. I mean, yeah. You're bound to. There's volume there.
11 It's not near like it was, yeah.

12 Q. And you did state there are -- there's more than one, an
13 alleyway goes in two directions, right?

14 A. Right, right.

15 Q. And there are other paths between these bins that go to
16 other neighbors' houses.

17 A. Yeah, we can put the fans on the one side, number one
18 side, and Mr. Gill's (phonetic) house would be right there in
19 line. We can put -- Used to be where we had the fans on this
20 number one and two that Ms. Saxbury was talking about. The lady
21 on the south of us would get it just as bad as what the Saxburys
22 would so, yeah, there's, you know, there's placements that other
23 neighbors -- we can place fans where other neighbors can hear
24 too.

1 MR. CUNNINGHAM: That's all.

2 HEARING OFFICER SUDMAN: Okay.

3 MS. SAXBURY: May I redirect?

4 HEARING OFFICER SUDMAN: Yes, please.

5 REDIRECT EXAMINATION

6 QUESTIONS BY MS. SAXBURY:

7 Q. If we're the ones having a problem with it and it
8 doesn't bother anyone else, why don't you place those fans there?

9 A. Well, basically we would have to run, like what Richard
10 said, the black snake or the black tube still to the air ducts
11 and you're still going to have some noise. If we -- if we put
12 them clear at the other end, say like where the fan is now, even
13 if we go out west farther, we're going to have to run this air
14 duct clear down to where it is nine, 10 and 11. And you're still
15 going to have some noise. I mean, you're never --

16 Q. Some noise, you know, is different from leaving house
17 noise?

18 A. Right. That's right, yeah.

19 Q. And do you not agree that -- that the other neighbors
20 except for Mr. Culgrove basically are barred by the silos? I
21 mean, there's a bunch of silos that are -- that are keeping the
22 noise from those other people?

23 A. No, I wouldn't agree with that. Because when we put
24 those fans on the west side, on the number one side like on bin

1 number four around there, that is probably within 30 feet of
2 Russell Gill's house when we put the fan there.

3 Q. Really?

4 A. Yeah. And then like say when we had the number one and
5 two fan there by the office, which you were referring to, it was
6 as close to Jeannie's house as it would be to yours.

7 Q. Huh, that's interesting.

8 MS. SAXBURY: I think that's all I have.

9 HEARING OFFICER SUDMAN: Okay. Anything further?

10 MR. CUNNINGHAM: No.

11 HEARING OFFICER SUDMAN: Okay. Thank you, Mr. Thompson.

12 MS. SAXBURY: Mr. Dimmitt, please.

13 HEARING OFFICER SUDMAN: Okay. Mr. Dimmitt. The court
14 reporter will swear you in.

15 (The witness was sworn.)

16 HEARING OFFICER SUDMAN: Mr. Dimmitt, would you please
17 state your name and your position?

18 A. My name is G. W. Dimmitt. I'm manager of the elevator
19 operation in Quincy and then oversee the country elevator
20 operation which includes the Hull Division.

21 HEARING OFFICER SUDMAN: Thank you.

22 DIRECT EXAMINATION

23 QUESTIONS BY MS. SAXBURY:

24 Q. I just want to clarify something with you. When you did

1 come over to test the fan on July 7th of this year, did you say
2 anything to us about coming back?

3 A. No, I did not.

4 Q. All right. Then may I ask you how Mr. Cunningham in his
5 -- in his letter or information that he gave me said that you
6 said that you were coming back and you came back and knocked on
7 the door and looked in the garage and we were gone?

8 A. I did not tell Mr. Cunningham that I told you that I was
9 coming back. If I recall right, when I discussed the situation
10 with you all and left and we were talking about what we could
11 possibly do more or less, I mentioned something that I could turn
12 the portable fan where it's sitting and just spin it where the
13 discharge was in a different direction. I don't know if that
14 would make any difference. When I left your place and went to --
15 back over to look around in some situations, I decided to go
16 ahead and do that on my own account to see what that -- what it
17 did.

18 Q. All right.

19 A. I was taking readings at that time too. It didn't make
20 any difference so -- and as a courtesy I was going to come back
21 over and tell you what I did. You had left. I also had Kent
22 call you a couple times to see if you were in the house. I did
23 not look in your garage to see if your car was there. Kent or
24 one of the people noticed there wasn't a car in the garage.

1 Q. All right. All right. Do you remember when you were --
2 I guess you were taking decibels or something, you came into our
3 yard, you were outside our living room windows, the windows were
4 open?

5 A. I don't recall coming into your yard.

6 Q. Okay. You don't remember standing outside an open
7 window and saying it's hitting them head on?

8 A. I did not say that.

9 Q. Really? Okay. Do you remember the time that I called
10 you on the weekend because the noise was so bad that we were just
11 about to lose it?

12 A. Yes, I recall that.

13 Q. Do you remember what you told me?

14 A. If I remember right, it was on a Saturday.

15 Q. I think it was. It was on a weekend I know?

16 A. It was right around Thanksgiving. Harvest was over.
17 You said I think the fans are running. I said I don't think
18 that's possible. The elevator is closed. You said, yes, they
19 are. I said I'll check it out see what Kent's got going on.

20 Q. Do you remember not telling me that I must be hearing
21 something else?

22 A. I could very possibly could have said that. I didn't
23 recall that they should be on.

24 Q. All right. Do you remember whether it was a good

1 conversation or a bad conversation or a rude conversation?

2 A. No, I don't recall it being rude. I just remember you
3 were a little excited and upset. I could tell from that, from
4 the tone of your voice, and I more or less just told you, you
5 know, I'll have to get back to you because I need to see, you
6 know, investigate to see whether they are running or not.

7 Q. I've called you more than -- not a lot but more than a
8 couple times about this problem, haven't I?

9 A. Yes.

10 Q. All right. And nothing was said about -- at that time
11 about us -- us filing a complaint or anything? We were just
12 trying to get the problem solved, right?

13 A. Yes, the first few calls it was just to see what we
14 could do.

15 Q. So this isn't like a vendetta against ADM, it was just
16 trying to solve the problem?

17 A. Yes.

18 Q. All right. Okay. I would like to talk about the
19 decibels a little bit. When -- when they take the decibels,
20 since the ADM people are manipulating the controls over there,
21 they can up and down them, cannot the decibels be manipulated?

22 A. No.

23 Q. You don't have a -- you can't -- you have no controls on
24 your machines?

1 A. No. What machines?

2 Q. You can't you lower them or raise them?

3 A. What machines are you talking about?

4 Q. Well, I would assume the fans.

5 A. No, they're either on or off.

6 Q. Really. Then -- then why is it sometimes lower and why
7 is it sometimes higher?

8 A. I can't answer that for you.

9 Q. I know there's fluctuations in the winds and all that
10 but, I mean, sometimes it's fairly low and sometimes it's
11 booming?

12 A. It could be where all -- they're all portable fans. It
13 could be positioned there.

14 Q. All right. And have I not told you in the past because
15 of the noise we've had to leave the home many times?

16 A. Yes, you did.

17 Q. Because the noise was unbearable?

18 A. You did say that.

19 Q. All right. Could you tell me who took the pictures over
20 of the elevator?

21 A. What pictures are you discussing?

22 Q. I guess it would be the pictures that Lee sent me, Mr.
23 Cunningham?

24 A. What pictures are those?

1 HEARING OFFICER SUDMAN: Do you have the pictures, Ms.
2 Saxbury?

3 MS. SAXBURY: I don't have the ones that he sent me, that
4 Mr. Cunningham sent me.

5 HEARING OFFICER SUDMAN: Okay. Well --

6 MS. SAXBURY: We can't talk about them?

7 HEARING OFFICER SUDMAN: Well, no. I mean, he doesn't seem
8 to know what you're talking about.

9 A. I mean, I --

10 Q. (By Ms. Saxbury) I figured you had seen them. They're
11 of the elevator.

12 A. I'm sure I have.

13 Q. Okay.

14 A. I'm not going to say I took pictures until I've seen
15 them.

16 Q. Well, did you take any pictures?

17 A. Yes, I did.

18 Q. All right. Okay. And are you the one that told Mr.
19 Thompson to make dates and times, I think it was, late 2003?

20 A. That was a decision between myself and Lee and Mike and
21 the company itself.

22 Q. All right. All right. Did you realize that that wasn't
23 a full -- that they stopped on the 24th, that they didn't go past
24 the 23rd of December?

1 A. Yes, I realized from his -- his -- his log is what he
2 sent us and that's what the log said, yes.

3 Q. All right. Do you -- do you realize that on the 24th of
4 December that the fans run loud all day?

5 A. No, I do not realize because I don't believe they do.

6 Q. I can tell you they did. We had to get up and leave the
7 home on Christmas Eve day.

8 A. What year?

9 Q. 2003.

10 A. I don't believe so because the elevator was closed. I
11 can't recall because I wasn't there. The elevator was closed.
12 There was no need for them to be running.

13 Q. Well, a lot of times have we not discussed the fact that
14 sometimes, and I don't know whether it was one of the times or
15 not, but sometimes some of the employees go off and leave the
16 elevators running by mistake probably, we hope, at night and they
17 may be run all night. This is not -- this is not normal. I mean
18 --

19 A. You talking about what's run all night? Fans or --

20 Q. The fans. There have been several times when they run
21 all night. There have been several times when they run off and
22 left them on -- on a weekend?

23 A. I don't recall that.

24 Q. Okay. Did -- did we not mention this in our

1 conversation?

2 A. You could have -- you could have mentioned that but I
3 don't recall that you --

4 Q. And you didn't check into it?

5 A. Oh, yes, I've checked into it.

6 Q. And you dispute that?

7 A. I dispute that.

8 MS. SAXBURY: All right. All right. I think that's
9 probably all I have for him right at the moment.

10 HEARING OFFICER SUDMAN: Okay.

11 MS. SAXBURY: Thanks.

12 CROSS-EXAMINATION

13 QUESTIONS BY MR. CUNNINGHAM:

14 Q. Going back to this weekend conversation that you had
15 with Bonita, did you find out that the fans in fact were running
16 on that weekend?

17 A. Yes, I did. As soon as I got off the phone I called
18 Kent Thompson at his home, asked him if there was a possibility
19 that the fans could be running, and at that time he said, yes, it
20 was a nice day. He had a problem in the bin. He needed the air.
21 And he went over that morning and turned it on. And I told him,
22 instructed him to go back and turn it off and leave it off for
23 the rest of the weekend.

24 Q. Do you know when this conversation was with --

1 A. Time wise?
2 Q. Yeah, date approximately?
3 A. It was, if I recall, it was probably a Thanksgiving
4 weekend on that Saturday. I know it was a Saturday for sure. So
5 it was a Saturday before Thanksgiving or the Saturday right after
6 Thanksgiving.
7 Q. What year?
8 A. It would have been 2000, fall of 2000. Probably about
9 1:30, two o'clock in the afternoon.
10 Q. Do you know any idea of how often the fans maybe run on
11 weekend?
12 A. From my first conversation with Mrs. Saxbury when her
13 first complaint is we made a decision not to run the fans on the
14 weekends.
15 Q. And to your knowledge have the fans been run on the
16 weekends since then?
17 A. To my knowledge it has not been.
18 Q. And to your knowledge have the fans run at night during
19 a period?
20 A. Not run at night. We do not run them at night.
21 MR. CUNNINGHAM: That's all.
22 HEARING OFFICER SUDMAN: Ms. Saxbury, any redirect?
23 REDIRECT EXAMINATION
24 QUESTIONS BY MS. SAXBURY:

1 Q. So you're disputing the fact that they have run at
2 night?

3 A. Since your complaint, I'm not aware that they ran at
4 night.

5 Q. Okay. But they could have? You have no verification
6 written down on paper, they could have?

7 A. I don't have any -- I can't say because I'm not -- I'm
8 not there but their intention is not to run them at night.

9 Q. I know that. I know that, yes. And I do believe I will
10 put this in. I do believe that it was probably an employee going
11 off and leaving them on by mistake. I will give you that. But I
12 do dispute the fact that they have been running at different
13 times at night and on weekends. Let me check here. Have we not
14 tried to settle this before going to hearing?

15 A. I think your intentions were that, yes.

16 MS. SAXBURY: All right. That's all I have for him.

17 HEARING OFFICER SUDMAN: Mr. Cunningham, anything further?

18 RE-CROSS-EXAMINATION

19 QUESTIONS BY MR. CUNNINGHAM:

20 Q. Is it fair to say that since you had your weekend
21 conversation about the fans running on the weekend that if there
22 have been any times when the fans were running on the weekend or
23 night, that that was my mistake?

24 A. Yes, I'd say that.

1 Q. And would that be very unusual events in your --
2 A. Yes.
3 Q. -- knowledge?
4 MR. CUNNINGHAM: That's all.
5 HEARING OFFICER SUDMAN: No redirect?
6 MS. SAXBURY: No, I don't think there's anything else to be
7 had there.
8 HEARING OFFICER SUDMAN: Okay. Thank you, Mr. Dimmitt.
9 You may call your next witness.
10 MS. SAXBURY: I have no more witnesses. I think I would
11 make a statement.
12 HEARING OFFICER SUDMAN: The court reporter will swear you
13 in and you have stated a lot of facts throughout this proceeding
14 so far and if you would go ahead and restate them.
15 MS. SAXBURY: Restate them.
16 HEARING OFFICER SUDMAN: And anything else that you want to
17 throw in.
18 MS. SAXBURY: Okay.
19 (The witness was sworn.)
20 MS. SAXBURY: Okay. I would just like to reiterate that
21 Mr. Thompson did come over on July 8th and he told -- they were
22 -- they were looking towards the elevator talking about the
23 elevator, the fans were running, and he did say where he could
24 see that would be a problem. They were listening to the fans at

1 that time, and he also said that he might have to buy us out to
2 save his retirement. And Mr. Dimmitt, he came over as I -- as
3 was talked about on July 7th. And somehow Mr. Cunningham got the
4 idea that when he came back, that we were gone. It was almost as
5 if we, you know, it made us feel like we had slipped out and left
6 them with the -- the goods or whatever.

7 HEARING OFFICER SUDMAN: So you mentioned that several
8 times. What is the significance of that? That you would have
9 been there if you would have known he was coming?

10 MS. SAXBURY: Yes, absolutely.

11 HEARING OFFICER SUDMAN: Okay.

12 MS. SAXBURY: We waited all day that day. We planned on to
13 go to Quincy to get groceries but we stayed home specifically
14 because of that. And if we had known there was any possibility
15 of him coming back.

16 HEARING OFFICER SUDMAN: Was he coming to speak with you or
17 just to listen or what? You don't know?

18 MS. SAXBURY: I guess he was testing the fans, you know, to
19 see what the noise levels were.

20 HEARING OFFICER SUDMAN: Okay.

21 MS. SAXBURY: And I will reiterate that when he came over
22 and talked to us, when they were testing the fans, he -- he had
23 asked us if there was any difference and we said there was a
24 difference, somehow there was a difference in the tone, but it

1 was just as loud. And he said that was all that could be done.
2 Tell them what you want. And Mr. Dimmitt did come into our yard.
3 He stood by the living room window. The window was open. And he
4 commented, it's hitting them head on. And I was sitting in the
5 living room and I heard this with my own ears. And I've called
6 Mr. Dimmitt several times about the noise at the elevator, about
7 the -- when it's, you know, like if it's been left on at night or
8 on the weekend day when it actually -- I -- I will give them the
9 whatever. I believe that was a mistake by an employee or someone
10 just forgot it. And that one time he was very rude. He gave me
11 to understand that I must be hearing something else because no
12 one was over there. And when I told him that Kent Thompson's
13 truck was there, he said he would check into it.

14 And there is an attorney name of Mr. Smith of ADM. And I
15 had called to talk to Mr. Andres and I was referred to Mr. Smith.
16 And we talked a minute. He was very rude and he said do what you
17 have to do. And that's when -- that's when the decision was made
18 to file the formal complaint. And I agree with Richard. They
19 claim there's no noise or there is no noise loud enough to bother
20 us but what are they trying to fix?

21 And I guess I said this once in a different way but we did
22 not file the formal complaint until all avenues are closed or at
23 least we felt. And I did have a calendar of dates and times that
24 the elevator fans were running loudly but somehow somewhere the

1 calendar was lost. I suppose I threw it out with the trash when
2 the new year came in. And before ADM took over the elevator,
3 I'll agree there was noise. There's always noise around an
4 elevator. There's also dust, but never once, never once did we
5 have to leave home because of the noise. And we have had -- I --
6 I can't give you a count of the times but I will tell you that
7 we've had to leave many times, the house, because of the noise
8 and just go out and stay out for three or four hours and come
9 back and take it again.

10 And I dispute the decibels that ADM has taken because I do
11 believe that they can manipulate the noise levels. And I dispute
12 the pictures that Mr. Cunningham had taken because some of the
13 houses -- the houses around them, except ours, seems to be right
14 in the elevator and ours seem to be a great distance away which
15 is not -- which is not true facts. And I believe that -- that
16 the dates and times that Mr. Thompson wrote down, since he didn't
17 enter the one and we were -- we did have to leave our home on the
18 24th of December 2003, because we couldn't stand the noise and we
19 were going home that Christmas Eve and Christmas but we had to
20 get out of the house and that fan did run all day. And I figure
21 that if, you know, if part of the -- part of the dates and times
22 are not so, you have to question all of them.

23 And as I mentioned, the noises are worst the last couple of
24 weeks because there are some -- some other machines. I think the

1 ones that may be lasting longer than the actual fan -- The fan is
2 the primary problem. But it's the one where they suck out the
3 debris out of the elevator or something where they're cleaning
4 out the bins, that's quite -- quite a nuisance. Now it has to be
5 done. Now the auger comes and goes. You can stand noise for a
6 short amount of time but when it's hours on end, it's hard to
7 take.

8 And other than that, I -- I just want to say that we
9 started looking into this and started contacting people in
10 September 21, 2000. I contacted the EPA to see what could be
11 done and that's when she suggested that I write, to be a good --
12 good neighbor to write the letter and that letter was written to
13 Mr. Andres and that is the letter that I told you that we got no
14 response from. And I think that's all I have to say.

15 HEARING OFFICER SUDMAN: Okay. Well, I have just a couple
16 of questions for you.

17 MS. SAXBURY: Okay.

18 HEARING OFFICER SUDMAN: You had mentioned decibel
19 violations a couple of times. You actually are filing this
20 complaint as more of a nuisance noise?

21 MS. SAXBURY: Yes.

22 HEARING OFFICER SUDMAN: You are not bringing specific
23 decibel violation? You're not presenting evidence of decibel
24 numbers; is that correct?

1 MS. SAXBURY: Not unless -- Now Lee sent me some decibels.

2 HEARING OFFICER SUDMAN: Okay. But primarily, I mean, you
3 brought this as a nuisance complaint?

4 MS. SAXBURY: Yes, yes.

5 HEARING OFFICER SUDMAN: I just wanted to clarify that.
6 Also I would like to ask you if you have any physical ailments
7 that are exacerbated by noise or if the noise has caused any type
8 of other harm that you may not have mentioned?

9 MS. SAXBURY: Well, I can tell you that after being back
10 home since -- I believe I came back in -- came back probably to
11 stay in -- after the flood. I believe that would be December of
12 '93 I was back home. And I can tell you that my hearing is --
13 I'm losing hearing each time I go for a hearing test. My hearing
14 drops lower and it's the high sounds that are -- that are going
15 bad. And of course when you do hear the noise, it makes you --
16 after a while after it goes on for so long, it makes you very
17 nervous. So other than that, I don't have any ailments per se
18 from it except I think if you listen to it long enough, you might
19 just really go over the edge.

20 HEARING OFFICER SUDMAN: Okay. Thank you. Mr. Cunningham.

21 DIRECT EXAMINATION

22 QUESTIONS BY MR. CUNNINGHAM:

23 Q. How old are you?

24 A. Just turned 63 October 1st.

1 Q. Do you have any evidence whatsoever that the hearing
2 loss that you're having is related to the noise from the
3 elevator?

4 A. No, but I never had any hearing loss before.

5 Q. Can you tell us when you have lived in the -- your
6 current residence?

7 A. I have -- I was married for a number of years.

8 Q. What years?

9 A. What years?

10 Q. What years?

11 A. 1979 to 19 -- No, I take that back. I can't remember.
12 It's been so long. 1971 to -- I believe I got the divorce in
13 1980 or '81. And I worked away from home after that. I mean, I
14 worked -- I wasn't -- I was close enough to where I could home
15 for most of the time for a few years. I worked in Arizona.

16 Q. And when was that?

17 A. That would have been 1980, 1981, somewhere around in
18 there.

19 Q. You say you moved back in to your house full-time you
20 believe in December of 1993?

21 A. Yes, I had retired by then. And I took early retirement
22 from the government. And before that, I lived close enough -- I
23 came back to this part of the country from Arizona, which I love
24 dearly, but I came back because my folks both were very ill and I

1 stayed close enough to where I could come home on weekends. And
2 on my time off, I was home.

3 Q. When you moved back in 1993, the noise didn't bother you
4 at that time?

5 A. If it did, it wasn't so much. It seems -- it seems it
6 really started going around the year 2000. Before that, I don't
7 believe we ever -- it was so bad that we ever had to leave the
8 home.

9 Q. You think it's possible that ADM -- ADM did make a
10 number of improvements to the fan at the facility to try to
11 reduce the noise?

12 A. I believe they did.

13 Q. And have those been effective? Have they reduced the
14 noise?

15 A. They have not, no.

16 Q. They have not reduced the noise?

17 A. The ones on top that we told you on top are not the
18 problem. It's -- and the one that they put behind the office, of
19 course I agree that -- I mean, we can hear, at least I can hear
20 -- I can hear it turn on and off. I know that but there's --
21 it's little -- it's kind of a low hum. It doesn't bother you.
22 But the one that -- the one that they put this long tube on or
23 whatever it is, it is -- it changed tones but it's a loud noise.
24 Very loud.

1 Q. But ADM has successfully come close to eliminating the
2 noise from the top fans and much, much reduced the noise when
3 it's -- when the fan is in the position behind the office?

4 A. The fan behind the office doesn't bother us. The top
5 fans don't bother us.

6 Q. And before, they used to all bother you?

7 A. No, I never really had that much problem with the top
8 fans. It was just the fans on the ground.

9 Q. Okay. Do you think it's possible that ADM made the
10 improvements that it has made because it was trying to be a good
11 neighbor and reduce the noise as much as they could although ADM
12 didn't believe there was a nuisance to start?

13 A. Would you repeat the question?

14 Q. Do you think it's possible that ADM might have made
15 improvements to the noise despite the fact that they didn't
16 believe there was a nuisance just to try to be a good neighbor
17 and to get the noise under control perhaps for you?

18 A. No, I don't think they would spend the money if they
19 didn't -- if they was just trying to be a good neighbor. I mean,
20 let's face it. ADM is -- they're trying to make money.

21 Q. We're trying to make money. We're trying to be a good
22 neighbor as well?

23 A. Really.

24 Q. When's the last time that you had to leave your house

1 because of the noise?

2 A. Well, I'm thinking it was one day last week.

3 Q. And what was the cause of that noise?

4 A. The fans. It's -- They have been turning it on and off

5 intermittently.

6 Q. You say you think it was one day last week?

7 A. Yes, I believe. You know, my brother passed away last

8 week and so I'm not really too sure about things.

9 Q. Okay. Before that, when did you last have to leave your

10 home?

11 A. I can't remember the actual date. But I do know that

12 there have been many times. I cannot remember the actual date.

13 Q. In the last year?

14 A. Oh, yes, many times.

15 Q. Many times in the last year?

16 A. Yes.

17 Q. During the day or night?

18 A. Of course during the day. Usually you can get up in the

19 morning and if the fan is going, you can take it for about four

20 hours, and after that, you got to bail out.

21 Q. Do you have any estimate of the number of times, say

22 since January 1st of this year, that you've had to leave your

23 home because of the noise?

24 A. No, I don't. Because, you know, as you very well

1 realize that you have turned it off for weeks, months, you know.
2 It has been shut down.

3 Q. So you have no estimate at all as to how many times you
4 may have had to leave?

5 A. No, I don't. I honestly didn't think that -- that it
6 would come to a formal complaint so therefore, you know.

7 Q. Do you think it's more than 10 times?

8 A. Yes, probably is.

9 Q. Do you believe that the facility has social and economic
10 value to the area?

11 A. I'm sure it does. I know it does.

12 Q. Do you think it's in an inappropriate location?

13 A. Probably not. But when it was built, there probably
14 weren't that many people around there. It's been there, as I
15 understand, for years maybe before -- I don't know.

16 Q. It was always there as far as you know?

17 A. As far as I know, as far as I've been around it has.

18 Q. Do you know of any further actions that ADM could take
19 to reduce the noise more?

20 A. I'm not an engineer. I wouldn't know.

21 MR. CUNNINGHAM: That's all the questions I have.

22 HEARING OFFICER SUDMAN: Thank you. Mrs. Saxbury, would
23 you like to introduce as an exhibit that photograph? And I
24 didn't see it but does it show where the fan is in relation to

1 your house?

2 MS. SAXBURY: Sure. Now I want to verify one thing with
3 Richard. Now how many feet did you say?

4 MR. SAXBURY: 113 feet.

5 MS. SAXBURY: Okay. That's what I have. Lee has -- I made
6 him a copy of it, although he has -- he has this picture. But I
7 didn't have this written down below because Richard just measured
8 this the other day.

9 HEARING OFFICER SUDMAN: Okay. Can I look at it?

10 MS. SAXBURY: Sure.

11 HEARING OFFICER SUDMAN: And let me make sure I understand
12 it. So this is your front lawn?

13 MS. SAXBURY: The green part is our yard. And from the --
14 from the circling of the dryer, this is the front of it and it is
15 213 feet and seven inches to the center of our house.

16 HEARING OFFICER SUDMAN: So it's 213 feet?

17 MR. CUNNINGHAM: What did you say?

18 MS. SAXBURY: 213 feet.

19 MR. CUNNINGHAM: So Richard was wrong about that?

20 MS. SAXBURY: Yes, he was.

21 MR. SAXBURY: May I say something?

22 HEARING OFFICER SUDMAN: Mr. Saxbury -- well, Mr.
23 Cunningham, do you object to him saying anything?

24 MR. CUNNINGHAM: No.

1 MR. SAXBURY: She drew that across there and I told her at
2 the time that would come right -- from here pretty close, pretty
3 close to that fence right there, so, over that church here's our
4 house up here diagonal, not a straight line of course, that's not
5 --

6 HEARING OFFICER SUDMAN: Okay. Mr. Saxbury was just
7 explaining in the photograph. This is the only photograph then?
8 You just had several copies?

9 MS. SAXBURY: I have several others.

10 HEARING OFFICER SUDMAN: They just all show the same thing?

11 MS. SAXBURY: They show the elevator. Would you like to
12 take a look at them?

13 HEARING OFFICER SUDMAN: Sure.

14 MR. CUNNINGHAM: May I ask a couple questions about the
15 picture?

16 HEARING OFFICER SUDMAN: Yes.

17 MR. CUNNINGHAM: Where were you standing when you took this
18 picture?

19 MS. SAXBURY: Richard where were you? Where were you and
20 Frank standing when you took the picture?

21 MR. SAXBURY: Right in the middle of our yard. This is
22 alongside the street here.

23 MR. CUNNINGHAM: Is that kind of in line with your house
24 like between the house and the sides of the bins that are

1 showing?

2 MR. SAXBURY: Let me look at it. It comes at an angle

3 right about through here through here, right, Kent?

4 MS. SAXBURY: That little red thing there is the culvert.

5 I'm sure you've seen it noticed.

6 MR. SAXBURY: That's the culvert. That's the fence over

7 the church.

8 MR. CUNNINGHAM: And can you -- is the -- can you see the

9 portable fan in that picture?

10 MR. SAXBURY: I can't see it but I know where it is.

11 MR. CUNNINGHAM: Okay. Is it behind one of the bins there

12 so you can't see it?

13 MR. SAXBURY: It's not visible, no.

14 MR. CUNNINGHAM: Right. Okay. That's all.

15 HEARING OFFICER SUDMAN: Okay. Would you like to introduce

16 these photos as exhibits?

17 MS. SAXBURY: Yes, please.

18 HEARING OFFICER SUDMAN: Is there any objections? Would

19 you like to see them again?

20 MR. CUNNINGHAM: Yeah, let me see the ones that you have.

21 Let me take a look.

22 HEARING OFFICER SUDMAN: I don't think we need this one.

23 It shows the same thing as the top one.

24 MR. CUNNINGHAM: Yeah, in this picture 151. Are they

1 numbered here?

2 HEARING OFFICER SUDMAN: Let me see. Yeah, 149, 150, 151.

3 MR. CUNNINGHAM: Yeah. Whose house is that that you can
4 see at the left center of 151?

5 MS. SAXBURY: I'll have to ask Richard. I don't know.
6 Richard, whose house is this?

7 MR. SAXBURY: That's over on the other street, Lee. That's
8 just an old block house. I don't know whether anybody lives
9 there. Do you know where Jean Smith used to live there?

10 MR. THOMPSON: I don't know whether anybody lives there or
11 not.

12 MR. SAXBURY: I don't think anybody lives there. It was
13 never fixed up after the flood.

14 MR. CUNNINGHAM: No, I don't have any objections to the
15 pictures.

16 HEARING OFFICER SUDMAN: The pictures, which are labeled as
17 149 through 153 and stapled together, I will mark as Exhibit 1
18 and it will be admitted to the record. Just remind me, Mrs.
19 Saxbury, on page 149, what is the item that is circled there?

20 MS. SAXBURY: Well, as far as I know that is the -- that is
21 the --

22 HEARING OFFICER SUDMAN: Source of the noise?

23 MS. SAXBURY: Yes, that's what -- that's what they tried to
24 repair.

1 HEARING OFFICER SUDMAN: Okay.

2 MS. SAXBURY: It used to be -- it used to be a square type
3 of fan, right? Some type of a square type of fan until you put a
4 long --

5 MR. THOMPSON: No, we're using the same fan. We're using
6 the same fan now that we used that set out by the road.

7 MS. SAXBURY: Okay.

8 HEARING OFFICER SUDMAN: Okay. Do you have anything
9 further that you would like to present for your case, Mrs.
10 Saxbury?

11 MS. SAXBURY: I really don't --

12 HEARING OFFICER SUDMAN: Okay.

13 MS. SAXBURY: -- except I believe there was a question as
14 to what we wished to have done or --

15 HEARING OFFICER SUDMAN: Yes.

16 MS. SAXBURY: I didn't really understand part of it. But I
17 can give you what I did.

18 HEARING OFFICER SUDMAN: Just answer to the best of your
19 ability.

20 MS. SAXBURY: Okay. This is kind of hard but I don't know
21 what else to do. We wish to have the ADM elevator to cease
22 operation totally until the problem is fixed. And a one-time
23 fine of \$50,000, \$10,000 per day, and if it's possible,
24 retroactive until 2000, at least because of the economic revenue

1 that the elevator received during that time. That's as far as I
2 got with that.

3 HEARING OFFICER SUDMAN: Okay. Finished?

4 MS. SAXBURY: Okay.

5 MR. CUNNINGHAM: Can I ask a question about that?

6 HEARING OFFICER SUDMAN: Yes.

7 MR. CUNNINGHAM: Do you have any evidence of economic value
8 of the elevator?

9 MS. SAXBURY: No, I don't but I'm sure it's not over there
10 operating in the red or it wouldn't be there, right?

11 HEARING OFFICER SUDMAN: Okay.

12 MR. CUNNINGHAM: That's it.

13 HEARING OFFICER SUDMAN: Anything further, Mrs. Saxbury?
14 You're finished?

15 MS. SAXBURY: Yes, I don't know how to -- quite to -- there
16 was one more part to it but I didn't know how to comply with it.

17 HEARING OFFICER SUDMAN: Well, I'm going to suggest that we
18 take a five-minute recess and start with the respondent's case.
19 We'll go off the record.

20 (A short recess was taken.)

21 HEARING OFFICER SUDMAN: I guess we can go ahead and begin.
22 Are you ready? We're ready for the respondent to call his first
23 witness, please.

24 MR. CUNNINGHAM: Call G. W. Dimmitt.

1 HEARING OFFICER SUDMAN: Mr. Dimmitt, I'll just remind you
2 you are still under oath.

3 MR. DIMMITT: Okay.

4 DIRECT EXAMINATION

5 QUESTIONS BY MR. CUNNINGHAM:

6 Q. Can you describe for us a little bit what your current
7 position is and how long you've been in that position?

8 A. The position I'm in right now, I'm the manager of
9 elevator of operations in Quincy, Illinois, which includes the
10 responsibility of country elevator operations we have in Missouri
11 and Illinois.

12 Q. Since when?

13 A. I began them duties in June of 1996.

14 Q. And what did you do before that?

15 A. Before that for 22 years I ran a country elevator
16 operation in Missouri, Schubert, Missouri for Quincy Soybean
17 Company.

18 Q. And through that job did you have any knowledge of
19 operations at the Hull elevator?

20 A. Yes, I did. In fact, I worked at Hull some off and on,
21 and also from about '86 to '96 I was assistant supervisor of
22 country operation for Quincy Soybean Company.

23 Q. So you've actually had some direct involvement with the
24 facility over the years?

1 A. Yes.

2 Q. Can you describe the operations at the facility over
3 that time period?

4 A. Quincy Soybean purchased the facility from MFA, which
5 would have been probably in the early '80s. At that time there
6 was several more structured around the facility. They were using
7 the grain dryer that is still existing but it's out of operation.
8 They also had a grind and mix feed operation that was there but
9 was shut down at the time, which has been removed. And I know
10 there's been years in the early '80s that we did have to dry
11 grain and plus use aeration because of the type of season we had
12 that year. In fact, we were drying grain around the clock at
13 times and had a lot of transportation in and out. It happened to
14 be a year that the crop come out late. The crop was very wet and
15 to -- for our business, we needed to have that grain dried down
16 to a condition to use so we're using all grain dryers that we
17 could possibly use.

18 Q. And how would you compare the sound levels back in the
19 '80s to the current sound levels?

20 A. Well, at that time with the grain dryer it would be very
21 much louder than what the fans are at this time.

22 Q. How big is Hull, Illinois? How many people?

23 A. Approximately 250 people.

24 Q. And how long has the elevator been there?

1 A. From my recollection, what we could tell, from the early
2 '50s.

3 Q. Where within the town is the elevator located?

4 A. The elevator is located in the southwest corner of town.
5 It was built to existing railroad tracks. Because in the
6 beginning, that's where all elevators were built, next to a
7 railroad, so you could use that for transportation purposes.
8 There used to be a spur that ran by that so it's in that
9 location.

10 Q. When did ADM purchase this facility?

11 A. ADM took over in January 1998.

12 Q. And what fans are at the facility at that time?

13 A. At that time the two bottom portable fans were there.
14 There was an axial fan, stationary fan, on bin number two on the
15 south bay of bins. And we had just purchased in like the fall or
16 winter of '97 into '98 two top portable fans to be used for
17 aeration from the top silos.

18 Q. Okay. So -- And the bins themselves, how many fans were
19 they and how were they operated?

20 A. Actually there was two bottom portable fans to push air
21 up to the bin. There was two portable fans that were used on top
22 to draw that moisture off the fan, and then bin number two had
23 its own stationary bin or fan by itself. It was only used for
24 number two.

1 Q. Okay. All right. When did you first receive any
2 complaints about noise from the elevator?
3 A. Mrs. Saxbury contacted me, it was in the month of
4 October of -- fall of 2000.
5 Q. And nobody else had complained up until that time?
6 A. Not that I recall.
7 Q. Has anybody else complained to you since that time about
8 noise from the elevator?
9 A. No, no one else has.
10 Q. Can you describe the actions that ADM has taken since
11 Ms. Saxbury made her complaint to try to lower the amount of
12 sound coming from the fans?
13 A. You want to take it from 2000 to the present date?
14 Q. Yes.
15 A. When we were notified that Ms. Saxbury was having
16 problems with noise, in fact, Mike Klauke had just come in as
17 plant manager. I notified him. We went down and took a look at
18 -- and make some readings just to get a base to see what we had.
19 Looked at -- seen what possible -- what fan would be creating the
20 most noise or any noise. And we decided to only run the fans on
21 the weekdays like eight to five, business hours, not on nights,
22 not on weekends. From that we decided that bin number two --
23 Q. When -- when did you make that decision?
24 A. October, November of 2000.

1 Q. Okay.

2 A. From that we decided that we would do some work or
3 modifications on the stationary fan on bin number two because we
4 felt that that -- if there was any problem, that might be where
5 it was coming from. We insulated the intake of it by using
6 plywood, insulated board, anything to try to knock the noise down
7 from creating a noise or anything just to kind of muffle the
8 noise down.

9 Q. Okay. How much did you spend doing that?

10 A. Oh, approximately \$100 at that time.

11 Q. Okay. Let me go back a little bit. Can you -- can you
12 describe how the fans are used at the facility and why?

13 A. Hull Division is used basically for long-term storage
14 for grain that's either used for to sell at a later date like
15 wheat. We bring wheat in the summer July, August months. We
16 bring soybeans in the fall in which are kept long-term to be used
17 -- eventually to be sent on to our mother plant in Quincy. And
18 then in keeping grain for long terms, you got to keep the grain a
19 certain temperature compared to the outside temperature. If you
20 get into the fall of the year and you put that grain in there at
21 high, you know, 70, 80, 90 degree temperature, you need to get
22 that within 10 to 20 degrees of it outside temperature later on
23 or you're going to have to let the grain go out of condition. So
24 that's our -- we have hot spot detection, or which is a

1 temperature cable in all of our bins, that tells you what the
2 grain is at different levels. And we use that as a baseline to
3 figure out when we need to run our aeration and when we don't.
4 If we create where we're getting heat rising in that bin where,
5 you know, create the heating and grain, then that's when we use
6 the fans to keep that cool compared to the outside temperature.

7 Q. Does the limitations on the hours that you run these
8 fans adversely impact your operation in any way?

9 A. Yes, if -- if we had, you know, ideal situation would be
10 to turn the fan on and leave it on 24 hours a day until you get
11 the grain down to the temperature you need or was required to be
12 in a safe condition. With doing only on business hour days,
13 weekdays only, it takes longer to get to that problem. Sometimes
14 we don't get it to where we really want it to be with the
15 limitation and the hours we run.

16 Q. Okay. So you said that you, going back now, fixed the
17 -- you put in some insulation on number two did you refer to?

18 A. Yes, number two fan. We did that and we ran it. It
19 seemed to help it some. We looked at our other fans. We ran
20 that number two through the -- probably the 2001. And we decided
21 then that what could we do to make that one better. We decided
22 to remove that fan in 2002, completely fabricate that bin so we
23 could use one of the portable fans that we use on the other bins
24 at that time. So we eliminated that fan completely and did not

1 use it anymore.

2 Q. And you said that was the loudest of the fans?

3 A. Yes, it was the loudest of them all. It was a
4 stationary fan. It was a axial fan which is -- does create more
5 noise than the centrifugal fans that we use. The two bottom
6 portable fans that we use are centrifugal fans.

7 Q. Did you make any changes to the top fans?

8 A. Yes. Coming out of 2002 year, and give comment, these
9 fans are not ran every day of the week or every month of the
10 year. It's just usually through July, August and through the
11 fall and then through the, you know, some winter months until we
12 get into February, March, that time frame, just to keep the grain
13 in the condition.

14 Yes, we decided to take the portable -- bottom portable
15 fans first and try to insulate them. We built an enclosure
16 around them and put an insulated two and three quarter inch
17 insulated board to cover the whole fan. The intake to the fan,
18 the air intake, we baffled it. The top fans, the two portable
19 fans, they were running on 3450 RPM motors. We took them out and
20 put in a slower speed motor to 1750 which means they're moving
21 half the amount of air that they were but we thought that would
22 be satisfactory for what we use it for. It would still be the
23 purpose that we wanted them for. Also we took --

24 Q. Before you go on, how did that affect the sounds coming

1 from the top fans?

2 A. It, in my opinion, it reduced it probably 70, 80 percent
3 that you cannot hear it very well at all.

4 Q. Do you -- If somebody were just walking down the street
5 doing whatever between the elevator and the Saxbury's house, do
6 you think they would notice if those fans were operating?

7 A. No.

8 Q. Okay. Go ahead. One more. The insulation and the
9 building in this enclosure, how much money approximately did ADM
10 spend on that?

11 A. Material we used, approximately \$650 plus labor, which
12 was our own in-house maintenance people did the labor part of it.

13 Q. Okay. And what about the changes to the top fans, how
14 much was spent on that?

15 A. The motors, we had to replace motors they were about
16 \$275 a piece so we are looking at \$550 to \$600, and we had to
17 have an electrician come in and do the labor.

18 Q. Did you make any further efforts to reduce the noise
19 after that?

20 A. Bins nine, 10, and 11 which are closest to the street,
21 we felt that it would be beneficial if we lengthened the air duct
22 back towards the west where we could position our fan away from
23 the street back in behind the bin and some buildings to kind of
24 muffle the noise down. So we ran the air ducts approximately,

1 oh, probably 100 feet and the cost of that was approximately
2 \$1,500 plus labor.

3 Q. So how are those fans currently operated with -- with
4 the various elevator or bins?

5 A. Nine, 10 and 11, the fan is positioned back in between
6 number 11. And we run the flex tubing to the duct work that we
7 installed. Bins one and two, the fan is set between the concrete
8 block building, and that's the one closest to the office and the
9 silo back in behind there so it kind of knocks the noise down.
10 Then any of the other bins to the west, we positioned fans as
11 close as we can to the air duct but they are to the west.

12 Q. So now are there two -- only two positions that you put
13 the fans in when you use them?

14 A. On any bins closest to the street, one and two, nine,
15 10, 11, yes, there are only two positions.

16 Q. And how did you determine what those two positions would
17 be, where you'd place those fans?

18 A. We thought we would put it in a position that we could
19 effectively do what we wanted to do as far as moving air to those
20 bins, but we could also put it back in to where it was in the --
21 around some buildings and some silos so you could maybe be a
22 noise barrier for us.

23 Q. So you tried to place it so you would minimize the
24 amount of sound to the neighbors?

1 A. Right.

2 Q. And how effective was that?

3 A. At bins one and two it seemed to be really effective.

4 It doesn't create near any problems as much. In fact, the

5 Saxburys mentioned that they couldn't -- they could hear it come

6 on and off. They're didn't notice it as much. Number nine, 10,

7 11 were -- it's on the north side. It has reduced it. In my

8 opinion it's changed the sound of it, the tone of it. It's

9 closer to the street than the one and two, but it has reduced the

10 noise of it.

11 Q. Back in the year 2000 before you made any of these

12 changes, did you ever have any conversations with people standing

13 at the road between the elevator and the Saxbury's house?

14 A. You say in 2000?

15 Q. Yes.

16 A. Before the changes were done?

17 Q. Yes.

18 A. Yes.

19 Q. And could you hold a conversation there?

20 A. Yes. I mean, I took readings out in the street and --

21 you know, and I always had either Kent or somebody with me.

22 Q. And did you have trouble communicating with them?

23 A. Not necessarily, no.

24 Q. And did you have to raise your voice or stand

1 particularly close?

2 A. No, not anymore than you would be if there was a truck
3 running by or car going by.

4 Q. Okay. Let's go forward to in the last couple of months.
5 Have you been in a similar position holding a conversation?

6 A. Yes.

7 Q. How did -- Can you compare how the sound was from 2000
8 to what it's been like the last couple of months with the fans on
9 then?

10 A. My opinion, it's been reduced quite a bit. I mean, it
11 is as far as -- of course we eliminated number two -- bin number
12 two fan completely. We ran tests with just the top fans on.
13 It's not very noticeable at all when they're running. When we
14 hook the bottom fan on, naturally you can hear noise but it's
15 been reduced. Very noticeable to me it's been reduced.

16 Q. If you and I were to go out to the elevator right now
17 and stand as far apart as we are here, for the record that's
18 probably, what, 10, 12 feet, and place ourselves at the road
19 between the elevator and the Saxbury's house talking in a normal
20 tone of voice, do you think we would be able to converse with
21 each other?

22 A. I think so.

23 Q. Getting back to Hull. Can you describe the location of
24 residential homes around the facility?

1 A. Yes. The Saxbury's house is the first house to the
2 east. Of course they already gave you how many feet it is from
3 their house to the bins. To the north is Mr. Culgrove. It was
4 just right on the property line, on our property line, very
5 close, estimating probably 150 feet from the fan where it's
6 positioned. To the west there is not really anything because
7 there's a drainage ditch that goes through that way, back up
8 through that way. Closest is probably 2 or 300 yards, I would
9 say, except for the one street that the Culgroves, there's
10 somebody that lives behind them. That's to the north. To the
11 south, is it Wards? Ward's house is probably 150 to 250 feet and
12 then Russell Gill, probably the closest to the west, and he --
13 from his house to the first bin west is probably 75, 80 feet,
14 something like that.

15 Q. So there are four or five neighbors that are about the
16 same distance or closer to the elevator property than the
17 Saxbury's house?

18 A. Yes.

19 Q. Are you aware of anything more that ADM could reasonably
20 do at that facility to reduce the noise?

21 A. At this time I'm not aware of anymore.

22 Q. How many employees are there at the facility?

23 A. One full-time employee and then the -- in harvest we
24 bring in temporary help, anywhere from two to three depending on

1 what type of harvest we got coming.

2 Q. And is that temporary help from the neighborhood from
3 Hull, Illinois?

4 A. Yes, most cases they are right local. Hull people
5 within the -- within the local community. One employee, in fact,
6 lives within two blocks of the elevator.

7 Q. Does ADM pay property taxes on facility?

8 A. Yes, we do.

9 Q. Do you know how much that is?

10 A. Approximately \$20,000 a year.

11 Q. What -- what is the value of the elevator to the
12 surrounding area?

13 A. Well, we buy products, soybeans, wheat from the
14 surrounding area of Hull, probably 20, 25 miles. We initiate
15 different grain programs for these farmers to use in storing
16 their grain, give them an opportunity to maybe take advantage of
17 future prices, gains and prices. It's a close location where
18 they can come without traveling very far without going into
19 Hannibal or go into Quincy, the transportation costs to them.
20 It's just an area where they got a home-town representative or
21 place where they can go and do their business without traveling a
22 long distance.

23 Q. Does it bring other business to the town of Hull?

24 A. Yes, I mean, Hull, if you're familiar with it, it's just

1 like any small town. It has lost businesses. But I know there's
2 a service station there that does tire repair that many of the
3 farmers, as they come in, do business with them if they have
4 problems with tires or buying new tires. There's a local bank
5 there. If there's a restaurant open at all, at times there is,
6 times there isn't, it's kind of an off-and-on situation, it's
7 patronized very much by farmers that come in and out of town.

8 Q. What would happen -- what would the farmers do if the
9 elevator were not operating in Hull?

10 A. Well, they would have to look for other opportunities to
11 take the grain and other options, and the other options would be
12 traveling a greater distance, traveling into Hannibal or East
13 Hannibal, or traveling to Quincy which is another 25 miles, or
14 moving to New Canton, Illinois, possibly or even come as far as
15 over at Pittsfield, Illinois.

16 Q. And would that be more expensive?

17 A. Yes.

18 Q. For them to operate that way?

19 A. Extra added expense to them.

20 Q. Can you explain how the Hull elevator fits within the
21 Quincy Soybean system, I guess I should say ADM Quincy Soybean
22 system?

23 A. If you're familiar with Quincy, it's a processing plant.
24 It takes a large amount of grain to keep it functioning and

1 operating. Like I say, we have a country elevator system out
2 here with 13 elevators, Hull being one of them. We use that as a
3 source of incoming grain to keep the processing plant running.
4 It gives us -- just gives us a broader area to cover to receive
5 grain through. We also use the facility, since it has a large
6 amount of storage, for long-term so we can hold that grain, and
7 as we need that in later months in the year, we can bring it in
8 to process. We also use it for wheat storage. We bring wheat in
9 from some other locations. We bring it in to store it for three
10 to six months and when opportunities comes to put it on the
11 river, so we put it on the river. So it gives us option to carry
12 the grain so we can use it later.

13 Q. Do you know how much grain goes through the elevator
14 every year?

15 A. Probably anywhere from 750 to a million bushels, depends
16 on the type of year. 750 to a million bushels.

17 Q. Okay. Getting back to something you said earlier, are
18 there any controls on these fans other than on-off switches?

19 A. No.

20 Q. There's nothing that you can do to bury the noise level
21 from those fans except from turning it on and off?

22 A. As far as how much air is going to go through them, no,
23 it's just on or off.

24 Q. Okay. I want to show you this picture which is in

1 evidence number 149. And there is a line we talked about before
2 that goes to an area right by the bin. Can you describe what --
3 why that is there and how it is used?

4 A. This area here? This tubing?

5 Q. And, yeah, the tubing and the end there?

6 A. Okay. Each bin has what we call aeration under the
7 floor or in the floor, and it's usually a tubing that is
8 perforated. Once that's covered with grain, this tubing out here
9 outside is what we call aeration tube which leads back to the fan
10 itself. The fan is turned on which brings air through that
11 tubing back in through the aeration channels underneath the grain
12 and pushes air up through it. That is what is used either to
13 cool or heat it or whatever you want to do. Basically our factor
14 is to cool it. Once that air -- it pushes that air up to the
15 top, so you're pushing the heat up to the top. That's where we
16 use the portable fans on top to pull that condensation and stuff
17 off the top.

18 Q. And the white tubing that is shown there in the center
19 of that picture, is that something that you added?

20 A. Yes.

21 Q. And why -- why does it go to where it goes to?

22 A. It goes to that bin number nine. We took it back to the
23 west. That allows us to set the portable fan back away from the
24 street and back there around bin 11 to kind of use as a barrier,

1 noise barrier.

2 Q. So it used to be that you'd have to sit a fan right
3 there?

4 A. Yeah, right there.

5 Q. Pretty much where that line comes?

6 A. Right.

7 Q. Now you're able to tuck it in behind the bin?

8 A. Approximately there's three bins there so we moved it
9 approximately 100 feet to the west.

10 Q. Is there anything just about the environment that can
11 change the noise level from those fans?

12 A. Well, yes, outside wind direction would be one factor.
13 If the wind is in the west or the east, it's going to push that
14 noise one way or the other. So in my opinion the wind would be a
15 number one factor.

16 Q. Is pretty much every elevator that receives the types of
17 grain that you receive going to have some kind of fan system?

18 A. Yes, anybody that's storing wheat for a long term is
19 going to have to have some type of aeration to cool that grain
20 off. In the hottest months of the year, temperature of the grain
21 is anywhere from 90 to 100 degrees. If you're going to keep it
22 long term for the winter months, you've got to get that grain
23 down probably into the 50 to 60 degrees which is probably 10
24 degrees within the normal average outside temperature. So you

1 have to bring that down or you're going to have storage problems.

2 Q. And is you -- does ADM make an effort to minimize the
3 amount of daytime hours that it uses to cool this grain.

4 A. Yes. Right now our intention is to only run it through
5 business hours which would be 8:00 to 5:00 weekdays only, is our
6 intention is when we run the fan.

7 Q. Do you know if the facility is properly zoned?

8 A. As far as I know there's no zoning laws in Hull.

9 Q. Based on your interactions with Ms. Saxbury over the
10 last few years, what do you think the likelihood that ADM is
11 going to be able to reduce the noise from those fans to satisfy
12 her?

13 A. To continue to do operations like we need to do or
14 required to do to keep the grain, the likelihood of satisfying
15 her, my -- I don't think right now, from what we've done, I don't
16 know -- it's not going to satisfy her. I don't know how much
17 we're going to do. I don't know the likelihood it's going to
18 satisfy her.

19 Q. What can you -- can you describe for us how often the
20 fans are used since you came up with your limitations on the
21 hours of usage?

22 A. July, August into September, October it will vary
23 depending on, you know, how much grain we got in it. Probably
24 July, August we're looking at off on and because it's still hot

1 out and you're not going to put hot air in it. You're maybe
2 looking at a couple days a week, just depending. You get into
3 September when the temperature starts cooling down, that's when
4 we need to start bringing the temperature down. You could be
5 using them through September, October, early November four to
6 five days a week.

7 Q. And how many hours a day might you use them?

8 A. Only run them from 8:00 to 5:00, so we're only looking
9 from eight to nine hours at a most.

10 Q. Do you always run them from 8:00 until 5:00?

11 A. Not necessarily. It's -- it's up to Kent's decision to
12 say and he's not going to start them before eight and he's not
13 going to keep them running much, you know, past five. He may
14 start running them at nine, shut them off at 3:30 or four just
15 depending what hours he's keeping at the elevator. Harvest time
16 he runs longer hours. Of course now he may try to run them 8:00
17 to 5:00. Out of harvest time, you know, he may run them from
18 9:00 to 3:30 or four.

19 Q. What causes the sound that you hear from the elevators
20 running? Is it the motor itself or --

21 A. Movement of the air.

22 Q. Can you -- can you hear the motor running?

23 A. You can't hear the motor running over the movement of
24 the air. Now if you didn't -- if you didn't have the motor

1 hooked up to actually the fan, you could hear it running, but
2 it's just an electric motor. It's not going to make much noise.
3 It's the movement of the air through the fan through the tubing.

4 Q. And that air has to get to the various bins to -- to
5 cool them down, correct?

6 A. Correct.

7 Q. Have you talked to the Saxburys, either of them, at
8 their house when all the fans are on?

9 A. Yes.

10 Q. Did you have any difficulty conversing with them at the
11 time?

12 A. Did you say I was in the house?

13 Q. No, on their property?

14 A. I never talked to them when they were actually home.

15 Q. You didn't. Okay. How would you describe the sound
16 from the fans?

17 A. Probably a high pitched tone, kind of a whistling sound,
18 maybe a -- what do you want to call it, a whine or type noise.
19 If you heard wind blowing through something and, you know,
20 whistling like sound is kind of -- what I hear is a whistle, high
21 pitched whistle sound.

22 Q. The various efforts that we made, ADM made, over the --
23 the three-month period that was discussed earlier where we had
24 asked for some additional time to do some work on the facility

1 without having to go with hearing, why did you make those
2 changes?

3 A. Well, we felt that we could -- first off we talked to
4 other elevators to see if they done any types of modification of
5 fans for noise problems and they suggested the things that we
6 did, insulated the fan, the baffles in the intake, possibly
7 moving the fan to a situation or location that is a noise
8 barrier, other bins from other buildings. We thought as a good
9 neighbor we tried to see if we could do this. And knowing that
10 it should improve it some, not knowing how much until we did it,
11 we thought we should do that to see what we could accomplish.

12 Q. Can you make any estimate as to how much you believe the
13 facility has been able to reduce the sound from these fans since
14 the year 2000?

15 A. First off, number two fan we eliminated completely, so
16 that's 100 percent there. The top two fans, I'm saying we
17 probably reduced them 80 percent noise level. The two bottom
18 fans, depends on where you position them, I'm saying we could
19 have probably reduced them 40, 50 percent maybe. Just my
20 opinion.

21 Q. Yeah, thanks. All I was asking for. What do you know
22 about the fans running on the 24th or the 25th of December of
23 last year?

24 A. I do not recall them being run. I was not at the

1 location. If they were running, it was not intentional. The
2 facility was shut down for Christmas day and Christmas eve. So I
3 don't recall why they would have been running. If they were
4 running, it was unintentional.

5 MR. CUNNINGHAM: That's all I have.

6 HEARING OFFICER SUDMAN: Mrs. Saxbury, would you like to
7 cross-examine?

8 MS. SAXBURY: No, thank you.

9 HEARING OFFICER SUDMAN: Thank you, Mr. Dimmitt.

10 MR. CUNNINGHAM: Mr. Cunningham, you may call your next
11 witness. Kent Thompson, Wayne Kent, I guess.

12 MR. THOMPSON: Wayne Kent.

13 HEARING OFFICER SUDMAN: Mr. Thompson, I'll remind you
14 you're still under oath.

15 MR. THOMPSON: Okay. Thank you.

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. CUNNINGHAM:

18 Q. Have you ever talked to either both of the Saxburys on
19 their property or at the house while all of the fans were on?

20 A. I don't know whether I have or while all of them was on.
21 I mean, I talked to Richard and Bonnie one time. She was in the
22 house. I was standing at the back door. I don't know if I've
23 ever talked to her outside. But I have talked to Richard but I
24 don't know that I ever did when all of them was on but it's

1 possible.

2 Q. How about when the bottom fans were on?

3 A. Yes, uh-huh.

4 Q. Did you ever have any difficulty conversing with them in
5 a normal manner?

6 A. No, huh-uh.

7 Q. What do you recall about the use of the fan the 24th or
8 the 25th of December last year?

9 A. Well, I know on Christmas day I'm sure they wasn't
10 running on the 24th. We had off the 24th. And I don't -- I
11 don't remember ever turning them on. Bonnie says they was on but
12 I don't remember them being on. That's all I can tell you.

13 Q. If had you been aware that they were on, would you have
14 done anything about that?

15 A. If I was working that day and they was on, they probably
16 would have stayed on. If they wasn't working, yeah, I would have
17 had them off.

18 Q. If somebody had called you and told you that the fans
19 were on, what, if anything, would you have done?

20 A. If they was bothering them, I would have ran over and
21 turned them off. That would have been no problem.

22 Q. Do you recall ever telling either of the Saxburys that
23 you might have to buy them out to save your retirement?

24 A. I don't remember saying that. For one thing, I couldn't

1 buy them out. I wouldn't have the money. I'm just a pee-on that
2 works for ADM. To me, that would be ADM's problem that would
3 have to buy them out. No, I don't remember ever saying anything
4 like that.

5 MR. CUNNINGHAM: That's all I have.

6 HEARING OFFICER SUDMAN: Ms. Saxbury?

7 CROSS-EXAMINATION

8 QUESTIONS BY MS. SAXBURY:

9 Q. Are you certain that you weren't at the facility on the
10 24th?

11 A. I'm pretty certain because I think we had that day off.
12 But, you know, 99 percent certain. Was my truck there?

13 Q. I didn't look for the truck. But I know that the fans
14 were on. And also are you certain that you didn't make the
15 comment to Richard about you might have to buy him out to save
16 your retirement?

17 A. I don't ever remember saying that.

18 MS. SAXBURY: That's all.

19 HEARING OFFICER SUDMAN: Okay. Anything further? Thank
20 you, Mr. Thompson. Mr. Cunningham, you may call your next
21 witness.

22 MR. CUNNINGHAM: I don't think I have any more witnesses to
23 call.

24 HEARING OFFICER SUDMAN: Okay. Are you introducing any

1 exhibits today?

2 MR. CUNNINGHAM: No.

3 HEARING OFFICER SUDMAN: Okay. Well, before we hear
4 closing arguments, I would like to go off the record to discuss a
5 briefing schedule.

6 (A discussion was held off the record.)

7 HEARING OFFICER SUDMAN: We've just had an off-the-record
8 discussion regarding post-hearing briefs and the parties have
9 agreed to a briefing schedule as follows. The transcript of
10 these proceedings will be available from the court reporter by
11 October 18th, 2004, and will appear on the Board's website
12 shortly thereafter. The public comment deadline is November
13 15th, 2004. Public comment must be filed in accordance with
14 Section 101.628 of the Board's procedural rules. The
15 complainant's brief is due November 3rd, 2004. Respondent's
16 brief is due November 17th, 2004. Complainant's reply, if any,
17 is due November 28th, 2004. And the mailbox rule will apply.
18 Mrs. Saxbury, would you like to make any closing argument at this
19 time? You can reserve it for your brief if you like.

20 MS. SAXBURY: The only comment I would like to make is that
21 I believe that all of us, including ADM, should not be above the
22 law. And that's all I have to say.

23 HEARING OFFICER SUDMAN: Mr. Cunningham, would you like to
24 make any closing arguments at this time?

1 MR. CUNNINGHAM: I hope the Board comes out to listen to
2 the sound. I think if the Board would do that, they would think
3 it is not a noise nuisance. I think we've established that the
4 facility has done basically everything they can do to try to
5 satisfy the Saxburys, and we're disappointed that we've been
6 unable to do so. But we just don't know what more we can do and
7 that's how we ended up here. I think we've established that the
8 elevator is a significant social and economic value and that
9 we're operating it in a responsible manner. It is suitably
10 located, and I don't think that the Board should find that there
11 is a noise nuisance.

12 HEARING OFFICER SUDMAN: Okay. Thank you. At this time I
13 will note that there are no members of the public present. So I
14 will proceed to make a statement as to the credibility of
15 witnesses testifying during this hearing. Based on my legal
16 judgment and experience, I find all of the witnesses testifying
17 to be credible. I thank all of you for your participation and we
18 stand adjourned. Thank you.

19 (The hearing was adjourned.)

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 84 pages comprise a true, complete and correct transcript of the proceedings held on the 6th day of October A.D., 2004, at the City Hall Council Chambers, 215 North Monroe Street, Pittsfield, Illinois, in the case of Bonita and Richard Saxbury versus Archer Daniels Midland, Hull, Illinois Division, in proceedings held before Hearing Officer Carol Sudman, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 13th day of October A.D., 2004.

Beverly S. Hopkins
Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

CSR License No. 084-004316