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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ROGER L. YOUNG and
ROMANA K. YOUNG,

Complainants,

vs. No. PCB 00-90

GILSTER-MARY LEE
CORPORATION,

Respondent.

Proceedings held on April 10, 2001, at 8:50 a.m., at the
Randolph County Courthouse, One Taylor Street, Chester, Illinois,
before Hearing Officer Steven C. Langhoff.

Reported by: Darlene M. Niemeyer, CSR, RPR
CSR License No.: 084-003677

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A P P E A R A N C E S

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1 P R O C E E D I N G S

2 (April 10, 2001; 8:50 a.m.)

3 HEARING OFFICER LANGHOFF: Good morning, everyone. My name
4 is Steven Langhoff. I am the Pollution Control Board Hearing
5 Officer who is assigned to conduct the hearing in this matter.
6 This is PCB 00-090, Robert L. Young and Romana K. Young versus
7 Gilster-Mary Lee Corporation.

8 For the record, it is Tuesday, April 10th, 2001, and we are
9 beginning at 8:50 a.m. I want to note for the record that there
10 are no members of the public present. Members of the public are
11 encouraged and allowed to provide public comment if they so
12 choose.

13 At issue in this case are allegations contained in the
14 complaint filed by Robert L. Young and Romana K. Young.

15 MR. MUSKOPF: Excuse me. It is Roger.

16 HEARING OFFICER LANGHOFF: Roger. Thank you.

17 MR. YOUNG: All three times.

18 HEARING OFFICER LANGHOFF: I apologize. At issue in this
19 case are allegations contained in the complaint filed by Roger L.
20 Young and Romana K. Young. The violations alleged in the
21 complaint are for noise violations in violation of Section 24 of
22 the Environmental Protection Act, 415 ILCS 5/24. The location of
23 the site is at 1037 State Street, Chester, Illinois. Is that
24 correct?

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1 MRS. YOUNG: That is Gilster's address. Our address is not
2 that.

3 HEARING OFFICER LANGHOFF: What is your location, Mrs.
4 Young?

5 MRS. YOUNG: 1009 Swanwick, S-W-A-N-W-I-C-K.

6 HEARING OFFICER LANGHOFF: Thank you. I want to take a
7 brief moment to let you know what is going to happen today and
8 after the proceeding today. You should know that it is the
9 Pollution Control Board and not me that will make the final
10 decision in this case. My job as a Hearing Officer requires that
11 I conduct the hearing in a neutral and orderly manner so that we
12 have a clear record of the proceedings here today. It is also my
13 responsibility to assess the credibility of any witnesses giving
14 testimony today. I will do so on the record at the conclusion of
15 the proceedings.

16 We will begin this morning with opening statements from the
17 parties, and then we will proceed with the Youngs, or the
18 complainants' case, followed by Gilster-Mary Lee having an
19 opportunity to put on a case in its behalf. The Youngs may then
20 present a rebuttal. We will conclude with any closing arguments
21 that the parties wish to make. Then we will discuss off the
22 record a briefing schedule which will be set on the record at the
23 conclusion of the proceedings.

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1 Protection Act provide that members of the public shall be
2 allowed to speak or submit written statements at hearing. Any
3 person offering such testimony today shall be subject to
4 cross-examination by both parties. Any such statements offered
5 by members of the public must be relevant to the case at hand. I
6 will call for any statements from members of the public again at
7 the conclusion of the proceedings.

8 At this time I will again ask if there are any members of
9 the public present who wish to give statements today? Seeing
10 none, we will proceed at this time and I will ask again for any
11 comments from members of the public at the end of the
12 proceedings.

13 This hearing was noticed pursuant to the Illinois
14 Environmental Protection Act and the Board's rules and
15 regulations and will be conducted pursuant to Sections 101.600
16 and 101.610 of the Board's rules.

17 At this time I will ask the parties to make their
18 appearances on the record beginning with the complainant.

19 MR. MUSKOPF: Well, first of all, my name is Jeff Muskopf.
20 Good morning, Mr. Hearing Officer.

21 HEARING OFFICER LANGHOFF: Good morning.

22 MR. MUSKOPF: And Members of the Board. I am with the
23 Belleville law firm of Freeark, Harvey, Mendillo, Dennis, Wuller,

24 Cain & Murphy. I represent the complainants in this matter.

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1 Their names are Roger and Romana Young.

2 HEARING OFFICER LANGHOFF: Thank you.

3 MR. SAFLEY: My name is Tom Safley, S-A-F-L-E-Y, with the
4 law firm of Hodge & Dwyer, in Springfield, Illinois. I represent
5 the respondent in this matter, Gilster-Mary Lee Corporation.

6 HEARING OFFICER LANGHOFF: Thank you. Are there any
7 outstanding or prehearing motions that the parties would like to
8 present before we proceed?

9 MR. MUSKOPF: No, Your Honor.

10 HEARING OFFICER LANGHOFF: Thank you. Do we have any other
11 preliminary matters that need to be discussed on the record? We
12 have two stipulations, I believe, and if you would give them for
13 the record.

14 MR. MUSKOPF: Certainly. I have agreed to waive the
15 foundational requirements for all of the exhibits that Mr. Safley
16 has told me that he intends to introduce into evidence. And,
17 similarly, I have also agreed to stipulate that Mr. Weissenburger
18 is an expert qualified to give opinions in the subjects of noise
19 measurement, noise control, and the human impact of noise.

20 MR. SAFLEY: Tom Safley, on behalf of the respondent. The
21 respondent, Gilster-Mary Lee, has made the same stipulation
22 regarding the exhibits that have been disclosed on the foundation

23 of -- any foundation objection for the exhibits that have been
24 disclosed by the petitioners as well as stipulating to the status

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1 of Greg Zak, the petitioner's opinion witness, as an expert in
2 the areas mentioned by Mr. Muskopf.

3 HEARING OFFICER LANGHOFF: Thank you. Would the
4 complainant like to give a brief opening statement?

5 MR. MUSKOPF: I would. Thank you. Members of the Board,
6 Roger and Romana Young are the complainants in this case. They
7 are individuals, homeowners, and next-door neighbors to
8 Gilster-Mary Lee. Gilster-Mary Lee is an industrial food product
9 manufacturing company.

10 This proceeding is brought for violation of Section 24 of
11 the Environmental Protection Act, and the evidence will be quite
12 clear that Gilster-Mary Lee has been knowingly and willfully
13 violating Illinois law by emitting noise which unreasonably
14 interferes with the Youngs' enjoyment of life and their property.

15 The proof will come from the respondents own employees and
16 expert witness, from the Youngs, and from Mr. Greg Zak. All of
17 the noise measurements which have been taken by the parties to
18 this case make clear that the respondent is in violation of
19 Illinois law.

20 The evidence will also make clear that a technically
21 feasible and economically reasonable solution is available, that
22 a continuous noise monitoring system is appropriate, that a

23 system of penalties for future noncompliance is warranted, and
24 that justice requires the imposition of civil penalties for

9

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1 Gilster-Mary Lee's cavalier disregard of its neighbors, its
2 community, and the law.

3 HEARING OFFICER LANGHOFF: Thank you. For the respondent,
4 Mr. Safley?

5 MR. SAFLEY: Thank you, Mr. Langhoff. Again, my name is
6 Tom Safley, appearing today on behalf of the respondent,
7 Gilster-Mary Lee Corporation.

8 In response to the statement, the opening statement by the
9 petitioners, Gilster-Mary Lee would take issue with just about
10 everything that was stated. We believe the evidence will show
11 that there is no interference by any activity conducted by
12 Gilster-Mary Lee -- no interference caused by such activities to
13 the Youngs' use and enjoyment of their property. Further, that
14 under the factors considered by the Board in Section 33(c) of the
15 Illinois Environmental Protection Act, even if any sort of
16 interference exists, that interference is not unreasonable. That
17 there is no technically feasible and economically reasonable
18 means of achieving any further reduction in noise emissions by
19 Gilster-Mary Lee.

20 And, finally, we object to any statement regarding
21 penalties in this case. The complainants did not seek penalties

22 in their complaint. They have never raised the issue of
23 penalties before the opening statement given two minutes ago.
24 And if penalties are at issue, we object to that. We have not

10

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1 conducted any discovery on that matter. We think it is
2 inappropriate for the complainants to bring it up at this time.

3 But, again, the evidence will show that there has been no
4 violation of Section 24 of the Environmental Protection Act and
5 no nuisance cause and no interference with the use and enjoyment
6 of the Youngs' property.

7 HEARING OFFICER LANGHOFF: Okay. Thank you. We will take
8 just a brief moment off the record here.

9 (Whereupon a short recess was taken.)

10 HEARING OFFICER LANGHOFF: Okay. Thank you. Back on the
11 record.

12 Please present your case-in-chief, Mr. Muskopf.

13 MR. MUSKOPF: Thank you, Mr. Hearing Officer. I would like
14 to call as a first witness Mr. Jack Hutchinson. And I would make
15 a motion at this time that the Hearing Officer recognize him as
16 an adverse witness and permit him to be cross-examined.

17 MR. SAFLEY: On behalf of the respondent we object to that
18 motion. As, Mr. Langhoff, you know, the issue of adverse hostile
19 or unwilling witnesses is governed by Section 101.624 of the
20 Pollution Control Board Rules. There are specific requirements
21 under that section that have to be met. Mr. Muskopf has not made

22 any attempt to explain why Mr. Hutchinson would qualify as an
23 adverse witness, and we don't think that any of these apply.

24 HEARING OFFICER LANGHOFF: Why does Mr. Hutchinson qualify

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1 as an adverse witness, Mr. Muskopf?

2 MR. MUSKOPF: I will be happy to explain that.

3 HEARING OFFICER LANGHOFF: Thank you.

4 MR. MUSKOPF: There are a list of persons who may be called
5 as an adverse witness. They include officers, directors,
6 managing agents, or foremen of any party. Now, the Illinois case
7 law indicates that -- and by the way, Section 101.624 refers to
8 735 ILCS 5/2-1106. And there are numerous cases construing that
9 particular section of the Civil Practice Act and basically it is
10 a nonexclusive list.

11 I think also Mr. Hutchinson would qualify as a foreman
12 because his job title is -- basically he is responsible for
13 Gilster -- at Gilster-Mary Lee for the areas of engineering and
14 compliance. One of his job duties, as he indicated in his
15 deposition, involves advising his employer with regard to
16 environmental compliance issues.

17 Thus, he is basically -- I mean, he is to be distinguished
18 from a low level employee. He has responsibilities that are
19 directly germane to the issues in this case, and he is high
20 enough in the hierarchy at Gilster-Mary Lee to warrant him being

21 called as an adverse witness.

22 HEARING OFFICER LANGHOFF: Mr. Safley?

23 MR. SAFLEY: Well, first of all, I am certainly not aware
24 of the case law to which Mr. Muskopf refers. Secondly, I dispute

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1 that job title alone is enough to qualify someone as an officer,
2 director, managing agent or a foreman. Certainly, Mr. Hutchinson
3 testified, or if he did not in his deposition, will testify that
4 he is not an officer or director of Gilster-Mary Lee.

5 As far as a managing agent or foreman, my review of the
6 case law, specifically Bassett versus Burlington Northern Rail
7 Company, Fifth District, 1985, 476 northeast second 31, states
8 that the issue as to whether someone is a managing agent or a
9 foreman hinges on whether that person has a supervisory position
10 with the opposing party. I don't have a copy of the case. I do
11 have a copy of the annotation if you would like to see it, Mr.
12 Langhoff.

13 Mr. Hutchinson has testified in his deposition that he does
14 not supervise any employees. I assume that that is still the
15 case, and assuming that that is still the case, I -- it is our
16 position that he does not qualify as a foreman or a managing
17 agent. The fact that he has a job title that is engineering and
18 environment or that he is at some -- at whatever level he is in
19 the food chain at Gilster-Mary Lee is irrelevant. He is not an
20 officer. He is not a director. He does not supervise anyone.

21 Which the Fifth District has held is the test for whether he is a
22 managing agent or a foreman. Therefore, we don't believe that
23 those apply and that it would be improper to treat him as an
24 adverse witness.

13

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1 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf, I am going
2 to deny your motion at this time. If there is some evidence that
3 shows Mr. Hutchinson is a foreman at Gilster-Mary Lee, I will be
4 glad to hear your motion again at that time.

5 MR. MUSKOPF: Okay. Very good.

6 HEARING OFFICER LANGHOFF: Thank you.

7 MR. MUSKOPF: I would still like to call him as my first
8 witness.

9 HEARING OFFICER LANGHOFF: Very well.

10 MR. MUSKOPF: Mr. Hutchinson, please.

11 HEARING OFFICER LANGHOFF: Will you swear the witness.

12 (Whereupon the witness was sworn by the Notary Public.)

13 HEARING OFFICER LANGHOFF: Mr. Muskopf.

14 MR. MUSKOPF: Thank you.

15 J A C K H U T C H I N S O N,

16 having been first duly sworn by the Notary Public, saith as

17 follows:

18 DIRECT EXAMINATION

19 BY MR. MUSKOPF:

20 Q. Your name is Jack Hutchinson, correct?

21 A. Yes.

22 MR. SAFLEY: Objection. Leading.

23 MR. MUSKOPF: I think I can lead to get through some
24 background information.

14

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1 HEARING OFFICER LANGHOFF: I am going to overrule the
2 objection and let you get on with some of the background
3 questions.

4 MR. MUSKOPF: All right.

5 Q. (By Mr. Muskopf) You are employed by Gilster-Mary Lee?

6 A. That is correct.

7 Q. You are the same Jack Hutchinson that has given a
8 deposition in this proceeding, correct?

9 A. Yes.

10 Q. Okay. You have been a Gilster-Mary Lee employee for
11 about four years now?

12 A. Yes.

13 MR. MUSKOPF: Okay. Could I take an interruption for a
14 second.

15 Would it be okay with the Hearing Officer if I refer to
16 Gilster-Mary Lee by its initials GML in this proceeding?

17 HEARING OFFICER LANGHOFF: That is fine with me. Is there
18 any objection?

19 MR. SAFLEY: No.

20 HEARING OFFICER LANGHOFF: That's fine.

21 Q. (By Mr. Muskopf) Now, your responsibilities with GML are
22 in the areas of engineering and compliance; is that right?

23 A. Yes.

24 Q. And one of your job duties involves advising your

15

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1 employer with regard to environmental compliance issues; is that
2 true?

3 A. Yes.

4 Q. How many facilities does Gilster-Mary Lee have?

5 A. Roughly we have 14 manufacturing facilities plus other
6 facilities.

7 Q. Located in what geographic region primarily?

8 A. In the Midwest.

9 Q. How many manufacturing facilities in Randolph County?

10 A. We have four.

11 Q. You have two in Chester; is that right?

12 A. Yes.

13 Q. Okay. And for purposes of clarity, the cake plant is
14 the manufacturing facility of GML that is closest to the Young
15 property; correct?

16 A. Yes.

17 Q. Your office is in Chester at the cake plant?

18 A. My office is in Chester at 918 State Street, which is

19 slightly removed from the main office.

20 Q. Okay. How far is it from the cake plant?

21 A. As an estimate, 100 yards.

22 Q. You spend most of your day around the cake plant; is
23 that true?

24 A. In and about.

16

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1 Q. So you are certainly familiar with the operations of
2 that particular facility?

3 A. I am familiar with what they do at that plant.

4 Q. Okay. You observe that plant in operation on a
5 day-to-day basis, I would assume? Or at least the days that you
6 are working?

7 A. The days that I am in Chester I may be at the cake
8 plant.

9 Q. What does GML do at the cake plant?

10 A. We -- GML manufacturers food product for our customers.

11 Q. Your customers are not the end user of the food product
12 but grocery stores and their commercial buyers; is that fair to
13 say?

14 A. The product could be supplied to an end user.

15 Q. So Gilster-Mary Lee sometimes sells its product to the
16 end customer?

17 A. That's a possibility.

18 Q. Okay. Stuffing mixes, cake mixes, chicken coating

19 mixes, are those the kinds of things produced at that facility?

20 A. Those would be some examples.

21 Q. Can you give us a couple of other examples, please?

22 A. You might have a cookie mix or a -- did you say coating?

23 Q. I said chicken coating.

24 A. Okay. A cookie mix could be a possibility. When I say

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1 bake mix what you might envision as something that you may bake,
2 be it a cookie or cake or a brownie or whatever.

3 Q. Okay. Is it fair to say that raw materials are taken in
4 at the cake plant and then assembled, manufactured, processed and
5 then prepared for distribution?

6 A. Would you repeat, please?

7 Q. Sure. Would it be fair to say that raw materials are
8 taken in at the Chester cake plant, and they are processed or
9 assembled or manufactured, and then prepared for distribution?

10 A. That could be a fair statement.

11 Q. Okay. It could be or it is?

12 A. When you say "processed" that is depending upon your
13 definition of the word process. We bring in raw goods and do the
14 work to them to make a product that could go out to our customer.

15 Q. Okay. I think the facility would be accurately
16 characterized, then, as a manufacturing plant; is that fair to
17 say?

18 A. Yes.

19 Q. What are the plant's typical operating hours?

20 A. We typically run six days a week, 24 hours a day.

21 Q. Okay. And then approximately how many days out of the
22 year would you say that Gilster-Mary Lee is in operation at that
23 particular facility?

24 A. The number of days we must operate, of course, is driven

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1 by the orders. As an estimate of those, the number that we may
2 run, I would say 230 days.

3 Q. And sometimes the cake plant is in operation on Sundays;
4 is that true?

5 A. That's a possibility.

6 Q. I mean, is it -- since the -- during the four years that
7 you have been there, have you ever witnessed the cake plant being
8 in operation on a Sunday?

9 A. I don't recall a specific Sunday in which we would be in
10 operation. But, once again, it is a customer driven issue. We
11 must meet our customer's needs and we schedule to achieve those
12 goals.

13 Q. So it is your understanding that the cake plant has been
14 operated on Sundays?

15 A. I said it is possible.

16 Q. But you don't know for sure?

17 A. I don't know for a fact on which Sunday we may have

18 operated.

19 MR. MUSKOPF: I would renew my motion and ask that the
20 Hearing Officer allow me to cross-examine the witness under
21 Subsection B of Section 101.624.

22 HEARING OFFICER LANGHOFF: No, that motion is denied.

23 MR. MUSKOPF: All right.

24 Q. (By Mr. Muskopf) How many shifts are there of production

19

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1 employees?

2 A. Three.

3 Q. And those are beginning and ending at what times?

4 A. The first shift beginning at 7:00, running to 3:00. The
5 second shift running from 3:00 to 11:00. And the third shift
6 running from 11:00 to 7:00. Those would be the typical shifts.

7 Q. And so the employees that start at 7:00 in the morning,
8 what time are they required to be clocked in or ready for work?

9 A. They need to be at their work station at 7:00.

10 Q. Do you know what time people typically arrive to be at
11 their work station at 7:00?

12 A. Typically arrive to be at their work station at 7:00?
13 With as little time as they need to have in order to be there to
14 meet the goal. You may have employees that arrive much earlier.
15 There are those that make it to the very last second. That's the
16 nature of people.

17 Q. Is there a lunch break or any kind of break for the 7:00
18 to 3:00 shift?

19 A. There are breaks through the day.

20 Q. And when is the lunch break or any other break for the
21 people on the 7:00 to 3:00 shift?

22 A. A typical lunch break would be at 11:00.

23 Q. How long is that break?

24 A. Thirty minutes.

20

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1 Q. Are there any other breaks during the 7:00 to 3:00 shift
2 besides the lunch break you just described?

3 A. We typically give a break in the morning and the
4 afternoon.

5 Q. What time is the lunch break -- is the morning break and
6 the afternoon break for the people on the 7:00 to 3:00 shift?

7 A. The break in the morning, I don't know that I can answer
8 that for the employees.

9 Q. Can you give me an approximate time?

10 A. The approximate time would probably be about 9:30.

11 Q. So we have 9:30 and then the lunch break and then
12 another afternoon break?

13 A. Uh-huh.

14 Q. Approximately what time is the afternoon break?

15 A. Probably about 1:30.

16 Q. Now, I have the same set of questions for you about the

17 second shift, which is the 3:00 to 11:00 shift. Approximately
18 what time is the first break?

19 A. Probably somewhere around 4:30, 5:00.

20 Q. Then what time is the lunch break for the 3:00 to 11:00
21 shift?

22 A. About 7:00.

23 Q. And the afternoon break for the second shift is at
24 approximately what time?

21

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1 A. The afternoon break?

2 Q. Well, you were characterizing the first break before
3 lunch as the morning break and the break after lunch as the
4 afternoon break.

5 A. You are referring to their second break.

6 Q. Okay. Let's call it the second break then.

7 A. Their second break. All right. Its 9:30,
8 approximately.

9 Q. Okay. And then in the 11:00 to 7:00 shift, what time is
10 the first break, approximately?

11 A. The first break would be approximately, oh, 4:30 in the
12 morning or something like that. It depends on the employee.

13 Q. Different employees get different break times?

14 A. Well, we do different things in the plant. We have
15 maintenance personnel as opposed to the process people.

16 Q. Okay. My questions were directed specifically at the
17 production employees. Are you characterizing the maintenance
18 person as a production employee?

19 A. No.

20 Q. Okay. Well, could you answer the question, please,
21 then, with regard to the production employees?

22 A. As I spoke before. That would be approximate.

23 Q. On the last shift, the third shift, do the production
24 employees get a lunch break?

22

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1 A. On the last shift?

2 Q. Yes.

3 A. Yes.

4 Q. What time does that occur, approximately?

5 A. On the third shift you are referring to?

6 Q. Yes.

7 A. Okay. Let's see. I would have to calculate.

8 Approximately 2:30, 3:00.

9 Q. Are there basically three breaks for most production
10 employees in the final shift?

11 A. Basically.

12 Q. You are not a noise control engineer, correct?

13 A. That is correct.

14 Q. Do you consider yourself to be an expert in the science
15 of measuring noise?

16 A. No, I do not.

17 Q. Do you consider yourself to be an expert in the science
18 of noise control?

19 A. No, I do not.

20 Q. Do you consider yourself to be an expert in the science
21 of studying the affect or impact of noise on human beings?

22 A. No, I do not.

23 Q. Were you asked by your immediate supervisor in
24 approximately January of the year 2000 to take some noise

23

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1 measurements around the cake plant?

2 A. I believe the record would agree with that.

3 Q. Does that sound right to you?

4 A. It sounds correct.

5 Q. What was the equipment that you used for your initial
6 set of measurements?

7 A. At which time, sir?

8 Q. Well, why don't we simplify this. I am going to hand
9 you what has been marked as Exhibit C1 and ask if you would
10 identify that, please?

11 HEARING OFFICER LANGHOFF: Does Counsel for respondent have
12 the Exhibit C1.

13 MR. SAFLEY: I do. Thank you.

14 HEARING OFFICER LANGHOFF: Do you have any copies for me?

15 MR. MUSKOPF: Sure. For the record, I have given an entire
16 set of all of my exhibits to Mr. Safley ahead of time. And now I
17 am handing the Hearing Officer an entire set of all of my
18 exhibits at this time also.

19 HEARING OFFICER LANGHOFF: Thank you. Proceed, please.

20 MR. MUSKOPF: Thank you.

21 Q. (By Mr. Muskopf) I am sorry. Could you identify C1,
22 please?

23 A. C1 is entitled noise study at the Chester cake plant.

24 Q. Did you prepare that document?

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1 A. I did.

2 Q. Does it reflect noise measurements that were taken by
3 you?

4 A. It does.

5 Q. On what dates were those measurements taken, please?

6 A. September 1 of 1999, September 2nd of 1999, February 7th
7 of the year 2000, February 11th of the year 2000, and February
8 14th of the year 2000.

9 Q. Were you requested by someone to conduct these noise
10 measurements?

11 A. The sets in -- in simple terms, yes.

12 Q. Who was it that asked you to do that?

13 A. I was asked, as you mentioned in the note, for example,
14 by my boss to do those noise level measurements.

15 Q. What kind of device did you use to take the measurements
16 reflected on C1?

17 A. Those particular measurements were done with a noise
18 level meter.

19 Q. I am handing you what has been marked as Exhibit C42. I
20 would ask that you would identify that document, please?

21 A. This document is a photocopy of an instrument to produce
22 a pictorial representation of a Simpson 897 Dosimeter.

23 Q. Okay. There is actually more than one page to that
24 exhibit, correct?

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1 A. That is true.

2 Q. Could you identify the remaining two pages in that
3 exhibit, please?

4 A. The first page was the Simpson. The second page is a
5 similar picture of a Quest Technologies noise level meter. And
6 the third page is a poorer copy of the second, or so it appears.

7 Q. Do these appear to you to be accurate representations of
8 the instruments which you used to take noise level measurements
9 at the cake plant?

10 A. Yes.

11 Q. Now, let me hand you what has been marked as Exhibit
12 C43, and ask that you would identify the two pages in that
13 exhibit, please?

14 A. C43 is composed of two sheets. The first sheet is a
15 certificate of compliance and calibration for the Quest
16 Technologies device. The second is the same.

17 Q. Do those documents look familiar to you?

18 A. They do.

19 Q. Do they appear to be the documents that were provided
20 with the Quest noise meter that you used to take the measurements
21 reflected on Exhibit C1?

22 A. They do.

23 Q. Now, when you used both the Simpson and the Quest, did
24 you follow the directions that were provided with those devices?

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1 A. I did review the directions and I made every attempt to
2 follow those.

3 Q. Okay. Were you instructed on how to use those
4 particular devices?

5 A. No, I was not.

6 Q. Okay. So your operation of them was basically based on
7 what you read in the instructions provided with the devices?

8 A. That is correct.

9 MR. SAFLEY: Obviously, I am a little late on this. I
10 think we are past the background stage. I am going to object.
11 That was a leading question. It was not a big deal, but I just
12 want to raise the continuing objection to leading questions at
13 this stage of the examination.

14 HEARING OFFICER LANGHOFF: Okay. Thank you.

15 Q. (By Mr. Muskopf) Can you explain the difference between
16 the Simpson device and the Quest device?

17 A. The Quest device is a noise level meter. It is my
18 understanding that it is used to take a noise level reading or
19 measurement of what is occurring at that moment as opposed to the
20 dosimeter, which is the Simpson device, and will provide a time
21 weighted average of the noise that is in the measured area.

22 Q. Is it your understanding that one device is more
23 accurate than the other in measuring noise?

24 A. Since the two devices do different things, I don't know

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1 that I can answer that question.

2 Q. So you don't have an understanding one way or the other?

3 A. That one is more accurate than the other?

4 Q. Right.

5 A. No.

6 Q. Okay. Did you recall whether you would calibrate the
7 Simpson before each use?

8 A. The Simpson was calibrated at the factory for use for
9 us. I would go through its diagnostic, as the book describes, to
10 check it out.

11 Q. Did you follow that procedure before each time you used
12 the Simpson?

13 A. Before I took it to the field, yes.

14 Q. Okay. So what you were doing is, as I understand it,
15 you were checking the calibration before each use?

16 A. I was checking to see if the monitor appeared to be
17 functioning correctly.

18 Q. Okay. To the best of your knowledge, were both of these
19 devices accurate in measuring the sound levels at the time that
20 you used them?

21 A. I had no issue with the Quest being the noise level
22 monitor or meter, rather. I did have a question about the
23 dosimeter when I first used it.

24 Q. Okay. You sent it back to Simpson?

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1 A. Yes, I did.

2 Q. And did they return it to you?

3 A. Yes, they did.

4 Q. What did they tell you about whether it was functioning
5 properly or not?

6 A. They simply performed the typical service and checked
7 the cal on the device.

8 Q. So when they returned it to you was it your
9 understanding that it was functioning accurately?

10 A. Yes.

11 Q. Did they give you any indication that it had not been
12 functioning accurately when you took your first set of readings

13 with it?

14 A. I did not speak to them again about the device. It came
15 in recalibrated per their spec. I had no reason to assume that
16 it would be -- that there would be any problem with it at that
17 time.

18 Q. So is it your understanding that it was out of
19 calibration on the first time that you took readings with it?

20 A. I just assumed that there was probably an issue with
21 those readings, so I did not consider them any further.

22 Q. I mean, from looking back on it now retrospectively is
23 it your understanding, as you sit here today, that the Simpson
24 was out of true and accurate calibration when you first took

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1 readings with it?

2 A. I believe there may have been an issue with the Simpson.
3 Once again, that's why I sent it in.

4 Q. Okay. I understand that. That's why you sent it in at
5 the time. But now, as you sit here today, do you still believe
6 that -- do you think there was a problem with it?

7 A. I have no reason to think otherwise, that there was a
8 problem. I believe there was, when I used the device the first
9 time, or I would not have sent it in.

10 Q. Right. As you sit here today, do you believe that there
11 was a problem with it?

12 MR. SAFLEY: I will object. Asked and answered.

13 HEARING OFFICER LANGHOFF: I will grant that objection.

14 The question has been asked and answered.

15 Q. (By Mr. Muskopf) Now, turning back to C1, these are
16 readings that you took with which device?

17 A. These readings were taken with the noise level meter.

18 Q. So that was the Quest?

19 A. Yes.

20 Q. Okay. You took readings from different locations; is
21 that true?

22 A. That's true.

23 Q. To understand what the location -- you have different
24 locations on this document, A, B, C, D, E and F?

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1 A. Yes.

2 Q. Is that right?

3 A. (Nodded head up and down.)

4 Q. And to understand where those locations are, we need to
5 look at C2?

6 MR. SAFLEY: Objection. Leading.

7 MR. MUSKOPF: We are going to get through this a lot faster
8 if --

9 HEARING OFFICER LANGHOFF: I am going to overrule that
10 objection.

11 Q. (By Mr. Muskopf) Is that true?

12 A. The letters on the Exhibit C1 you are referring to are
13 on Exhibit C2 that you referred to, and the letters do refer to
14 the locations on C2.

15 Q. So by looking at C1 and C2 can we understand, then,
16 where you were taking the readings from that are reflected on C1?

17 A. Yes.

18 Q. Okay. C1 also reflects the conditions under which you
19 took the various measurements reflected in that document,
20 correct?

21 A. There are condition notes, yes.

22 Q. Okay. Can you just read through some of the condition
23 notes to give us an idea of what kinds of conditions you were
24 looking at?

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1 A. Four example, condition note one, blower on flour truck
2 enclosed. Condition note four, for example, no activity.
3 Condition number nine, for example, trash truck present at
4 location. A max noise level was 69.8 for about two minutes when
5 the pick up for the rolloff -- when picking up the rolloff
6 container, etcetera.

7 Q. How did you decide which conditions to include on that
8 document and which conditions to omit?

9 A. It was simply what I observed at the time that I took
10 the noise reading. It was a random thing. There was no planning

11 or predetermination of why I should do it when I did it.

12 Q. Well, the conditions there included on C1, basically did
13 you look around and get an idea of what you thought the various
14 noise sources might be and so you, therefore, included them on
15 C1?

16 A. I am sorry. I didn't -- would you ask that again?

17 HEARING OFFICER LANGHOFF: Mr. Muskopf, I am going to treat
18 Mr. Safley's objection as a running objection to the form of the
19 question since it has not been determined that Mr. Hutchinson is
20 an adverse witness, and ask you to not ask a leading question
21 when at all possible.

22 MR. MUSKOPF: Okay.

23 HEARING OFFICER LANGHOFF: Go ahead and ask your question
24 again.

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1 MR. MUSKOPF: Thank you, Mr. Hearing Officer. Sure.

2 Q. (By Mr. Muskopf) Is it your understanding that the sound
3 level measurements on C1 are A-weighted values?

4 A. The C1 I have it noted as the meter settings being scale
5 A, slow response, range 30 to 100 dB.

6 Q. Does that mean that they are A-weighted values?

7 A. Not being a noise level expert, I, in my position, might
8 assume that to be the case.

9 Q. Let me show you what has been marked as C4 and ask you
10 to identify that, please?

11 A. Exhibit 4 is -- let's see. It is titled summary sheet
12 of Illinois noise regulations.

13 Q. Are you familiar with that document?

14 A. I have seen this document before.

15 Q. Okay.

16 HEARING OFFICER LANGHOFF: For the record, Counsel is just
17 putting on a new exhibit mark that reads C4 as opposed to 4.

18 MR. MUSKOPF: Yes. I don't know how that happened.

19 Q. (By Mr. Muskopf) Now, did you compare the values that
20 you got when using the Quest meter as reflected on C1 to the
21 limits on C4?

22 A. Yes.

23 Q. Okay. Were you assuming that the daytime industrial
24 noise to residential receiver limits were the applicable limits?

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1 A. Yes.

2 Q. None of your measurements were taken before 7:00 a.m. or
3 after 10:00?

4 A. There were some taken after 10:00.

5 Q. I am sorry? At 10:00 p.m.?

6 A. That is correct, 7:00 a.m. to 10:00 p.m. There were
7 no -- they were all taken within that time frame.

8 Q. Okay. So it was your -- was it your understanding that
9 if any of the values on C1 exceeded 61 dB(A) then there was a

10 violation?

11 A. As to whether it is a violation or not, I don't know
12 that that is my place to make that call.

13 Q. I was just asking for whether it was your understanding?

14 HEARING OFFICER LANGHOFF: You can answer the question if
15 you know, Mr. Hutchinson.

16 THE WITNESS: I was thinking. The sheet, C4, would
17 indicate that the approximate A-weight would be 61 dB(A) for
18 daytime industrial noise to residential receiver limits. And in
19 several cases on my -- on Exhibit C1 we do exceed 61 dB(A).

20 Q. (By Mr. Muskopf) What was the highest value that you
21 had?

22 A. Quickly looking at this, it would appear that the
23 highest value on Exhibit C1 is 93.

24 Q. Do you see a substantial number of figures that are in

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1 excess of the value of 61 on C1?

2 A. The --

3 MR. SAFLEY: I am going to object quickly to relevance. I
4 am not sure that this has come out, but maybe I can voir dire the
5 witness. It is my understanding that most of these measurements
6 were -- well, none of these measurements were taken on the
7 Youngs' property. Most of them were taken some distance from the
8 Youngs' property. So I am not sure of the relevance of readings
9 taken at places other than the Youngs' property.

10 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf, as to the
11 relevance of the evidence?

12 MR. MUSKOPF: Clearly, and this will be certainly testimony
13 that Mr. Zak will give, taking noise measurements at a location
14 that is other than at the Young residence is relevant because, as
15 we all know, noise travels. So perhaps there will be some
16 testimony from Mr. Weissenburger that the volume of noise
17 diminishes over distance. But a reading of 94 of some noise that
18 could travel to the Young property is certainly relevant.

19 HEARING OFFICER LANGHOFF: Okay. Thank you. I am going to
20 overrule your objection, Mr. Safley. And, again, ruling on the
21 running objection, if you could refrain from using leading
22 questions.

23 MR. MUSKOPF: I am trying to do my best.

24 HEARING OFFICER LANGHOFF: Okay. Thank you. There is a

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1 question. Would you like to restate?

2 MR. MUSKOPF: Was it -- I can't recall the question. I
3 think it might have been, though, was it your -- could you read
4 it back? I am sorry.

5 HEARING OFFICER LANGHOFF: Is there a substantial amount of
6 readings above 61 decibels.

7 MR. MUSKOPF: Yes. Thank you.

8 Q. (By Mr. Muskopf) Do you see a substantial number of

9 readings on C1 that are above 61 dB(A)?

10 A. I see a number of readings that are above 61 dB(A). If
11 I look at the locations for those readings, for example, location
12 D, and referring back to C1, is at the old flour unloading
13 itself. And on that same set of readings for that date and time
14 location A would be 64.5, which is still above 61.

15 MR. MUSKOPF: I am going to object to the nonresponsive
16 portion of the answer. My question was simply --

17 HEARING OFFICER LANGHOFF: I am going to overrule your
18 objection, Mr. Muskopf, and allow the witness latitude to answer
19 the questions as if they were asked without a leading question.

20 Q. (By Mr. Muskopf) Condition four on C1, that says no
21 activity?

22 A. Yes, it does.

23 Q. Okay. Does that mean that the plant was shut down?

24 A. No activity in this case, since I have prepared this

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1 document, would mean there was no activity in the yard. The yard
2 meaning the area where we would typically unload flour at that
3 time or the old unloading station.

4 Q. Well, would the plant have been shut down then?

5 A. No.

6 Q. Okay. Let me hand you what has been marked as C3. Can
7 you identify that, please?

8 A. C3 is -- let's see what we got here. It looks like some

9 notes to myself for date and time. C3 was apparently written on
10 September 2nd of 1999.

11 Q. These are your notes, then?

12 A. Yes.

13 Q. Okay. Could you read the last paragraph of C3, please?

14 A. The last paragraph in C3 reads as follows: Residential
15 bordering industrial, one must meet these for residential unless
16 one can demonstrate the source of the noise is typically
17 background noise or another source. To determine background
18 noise one must shut off your plant. And in parenthesis I have
19 the word sources.

20 Q. Did you ever determine the background noise by shutting
21 off the plant?

22 A. No.

23 Q. Why did you not do that?

24 A. To shut down the plant would cause a very dramatic

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1 interruption in business for our facility and idle the people
2 associated with that.

3 Q. Do you know how much it would cost to shut the plant off
4 for let's say an hour?

5 A. No, I do not.

6 Q. Would it be feasible to shut the plant down for a period
7 of one hour?

8 A. Would it be feasible?

9 Q. Yes.

10 A. By feasible I don't understand your meaning.

11 Q. Can you do it?

12 A. Could I physically do it?

13 Q. Yes.

14 A. Certainly.

15 Q. How long would it take to restart it?

16 A. That depends upon what process you are speaking of. You

17 don't always -- for example, if you are going to prepare a mix,

18 you don't just start with all of the equipment having everything

19 in all at one time. You have to make your batch and bring it

20 through its stages to get it through packaging. So does that

21 answer your question, sir?

22 Q. I believe so. Thank you. Were any of the locations

23 from which you took the measurements on C1 close to the boundary

24 between the Young property and the GML property?

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1 A. Would you rephrase that, please?

2 Q. Sure. Were any of the locations from which you took the

3 measurements on C1, were any of those close to the boundary

4 between the Young property and GML's property?

5 A. Yes.

6 Q. Okay. Which of those locations, please?

7 A. It would be location A and location B.

8 Q. Is it your understanding that A and B are basically
9 right on the property line of the Young and GML properties?

10 A. The location of A and B are close to the property line
11 common to the Youngs and GML.

12 Q. Okay. Within approximately how many feet of what your
13 estimate of what the property line was?

14 A. Oh, my estimate, within five feet.

15 Q. Okay. Why didn't you take any measurements between the
16 hours of 10:00 p.m. and 7:00 a.m.?

17 A. I just didn't for no real reason.

18 Q. Those were not your regular working hours?

19 A. That would probably be true.

20 Q. Were you instructed not to take any measurements between
21 those times?

22 A. No, I was not.

23 Q. Which, if any, of the conditions you have listed on C1
24 would be present on any given day after 10:00 p.m. and before

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1 7:00 a.m.?

2 A. Would you state that again, please?

3 Q. Sure. You have a number of conditions listed here on
4 C1, and I am wondering if any of those conditions have ever
5 existed after 10:00 p.m. and before 7:00 a.m.?

6 MR. SAFLEY: Not to be too objectional, but I am just a

7 little unclear on if -- have ever is a pretty broad time frame.
8 I certainly don't think anything before the Youngs owned the
9 house in 1995 is relevant. I am not sure if you mean now or at
10 the time you took the measurements.

11 MR. MUSKOPF: I will withdraw the question.

12 MR. SAFLEY: I am just unclear on the timing issue.

13 HEARING OFFICER LANGHOFF: Okay. Thank you.

14 Q. (By Mr. Muskopf) What year did you start with GML?

15 A. 1997.

16 Q. From the time you started there until the present, are
17 you aware of any of the conditions that you have listed on C1
18 here having been present after 10:00 p.m. and before 7:00 a.m.?

19 A. After 10:00 -- say again, please?

20 Q. After 10:00 p.m. and before 7:00 a.m.?

21 A. Well, let's see. A number of these apply to this time
22 frame. I suppose anything is conceivable. It is entirely
23 possible that one could do some of these activities during that
24 time frame. A diesel could be idling, for example. For example,

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1 again, item seven, the truck blower not running, but the dye
2 house blower is, and having the truck idle. If they arrived
3 early for delivery or whatever that is entirely possible.

4 Q. Is it your understanding that flour deliveries have been
5 made from the time you have been working at GML to the present
6 after 10:00 p.m. and before 7:00 a.m.?

7 A. I am not personally aware of any deliveries through that
8 time frame.

9 Q. Right. That was a slightly different question that I
10 was asking. I am wondering if you were aware of any, not
11 necessarily from your personal knowledge, but are you aware of
12 any flour deliveries occurring after 10:00 p.m. but before 7:00
13 a.m. during the time frame that you have worked at GML?

14 A. I am not aware of any deliveries, any specific
15 deliveries that were notated to me by another individual, if that
16 is what you are asking.

17 Q. No, I am just asking generally. Is it your
18 understanding that flour deliveries sometimes occur after 10:00
19 but before 7:00?

20 A. Once again, I don't know of any that occurred, but I am
21 not going to say that they couldn't. If the plant is in need of
22 a product to avoid shutting down, I am assuming that is a
23 possibility.

24 Q. What about the garbage container, do you know when that

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1 is typically replaced? Once it gets full, it is replaced with an
2 empty one? I think that is how it works. Is that right?

3 A. When the garbage container is full, yes, we must remove
4 it and replace it with an empty.

5 Q. Do you know during what hours that typically occurs?

6 A. Typically the trash is removed from the plant once a day
7 and it typically occurs from about 9:30 to noon. 9:30 in the
8 morning until noon.

9 Q. Does it ever occur before 7:00 a.m.?

10 A. Not that I am aware, no.

11 Q. Did you inform any of your superiors or anyone at GML of
12 your findings, as reflected on C1?

13 A. Most certainly.

14 Q. Did you let them know that you were thinking that they
15 were in excess of the values on C4?

16 A. I informed them that there is a possibility that we
17 could have an issue.

18 Q. Do you know what the response was to that?

19 A. We need to look into it.

20 Q. Okay. There were a number of -- were there a number of
21 changes made to Gilster-Mary Lee's operations and facility in
22 response to your findings there?

23 A. One example would be the trash truck unloading. In the
24 past the unloading would -- it was all done -- all the work was

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1 done at that location. And the change in that procedure was that
2 we would drop the boxes at another location in an effort to
3 minimize that amount of noise.

4 Q. Did that completely resolve the noise problem from the
5 loading and unloading of the dumpster?

6 MR. SAFLEY: I am going to object. If that question is did
7 it completely resolve for the Youngs the noise problem, then I
8 don't think this witness is qualified to answer. I guess I don't
9 exactly know what completely resolved means.

10 MR. MUSKOPF: I will withdraw the question.

11 HEARING OFFICER LANGHOFF: Thank you. Could you rephrase
12 the question.

13 MR. MUSKOPF: Yes.

14 Q. (By Mr. Muskopf) Let me hand you what has been marked as
15 C11. Could you describe to me what you see in those two
16 photographs on that exhibit?

17 A. On Exhibit C11 I see two photographs of a trash truck.
18 It is a rolloff handling vehicle.

19 Q. Does that appear to be the GML facility?

20 A. Yes, it does.

21 Q. Does that appear to be the typical size trash container
22 that you use at GML?

23 A. Yes, it does.

24 Q. Does that appear to be the typical size of truck and

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1 kind of truck that is used to drop off and haul away the trash
2 containers at GML?

3 A. Yes.

4 Q. Now, you said that the procedure was changed. Was the

5 location of the trash container changed?

6 A. I don't think I understand your question.

7 Q. Okay. You said that basically instead of switching the
8 empty for the full in a parking lot nearby the cake plant there,
9 that switch is made off site, correct?

10 A. Yes.

11 Q. Okay. Now I am just wondering, though, did the location
12 of where you all keep the trash container change?

13 A. Are you referring to the empties that we switch out or
14 the trash container at the plant?

15 Q. The trash container at the plant.

16 A. The location of the container at the plant is still in
17 the same location.

18 Q. Do you know when that change was -- that modification to
19 the procedure was implemented?

20 A. I don't recall the exact date at which it was
21 implemented.

22 Q. Do you recall the time frame?

23 A. I would say it was in the spring of 2000. Well, that is
24 a long time ago. Right in that neighborhood, about the time we

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1 took the noise level readings.

2 Q. Could you take a look at Exhibit C5 and identify that,
3 please?

4 A. Yes. C5 is a -- it looks like the report that is

5 generated by the Simpson -- although the words are not clearly
6 printed -- dosimeter. It is entitled sound analysis report.

7 Q. Do you recognize that document?

8 A. Yes, I do.

9 Q. Does it appear to be a document that you prepared?

10 A. Yes, it does.

11 Q. Could you identify C6 also for me?

12 A. C6 is a similar document to C5.

13 Q. And C7?

14 A. C7 is similar to C5.

15 Q. These are basically reports that are generated by the
16 Simpson dosimeter from noise studies that you had performed?

17 A. These are the printouts from the download of the device,
18 yes.

19 Q. Okay. As far as you are aware, are these printouts
20 accurate reflections of the measurements that were taken by you?

21 A. C5 would be an example or is the example of my first use
22 of the device. It was the one that was suspect. That is what
23 made me want to return the device to Simpson. C6 and C7 were
24 completed after the device was returned to me.

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1 Q. Okay. So do C6 and C7 appear to be accurate reflections
2 of the measurements that you took?

3 A. They were the measurements that the device recorded.

4 Q. Well, by the same token, was C5 actually -- those were
5 the measurements that the device recorded as well?

6 A. Yes.

7 Q. The values on C5 were from a study on March 1 of 2000?

8 A. That's correct.

9 Q. Then C6, the study on May 10 of 2000?

10 A. Yes.

11 Q. And C7, the May 11 of 2000?

12 A. Yes.

13 Q. Were those studies made in C5, C6, and C7 after there
14 had been some changes made to GML's operations in an effort to
15 minimize noise that might be heard by the Youngs?

16 A. We had made some changes, yes.

17 Q. Did you make any changes after let's say May 11 of 2000?

18 A. Yes.

19 Q. Tell me about those changes, please?

20 A. We completed the installation of our new flour loading
21 station, which put the unloading at a greater distance from --
22 how to phrase this. It moved the flour loading station from its
23 old location to its new location.

24 Q. And the new location is further away from the Young

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1 property?

2 A. Yes.

3 Q. Okay. Now, did you perform any noise studies to

4 determine whether that minimized the noise that might be heard by
5 the Youngs?

6 A. I did not conduct any further noise studies.

7 Q. Why didn't you do that?

8 MR. SAFLEY: I am just going to object to the extent that
9 that calls for attorney-client conversations.

10 Q. (By Mr. Muskopf) I am not asking you about the content
11 of your conversations with any of your attorneys. I am merely
12 asking you why is it that you didn't perform any further noise
13 studies?

14 A. I had no further direction to do so.

15 Q. Okay.

16 HEARING OFFICER LANGHOFF: I am going to have to overrule
17 the objection.

18 MR. MUSKOPF: I am sorry.

19 Q. (By Mr. Muskopf) As you look at the measurements that
20 you took on May 11 and May 10 of 2000, that are reflected on C6
21 and C7, do you see that any of those measurements are in excess
22 of the allowable limits reflected on C4?

23 A. I would say that, yes, some of the noise measurements on
24 those two documents are in excess of the value on C4.

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1 Q. Did you communicate that to someone at GML?

2 A. Yes.

3 Q. Can you tell how long the Simpson device was gathering
4 data on March 1st of 2000?

5 A. It would appear seven hours and 44 minutes.

6 Q. How about can you give me the same -- how long was the
7 device taking in data on May 10 of 2000?

8 A. On May 10, seven hours and 22 minutes.

9 Q. And how about --

10 A. I am sorry. Excuse me. Seven hours and 27 minutes.

11 Q. Okay. How about on May 11?

12 A. On May 11? On May 11, seven hours and 15 minutes.

13 Q. Do you have any reason to believe that the Simpson
14 device was not operating accurately on May 10 and May 11?

15 A. No.

16 Q. Okay. Now I am handing you what has been marked as C8.
17 Does that appear to be a diagram of the cake plant and the Young
18 property and some surrounding properties?

19 A. Let's see. Yes.

20 Q. Understanding that it is not to scale, do you believe
21 that is a reasonably accurate depiction of the GML properties,
22 the Young property, and the surrounding properties, at least in
23 terms of the relationships to one another?

24 A. Generally, yes.

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1 Q. Would you be kind enough to use this pink highlighter
2 and highlight all of GML -- all of the properties on that diagram

3 that GML either owns or operates or uses?

4 A. (Witness complied.)

5 HEARING OFFICER LANGHOFF: Let the record reflect that the
6 witness is highlighting those properties.

7 Q. (By Mr. Muskopf) Very nice. Thank you.

8 MR. MUSKOPF: With the Hearing Officer's permission, I
9 would like to clarify the record by reading the words that are in
10 the areas highlighted by Mr. Hutchinson.

11 HEARING OFFICER LANGHOFF: No. I think that speaks for
12 itself.

13 MR. MUSKOPF: Okay.

14 Q. (By Mr. Muskopf) I am handing you C9. Can you take a
15 look at that. What does that appear to be to you?

16 A. C9 is a photograph or a picture of it. It has words at
17 the bottom to describe it, looking from Swanwick Street and Light
18 Street toward the Young house and GML buildings. I see our flour
19 tanks and part of the plant and the Youngs' home.

20 Q. Okay. Does that appear to be reasonably accurate
21 depiction of those buildings, structures, to you?

22 A. Yeah.

23 Q. I am sorry?

24 A. A picture of good quality.

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1 Q. I mean, is that what the site looks like basically?

2 A. I think the description is accurate, yes.

3 Q. Okay. Could you do the same thing for me with --

4 HEARING OFFICER LANGHOFF: Counsel, haven't we stipulated
5 to all the foundation of all of the documents?

6 MR. MUSKOPF: I thought so. So I can skip this?

7 HEARING OFFICER LANGHOFF: Is that correct.

8 MR. SAFLEY: Yes.

9 HEARING OFFICER LANGHOFF: You don't -- we don't need to
10 have that -- the foundation laid for the photographs then.

11 MR. MUSKOPF: Excellent. Thank you.

12 Q. (By Mr. Muskopf) Okay. 44, could you identify that,
13 C44?

14 A. C44 looks like some notes that I had taken.

15 Q. Okay. C45, could you identify that, please?

16 A. C45 are some notes that looks like some equipment model
17 numbers and serial numbers, various pieces of equipment.

18 Q. Do they look like your notes?

19 A. Yes, it looks like I did this.

20 MR. MUSKOPF: Okay. Thank you. I don't have anything
21 further.

22 HEARING OFFICER LANGHOFF: You are finished with the
23 witness?

24 MR. MUSKOPF: Yes.

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1 HEARING OFFICER LANGHOFF: Okay. At this time, Mr. Safley,

2 Mr. Hutchinson is your witness.

3 Just for the record, Mr. Safley won't be limited in scope
4 to anything that was brought out on direct since he would be
5 calling Mr. Hutchinson as a direct witness. We are doing this in
6 order to help Mr. Hutchinson.

7 MR. MUSKOPF: That was the other stipulation that I
8 couldn't remember at the beginning.

9 HEARING OFFICER LANGHOFF: Okay. Thank you.

10 MR. SAFLEY: Thank you, Mr. Langhoff.

11 CROSS EXAMINATION

12 BY MR. SAFLEY:

13 Q. Mr. Hutchinson, I would like to start a little bit
14 basically and just ask you some of your background information.

15 Mr. Hutchinson, did you graduate from high school?

16 A. Yes.

17 Q. What year did you graduate from high school?

18 A. 1976.

19 Q. Have you had any formal education since high school?

20 A. Yes.

21 Q. What education was that?

22 A. A Bachelor's of science.

23 Q. What university did you receive that from?

24 A. Southern Illinois University, Carbondale.

1 Q. What year did you receive that degree?

2 A. In 1981.

3 Q. What degree -- I am sorry. Did you state what the
4 nature of the degree was?

5 A. My degree is in industrial technology.

6 Q. What subjects did you study in working on your
7 industrial technology degree?

8 A. Aside from the general studies courses, just speaking to
9 the core with some math and science, of course, they related to
10 industrial processes, such as production, quality control,
11 packaging, those sorts of things.

12 Q. Have you had any other formal education since receiving
13 that degree?

14 A. No.

15 Q. When did you start work for Gilster-Mary Lee?

16 A. In 1997.

17 Q. And what is your current position with Gilster-Mary Lee?

18 A. Engineering and compliance.

19 Q. How long have you held that position?

20 A. Since I began employment.

21 Q. What are your job duties in that position?

22 A. Engineering compliance. It deals with environmental
23 issues, safety issues, building construction and maintenance
24 issues and essentially those projects or tasks that my boss would

1 like me to pursue.

2 Q. Who is your boss at Gilster-Mary Lee?

3 A. Ron Tretter.

4 Q. And what is his job title?

5 A. He is the general superintendent for Gilster-Mary Lee.

6 Q. Where did you work before coming to Gilster-Mary Lee?

7 A. My previous employment primarily was with Sparta
8 Printing Company in Sparta, Illinois.

9 Q. What was the last position that you held at that
10 company?

11 A. I was the director of environmental affairs.

12 Q. And what duties did you have in that position?

13 A. My job as the director were to see that we were in
14 compliance with permitting issues, see that the permits were
15 obtained, see that the records were kept, and this -- whatever
16 those issues were that pertained to the facility.

17 Q. Like Mr. Muskopf, I am going to be asking you questions
18 about the plant. Do you understand that I am referring to the
19 Gilster-Mary Lee plant in downtown Chester, which is at issue in
20 this case?

21 HEARING OFFICER LANGHOFF: Is that also the cake plant?

22 MR. SAFLEY: That is my understanding.

23 Q. (By Mr. Safley) Is that what your understanding is?

24 A. Yes.

1 MR. SAFLEY: Yes, that is referred to as the cake plant.

2 HEARING OFFICER LANGHOFF: Okay. Thank you.

3 MR. SAFLEY: Thank you.

4 Q. (By Mr. Safley) Mr. Muskopf asked you a little bit about
5 the types of products that you all make. I was a little unclear
6 on to whom you sell those food products. Can you explain that to
7 me?

8 A. Those products could be marketed to either institutions
9 or for distribution to various chains.

10 Q. When you say chains, what do you mean?

11 A. It could be a grocer.

12 Q. Okay. Is that a store brand or a, quote, name brand
13 like Betty Crocker or something?

14 A. It could be.

15 Q. Okay.

16 A. It depends on what we sold.

17 Q. Okay. When you say institutions, what do you mean?

18 A. It could be a prison or a school or something of that
19 manner.

20 Q. Mr. Muskopf also asked you a little bit about the
21 operation of the plant, the number of shifts, for example, that
22 the plant has. Has that number of shifts changed since you
23 worked at Gilster-Mary Lee at all?

24 A. No.

1 Q. Mr. Muskopf also asked you some things about your noise
2 testing. When you conducted the noise testing, did you follow
3 the procedures established by the Illinois Environmental
4 Protection Agency for taking noise measurements?

5 A. Procedures, per se?

6 Q. Yes. I guess maybe I should back up and let me rephrase
7 the question. Did you review any procedures promulgated by the
8 Illinois Environmental Protection Agency on how noise
9 measurements should be taken?

10 A. No.

11 Q. And did you follow those procedures?

12 A. I reviewed some information that I had obtained about
13 what limits could be. But as far as procedures, no.

14 Q. Okay.

15 A. I am not a noise engineer, that type of an individual.

16 Q. Okay. I would like to hand you what I have marked as
17 Respondent's Exhibit A and ask you to take a look at it?

18 HEARING OFFICER LANGHOFF: Do you have a package for me or
19 do you --

20 MR. SAFLEY: Unfortunately, I am not quite as organized. I
21 only have about seven exhibits, though.

22 HEARING OFFICER LANGHOFF: Okay.

23 MR. SAFLEY: I will try to at the lunch break put together
24 the rest of them.

1 HEARING OFFICER LANGHOFF: Okay. That's fine. Thank you.

2 Continue.

3 MR. SAFLEY: Okay.

4 Q. (By Mr. Safley) Can you tell me what that document is?

5 A. This is a diagram prepared by myself, which is a sketch
6 of the area where the old flour unloading occurred and where the
7 new flour unloading station is.

8 Q. Do you believe that this is an accurate depiction of the
9 location of the Gilster-Mary Lee plant and the Youngs' home
10 adjacent to that plant and the flour unloading stations?

11 A. I think it is reasonably accurate.

12 Q. Why did you prepare this map?

13 A. Well, it gives me a point of reference for when I would
14 collect information so that I could repeat the points of
15 reference that I used and it is an aid.

16 Q. Mr. Muskopf asked you a little bit about the steps that
17 Gilster-Mary Lee has taken to reduce noise from the Gilster-Mary
18 Lee plant. You mentioned a change in the trash unloading. You
19 also mentioned the movement of the flour unloading station. Are
20 there any other steps that you know of that Gilster-Mary Lee has
21 taken to reduce the amount of noise emitted from its plant?

22 A. Well, in looking at the noise as we would perceive it,
23 we determined that the dye house blower, which is marked on this
24 exhibit, was a source. So to help reduce that, we installed a

1 duct to help dampen the noise emitted from that space.

2 Q. Pardon me for interrupting. I am going to ask you some
3 of the specific things that you did. But if you know, if you
4 could just list for me the things that you recall, just, you
5 know, the noise sources that you addressed or just in shorthand
6 and then I will go back again in more detail.

7 A. Well, aside from the obvious being the unloading, of
8 course, we found that we had some other things that we addressed.
9 For example, near that dye house room was a set of louvers. They
10 are a metal -- some metal contraption or device, and they open
11 and close. And with the time and wear they become loose and,
12 therefore, you get more noise out of them. They want to rattle.
13 So we replaced those. We took them out and put in new ones. To
14 help that situation even further, we put a -- once again, a piece
15 of duct over the opening to help dampen that noise. The duct
16 would protrude out of the wall and then bend down towards the
17 ground to help direct it and dampen it. We did that on a number
18 of locations on that same wall.

19 One of the other things we addressed was at the top of the
20 flour tanks themselves there is a set of louvers and as the
21 exhaust for the air out of the tops of those tanks, and we noted
22 that there was a noise coming from those. So we basically
23 installed or added some pieces that would act to help dampen the
24 impact of the metal on metal.

1 Q. I would like to ask you some specifics about some of
2 those things. First, the addition of the duct work to the
3 blower, you said the dye house blower. I am going to hand you a
4 blue pen and ask you to circle the location on that map where you
5 added that duct work, if you could, please?

6 A. For the dye house blower?

7 Q. For the dye house blower.

8 A. (Witness complied.)

9 Q. Is that location labeled at all on the map?

10 A. Yes, it is.

11 Q. How is it labeled?

12 A. It is labeled dye house blower room.

13 Q. And I note that there is a box that is outlined in
14 dotted lines. What does that box depict?

15 A. That would depict that duct work.

16 Q. Okay. Again, why is that Gilster-Mary Lee added that
17 duct work to the blower?

18 A. To help dampen the noise that was being emitted from the
19 opening in that wall.

20 Q. Since that duct work was added, have you heard the noise
21 that is emitted from that location?

22 A. I have been in that area, and it appears to be reduced.

23 Q. Okay. Moving on, you talked with Mr. Muskopf about the
24 movement of the flour unloading. Using the same blue pen, can

1 you please circle for me where the flour unloading used to be
2 located -- the flour unloading station used to be located?

3 A. (Witness complied.)

4 Q. And is that location labeled on your map?

5 A. It is. It is old flour unloading station.

6 Q. Can you please mark on the map where the flour unloading
7 station is located now?

8 A. (Witness complied.)

9 Q. Is that labeled on your map, as well?

10 A. It is.

11 Q. And how is it labeled?

12 A. New flour unloading station.

13 Q. I noticed that part of what you circled is a box that
14 has the word truck inside it. Can you please describe for us
15 what that means?

16 A. The box is a representative of the tanker component of
17 the tractor tank truck arrangement.

18 Q. Okay. I would like to ask you to -- moving on your
19 diagram to the left, heading toward the Youngs' home, can you
20 describe for me what you would encounter in between that truck
21 and then getting over towards the Youngs' home, and go slowly
22 because I am going to ask you to label things as we go along.

23 A. Would you please rephrase?

24 Q. Yes. What is the first thing that you would encounter

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1 to the left of the truck on your diagram heading towards the
2 Youngs' home from the back of the truck?

3 A. From the back of the --

4 Q. Yes.

5 A. The new unloading station.

6 Q. Of the new unloading station, yes.

7 A. There is a building or a structure there.

8 Q. Do you know how high that building is?

9 A. Not exactly. It would be more of an estimate on my
10 part. But I would guesstimate that it is 20, 25 feet.

11 Q. Okay. I am going to hand you a red pen and ask you to
12 highlight that or outline that building or structure that you are
13 speaking of in red?

14 A. (Witness complied.)

15 Q. Then going on from that, to the left on the diagram what
16 is the next thing that you encounter?

17 A. The five flour tanks.

18 Q. Okay. And what are those five flour tanks used for?

19 A. Well, flour is a bit of misnomer, but basically they
20 contain flour or sugar.

21 Q. Okay. Where does that flour or sugar come from? How
22 does it get to those tanks?

23 A. Out of the tank truck.

24 Q. And that is the tank truck that you circled earlier in

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1 blue?

2 A. Yes.

3 Q. At the new flour unloading station; is that correct?

4 A. Yes.

5 Q. Okay. I am going to hand you a yellow highlighter and
6 ask you just to highlight those flour tanks.

7 A. (Witness complied.)

8 Q. Now, since -- well, pardon me. Let me back up just a
9 little bit. The building that you circled in red and the flour
10 unloading tanks that you highlighted in yellow, were those in
11 existence before the new flour unloading station was put into
12 use?

13 A. Could you please state that again?

14 Q. How long has the building that you outlined in red been
15 there, or the structure you circled in red?

16 A. It was constructed shortly after the flour tanks were
17 put up.

18 Q. When were the flour tanks put up?

19 A. Beginning in the spring of 2000.

20 Q. Okay.

21 A. They were erected.

22 Q. Okay. Since the new flour unloading station -- well,
23 let me back up a little bit, too. When was the new flour
24 unloading station actually put into operation so that that is

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1 where the flour unloading occurred?

2 A. The new unloading station was put into operation in the
3 summer of 2000.

4 Q. Since that unloading station was put into operation,
5 have you stood near the Youngs' property to observe the level of
6 noise emitted by the unloading?

7 A. I have been in that area and have observed the noise
8 level.

9 Q. Is the noise less or more now than when it was, when the
10 unloading was at the former unloading station?

11 A. I would say it is much less.

12 Q. You mentioned also, Mr. Hutchinson, replacing some
13 louvers. I would like to hand you a pink highlighter and ask you
14 to mark for me where the louvers are that you replaced?

15 A. (Witness complied.)

16 Q. And I see that you have marked an area in the center
17 of -- kind of in the center of the map. Is that -- were those
18 louvers on the wall of that building that you have marked?

19 A. Yes.

20 Q. Is there a name for that building that you use?

21 A. We call that whole building right there as a group the
22 dye house.

23 Q. Okay. What is the reason that those louvers are there?
24 What is their use?

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1 A. To exhaust the interior of that room.

2 Q. Again, can you state -- tell me why you replaced those
3 louvers?

4 A. They were banging. They were loose. They were old. It
5 was a maintenance issue.

6 Q. Since those louvers have been replaced, have you
7 observed the level of noise that is emitted from that area?

8 A. Yes.

9 Q. Is it less or more now, than it was before you replaced
10 the louvers?

11 A. I would say it is less.

12 Q. You also mentioned adding some equipment or parts to
13 vents on the flour tanks; is that right?

14 A. Yes.

15 Q. Okay. I am going to hand you the same pink highlighter
16 and ask you, please, to mark, to the best you can, the location
17 of where you added that equipment?

18 A. (Witness complied.)

19 Q. And since you added that equipment, have you observed
20 the level of noise emitted from those vents?

21 A. It appears to be less.

22 Q. You mentioned also the loading and the unloading of the
23 garbage dumpster, and I was a little unclear exactly on the

24 process. Can you tell me what the process was for the loading

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1 and unloading of the garbage dumpster before the change was made?

2 A. Before we changed, the process was that the truck would
3 show up with the empty container on board, he would drop that
4 container in the parking area adjacent to the dye house and
5 then --

6 Q. Okay. Pardon me for interrupting. Can you, with the
7 red pen, just mark an "X" in about the location that he would
8 drop that container?

9 A. (Witness complied.)

10 Q. Thank you. Go on. I am sorry.

11 A. Okay. Then he would go to the trash compactor area and
12 retrieve the full container. He would then drop it near the
13 empty, pick up the empty, install it, then return to pick up the
14 full one and depart.

15 Q. When you say install it, what do you mean?

16 A. Well, he drops it and pushes it into place.

17 Q. Okay. Can you please write the word trash for me with
18 the blue pen where that trash container goes into place?

19 A. (Witness complied.)

20 Q. Mr. Muskopf asked you about the time of day that the --
21 well, pardon me. I am getting ahead of myself. Can you tell me
22 what the process is now and how it is different than it was
23 before?

24 A. The current procedure is for the driver to take the

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1 empty to another location, drop the empty, and then with an empty
2 truck, no container on board, he arrives at the trash compactor
3 space. And he then picks up the full one and drives away. He
4 drops the full one at the remote location. He puts the empty on
5 board, returns, and then installs it in the trash compactor space
6 and then drives away.

7 Q. Is the remote location near the Youngs' home?

8 A. No.

9 Q. And how long does that whole procedure that you just
10 spoke about take?

11 A. Well, given traffic and what have you, I would say 15 to
12 30 minutes.

13 Q. What percentage of the time is the unloading truck
14 actually at the trash compacting station as opposed to traveling
15 back and forth to pick up the other --

16 A. That's a guesstimate on my part. But I would say no
17 more than a third of that time.

18 Q. Since that change has gone into effect, have you heard
19 the -- or observed the amount of activity that takes place with
20 the trash loading and unloading?

21 A. Causally. It appears that -- well, because they are
22 there for such a short time, I have to be there when they are

23 doing it. But I would say it is greatly reduced given the fact
24 that we are not dropping on the rock lot any longer.

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1 Q. Would it be safe to say that there is less activity
2 involved in the trash loading and unloading near the Youngs' home
3 than there was before this change was put into effect?

4 A. Yes.

5 Q. One of the Youngs' complaints in this case has been
6 activity on the lot that you just marked with the red "X" where
7 the trash dumpster used to be dumped or dropped. Can you tell me
8 whether Gilster-Mary Lee has done anything to change the activity
9 on that lot to reduce the level of noise?

10 A. Well, one time we used that lot to drop trailers and
11 park tractors, tractor-trailers. That is no longer the case. It
12 is now an employee parking lot, cars and pickup trucks.

13 Q. Has that reduced the level of noisy activities that take
14 place on that lot?

15 A. Well, given the fact that it is an employee parking lot,
16 you know, the cars are moving when they either come and go to
17 work. That would be, you know, when they arrive in the morning
18 and go home in the evening or if they leave for lunch.

19 Q. What was the level of activity like before it was used
20 as an employee parking lot?

21 A. Well, given the fact that we did stage trailers there
22 that is a through the day activity while the plant is in use.

23 Q. One of the Youngs other complaints in this case has been
24 that Gilster-Mary Lee's employees, for example, on their way to

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1 and from their cars are noisy, just the employees themselves are
2 noisy. Has Gilster-Mary Lee done anything to try to reduce that
3 noise?

4 A. Well, we are talking about employees. Employees come
5 and go. When we are made aware that we have a problem with an
6 employee we do speak to him or her, as the case may be. That is
7 one of those issues that is a constant struggle with new people.
8 You advise them of the policy. You deal with it as best you can.

9 Q. One of the Youngs other complaints in this case has been
10 that the unloading of tanker trucks has taken place 24 hours a
11 day. Has Gilster-Mary Lee done anything to try to reduce the
12 level of noise caused by that?

13 A. Well, it is very clear and had been brought out more so
14 that flour tank or sugar unloading is to occur between 7:00 and
15 10:00.

16 Q. When you say 7:00, a.m. or p.m.?

17 A. Yes.

18 Q. 7:00 a.m.?

19 A. 7:00 in the morning until 10:00 at night.

20 Q. Okay. Does Gilster-Mary Lee enforce that rule?

21 A. Yes.

22 Q. Another one of the Youngs' complaints in this case has
23 been that Gilster or trucks relating to Gilster-Mary Lee idle in
24 front of the Youngs' home. Has Gilster-Mary Lee done anything to

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1 try to reduce the noise from that?

2 A. Well, given that it is our truck, our policy is that if
3 they must pull up there to park they are to shut the truck down.

4 Q. Is it always your truck?

5 A. I wouldn't say it is always our truck. I mean, I can't
6 control other companies, per se.

7 Q. And that's I guess what I was asking. Are there other
8 companies that make deliveries to the plant using their own
9 trucks?

10 A. I would assume so. We buy things from numbers of
11 people.

12 Q. Do you always send your truck to go pick up the things
13 you buy or do they sometimes deliver?

14 A. I would assume that we take deliveries from others.

15 Q. Okay. One of the Youngs other complaints in this case
16 has been the noise generated by the unloading itself, the actual
17 process of unloading the flour or sugar from the tanker trucks.
18 Has Gilster-Mary Lee done anything to try to reduce the level of
19 noise that that operation causes?

20 A. For the unloading of the flour?

21 Q. Yes. Pardon me. I am speaking other than the movement

22 of the flour unloading station that we were talking about before.

23 A. I am sorry. Would you please ask it again?

24 Q. Sure. Let me state it a different way that might be

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1 clearer. When the flour or sugar unloading takes place, what is
2 the process by which that flour or sugar is unloaded from the
3 trucks?

4 A. Okay. It is pneumatically transferred.

5 Q. Okay. And when you say pneumatically transferred, what
6 do you mean?

7 A. That means that we employ a blower and use air to move
8 the flour from the tank truck to the storage vessel.

9 Q. Where is that blower located?

10 A. That blower could be either one that we have on the
11 premises or it could be on the truck.

12 Q. Okay. Does that blower make noise?

13 A. Of course.

14 Q. Has Gilster-Mary Lee done anything to try to reduce the
15 level of noise that those blowers make?

16 A. On our trucks we have fitted them with different
17 silencers, if you want to call them that, to help improve that.
18 We have also talked to our primary carriers.

19 Q. When you say talked to the primary carriers, what do you
20 mean?

21 A. The transport companies that most typically deliver
22 flour to our facility.

23 Q. And what have they been told?

24 A. That they need to do what they can to get their vehicles

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1 in line.

2 Q. When you say in line, what do you mean?

3 A. Meaning to get the noise down.

4 Q. And do the silencers or the mufflers that are put on
5 those blowers reduce the level of noise that the blowers emit?

6 A. That is what they are supposed to do.

7 Q. Do they work?

8 A. I am assuming that they are working.

9 Q. Have you observed a truck unloading without a blower --
10 pardon me -- without a silencer, as opposed to a truck with a
11 silencer?

12 A. Yes.

13 Q. Which one is quieter?

14 A. The one with the silencer is much quieter.

15 Q. Does Gilster-Mary Lee monitor trucks from other
16 companies to try to assure that they do have silencers on those?

17 A. Yes, we do.

18 Q. Have you ever spoken with the Noise Department at the
19 Illinois Environmental Protection Agency?

20 A. Yes, I have.

21 Q. With whom did you speak with at that department?
22 A. Mr. Greg Zak.
23 Q. Was that in person or by telephone?
24 A. It was by telephone.

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1 Q. And when was it that you contacted Mr. Zak?
2 A. I don't recall the exact date.
3 Q. Okay. Was it within -- was it within the past year?
4 A. Within the past year? No.
5 Q. Was it within the past two years?
6 A. Yes.
7 Q. Okay. Was your contact to him related at all to the
8 Youngs' complaints about the noise emitted by the plant?
9 A. Yes, it would be related to that.
10 Q. Okay. Mr. Zak has not testified yet today, but my
11 understanding is that he testified in his deposition, and I
12 assume he will testify today, that Gilster-Mary Lee could reduce
13 the level of noise emitted by its plant by enclosing the new
14 flour unloading station and enclosing the location where the
15 trash dumpsters are kept. Do you have any concerns with either
16 of those proposals?
17 A. Well, one of the first things that comes to my mind
18 would be sanitation from a food safety point of view.
19 Q. Why is that a concern?

20 A. Well, awnings or roofs provide harborage where the birds
21 can get in and associated other pests that may find harborage in
22 that space. Those are hard to keep clean. And as much as the
23 flour is a finished good to us, it goes directly into our
24 process, and that is why that would be a concern.

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1 Q. Okay. Are there any operational concerns? Do you think
2 that it would be -- pose any kinds of problems for trucks getting
3 in and out of those enclosures?

4 A. Well, given the locations and how the trucks move in and
5 out now, it might limit the driver's field of view.

6 Q. Okay. I would like to ask you some questions about some
7 of the noise sources complained about by the Youngs and whether
8 Gilster-Mary Lee could do anything to reduce the level of noise.
9 One of the things the Youngs have complained about is noise from
10 cars parking in parking lots adjacent to their home that are
11 owned by Gilster-Mary Lee. Does Gilster-Mary Lee have other
12 parking lots where the people who use the lots adjacent to the
13 Youngs' home could park?

14 A. We have several parking areas. We try to provide
15 parking for -- adequate parking for our employees.

16 Q. Is there enough parking in other places that the people
17 who park next to the Youngs' home could just go park somewhere
18 else?

19 A. Well, I am assuming that they could park on the street.

20 Q. And pardon me for not being clear. On your parking
21 lots, on Gilster-Mary Lee parking lots, are there a lot of empty
22 spaces somewhere else that they could use?

23 A. They are usually utilized.

24 Q. Okay. The Youngs have also complained, and again, we

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1 discussed it a little bit earlier, about the noise from the trash
2 dumpster unloading. Could the trash area that you have labeled
3 on this map be moved somewhere else on the location -- you know,
4 on Gilster-Mary Lee's property?

5 A. Our buildings occupy pretty much all of the space that
6 we own. The trash dumpster directly serves that tall structure
7 that has a shoot in it from the third floor whereby which we can
8 get the trash and the packaging or whatever scrap down to the
9 compactor. In that complex, I don't see another reasonable place
10 in which to locate a trash compactor system.

11 Q. Okay. One of the Youngs other complaints has been noise
12 made by trucks making delivery to Gilster-Mary Lee. I think you
13 stated earlier those noise -- well, let me just ask again. I
14 don't want to repeat myself, but the tanker trucks that come to
15 the unloading station, what are those trucks delivering?

16 A. Flour and sugar.

17 Q. Could Gilster-Mary Lee get flour and sugar to its plant
18 by any other means other than truck?

19 A. Well -- oh, by other than truck?
20 Q. Other than truck?
21 A. We have no rail access to this facility, and in order to
22 get the volume that we would need, that would be the other way
23 you might do that.
24 Q. What would happen if no trucks were allowed to make

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1 deliveries to Gilster-Mary Lee's facility?
2 A. You are referring to the tank truck delivery?
3 Q. No trucks at all. If no semi-trucks could deliver flour
4 or sugar to the facility what would happen?
5 A. Then we couldn't have a facility.
6 Q. Could the facility operate without flour and sugar?
7 A. We don't -- we couldn't made the product without flour
8 and sugar.
9 Q. Okay. Could Gilster-Mary Lee get the sugar and flour
10 delivered in some other form than in tanker trucks?
11 A. Certainly.
12 Q. In what form would that be?
13 A. You could get it in 100 pound bags.
14 Q. Okay. Would that create any problems for your
15 operations?
16 A. Well, there is more trash, because you have --
17 Q. Why is that?
18 A. -- more volume. Well, we receive quite a few tons of

19 sugar and flour through the tank truck, and it is simple math to
20 determine how many bags you have got to have as opposed to what
21 is delivered in the tank truck.

22 Q. So you would have trash caused by the bags? You would
23 have to dispose of the bags as trash, the bags that the flour and
24 sugar came in?

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1 A. The new containers, the bags, yes, would have to be
2 disposed of.

3 Q. And where would those -- would those be disposed of in
4 the same trash dumpster area that we talked about earlier?

5 A. In all probability.

6 Q. Okay. Would that increase the number of trash pick ups
7 that would have to be made --

8 A. Certainly.

9 Q. -- at that location? Would one truck delivering bags of
10 flour or sugar be able to deliver the same amount of flour or
11 sugar that a tanker truck can deliver?

12 A. No.

13 Q. So does that mean that there would be more or fewer
14 trucks coming in and out of the plant if you got the flour and
15 sugar in bags rather than in tanker trucks?

16 A. I would assume we would have more trucks.

17 Q. Okay. Mr. Hutchinson, have you stood near the Youngs'

18 property since all of those noise reduction measures that we
19 talked about were put into place?

20 A. Yes.

21 Q. Have you observed the level of noise that is emitted
22 towards the Youngs' property since those noise reduction measures
23 were put into place?

24 A. Well, I have my personal observation.

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1 Q. Is the noise now louder or softer than it used to be?

2 A. It would appear to be less noise than before.

3 Q. Okay. I would like to ask you a few follow-up questions
4 to Mr. Muskopf's questioning to you. Mr. Muskopf asked you about
5 the breaks that employees take. You mentioned the length of the
6 lunch break or the middle break on a shift is 30 minutes; is that
7 right?

8 A. Yes.

9 Q. What is the length of the other breaks that are taken?

10 A. Fifteen minutes.

11 Q. Fifteen. Okay. Thank you. I would like to show you
12 Exhibit C1 that Mr. Muskopf showed you earlier. Were any of the
13 noise measurements that are depicted on that table taken after
14 the flour unloading station was moved and put into operation?

15 A. No.

16 Q. I would now like to show you Exhibit C2. Can you tell
17 me -- and it is my understanding that that exhibit depicts the

18 location at which you took noise measurements; is that correct?

19 A. Exhibit C2, yes, it depicts the location at which I took
20 the noise measurements.

21 Q. Is that by the letters that are on that?

22 A. Yes.

23 Q. Okay. It is my understanding that you testified that
24 letter A -- the location that is at letter A is at or near the

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1 property line of the Youngs' property; is that correct?

2 A. Location A is at or near the property line.

3 Q. Location B is also at or near the property line?

4 A. Yes.

5 Q. Are any of the other locations at or near their property
6 line?

7 A. At or near being a relative thing, but within -- no.

8 Q. Okay. What is the next closest location that you took
9 measurements?

10 A. It is -- I would say probably 50, 60 feet.

11 Q. Okay. Would that be letter C?

12 A. Yes.

13 Q. Okay. And then D, would that be further?

14 A. Yes.

15 Q. And that appears to be near the old flour unloading
16 station?

17 A. Yes.

18 Q. Is -- where is E located?

19 A. E is --

20 Q. Oh, okay. E is on the other side of their home from the
21 plant?

22 A. Yes.

23 Q. Okay. Where is location F located?

24 A. F is at the new truck unloading area.

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1 Q. Would that be near the blower on the truck that is used
2 to unload the flour?

3 A. Yes.

4 Q. And so would noise measurements that you took from that
5 location be picking up the -- assuming that a blower was running
6 at the time, be picking up the noise emitted from the blower?

7 A. Yes, sir.

8 Q. Okay. Moving on to -- pardon me. Back to C1. Mr.
9 Muskopf asked you about the highest number that was depicted on
10 that table and you said it was 93. Can you locate that number on
11 that table?

12 A. Yes, I can.

13 Q. Okay. What -- at what location was that number
14 recorded?

15 A. At location D.

16 Q. And is location D at or near the property line of the

17 Youngs' home?

18 A. No.

19 Q. Okay. How far is it from the Youngs' home?

20 A. It is approximately 108 feet, according to the diagram.

21 Q. Pardon me. I said from the Youngs' home. Is it 108
22 feet from their home or from the property line?

23 A. From the property line.

24 Q. Okay. It is located on Gilster-Mary Lee's property?

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1 A. Yes.

2 Q. Okay. Would it be correct that all of the measurements
3 depicted on Exhibit C1 being taken at locations C, D, E and F
4 were taken at locations that are not on or adjacent -- on or
5 within five feet of the Youngs' property line?

6 A. Yes.

7 Q. And that C, D and F were actually taken on Gilster-Mary
8 Lee's property?

9 A. Yes.

10 Q. Okay. Mr. Muskopf also asked you whether or not any of
11 the conditions under which the noise measurements were taken that
12 are depicted on Exhibit C1 had -- whether those conditions took
13 place at any time at least since you worked for Gilster-Mary Lee
14 after 10:00 p.m. and before 7:00 a.m. Do you recall that
15 question?

16 A. Yes.

17 Q. Okay. But you also stated, if I am correct, that you
18 never took yourself any measurements after 10:00 p.m. or before
19 7:00 a.m.?

20 A. That's correct.

21 Q. Do you have any knowledge as to whether the exact
22 conditions which were happening at the time that you took the
23 measurements depicted on C1 have ever taken place or repeated
24 themselves after 10:00 p.m. and before 7:00 a.m.?

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1 A. After 10:00 p.m. to 7:00 p.m.?

2 Q. To 7:00 a.m.?

3 A. To 7:00 a.m.?

4 Q. Yes. Do you have any personal knowledge as to whether
5 those conditions have repeated themselves during that time frame?

6 A. I don't know that.

7 Q. I need to find the exhibit that you -- on which you
8 marked the property owned by Gilster-Mary Lee.

9 HEARING OFFICER LANGHOFF: For the record, it is --

10 MR. SAFLEY: That is Exhibit C8. Thank you.

11 Q. (By Mr. Safley) I realize that this is labeled. But
12 just to make clear, does all the property that you have
13 highlighted in pink, is all of that property used for
14 manufacturing purposes?

15 A. No.

16 Q. Okay. Which properties that are highlighted are not
17 used for manufacturing purposes?

18 A. Please define manufacturing in your context.

19 Q. Well, and I -- that's a fair question. What I am
20 thinking of is the actual buildings in which manufacturing is
21 taking place.

22 A. The reason I ask is because there is a couple of homes
23 on here. Those are obviously not manufacturing. But we also
24 have three parking lots that are not manufacturing. We also have

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1 the GML offices, which are not manufacturing. Manufacturing
2 occurs in the objects labeled GML factory in two cases, and the
3 dye house, to a limited degree, might be considered manufacturing
4 or storage.

5 Q. Am I correct that that is the building that is labeled
6 GML building on this map?

7 A. Yes.

8 Q. Now, there is one building that says McClure and GML in
9 dark printing and in lighter it says vacant building since
10 02-2001, reportedly sold to GML. First of all, did you write
11 that language in there?

12 A. No, I did not.

13 Q. Did you write any of the words that are on this map?

14 A. No, I did not.

15 Q. Do you know the building to which that is referring?

16 A. I think so.

17 Q. Okay. Is that building actually owned by Gilster-Mary
18 Lee, do you know?

19 A. There is a number of little buildings right in through
20 that area. Building vacant since 02-2001. We have not purchased
21 any buildings that I know of this year.

22 Q. Okay. When you labeled that -- you did label that
23 building pink, however. Why did you do that?

24 A. Well, there is one, two, three -- let's see. One, two,

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1 three -- three buildings from the corner, if my count is correct.
2 One, two -- yes, I believe it is three buildings that we own from
3 the corner.

4 Q. Okay. And so you assumed that this depicted those three
5 buildings?

6 A. Yes.

7 Q. Okay. The first building at the corner -- I assume you
8 meant the corner of Stacey and State Street; is that correct?

9 A. Yes.

10 Q. The first building there says GML factory. That's one
11 of the buildings where you referred to that manufacturing
12 actually takes place?

13 A. Yes.

14 Q. Next to that is GML offices. Does any manufacturing

15 take place in that building?

16 A. No.

17 Q. Then the next building that right now is labeled McClure
18 GML and has the other writing, does any manufacturing take place
19 in that building?

20 A. No.

21 Q. What does take place in that building?

22 A. Depending on which -- it is an office or McClure used it
23 for a store.

24 Q. Okay. But it is not a building that Gilster-Mary Lee

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1 uses for manufacturing purposes?

2 A. Correct.

3 Q. Have you seen any activities at the Youngs' property
4 that indicates to you that the noise emitted by Gilster-Mary
5 Lee's plant does not interfere with the use of that property?

6 A. Well, the only incident that comes to my mind at the
7 moment was -- this occurred some time ago. I was returning from
8 the cake plant. I don't recall. Let's see. I had gone up there
9 to look at a roof, I believe, which is part of what I do. And on
10 my way back through I noticed that Mrs. Young was enjoying the
11 use of her telephone on the front porch of her home.

12 Q. What activities were going on at Gilster-Mary Lee's
13 plant at that time?

14 A. Well, at that time we were unloading flour there, at our
15 new location.

16 MR. SAFLEY: Okay. Those are all of my questions. Thank
17 you.

18 HEARING OFFICER LANGHOFF: Before we get to cross, I have
19 one question that I want to ask to make sure that the record is
20 clear. Did you testify that this Exhibit C1, these readings were
21 taken before you moved the flour station to its present location?

22 THE WITNESS: Yes.

23 HEARING OFFICER LANGHOFF: Okay. Thank you. Your cross.

24 MR. MUSKOPF: I would request permission to conduct

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1 cross-examination.

2 MR. SAFLEY: I don't have any objection to that.

3 HEARING OFFICER LANGHOFF: Go ahead.

4 MR. MUSKOPF: Okay. Thanks. I just was not clear since,
5 you know, it has been --

6 MR. SAFLEY: Sure.

7 MR. MUSKOPF: Okay.

8 HEARING OFFICER LANGHOFF: It is your cross.

9 MR. MUSKOPF: Okay.

10 CROSS EXAMINATION

11 BY MR. MUSKOPF:

12 Q. So what makes you think that -- well, now, you don't
13 recall when it was that Mrs. Young was on the telephone, correct?

14 A. Not the specific date.

15 Q. So, I mean, for all you know she could have been on the
16 phone calling the police to complain about the noise of the flour
17 unloading, correct?

18 A. That's true.

19 Q. Now, I wonder if you could go through on C2 and
20 highlight all of the letters, because a lot of times I was
21 finding it hard.

22 A. (Witness complied.)

23 Q. Thank you.

24 HEARING OFFICER LANGHOFF: Let the record reflect the

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1 witness has highlighted the letters where the sound locations
2 were -- the sound measurements were taken on Exhibit C2.

3 Q. (By Mr. Muskopf) Condition four, on C1, that is
4 basically the quietest state of affairs; is that right?

5 A. That would appear to be the quietest, yes.

6 Q. Okay. And the location E is the furthest location on --
7 that is location E that is depicted on C2, and that's the
8 furthest location from any of the noise sources at the GML plant,
9 correct?

10 A. That's true.

11 Q. So on September 2nd, 1999, when you took noise
12 measurements during the quietest set of conditions and at the

13 furthest point from the GML plant, you still got readings that
14 were over the limit, right?

15 A. That's what the document displays, yes.

16 Q. When you were giving your opinions earlier as to whether
17 you thought that various changes to the operations at the GML
18 plant reduced the noise impacting the Youngs' property, you were
19 not testifying as an expert, I assume?

20 A. No.

21 Q. You were just testifying as a layperson as to what your
22 opinion was as to how loud something appeared to you?

23 A. That's correct.

24 Q. Did you make a record of any of the conditions?

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1 A. No.

2 Q. Did you make a record of any of the dates?

3 A. No.

4 Q. No weather conditions?

5 A. No.

6 Q. You didn't make a note of whether the wind was blowing
7 or from what direction?

8 A. No.

9 Q. You don't know whether at the times you went and stood
10 at the property line to listen that there was unloading going on,
11 and I mean whether a number of the conditions, for instance, that
12 you have depicted on C1 were occurring simultaneously?

13 A. No.

14 Q. It is your opinion, though, that you think you can tell
15 the difference between a tank truck with a silencer and one
16 without?

17 A. There is a noticeable difference between a truck that
18 has no silencer on and one that does.

19 Q. Okay. Have you ever conducted any measurements of noise
20 made from a tank truck with a silencer and one without?

21 A. Let's see. Yes.

22 Q. Okay. When was that?

23 A. According to Exhibit C1, that would have been on
24 February the 7th of 2000.

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1 Q. Okay. And you measured -- can you explain what you did
2 there to distinguish or to measure a truck with a silencer and
3 one without?

4 A. We had basically took the silencer off.

5 Q. What was the difference in decibels?

6 A. At location F, for example, the decibels between -- with
7 the truck blower running at the new location, it was 88. And the
8 truck blower running at the new location with the muffler on the
9 truck, it had been removed, it was at the most 90.3.

10 Q. Okay. So basically a couple decibels difference?

11 A. Uh-huh.

12 Q. That is a yes --

13 A. Yes.

14 Q. -- for the court reporter? Are you suggesting that
15 study was scientifically meaningful in some way?

16 A. Scientifically meaningful?

17 Q. Right.

18 A. It is just an indication. Scientifically meaningful can
19 mean a lot of things. But it just indicated that the muffler was
20 having a positive impact.

21 Q. So are you suggesting that GML insists that all of the
22 deliveries it gets of flour and sugar, that those tank trucks
23 carrying those products must have these silencers installed
24 otherwise you won't accept the delivery?

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1 A. We insist that our suppliers make every effort to have a
2 muffler on board. I can't speak to whether deliveries have been
3 rejected or not, you know, whether the blower has been present or
4 not. I can't speak to that.

5 Q. I mean, every effort meaning that you insist that it
6 have a muffler, right?

7 A. Every effort.

8 Q. If they make every effort to put a muffler on they will
9 put it on, right?

10 A. They are going to put a muffler on. We insist that it
11 be there. That is what we want. If we have a -- if it is not a

12 conventional hauler, someone that is brought in for the day
13 because of whatever reason, does that -- is that particular truck
14 on that particular day being not a typical vendor have a muffler
15 in place? We hope so. If that truck has not had one installed
16 can they get one quickly? Probably not.

17 Q. So what you are saying is your typical vendors you
18 really have no control over whether they are going to have a
19 muffler on or not? Excuse me. The vendors that are not your
20 typical vendors?

21 A. If they are not a typical vendor we have not a great
22 deal of control over them.

23 Q. Are you saying every truck from the typical vendors has
24 a muffler on that --

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1 A. I am not saying that.

2 Q. If you insist that they make every effort why would they
3 not have a muffler on every truck?

4 A. We can insist that they make every effort. We are also
5 dealing with people.

6 Q. Basically you are not going to turn away a delivery if
7 the truck does not have a muffler on it, are you, if the plant
8 needs the sugar and flour?

9 A. If we are running tight and we are going to have a
10 production issue, I will have to say in all likelihood we are

11 going to accept that flour.

12 Q. Are you aware of any time at all that a delivery has
13 been refused because a tank truck did not have a muffler on it?

14 A. I am not aware of any.

15 Q. Is that the policy?

16 A. That we -- please --

17 Q. Is that GML policy, that you are going to turn away
18 deliveries if the tank truck does not have a muffler on it?

19 A. I cannot say that is a specific policy that we will turn
20 them away.

21 Q. Do you do anything to inspect the mufflers to determine
22 that they are functioning correctly?

23 A. We inspect to see that the muffler is present.

24 Q. So you don't inspect to see if it is functioning

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1 correctly?

2 A. I am not sure how we would do that, but we do inspect to
3 see that it is there.

4 Q. You don't take sound level measurements of the trucks
5 that come in to make sure the mufflers are functioning?

6 A. No, we don't take sound level measurements of every
7 truck that comes to our plant.

8 Q. Both of the trucks that you own and trucks owned by
9 outside vendors, correct?

10 A. That we do take sound level measurements of every truck

11 that comes in?

12 Q. Right.

13 A. No, we do not.

14 Q. Right. You don't take sound level measurements of your
15 own trucks to determine that the mufflers that you have installed
16 on them are functioning correctly?

17 A. Not with each load.

18 Q. How often do you do the inspections and take sound level
19 measurements?

20 A. I don't know that there is any set schedule to check to
21 see that those mufflers are meeting the criteria that you are
22 asking about.

23 Q. The truth is that none have ever been done except what
24 is on C1, right?

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1 A. I am -- those are the only measurements that I have
2 taken. If anyone else has taken measurements, I am unaware of
3 those.

4 Q. All right. Was it your idea to replace the venting
5 louvers?

6 A. I don't recall whether it was mine or if it was
7 something that someone else had suggested to me to look at.

8 Q. Do you recall whose idea it was to put a duct on the dye
9 house blower?

10 A. That was mine.

11 Q. Okay. Do you recall whose idea it was to try to dampen
12 the impact of the metal on metal sound from the top of the flour
13 tanks?

14 A. That was mine.

15 Q. On Exhibit RA, you have a blue circle around the truck
16 which is basically the flour unloading station, correct?

17 A. Yes.

18 Q. A red circle around the building, which is between the
19 flour unloading station and the Young property, correct?

20 A. Yes.

21 Q. What I am asking you is what is directly across Swanwick
22 Street from the flour unloading station?

23 A. GML's building.

24 Q. How tall is the building there?

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1 A. I believe it is three stories.

2 Q. Do you know what the outside surface of that building
3 is?

4 A. Brick and windows.

5 Q. Okay. So that is a pretty good sound reflecting
6 surface, isn't it?

7 MR. SAFLEY: I object. I don't think he is qualified to
8 answer that, and there has been no foundation laid that he can
9 answer that question.

10 HEARING OFFICER LANGHOFF: You can answer if you know.

11 THE WITNESS: That that is a good sound reflecting?

12 MR. MUSKOPF: Yes.

13 THE WITNESS: I would be making an assumption. I don't
14 know that it is. I could tell you what I think it is, but I
15 don't know that it is.

16 Q. (By Mr. Muskopf) What do you think that it is?

17 A. I think that it might be.

18 Q. I mean, as a layperson, you come in here to testify that
19 you made certain changes to the facility and then go stand by the
20 property line and they have always quieted things down. So are
21 you saying that you can't testify as to whether sound bounces off
22 of a brick wall better than an open space?

23 MR. SAFLEY: I am going to renew my objection.

24 HEARING OFFICER LANGHOFF: I am going to sustain that

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1 objection.

2 Q. (By Mr. Muskopf) Once again, all of the times that you
3 made these changes, then went to the property line to listen for
4 the difference, you didn't take sound level measurements,
5 correct, with the --

6 A. No.

7 Q. With a meter or a device or something like that?

8 A. We made the changes. We did not go take a measurement.

9 Q. You made the change and then would go over and stand by
10 the property line and listen with your ear and see if it sounded
11 like to you that it had made a difference?

12 A. Essentially, yes.

13 Q. You testified that it is the policy of GML not to accept
14 flour and sugar deliveries between 10:00 p.m. and 7:00 a.m.,
15 correct?

16 A. It is not a normal practice to do that.

17 Q. Okay. You said that you -- something along the lines
18 that you enforce that policy. Do you remember that testimony?

19 A. That we enforce it?

20 Q. Yes.

21 A. I don't remember the use of the word enforce.

22 Q. Okay. I mean, the fact of the matter is if it is a
23 production issue you will absolutely positively take a shipment
24 of flour or sugar between the hours of 10:00 p.m. and 7:00 a.m.,

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1 won't you?

2 A. We are going to look at the circumstances that present
3 themselves at the time to avoid sending our people home or
4 needing to shut the plant down. To that extent I am certain that
5 they would do something like that or at least consider it.

6 Q. Right. You are not aware of any instance where a
7 delivery has been refused between the hours of 10:00 p.m. and
8 7:00 a.m., are you?

9 A. I am not aware of any loads that have been refused.

10 Q. And you have no personal knowledge as to whether or not
11 there have been deliveries between 10:00 p.m. and 7:00 a.m. of
12 flour or sugar, are you?

13 A. I have no personal knowledge.

14 Q. You have no understanding that they do deliver during
15 those hours, correct?

16 A. It is my understanding that it is not the practice.

17 Q. That it is never done or not the typical practice?

18 A. I am not going to say anything is never done. It is not
19 the typical practice.

20 Q. Okay. So you can't say how often it is done, how often
21 that the typical practice is deviated from, can you?

22 A. No, I cannot.

23 Q. As far as you know it could be every night or once a
24 week or once a month? You really don't have any basis to say one

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1 way or the other?

2 A. I don't have a basis to say on -- that it is deviated
3 from.

4 Q. By the same token, since you don't know, you are not
5 there, you can't say it is deviated from and you can't say that
6 it is not deviated from, can you? How can you say that --

7 A. I am not present. I can't speak to that issue.

8 Q. How can you say you don't get deliveries during those
9 hours when you can't say that you do, because you are not there?

10 MR. SAFLEY: I would like to interpose an objection. I am
11 not sure -- I don't think that Mr. Hutchinson ever testified that
12 they do -- that they do or don't. He testified that he doesn't
13 know. I think the question, how can you say that you don't, is
14 not proper. He never said that they don't.

15 HEARING OFFICER LANGHOFF: Why is that not proper, Mr.
16 Safley?

17 MR. SAFLEY: It mischaracterized his testimony.

18 MR. MUSKOPF: This is cross-examination. I am not trying
19 to mischaracterize the witness' testimony. That's all I have to
20 say.

21 HEARING OFFICER LANGHOFF: I will allow your question.

22 Q. (By Mr. Muskopf) The flour that is transmitted from the
23 tank truck to where does it go next, directly into these big
24 tanks?

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1 A. Yes.

2 Q. I assume there is a permanent pipeline system?

3 A. Yes.

4 Q. Where is the blower located that sucks the flour out to
5 blow it into that tank?

6 A. The blower that is located that sucks the flour out to
7 blow it into the tank?

8 Q. There are two different --

9 A. The blower does not suck it out. The blower blows it
10 from the tank truck into the tank.

11 Q. Where is that blower located?

12 A. It could be on the truck or it could be in the building.

13 Q. How do you know what -- some trucks have blowers and
14 some don't?

15 A. There is both possibilities.

16 Q. Okay. And the blowers, does GML own any trucks with
17 blowers on them?

18 A. Sure.

19 Q. Have you made any effort to quiet the blowers?

20 A. Yes.

21 Q. Did you talk about those earlier?

22 A. Yes, we did.

23 Q. Have you made any other efforts that you have not talked
24 about so far?

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1 A. In what regards, sir?

2 Q. Any efforts to quiet the blowers on the trucks that you
3 own?

4 A. Other than putting the silencers on the trucks, no.

5 Q. When it is -- when the truck has a blower that is in use
6 to transmit the flour, is there another blower in use then as

7 well?

8 A. No.

9 Q. So is it one blower at a time?

10 A. One blower to empty that truck into whichever tank it is
11 sent to.

12 Q. The one in the truck or the one in the building?

13 A. That's correct.

14 Q. Is one faster than the other? I mean, does one move
15 more volume?

16 A. Faster is a relative thing. It depends on how far you
17 need to transport it as to how long.

18 Q. I mean, it all goes to the same place, doesn't it, these
19 five big tanks?

20 A. It -- flour is stored in those tanks as well as tanks in
21 the dye house.

22 Q. I see. So I am not talking about the variable of how
23 far the flour has to be moved. What I am talking about is the
24 variable of the blower on the truck versus the blower in the

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1 building. I am asking you which one moves flour faster or which
2 one moves more flour?

3 A. Which one has a greater horsepower blower? I can't
4 answer that question.

5 Q. I am asking you which one works faster?

6 A. I can't answer that. If you have a -- it is down to,

7 again, one is bigger than the other one. The one with the more
8 horsepower has greater potential to move the product. Right now
9 I cannot answer to you which blower has that capability.

10 Q. Okay. So you have never timed a truck, for instance,
11 you know, full of flour how long it takes the blower on the truck
12 to move it or how long it takes the blower in the building to
13 move it?

14 A. I have never timed the unloading.

15 Q. So how does a bird that is somewhere in the area
16 interfere with the sanitation, the sanitary aspect of flour,
17 which is completely enclosed in a truck moving into a tube into a
18 completely enclosed tank?

19 A. Well, you have to make the coupling and uncoupling and
20 we do have to do sampling of the flour when it comes in before we
21 can unload. The samples are pulled and sent to the lab and they
22 do whatever the lab does to approve it, and provided it passes
23 then it can go -- it can be sent into the building. The -- I am
24 not a sanitarian by profession. That is not what I do for the

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1 company. He could probably explain that in much better detail
2 than I could. But I do know that bird harborages and harborages
3 with insects are something that we watch with great detail. We
4 are very -- we try to be aware of those things.

5 Q. You have been around, haven't you, when people are

6 banging on the sides of the tank trucks with rubber mallets?

7 A. Yes.

8 Q. Why do they do that?

9 A. It has to do with the flour or the product itself
10 wanting to settle to the bottom so that the truck can't be
11 emptied effectively.

12 HEARING OFFICER LANGHOFF: Off the record.

13 (Discussion off the record.)

14 HEARING OFFICER LANGHOFF: Okay. Back on the record,
15 please.

16 Q. (By Mr. Muskopf) You have to bang on the -- they use
17 rubber mallets, right?

18 A. A dead blow hammer.

19 Q. A dead blow hammer. What kind of head does it have on
20 it?

21 A. It could be a number of products. It depends on whose
22 hammer you are using.

23 Q. Metal?

24 A. No.

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1 Q. Brass?

2 A. No.

3 Q. Wood?

4 A. No.

5 Q. Plastic?

6 A. It would have -- it would be some type of a weighted
7 hammer with a protective coating over it.

8 Q. So that it does not dent the metal that you are banging
9 on?

10 A. Correct.

11 Q. Okay. Do you have to use a hammer to bang on the side
12 to empty the flour or sugar effectively?

13 A. You could probably do something else, but the hammer is
14 the simplest and the most commonly used method.

15 MR. MUSKOPF: Okay. That's all I have. Thank you.

16 MR. SAFLEY: I only have a very few follow-up questions.
17 Pardon me a second. I am just making a note.

18 RE CROSS EXAMINATION

19 BY MR. SAFLEY:

20 Q. Mr. Hutchinson, Mr. Muskopf asked you about the noise
21 level measurements that you took at location E, which is furthest
22 from the Gilster-Mary Lee plant, and he noted that at that
23 location under condition four, no activity, there was a range
24 from 50 to 64.5 decibels; is that correct?

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1 A. That's correct.

2 Q. Do you know what other noises -- what noises, other than
3 those emitted by the Gilster-Mary Lee plant, were being picked up
4 by the noise meter when you took the measurements at that

5 location?

6 A. At that stop sign, I would say that there would just be
7 a normal activity in that area, whatever that might be.

8 Q. Is there any activity in that area that is not related
9 to Gilster-Mary Lee?

10 A. Well, there would be the public street traffic and those
11 types of activity.

12 Q. Okay. Did you take any -- did you do any tests to see
13 what the background noise level was at that location to see what
14 noises were there other than were emitted by Gilster-Mary Lee?

15 A. I don't know that I was looking for background noise,
16 per se.

17 Q. Okay. When you took all of the noise measurements that
18 are shown on Exhibit C1 were there other activities going on
19 other than those related to Gilster-Mary Lee? Did you shut down
20 the street to make sure that no cars drove by, for example?

21 A. No, we didn't restrict the public access to that area.
22 There was the other vehicular traffic that we might normally see
23 on the street.

24 Q. Was there activity going on in the downtown area

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1 adjacent to the Gilster-Mary Lee plant at the time?

2 A. It was a business day.

3 Q. Mr. Muskopf asked you about checking the operation of
4 the mufflers on Gilster-Mary Lee trucks. Is truck maintenance

5 part of your responsibility at Gilster-Mary Lee?

6 A. No.

7 Q. He also asked you about whether or not the plant would
8 accept loads of flour in certain situations. Is it your
9 responsibility to decide whether the plant accepts a load of
10 flour or not?

11 A. No.

12 Q. Mr. Muskopf also asked you about the issue of birds
13 roosting at or near the flour unloading station. Is Gilster-Mary
14 Lee subject to any government or state, federal, local
15 requirements or, you know, agency requirements relating to
16 cleanliness at its plant?

17 A. Well, most certainly. The government agencies look to
18 us to guarantee that our product is safe for human consumption
19 before we send it out.

20 Q. Do they regulate your operations in that regard?

21 A. They do.

22 Q. Do any of the regulations have to do with birds or
23 insects or other pests in your facilities?

24 A. Well, we are simply not allowed to have them there.

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1 Q. Does that included around your facilities as well as
2 inside the facility?

3 A. Certainly.

4 Q. Okay. Mr. Muskopf finally asked you about the banging
5 of the hammers on the trucks. And I think your response was that
6 there is something else that could be done, but the hammer is the
7 most common method. Is there any method of achieving what the
8 hammer achieves without making any noise?

9 A. I don't know of one.

10 Q. Okay. What are the other methods that you were
11 referring to that could be used?

12 A. I suppose you could install vibrators on the trucks, but
13 then that would mean that the other facilities that use that
14 truck would have to have compatible equipment, whether they are
15 our facilities or someone else's.

16 Q. Would the vibrators make noise?

17 A. Sure.

18 Q. Is there any other way that you could see to loosen the
19 flour?

20 A. And not do it in a sanitary manner.

21 Q. Okay. What unsanitary ways would there be to do it?

22 A. I suppose you could open the top of the truck up and use
23 a pole.

24 Q. Would that create sanitation problems?

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1 A. Most certainly.

2 MR. SAFLEY: Those are all of my questions.

3 HEARING OFFICER LANGHOFF: Thank you. Mr. Hutchinson, I am

4 still -- I want to make sure the record is clear. I am still a
5 little unclear. I asked you about this C1.

6 THE WITNESS: Yes, sir.

7 HEARING OFFICER LANGHOFF: These measurements were taken
8 before --

9 THE WITNESS: I think I know what --

10 HEARING OFFICER LANGHOFF: -- you moved the --

11 THE WITNESS: -- you are drawing to, and I will be happy to
12 explain it.

13 HEARING OFFICER LANGHOFF: Okay. If you could explain when
14 these measurements were taken and how they might relate to the
15 truck being at the new flour unloading.

16 THE WITNESS: It was our attempt to look at what our noise
17 may be if we had an unloading situation. So even though this was
18 still in use, we brought the truck over here and parked it in
19 place and ran the blower.

20 HEARING OFFICER LANGHOFF: Okay. Thank you. That's all.
21 Thank you. That answers my question. You are excused.

22 THE WITNESS: Thank you.

23 (The witness left the stand.)

24 HEARING OFFICER LANGHOFF: We are going to take a five

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1 minute break. Thank you.

2 MR. SAFLEY: Thank you.

3 (Whereupon a short recess was taken.)

4 HEARING OFFICER LANGHOFF: Back on the record. Mr.
5 Muskopf, your next witness.

6 MR. MUSKOPF: I would like to call Roger Young, please.

7 HEARING OFFICER LANGHOFF: Thank you. Would you swear the
8 witness, please.

9 (Whereupon the witness was sworn by the Notary Public.)

10 R O G E R Y O U N G,
11 having been first duly sworn by the Notary Public, saith as
12 follows:

13 DIRECT EXAMINATION

14 BY MR. MUSKOPF:

15 Q. Would you give us your name for the record, please.

16 A. Roger Young. That is R-O-G-E-R.

17 Q. How old are you, Mr. Young?

18 A. Seventy.

19 Q. And what is your occupation?

20 A. Retired.

21 Q. How long have you been retired?

22 A. Since 1988.

23 Q. Where did you grow up?

24 A. In Chester.

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1 Q. Okay. And were you born somewhere -- were you born --

2 A. Born in Ellis Grove.

3 Q. How far is Ellis Grove from Chester?
4 A. Ten miles.
5 Q. It is basically part of the same community?
6 A. You might say so.
7 Q. So you have lived in Randolph County your whole life?
8 A. Right, the biggest part of it.
9 Q. Okay.
10 A. Except for the last seven years. We have a place down
11 in Lake of Egypt also.
12 Q. Are you a homeowner?
13 A. Yes.
14 Q. And you have a home in Chester?
15 A. Yes, we do.
16 Q. What is the address of that residence, please?
17 A. 1009 Swanwick Street.
18 Q. Let me show you what has been marked as C8. Can you
19 highlight in green where you live, please?
20 A. (Witness complied.)
21 Q. Okay. A green X. How long have you lived in that
22 house?
23 A. Since 1995, I believe. Is that correct? I believe
24 that's correct.

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1 Q. I know your wife is here, but you are going to have to

2 go with --

3 A. I am going to have to answer my own questions.

4 Q. Pretty much.

5 A. Okay. 1995.

6 Q. Okay.

7 MR. SAFLEY: And pardon me. If I could just ask what the
8 document is that Mr. Young was reviewing in answering that
9 question.

10 THE WITNESS: I have a little notebook.

11 MR. SAFLEY: Okay.

12 HEARING OFFICER LANGHOFF: Okay, Mr. Young -- let's go off
13 the record just a minute.

14 (Discussion off the record.)

15 HEARING OFFICER LANGHOFF: Okay. Back on the record.

16 MR. MUSKOPF: Okay.

17 THE WITNESS: But I can refer to my little notebook? If
18 you want to see it, I mean, it is --

19 HEARING OFFICER LANGHOFF: Okay. Mr. Safley had an
20 objection. He wanted to know what he was referring to. Okay.
21 What are you referring to, Mr. Young?

22 THE WITNESS: Well, I have a few little notes here. Would
23 you like to look at them?

24 MR. SAFLEY: I will look at it later. I don't need to look

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1 at it right now. Thank you.

2 THE WITNESS: It won't mean anything to you. Just little
3 words.

4 Q. (By Mr. Muskopf) I know you are --

5 A. I am not 20 years old anymore. I do not have the memory
6 that I had 20, 25 years ago now.

7 Q. I understand that. There is nothing wrong with --

8 A. I just need something to refer to occasionally, but I
9 thank you.

10 Q. There is nothing wrong with that. All right. I know
11 that you have --

12 A. And -- go on.

13 Q. Okay. I know this is --

14 A. Before I start.

15 Q. It is an emotional sort of experience for you. I would
16 just ask that, you know, you try to not lose your temper with me
17 or anybody else?

18 A. I am not going to lose -- not too much.

19 Q. Okay. Good. Well, now, was that house in your family
20 before you and your wife moved in?

21 A. It was in my family ever since 1953. Previously it was
22 in my wife's family since 1948.

23 Q. Did your folks live there?

24 A. My mother lived there for 35 years. (The witness

1 reviewing his notebook.) For 23 years.

2 Q. I should ask you, your wife's name is Romana, correct?

3 A. Romana is my wife.

4 Q. And how long have you been married?

5 A. For 48 years.

6 Q. Okay. That one you didn't have to look at your note pad
7 for.

8 A. Oh, yes.

9 Q. Let the record reflect that. That's the most important
10 thing.

11 A. Uh-huh.

12 Q. How long did your wife's folks live in your house?

13 A. Since 1948 until my parents bought it in 1953.

14 Q. Okay. So do you have some sentimental attachment to
15 that home?

16 A. Sure do.

17 Q. Can you just briefly describe the kind of neighborhood
18 that you live in?

19 A. Well, it used to be nice and quiet. Can I use the words
20 used to be. There was houses. It was a regular residential.
21 There used to be a shoe factory across the street where
22 Gilster-Mary Lee is now located, and a knitting mill in part of
23 their building on Stacey Street. It was a very quiet
24 neighborhood from what I remember. Now, I did not live there.

1 My wife did. She grew up there.

2 Q. Okay. Now, you have a couple of commercial businesses
3 across the street from you?

4 A. There is a funeral home and that's it.

5 Q. Okay.

6 A. There was a furniture store and it has since sold out to
7 somebody else.

8 Q. Swanwick is the street right in front of your house
9 right?

10 A. Correct.

11 Q. And Light Street is another street that --

12 A. A side street.

13 Q. Okay. Another side street is Maple?

14 A. Right.

15 Q. Are any of those streets that are immediately around
16 your house major thoroughfares?

17 A. Swanwick Street, I would say, would be.

18 Q. What about -- then it looks like one block over there is
19 State Street and those are the State Routes 3 and 150?

20 A. Correct.

21 Q. What is the traffic volume like as compared -- when you
22 compare Swanwick to State Street or --

23 A. State Street, I would say, would have more traffic.

24 Q. Okay. Is State Street the main route through town?

1 A. Yes.

2 Q. Swanwick is not?

3 A. No.

4 Q. Does any of the traffic that goes on the streets
5 immediately around your house make any noise?

6 A. Yes.

7 Q. Are there -- are there trucks that go by your house to
8 go to Gilster-Mary Lee?

9 A. Yes.

10 Q. How do you compare the noise from the trucks going to
11 Gilster-Mary Lee to the noise from any other traffic on Swanwick?

12 A. Considerably louder.

13 Q. Which ones?

14 A. By name, Fed Ex, UPS, GML.

15 Q. No. I mean which trucks are loader or which traffic is
16 louder?

17 A. Well, your big diesels, which would be -- in fact, all
18 three are very loud.

19 Q. Would you say -- are the trucks going to Gilster-Mary
20 Lee louder than the other traffic?

21 A. I would say most diesel trucks are loud.

22 Q. Do most diesel trucks that are going through town, in
23 your experience, take State Street if they are not going to GML,
24 or do they take Swanwick?

1 A. They take State.

2 Q. Okay. GML is your neighbor; is that true?

3 A. True.

4 Q. You have property lines that butt right up against each
5 other?

6 A. True, on three sides.

7 Q. What was the noise like from any source when you first
8 moved in your house in 1995?

9 A. Not near as bad as it is now. It was, I would say,
10 livable. But there has been a lot of changes since then.

11 Q. Did the furniture store -- was there ever noise from the
12 furniture store or from the funeral home?

13 A. No.

14 Q. Was it any noise at all?

15 A. Occasional delivery of maybe merchandise. Of course,
16 the only truck that I have ever seen at the furniture store,
17 which is no longer there, was mattress trucks, delivering
18 mattresses. That is the only people that I saw to make
19 deliveries. The rest were all on State Street.

20 Q. When you compare the noise made from the furniture store
21 and the funeral home to the noise made by GML, how would you
22 compare the two?

23 A. No comparison.

24 Q. What do you mean by that?

1 A. Gilster-Mary Lee is very noisy.

2 Q. Now, GML was clearly in operation at the cake plant
3 there when you moved into your house, correct?

4 A. Right.

5 Q. You understood that when you moved in?

6 A. Right.

7 Q. And you are not -- are you saying that there was any
8 noise -- that there was no noise from GML when you first moved
9 in?

10 A. I would say there was some, but it was acceptable.

11 Q. What has changed between 1995 and the present in terms
12 of the noise from GML?

13 A. Their unloading of trucks and -- I guess that's the main
14 thing. And the amount of traffic.

15 Q. Is the noise louder now?

16 A. It is much louder.

17 Q. Is there more noise now than there was then?

18 A. Much more.

19 Q. Are the noises of different kind?

20 A. Yes.

21 Q. How so?

22 A. Well, at times the trucks that are unloading are so
23 shrill and loud that you -- there is no way that you could use
24 the telephone out on the front porch. In fact, there is no way

1 in the world you can communicate with anybody standing on the
2 front porch.

3 Q. Did it used to be like that in 1995?

4 A. Nope.

5 Q. When do you recall the noise first starting to be a
6 problem for you?

7 A. The big major change was when they put in the big tanks.

8 Q. Do you recall when that was, approximately what year or
9 how long ago?

10 A. No, I do not.

11 Q. Sometime between the time you moved in and now?

12 A. (The witness reviewing his notebook.) In the spring of
13 2000, I think.

14 Q. If you need to look at --

15 A. I think.

16 Q. There is nothing wrong with referring to notes.

17 HEARING OFFICER LANGHOFF: If you need to look at your
18 notes, just say so and we will let you look at your notes, Mr.
19 Young.

20 THE WITNESS: Okay. The summer of 2000 it was in
21 operation.

22 Q. (By Mr. Muskopf) Okay. That's when you recall the tanks
23 going in?

24 A. Well, they went in before then.

1 Q. Oh, I am sorry. But they were up and running in the
2 spring of 2000?

3 A. That's what Mr. Hutchinson said a while ago.

4 Q. And do you think that once the tanks were installed it
5 got any noisier?

6 A. It is noisier.

7 Q. Now, can you describe the layout of your home, please?
8 In fact, why don't we do it this way. I am going to hand you
9 Exhibit C31, and ask you to take a look at that and tell me
10 basically what that diagram shows?

11 A. The living room, dining room, kitchen, bath, the front
12 porch, a hallway, a bedroom and a porch on the back and
13 another --

14 Q. Okay. Let me interrupt you just for a second. Is this
15 diagram a pretty accurate depiction of the floor plans of the
16 first and second floors of your house?

17 A. Yes.

18 Q. Are the first and second floors of your house the main
19 living areas?

20 A. The ground floor is the main living area at the present
21 time.

22 Q. Okay. There is an attic on that house?

23 A. There is a big attic in the house.

24 Q. But that is not a living space?

1 A. No.

2 Q. And there is a basement?

3 A. There is a big basement.

4 Q. But you don't use that as a living space?

5 A. No.

6 Q. It is not altogether finished, as I understand it?

7 A. No.

8 Q. So about how many rooms in your house?

9 A. Twelve.

10 Q. When was it built? Do you have any idea?

11 A. 1892, I believe somewhere in that area.

12 Q. Would you say it is a well-built house?

13 A. A very well-built house.

14 Q. Okay. When you go from -- it has brick on it, correct?

15 A. Right.

16 Q. When you go from the outside wall to the inside wall,

17 there is a layer of brick, and then describe what the different

18 layers of material are?

19 A. Okay. The reason I know this is because I had to put an

20 exhaust fan in the kitchen. Otherwise, I would not have any

21 idea. But on the outside you have full brick. Then you have got

22 a full one inch board covering the whole structure. And then you

23 have got at least three to four inch dead air space. On the

24 inside you have got wood laths, plaster, and then over the top of

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1 that has been cellotech ceiling type wallboard that was put on by
2 my wife's parents.

3 Q. Is that on all of the interior walls?

4 A. Yes.

5 Q. So how thick is that -- how thick are the outside walls
6 of your house from outside to inside?

7 A. Outside, I would say approximately 12 inches.

8 Q. What about the interior walls? Can you describe the
9 construction of those?

10 A. No, because I have never taken one out. I know they are
11 approximately eight inches wide.

12 Q. Eight inches thick?

13 A. Thick.

14 Q. And are they plaster or --

15 A. Plaster, sure.

16 Q. Okay.

17 A. Plaster and probably the wood laths.

18 Q. The doors in your home, what are they made of?

19 A. Solid wood.

20 Q. What is the floor covering like on the ground floor?

21 A. The ground floor is all carpeted. Everything is
22 carpeted with a heavy pad.

23 Q. Okay. When did you put that carpeting in, and the heavy
24 pad?

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1 A. Right after we moved in.

2 Q. Why did you do that?

3 A. Well, for one thing, it is a sound deadener and we
4 wanted carpet. It is quieter and warmer.

5 Q. Where is your bedroom at?

6 A. The bedroom is on what I would call the northeast side.

7 Q. On the ground floor?

8 A. On the back side, yes.

9 Q. Is that the --

10 A. The back.

11 Q. The back corner from GML?

12 A. Yes, bordering their parking lot on the east side.

13 Q. Is that where the bedroom has always been?

14 A. Nope.

15 Q. Where was the bedroom before?

16 A. Right off the front porch on Swanwick Street.

17 Q. How come it is not there anymore?

18 A. It is too noisy, for one thing.

19 Q. Did you move your bedroom to escape the GML noise?

20 A. I would say yes. That is --

21 Q. Did it work?

22 A. -- the main reason.

23 Q. Did it work?

24 A. No, because at ten after 6:00 this morning I was woke

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1 up.

2 Q. By what?

3 A. Some GML noise, and at 20 after 6:00 I was outside
4 videotaping and taking readings on my little meter.

5 Q. What kind of noise woke you up?

6 A. I don't know. But it was a thud or a thump or
7 something. But anyhow it woke me up.

8 Q. What time do you normally get up?

9 A. Probably 7:00, 7:30, try to.

10 Q. So that woke you up earlier than your normal time?

11 A. Yes.

12 Q. Did you try to go back to sleep?

13 A. Nope.

14 Q. Why not?

15 A. I was outside. I was videotaping until about two
16 minutes until 7:00.

17 Q. Have you been awakened by GML noise on other occasions?

18 A. Sure have.

19 Q. How many times? Can you count them?

20 A. No.

21 Q. Do you have any idea, let's say over the past year?

22 A. No, I do not. That is one thing that I -- one time does
23 stick in my mind. At 3:00 in the morning one of these big tanker
24 trucks rolled in.

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1 Q. How long ago was that?

2 A. I can't answer that.

3 Q. I mean, would you say that it was in the past year?

4 A. No.

5 Q. Let me ask you this. Did you film it?

6 A. That was before I had the noise meter or the camera.

7 Q. Okay.

8 A. That's one reason why I bought it, because that -- the
9 tanker sat out there and run from 3:00 in the morning until about
10 two minutes till 6:00 and then shut down and then it was quiet
11 the rest of the day. And it was extremely loud.

12 Q. Was this one of the flour or sugar tanker trucks that
13 Mr. Hutchinson was describing?

14 A. It was a big tanker truck like they are using now.

15 Q. Okay. What kind of windows do you have in your home?

16 A. Wood windows, double strength glass, storm windows on
17 the outside with double strength glass.

18 Q. Has it been that way since you moved in?

19 A. It has.

20 Q. You have not changed the windows?

21 A. Nope.

22 Q. It looks like from the pictures you have got a front
23 porch and a back porch?

24 A. Right.

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1 Q. Is there a patio or deck or anything like that in your
2 yard?

3 A. Not other than the two porches.

4 Q. Okay. Have you made any changes to the interior of your
5 home that you have not described in an attempt to minimize the
6 noise or your perception of the noise from GML?

7 A. Yes.

8 Q. What other things have you done besides moving the --

9 A. We have blinds at the window. We have heavy drapery
10 that are all lined.

11 Q. Are you saying that you put those up in an attempt to
12 insulate yourself from the noise?

13 A. Right. Uh-huh, right.

14 Q. Did it work?

15 A. It helps, I would say.

16 Q. Does it work altogether?

17 A. It does not eliminate the noise, no, not completely.

18 Q. I assume you had to spend some money on these changes?

19 A. Oh, yes.

20 Q. Is there anything between your home and the GML facility
21 that would serve as a noise barrier?

22 A. Nothing.

23 Q. Any trees?

24 A. Not that would do any good.

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1 Q. Any bushes or anything like that?

2 A. No.

3 Q. Okay.

4 HEARING OFFICER LANGHOFF: Just a second, please. Mr.
5 Young, would you write on here which way is north and draw the
6 street here in front of the house. I assume it is the front of
7 the house. Just in case the Board would look at this. Does the
8 street run --

9 THE WITNESS: Nothing runs north and south in Chester.

10 HEARING OFFICER LANGHOFF: Well, okay.

11 THE WITNESS: It is true. This would be Swanwick.

12 HEARING OFFICER LANGHOFF: Okay. That's all you need to
13 put in there, then. That is what I thought. Thank you.

14 THE WITNESS: This is northeast and the plant is over here.

15 Q. (By Mr. Muskopf) Would you put a big "X" on C31 where
16 the cake plant is?

17 HEARING OFFICER LANGHOFF: Just the direction there.

18 THE WITNESS: Okay.

19 HEARING OFFICER LANGHOFF: Okay. Thank you. That's fine.

20 Q. (By Mr. Muskopf) Can you do your best on C8 to write a
21 north arrow?

22 A. North?

23 Q. Yes.
24 A. North would probably be over here. I am guessing. And

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1 that is strictly a guess.
2 Q. Okay. You are writing an "X" on there. Why don't you
3 highlight that "X" in blue?
4 A. Okay. Great.
5 Q. All right. Thank you. Now, you own a home -- actually
6 you are a homeowner times two, right?
7 A. Correct.
8 Q. Your other home besides your Chester home is where?
9 A. Lake of Egypt.
10 Q. And that's near Marion, Illinois?
11 A. Correct.
12 Q. How long have you had that property?
13 A. Seven years plus.
14 Q. Which one is your primary residence?
15 A. Chester.
16 Q. What does the address on your driver's license say?
17 A. Chester.
18 Q. Where do you vote?
19 A. Chester.
20 Q. Did you vote in this last election?
21 A. Sure did.
22 Q. Where at?

23 A. In Chester. (The witness taking his driver's license
24 out.)

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1 Q. You don't need to show it to me, but for the record I am
2 looking at Mr. Young's Illinois driver's license. It says 1009
3 Swanwick Street.

4 MR. MUSKOPF: Do you want to take a look?

5 MR. SAFLEY: That's fine. Thank you. I am fine. Thank
6 you, sir.

7 THE WITNESS: All right.

8 MR. MUSKOPF: Mr. Hearing Officer?

9 HEARING OFFICER LANGHOFF: That's fine.

10 Q. (By Mr. Muskopf) Do you have family nearby the lake
11 house or the Chester house?

12 A. The Chester house. We have a son in Sparta.

13 Q. Okay. Does your wife have family in the Randolph County
14 area?

15 A. Yes. Her parents live here in Chester.

16 Q. And Chester is located in Randolph County, for the
17 record, correct?

18 A. Right.

19 Q. Over the past several years, how much time have you
20 spent -- can you break it down, like percentage wise, roughly
21 between the two houses or days of the week, something like that?

22 A. I would say from Sunday till Friday evening we are in
23 Chester and the rest of the time we might be down at the lake.

24 Q. So it is sort of a weekend getaway for you?

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1 A. (Nodded head up and down.)

2 Q. You are nodding your head yes?

3 A. Yes. Sorry about that.

4 Q. That's all right.

5 A. I forget.

6 Q. Do you ever find yourself going to the lake house to get
7 away from the noise?

8 A. Yes.

9 Q. Would you spend more time in your Chester house if it
10 weren't as noisy as --

11 A. I think so.

12 Q. Now, did there used to be any structures of any kind
13 between your house and the cake plant that would have served as a
14 noise buffer?

15 A. Years ago, yes, there was three houses, from what I
16 recall.

17 Q. And what happened?

18 A. Three houses and trees.

19 Q. What happened to them?

20 A. GML bought them and tore them down.

21 Q. And now we have a parking lot?

22 A. Now we have a parking lot.
23 Q. Exhibit C14, tell me what that is?
24 A. That is the property that we are talking about, where I

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1 think there used to be three houses.
2 Q. Now, who took that picture?
3 A. I did.
4 Q. Where did you take it from?
5 A. I took it from an upstairs window.
6 Q. Can you just describe -- you are looking out an upstairs
7 window?
8 A. Right.
9 Q. What is here in the foreground?
10 A. A parking lot.
11 Q. Okay.
12 A. Then the main plant is here and then here is your five
13 tanks and I don't know what they do here. And back here you can
14 see just a little bit of their other buildings.
15 Q. Okay. There is some writing on here. Is that yours or
16 your wife's?
17 A. That is my wife's.
18 Q. Okay. I will talk to her about it, then.
19 A. Okay.
20 Q. C15, what is that? Is that basically --

21 A. This is basically the same picture as this one. The
22 only thing, there is a tanker truck sitting here. And this one
23 here is looking over towards the main plant and their office
24 parking lot and their office building.

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1 Q. Well, let me just interrupt you. Are these basically
2 views of the GML facility --

3 A. Right.

4 Q. -- from one of your upstairs rooms?

5 A. Correct. The same place that was taken.

6 Q. C16, is that also a view of the GML facility from your
7 upstairs room?

8 A. True.

9 Q. Okay. Have you ever talked to anybody at GML about the
10 noise problem?

11 A. I sure have.

12 Q. Let me show you C17, 18, 19 and 20, and ask you if these
13 are letters between you and Mr. Don Welge about the noise
14 problem?

15 A. Yes, they are.

16 Q. When you talked to -- who did you talk to, first of all,
17 at GML about the noise problem?

18 A. Mr. Don Welge.

19 Q. Anybody else?

20 A. Mr. Mike Welge.

21 Q. What did they tell you about the noise? Just sum it up
22 for us.

23 A. I can sum it up by basically saying that they was not
24 going to do a damn thing.

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1 Q. So --

2 A. That's the whole summary. I mean, they put a little
3 sugar coating on it.

4 Q. Well, you heard Mr. Hutchinson describe some of the
5 changes that they made, didn't you?

6 A. Right.

7 Q. Do you disagree that they made those changes?

8 A. No, they made changes. It didn't do any good.

9 Q. All right.

10 A. They still got problems. We have got big problems.

11 Q. And did you try to resolve those problems with them?

12 A. No. I can't resolve their problems.

13 Q. I mean, did you try to --

14 A. I mean, they wouldn't listen to me.

15 Q. But did you try to get them to resolve their problems?

16 A. I went over and talked to them, and I was told that it
17 would be a cold day in hell before they would ever buy us out,
18 and that the house would rot down before they would ever do such.
19 That was the last communication that I had with them. I said,

20 okay, fine. You do what you have to do. I will do what I have
21 to do. So we got ahold of Mr. Zak.

22 Q. Now, when you look out your windows or when you look at
23 the GML facility, can you tell what the noise sources are?

24 A. No. I cannot see the tankers unloading on the other

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1 side of the big tanks.

2 Q. When they used to unload closer to your house, you could
3 see that, I guess?

4 A. Right.

5 Q. Well, what about the dumpster? Can you see the --

6 A. Yes.

7 Q. Do you find that to be noisy?

8 A. Very.

9 Q. Does it get on your nerves?

10 A. Yes.

11 Q. Make you mad?

12 A. Yes.

13 Q. Cause you to lose sleep?

14 A. Yes.

15 Q. Puts you in a bad mood?

16 A. It makes me very mad and very unhappy.

17 Q. Hard to enjoy peace and quiet in your own house?

18 A. Yes, isn't that the truth. Yes.

19 Q. What do you like to do? Do you read, watch TV, or what?

20 A. Read, garden, yard work, TV.
21 Q. When you are sitting there reading do you ever find that
22 you have some trouble concentrating because of the noise?
23 A. Yes.
24 Q. What about when you are watching TV?

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1 A. Yes.
2 Q. Do you turn it up louder?
3 A. It has to go up louder.
4 Q. Why is that?
5 A. Because of the outside noise.
6 Q. You try to drown it out?
7 A. You can't drown it out, especially when they are
8 thumping on the side of the tanks.
9 Q. Okay.
10 A. And -- go ahead.
11 Q. No, go ahead.
12 A. No.
13 Q. All right. Have you ever seen them thumping on the side
14 of the tank?
15 A. Yes, I sure have.
16 Q. What do they use?
17 A. It looks like a big rubber mallet to me.
18 Q. How far away can you here that?

19 A. Three or four blocks, at least.

20 Q. What is the furthest away you have ever heard them
21 banging on the side of the trucks?

22 A. Up on George Street, which is at least three blocks
23 away.

24 Q. So can you hear it in your house, then?

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1 A. Yes, very loudly.

2 Q. Is there any room in your house that you can't hear
3 that?

4 A. I might be able to go down to the basement, in the back
5 portion of it.

6 Q. But that's not where you live?

7 A. No.

8 Q. What about the dumpster noise? Can you hear that inside
9 of your house?

10 A. I sure can.

11 Q. You said you like to garden. I know you gave me a nice
12 pepper plant. Do you find the noise from GML to bother you when
13 you are outside gardening?

14 A. I more or less ignore it unless I have a friend or
15 somebody there. You can't sit on the front porch and communicate
16 with anybody. I mean, that is at times when the dumpster is
17 unloading or when they are unloading some of the trucks.

18 Q. Would you sit on your front porch if it weren't for the

19 noise?

20 A. I would, sure.

21 Q. Okay.

22 A. I would sit out there quite a bit.

23 Q. Did you used to do that before the noise got to the
24 point where it was unbearable for you?

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1 A. Right, right.

2 Q. Do you spend less time outside because of the noise?

3 A. No, that doesn't make any difference. I mean --

4 Q. Does it bother you more inside than outside for some
5 reason?

6 A. Yes.

7 Q. How come?

8 A. Maybe I am not concentrating as much on -- there is
9 nothing -- unless I am trying to read or something like that. I
10 mean --

11 Q. What about -- let's see. Now, we talked about sleep. I
12 want to talk to you a little bit more about sleep disturbance.
13 There is a difference between having trouble getting to sleep
14 because of noise and being woken up because of noise. Do you
15 have either or both of those problems?

16 A. Both.

17 Q. What is your usual bedtime?

18 A. Around 11:00.
19 Q. And have you ever heard noises around 11:00 that have --
20 A. I have heard a lot of noises around 11:00.
21 Q. From GML?
22 A. From GML. Last night it was a quarter to 12:00 before I
23 went to bed, because I was outside videotaping. There was very
24 loud noises.

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1 Q. What were they doing?
2 A. They were unloading a truck.
3 Q. At what time?
4 A. At a quarter to 12:00. It is on the tape.
5 Q. Was it in the flour unloading area that we have heard
6 Mr. Hutchinson describe?
7 A. It was, yes.
8 Q. It is this pneumatic unloading of this --
9 A. Uh-huh.
10 Q. -- flour or sugar or something out of a tank truck?
11 A. Right.
12 Q. You are telling us that you heard it last night at
13 11:00?
14 A. At 11:45.
15 Q. How long did -- is that when it started or when it
16 ended?
17 A. That's whenever I got tired and I said the hell with it

18 and I am going in the house.

19 Q. Do you remember what time that unloading started last
20 night?

21 A. I don't know.

22 Q. You don't know what time --

23 A. Because I didn't get home until -- it was later.

24 Q. So when this noise wakes you up you said you have a

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1 problem with that, right, being asleep at night and the noise
2 waking you up?

3 A. Sure.

4 Q. Do you have trouble getting back to sleep then?

5 A. Yes.

6 Q. How come?

7 A. Well, like I said, I am not 20 years old anymore.

8 Q. So as you --

9 A. I do not sleep as well or as sound as I used to.

10 Q. So are you saying that as you have gotten older you have
11 found that it is harder to get back to sleep once you are woken
12 up?

13 A. Sure.

14 Q. So have you ever taken sleeping pills or anything like
15 that to help you get to sleep?

16 A. Sure do.

17 Q. How often do you do that kind of thing?
18 A. Well, I take Valium three times a day.
19 Q. Right now?
20 A. Right now. That is the reason I am so calm.
21 Q. Well, I am glad to hear that. Well, the Valium -- is
22 the Valium prescription -- is it a prescription?
23 A. It is a prescription, yes.
24 Q. Okay. What is it dispensed for?

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1 A. I guess it is supposed to be a calming agent. I
2 cannot -- I don't know. I take it because I was told to.
3 Q. Because why?
4 A. Because I was told to.
5 Q. By whom?
6 A. Well, it is recommended by the doctor and it says right
7 on it take --
8 Q. Why did you go-
9 A. -- three times a day.
10 Q. Did you tell your doctor something that caused him to
11 say that we need to get you on Valium?
12 A. Yes.
13 Q. What did you tell him?
14 A. Well, that we had a problem.
15 Q. What do you mean, a noise problem?
16 A. Well, noise and everything else that goes with it, and

17 no solution. And if you can't sleep -- and I have gone probably
18 two nights without sleep, at least.

19 Q. Okay. At all?

20 A. At all, no sleep, and I mean wide awake.

21 Q. Two nights in a row?

22 A. Yes, and it --

23 Q. Because of the noise?

24 A. -- kind of wears you down.

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1 Q. So when you have sleep disturbance because of the GML
2 noise, do you find that you are tired during the day?

3 A. Very.

4 Q. Do you ever take naps?

5 A. Yes.

6 Q. Are you --

7 A. I try to.

8 Q. Are your naps ever disturbed about GML noise?

9 A. Yes. You might as well forget it.

10 Q. As I understand it, you have got a partial knee
11 replacement in each knee?

12 A. Right.

13 Q. When was the last one done?

14 A. Six weeks ago.

15 Q. Where did you recuperate?

16 A. Down at the lake.
17 Q. When was the first one done?
18 A. Two months ago.
19 Q. Where did you recuperate from the first one?
20 A. In Chester.
21 Q. What was the difference like between being at the lake
22 and being in Chester?
23 A. There is a lot of difference. Down at the lake I could
24 rest, sleep.

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1 Q. Did that have --
2 A. Instead of being aggravated by the boom, boom, booming
3 on the tankers and the roaring and so forth.
4 Q. So did it have anything to do with the noise the fact
5 that your recuperation was easier at the lake than it was in
6 Chester?
7 A. I don't know if it -- it should have. I wasn't as
8 nervous.
9 Q. Now, since you moved in in 1995, did you ever try to
10 sell that house in Chester?
11 A. Yes, before we moved in, yes.
12 Q. Okay. So when did you own -- there is a different date
13 of -- the move in date was different from the date that you
14 acquired the property?
15 A. Right. We acquired the property in 1995.

16 Q. Okay. When did you move in exactly?
17 A. I can't answer that. I don't know.
18 Q. Was it in 1995?
19 A. No.
20 Q. Okay.
21 A. Probably two years. I believe two years later, because
22 we did a lot of work.
23 Q. Did you ever complain to anybody in the city government
24 about the noise problem?

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1 A. Yes.
2 Q. To whom?
3 A. The mayor, all of the aldermen, anybody that would
4 listen.
5 Q. Did anybody listen to you?
6 A. It didn't do any good. I mean, yes, they all listened.
7 I sat in just about all of the aldermen's living room and run the
8 tapes for them, and there was the end of that.
9 Q. Are you talking about videotape?
10 A. Videotape, right.
11 Q. Well, did they do anything for you?
12 A. Nothing.
13 Q. Did they say that they were going to?
14 A. No.

15 Q. Do you think they can do anything?

16 A. I can't answer that the way I want to. Sorry about
17 that.

18 Q. That's fine. Now, are you ever bothered by regular
19 vehicle traffic on Swanwick?

20 A. Occasionally.

21 Q. Are you ever -- what about the -- is there anything
22 bothersome -- is there any noise from the parking lots that are
23 all around your house?

24 A. Yes.

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1 Q. What kind of noise comes from those parking lots?

2 A. They are all gravel. And anybody that has ever driven
3 on a rock surface knows that when there is -- if it is quiet at
4 night and somebody drives on the parking lot and you have a
5 window open that you are going to hear it. Nowadays most new
6 cars have the automatic locking system. When you lock the car,
7 what do you get, you get a beep. And besides slamming doors.

8 Q. What times of day or night do you hear noises from those
9 parking lots?

10 A. It can be just -- well, at break time, at shift change.

11 Q. Are there any specific times when you notice more
12 activity in those lots?

13 A. Whenever I notice it? Yes, I would say probably from
14 6:00 in the morning until 8:00.

15 Q. You hear the noises --

16 A. Then at 3:00, 3:00 in the morning, there is a lot of
17 them that are noisy.

18 Q. You hear the kinds of noises that you have described
19 already?

20 A. Sure.

21 Q. Okay.

22 A. Yeah.

23 Q. You mentioned your noise meter. Do you have that with
24 you?

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1 A. I do.

2 Q. Could we have a look at that?

3 A. Yes.

4 Q. Great. Would it bother you if I put a sticker on it?

5 A. Go ahead.

6 HEARING OFFICER LANGHOFF: Are you going to submit that
7 into evidence?

8 MR. MUSKOPF: No. I just want to -- I guess we can always
9 just refer to it as the noise meter.

10 HEARING OFFICER LANGHOFF: Let's do that.

11 MR. MUSKOPF: All right.

12 Q. (By Mr. Muskopf) Okay. So what is this?

13 A. That's the noise -- the sound level meter.

14 Q. Where did you get it?
15 A. Radio Shack.
16 Q. How much did you pay for it?
17 A. \$60.00 or less, somewhere in that neighborhood.
18 Q. Is this always the same one you have used?
19 A. The same one.
20 Q. Why did you get it?
21 A. So I could record the noise level from the neighborhood.
22 Q. And how do you use it?
23 A. How do you use it?
24 Q. Uh-huh.

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1 A. Well --
2 Q. What's the first thing you do?
3 A. I use it according to the book, the directions. And I
4 was also told by Mr. Greg Zak how to use it properly. The first
5 thing you do is turn it on.
6 Q. That is usually a good start.
7 A. Right. And then make sure the battery doesn't say that
8 it is bad. Hit your weighting and your response, which is slow
9 and A for response.
10 Q. Those are the settings that you use it on slow and A?
11 A. Uh-huh.
12 Q. Okay.
13 A. If the low setting goes to six -- well, the low setting

14 probably goes down to about 55, I believe, and it goes up to 70.
15 And if it starts blinking at 70, you just raise it up to the next
16 notch. And there is a lot of times when the noise level is over
17 70 dB.

18 Q. Now, are you talking about this dial indicator?

19 A. Uh-huh, right.

20 Q. Where it says range and it has got an arrow?

21 A. Uh-huh, yep.

22 Q. So you start with it on 60?

23 A. Always.

24 Q. And then do you ever kick it up to 70?

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1 A. Yes.

2 Q. Why do you do that?

3 A. Because the low reading is not high enough.

4 Q. Oh, so what you are --

5 A. The noise level is higher than the meter says.

6 Q. Okay. So if it is set on 60, it is not going to --

7 A. It will only go up to 70.

8 Q. And then it just --

9 A. And then you kick it up on 70 and then it will go up to
10 I think probably 80.

11 Q. Okay. Is this thing directional?

12 A. It is.

13 Q. And what are you supposed to do? You point it at the --
14 A. You point it at the noise source.
15 Q. Okay. And where have you taken measurements from with
16 that meter?
17 A. From the property line, the front steps.
18 Q. Now, where on the property line?
19 A. On the northeast towards Gilster-Mary Lee's plant.
20 Q. Okay.
21 A. Which is on the northeast side.
22 Q. Are you close to the sidewalk?
23 A. Right, on the property line, or up by our front porch or
24 the upstairs window.

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1 Q. Any place else?
2 A. I have got two windows upstairs.
3 Q. You go --
4 A. There is mainly one that I use.
5 Q. Has this thing ever acted funny on you?
6 A. No.
7 Q. Have you ever had it calibrated or fixed?
8 A. It was sent to Mr. Zak and he checked it and he said it
9 was perfect.
10 Q. Okay.
11 A. No calibration needed.
12 Q. You have been -- you have used it since you got it back

13 from him?

14 A. Right.

15 Q. You used it before you gave it to him?

16 A. Right.

17 Q. And it is the same one?

18 A. The same one.

19 Q. So you use this along with the video camera, right?

20 A. Right.

21 Q. Okay. Tell me how you use the two together?

22 A. Okay.

23 HEARING OFFICER LANGHOFF: Excuse me, Counsel. Let the

24 record reflect that this is a Radio Shack sound level meter,

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1 catalog number 33-2055 on the back. I have seen these before. I

2 am sorry. Go ahead.

3 THE WITNESS: Okay. Anyhow, what we do is we get the
4 direction where the noise level is the highest and videotape it.

5 That's it.

6 Q. (By Mr. Muskopf) Videotape what, the meter?

7 A. The meter and the sound level.

8 Q. Okay. And you switch --

9 A. Then I go to where the sound is actually coming from.

10 HEARING OFFICER LANGHOFF: Okay. Let the record reflect

11 that the witness is holding the sound meter in his left hand,

12 giving a demonstration as if he was listening to sound,
13 indicating that he has the camera in his right hand. It is an
14 Hitachi, Stable Pix times 32 zoom, rapid reflex camera, which he
15 is demonstrating that he takes a picture of the meter and then
16 the source. I am sure we will see that on some videotape. Thank
17 you.

18 MR. MUSKOPF: Thanks.

19 Q. (By Mr. Muskopf) With the permission of the Hearing
20 Officer, what I would like to do is show five minutes or less of
21 videotape to determine whether, according to Mr. Young, it is a
22 good indication of what we could see on the other -- all nine
23 videotapes, if anybody had the time or inclination to sit through
24 them?

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1 HEARING OFFICER LANGHOFF: Okay. Mr. Safley?

2 MR. SAFLEY: I have no objection.

3 HEARING OFFICER LANGHOFF: Okay. I think that would be
4 very helpful. I think we will have to arrange it so that the
5 experts can take a look at them, too.

6 MR. MUSKOPF: Okay.

7 HEARING OFFICER LANGHOFF: Let's go off the record.

8 (Whereupon a short recess was taken to set up the
9 videotape.)

10 HEARING OFFICER LANGHOFF: Okay. Back on the record.

11 MR. MUSKOPF: For the record, I would like to first put in

12 videotape number one, which is Exhibit C22. And the tape has
13 been rewound to the very beginning.

14 HEARING OFFICER LANGHOFF: Would you move that cup, Mr.
15 Muskopf?

16 MR. MUSKOPF: Yes.

17 HEARING OFFICER LANGHOFF: Thank you.

18 MR. MUSKOPF: Now I am pausing the tape, and I want the
19 record to reflect that there is a time and date stamp that this
20 video camera has. It appears to say 1:17 p.m., and the date
21 looks like it is September 3 of 1999.

22 HEARING OFFICER LANGHOFF: Okay. Let the record reflect
23 that.

24 MR. MUSKOPF: Excuse me. It is September 13th.

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1 (The videotape playing.)

2 THE WITNESS: Now, that was before the new tanks.

3 Q. (By Mr. Muskopf) Now, Mr. Young, you have just watched
4 15 seconds of video footage, right?

5 A. Right.

6 Q. Is that your handiwork?

7 A. Yes.

8 Q. Can you tell us what we have seen so far in the last --
9 in this past 15 seconds?

10 A. That is the loading or unloading of a dumpster, I think.

11 Q. Okay. At the GML facility?
12 A. Yes.
13 Q. Okay.
14 A. The parking lot next to the house.
15 Q. Was that your noise meter we saw in the bottom of the --
16 A. Yes.
17 Q. -- screen a little while ago?
18 A. Right.
19 (The videotape playing.)
20 Q. (By Mr. Muskopf) Mr. Young, could you please describe
21 the sounds that you were hearing when you filmed this?
22 A. Just what you are hearing.
23 Q. Yes, but for the record --
24 A. A very loud screeching noise.

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1 Q. Is it a metal on metal sound?
2 A. Metal on metal.
3 Q. Can you hear the noise of the engine of that tractor?
4 A. Somewhat
5 (The videotape playing.)
6 Q. (By Mr. Muskopf) I also want the record to reflect that
7 there is some kind of counter. I am not sure if it is the VCR
8 and TV or if it on the tape.
9 A. That should be a footage counter, I think. Run it and I
10 will tell you.

11 Q. You can barely see it.

12 (The videotape playing.)

13 A. Yeah, yeah, that's what that is. At the bottom is the
14 time and the date.

15 (The videotape playing.)

16 A. Why don't you pick a newer one. That's an older tape.

17 Q. (By Mr. Muskopf) Okay. Mr. Young, can you tell us what
18 we just saw, what they were doing over there at GML?

19 A. They were loading a dumpster.

20 Q. Are they still doing that kind of thing up to the
21 present date?

22 A. Not at that location, no.

23 Q. Okay.

24 A. That was on that parking lot where they used to unload.

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1 Q. Do they still load and unload somewhere?

2 A. Yes.

3 Q. I mean, where you can hear it and see it from your
4 house?

5 A. Oh, yes.

6 Q. Is that the kind of noise --

7 A. Yes.

8 Q. -- that that thing typically makes?

9 A. No, not all of the time. But they do make that noise,

10 yes.

11 Q. Okay. That's the kind of thing you live with on a
12 day-to-day basis?

13 A. Oh, yes, uh-huh.

14 Q. All right. I want to skip to tape number six, which is
15 Exhibit C27, and run another 30 seconds of it and then have you
16 tell us about it?

17 A. Okay.

18 HEARING OFFICER LANGHOFF: Okay. Mr. Safley?

19 MR. SAFLEY: I have no objection. I am sorry.

20 HEARING OFFICER LANGHOFF: Okay.

21 MR. MUSKOPF: Now, I also want the record to reflect that
22 this tape it not rewound all the way to the very beginning but,
23 rather, it is maybe a minute or so into the tape.

24 (The videotape playing.)

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1 THE WITNESS: And that was 5:10 a.m.

2 Q. (By Mr. Muskopf) Tell us what we are seeing here, Mr.
3 Young?

4 A. Well, you are seeing a very loud noise for at that time
5 of the morning.

6 Q. And is this time correct, 5:10 a.m.?

7 A. It is correct or should be approximately.

8 Q. And this date?

9 A. February the 29th.

10 Q. Of the year 2000?
11 A. Of the year 2000.
12 Q. Okay. What was your noise meter saying?
13 (The videotape now playing with the sound off.)
14 A. It is 55, and there it says 54 to 56, and 55.
15 Q. (By Mr. Muskopf) Where were you taking this footage
16 from?
17 A. That should have been taken, I think, from the window
18 upstairs.
19 Q. Okay. And it looks like it was nighttime.
20 A. Yes.
21 Q. But now we have skipped to daytime?
22 A. Right. This is at 8:18 a.m., February the 29th of 2000.
23 Q. What does your meter say?
24 A. It says 69.

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1 Q. Where are you at? Where are you taking this footage?
2 A. The same place, looking out of the window upstairs.
3 Q. What kind of --
4 (The videotape now playing with the volume on.)
5 Q. (By Mr. Muskopf) What are they doing there that is
6 making noise?
7 A. Evidently unloading, because -- I can't say that for
8 sure, because I can't see it.

9 (The videotape now playing with the sound off.)

10 Q. (By Mr. Muskopf) That would have been after they moved
11 the loading, unloading station?

12 A. I think maybe they were in the process of putting it up
13 then.

14 Q. Okay.

15 A. You will have to ask somebody here from the company that
16 knows when they was installed, because I do not -- I cannot come
17 up with an exact date.

18 Q. Is the noise that we were hearing on this tape just a
19 little bit ago typical of what you hear on a day-to-day basis?

20 A. Right.

21 Q. Okay.

22 A. There are two years of tapes there to show you.

23 Q. Okay.

24 A. Anywhere from probably 15 seconds to maybe three

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1 minutes.

2 MR. MUSKOPF: Unless the Hearing Officer would find it
3 useful, or someone else would, to show more video footage, I am
4 through with that --

5 HEARING OFFICER LANGHOFF: If --

6 THE WITNESS: Do you want to show the last one?

7 HEARING OFFICER LANGHOFF: That's fine. That is
8 acceptable. If Mr. Safley wants to show anything from the tapes

9 he can at the appropriate time.

10 MR. SAFLEY: Yes, I will.

11 MR. MUSKOPF: I think that's enough.

12 HEARING OFFICER LANGHOFF: Okay. Thank you.

13 Q. (By Mr. Muskopf) Okay. Would you take a look at these?

14 They are Exhibits C22, C23, C24, C25, C26, C27, C28 and C29, and

15 tell me what those are?

16 A. Those are --

17 Q. And C30.

18 A. Okay.

19 Q. They are videotapes, right?

20 A. Yes, videotapes.

21 Q. Are they yours?

22 A. Yes, they are mine.

23 Q. They say on --

24 A. I have many hours tied up in these.

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1 Q. Do they say on the labels the dates --

2 A. The dates.

3 Q. -- that you were taking the footage that is on those

4 tapes; is that right?

5 A. Right, right. Correct.

6 Q. Now, your camera has a time and date stamp?

7 A. Right.

8 Q. So is it always on on all of these tapes?
9 A. I believe it is on on all of them.
10 Q. Okay.
11 A. It might have been switched off occasionally, but not --
12 I try -- I think it is on the biggest part of the time.
13 Q. Do you generally try to make sure that that time and
14 date stamp is accurate?
15 A. Yes.
16 Q. Okay. So when we are watching -- so if anybody were
17 watching some of these tapes and they saw that --
18 A. They should be fairly accurate.
19 Q. Okay. Give or take a minute or two or something like
20 that?
21 A. Yeah.
22 Q. Okay.
23 A. As far as I know.
24 Q. Okay. Most of the time when -- if a person is watching

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1 those tapes, can you tell the point, the position from which you
2 are filming?
3 A. I always say where I am at at the time.
4 Q. Okay.
5 A. I am looking out the window or I am on the property line
6 or I am by the front steps or the front porch or I am sitting on
7 the front porch.

8 Q. Okay. Even if you didn't say something, would it be
9 fairly easy to tell from where you are taking the footage?

10 A. For me, yes.

11 Q. Okay.

12 A. For anybody else I don't know.

13 Q. Okay. Have you reviewed these tapes since you filmed
14 the footage that is on them?

15 A. They have always been reviewed and everything that --
16 the high level of noise has been recorded. My wife went through
17 each and every one of these tapes and cataloged everything, the
18 date, time, noise level.

19 Q. Okay. And from what you have seen in reviewing them, it
20 was a successful transfer from the video camera to these VHS
21 tapes, meaning that the copying procedure -- that these tapes are
22 accurate -- are these tapes accurate reflections of the video
23 footage that you took?

24 A. They are accurate. They have not been monitored,

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1 changed or anything. That's the way that it came off the camera.

2 Q. Okay.

3 A. There have been no changes --

4 Q. When you look --

5 A. -- at all.

6 Q. When you look at these videotapes, it looks just like it

7 looked when you were filming?

8 A. Right.

9 Q. Okay.

10 A. Yep.

11 MR. MUSKOPF: All right. Mr. Young, I don't have anymore
12 questions for you.

13 HEARING OFFICER LANGHOFF: All right. Thank you, Mr.
14 Muskopf. Mr. Safley?

15 MR. SAFLEY: Would you like to go ahead? I don't think I
16 will be too long.

17 HEARING OFFICER LANGHOFF: Please.

18 MR. SAFLEY: I just realized that it is after noon.

19 HEARING OFFICER LANGHOFF: Yes, please.

20 MR. SAFLEY: Okay.

21 CROSS EXAMINATION

22 BY MR. SAFLEY:

23 Q. Mr. Young, again, my name is Tom Safley. I represent
24 Gilster-Mary Lee. I only have a few questions for you.

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1 First, you mentioned that the furniture store across the
2 street from your house went out of business?

3 A. They sold out to the other furniture store in town.

4 Q. Do you know when that happened?

5 A. Just recently.

6 Q. Okay. Within the last couple of months?

7 A. I would say so.

8 Q. You mentioned earlier that Greg Zak told you to use
9 weighting C -- pardon me -- weighting A when you were taking the
10 noise measurements?

11 A. Right.

12 Q. If I told you that I had watched those videotapes this
13 last weekend and saw a couple of occasions on which the meter
14 said that the weighting C was being used, would you --

15 A. It happened.

16 Q. Okay.

17 A. I know it.

18 Q. Well, that is fine.

19 A. I didn't change or alter any of the tapes.

20 Q. I understand.

21 A. It happened.

22 Q. Would it be fair to say that you certainly tried to use
23 weighting A all of the time?

24 A. Yes.

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1 Q. Okay. Fair enough. I just wanted to ask.

2 A. Sometimes things do happen.

3 Q. I understand. Now, am I correct that you inherited the
4 house in 1995?

5 A. Correct.

6 Q. And you were living at Lake of Egypt at that time?
7 A. Right.
8 Q. And you continued to live there for maybe a couple of
9 years after --
10 A. Right.
11 Q. -- you inherited the house?
12 A. Yes.
13 Q. And then you chose to move back to Chester?
14 A. Yes, after we couldn't sell it.
15 Q. Oh, okay. You couldn't sell the house in Chester?
16 A. Yes.
17 Q. Okay.
18 A. We put it up for sale.
19 Q. Okay.
20 A. And --
21 Q. So you chose to move into this house here in Chester?
22 A. Right, because we have relatives here, and we don't have
23 any down there. I have a few health problems, and we just think
24 that it is better to be back here. My wife's parents are still

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1 living. Both of them are close to 90 and are living at home by
2 themselves. She has a brother here. We have a son in Sparta.

3 Q. Before you inherited the house, did you visit it --

4 A. Yes.

5 Q. -- to visit your parents?

6 A. Right.

7 Q. And so you were aware when you inherited the house that
8 Gilster-Mary Lee had a factory next door?

9 A. Yes.

10 Q. Okay. When you tried to sell the house did you list it
11 with a real estate agent?

12 A. Nope.

13 Q. Mr. Muskopf showed you some letters earlier that were
14 written back and forth between you and Gilster-Mary Lee?

15 A. Yes.

16 Q. I noted that in at least one of those letters it
17 references a complaint that you had about Gilster-Mary Lee
18 employees parking in front of your house?

19 A. Yes.

20 Q. Okay. Did you ask Gilster-Mary Lee to instruct the
21 employees to stop doing that?

22 A. Yes.

23 Q. Did they instruct their employees to stop doing that?

24 A. I was told that there was letters put up on their

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1 bulletin boards and it didn't do any good.

2 Q. Do they still park in front of your house?

3 A. Well, we had it -- I went before the city council and
4 had it turned into handicap parking.

5 Q. Okay. Has that helped with the parking issue --
6 A. Yes.
7 Q. -- in front of your house?
8 MR. MUSKOPF: Would you excuse me a second.
9 MR. SAFLEY: Sure.
10 MR. MUSKOPF: I just want to make an objection to this line
11 of questioning. Unless there is a noise problem related to the
12 parking issue, I just -- I don't know that it is worth talking
13 about.
14 HEARING OFFICER LANGHOFF: Okay. Your objection is
15 overruled.
16 Q. (By Mr. Safley) Now, you all have made several
17 improvements to your house since you inherited it?
18 A. We made a lot of improvements.
19 Q. That includes installing a new furnace?
20 A. A new furnace.
21 Q. New air-conditioning?
22 A. New air-conditioning. All new duct work.
23 Q. Okay. New jacuzzi tub?
24 A. New jacuzzi tub.

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1 Q. New carpeting?
2 A. All new carpeting.
3 Q. New wiring?
4 A. Some new wiring.

5 Q. New ceiling fans?

6 A. New ceiling fans.

7 Q. Okay.

8 A. New plumbing. New hot water heater. What else.

9 Q. That's fine. I just wanted to get a --

10 A. Well --

11 Q. -- flavor of the things. Now, Mr. Muskopf asked you

12 about the houses that used to be located between your house and

13 Gilster-Mary Lee's plant.

14 A. (Nodded head up and down.)

15 Q. Do you remember when those were torn down?

16 A. No.

17 Q. Did it happen after you inherited the house?

18 A. No.

19 Q. Do you know that it was Gilster-Mary Lee that tore the

20 houses down?

21 A. I would think so.

22 Q. Why is that, just your recollection or --

23 A. I don't recall.

24 Q. Okay. Do you know of anything that Gilster-Mary Lee

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1 that has torn down since you inherited the house in 1995?

2 A. Yes.

3 Q. What is that?

4 A. The house over on Light Street.

5 Q. Okay. That's on the other side of your house from the
6 plant or --

7 A. On what I would call the east side next to -- that is
8 where they have a parking lot now.

9 Q. They torn that down after 1995?

10 A. You said --

11 Q. I apologize if I didn't ask the question very clearly.

12 A. No, you didn't. I didn't answer very clearly.

13 Q. Did they tear that house down after 1995?

14 A. No, I don't think.

15 Q. Okay.

16 HEARING OFFICER LANGHOFF: For the record, would you
17 describe that house and the property?

18 MR. SAFLEY: Yes.

19 Q. (By Mr. Safley) Mr. Young, were you referring to the
20 house that used to be located where it says GML rock parking lot?

21 A. Yes.

22 Q. At the corner of Light and Swanwick Street?

23 A. Yes, right here.

24 HEARING OFFICER LANGHOFF: What is the exhibit ?

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1 MR. SAFLEY: Exhibit C8.

2 HEARING OFFICER LANGHOFF: Thank you.

3 THE WITNESS: Yes, this lot right here.

4 Q. (By Mr. Safley) Okay. Thank you. Now, Mr. Young, am I
5 correct that you have a hearing problem?

6 A. Yes.

7 Q. And that is tinnitus?

8 A. Yes.

9 Q. You got that tinnitus while serving in the Armed Forces?

10 A. Right.

11 Q. You have received medical treatment for that problem?

12 A. There is nothing they can do for it.

13 Q. Okay.

14 A. So they tell me.

15 Q. Okay. I next want to go to one of the videotapes, the
16 first one. This will be my last couple of questions.

17 MR. SAFLEY: Did you rewind this, Jeff.

18 MR. MUSKOPF: I didn't rewind it.

19 MR. SAFLEY: Okay.

20 MR. MUSKOPF: The TV is unplugged.

21 MR. SAFLEY: I am sorry. I thought I said that I was going
22 to show --

23 MR. MUSKOPF: Oh, I am sorry. I didn't hear you.

24 MR. SAFLEY: That is okay.

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1 HEARING OFFICER LANGHOFF: Let's go off the record.
2 (Whereupon a short recess was taken to set up the

3 videotape.)

4 HEARING OFFICER LANGHOFF: Okay. We are back on record.

5 Q. (By Mr. Safley) Mr. Young, I would like to play a little
6 bit of the videotape that we watched earlier and ask you to take
7 a look at it and then ask you a couple of questions.

8 HEARING OFFICER LANGHOFF: Counsel, what tape is that?

9 MR. SAFLEY: I apologize. This is the first tape that we
10 reviewed earlier tape, number one, which is Exhibit --

11 HEARING OFFICER LANGHOFF: C22.

12 MR. SAFLEY: C22. Thank you.

13 Q. (By Mr. Safley) Again, this is the date -- well,
14 actually, I apologize. I just saw something else I want to ask
15 you about. I first want to start at the very beginning of that
16 tape where we started before, and this may be difficult to see
17 where you are sitting. But at the bottom right-hand corner of
18 the tape, as Mr. Muskopf noted earlier, states that the date
19 measurement, the date of that tape is 09-13 of 1999. And I think
20 you stated earlier that that was accurate, the date on which you
21 took that footage?

22 A. As far as I --

23 Q. Okay.

24 A. There is no way in hell you could even swear to that. I

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1 mean --

2 Q. Well, as far as you know the number was accurate?

3 A. I took the tape.

4 Q. Okay. I now notice that it says 09-10 of 1999, three
5 days earlier. Can you explain how the footage that comes after
6 that point on the tape is three days earlier than the footage we
7 just saw?

8 A. Well, sir, that tape was made -- no, I can't explain why
9 the date is changed.

10 Q. Okay.

11 A. Because that does not just happen.

12 Q. Okay.

13 A. Play a little more of it, will ya, please.

14 Q. Of course. Of course.

15 (The videotape playing with the sound off.)

16 Q. (By Mr. Safley) Actually, this is the other thing I
17 wanted to ask you, so I will go ahead. These particular pictures
18 you are looking at right now of the dumpster being unloaded,
19 where were you taking those pictures from?

20 A. Okay. That's why I wanted to say something awhile ago.

21 Q. Okay. Great.

22 A. I was taking those from across the street.

23 Q. Okay. So this is not located on your property?

24 A. No, that is not on -- no.

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1 Q. Okay.

2 A. But it does show the dumpsters being unloaded and
3 loaded.
4 Q. Sure.
5 A. It is not where -- they don't do it anymore.
6 Q. Okay.
7 A. I mean, that is out of the question.
8 Q. I will just --
9 A. They don't do that.
10 Q. Thank you. I will note for the record that it says 9:02
11 a.m. of September 10th of 1999?
12 A. In fact, that was probably Popeye picnic day.
13 Q. Do you have any other -- you asked me to let you see a
14 little bit more. Do you have any other thoughts on why the
15 date --
16 A. I have no idea.
17 Q. That's fine. That's all I wanted to ask.
18 (Stopping the videotape.)
19 Q. (By Mr. Safley) Now, the videotape that we just saw -- I
20 guess I should eject it. Does this videotape fit in that camera?
21 A. No.
22 Q. Okay. What tape fits in that camera?
23 A. An eight millimeter.
24 Q. Then how do the pictures get from the eight millimeter

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1 tape to this big tape?

2 A. Transferred by VCR.

3 Q. Did you do that transfer?

4 A. Yes.

5 Q. Did you ever give the eight millimeter tape to your
6 attorney?

7 A. No.

8 Q. You only gave --

9 A. Because they have no way to play it. It only plays
10 through any eight millimeter camera.

11 Q. So the only thing you gave your attorney was the bigger
12 tapes --

13 A. Right.

14 Q. -- that you made the transfer on to?

15 A. Right, right.

16 MR. SAFLEY: Okay. Those are all of my questions.

17 THE WITNESS: There is no way that he could --

18 HEARING OFFICER LANGHOFF: Thank you, Mr. Safley. Mr.
19 Muskopf, do you --

20 MR. MUSKOPF: I have a little redirect.

21 HEARING OFFICER LANGHOFF: Okay.

22 REDIRECT EXAMINATION

23 BY MR. MUSKOPF:

24 Q. Mr. Young, in spite of the fact that every now and then

1 the sound level meter may not have been on A or slow, is that
2 basically -- are those basically the settings that you tried to
3 keep the meter on?

4 A. It automatically goes back to the -- you can't hear it.
5 (The witness turning the meter on.) It automatically goes back
6 to fast C. And we want it on slow A.

7 Q. If it is on fast C, then we are going to be able to see
8 that on the videotape, right?

9 A. Yes.

10 Q. So it is not going to be any mystery?

11 A. No.

12 Q. Okay.

13 A. You might see that. I mean, it happens.

14 Q. Did you use your best efforts to make sure that the time
15 and date stamp was correct?

16 A. I -- when you are videotaping you don't pay any
17 attention to it. The main thing I am interested in is the meter
18 reading and what I am taking a picture of. I don't look at the
19 date.

20 Q. Would you check it periodically?

21 A. I guess you could.

22 Q. I mean, did you?

23 A. No, no.

24 Q. Okay. You set it up once and let it --

1 A. Yes, and let it do its thing.

2 Q. Okay. While we are on the subject of employee parking
3 problem, do you have any other complaints about employees in the
4 parking lot?

5 MR. SAFLEY: I think this is beyond the scope of cross, but
6 I am just not sure where he is going.

7 HEARING OFFICER LANGHOFF: Mr. Muskopf, what is the purpose
8 of the question? How does it deal to the cross-examination?

9 MR. MUSKOPF: Well, I think he -- Mr. Young was
10 cross-examined on problems of employee parking being resolved,
11 and I am asking further follow-up questions on that particular
12 subject.

13 MR. SAFLEY: Pardon me. If I can, in response, the only
14 thing I asked about was the parking on the street in front of the
15 house. If he is asking about parking in the parking lots next to
16 the house, I think that that is outside the scope of cross.

17 MR. MUSKOPF: All right. I will withdraw the question.

18 HEARING OFFICER LANGHOFF: Okay. Thank you.

19 MR. MUSKOPF: Okay. I don't have anything further for you,
20 Mr. Young.

21 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Young. I
22 am sorry, Mr. Safley, did you have --

23 MR. SAFLEY: No, no further questions. Thank you.

24 HEARING OFFICER LANGHOFF: Thank you, Mr. Young.

1 (The witness left the stand.)

2 HEARING OFFICER LANGHOFF: Mr. Muskopf, call your next
3 witness.

4 MR. MUSKOPF: I would like to call Romana Young to the
5 stand, please.

6 HEARING OFFICER LANGHOFF: Okay. Thank you. Mrs. Young.
7 Could you swear the witness, please.

8 (Whereupon the witness was sworn by the Notary Public.)

9 R O M A N A K. Y O U N G,

10 having been first duly sworn by the Notary Public, saith as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. MUSKOPF:

14 Q. Mrs. Young, how are you today?

15 A. I have had better days.

16 Q. Are you a little nervous?

17 A. Yes.

18 Q. That's all right. Everyone understands that. Could you
19 give us your full name for the record, please.

20 A. Romana Young, R-O-M-A-N-A, Y-O-U-N-G.

21 Q. I know this question may be a little indiscreet, but
22 could you tell us your age?

23 A. I am 67.

24 Q. And what is your occupation?

1 A. I am retired.

2 Q. How long have you been retired?

3 A. Since 1992.

4 Q. And your husband is Roger?

5 A. Yes.

6 Q. He is the gentleman that just testified, correct?

7 A. Yes.

8 Q. And you have been married 48 years?

9 A. Uh-huh, yes.

10 Q. Congratulations.

11 A. Thank you.

12 Q. When did you move in -- no offense to Mr. Young. But I

13 bet you are going to be a little bit better on dates.

14 A. Maybe.

15 Q. When did you move in and start living in your house on

16 Swanwick?

17 A. Well --

18 Q. Or do you have notes or something that would tell us?

19 A. Roger's mother passed away in December of 1995. In

20 early 1997 Roger was diagnosed with cancer, besides his other

21 health problems that he had with his knees and various other

22 things. And late 1997 we decided that it would be advantageous

23 to us to move back to Chester and eliminate the work that goes

24 with a lake house. And it would also eliminate three hours of

1 driving time every time we came up and back, considering that my
2 mother would call on a daily basis needing something at her age
3 and since I am her oldest daughter. I have a brother living in
4 Chester, but brothers -- well, he is still fully employed. So I
5 was called. It just made sense for us since we had this house to
6 move into it.

7 Q. So it sounds like the time frame is late 1997?

8 A. I am thinking later in 1997.

9 Q. Okay. You mentioned your mother. Do you have --

10 A. Yes.

11 Q. Your parents are living still?

12 A. Both my parents are living at home.

13 Q. And how old are they?

14 A. My dad is 89 last November. My mother is 87 last
15 November.

16 Q. They live here in town?

17 A. They live on Solomon Street in Chester.

18 Q. Okay. Where did you grow up?

19 A. I was born and raised in Chester.

20 Q. And have you ever left for any period of time?

21 A. Yes.

22 Q. I mean, except for the Lake of Egypt, which you have
23 already talked about?

24 A. Well, we lived for about 20 years in Sparta.

1 Q. I see. Let me show you C12 and then C13. C12, that's
2 your house, isn't it?

3 A. Yes.

4 Q. And then C13 that's a view of GML --

5 A. Uh-huh.

6 Q. -- from your --

7 A. Probably the front sidewalk. Our sidewalk that goes
8 from the porch to the street.

9 Q. Now, did you grow up in that house?

10 A. I -- not exactly. Well, depending on how you mean grew
11 up.

12 Q. Did you --

13 A. I lived there as a teenager.

14 Q. Okay.

15 A. I went to high school from this house and to my first
16 year of employment in that house until I was married in 1953.

17 Q. Now, do you remember when you were in high school
18 whether GML had a plant there?

19 A. No, they did not.

20 Q. Okay. Do you remember when the GML plant was first
21 installed or when they got up and running?

22 A. No, I do not. I know that it was after 1960. The shoe
23 factory plant closed, as I recall, early 1960, and the hosiery
24 plant. So it was sometime after that. I do not know. It

1 doesn't seem as though the buildings were empty or vacant for any
2 length of time. But I do not know that.

3 Q. Do you remember the shoe factory being noisy?

4 A. Maybe a little hum during the day, but they only worked
5 from 7:00 till 4:00 in the daytime, and never evening or
6 nighttime.

7 Q. Do you -- what is the difference between the noise the
8 shoe factory was making when you were in high school and the
9 noise that GML is making today?

10 A. Well, it was a nice, pleasant little hum, you know, just
11 a hum. And it was buffered by the houses that were up the street
12 toward the factory from us. And there were also Maple trees and
13 the shrubbery attendant to all these residences. And there were
14 Maple trees at that time on both sides of the sidewalk, both on
15 the resident side of the sidewalk and the street side of the
16 sidewalk. There were trees that lined that area. I can remember
17 that even as a child going to school. And there used to be
18 fences here on both sides of the sidewalk. And there were trees
19 there. That all muffled any sounds that came from anywhere.

20 Q. So you have described some of the differences between
21 the neighborhood then and the neighborhood now. Can you describe
22 any other differences that have resulted from GML's facility?

23 A. Well, we have no buffering sound whatever now. The rock
24 parking lot that borders us on their factory side, when they park

1 their trailers there, a row of those trailers seem to muffle the
2 sound of this tanker when it was unloading in what they call the
3 dye plant. And they were picked up or brought periodically, but
4 they came and they went. It was not a continual constant
5 irritant, you know, occasional things. And it went on every day
6 but not, you know, droning on for continual hours at a time.

7 Q. Has the noise become unbearable from GML for you?

8 A. There are days when we just leave. There are times when
9 we are there at nighttime when other than getting up and leaving,
10 you don't go any place. I mean, we could get up and leave and go
11 back down to the lake but you can't go any place to visit to
12 escape this. And they do unload at night. They do make
13 considerable noise at night. I have been awakened at night and I
14 have called the police at night, and told them to log their --
15 however they do it, that I am complaining about the noise.

16 I can tell you that on the night of October 24th of this
17 past year, the next day would have been my brother Tom's 60th
18 birthday. I made a nice supper and we took it out to my parents'
19 house. My brother Tom's birthday is a difficult day for them.
20 My brother died very suddenly nine years ago. And we spent the
21 evening looking at pictures, going over things, laughing about
22 some of the silly things he had done, you know, the usual kind of
23 thing. And we went home and went to bed, and at 2:00 I am
24 awakened by horns and these apparently are truck horns. I got up

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1 and went out into the kitchen and, of course, from my kitchen
2 window I can view that whole parking lot and up the street
3 towards Stacey Street.

4 I went back to bed and tried to sleep. I couldn't go to
5 sleep, of course. And then it comes about 3:00, for their break
6 time. Well, break time these people are turned loose and all
7 kinds of, you know, comings and goings and all kinds of stuff is
8 going on. And they finally get settled, and then I think, well,
9 maybe it will be quiet. But, no, this tanker is not finished
10 unloading yet. They are having some kind of problem, and it is
11 loud. And it continues to be loud. And I know that that morning
12 or that day I am going to have to drive to Belleville to take
13 Roger to his doctor's appointment for his checkup after his
14 surgery. I need to be alert.

15 I finally got to sleep who knows when. But, anyway, I was
16 awakened again by 7:00 a.m. by more of this noise and truck
17 unloading. Well, by 7:00 a.m. I guess it is time I should be
18 getting up anyway. But they do unload at night. They are very
19 noisy at night. I have called the law.

20 Q. What about Sundays? Do you ever hear noise on Sundays?

21 A. Not often.

22 Q. So that is a one day of peace and quiet for you?

23 A. Hopefully.

24 Q. What about Saturdays?

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1 A. They do not always work Saturdays, but they do work
2 some.

3 Q. Have you ever heard trucks unloading after 10:00 p.m.
4 and before 7:00 a.m.?

5 A. Last night, for one.

6 Q. Really? What time was it last night? Like your husband
7 said, 11:00 --

8 A. Yes.

9 Q. -- or quarter till 12:00?

10 A. Yes. He didn't get back until about quarter of 11:00
11 when he came in. So then that was from then until we went to
12 bed, which was near midnight.

13 Q. How often -- can you give us an estimate as to how often
14 you hear one of those -- when I say trucks unloading, what I am
15 talking about is the flour or sugar tanker trucks --

16 A. Uh-huh.

17 Q. -- with the blower unloading that material
18 pneumatically. Is that what you are talking about, too?

19 A. That's what I am talking about, too.

20 Q. How many times -- can you give us an indication as to
21 how often there are trucks unloading after 10:00 p.m. and before
22 7:00 a.m.?

23 A. It is going to be several nights a week probably. At
24 some time during that night there will be unloading. Now, I will

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1 say that some of their trucks unloading are not as noisy as
2 others.

3 Q. Do you know why that is?

4 A. I have no idea.

5 Q. Now, does that banging on the side of the tanker with
6 the hammer --

7 A. Oh, yeah, I would like to bang --

8 Q. So you can hear that?

9 A. -- whoever is doing the banging.

10 Q. That's a noise that you can hear inside of your home?

11 A. Oh, easily.

12 Q. What about the blower, the noise from the blower and the
13 unloading process, can you hear that inside of your home?

14 A. Yes.

15 Q. Are there any rooms in your house where you can't
16 hear --

17 A. No.

18 Q. -- GML noise?

19 A. No.

20 Q. Okay.

21 A. I can tell you that one night when I called the police
22 department a young officer, and I can tell you what his name is,
23 came, and I had him stand in my living room with the TV off,
24 nothing else off, and look at the meter on the tape. And I asked

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1 him to record it, what it was. Now, whether he did or not --
2 because we did not file a complaint. We are trying to be good
3 neighbors.

4 Q. What about -- are there any noises from the parking lots
5 that bother you?

6 A. Well, they are mostly young people, and a lot of them
7 have vehicles that are not new. And as they come and go, these
8 young people have to get their stereos turned up as loud as
9 possible, and they do not talk in a normal tone of voice. They
10 are probably yelling across the parking lot to each other. It is
11 the middle of their day for them even in the middle of our night.
12 And some of them, even though their vehicles are old, they have
13 the ability to spin the tires and throw the rocks.

14 Q. Is there a fence between your property and the parking
15 lot?

16 A. Yes, on both sides.

17 Q. What kind of fence is it?

18 A. Wire, mesh.

19 Q. So it doesn't do much for sound?

20 A. No.

21 Q. Are any of the parking lots paved?

22 A. None that I am aware of. None near us. They are all
23 stone.

24 Q. Gravel or rock?

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1 A. Gravel, rock.

2 Q. Let me show you C8.

3 A. Okay.

4 Q. You wrote this up, right?

5 A. I wrote this up, yes.

6 Q. Okay. You think this is accurate?

7 A. Close as --

8 Q. I don't mean to scale?

9 A. Yes, it is close.

10 Q. You have parking lots on all sides, don't you?

11 A. Well, this is not a parking lot here (indicating).

12 Q. In the back?

13 A. But this is an alley. And this alley used to go all the
14 way through here to Maple Street. And GML had this alley vacated
15 here so that they would have more parking area. But our garage
16 back here butts up against the property line and their building
17 butts up against the property line back to back right here and
18 there is maybe two feet between it.

19 Q. Write a G on that diagram, C8.

20 A. Down here?

21 Q. Yes, just where your garage is.

22 A. (Witness complied.)

23 Q. There you go. You drew in a box?

24 A. Yes.

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1 Q. Okay.

2 A. It is down in that area.

3 Q. Okay. Any other parking lot noises that bother you?

4 A. Well, the rocks, the kids -- well, they are not all
5 kids.

6 Q. Okay. Well, if you think of one later, let me know.

7 A. That is basically, I think, most of it.

8 Q. We have covered the banging on the side of the tanker?

9 A. (Nodded head up and down.)

10 Q. We have covered the blower noise from unloading the
11 tankers?

12 A. Uh-huh.

13 Q. What about the -- you have not talked about the garbage
14 container yet?

15 A. Oh.

16 Q. Can you hear that?

17 A. You know about fingernails on chalkboard?

18 Q. Yes.

19 A. That's what it does to me.

20 Q. Is it a screeching?

21 A. Screeching like --

22 Q. Was it like we heard in the videotape earlier?

23 A. Yes and sometimes -- well, see, if you don't have that
24 turned up you are not where you can actually hear it. I mean,

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1 that's a tape.

2 Q. Right.

3 A. Fingernails on blackboard. It is just...

4 Q. How -- you can -- can you see the dumpster --

5 A. Oh, yes.

6 Q. -- from your house?

7 A. Yes. They have changed the location from -- they have
8 changed their method of operation, because they used to always
9 drop it on -- let's see. Right here. Swanwick Street. They
10 used to drop it right beside our fence right here (indicating).

11 Q. Why don't you --

12 A. And I think on some of the videotape you maybe will see
13 some of the garbage that has dumped out of there and a raccoon
14 that is in there.

15 Q. Put a little blue mark where you are indicating on that
16 diagram where they used to unload?

17 A. Okay. (Witness complied.) That is where they used to
18 unload, was right there. And it would come and go. I mean, you
19 know, that is -- and that man who operated that thing got a
20 little unhappy, I think, when Roger was videotaping often,
21 because he thought we were probably complaining about him. But,
22 of course, we understand that he is doing his job.

23 Q. When we are talking about loading and unloading -- you
24 were here for Mr. Hutchinson's testimony?

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1 A. Yes.

2 Q. And he was saying that basically they do the switching
3 out of the empty for the full onto the same truck somewhere else.
4 But are you saying --

5 A. Now they are. Now they do.

6 Q. Okay. Now. You are not saying that they actually keep
7 the -- their garbage container in a different location now?

8 A. Well, where the garbage container is usually loaded is
9 here right up opposite -- go up through Maple Street, and that's
10 where they pick it up now.

11 Q. Would you write on that diagram, C8 --

12 A. Right here (indicating).

13 Q. Okay.

14 A. (Witness complied.)

15 Q. You are making a box. It is in this --

16 A. In this factory area.

17 Q. -- GML factory area?

18 A. It is just opposite Maple Street. What they do is they
19 come down Swanwick Street and they turn into Maple Street and
20 then they back straight across Swanwick Street into this parking
21 area. That's where the dumpster is loaded and they also have

22 tractor trailers that park in there and come and go. But the
23 dumpster is right here.

24 Q. Is there any other noise in your neighborhood that is

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1 nearly as loud as anything from GML?

2 A. No.

3 Q. Is there any other noise in your neighborhood that
4 bothers you to the extent that the GML noise does?

5 A. No.

6 Q. Do you have trouble getting to sleep because of the
7 noise?

8 A. Often.

9 Q. What is your usual bedtime?

10 A. 11:30, 11:00, 11:30, somewhere in that neighborhood.

11 Q. And you have heard noises at that time that have kept
12 you from getting to sleep?

13 A. Yeah.

14 Q. Have you been woken up out of a sleep at night because
15 of GML noise?

16 A. Yes.

17 Q. How --

18 A. But you don't -- I don't know when I am awakened during
19 the night exactly what it is that wakens me. I can only know
20 that after I am awake what I hear. But whether it is the same
21 sound (the witness shrugging shoulders.)

22 Q. Right. I understand. Now, once you are -- do you have
23 trouble getting back to sleep once you are awake?

24 A. Oh, yes. I never used to. And it is since -- one of

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1 our sons was killed in 1984 in the middle of the night.

2 Q. I am sorry to hear that.

3 A. So when somebody bangs on our door or a noise awakens or
4 a telephone rings in the middle of the night it is all but
5 impossible to go back to sleep because that --

6 Q. It is still with you?

7 A. It is just a psychological thing that you just...

8 Q. I understand. Do you -- now, you made the drapes,
9 right?

10 A. Yes.

11 Q. Okay.

12 A. The windows are extremely long. We have 11 foot
13 ceilings. So the windows are very, very long. Draperies must
14 all be custom-made.

15 Q. The custom maker is?

16 A. The custom maker is me. I have that ability. I used to
17 teach sewing and I have a certificate from SIU in doing various
18 things. And the draperies are custom-made. There are four
19 windows in the living room. There are four windows in the room
20 across the hall. There are two in the bedroom. There is like 14

21 windows downstairs to custom make these extremely long and
22 expensive draperies.

23 Q. Well, did the GML noise have anything to do with you
24 either deciding to the make the drapes in the first place or what

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1 kind of material you used?

2 A. Well, yes. I used the -- I maybe would not have used
3 the same type of material, but knowing that we had to deaden all
4 sound as best we could, I chose heavy material and I chose heavy
5 lining fabric. And then there are blinds in place all the way
6 around the house. And then also we carpeted the whole house.
7 Even my kitchen is carpeted, kitchen and bathroom. I did not
8 want any hard surface any place to -- every place I could carpet
9 I wanted the carpet to sound deaden everything.

10 Q. Did it work?

11 A. Well, I am sure it is helping.

12 Q. But it has not fixed the --

13 A. It has not fixed the problem, no.

14 Q. Do you like to read or watch TV or what are your
15 occupations during the day?

16 A. During the day I am usually busy doing something. I
17 have a computer. I do a lot of computer things. We have a
18 daughter in New Mexico. We have a son in Iowa. We have family
19 scattered around the country, and we keep in contact with all of
20 them usually via computer. And that's daily. I do read. I do a

21 lot of sewing and craft work. My main occupation at this time is
22 being sure that my mother and dad get to the doctor, get to
23 whatever tests they have to go to, to the dentists, and to the
24 grocery store, and the pharmacy at least once a week. General

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1 keeping them going.

2 Q. Well, of any of those activities that you have
3 described, does the noise from GML interfere with your enjoyment
4 of those activities?

5 A. Well, I am supposed to have an office and a sewing room
6 upstairs in our house in the middle room on the side that faces
7 GML. I don't work there. It is not a possibility. My hearing
8 is good.

9 Q. Do you have people over and do you entertain people in
10 your home?

11 A. Never when the plant is in operation.

12 Q. Because why? Because of the noise?

13 A. Well, because of the noise. We are not going to fight
14 trying to have a conversation because of the noise. When Roger's
15 mother was still living, we would come up here on this porch.
16 You know, this kind of house and this kind of porch is --

17 Q. The front porch?

18 A. Yes, the front porch. It is a house that people are
19 building now, and people like porches. We used to come on this

20 porch with Roger's mother, and her friends would stop by, like
21 Adele Hahn, which some of you will remember and Lucille
22 Eggemeyer. And we would sit out here in the evening and we would
23 watch all the chimney sweeps that congregate at night and go in
24 that big chimney in the building across the street. It is the

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1 McClure's building. It is a big chimney. And these chimney
2 sweeps have been going in there by the thousands every night for
3 years. Now, how they all get in there, we don't know. But it
4 used to be an evening enjoyment thing where we would sit up there
5 and we would talk and the ladies would talk. His mother was hard
6 of hearing. Mrs. Hahn didn't hear well. We didn't have any
7 problem.

8 Q. But not anymore?

9 A. You can't do that anymore. The chimney sweeps are still
10 going in there. We just don't sit out there to watch them.

11 Q. You were the one that did the work in preparing the
12 indexes, the indices I should say, of the tapes that your husband
13 prepared, correct?

14 A. Yes.

15 Q. I am going to hand you exhibit C32, C33, C34, C35, C36
16 and C37, and ask you if these are the indices that you prepared?

17 A. Yes.

18 Q. Now, would you tell me what procedure you followed in
19 order to create those?

20 A. I played every tape on the television, and I sat in my
21 chair for hours with a notebook and wrote off the date and the
22 time and the readings and from where it was taken and what was
23 happening.

24 Q. Did you do the best job you could to accurately --

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1 A. The best could I do.

2 Q. Okay. Do you think that -- is it your honest belief
3 that those indices are reasonably accurate?

4 A. Yes.

5 Q. I am not saying that they are absolutely perfect --

6 A. No.

7 Q. -- because all of us make mistakes.

8 A. I am sure they are not going to be absolutely perfect.

9 Q. But you did your best job and most honest job that you
10 could?

11 A. Yes.

12 Q. There we go. How many times have you called the police
13 because of the GML noise?

14 A. I don't know but several.

15 Q. Now, you have --

16 A. Mostly always at night.

17 Q. You were here when your husband testified?

18 A. Yes.

19 Q. And we are trying to get out of here, and all of us want
20 this to be over in one day. So I am just going to ask you a
21 blanket question. Did you hear him saying anything that you
22 disagree with or that you think needs clarification?

23 A. Not that I can think of right off.

24 Q. So basically you found yourself in agreement with what

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1 you were hearing?

2 A. Yes. I watched him -- often watched him doing the
3 video.

4 Q. Well, I am just --

5 A. Yeah, basically I would agree with --

6 Q. I can save some time by not asking you --

7 A. Yeah, I know.

8 Q. -- each and every one of the same questions that I asked
9 him.

10 A. Yes.

11 Q. If it is true for you -- if you believe that what he
12 said was accurate, then --

13 A. Yes.

14 Q. Okay.

15 A. Yes. Now, one thing, Jeff, he did -- he maybe was not
16 as clear as I thought he might be, was on his recuperation. And
17 he didn't know if he recuperated faster at the lake than he did
18 when we were here. I know that he did. When we were here, we

19 had the problem with the noise and we had general things going on
20 around us. And he had physical therapists coming in every day
21 and home health nurses coming in every day and every one of them
22 that would come in would say I couldn't find a place to park so I
23 am late. He is in pain. He has got problems. You have got
24 people that are supposed to be helping you that are complaining.

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1 And that's when the doctor first prescribed the Valium. Now,
2 when we went to the lake, we had no problem.

3 Q. And you think it was because of the noise?

4 A. Because of the noise. All the nurses -- everybody had
5 no problem finding us or getting to us. They arrived at their
6 appointed time. It is a nice -- it is a restful place. When you
7 compare the two, it is extremely restful.

8 Q. What about the comparison between when you were in high
9 school and living in that house and now, which one is more --

10 A. Well, it is difficult to compare something that is so
11 different. When I was in high school, it was quiet. You have to
12 understand that that is a very long time ago. There was not
13 nearly the amount of traffic that there is now. The shoe factory
14 did not unload any trucks in that area. They unloaded up around
15 on Stacey Street, which is no where near where our house is. The
16 factory was not in operation except during the daytime and during
17 the daytime mostly I was not there. But if I was there it was

18 just a nice soft tone.

19 Q. Well, I am just trying to get a sense of what --

20 A. Well, now it is a continual, constant noise level from
21 dumpsters, from trucks, from trucks sitting in front of the
22 house. We have had tanker trucks lined up. We have had --
23 Gilster has had tanker trucks lined up down here on Maple Street,
24 one parked on this parking lot here, and there will be one parked

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1 beside their building here waiting and one parked here waiting
2 besides the one that is in that shoot unloading.

3 HEARING OFFICER LANGHOFF: Okay. Let the record reflect
4 that the witness is referring to Exhibit C13.

5 MR. MUSKOPF: Thank you.

6 Q. (By Mr. Muskopf) So on C8 are you saying that they would
7 be parked all along Swanwick?

8 A. Yes. This has happened when they would be parked here
9 behind the McClure building, and there would be one parked here
10 where the old unloading shoot was.

11 Q. You are in the parking lot on the corner of Maple and
12 Swanwick right now?

13 A. Yes, where that old unloading dock is, where they used
14 to unload. There would be a truck parked in there and he would
15 be waiting. There would be one on Maple Street sitting here
16 waiting. There would be one parked up here on this side of
17 Swanwick Street next to their factory building, and he would be

18 sitting and waiting, and somebody would be in the shoot
19 unloading.

20 Q. And --

21 A. And this is all during one time, I mean one time span.

22 Q. Engines running? Engines off? Which one?

23 A. Some both. This man that sat across the street from us
24 one evening, he got there before dark, and he was the last one to

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1 arrive so he was here. And we always figured that it is two to
2 three hours to unload a truck. So if he had to wait until all of
3 these people were done, he sat in his truck with some kind of
4 flashlight and read. We could watch him from the porch. He had
5 a book.

6 Q. Did he leave his engine running?

7 A. You know, I don't remember if he had the engine running
8 or not. Some of them were running. And almost every
9 tractor-trailer driver that comes in when they stop to go into
10 GML's offices, for whatever reason, but that is the general area
11 that they go to, they park right here in front of this GML rock
12 parking lot usually.

13 Q. On Swanwick and Maple?

14 A. On Swanwick Street with at least the front part their
15 cab on our boundary line. The only -- I have only seen them turn
16 that truck off once in the length of time that we have lived

17 there.

18 Q. When was that?

19 A. That was on April the 2nd, as I recall, the day when Mr.
20 Zak was -- we found out later it was Mr. Zak who was making an
21 inspection tour.

22 Q. Now, have we covered -- have you and I covered in this
23 conversation fairly well the various noise sources that bother
24 you from GML? I mean, the specifics like the dumpster and the

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1 parking lots and the unloading of the trucks?

2 A. Oh, one thing I could tell you is that -- and if you
3 watch the various videotapes, it will bring it out. Is that
4 since the new silo things here are in operation the noise is
5 louder now than it used to be.

6 Q. You are referring to these five flour tanks?

7 A. Five flour tanks, yes.

8 Q. That are depicted on Exhibit RA?

9 A. Yes.

10 Q. Okay.

11 A. The noise now is louder. I do not know why. I do not
12 care why. I just know that it is louder now. I don't know if it
13 is reflecting off of whatever. But it is more noisy now. We had
14 thought -- we had hoped -- we had thought when they started
15 putting these tanks in we thought, well, now, when they get those
16 in operation, the way it looks like that is going to be, that

17 that will eliminate the problem. It didn't. It is worse.

18 Q. Okay. I can't think of anything else to ask you. Is
19 there something that I have missed that you are just dying to
20 tell everybody here?

21 A. No. You should have fun looking out the window like I
22 do sometimes and see some of things that goes on in the parking
23 lot.

24 Q. Okay. Well, if they are not noise issues, then we had

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1 better stay away from them.

2 A. They are not noise issues. It gets very interesting.

3 MR. YOUNG: It wouldn't hurt --

4 HEARING OFFICER LANGHOFF: Okay. Thank --

5 MR. YOUNG: -- to pass the picture around, would it?

6 HEARING OFFICER LANGHOFF: -- you, Mrs. Young. Mr. Safley?
7 You are finished?

8 MR. MUSKOPF: Yes, sir.

9 MR. SAFLEY: Thank you. I only have a few follow-up
10 questions.

CROSS EXAMINATION

BY MR. SAFLEY:

13 Q. The indices that you have in front of you starting
14 C32, I noticed that the indices start with tape four and then go
15 on. Did you ever make any indexes of tapes one through three?

16 A. If I did, they are misplaced or Jeff had them misplaced.
17 I don't know what happened to them.

18 Q. Okay.

19 MR. MUSKOPF: I couldn't find them.

20 MR. SAFLEY: Okay. I was going to say, I never saw them.
21 So that is the reason why I asked.

22 MR. MUSKOPF: I never saw them either.

23 MR. SAFLEY: Okay.

24 THE WITNESS: So maybe I didn't do them. I don't know. I

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1 don't know why I would have started with tape four. I do not
2 know.

3 Q. (By Mr. Safley) Okay. That's fine. I just wanted to
4 make sure that I understood. Now, I think your husband mentioned
5 that you took some noise measurements from the front porch,
6 either you or your husband did; is that right?

7 A. Yes. He made probably 99 percent of all of the tapes.

8 Q. Okay. I think when we spoke in your deposition you said
9 that that porch is about eight feet wide; is that right?

10 A. Yes.

11 Q. And he also took some measurements from the upstairs
12 bedrooms in your house?

13 A. Correct.

14 Q. Those are not the bedrooms that you all sleep in?

15 A. No. We have not finished that part of the house because

16 when this noise issue came up we stopped all of our remodeling
17 process.

18 Q. Okay.

19 A. Until this noise is -- until there is a resolution.

20 Q. Okay. So right now you don't use the upstairs for
21 living space?

22 A. We are not using the upstairs as a living space at this
23 time.

24 Q. And the bedroom which you sleep in is on the ground

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1 floor?

2 A. The furthest corner of the house from the factory.

3 Q. Great. That's exactly what I was wondering. You didn't
4 take any noise measurements from that bedroom?

5 A. No.

6 Q. Okay. Now, when you took noise measurements, you or
7 your husband, the noise meter picked up noises from sources other
8 than Gilster-Mary Lee's plant; is that right?

9 A. Tried not to. The thing is directional, the off and on
10 switch on the thing. No, we tried to avoid taking anything else.

11 Q. Okay.

12 A. It is a possibility that there may have been something
13 going by on occasion but generally we tried to avoid getting any
14 traffic noise or anything of that sort.

15 Q. Did you videotape any recordings of noise from other
16 sources other than Gilster-Mary Lee?

17 A. No, I didn't.

18 Q. Okay. You don't have any other kind of records of other
19 noises other than from Gilster-Mary Lee?

20 A. (Shook head from side to side.) No. Sorry. You can't
21 hear my head shake.

22 Q. Now, you mentioned to Mr. Muskopf that there used to be
23 houses located between where your house is and the Gilster-Mary
24 Lee plant?

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1 A. Yes, three.

2 Q. Okay. But those houses were not present when your
3 husband inherited the house that you live in in 1995?

4 A. No, they were not.

5 Q. Are you aware of any other structures between your house
6 and the Gilster-Mary Lee plant that Gilster-Mary Lee has torn
7 down since 1995?

8 A. No.

9 Q. The house that was on the other side of your house from
10 the Gilster-Mary Lee plant, that also was not present when your
11 husband inherited the house in 1995?

12 A. Right. There were three houses on that parking lot.

13 Q. Right. I apologize for --

14 A. They were not there in 1995.

15 Q. Okay. Then the house that was at the corner of Light
16 and Swanwick where there is a parking lot now --

17 A. Yes.

18 Q. -- that was -- my understanding is that house was not
19 there in 1995 either?

20 A. No, there was not.

21 Q. Okay. Let me just look at my notes and see if I have
22 anything else. You mentioned that the Gilster-Mary Lee plant was
23 not in operation when you were in high school and lived in the
24 house?

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1 A. That's correct.

2 Q. But I think, as I understood, the shoe plant was in
3 operation at that time?

4 A. Yes, until 1960.

5 Q. Okay. So the buildings in which the Gilster-Mary Lee
6 plant are located now were there before -- at that time?

7 A. Yes.

8 Q. Okay. You mentioned the time on April 2nd that there
9 was a trailer parked on the street and that you remember them
10 turning off the truck?

11 A. (Nodded head up and down.)

12 Q. Was that April 2nd of this year?

13 A. Yes.

14 Q. Okay.

15 A. A couple days ago.

16 Q. So about a week ago. You said Greg Zak was present at
17 the time or around at the time?

18 A. I had seen this gentleman walking up and down the street
19 a couple of times and saw him across the street. I did not know
20 it was Greg Zak until later.

21 Q. Okay.

22 A. But I found out later that it was he. And the only time
23 that they have ever turned a truck off out there is when he was
24 there.

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1 MR. SAFLEY: Okay. Those are all of my questions. Thank
2 you.

3 HEARING OFFICER LANGHOFF: Okay. Thank you. Anything on
4 redirect?

5 MR. MUSKOPF: No.

6 HEARING OFFICER LANGHOFF: Thank you, Mrs. Young.

7 (The witness left the stand.)

8 HEARING OFFICER LANGHOFF: Let's go off the record for a
9 minute.

10 (Discussion off the record.)

11 HEARING OFFICER LANGHOFF: We will take a 40 minute lunch
12 break and be back here at 2:00.

13 (Whereupon a lunch recess was taken.)

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1 A F T E R N O O N S E S S I O N

2 (April 10, 2001; 2:03 p.m.)

3 HEARING OFFICER LANGHOFF: We are back on the record after
4 a lunch break. It is 2:03.

5 Do you have something that we need to discuss, Mr. Safley,
6 before we --

7 MR. SAFLEY: Yes, sir. I noted when we were talking with
8 Mrs. Young that she stated that Greg Zak had made an inspection
9 of the area in which the Gilster-Mary Lee plant is located about
10 eight days ago. We deposed Mr. Zak October 30th of 2000. His
11 inspection had not been disclosed to us until through Romana's
12 testimony. We have not had an opportunity to conduct discovery

13 on it. We object to any testimony regarding that inspection, any
14 opinions that are based on any facts gathered during that
15 inspection. Those certainly were not disclosed to us previously.
16 We were under the impression that what we were going to be
17 dealing with was the testimony that was given during the
18 deposition.

19 HEARING OFFICER LANGHOFF: Okay. Is that some sort of
20 motion?

21 MR. SAFLEY: Well, yes, it is. It is a motion to exclude
22 any testimony regarding that inspection and any opinions that
23 relate in any way to that inspection or for that matter any other
24 inspections or undisclosed reviews of information that occurred

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1 since October 30th of 2000.

2 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf?

3 MR. MUSKOPF: Yes. I think that how these cases should be
4 typically handled is that the Hearing Officer should allow as
5 much evidence in and let the Board sort it out. I agree that the
6 fact that Mr. Zak had made this site visit was undisclosed to the
7 respondents. It was really, frankly, also undisclosed to me. I
8 didn't collaborate on that ahead of time. He simply made the
9 visit. I found out about it later. I don't know what, if any,
10 of his opinions are based on that information.

11 HEARING OFFICER LANGHOFF: Okay. Thank you. I am going to
12 deny your motion. Feel free to bring it up during the testimony

13 of Mr. Zak if you think anything is not relevant or has not been
14 properly disclosed or in supplemental discovery duty or anything
15 like that, please.

16 MR. SAFLEY: Thank you.

17 MR. MUSKOPF: If Mr. Safley needs to voir dire Mr. Zak on
18 that particular issue to find out ahead of time what, if
19 anything, he learned and then formed his opinions, then
20 certainly, I would have no objection to that sort of thing.

21 HEARING OFFICER LANGHOFF: Okay. Your next witness, Mr.
22 Muskopf.

23 MR. MUSKOPF: Thank you, Mr. Hearing Officer. I would like
24 to call Mr. Greg Zak to the stand.

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1 HEARING OFFICER LANGHOFF: Thank you. Would you swear the
2 witness, please.

3 (Whereupon the witness was sworn by the Notary Public.)

4 HEARING OFFICER LANGHOFF: Thank you.

5 G R E G Z A K,
6 having been first duly sworn by the Notary Public, saith as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. MUSKOPF:

10 Q. Your name, please, sir.

11 A. My name is Greg Zak.

12 Q. How are you employed?

13 A. By the State of Illinois, the Illinois Environmental
14 Protection Agency.

15 Q. What do you do for the Illinois EPA?

16 A. I am the noise advisor for the Illinois EPA.

17 Q. As I understand it, you are a one-man noise department?

18 A. That's correct.

19 Q. Okay. What kinds of -- what are your job -- is there a
20 job description or can you give us an overview of your duties,
21 please, for the Illinois EPA?

22 A. My duties would relate to any issues addressing noise.
23 Any phone calls that come into our agency that either address
24 noise or vibration are directed to me. Since the Pollution

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1 Control Board does have noise regulations, we get a number of
2 inquiries on that. Those go to me. If the agency has got a
3 project, an ongoing project where there is some concern of
4 possible noise production due to that project, they will bring me
5 into the project and have me take tests and review the project to
6 see if we are going to have noise problems and if we are to
7 design a solution we need to be in compliance with the Board
8 regulations.

9 Q. Do you do a lot of what you are doing here today, that
10 is act as an expert witness for complainants in noise pollution
11 cases?

12 A. Yes, very often.

13 Q. Approximately how many times have you done that over the
14 years?

15 A. Well, I would say it has been well over 100 times.

16 Q. Okay. You are not -- beyond your state salary you are
17 not being compensated for your time here today?

18 A. That's correct, I am not being compensated.

19 Q. Have either I or the Youngs offered any kind of
20 compensation or promised you anything in exchange for your
21 testimony today?

22 A. No, nothing.

23 Q. Okay. Except for the chicken sandwich at lunch at
24 Hardee's?

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1 A. Yes.

2 (Laughter.)

3 Q. (By Mr. Muskopf) Let me hand you Exhibit C39, and ask if
4 you can identify that, please?

5 A. Yes. It is a copy of my resume that I provided to you
6 at the end of October. I believe I also provided it to Mr.
7 Safley, representing Gilster-Mary Lee. It is dated October 26th
8 of the year 2000 and it accurately reflects my job experience up
9 to that date.

10 Q. Does it also accurately reflect or provide an overview,

11 anyhow, of your qualifications as an expert on noise pollution,
12 noise control, and the human impact of noise?

13 A. Yes, it does.

14 Q. Okay. How long have you been in your current position?

15 A. I have been in the position for over 28 years.

16 Q. Okay. Could you briefly describe your educational
17 background and your work experience background, please?

18 A. My educational experience would go back to my schooling
19 in the United States Marine Corps and basic intermediate and
20 radar electronics. In addition, I taught electronics for a year
21 in the Marine Corps. Subsequently, upon leaving the service, I
22 attended college where I obtained a Bachelor of Science Degree in
23 biology. And then after that I obtained a Master's degree in
24 Public Administration while employed by the Illinois EPA.

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1 MR. MUSKOPF: Okay. As I understand it, Mr. Hearing
2 Officer, there has been a stipulation that Mr. Zak will be
3 accepted as an expert with sufficient qualifications in the areas
4 of noise control, noise pollution measurement and human impact.

5 MR. SAFLEY: That is certainly the case.

6 MR. MUSKOPF: I would tender Mr. Zak as an expert at this
7 time on those subjects.

8 HEARING OFFICER LANGHOFF: Okay. Let it be noted that your
9 stipulation is agreed to and it is so noted.

10 MR. MUSKOPF: Thank you.

11 Q. (By Mr. Muskopf) Now, Mr. Zak, you have been here in
12 this proceeding today from the outset, correct?

13 A. Yes, I have.

14 Q. So you have heard Mr. Hutchinson testify and you have
15 heard Mrs. Young testify and Mr. Young testify, correct?

16 A. Yes.

17 Q. Beyond that, you have been provided all of the exhibits
18 that -- all the complainant's exhibits for today; is that true?

19 A. That's true.

20 Q. And you have reviewed materials that have been produced
21 in discovery by the respondents; is that correct?

22 A. That's correct.

23 Q. And, finally, you have reviewed -- you have had the
24 unenviable task of reviewing eight full length videotapes,

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1 correct?

2 A. That's correct.

3 Q. Is there any other information upon which you will base
4 your opinions that I expect you to render in your testimony
5 today?

6 A. Well, my opinions have not significantly changed since
7 the deposition of October 30th.

8 Q. Did the site visit inform your opinions in any way?

9 A. The site visit clarified some of the perceptions I got

10 from watching the videotape, but the site visit didn't really
11 change any of the opinions on my part.

12 Q. Okay. You heard Mr. Young testify about how he was
13 using his Radio Shack noise meter, correct?

14 A. Yes.

15 Q. And you, in fact, have had an opportunity to and you did
16 calibrate that instrument?

17 A. Yes, I did.

18 Q. Or you tested the calibration of it? Is that a more
19 accurate way to say?

20 A. Yes, it actually would be more accurate to say that I
21 tested the calibration because of that fact that when I did test
22 the meter it was exactly on correct. And when we say calibration
23 we are usually thinking of, well, we test something and we find
24 that the calibration may be off a little bit and we will adjust

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1 the instrument in order to bring the calibration back to where it
2 is supposed to be. In the case of his meter it needed no
3 adjustment. It was perfectly on the money.

4 Q. Do you recall when it was that you performed that test,
5 approximately?

6 A. Just prior to my deposition in late October of 2000.

7 Q. Have you had experience with testing the accuracy of
8 instruments, just like Mr. Young's Radio Shack noise meter?

9 A. Yes. I have done quite a few of those type of meters

10 and I have done actually several hundred calibrations of
11 precision instrumentation.

12 Q. Is it your experience that the Radio Shack noise meter,
13 like Mr. Young has, as a general rule that those instruments are
14 capable of providing reasonably reliable measurements of sound?

15 A. Yes. They are not precision instruments nor are they
16 meant to be, but when we want to have a general idea of the noise
17 level in an area, they are very convenient to use and typically
18 will produce a result within a decibel or two of the precision
19 instrument.

20 Q. Does it appear to you that Mr. Young followed the
21 instructions that you gave him on how to use the noise meter and
22 the video camera in conjunction with one another?

23 A. Yes, he did. And to amplify that a little bit, if I
24 could, he -- it was mentioned that he took a small portion of his

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1 measurements on the -- with the meter on C-weighting and fast
2 response. And the explanation for that is when the meter is
3 turned on it automatically goes to C and fast. The person
4 operating the meter has to operate the controls to put the meter
5 into an A position and a slow position. And I imagine what may
6 have happened there is he was not aware of it when he first
7 turned it on, caught it later on, and changed it. I reviewed all
8 eight tapes and saw very little of C-weighted measurement in

9 there.

10 Q. Was there enough A-weighted measurement in the
11 videotapes for you to form some conclusion about the reliability
12 of the measurements that he took?

13 A. Yes.

14 Q. Okay. So do you have an opinion, to a reasonable degree
15 of scientific certainty, as to -- well, let me ask you this. Do
16 these meters tend to drift at all in calibration?

17 A. It has been my experience that they don't. That they
18 typically will hold the -- whatever setting they have got for
19 months -- for periods of several months, if not several years.

20 Q. So the fact that you performed this calibration shortly
21 before your deposition and that it was dead on, does that lead
22 you to any conclusion about whether the meter was dead on before
23 you tested it and whether the meter continues to be accurate to
24 this day?

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1 A. It has been my experience with that model of meter that
2 it was typically dead on for a period of months before I
3 calibrated it and probably to this very day it is dead on.

4 Q. So can you conclude to a reasonable degree of scientific
5 certainty that, in fact, the meter was substantially in
6 calibration at the times that Mr. Young was using it?

7 A. Yes, I would say that it was.

8 Q. Okay. Do you have an opinion, to a reasonable degree of

9 scientific certainty, as to whether the Youngs' noise meter, in
10 particular, is capable of producing reasonably reliable
11 measurements of sound?

12 A. Yes. I think that it could take very good measurements
13 from the standpoint of, again, if we keep the idea that there
14 could be potentially a one or a two decibel error in there,
15 keeping that in mind, I do think it would take an accurate
16 measurement.

17 Q. Okay. I think I asked you a very similar question and
18 it was just about that type of meter. I wanted to make sure that
19 you held that same opinion with this particular meter that was
20 used in this case?

21 A. Yes, I do.

22 Q. Okay. Do you have an opinion as to whether the GML
23 Chester cake plant would be accurately characterized as an
24 industrial noise source under the Illinois regulations?

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1 A. Yes. Looking at Appendix B, which would be the SLUCM
2 code, I believe that type of operation would fall under what we
3 call class E property or industrial, and it would fit the
4 description that you described.

5 Q. You are familiar with the relevant regulations for
6 classification of land uses under --

7 A. Yes.

8 Q. -- the Illinois regulations?

9 A. Yes, I am.

10 Q. Are you also familiar with the relevant regulations
11 under Illinois law for the classification of residential land
12 uses?

13 A. Yes, I am.

14 Q. Would you characterize the Youngs' property as being a
15 residential property under those regulations?

16 A. Yes, I would.

17 Q. Okay. So what we have is an industrial noise source and
18 a residential noise receiver in this case; is that right?

19 A. That's correct.

20 Q. Okay. Let's go to C1, which is Mr. Hutchinson's
21 measurements with his Quest sound meter. First of all, let me
22 ask you, based on what you have heard from Mr. Hutchinson and
23 based on what you know about the type of sound meter that he
24 used, do you have any opinion as to whether the measurements that

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1 he took with that meter are substantially accurate
2 scientifically?

3 A. I would say they were substantially accurate
4 measurements.

5 Q. Okay. Did any of those measurements, the values that he
6 got that are reflected on C1 did they indicate to you that the
7 GML facility was producing noise such that it could reasonably

8 interfere with the Youngs' enjoyment of their property?

9 A. From the diagram here, the location -- I don't have a
10 map of location. Now, I have got the column that gives me the A
11 through F as far as locations are concerned, but I would need to
12 look at a map.

13 Q. Okay. There is C2. That is the map.

14 A. Okay. Now, using the map, locations A and B would be
15 closely adjacent to the Young property. Looking at the table,
16 Exhibit C1, the levels I see recorded here are somewhat similar
17 to the type of levels I observed on the videotape when I reviewed
18 all eight videotapes.

19 Q. So are you saying that those figures on C1 that Mr.
20 Hutchinson produced are consistent with the figures that the --
21 the readings and the measurements of sound that the Youngs have
22 also taken?

23 A. I would say consistent to the point where some of the
24 measurements the Youngs obtained were significantly higher than

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1 what Mr. Hutchinson got, but then also on the videotape there
2 were some measurements that were somewhat lower than what Mr.
3 Hutchinson got. So I would say for the day and time that Mr.
4 Hutchinson took the measurements, I would not really question
5 their accuracy.

6 Q. Okay. You know that Mr. Hutchinson took measurements

7 with a Simpson dosimeter also?

8 A. Yes.

9 Q. Are you familiar with that kind of instrument?

10 A. I have never personally used one. We don't use
11 dosimeters in work for -- at the EPA. The concept is somewhat
12 simpler than the type of instrumentation that we use. Having
13 said that, that I have never actually operated the instrument,
14 the fact that -- but I do understand the basic functioning of
15 that instrument. I am sorry. I don't know if I answered your
16 question completely or not.

17 Q. I can't recall what my question was, so I am not sure.
18 But let me ask you if you believe that the measurements Mr.
19 Hutchinson took with the Simpson dosimeter, based on your
20 understanding of the instrument and based on his testimony of how
21 he used the instrument, and based on the certificates of
22 compliance and calibration that you have seen before, do you have
23 any opinion as to whether those readings are to a reasonable
24 degree of scientific certainty reasonably reliable measurements?

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1 A. The only problem I have got with the measurements is I
2 am a little bit unsure as to the exact location of where he was
3 at when he took the measurements.

4 Q. Yes, there is an indication of location at the top of
5 each, but -- so that just says cake. But I am not sure -- I
6 don't know if there has ever been an indication specifically

7 where those locations were.

8 A. The measurements appear to be taken on the property of
9 GML, and it is a little difficult -- actually, it is really
10 impossible for me to say since the measurements were taken on the
11 GML property, whether or not they would be a close approximation
12 to what the Youngs were able to measure. It is a little bit like
13 comparing apples and oranges.

14 Q. Do you recall seeing any of the measurements or the --
15 yes, the measurements that were taken by, I guess, Dr.
16 Weissenburger's associate?

17 A. Yes.

18 Q. And are those -- were those figures reasonably
19 consistent with Mr. Hutchinson's noise meter results and the
20 Youngs' noise meter results?

21 A. Yes, I thought they were.

22 Q. When you consider all of this data, do you have any
23 opinions, to a reasonable degree of scientific certainty, as to
24 whether the noise being produced and that has been produced at

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1 the GML facility is of the type that it could unreasonably
2 interfere with the Youngs' use and enjoyment of their property?

3 A. Yes, I think it could.

4 Q. Okay. Do you have an opinion, to a reasonable degree of
5 scientific certainty, as to whether the noise from the GML

6 facility is of the type that it could unreasonably interfere with
7 a person's sleep at the Youngs' residence?

8 A. Yes, judging from the levels measured, by both Dr.
9 Weissenburger's staff, Mr. Hutchinson, and the Youngs, I would
10 say, yes, it definitely could impact sleep.

11 Q. You have heard the Youngs' testimony as to how their
12 sleep has been impacted by the noise from the GML facility?

13 A. Yes, I have. That is consistent with my experience with
14 this type of noise source.

15 Q. Okay. I basically have the same type of question for
16 you with regard to a number of the activities that the Youngs'
17 have testified that have been interfered with by the GML noise.
18 So I am going to sound like a broken record, but you will have to
19 forgive me for that. Do you have an opinion, to a reasonable
20 degree of scientific certainty, as to whether the noise from the
21 GML facility is of the type that it could unreasonably interfere
22 with a person's ability to have normal conversation in an
23 otherwise quiet room at the Young residence?

24 A. Yes. From the measurements and from the testimony of

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1 both the Youngs I would concur that the levels and nature of the
2 noise are such that it would interfere with conversation.

3 Q. And that's inside the residence?

4 A. Yes.

5 Q. And that would apply equally to outside the residence?

6 A. Yes, even more so outside.

7 Q. Okay. Do you have an opinion, to a reasonable degree of
8 scientific certainty, as to whether the noise from the GML
9 facility is of the type that it could unreasonably interfere with
10 a person's ability to concentrate while reading in an otherwise
11 quiet room at the Young residence?

12 A. Yes. Again, the levels are such that they would -- they
13 could be reasonably expected to, and there was testimony by the
14 Youngs, that it would interfere with quiet contemplation or a
15 person trying to concentrate on some activity.

16 Q. And that would include activities like reading or sewing
17 or things of that sort?

18 A. Yes.

19 Q. Okay. Do you have the same type of opinion as to
20 whether the noise from the GML facility is of the type that it
21 would unreasonably interfere with the entertainment of guests
22 outdoors at the Young residence?

23 A. Yes. Based on my experience and the testimony presented
24 here today, the levels are such that -- the testimony is such

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1 that I think it would definitely interfere with any type of
2 outdoor communication or socializing.

3 Q. Is this the type of noise that would cause stress to the
4 inhabitants of the Young household, in your expert opinion?

5 A. It could, yes.

6 Q. Is this the type of noise that would have or could have
7 an adverse psychological impact on the inhabitants of the Young
8 household, in your expert opinion?

9 A. Yes.

10 Q. Is this the type of noise that could depress the value
11 of the Youngs' property, in your expert opinion?

12 A. Based on my experience with other cases I would say yes.

13 Q. What do you see as being the principal problem noise
14 sources at the GML facility as far as the impact to the Youngs?

15 A. The principal sources that have been testified to, I
16 will try as best I can to rank them in order starting from the
17 biggest problem down to the smallest problem. The truck
18 unloading operation seems to be the biggest problem. The
19 pneumatic unloading would be -- using a blower would, I think, be
20 the -- one of the largest problems present, both having viewed
21 the videotape and also having been on site once to observe and
22 verify the videotape that I had gone over.

23 MR. SAFLEY: Pardon me. If I can interject. This is the
24 point at which I would make the objection that the site visit has

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1 influenced Mr. Zak's testimony and he is basing opinions on it.

2 HEARING OFFICER LANGHOFF: Mr. Muskopf?

3 MR. MUSKOPF: I don't have a response to that, but I will
4 ask Mr. Zak another question.

5 MR. SAFLEY: I would move to strike the portion of the
6 answer referring to the site visit and any further testimony
7 relating -- relying on anything observed during the site visit.

8 HEARING OFFICER LANGHOFF: As to the site visit and
9 afterwards?

10 MR. MUSKOPF: I mean, I have the same position that I did
11 when we initially addressed this issue, which is simply that
12 admittedly it has not been disclosed until today to Mr. Safley
13 that this visit has been made. However, I do feel that the Board
14 should be allowed to make the decision as to whether they want to
15 consider under the rules and under the law that evidence or not.

16 MR. SAFLEY: If I may, my only response to that is it is my
17 understanding that, Mr. Langhoff, it is your province to make the
18 evidentiary rulings and this is just something that is not proper
19 to be in the record and will be prejudicial to Gilster-Mary Lee
20 to include it at all.

21 MR. MUSKOPF: Well, my response to that is quite simply as
22 Mr. Zak has indicated, his opinions are, in effect, unchanged as
23 a result of his site visit. And so there is really no prejudice
24 whatsoever. This is not a new opinion. It is not a different

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1 opinion. It is not a surprise opinion. It is just a tiny extra
2 bit of basis for an opinion that he has already held.

3 HEARING OFFICER LANGHOFF: When was the site visit, Mr.

4 Zak?

5 THE WITNESS: April the 4th.

6 HEARING OFFICER LANGHOFF: April the 4th?

7 THE WITNESS: Yes.

8 HEARING OFFICER LANGHOFF: Did you compile any reports or
9 any notes?

10 THE WITNESS: No. Simply what I was doing was just to be
11 able to clear up the area in my mind so when I testified here I
12 would basically get north, south, east and west correct, and the
13 buildings and the various structures in the proper locations
14 where they are.

15 HEARING OFFICER LANGHOFF: Okay. Mr. Zak, did your answer
16 and do your answers incorporate, I guess, evidence that you
17 discovered on your site visit April 4th? You just testified, I
18 believe, that it was based on the reports and what you saw at the
19 site on your site visit on the 4th.

20 THE WITNESS: To clarify that, if I could -- were to do it
21 again I would not have mentioned the site visit at all. I think
22 it was -- the reason I mentioned the site visit was it was
23 something fresh in my mind having been there less than a week
24 ago, but it really didn't change my attitude, opinion or any

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1 conclusions that I had reached at the point of deposition.

2 HEARING OFFICER LANGHOFF: Did you notify Mr. Muskopf of
3 your site visit?

4 THE WITNESS: No, I did not.

5 HEARING OFFICER LANGHOFF: When did you find out, Mr.
6 Muskopf?

7 MR. MUSKOPF: I found out when my clients called me and
8 said they saw a suspicious and dangerous looking man walking
9 around and who got into a car with the license plates G ZAK.

10 MR. YOUNG: G ZAK 1.

11 MR. MUSKOPF: G ZAK 1.

12 HEARING OFFICER LANGHOFF: Thank you, Mr. Muskopf. I am
13 going to overrule your objection, Mr. Safley, based on Mr. Zak's
14 representations that his opinions have not changed and it was in
15 response to some questions that he had from the discovery that
16 was produced. I must say I am not real happy about having to
17 make that ruling but, nevertheless, I am going to.

18 MR. SAFLEY: Thank you.

19 Q. (By Mr. Muskopf) Well, why don't we keep this record
20 clean, Mr. Zak. Why don't we -- all my questions that I am going
21 to ask you I want you to exclude from your opinions and from your
22 testimony the information that you gained at the site visit. Are
23 you able to do that?

24 A. Yes, I am.

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1 Q. Okay. So just so we are clear and so that we don't have
2 a problem with this later on, why don't I just -- why don't you

3 and I in your testimony pretend like you were never there. Can
4 we do that?

5 A. Yes, we can.

6 Q. Okay. We were talking, I think, about the principal and
7 you were trying to put them in rank order, the principal noise
8 source problems at the GML facility. I believe we were talking
9 about the flour unloading operation. I don't recall exactly
10 where we were. Just let me ask you, have you ever had experience
11 with that type of noise source in the past?

12 A. Yes, I have. There have been a number of situations
13 where we have had noise complaints about pneumatic unloading
14 systems. So I am not unfamiliar with that type of problem and
15 investigating that kind of problem.

16 Q. Okay. Can you identify basically what the various
17 factors are that contribute to the problem of the noise from the
18 flour and sugar unloading operation impacting the Youngs? So,
19 for instance, does it make any difference that there is sort of a
20 tunnel there, that there is a building across the street that is
21 three stories high that is brick and glass and that is
22 immediately across the street from the flour unloading operation?

23 A. Yes, I can. The configuration of the area is such that
24 we can think of it almost as a brick canyon where you have high

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1 brick walls on both sides and the noise occurring in that block
2 hall or brick canyon. The sound travels down the canyon and at

3 the end is the Youngs' residence. So there tends to be some
4 focusing affect and some reverberation and echoing affect that
5 takes place at the Youngs.

6 I think that was, in my mind, somewhat borne out by Mrs.
7 Young's statement or testimony that when they moved the loading
8 operation a little further away that the sound levels didn't
9 really drop down. And based on my experience with situations
10 similar to where you have a lot of very tall buildings forming
11 that kind of acoustic configuration that is not surprising.

12 Now, you also asked me in the previous question, and I
13 didn't really have a chance to finish it, to rank order of the
14 various noise sources there. Do you want me to do that at this
15 time?

16 Q. Yes. Why don't we just get an overview and then we will
17 talk about them in a little detail one by one. So, yes, if you
18 could please give us the rank order of the noise source problems?

19 A. Okay. Number one would be the pneumatic unloading with
20 the blower in the truck.

21 Number two would be the picking up and dropping off of the
22 dumpster.

23 Third would be the idling of semi diesel engines that are
24 waiting to unload at the plant.

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1 Fourth would be noise from the employees coming to and

2 leaving the parking lot.

3 Q. Do you have a preference as to which order we discuss
4 these in?

5 A. No.

6 Q. Okay. Well, let's start with number one, then. First
7 of all, what about the banging on the side of the tanks with a
8 hammer? Do you see that as a problem?

9 A. Yes, very much so. And if I could use an analogy here,
10 it is very similar to beating on a huge, mammoth base drum. What
11 you generate are very low frequency thump, thump, thump sounds
12 that have the frequency content such that they will travel even
13 through a house with 12 inch walls. So it is plenty audible on
14 the inside of the house. The bang would be a significant part of
15 the noise that would irritate the average person in a situation
16 where you have the pneumatic unloading and the subsequent bang
17 with the hammer to loosen the material.

18 Q. You heard Mr. Hutchinson's testimony about the two
19 decibel -- the approximately two decibel difference between a
20 truck with a blower on it without some type of silencing device
21 and a truck with the silencing device. First of all, do you
22 think that the study that he conducted was scientifically
23 accurate?

24 A. The study, as I understood it, was a case of taking

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1 measurements with the silencer mounted and with the silencer not

2 mounted on the blower. The decibel difference he obtained was
3 approximately two decibels. A two decibel difference to the
4 average person would be virtually imperceptible.

5 MR. SAFLEY: I am going to object to this testimony,
6 because the noise measurements that Mr. Hutchinson talked about
7 for the two decibel difference were taken at location F, which is
8 ten feet from the truck that is being unloaded and have no
9 bearing whatsoever on the noise levels that are experienced at
10 the Youngs' property. And I would be happy to point out that the
11 differences at their property are different than the difference
12 by that truck, if you would like me to, Mr. Langhoff. I think
13 having Mr. Zak make opinions based on noise measurements that
14 were taken at the point furthest from the Youngs' property is
15 misleading.

16 HEARING OFFICER LANGHOFF: Right now I am inclined to
17 overrule your motion. Is there something further that you wanted
18 to bring to my attention?

19 MR. SAFLEY: No. I will deal with it on cross-examination.

20 HEARING OFFICER LANGHOFF: Okay. Thank you.

21 MR. SAFLEY: Thank you.

22 Q. (By Mr. Muskopf) Mr. Zak, perhaps you could address that
23 concern that Mr. Safley has just expressed. Is there any
24 relevance of the measurements that Mr. Hutchinson took of the

1 truck blower without the silencer and the truck blower with the
2 silencer, assuming that they were ten feet away, to how that
3 particular noise might impact the Youngs' property?

4 A. Yes. If I could answer that, when one takes
5 measurements, say, ten feet away from a noise source and to
6 basically check to see how much noise reduction is provided by a
7 silencer and then you were to, say, simultaneously take
8 measurements at the residential property, at that point you would
9 also see a two decibel change in the sound level for that
10 particular noise source. So it is very relevant. I mean, that
11 is the typical way we do things in the noise control engineering,
12 would be to take measurements close to the noise source and see
13 what kind of reduction we get and then we can safely project that
14 out to the residential area and say that is the affect that we
15 are going to have in the residential area.

16 Q. Does the distance between ten feet away from the truck
17 and the distance -- and the Youngs' property, does the distance
18 between where the two measurements were taken, does that affect
19 your opinions in any way? I mean, is the sound level going to
20 drop over that distance?

21 A. Yes. But when there is a two decibel difference in
22 sound level, if I could just bring up -- I will make up a figure
23 to try to illustrate it. Let's say we have 90 decibels with no
24 silencer and we are measuring, say, 70 decibels at the Young

1 residence. If we then put a silencer on there and drop it down
2 to 88 decibels, then we would measure 68 decibels at the Young
3 residence. So it is a two decibel drop at the source and two
4 decibel drop at the receiver. That's the standard result that
5 you would get in that kind of situation.

6 Then, of course, I got into it before that we want to look
7 at, in a situation like this with a two decibel drop, how
8 significant is a two decibel drop. And the problem that we run
9 into is that to the average person they cannot perceive that two
10 decibel drop over a period of several minutes. For example, if
11 the two decibel drop happened instantaneously, yes, the person
12 could say, well, yes, I had heard a change in sound volume. But
13 if you have any period of minutes there where you have nothing
14 going on and then there is a two decibel -- and the noise is
15 started up again two decibels quieter, the average person can't
16 tell if it is two decibels quieter or two decibels noisier.

17 Typically, in a silencer situation like that, what you
18 would be looking for would be at least a 10 decibel change. The
19 reason why we want 10 decibels minimum, is at 10 decibels we
20 would cut the sound level as it is perceived in half. Better
21 would be to go for a 20 decibel drop, where it would sound one
22 quarter as loud. There have been many silencer applications I
23 have used where we were looking at a 30 decibel drop or a sound
24 level that is one-eighth as loud as what they were at the

1 uncorrected level.

2 Q. So do you think the silencers that Mr. Hutchinson has
3 described where he achieved a two decibel drop with them are
4 basically ineffective?

5 A. Yes. I have other concerns there, too, because due to
6 the type of instrumentation that he was using and his not having
7 much practice in doing these kind of measurements, it is very
8 likely that there was virtually no change at all or maybe he
9 could have had a four decibel change, but the error in there is a
10 several decibel error of doing that type of measurement as such
11 as the way he did it with the kind of instrumentation that he
12 used.

13 MR. SAFLEY: I want to interpose an objection. I realize
14 it may be too late. But most of what Mr. Zak has talked about
15 today was not disclosed in his deposition, and some of it is
16 related to what is disclosed in his deposition. Mr. Zak made two
17 opinions in his deposition. One, that the noise emitted causes a
18 nuisance. Two, that the noise could be reduced by enclosing the
19 noise source. That is it. There was no discussion by Mr. Zak
20 and there has been no disclosure of any opinions that Jack
21 Hutchinson was taking noise measurements incorrectly. There has
22 been no disclosure of any opinion that silencers are not working.
23 There has been no disclosure of any opinion that only a two
24 decibel reduction was achieved.

1 I have been trying not to object where I thought that what
2 was being stated was remotely related to one of the two opinions
3 which was expressed, which was nuisance or enclosure. But I
4 think that we have gotten far beyond that. And this is just
5 another situation where we are being faced with new testimony
6 that we have never heard before and things that were not
7 disclosed in discovery and things that were not disclosed in the
8 deposition.

9 Mr. Muskopf filed a motion in limine against our expert
10 witness saying if you don't disclose something in one of those
11 two places you can't use it. We are being faced with that here.
12 I object to the former response and I object to any more
13 questions sought to elicit anything other than the opinion that,
14 A, there is a nuisance, or, B, the noise source can be reduced by
15 enclosing it, because that is all that has been disclosed before.

16 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf?

17 MR. MUSKOPF: Well, my response to that, quite simply, is
18 it is impossible to anticipate exactly what is going to come out
19 of certainly Mr. Hutchinson's mouth when he testifies at hearing.
20 The fact that Mr. Zak has been sitting here and hearing
21 contemporaneously what has been going on in this proceeding and
22 then has some opinion about it, I can't imagine how anybody would
23 be expected to anticipate that. And it is a legitimate, valid
24 opinion that the Board should consider, just as they should

1 consider what Mr. Hutchinson has said. You know, if we are going
2 to be on the subject of the disclosure of Dr. Weissenburger's
3 opinion, then basically they are going to be limited to exactly
4 what he has testified to or what he --

5 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Muskopf.
6 I am going to overrule your objection, Mr. Safley. There has
7 been plenty of evidence that has been brought out today and
8 testimony about the things that have been done. Mr. Zak is an
9 expert in the field of noise. This documentation was disclosed,
10 all of these readings. And I feel he can make his expert opinion
11 based on the evidence that is before us today.

12 MR. SAFLEY: Thank you.

13 MR. MUSKOPF: Could you read it back?

14 HEARING OFFICER LANGHOFF: No.

15 MR. MUSKOPF: Do you know what it is?

16 HEARING OFFICER LANGHOFF: Well, I hate to have you do
17 that. Okay. Would you read back the question, please.

18 MR. MUSKOPF: I am sorry.

19 (Whereupon the last question and answer of the record was
20 read back by the Reporter.)

21 Q. (By Mr. Muskopf) Did you complete your -- I am not sure
22 if you were interrupted by the objection or if you had completed
23 your answer to that question.

24 A. No, I had completed it.

1 Q. Okay. What about the -- it sounded like from what you
2 said earlier that the pneumatic unloading with the blower on the
3 trucks is more of a problem than the pneumatic unloading with the
4 blower located in the facility itself?

5 A. Yes. That has been my experience at other facilities,
6 and I basically take some of my experience from other operations
7 and apply them here, and generally speaking the -- when you have
8 the blower inside the truck or inside the trailer of the -- the
9 truck trailer, that the sound can radiate out through the thin
10 metal walls of the truck trailer. Whereas, if the blower is
11 located in the plant you have got the thick walls of the plant to
12 contain much of the noise.

13 Q. Okay. Do you understand what the containment system is
14 of the blower that is located in the plant?

15 A. I have no details on it.

16 Q. Okay. Are there silencers available that could achieve
17 a 20 decibel drop for the blowers on the truck?

18 A. There are general silencers available that will provide
19 in the range of, say, 10 to 40 decibels of drop. We would be
20 looking at a situation like this, what would be considered a
21 dirty gas silencer. And the dirt in this situation would be the
22 flour or the sugar. And I am not implying there is anything
23 wrong with the flour or the sugar, but basically silencers have
24 been designed to handle materials like that. That type of

1 silencer, I believe, could produce anywhere from a 10 to a 30
2 decibel drop in a situation like that.

3 MR. SAFLEY: Pardon me. Can I just show a running
4 objection to all of the questions and answers rather than having
5 to object every time?

6 HEARING OFFICER LANGHOFF: Certainly. It is so noted.

7 MR. SAFLEY: To the disclosure issue. Thank you.

8 Q. (By Mr. Muskopf) Would you prefer to talk about the
9 solutions for each of these problems while we are talking
10 about -- on the heels of talking about the specific problems
11 themselves instead of, for instance, what can solve the problem
12 of the pneumatic unloading with the blower on the truck, should
13 we talk about that now or should we go on and talk about the
14 dumpster and then go on and talk about the solutions all at once?

15 A. I prefer to stay with the pneumatic unloading, because I
16 think I can -- my end answer is going to be in complete agreement
17 with my deposition, where I am not quite through with the answer
18 yet and the -- my feeling on that is that the silencer idea
19 itself is probably not really the way to go. My feeling on this,
20 as I said in the deposition, would be to build a garbage type of
21 arrangement around where the truck is unloaded. And having a
22 door on there, much like an ordinary garage door, building the
23 building such that it is a relatively inexpensive building yet it
24 will contain the sound, and to unload the truck in that manner.

1 The reason I stress that is even if the silencer were improved on
2 the presence system, we still have the hammering on the side of
3 the tanker. By enclosing it, then we take care of both the
4 pneumatic sound and the hammering at the same time. So, again,
5 that would be my solution to the problem. It would not be to
6 worry about the silencer at this point in time but to go with the
7 enclosure.

8 Q. Would that enclosure entail moving the flour unloading
9 station from its present position?

10 A. I don't believe so. I believe that the enclosure could
11 be constructed such that it is just slightly larger than the
12 truck dimensions, allowing enough room to pull the truck in and
13 pull the truck out, and allowing enough room for the driver to be
14 able to walk along either side of the truck to hit it with a
15 hammer to loosen up the material in there.

16 Q. Have you seen solutions like that work in other cases?

17 A. Yes. The case that comes to mind is Christiansen versus
18 American Milling. In that situation there the company ultimately
19 built a large containment building to contain the unloading of
20 their trucks and also railcars at the same time. The situation
21 there was in some ways similar. It was a food product. However,
22 there rather than it being powder form, it was more of a viscous
23 form and difficult to handle.

24 Q. Did they have sanitation problems with that enclosure,

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1 like Mr. Hutchinson was concerned about?

2 A. I am aware of a number of enclosures used around food
3 handling facilities or facilities that have to maintain fairly
4 high levels of cleanliness, and this is the first time I have
5 heard somebody show a serious concern about keeping a building --
6 the inside of a building clean.

7 Q. What kind -- it sounds like the building in Christiansen
8 would be much, much bigger than the type of building that would
9 be needed here?

10 A. Yes. I would say probably it would be in the order of
11 magnitude bigger, because not only did they have to handle
12 semi-trucks, the semis themselves were put on shakers and then
13 the semi was turned upside down and shaken. The railcars, the
14 same thing was done. There was a device in there that was large
15 enough to grab a railcar, flip it upside down, shake the material
16 out, flip it back, and then send it on its way. This whole
17 configuration of both truck flippers and shakers and train
18 flippers and shakers was all put in one building.

19 Q. So what kind of materials do you need to construct the
20 type of building that you are proposing as a solution for the
21 flour handling problem?

22 A. I think we are looking at basically a steel building.
23 So it is relatively inexpensive, just heavy enough gauge steel to
24 contain the sound, much like some of the farm buildings we see on

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1 farms where they have this steel building for holding all of the
2 agricultural equipment.

3 Q. Can you give an approximate range of the cost of that
4 type of building?

5 A. I would say just for the building itself, and putting it
6 up, we are looking at something probably in the area of
7 \$50,000.00.

8 Q. How long would it take to construct such a building?

9 A. A few weeks.

10 Q. Do you think it could be done without significant
11 disruption to the flour and sugar loading and unloading?

12 A. I would think so. If I could amplify that a little bit,
13 I think a good portion of the construction could go on between
14 trucks and then on Sunday it could be finished off when they have
15 no trucks coming in.

16 Q. Or between the hours of 10:00 p.m. and 7:00 a.m., since
17 we know that there are no trucks that --

18 A. That's right.

19 Q. --come in at that time, too? Have we covered to your
20 satisfaction the pneumatic unloading problem?

21 A. Yes.

22 Q. And the solution to it?

23 A. Yes.

24 Q. Okay. What about the dumpster? What is the problem

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1 there? I mean, can the -- well, can you just describe the
2 problem with the dumpster?

3 A. Well, again, from the videotape, the -- when the
4 dumpster is loaded onto what I would call a rolloff truck, the
5 dumpster has little steel wheels on it, and it is pulled up the
6 back of the truck to be loaded on the truck to be taken out.
7 That generates a lot of metal on metal squeal. You are also
8 going to have clanging and banging due to loose metal parts on
9 that type of a rig. I have experienced many of those myself with
10 noise problems.

11 The other area with that type of operation is what I would
12 call clanging and banging. As different -- as the trailer -- as
13 the rolloff box comes up, it tends to bang on the carriage of the
14 truck. And then when they are unloading an empty box, rolloff
15 box, it is the same thing. It rolls off and there is quite a bit
16 of noise from the rolloff itself, and then when it hits the
17 pavement you get a real load boom or clang when it hits the
18 pavement. That type of operation is not really -- I would feel
19 that as far as the noise regulations are concerned, it is not
20 conducive -- it should not be done in an area close to a
21 residence.

22 I see two possibilities to solve this problem. One would
23 be to do it in a location far enough away from the Young
24 residence that they couldn't hear it or another way would be much

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1 like the unloading of the truck, to build a metal building for
2 the dumpster and, again, having the truck that picks it up and
3 drops it off pull into a metal building, perhaps constructed on
4 the parking lot next to the Young residence where the whole
5 operation would be done inside a building and then taken outside
6 the building and the door would be closed to the building except
7 when the trucks is ingressing or egressing.

8 Q. How much would that cost?

9 A. In the range of -- I would say approximately \$50,000.00.

10 Q. Is there just no way to quiet that loading and unloading
11 of this type of trash container? I mean, is the only thing you
12 can do is basically enclose it?

13 A. I have not seen any other way to do it. If somebody
14 developed a plastic rolloff box with rubber wheels perhaps that
15 might solve the problem. I am not aware of any other way to do
16 it other than the enclosure method.

17 Q. I would assume that with the prevalence of this type of
18 dumpster that you have seen a number of these problems before?

19 A. Yes, I have.

20 Q. And this -- what are the range of solutions?

21 A. Well, again --

22 Q. Just the two that you mentioned and that's it?

23 A. Just the two that I have mentioned really, the

24 relocation and enclosure.

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1 Q. Would the relocation problem cause another problem with
2 the -- I mean, somebody has to take the trash out, right? They
3 have to get the garbage from the facility to the dumpster itself.
4 Or are you not suggesting moving the location of -- maybe I am
5 not understanding.

6 A. If it is important for the operation to keep it where it
7 is at right now, perhaps the most viable way of doing it would be
8 to build the enclosure. If, however, analyzing that scenario and
9 then saying, well, is it less expensive in the long run to do it
10 at a different location in the plant, such that we are not going
11 to create noise for the neighbors, then either solution, you
12 know, would work. And it would be something up to Gilster-Mary
13 Lee to decide which is the best for them.

14 Q. Okay. So the enclosure -- enclosing the present
15 location of the garbage container, how much would that cost?

16 HEARING OFFICER LANGHOFF: That has been asked and
17 answered, Counsel.

18 Q. (By Mr. Muskopf) Was that \$50,000.00?

19 A. Yes.

20 Q. And the type of material used to construct that
21 enclosure?

22 A. The same as the material used for the truck.

23 Q. Okay. Now, if it moves entirely, if the location of the

24 garbage container moves entirely and you have to build on the

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1 parking lot as you mentioned as another option, how much would
2 that structure cost to construct?

3 A. Well, perhaps I was not clear in my testimony.

4 Q. Maybe I am just --

5 A. I was looking at two possible scenarios there. Either
6 moving the rolloff box to a different location on the
7 Gilster-Mary Lee property or if they want to keep it where it is
8 presently located to then build a structure to be able to load
9 and unload it inside the building.

10 Q. I am with you now. I am sorry. I just misunderstood
11 you. How long would it take to construct the kind of structure
12 that you talked about at the present location of the dumpster?

13 A. I would say probably two to four weeks.

14 Q. Have we covered the dumpster issue?

15 A. Yes.

16 Q. Okay. Idling of semi diesel engines waiting to unload.

17 A. I run across this situation a number of times and the
18 way it is typically worked out is the plant will notify all
19 incoming drivers that they have to shut their engines off once
20 they get into -- get cued up in line there for unloading. That
21 can be handled -- I have seen it usually handled simply by if it
22 is a company truck, it is company policy and they have to do it.

23 If it is a contractor or subcontractor it is written in their
24 contract that when you pull your truck up here this is -- you

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1 know, you will shut the truck off until it is your turn to move
2 back up there for unloading.

3 Q. Or we won't do business with you?

4 A. Exactly.

5 Q. Why do they let diesel engines idle anyhow? I mean, is
6 there some --

7 MR. SAFLEY: I am sorry. You are asking why does
8 Gilster-Mary Lee or why do the drivers?

9 MR. MUSKOPF: Just in general.

10 Q. (By Mr. Muskopf) I mean, like, truck drivers you see
11 them sitting in a truck stop and they just leave their engines
12 running. What I am getting at is there some disadvantage or is
13 there going to be some cost associated with simply turning your
14 -- turning the engine off on a truck and restarting it?

15 HEARING OFFICER LANGHOFF: Mr. Safley?

16 MR. SAFLEY: I don't have an objection to that question.

17 HEARING OFFICER LANGHOFF: Okay.

18 MR. SAFLEY: The question I heard was why do they, and I
19 just --

20 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Zak.

21 THE WITNESS: The idling problem has come up many, many
22 times in my 28 years of doing noise work. I have talked to a lot

23 of drivers about it and have talked to a lot of companies about
24 it, and to answer your question typically the main reason they

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1 let them idle is the driver likes the air-conditioning on in hot
2 weather. If it is extremely cold weather the driver likes the
3 heater on. The heater and the air-conditioner will not work with
4 the engine turned off. So you have a miserable driver. So it is
5 mainly for the comfort of the driver as far as why they will idle
6 like that.

7 Now, the one other side bit of information that is not
8 exactly specific to the problem where you have got the trucks in
9 line cueing up to unload is the question of starting the truck in
10 cold weather. But I would not expect a truck would sit there so
11 long to unload that his engine would be so cold that he couldn't
12 start it even when it is, say, below zero.

13 Q. (By Mr. Muskopf) Okay. You think that simply having
14 them turn their engines off and having GML have a contractual --
15 impose a contractual obligation on the noncompany truck drivers,
16 that is workable?

17 A. It has worked at other facilities.

18 Q. What happens? How do you enforce that? I mean, let's
19 suppose that the drivers say, well, I know we have a contract
20 with GML, but I am going to leave my engine running. And GML
21 says I don't care if they leave their engine running. I mean,

22 the Youngs are the ones that suffer if the truck driver does not
23 obey the contract and if GML does not enforce it.

24 A. Yes. My suggestion there would be that would be part of

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1 the Board order. That would then put GML in a position to
2 enforce that. They could always say, well, it is not us. It is
3 the Pollution Control Board because the neighbors have complained
4 about the noise, so you have got to shut your engine off.

5 Q. Has that covered that issue?

6 A. Yes.

7 Q. So we can move on to the parking lot?

8 A. Yes.

9 Q. Actually, I guess there are several of them, aren't
10 there?

11 A. Yes. In the parking lot, again, based on the testimony,
12 it seems that when the employees arrive some of the issues are
13 loud radios, loud conversation, locking the later model cars
14 where they use the remote control and they get the horn to honk,
15 indicating to the driver that the car has locked itself. And
16 then when people are coming out of work it is the same thing all
17 over again, unlocking the vehicles, getting the engines started
18 and then pulling out and driving on the gravel surface out there.

19 One potential solution would be -- a partial solution would
20 be to blacktop the parking lot. I think that the amount of --
21 all that would do is address the problem of the tires on the

22 gravel. But you would still have a lot of other noise problems
23 in addition to that. My suggestion in this case would be to go
24 with a noise barrier between the parking lot and the Young

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1 residence of sufficient height in order to reduce or block out
2 the noise from the parking lot operation impacting the Young
3 residence.

4 Q. How high would that have to be?

5 A. Normally you would want something approaching the height
6 of -- the top height of the second floor windows. On a house
7 like that, that they have got, I would say -- the windows appear
8 to be approximately 20 feet high. So I think we are talking
9 about something on the order of about 20 feet in height in order
10 to provide that kind of blockage.

11 Q. How much a lineal foot would a fence like -- I mean, it
12 is basically an acoustic fence, right?

13 A. Yes.

14 Q. You said sound barrier, but somebody might look at it
15 and -- a layperson may look at it and think it is a fence; is
16 that --

17 A. Correct, yes. Actually, the reason I use acoustic
18 barrier is that when we say fence a lot of different people have
19 a lot of different impressions of what a fence is. To be
20 acoustically effective it has to be solid, air tight, and

21 virtually sealed to the ground, having no leaks anywhere from the
22 bottom to the top, and being of sufficient length to provide a
23 complete barrier for the house from activities in the parking
24 lot.

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1 The type of material that would serve quite well to do that
2 would be, say, three-quarter inch outdoor grade plywood, which is
3 not terribly expensive to do, to build, say, 20 feet high, and do
4 one side of the parking lot, as far as the acoustic properties
5 are concerned. But we have another problem in there and that
6 is -- the main problem is wind. You have got to design this type
7 of thing to withstand high wind load. That's where the cost
8 comes in. That's what makes it expensive to do that.

9 I had a situation where a trucking company up in Palatine,
10 Overland Trucking, needed a 22 foot high noise fence that would
11 have been about 500 feet long, and not knowing the exact
12 dimensions off the top of my head, I would say we are probably
13 looking at several hundred dollars per running foot for that type
14 of barrier.

15 Q. Which sides of the house would it need to be on? Does
16 this help?

17 A. (The witness reviewing document.) As we look at the
18 Young residence here, it would be on the right side. I am
19 looking at Exhibit C8. It would be on the right side of the
20 Young residence. It is a little difficult to give an actual

21 compass direction because the roads in Chester tend to run
22 northwest to southeast. But I think it is clear enough just to
23 simply say it would be the right side of the Young residence on
24 that exhibit.

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1 Q. Okay. So that's the only side that a fence would be
2 required? You are talking about basically the side -- when you
3 say the right side, is that facing the house looking at it and
4 then to the right?

5 A. Yes. Now, I might elaborate on that a little bit, too.
6 I notice on the diagram here that we have a parking lot on the
7 left side of the house also. And that -- if that is also a
8 problem -- and from the testimony I was not quite sure if the
9 problem was on both sides of the house or one side of the house.
10 But if it is on both sides of the house then we would be looking
11 at a barrier on both sides as opposed to one side.

12 Q. Okay. How long would it take to construct acoustical
13 barriers, as you have described?

14 A. Oh, I would say probably a period of, say, two to four
15 weeks.

16 Q. I can't remember how many noise cases you said you have
17 handled over the years. How about the ones that have gone to
18 hearing where there has been a finding that the respondent was in
19 violation?

20 A. I never actually tabulated that. But my guess is that
21 it would be approaching 100.

22 Q. Have you ever run into a problem where the respondent is
23 found to be in violation, the Board orders that they essentially
24 cease and desist their violations, and then the respondent

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1 basically continues violating the law?

2 MR. SAFLEY: My only objection is I don't understand the
3 relevance of that question.

4 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf, what is the
5 relevance?

6 MR. MUSKOPF: We will be getting there in about two more
7 questions. It goes to whether a continuous sound monitoring
8 system should be implemented or not in this case.

9 MR. SAFLEY: I don't know if you want me to speak further
10 on that, Mr. Langhoff.

11 HEARING OFFICER LANGHOFF: Please, Mr. Safley.

12 MR. SAFLEY: My response to that is -- and I still have
13 running objection that everything we have just heard was not
14 disclosed, or if not everything most all of it. But I think to
15 have opinion testimony on potential solutions for things that
16 have not happened yet is way outside the realm of what we should
17 be talking about here. I don't think it is appropriate.

18 MR. MUSKOPF: I think it is probably done in almost all
19 Board cases. I mean, you have to ensure future compliance.

20 That's the whole idea of this proceeding. It is not just to --

21 HEARING OFFICER LANGHOFF: But the question is how many
22 cases has he dealt with and this crops up. That is not really
23 relevant to this case. I am going to sustain the objection.

24 MR. MUSKOPF: Okay.

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1 Q. (By Mr. Muskopf) Mr. Zak, do you think it would be
2 appropriate in this case to implement a continuous noise
3 monitoring system at the expense of GML?

4 A. Yes, I do.

5 Q. Why do you think that?

6 A. There is a large number of noise sources involved.
7 There has been -- from what I heard of the testimony, the
8 complainants are stating and the videotape demonstrates that
9 there is a noise problem at any unpredictable time. Other
10 testimony has indicated that, well, they don't allow -- they
11 don't normally allow anything in there -- any unloading, say,
12 from 10:00 to 7:00. In order to ensure compliance, I think the
13 best way to do that would be to use a 24 hour noise monitor set
14 up and maintained by GML so that when questions arise as far as
15 like noise is concerned, the monitor is there to basically
16 demonstrate whether there is a problem or not.

17 Q. And have you seen those kinds of systems work in the
18 past and do you believe that based on our past experience that

19 such a system would be feasible in this case?

20 A. Yes. For example, the Illinois Department of
21 Transportation uses that type of device all of the time. They
22 will set the box up with the microphone on there and leave it for
23 a period of several days or even several weeks to monitor noise
24 in a certain area for highway construction projects. So it is

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1 commonly done.

2 Q. So basically the data is collected and it does not have
3 to be -- the device would not have to be monitored except
4 periodically?

5 A. Correct. It is computerized and the internal instrument
6 keeps track of dates, times, duration of the event, levels are
7 measured, and all of the pertinent data is kept in the little
8 box.

9 Q. And then you don't have to analyze all of that data? I
10 mean, when would you call for analysis of all of it?

11 A. Well, typically if the Youngs were to, say, well, let's
12 say April the 30th of 2002 they were unloading for half the
13 night, and the noise was terrible. Gilster-Mary Lee could then
14 go back and look at the data and be able to either say, look,
15 there is nothing significant going on here or gee, yeah, it was
16 awfully noisy that night. And then take steps to address that
17 noise problem so that it does not occur in the future.

18 Q. How much would a system like that cost for this

19 application?

20 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf, Mr. Safley
21 has a running objection as to this testimony as beyond the scope
22 of what was disclosed in deposition. I have been pretty lenient
23 with allowing Mr. Zak to testify because I believe that it does
24 tie in with having an enclosed building or a nuisance, at least

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1 testimony to that effect. I think we are getting way beyond that
2 now. This has nothing to do with an enclosed building. Now we
3 are talking about not only enclosed building one but enclosed
4 building two, a 20 foot high fence, electronic monitoring, and
5 you are beyond, beyond what is relevant, and also beyond what was
6 disclosed to the respondent in discovery. So I am going to cut
7 off your questioning with regard to this.

8 Now, if you have some more things that you want to discuss
9 the solutions to, I believe there is one more that might have
10 been disclosed before. Is there one?

11 MR. MUSKOPF: Actually, there is not.

12 HEARING OFFICER LANGHOFF: Okay. There isn't. Okay.

13 MR. MUSKOPF: I would like to say a few words for the
14 record on your ruling.

15 HEARING OFFICER LANGHOFF: Okay.

16 MR. MUSKOPF: First of all, relevance is determined by the
17 complaint. If you read the very end of the complaint, the

18 complainants ask for an order from this Board that the respondent
19 cease and desist all of its illegal activity and for any and all
20 such further relief to which it may be just entitled, which would
21 include a continuous monitoring system. So what the complainants
22 are asking for is some relief from the Board, would you please
23 help us fix the problem with the noise that these people are
24 making. And, secondly -- so the information that I am eliciting

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1 right now as to whether a continuous monitoring system is
2 appropriate or not is absolutely relevant.

3 Then, secondly, on the disclosure issue, if you read the
4 disclosures that have been exchanged in this case basically they
5 are very general, both of ours are. Everything that I have asked
6 Mr. Zak is completely within the scope of the disclosure that I
7 have given. Now, I have not taken Dr. Weissenburger's
8 deposition. And they have taken Mr. Zak's deposition. I am not
9 sure who did it. But if they have not asked him right the
10 questions to find out what he is going to say, it is not my
11 fault.

12 I have done my job and completely -- I have disclosed and I
13 have disclosed at the same level of generality and specificity as
14 my opponents have. They have opted to take my expert's
15 deposition. And, again, if they omit -- if they forgot to ask
16 him, well, what do you see as a solution to this or do you think
17 a continuous monitoring system is appropriate, it is not my

18 responsibility to inform them of all of the questions that they
19 didn't ask.

20 And so, you know, basically what we have is a situation
21 where Dr. Weissenburger shouldn't be allowed to testify to
22 basically anything except for the five sentences that are in the
23 interrogatory answers because if -- really the issue is scope of
24 disclosure, is what -- is the testimony that is being elicited,

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1 is it within the scope of the disclosure, not whether every tiny
2 little detail has been revealed. And everything I am asking Mr.
3 Zak is well within the scope of my disclosure.

4 HEARING OFFICER LANGHOFF: Okay. Thank you.

5 MR. MUSKOPF: Thank you. Well, for that matter, I feel
6 like I need to make an offer of proof so that should the Board
7 decide that I am entitled to ask Mr. Zak these questions that we
8 do have a record of that.

9 HEARING OFFICER LANGHOFF: We have already heard the
10 questions and the answers. Feel free to offer your -- make your
11 offer of proof on anything additional that you were going to talk
12 about, but we have already talked about the monitoring and the
13 fence.

14 MR. MUSKOPF: Okay.

15 HEARING OFFICER LANGHOFF: And it has been asked and
16 answered.

17 MR. MUSKOPF: I just was not sure if Mr. Zak was finished
18 with the monitoring system. In fact, the next question I was
19 going to ask him was cost and I don't think we have talked --

20 HEARING OFFICER LANGHOFF: No. Cost is fine.

21 MR. MUSKOPF: Okay.

22 HEARING OFFICER LANGHOFF: That is relevant, but we are
23 getting too far afield about where the Department of
24 Transportation has used this before and his myriad of other cases

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1 that he has had.

2 MR. MUSKOPF: Well, it goes to -- I mean, the solutions
3 have to be economically feasible.

4 HEARING OFFICER LANGHOFF: Yes, so --

5 MR. MUSKOPF: And that's what I am talking about.

6 HEARING OFFICER LANGHOFF: So go ahead and ask your
7 question about the cost, please.

8 MR. MUSKOPF: Okay.

9 Q. (By Mr. Muskopf) Mr. Zak, do you have an opinion as to
10 how much a system like this for this application -- that you have
11 recommended for this application would cost?

12 A. Yes. I would say in the range of between \$10,000.00 to
13 \$25,000.00.

14 Q. Is that on an annual basis or is it a one time setup? I
15 assume that this -- that a system like this would require
16 maintenance?

17 A. The cost would be as far as purchasing the equipment and
18 setting it up. There would be a relatively minor annual cost to
19 keeping the system up.

20 Q. Okay. Do you have any other opinions on the continuous
21 monitoring system that we have not discussed?

22 A. Only to add that in my statements in the case of Cohen
23 versus Overland the situation was not too dissimilar from the
24 situation that we have here with Gilster-Mary Lee and one of my

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1 recommendations in that case was to go with continuous monitoring
2 because of the very same nature of trucks coming in and out in
3 the early a.m.

4 Q. Okay. Let's see. To ensure compliance along with the
5 continuous monitoring system, do you have an opinion as to
6 whether it would be appropriate for the Board to establish a
7 system of penalties for noncompliance? I mean, is it good enough
8 to simply set up a monitoring system and find out when they have
9 violated the Board's order, or does there need to be some teeth
10 to this type of system?

11 MR. SAFLEY: May I interpose an objection? I am not sure
12 that is within this witness' expertise. That may be a decision
13 for the Board to make. But I think that is a legal decision and
14 not a technical noise expert decision.

15 HEARING OFFICER LANGHOFF: Mr. Muskopf?

16 MR. MUSKOPF: Mr. Zak is an expert on solutions to noise
17 problems.

18 HEARING OFFICER LANGHOFF: Okay. I am going to sustain the
19 objection.

20 Q. (By Mr. Muskopf) Anything more that we need to talk
21 about?

22 A. I think we have pretty much covered it.

23 Q. Let me think about this for a second. Do you think that
24 in this case the respondents have basically proven the case

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1 against them?

2 MR. SAFLEY: I object. That is a decision for the Board as
3 to what the conclusion of the case is and what the proof is.

4 HEARING OFFICER LANGHOFF: I think it is pretty clear what
5 his opinion will be. I will allow the question.

6 MR. MUSKOPF: Well, let me -- I will rephrase it. I will
7 be happy to rephrase the question.

8 Q. (By Mr. Muskopf) Mr. Zak, have you seen from the
9 measurements and other evidence that has been either generated or
10 produced by the respondent that Gilster-Mary Lee is unreasonably
11 interfering with the Youngs' enjoyment of their life and their
12 property?

13 A. Yes, that sums up my opinion.

14 Q. How is it that their own evidence establishes the
15 liability?

16 A. Well, we have the measurements taken by Mr. Hutchinson.
17 We have the measurements taken by Dr. Weissenburger's staff. And
18 then to even bolster that further we have the videotapes and the
19 measurements taken by the Youngs, and they all came to the same
20 conclusion.

21 MR. MUSKOPF: Okay. Thank you very much.

22 HEARING OFFICER LANGHOFF: Okay. We will take five
23 minutes. We will be back on the record in five minutes.

24 (Whereupon a short recess was taken.)

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1 HEARING OFFICER LANGHOFF: Okay. Back on the record. Yes,
2 Mr. Safley.

3 MR. SAFLEY: If I can raise -- on or off the record. I
4 guess I don't really care. We are getting a little concerned
5 about time and whether we are going to get thrown out of here at
6 some point. I think that we are all willing to stay as long as
7 it takes to get this done today. I certainly would like to do
8 that. Mr. Tretter cannot be available tomorrow. We disclosed
9 that to Mr. Muskopf previously. I think that Gilster-Mary Lee
10 could make a room available to us if we do get thrown out of
11 here. I don't know of any other locations. I just wanted to
12 raise that issue and see what we need to talk about.

13 HEARING OFFICER LANGHOFF: Okay. I want to make it clear
14 for the record that it is 3:35. We have not even finished with

15 the Youngs' case, and I have absolutely no problem with us going
16 over until tomorrow if we have to have it here at 1:00 or if we
17 could do it somewhere else. I don't think that is a problem. So
18 we can address that.

19 MR. SAFLEY: I guess maybe that is the question. Would we
20 rather have it go over into tomorrow or whether to just push
21 through until 7:00 or 8:00 tonight to get it done.

22 HEARING OFFICER LANGHOFF: Can you finish by 7:00 or 8:00
23 tonight?

24 MR. SAFLEY: Well --

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1 HEARING OFFICER LANGHOFF: I don't want you to be rushed
2 since --

3 MR. SAFLEY: I understand that. I don't want to be rushed
4 either. The problem is Mr. Tretter is gone tomorrow and is just
5 unavailable.

6 HEARING OFFICER LANGHOFF: Well, we will push through to
7 get him today, certainly.

8 MR. SAFLEY: He is probably my longest witness. I guess I
9 don't know how long Dr. Weissenburger is going to take. I hate
10 to have Dr. Weissenburger -- take more of his time than we have
11 already taken.

12 MR. MUSKOPF: I am actually finished with my case except
13 for maybe a couple questions on redirect.

14 MR. SAFLEY: I think we probably can get done by 7:00.

15 Hopefully 7:00, if not 8:00. We will all be driving back a lot
16 later than we had hoped to. I prefer to get it done just to make
17 everyone's life easier.

18 HEARING OFFICER LANGHOFF: Okay. Well, we will try to do
19 that. We will try to get it done today.

20 MR. SAFLEY: Again, if anyone has an objection to that,
21 then let's --

22 MR. MUSKOPF: I don't have hardly anything to cross Dr.
23 Weissenburger on.

24 MR. SAFLEY: Okay.

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1 MR. MUSKOPF: Maybe I will talk to Mr. Tretter a little
2 bit, but not much.

3 MR. SAFLEY: I think the longest witnesses were the first
4 three.

5 HEARING OFFICER LANGHOFF: Let's just see what happens.

6 MR. SAFLEY: Okay.

7 HEARING OFFICER LANGHOFF: Okay. Your witness, Mr. Safley.

8 MR. SAFLEY: Oh, excuse me. I am sorry.

9 HEARING OFFICER LANGHOFF: Off the record.

10 (Discussion off the record.)

11 MR. SAFLEY: They close the doors at 4:00, and one of our
12 witness is -- we are not going to be able to put him on at 4:00,
13 but we want to make sure that he can get in the building.

14 HEARING OFFICER LANGHOFF: Okay.

15 MR. SAFLEY: Mr. Welge is going to check on that. Pardon
16 me. Okay. I am ready.

17 MR. MUSKOPF: Do you mean Ed?

18 MR. SAFLEY: Yes.

19 MR. MUSKOPF: Well, if you just want to put that document
20 in, you don't need him to authenticate it. I mean, you can put
21 it in. If you want to -- I don't know what you intend to do
22 with --

23 MR. SAFLEY: Well, I have to think about it.

24 MR. MUSKOPF: I mean, I will be happy to stipulate that the

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1 city attorney has issued this opinion.

2 HEARING OFFICER LANGHOFF: It has already been stipulated.
3 The foundation has been laid for all of the exhibits.

4 MR. SAFLEY: Yes, for the foundation issue. I am just
5 trying to remember what more I was going to ask him about. I am
6 sorry. That is not what I was thinking about at this point.

7 MR. MUSKOPF: I mean, I will stipulate that he is the city
8 attorney and that he issued this opinion.

9 MR. SAFLEY: Will you stipulate as to the facts
10 represented in that opinion?

11 MR. MUSKOPF: That they are true?

12 MR. SAFLEY: Yes. I mean, I guess that is what I was going
13 to have him testify about, is the way the zoning ordinance was

14 adopted and the fact that Gilster-Mary Lee was in existence
15 before the zoning ordinance was adopted and they were
16 grandfathered in, etcetera, etcetera. I mean, stipulating that
17 the exhibit is a true exhibit is not enough. I need the facts
18 that are in there to be stipulated to be true. If you will do
19 that, we may not need him. But I would like two minutes to go
20 over my list of questions to make sure there was not something
21 else that I was going to ask him.

22 MR. MUSKOPF: I mean, I would stipulate that this is his
23 opinion. I don't really intend to cross-examine him.

24 HEARING OFFICER LANGHOFF: Okay. Why don't you call him.

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1 MR. SAFLEY: Call him and tell him we need him?

2 HEARING OFFICER LANGHOFF: If you are not sure and you need
3 to do it by 4:00, then why don't you go ahead and do it.

4 MR. SAFLEY: Okay. Go ahead and call him, Don. Thank you.

5 HEARING OFFICER LANGHOFF: Thank you.

6 MR. SAFLEY: Sorry about that. Okay. I am ready to go on
7 with cross-examination.

8 CROSS EXAMINATION

9 BY MR. SAFLEY:

10 Q. Good afternoon again, Mr. Zak. Again, my name is Tom
11 Safley. I represent Gilster-Mary Lee in this matter.

12 I would like to clean up -- try to clean up a couple of

13 things before I jump into too much asking you about questions
14 that you have been previously asked. I am looking for Exhibit C3
15 or C4. I think I have my copy of it, which I assume will work,
16 unless -- I just don't know where all the plaintiffs copies of
17 the exhibits have gone to.

18 MR. MUSKOPF: Good question.

19 Q. (By Mr. Safley) Okay. We had a discussion earlier about
20 the 61 -- I am sorry. I meant to say C4. The 61 decibel levels
21 for approximate A-weighting for industrial noise to a residential
22 area. Is that indicated in this column I am pointing to here, 61
23 decibels?

24 A. Yes.

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1 Q. What does that mean in that location right there?

2 A. The way -- it is the approximate A-weighting, and what
3 was done to obtain that is the octave bands above that,
4 consisting of nine octave bands, were added together to produce a
5 single number. When that is done you have both addition and also
6 correction factors added to each frequency in order to arrive at
7 the correct A-weighting for each of the frequencies. That is all
8 brought together in order to produce the equivalent level of 61
9 dB(A) for an industrial noise source impacting a residential
10 property.

11 Q. Okay.

12 A. And the other thing about the 61 dB(A), that is -- that

13 indicates that if you measure anything above 61 dB(A) you are
14 going to be -- you have to exceed one of the nine octave bands to
15 get above 62. However, the inverse is not true. One can be in
16 violation of one of the octave bands and still not necessarily
17 read more than 61 dB(A) at the meter.

18 Q. Okay. My understanding is that there is no regulation
19 somewhere that says if you use a device that measures with an
20 A-weighting and you get above 61 you are in violation of some
21 section of the Illinois Administrative Code?

22 A. That's correct.

23 Q. Thank you. That was my only question. I would like to
24 go to Exhibit C1. That was one of the exhibits about which I

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1 made an objection earlier. I would like to ask you to look at
2 columns five and six, which are both dated February 7th, 2000,
3 10:30 a.m. If you go down those columns, across from column A --
4 pardon me -- from row A, in column five, can you please read what
5 those numbers are?

6 A. Yes. We have 64.9 to 65.1.

7 Q. Okay. Then if you move over to the next row, six, what
8 do you have?

9 A. I have 64.5 to 64.7.

10 Q. Okay. Those numbers appear to me to be -- if you are
11 looking at what -- if you have a reduction, that is a .4 decibel

12 difference between those numbers. Would you agree with me? In
13 the range of -- in the range on the right, in the right column,
14 number six, it starts .4 decibels lower and ends .4 decibels
15 lower approximately?

16 A. Yes, that is approximately.

17 Q. Okay. If you go down to the next row down, can you read
18 the numbers in column five?

19 A. We have 59.5 to 60.

20 Q. Okay. In the next row what do you have? A row over.
21 In row six on that same column?

22 A. 65 --

23 Q. Pardon me. A column over on the same row.

24 A. 65.8 to 66.2.

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1 Q. So it looks to me like in that situation you have a 6
2 decibel difference?

3 A. Approximately, yes.

4 Q. Okay. Those are the rows that we were talking about
5 earlier with Jack Hutchinson and what affect the silencers had on
6 the reduction of noise. Can you -- do you have any explanation
7 for why at one of the locations, location A, there is only a .4
8 decibel difference, but at location B there is a 6 decibel
9 difference?

10 MR. MUSKOPF: Excuse me for a moment. I have an objection.

11 Mr. Hutchinson has not testified that that is, in fact, what the

12 range of figures mean in those columns. There has been no
13 evidence that that is what those figures mean.

14 HEARING OFFICER LANGHOFF: Overruled.

15 Q. (By Mr. Safley) Do you recall the question?

16 A. No. Could you repeat the question, please.

17 Q. Yes. Do you have an explanation for why at location A,
18 at column -- in column five and six, there is a .4 decibel
19 difference but at location B there is a 6 decibel difference?

20 HEARING OFFICER LANGHOFF: That is .6, isn't it, Counselor?

21 MR. SAFLEY: I may have said -- pardon me. In row A you
22 mean, .6 instead of -- yes. I am sorry. I said .4. It is .6.

23 Q. (By Mr. Safley) So you have a .6 decibel difference in
24 row A and a 6 decibel difference in row B. What is the reason

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1 that at location B you have such a bigger reduction in the number
2 of decibels?

3 HEARING OFFICER LANGHOFF: Do you know, Mr. Zak?

4 THE WITNESS: Yes, Mr. Hearing Officer.

5 HEARING OFFICER LANGHOFF: I apologize.

6 THE WITNESS: I am trying to formulate the answer based on
7 the data, the location, and the range, and explain the
8 difference. Since at one location we have a very slight change
9 and at another location we have a somewhat larger change, namely
10 approximately a two decibel range and then a 6 decibel range. I

11 am not terribly concerned about that. The reason I am not
12 terribly concerned about it is that the instrumentation we are
13 talking about here is not precision instrumentation. The sound
14 field itself where the measurements were taken was not
15 standardized. And to see this much of a variation given the
16 instrumentation and the level of expertise of the person taking
17 the measurements, we could easily see those kind of differences
18 simply due to instrumentation, the sound field, and operator
19 error.

20 Q. (By Mr. Safley) What is the difference between the noise
21 meter that Mr. Hutchinson used to take his measurements and the
22 noise meter that Mr. Young used to take his measurements?

23 A. Very little. They would be -- from an electronic
24 standpoint they would be fairly similar. There is a little more

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1 documentation on the one that Mr. Hutchinson used. Other than
2 the amount of documentation on the meter itself as far as what
3 ANSI standards it meets, I would not expect to see a big
4 difference between the two.

5 Q. Do you know what other noise sources were emitting noise
6 in the areas in which those measurements were taken at the time
7 that Mr. Hutchinson took the measurements?

8 A. No, I don't.

9 Q. Were you there when he took the measurements?

10 A. No, I was not.

11 Q. Do you know whether or not the numbers he got were
12 affected by other noise sources such as cars going by or
13 whatever?

14 A. They could have been.

15 Q. Okay. So could it be that, for example, the reason
16 there is only a .6 decibel difference in column A is that there
17 was some other noise source that emitted noise in about that
18 range and, therefore, the noise meter didn't pick up the drop in
19 decibels because of the silencer?

20 A. Again, since he is not trained in the area and a trained
21 person would naturally look for -- would be listening for any
22 type of pass by or background noise, it is possible, yes.

23 Q. Okay. Thank you. Those are my only questions about
24 that exhibit. Jack Hutchinson -- did you hear him testify that

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1 he spoke with you at least once on the telephone after the noise
2 complaints were made to Gilster-Mary Lee?

3 A. Yes.

4 Q. Do you recall that conversation?

5 A. Yes, I do.

6 Q. It is my understanding from your deposition that you
7 spoke with Mr. Hutchinson regarding your experience in addressing
8 noise problems?

9 A. Yes.

10 Q. Okay. It is also my understanding that the American
11 National Standards Institute, ANSI, has promulgated guidelines
12 for taking noise measurements; is that correct?

13 A. That's correct.

14 Q. Okay. And, for example, while it may not be at issue
15 right now in this case, if someone wanted to prove a violation of
16 the numeric limits in the Illinois Administrative Code, for the
17 numeric noise limits, they would have to follow those procedures?

18 A. That's correct.

19 Q. Okay. And the reason they have to follow those
20 procedures is that assures that the noise measurements are as
21 accurate as they can be?

22 A. And repeatable.

23 Q. And repeatable. Fair enough. And I think you testified
24 in your deposition that you have concerns regarding the accuracy

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1 of noise measurements that were not taken in accordance with
2 those standards; is that correct?

3 A. That's correct.

4 Q. Okay. I think you also testified in your deposition
5 that you did not provided a copy of those ANSI standards to the
6 Youngs before they took their noise measurements?

7 A. That's correct.

8 Q. Do you have any evidence that the Youngs followed the
9 ANSI standards in taking their noise measurements?

10 A. I have no evidence that they did or did not.

11 Q. I assume that your -- my understanding was that you
12 expressed the opinion in your deposition that there is not
13 sufficient evidence in this case to find that Gilster-Mary Lee
14 has violated the numeric noise limits?

15 A. That's my opinion.

16 Q. That is still your opinion today?

17 A. Yes.

18 Q. Okay. Thank you.

19 MR. MUSKOPF: Excuse me a second. I need to express an
20 objection. This is not a numerical limits case. I don't
21 understand what the relevance would be.

22 HEARING OFFICER LANGHOFF: Okay. Overruled.

23 MR. SAFLEY: Okay. Thank you.

24 Q. (By Mr. Safley) Other than the visit that you made to

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1 Chester and to the area in which Gilster-Mary Lee's plant is
2 located and the Youngs' house is located a week ago or so, have
3 you ever made any other visit to that area other than maybe
4 driving by today?

5 A. I may have been through Chester once or twice in 28
6 years, but it was not to go to Chester. It may have been going
7 through Chester to go somewhere else.

8 Q. Okay. But you have not made a trip to that particular

9 area, those few blocks related to this case, other than your trip
10 about a week ago?

11 A. That's correct.

12 Q. Okay. And so at the time that you testified at your
13 deposition you had not viewed the property firsthand, only
14 through the videotapes?

15 A. That's correct.

16 Q. You had not heard the noises emitted by Gilster-Mary Lee
17 firsthand, only through the videotapes?

18 A. That's correct.

19 Q. You testified on direct examination that it was your
20 opinion that Gilster-Mary Lee emitted noise to the Youngs'
21 property in such a manner that it unreasonably interfered with
22 the use and enjoyment of their property; is that correct?

23 A. That's correct.

24 Q. Can you remind me again what the basis for that opinion

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1 was?

2 A. The basis would be the Youngs' testimony, under oath --

3 Q. Okay.

4 A. -- as to loss of sleep, being awakened at night,
5 difficulty falling asleep. Then getting away from the sleep area
6 then we have got having to turn the TV volume up in order to hear
7 the TV. There was some issue of the telephone. Again, I got the
8 impression from the testimony that there was also disturbance

9 there as far as using the telephone was concerned. And there was
10 also, I believe, some issue as far as being able to relax and
11 enjoy their home, and they were prevented from doing so by the
12 intrusive nature of the noise.

13 Q. Anything else other than the testimony that supported
14 your opinion?

15 A. Not that comes to mind right now.

16 Q. How often does noise emitted by Gilster-Mary Lee cause
17 the Youngs sleeping problems?

18 A. From the testimony, quite frequently.

19 Q. Do you know how long, for example, when Gilster-Mary Lee
20 is emitting noise that interferes with the use of the Youngs'
21 property during the day, how long does that interference last?

22 A. From the testimony, it sounded like it takes three to
23 four hours to unload a truck. So I would say three to four hours
24 or considerably more than that if there is more than one truck to

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1 be unloaded.

2 Q. I would like to ask you a little bit about the enclosure
3 of the flour loading station and the trash area. First of all, I
4 was a little unclear when we took your deposition, after going
5 back and actually reviewing it, it appeared to me in your
6 deposition that you might be thinking about one enclosure for
7 both of those things. I get a different sense from your

8 testimony today. Are you recommending one enclosure that would
9 somehow cover both the truck -- the flour unloading and the trash
10 area or are you talking about two different enclosures?

11 A. I am talking about two different enclosures. Yeah, two
12 different enclosures.

13 Q. Okay. Have you spoken with anyone at Gilster-Mary Lee
14 regarding any concerns they would have as to either of those
15 enclosures?

16 A. No.

17 Q. And you testified earlier, it is my understanding, that
18 your visit to Gilster-Mary Lee's -- the location of Gilster-Mary
19 Lee's plant within the last ten days did not affect your -- did
20 not affect or help you form your opinion in regard to the
21 enclosures; is that correct?

22 A. That's right.

23 Q. Going now to some of the things that were raised in the
24 direct examination, we have noted here that a few measurements

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1 may have been taken with C-weighting and fast response. What
2 affect would that have on the numbers that Mr. Young would get
3 when taking noise measurements?

4 A. Typically, since the C-weighting will pick up the low
5 frequency noise that A-weighting largely rejects, generally
6 speaking, from an industrial noise source when you are using
7 C-weighting you will get higher measurements levels. And fast

8 meter response allows the meter to, again, give you a -- if the
9 noise is fluctuating, you can get higher levels due to the fast
10 response. So if we have the presence of low frequency noise, if
11 we have fluctuation in the noise, on C fast we are going to see
12 higher readings.

13 Q. It is my understanding from your testimony that it is
14 your opinion that the noise meter was in proper calibration when
15 Mr. Young took his noise measurements; is that correct?

16 A. That's correct.

17 Q. You base that on the fact that, one, when you tested the
18 noise meter it was in proper calibration and, two, your
19 experience with the noise meters is that -- with that particular
20 type is that they normally don't drift at least for a period of
21 several months?

22 A. That's correct.

23 Q. Okay. Do you have any -- have you tested the noise
24 meter since -- immediately before your deposition in October of

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1 last year? Have you tested the calibration other than the one
2 time before your deposition last year?

3 A. Just the one time.

4 Q. Okay. So you don't have any knowledge one way or the
5 other as to whether in the six months that have passed since your
6 deposition whether the noise meter is still in calibration today?

7 A. That's correct.

8 Q. Okay. And you don't have any knowledge one way or the
9 other as to whether six months before you tested the noise meter
10 it was in calibration?

11 A. I have an opinion, but no direct knowledge.

12 Q. Could it be that it was out of calibration and it
13 drifted into calibration?

14 A. That is possible, but we have to -- in order to fairly
15 answer your question there we have to say, well, how much out
16 would it be and how much -- how far would it have to drift to be
17 out and then drift in. Typically, my experience with those
18 meters is that they may be, say, minus a half decibel -- they
19 could go from a minus half decibel to right on or could be plus
20 half a decibel and go to right on. But in any case, whether they
21 are in or out, the amount of decibels that we are talking about
22 here is on the order of half a decibel. So it is a very, very
23 slight amount of noise. And if it is off a half decibel in
24 calibration it means all the measurements that meter takes are

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1 going to be off by just one half a decibel.

2 Q. Right.

3 A. That becomes a concern if we are saying, well, the -- if
4 the limit were -- let's say we are looking at 61 and we measure a
5 62, it would be very bad to have half a decibel off when you are
6 that close.

7 Q. Right.

8 A. But if we have a situation where the level is 61 and we
9 are reading 70, then the half decibel is then inconsequential.

10 Q. It is my recollection from your deposition testimony
11 that you stated when you were dealing with the laboratory at IEPA
12 that was used to calibrate noise measurement equipment it was
13 your opinion that a two-tenths of a decibel difference -- or if
14 something was more than two-tenths of a decibel off in
15 calibration that was significant. Do you remember that
16 testimony?

17 A. Yes.

18 Q. Do you still feel that way?

19 A. Yes. If I could just expand on that just a little bit
20 and just say that that was regarding precision instrumentation,
21 in laboratory grade instrumentation, not necessarily the
22 inexpensive type instruments that either Gilster-Mary Lee used or
23 the Youngs used.

24 Q. You also testified on direct examination that it is your

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1 opinion that the noise emitted by Gilster-Mary Lee is of the type
2 that it could interfere with the value of the Youngs' property;
3 is that correct?

4 A. Yes.

5 Q. Have you been presented with any evidence as to any

6 affect that the noise being emitted has had on the value of the
7 Youngs' property?

8 A. Mainly the testimony of the Youngs themselves and then
9 digging back to the various hearings that I have been through on
10 other noise cases where noise complainants have had problems
11 getting a fair market value for their house.

12 Q. Specifically in this case have you seen any appraisals
13 of the Youngs' property?

14 A. No.

15 Q. Have you seen any opinions by any real estate experts or
16 anything that the value of the Youngs' property is decreased
17 because of the noise?

18 A. No.

19 Q. You talked about the principal noise sources or what you
20 view as the principal noise sources and ranked them. Was that
21 your opinion based on what you saw or was that something that the
22 Youngs told you, these are our top four in order?

23 A. I don't think they are really knowledgeable about the
24 operation. I should say sufficiently knowledgeable about the

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1 operation in order to rank anything. That was based upon their
2 testimony as far as the noise. It was based upon observing all
3 eight videotapes. And that was based upon a lot of the
4 information that Gilster-Mary Lee supplied in the depositions.

5 Q. You mentioned the case of Christiansen versus American

6 Milling. Was American Milling a food operation like Gilster-Mary
7 Lee where they took in food products, did no processing of them,
8 but just combined them with other food products and packaged them
9 and sent them out to be used?

10 A. The material they were processing there was gluten.

11 Q. What type of processing took place?

12 A. From memory -- this is going back about 11 years, 10 or
13 11 years. They received the gluten material in both truck and
14 train carload and unloaded it and then went through -- the
15 processing itself was not a part of the noise problem. And at
16 this point in time since it was not a part of the noise problem,
17 I don't specifically remember what type of process that they
18 used.

19 Q. Okay. Fair enough. One of the -- regarding the trash
20 dumpster issue, one of the solutions that you proposed is moving
21 the dumpster. If moving the dumpster would put the trash loading
22 and unloading operation in the same proximity or closer proximity
23 to another home other than the Youngs, do you consider that a
24 responsible reduction of noise?

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1 A. No.

2 Q. Now, I was also confused, I think the same way Mr.
3 Muskopf was, regarding your testimony about the enclosure. It
4 sounded to me like you were proposing a separate building in the

5 parking lot in front of the dye house that the trash dumpster
6 would be located in. Is that what you were proposing or were you
7 proposing something different?

8 A. No. Basically I was proposing -- basically, having
9 looked at the information that you folks supplied, the only area
10 I could see where there was enough room to build an enclosure for
11 the dumpster would -- and keeping the dumpster as close as
12 possible to where it is located now, would be a building in the
13 parking lot.

14 Q. Okay. An entire new building in the middle of the
15 parking lot?

16 A. Yes.

17 Q. Okay. Wouldn't that building be closer to the Youngs'
18 home than where the trash dumpster is located now?

19 A. Yes, I think it would.

20 Q. How would Gilster-Mary Lee get the trash into that
21 building?

22 A. Based on what I observed in the videotape, the dumpster
23 was located in a parking lot initially.

24 Q. Well, obviously, I am not a witness, but let me tell you

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1 what my understanding was. My understanding was the dumpster has
2 always been located where the word trash is on Exhibit RA, that
3 it was only placed in the parking lot while it was being switched
4 in and out, while they were switching a new empty dumpster for an

5 already full dumpster. And someone testified, I think, that
6 where that red "X" is is where the dumpster would be placed.
7 Again, that is my understanding of the testimony. If the
8 testimony does not bear that out, then that is different.

9 But assuming for now that I am right and that the trash has
10 always been located where the word trash is and has never been
11 located as a receptacle for trash in that parking lot, if you
12 move the dumpster to that parking lot, how would Gilster-Mary Lee
13 get the trash over there?

14 A. I am a little perplexed on your question there, because
15 I am still not clear as to exactly how they were handling the
16 trash when I observed all of the videotapes there showing the
17 dumpster in the parking lot.

18 Q. Well, again, let me state my understanding of the
19 testimony. My understanding is that originally the trash -- the
20 trash dumpster would always be located where the word trash is.
21 Originally a trash truck would pull into that area, pick up the
22 trash dumpster, move it over to the parking lot, drop it there,
23 pick up an empty dumpster that it would have earlier dumped
24 there, pull the empty dumpster into the trash location, and then

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1 go back over to the parking lot and pick up the full dumpster and
2 drive away. Does that make sense at least?

3 A. Yes. Now I am following you.

4 Q. Again, that is my characterization of the testimony, but
5 that is my understanding.

6 A. Okay.

7 Q. My understanding of the way it works now is Gilster-Mary
8 Lee drops the empty dumpster somewhere two blocks away, comes and
9 picks up a full dumpster, drives away with the full dumpster,
10 drops it two blocks away, picks up the empty dumpster, brings it
11 back two blocks and puts it in. So now no activity relating to
12 the trash currently takes place on that parking lot. So, again,
13 that is my understanding of the testimony and my background for
14 you.

15 A. Okay.

16 Q. Assuming that I am correct in those characterizations of
17 the previous trash unloading and the current trash unloading, if
18 you built a building in that parking lot to house the trash
19 dumpster, how would Gilster-Mary Lee get the trash to that
20 building?

21 A. Well, given your explanation, and the fact that I base
22 my opinion on the tape, there is a change in methodology here.

23 Q. Okay.

24 A. Then it would seem that there would be nothing to be

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1 gained by building the additional structure in the parking lot.

2 Q. Okay.

3 A. I think at this point what would -- my recommendation

4 would be for when the trash is picked up and the operation
5 actually takes place, my suggestion would be to have somebody
6 like Dr. Weissenburger's people take measurements at the property
7 line there and see if the current trash situation is such that it
8 does exceed the State standards. If it does exceed the State
9 standards, then they could -- we would be getting down to the
10 point of having to move the dumpster to a different location or
11 possibly doing some type of noise control right where the --
12 right where you have the word trash written on here.

13 Q. Okay.

14 A. Again, Dr. Weissenburger's staff would be very capable
15 in telling you how to do that.

16 Q. Okay. Thank you. Pardon me. Let me just check my
17 notes to make sure I don't have any other questions. My only
18 other question is, it is my understanding, based upon your
19 deposition testimony, that at hearings in those enforcement cases
20 you have only testified on behalf of the complainants; is that
21 correct?

22 A. No. I have testified on behalf of noise emitters in
23 hearings also.

24 Q. In noise enforcement hearings?

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1 A. Oh, I am sorry.

2 Q. I am not talking about variance hearings --

3 A. Okay.

4 Q. -- but noise enforcement cases?

5 A. Okay. That's true.

6 MR. SAFLEY: Those are all of my questions.

7 HEARING OFFICER LANGHOFF: Thank you. Redirect?

8 MR. MUSKOPF: Thank you.

9 REDIRECT EXAMINATION

10 BY MR. MUSKOPF:

11 Q. Mr. Zak, you were asked on cross-examination what the
12 support for your opinion was that the Youngs have suffered an
13 unreasonable inference with the enjoyment of their property due
14 to noise from GML. I wanted to see if some of the other things
15 that you didn't mention but that had been in evidence today are
16 also a basis for your opinion.

17 MR. SAFLEY: I would just object. It is asked and
18 answered.

19 HEARING OFFICER LANGHOFF: I will allow the question.

20 Q. (By Mr. Muskopf) The videotapes, do they form a basis
21 for your opinion?

22 A. Yes, they do.

23 Q. How about the readings taken by Mr. Hutchinson?

24 A. Yes.

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1 Q. How about the readings taken by Dr. Weissenburger's
2 office?

3 A. Yes.

4 Q. How about the Youngs' testimony that they go to the lake
5 house or anywhere else they can to escape the noise from GML?

6 A. Yes.

7 Q. How about the Youngs' testimony that particularly when
8 we viewed the videotape briefly that this is the kind of thing
9 that they deal with on a day-to-day basis, and specifically what
10 Mr. Young was talking about was the emptying of the trash
11 dumpster?

12 A. Yes.

13 Q. Would that include Mr. Hutchinson's testimony that that
14 trash dumpster is emptied once a day?

15 A. Yes.

16 Q. Would it include other things such as the Youngs'
17 testimony that they have used sleeping pills to try to get to
18 sleep and stay asleep because of the GML noise?

19 A. Yes.

20 Q. Okay. Is it possible that there are a number of other
21 bits of evidence that didn't come to mind when you were asked the
22 question by Mr. Safley on cross-examination?

23 A. Oh, very possible. There was so much testimony that it
24 is quite possible that I was -- I thought about it at the time

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1 and used it to put my opinion together, but don't remember all of

2 the details of the impact of the noise.

3 Q. You have read the Youngs' depositions, correct?

4 A. That's correct.

5 Q. And, in fact, you read those before you gave your
6 deposition?

7 A. Yes.

8 Q. And so would you also be basing your opinions on what
9 you read from the Youngs' testimony in their depositions?

10 A. Yes.

11 Q. I mean, as a general statement, are you basing your
12 opinions on the evidence that has been presented today in this
13 hearing?

14 A. Yes.

15 MR. MUSKOPF: Okay. Thank you.

16 HEARING OFFICER LANGHOFF: Mr. Safley?

17 MR. SAFLEY: No further questions. Thank you.

18 HEARING OFFICER LANGHOFF: Thank you. Thank you, Mr. Zak.

19 (The witness left the stand and remained in the hearing
20 room.)

21 HEARING OFFICER LANGHOFF: Mr. Safley, do you want to
22 tackle Mr. Tretter now?

23 MR. SAFLEY: Actually, I was going to go ahead and do Mr.
24 Fisher, if that is okay, because it is going to be the shortest

1 examination that we have and he is doing us a favor coming over,

2 so I thought we would give him the courtesy of getting him out of
3 here.

4 MR. MUSKOPF: I might want to rest my case-in-chief.

5 HEARING OFFICER LANGHOFF: I apologize. Anything further,
6 Mr. Muskopf?

7 MR. MUSKOPF: Yes. I would simply tender --

8 HEARING OFFICER LANGHOFF: All of your exhibits?

9 MR. MUSKOPF: -- my exhibits. I guess I think I need to do
10 that before I rest.

11 HEARING OFFICER LANGHOFF: Actually, you don't.

12 MR. MUSKOPF: Okay. Well, then --

13 HEARING OFFICER LANGHOFF: But we can do them now. You can
14 tender C1 through --

15 MR. MUSKOPF: If we are going to have discussions about
16 this, about these exhibits then maybe we should do it later.

17 MR. SAFLEY: I would have just a very slight discussion,
18 but we can --

19 HEARING OFFICER LANGHOFF: Okay. Let's wait and do it all
20 at once at the end of all of the evidence.

21 MR. MUSKOPF: Okay. Perfect.

22 HEARING OFFICER LANGHOFF: Okay. Thank you.

23 MR. MUSKOPF: Thank you.

24 HEARING OFFICER LANGHOFF: Anything further, Mr. Muskopf?

1 MR. MUSKOPF: No, beyond the reservation that I have of the
2 right to introduce my exhibits, I am resting my case-in-chief.

3 HEARING OFFICER LANGHOFF: Okay. Thank you. I apologize
4 for cutting you off.

5 MR. MUSKOPF: Quite all right.

6 HEARING OFFICER LANGHOFF: Mr. Safley.

7 MR. SAFLEY: Yes. Thank you. I would like to call my
8 first witness, Mr. Edward Fisher.

9 HEARING OFFICER LANGHOFF: Would you swear the witness,
10 please.

11 (Whereupon the witness was sworn by the Notary Public.)

12 E D W A R D J. F I S H E R,

13 having been first duly sworn by the Notary Public, saith as
14 follows:

15 DIRECT EXAMINATION

16 BY MR. SAFLEY:

17 Q. Mr. Fisher, good afternoon. My name is Tom Safley.
18 Nice to meet you in person after talking to you on the phone.
19 Could you please introduce yourself for the record.

20 A. For the record, my name is Edward J. Fisher,
21 F-I-S-H-E-R.

22 Q. Thank you. You are anticipating my next question. Mr.
23 Fisher, are you currently employed?

24 A. Yes, I am.

1 Q. And how are you employed?

2 A. I am engaged in the general practice of law in the City
3 of Chester, Illinois, and have been in such a capacity for almost
4 30 years now.

5 Q. You have practiced in Chester for 30 years?

6 A. Yes, sir.

7 Q. Okay. Do you concentrate your practice in any certain
8 areas of law?

9 A. I probably concentrate in municipal law, representing
10 units of government including municipalities and school
11 districts, and then I also have an interesting concentration in
12 workers' compensation, by reason primarily of the two state
13 institutions here, and I do a fair amount of personal injury.
14 But I also do a lot of other garden variety things, deeds, some
15 estate planning, and some estate administration.

16 Q. Okay. In your practice do you have occasion to do work
17 for the City of Chester?

18 A. Yes, I do.

19 Q. How is that?

20 A. I have been what they call city attorney since 1977.

21 Q. Okay. Does Chester have a zoning code?

22 A. Yes, it does.

23 Q. Okay. I would like to hand you what I have marked as
24 Respondent's Exhibit E, and I would ask you to take a look at

1 that. Tell me when you have had a chance to look through that.

2 A. Well, I know it is Chapter 40, because I looked at it
3 this afternoon in anticipation of having to come down here, and
4 this appears -- Exhibit E appears to be a complete copy or
5 reproduction of the zoning code for the City of Chester,
6 Illinois.

7 Q. Have you ever had occasion to do any work in your
8 practice relating to that code?

9 A. Yes, sir, I have.

10 Q. When was that code adopted?

11 A. This Chapter 40 essentially was adopted in 1978.

12 Q. And pardon me. You mentioned, I think, that you were
13 the attorney -- the city's attorney starting in 1977?

14 A. It was about the 1st of May of 1977 when the new mayor
15 was elected at that time and he appointed me city attorney, and I
16 have been city attorney ever since.

17 Q. Okay. Did you do work as the city attorney for Chester
18 when Chester was in the process of adopting this code?

19 A. Yes, I did.

20 Q. Okay. Could you tell me a little bit about, just
21 briefly, what kind of zones this code establishes for the City of
22 Chester?

23 A. Well, there are three -- there are three residential
24 zones, one commercial zone, and an industrial zone. There is R1,

1 R2, and R3.

2 Q. Okay.

3 A. R1 are areas, territories, zones -- using the three
4 synonymously -- intended to accommodate single family residences,
5 your highest classification of single family housing. That is
6 generally using your modern subdivisions and more recent
7 subdivision developments. Those are generally zoned R1.

8 Q. Okay.

9 A. R2 is intended as a zoning district for residences
10 intended to accommodate a wide variety of housing types. You may
11 have some single family residences in there. You can have
12 duplexes, condominiums, townhouses, apartment facilities. The
13 zoning ordinance does not require conventionally constructed
14 homes in there.

15 Q. Okay.

16 A. It can be premanufactured homes, duplexes, that kind
17 of -- that is your R2.

18 Q. Okay.

19 A. Your R3 is simply mobile homes.

20 Q. Okay.

21 A. Mobile home courts where it is limited exclusively, you
22 know, to mobile home courts. All mobile homes must be put in an
23 R3 zoned area. So those are the three residential. You have
24 commercial and you have industrial.

1 Q. Okay.

2 A. Do you want me to describe my understanding of what
3 those --

4 Q. No. I think that is okay for our purposes now. What
5 happens if someone wants to build, for example, a commercial
6 store in an area that is zoned R1? I mean, do they go to the
7 city --

8 A. Well, it is not permitted. I mean, in the residential
9 district if one wanted to put a commercial type of an operation
10 in a residential district, it is just simply not permitted.

11 Q. Okay. What --

12 A. There might be a possibility under some circumstances to
13 have it rezoned commercial --

14 Q. Okay.

15 A. -- depending upon --

16 Q. But as long as it stays zoned residential --

17 A. Within each -- Counsel, within each zone -- within each
18 zone, whether it be R1, R2, R3, commercial, industrial, your
19 zoning ordinance tells you what uses are permitted within that
20 zoning district.

21 Q. Okay.

22 A. There is a list.

23 Q. What happened in 1978 if there was a zone existing in
24 some area and it ended -- that area ended up being zoned for some

1 different kind of use? For example, let's say you had a store
2 operating in an area that had been zoned R1. What happened to
3 that?

4 A. I think that -- if you had a store in an area that was
5 zoned R1? Well, number one, the store -- I am assuming you are
6 talking about a retail outlet?

7 Q. Right.

8 A. A retail or a wholesale type of an outlet or a discount
9 or that type of thing, that would be a nonconforming use.

10 Q. Okay.

11 A. That is what is known under zoning as a nonconforming
12 use. It simply means nonconforming. If that store was lawfully
13 operating at its location at the time of the enactment of zoning
14 it is permitted to continue to operate there.

15 Q. Okay.

16 A. You just simply cannot -- the government cannot just
17 simply destroy somebody or put them out of business, you know.

18 Q. Okay.

19 A. It is lawful existing use. But if it is commercial
20 within a residential then it is called nonconforming use. It is
21 permitted to continue to operate. If it was there lawfully in
22 the first place, it is allowed to continue to conduct its lawful
23 operations. It is what is known in zoning as a nonconforming
24 use.

1 Q. Okay.

2 A. In other words, it does not conform --

3 Q. Right.

4 A. -- to what that territory is zoned.

5 Q. Right.

6 A. Some territory is zoned residential in your hypothetical
7 here, but you have a commercial use within that area.

8 Q. What --

9 A. The intent of zoning being is to ultimately eliminate
10 that commercial use so that all uses within that area will be
11 residential ultimately.

12 Q. Okay.

13 A. For example, if that store burns down or is hit by a
14 tornado or something, many zoning ordinances provide that that
15 cannot be replaced. I mean, some of -- you know, but they will
16 let the use continue.

17 Q. Right, right. Is that --

18 A. They will let the use continue because they were
19 lawfully there in the first place.

20 Q. Would --

21 A. It is called a nonconforming use.

22 Q. Would the same thing be true, say, if you had an
23 industrial operation that was going on in an area that was zoned
24 commercial in 1978?

1 A. Exactly. Apparently, that is what you got here, if you
2 look at the Gilster-Mary Lee facility. I assume that is what you
3 are leading up to.

4 Q. It is.

5 A. Okay.

6 Q. You anticipate my next question. Are you familiar with
7 Gilster-Mary Lee's plant in downtown Chester?

8 A. Yes. I mean, not intimately.

9 Q. But you --

10 A. I know it has been there since I have been in Chester.
11 It has been in operation for 30 years.

12 Q. Okay. The area in which that plant is located, do you
13 know what the zoning of that area is?

14 A. That is zoned commercial.

15 Q. Okay. Are you familiar with the location of the Youngs'
16 house that is adjacent to that plant?

17 A. Yes.

18 Q. Okay. What is the zoning in that area?

19 A. That is also zoned commercial.

20 Q. Was Gilster-Mary Lee's plant in operation at the
21 location before the zoning code went into effect in 1978?

22 A. Definitely.

23 Q. Okay. Was the city aware of that fact when it passed
24 the zoning code?

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1 A. Certainly.

2 Q. Did the city take Gilster-Mary Lee's operation into
3 affect when it adopted the zoning code?

4 A. Well, it had to, you know.

5 Q. Okay. Is that through the process that you just
6 discussed of the grandfathering or the existing use, allowing the
7 existing use to continue?

8 A. Sure, sure. Right.

9 Q. Okay. I would like to hand you what I have marked, Mr.
10 Fisher, as exhibit -- as Respondent's Exhibit F, and ask you to
11 take a look at that.

12 MR. MUSKOPF: I have got it.

13 Q. (By Mr. Safley) And tell me when you have had a chance
14 to do so?

15 A. (Witness reviewing document).

16 Q. You don't have to read through it all unless you want
17 to.

18 A. I realize that. I was just trying to -- I had not
19 looked at this since --

20 Q. Okay.

21 A. I know it is a letter that I wrote, but I was just
22 reviewing specifically what I said.

23 Q. That's fine. If you would like to, that's fine.

24 A. Okay.

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1 Q. I just didn't want you to think that I was going to
2 force you to if you didn't want to.

3 A. Sure. I understand. I appreciate that.

4 Q. Okay.

5 A. Yes, sir, I --

6 Q. Can you tell me what that is?

7 A. Well, of course, it is a letter dated July 7th of 2000
8 that I wrote to Mr. Don Welge who is president and chief
9 executive officer of the Gilster-Mary Lee Corporation.

10 Q. Why did you write that letter?

11 A. Well, either Mr. Welge or one of his staff contacted me.
12 I believe it was -- you know, I believe it was one of his staff,
13 contacted me and wanted to know about their zoning
14 classification.

15 Q. Okay.

16 A. That they were -- I think one of the questions was why
17 they were not zoned light industrial in the first place. I am
18 thinking. I can't remember who it was that I talked to.

19 Q. Okay.

20 A. So this was my explanation. This was my response.

21 Q. Okay. Does your response accurately detail the facts
22 that we have talked about and the way that the zoning ended up
23 how it is now?

24 A. Yes, sir.

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1 MR. SAFLEY: Those are all of my questions for Mr. Fisher.
2 I promised to get him out quickly.

3 HEARING OFFICER LANGHOFF: Cross?

4 MR. MUSKOPF: Yes.

5 CROSS EXAMINATION

6 BY MR. MUSKOPF:

7 Q. I have a couple for you, Mr. Fisher. Good afternoon to
8 you.

9 A. Good afternoon.

10 Q. It is your opinion that, as it is reflected in your July
11 7th of 2000 letter, that under the Chester zoning code that
12 Gilster-Mary Lee is an industrial use?

13 A. Well, it -- I believe it is, or I would call it light
14 industrial, you know.

15 Q. Okay.

16 A. I am not sure where you draw the line between light and
17 heavy industrial. But I would say that in reality it is an
18 industrial use.

19 Q. Okay. We are talking about the cake plant in downtown
20 Chester?

21 A. Right.

22 Q. And then do you know Roger and Romana Young?

23 A. I don't know, to be honest, if we have met before or
24 not.

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1 Q. These are my clients and the complainants in this
2 matter.

3 A. I figured that.

4 Q. Okay. I suppose -- are you familiar with where they
5 live, by any chance?

6 A. Yes.

7 Q. Okay. I can show you a couple of pictures if --

8 A. Well, I assume that they live or used to live in the
9 house behind Gilster-Mary Lee.

10 Q. Let me see if I can --

11 A. It is a large two-story brick home, I believe.

12 Q. This is the place, on C12?

13 A. Right. This is where I assumed that their house was,
14 yes.

15 Q. Okay. Do you have -- under the Chester zoning code,
16 would you classify the Young property there as a residential use?

17 A. As far as I know it is used as a residence and probably
18 always has. I am not aware of it being use for any other
19 purpose. I mean, they would know for sure.

20 Q. Okay.

21 A. It certainly is a residence, it certainly appears. I am
22 not aware that it has been used for anything else but.

23 Q. All right. Have you had occasion in your practice of

24 law to represent the Gilster-Mary Lee Corporation?

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1 A. I don't think so. I won't say absolutely that I have
2 never done one thing for them. I can volunteer this. I probably
3 have about half a dozen workers' comp claims pending against them
4 now. But we do not have any -- you know, we do not have any
5 business -- we do not represent them in any matter that -- I
6 can't recall. I am not saying -- there might have been a little
7 something years back, or something, a real estate thing or
8 something. I don't recall. I think Richard Brown from Chester
9 is basically their attorney for local matters, I believe.

10 Q. I see. How about any members of the Welge family, have
11 you had any occasion to represent any of them over the years?

12 A. Now, which family are you talking about?

13 Q. I don't know.

14 A. There really are a lot of Welges, you know, in this
15 community.

16 Q. Okay. Any of the Welges?

17 A. We have done -- my partner has, I think, settled an
18 estate. The senior partner in our firm -- well, he has been dead
19 since 1993. He did a lot of work for I think these Welges'
20 parents, you know. And my partner, I believe, has handled the
21 estate of Don and Mike Welges' parents or maybe it is the mother.
22 I think that estate has settled. There may be some ongoing
23 things with the IRS or something.

24 Q. My question was directed to the branch of the Welge

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1 family that has an ownership or control interest in Gilster-Mary
2 Lee. It sounds like you have answered that.

3 A. Yes. I can tell you that -- I can tell you that I have
4 a law partner that has and may still be, to some extent, involved
5 in the administration of the estate of Don Welge's mother.

6 MR. MUSKOPF: Okay. Very good. Thank you, sir.

7 THE WITNESS: All right.

8 MR. SAFLEY: Just brief redirect.

9 REDIRECT EXAMINATION

10 BY MR. SAFLEY:

11 Q. Following up on the questions about your representations
12 of Gilster-Mary Lee and the Welges, have you colored or changed
13 your testimony here at all today, Mr. Fisher, based on the fact
14 that it is Gilster-Mary Lee or the Welges that are involved in
15 this case in any way?

16 A. No, absolutely not. You know, there is -- there is
17 nothing to do that. It don't change the zoning classification.
18 It don't change the text of the ordinance. It don't change
19 anything regardless of who is representing whom.

20 MR. SAFLEY: Okay. That's my question. That's what I
21 would have thought. Thank you very much. We appreciate you
22 coming in.

23 THE WITNESS: Okay.

24 HEARING OFFICER LANGHOFF: Thank you, Mr. Fisher.

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1 MR. SAFLEY: Thanks.

2 MR. MUSKOPF: Thanks.

3 THE WITNESS: Okay.

4 (The witness left the stand.)

5 HEARING OFFICER LANGHOFF: Okay. Mr. Safley?

6 MR. SAFLEY: Yes. Thank you. I would like to next call
7 Ron Tretter.

8 HEARING OFFICER LANGHOFF: Would you swear the witness,
9 please.

10 (Whereupon the witness was sworn by the Notary Public.)

11 R O N A L D T R E T T E R,

12 having been first duly sworn by the Notary Public, saith as
13 follows:

14 DIRECT EXAMINATION

15 BY MR. SAFLEY:

16 Q. Good afternoon, Mr. Tretter. Can you tell me, are you
17 currently employed?

18 A. Yes, I am.

19 Q. By whom?

20 A. Gilster-Mary Lee Corporation.

21 Q. Okay. Where are your offices located?

22 A. Located at 918 State Street.

23 Q. Is that the same location referred to earlier today by
24 Jack Hutchinson?

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1 A. Yes, down the street.

2 Q. Just to clarify for the record, have you been present
3 for all of the testimony that has been presented today?

4 A. Yes, I have been.

5 Q. I think Mr. Hutchinson stated that your all's offices
6 are located down the street from the plant that is at issue in
7 this matter?

8 A. Yes, just about two blocks.

9 Q. So you agree with his description of that?

10 A. Yes.

11 Q. Mr. Tretter, did you graduate from high school?

12 A. Yes, I did.

13 Q. Was that here in Chester?

14 A. Chester High, yes.

15 Q. What year was that?

16 A. In 1961.

17 Q. Okay. Have you had any formal education since high
18 school?

19 A. Yes, I have.

20 Q. What was that?

21 A. I have a Bachelor of Science Degree from SIU.

22 Q. In what subject?
23 A. In agriculture.
24 Q. Okay. What year did you get that degree?

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1 A. In 1965.
2 Q. Any other formal education since then?
3 A. No.
4 Q. When did you start working for Gilster-Mary Lee?
5 A. I started working for Gilster-Mary Lee September the 9th
6 of 1968.
7 Q. What is your current position with Gilster-Mary Lee?
8 A. Currently I am the general superintendent and vice
9 president of operations.
10 Q. How long have you held those two positions?
11 A. I have been general superintendent for about 15 years,
12 and I have been vice president of operations for about 12 of
13 those 15. Yes, about 12 of those or 10 of those 15 years.
14 Q. Okay. So since 1985 or so for the chief superintendent
15 and 1987 or something or 1988 for the --
16 A. Yes. No, I was -- I was general -- well, first I was
17 assistant general superintendent.
18 Q. Okay.
19 A. And then when Albert Linton retired I became general
20 superintendent. I don't quite remember the year, but it would
21 have been in the mid 1980s.

22 Q. Going through this real quickly, as far as chief
23 superintendent, what are your job duties in that --

24 A. Well, as general superintendent, of course, all of the

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1 superintendents report to me. So that puts me at the top of the
2 production department.

3 Q. If I can interrupt you a second. When you say
4 superintendents, superintendents of what?

5 A. Of the operating plants.

6 Q. Okay. I am sorry. Go ahead.

7 A. All right. Each one of our plants is an operating unit,
8 but not a profit center.

9 Q. Okay.

10 A. The profit center is only at the front office. So,
11 therefore, the superintendent in each plant is the head of
12 operations of that facility and the superintendents report to me,
13 the general superintendent. Also under the general
14 superintendent we do the in-house engineering. For instance, lay
15 out packaging lines, process systems, so forth and so on. We
16 also have -- on my staff is the corporate sanitarian; the
17 corporate safety supervisor; Jack Hutchinson, the compliance
18 officer. We also run the central parts room and we have a
19 corporate electrician and corporate warehousing.

20 Q. What about in your position as vice president of

21 operations, any other job duties that are specific to that?

22 A. Well, other than, of course, being the general
23 superintendent with the superintendents reporting to me, we get
24 involved in personnel and overall plant operations, of course.

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1 Q. Do you live in Chester?

2 A. No, I do not.

3 Q. Have you ever lived in Chester?

4 A. Yes, I have.

5 Q. When did you first live in Chester?

6 A. My parents moved to Chester when I was about two years
7 old. They lived with my grandparents just two miles north of
8 Chester. So actually the Chester area. They moved to Chester up
9 on West Holmes Street when I was two years old. We left there
10 when I was -- let me see. I was about eight when we moved to
11 George Street. And that's where my mother -- my mother and my
12 dad lived there until they both passed away.

13 Q. The West Holmes address, is that near the Gilster-Mary
14 Lee plant?

15 A. No, 711 West Holmes Street is out beyond the Evergreen
16 Cemetery. It is probably a mile from the Gilster-Mary Lee plant.

17 Q. What about the George Street address that you lived at
18 when you were --

19 A. The George Street address is about three blocks away
20 from the Gilster-Mary Lee plant.

21 Q. Okay. Can you tell me how long Gilster-Mary Lee has
22 been in existence?

23 A. Gilster-Mary Lee, I think, or the actual beginnings of
24 the company started in the old Gilster Company.

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1 Q. Okay.

2 A. Now, the Gilster Company has been around since the late
3 1800s. But the actual packaging operations began in the old
4 Gilster flour mill over in Steeleville, which was about 1959.
5 Then sometime in the early 1960s -- see, I graduated from high
6 school in 1961. So then I went to Carbondale basically for four
7 years. You come home, but you don't know very much. So sometime
8 in that area they come -- they got the big buildings.

9 Q. What did the Gilster Company that started in the late
10 1800s do?

11 A. They were flour millers.

12 Q. Okay. Where did the Mary Lee come from in the
13 Gilster-Mary Lee?

14 A. In about 1970 there was a split between -- at the time
15 we were Gilster Martha White.

16 Q. Okay.

17 A. There was a split between Martha White and Don Welge.
18 Don went across the river to Perryville and started up the Mary
19 Lee Packaging Corporation. About two years later he bought the

20 Gilster portion back from Martha White, and that is when we
21 became Gilster-Mary Lee.

22 Q. Okay. I am going to try to short-cut some of the
23 questions I had for you because you heard Jack Hutchinson
24 testify, rather than asking you a lot of the same questions. Did

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1 you hear Jack's description or Mr. Hutchinson's description, I
2 should say, of the products that Gilster-Mary Lee makes at the
3 plant here in Chester?

4 A. Yes, I did.

5 Q. Did you agree with --

6 A. It is basically right.

7 Q. Okay. Now, the other thing I want to just say just so
8 that we are clear on the record, do you understand when I say the
9 word plant that I am referring to the plant that is at issue in
10 this lawsuit and not the other Gilster-Mary Lee plants anywhere
11 else?

12 A. Yes, sir, I understand that.

13 Q. Okay. Thank you. When you first moved to Gilster --
14 pardon me -- to Chester in -- when you were, I guess, two or
15 eight, and I guess I should say when you first moved to the
16 George Street location, were the buildings that are now where the
17 Gilster-Mary Lee plant is, were those building in existence back
18 then?

19 A. Yes, they were.

20 Q. Okay.

21 A. They were the International Shoe Company.

22 Q. Do you know how long those buildings have been in
23 existence?

24 A. I don't know for sure, but I know that -- I was going to

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1 ask around about that. I know that my brother saw a photograph
2 that showed the dedication of the shoe factory up town and the
3 date was sometime in 1929. So I am assuming sometime in that
4 time frame.

5 Q. Okay. And you have kind of answered my next question,
6 which was going to be when you moved to George Street when you
7 were eight, was Gilster-Mary Lee operating in those buildings?

8 A. No. It was the International Shoe Company.

9 Q. Okay. Was there -- of the, I think, the three buildings
10 that we have talked about today, was the International Shoe
11 Company all of those buildings?

12 A. No. The International Shoe Company was the three-story
13 building, the big brick building. Of course, it had its offices
14 alongside the side of it, where our offices are. And then there
15 was the -- across the street there was the heel factory, which we
16 now call the institutional plant. And then there was a gap of
17 about 30 feet and then the Prim Hosiery building started.

18 Q. Okay. I am going to hand you, just so you can refer to

19 it, what I have marked as Respondent's Exhibit B.

20 A. Okay.

21 MR. SAFLEY: Just so everyone knows, this is a copy of the
22 same map that we had earlier with Jack Hutchinson. I just have a
23 clean copy so that if we mark it up we don't get any confusion as
24 to who made what marks. Again, this is Respondent's Exhibit B.

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1 HEARING OFFICER LANGHOFF: Okay.

2 Q. (By Mr. Safley) Now, if I refer to the top of this map
3 as north, would I be too far off?

4 A. No. That is generally a northerly direction.

5 Q. I realize it may not be directly northerly?

6 A. No, it is not directly north.

7 Q. Okay. Is it okay with you if I say north, south, east
8 and west referring to the sides of the paper? Are you okay with
9 that?

10 A. That's the easiest way.

11 Q. It would be easier for me, so I appreciate that. Just
12 quickly to go back through them, then, there is a building near
13 the lower right hand corner of the piece of paper that says GML
14 on it, that is located on the south side of Swanwick Street. You
15 said that was the shoe company?

16 A. That's the big multi-story building.

17 Q. Okay. What was located there when you moved to George
18 Street?

19 A. The shoe factory was in operation.
20 Q. Okay.
21 A. So it was running and it was making shoes.
22 Q. What about the buildings to the north of that across
23 Swanwick Street?
24 A. That was the heel factory. I don't know what they were

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1 doing in there. It has always been called the heel factory. But
2 I really don't know what they did in there.
3 Q. Was it part of the International Shoe as well?
4 A. Yes, it was.
5 Q. Then you say there was another building, 30 foot
6 separation and --
7 A. There was a gap right behind the heel factory, which
8 would be like right in here.
9 Q. I am going to have you -- let me give you a pen and ask
10 you to mark where the gap was just for clarity.
11 A. Okay.
12 Q. Obviously, just --
13 A. The gap was right about here (indicating).
14 Q. Okay. What was on the north side of that gap?
15 A. It was Prim Hosiery.
16 Q. What about the building that is more towards the Youngs'
17 house that we have been calling the dye house?

18 A. Okay. The dye house -- I don't remember exactly when
19 the dye house was built, although I kind of remember way back
20 when that the dye house was not there.

21 Q. Okay.

22 A. But then when they built the dye house they took that
23 whole area.

24 Q. Okay. So Prim Hosiery built that?

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1 A. So I kind of -- like I say, way back like maybe when I
2 was in first grade or something like that, because, see, I lived
3 out here on West Holmes Street. So when we walked home we walked
4 down this alley, down around this building, up to St. John's
5 Church, down Route 3, up to West Holmes Street. So I walked by
6 there two times a day in school.

7 Q. Okay. Do you know who built -- was the dye house ever
8 connected to International Shoe or the Prim Hosiery?

9 A. I don't think it ever had anything to do with the
10 International Shoe Company. It was always connected to Prim
11 Hosiery, as far as I knew.

12 Q. Okay.

13 A. Yeah, as far as I knew.

14 Q. Okay. One question I guess I should have asked, it is
15 my understanding that you did not prepare this document, this
16 map?

17 A. I did not make this map.

18 Q. Looking at it, do you believe that it is a fair and
19 accurate representation of the location?

20 A. It is fairly accurate. It is not to scale. But it is
21 fairly accurate as to the location of the different buildings.

22 Q. Okay. Thank you. Do you remember whether the shoe
23 factory made noise, emitted noise?

24 A. The shoe factory -- and I don't know much about making

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1 shoes. But the shoe factory used to make a -- although I did
2 have relatives that worked in the shoe factory, so they explained
3 some things to you. But there was a loud clapping noise. We
4 used to -- up on George Street you would hear that all of the
5 time. I believe my Great Uncle told me that was a Good Year
6 machine doing that. I don't know what a Good Year machine did,
7 but I think that is what made that noise.

8 Q. You remember hearing noises coming from the shoe
9 factory?

10 A. Oh, yes, sir.

11 Q. Do you know when Gilster-Mary Lee purchased those
12 buildings that you have been talking about?

13 A. I don't know exactly, but I believe in the early 1960s.

14 MR. SAFLEY: Jeff, I would like to get the exhibit that we
15 had Jack color on earlier with the pink marker. I think that was
16 a good representation of the surrounding area. I think it would

17 be easier to do it that way. I just can't remember the number.

18 I am sorry. It is 9 or 10 or something.

19 MR. MUSKOPF: It is Exhibit 8.

20 MR. SAFLEY: Thank you very much.

21 Q. (By Mr. Safley) I would like to show you what has been
22 marked earlier as Exhibit C8, and ask you to take a look at that.
23 My understanding is, and I think the transcript will bear this
24 out, is that the pink hash marks on that are meant to denote the

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1 property that Gilster-Mary Lee owns, and Jack Hutchinson put
2 those on there. I first would like you to review that, and then
3 tell me when you have had a chance to do that. My question for
4 you afterwards is going to be do you agree with what he has
5 marked?

6 A. I agree with everything except the McClure -- where this
7 McClure building is here.

8 Q. Okay.

9 A. If that truly is, there are some buildings missing in
10 here.

11 Q. Okay.

12 A. So this is not all the buildings that were there.

13 Q. So can you explain --

14 A. So the McClure building is not a Gilster-Mary Lee
15 property. But in here is the -- next to the Gilster-Mary Lee
16 offices, the next building over -- and, see, way back in --

17 whenever they took those buildings over in the early 1960s, they
18 filled in -- well, I take it back. I think International Shoe
19 Company filled in -- there used to be a coal yard right there
20 where they backed in from the front street to drop coal down in
21 the coal bin. If I remember right, before International Shoe got
22 it shut down, they built an office over the top of that.

23 Q. Okay.

24 A. Then that put them right up against the Epstein

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1 building. Epstein had a clothing store. And then we have that
2 building now. Then the next building over was a barber shop.
3 And we have that building. That's where our property ends.

4 Q. Okay. So it looks to you like there might be some --

5 A. There is some lines missing in here.

6 Q. Okay. That's fine.

7 MR. SAFLEY: Does anyone have any objection to him marking
8 on this just a little bit?

9 MR. MUSKOPF: (Shook head from side to side.)

10 MR. SAFLEY: Okay.

11 Q. (By Mr. Safley) I would like to ask you -- if you look,
12 I'm looking at the corner of Light Street and something that is
13 called -- there is a word that says alley.

14 A. I think this goes over and dead-ends into St. Mary's
15 back yard there.

16 Q. Okay. Can you tell me what is located right -- if you
17 are moving toward the bottom of the document on that corner -- a
18 lot of this is labeled, but that corner is --

19 A. These are residences here.

20 Q. Would you write the word residences in there for me?

21 A. (Witness complied.)

22 Q. Now, if you could just review what Mrs. Young drew up as
23 far as the labels of -- the uses of the property that is located
24 all around this area and tell me whether you think that is

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1 accurate?

2 A. Okay. I think this parking lot over here, it says GML
3 parking, but that is shared with the St. John's Church.

4 Q. Okay. That is on the south --

5 A. I don't know the ownership of that land.

6 Q. That is on the lower left-hand corner of that document?

7 A. Yes. I don't know the real ownership there.

8 Q. Does anyone from Gilster-Mary Lee park there?

9 A. Yeah. We use it during the week and St. John's uses it
10 on the weekends.

11 Q. Okay.

12 A. So I don't know the ownership of that piece of property.

13 Q. Okay.

14 A. And right here there is a resident and a doctor's
15 office, a chiropractor's office.

16 Q. That is the block directly north of that GML parking
17 that you were just talking about or directly toward the top of
18 the paper?

19 A. Right across Stacey Street from -- between Stacey and
20 High.

21 Q. Okay.

22 A. And there is businesses here, yeah. Okay. And
23 businesses here, yes.

24 Q. What about the corner at -- at the top left-hand corner

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1 of that --

2 A. That is an abandoned service station and the Eagle Club
3 is next down. And then -- there is an abandoned service station
4 here on the corner. The Eagle Club is sitting here. And, oh, a
5 quick shop, a quick food store, you know, a --

6 Q. Okay.

7 A. They have gas pumps and --

8 MR. MUSKOPF: A mini-mart.

9 THE WITNESS: Yeah, a mini-mart. It is Casey's General, is
10 what it is.

11 Q. (By Mr. Safley) Okay. You are comfortable with the rest
12 of the labels on here as accurately depicting the surrounding
13 area?

14 A. Yes.

15 Q. Okay. Great. Then I don't have to ask you to do that.
16 Did you hear Mr. Hutchinson testify as to the activities that
17 take place in the different Gilster-Mary Lee buildings?

18 A. Yes, I did.

19 Q. Did you agree with his testimony?

20 A. He is basically right.

21 Q. Okay. You agree about the location of -- well, going
22 back to -- well, this was earlier marked as Respondent's Exhibit
23 A, where the word trash is. Are you in agreement that that is
24 the location of the --

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1 A. Yes, this is the trash loading area, the trash dumpster
2 area.

3 Q. Okay. Is there anything else that takes place in that
4 area?

5 A. There is another dock door there that is used for a
6 number of different things. One thing that goes out of there, we
7 have two different kinds of trash. We have what we call solid
8 waste, which goes into compactor and then into the dumpster
9 tubes. And then we also have animal feed waste, which is
10 collected into an animal food tote system. And about once a week
11 there will be a load of that go out.

12 Q. Okay.

13 A. It is normally -- but it accumulates in the plant, and
14 normally there is a truck put up in there to accumulate that

15 animal feed waste.

16 Q. Okay. So a truck just parks in there until it is full
17 or --

18 A. Right. And only in an emergency would there be any
19 unloading done in there, because it is a difficult place to -- it
20 is a trash dock. We don't like to unload food across the trash
21 dock.

22 Q. Okay. Did you hear Mr. Hutchinson testify about the
23 process of the unloading of the tanker trucks?

24 A. Yes.

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1 Q. Were you in agreement with his description of that?

2 A. He is basically right.

3 Q. And also his description of the movement, where the
4 flour unloading station used to be and where it has --

5 A. Now, the flour unloading station has actually been in
6 three different locations in Chester. In 1968 when the bulk
7 flour system was in what we now call the tower, the unloading
8 station was right along Stacey Street at the corner of the trash
9 area there.

10 Q. Across the street from where the tanks are now?

11 A. From where the tanks are now.

12 Q. Okay.

13 A. Then the Chester plant went through some renovations and

14 was used for several different types of product. When we put a
15 flour system in again we put it in over here in the dye house.
16 It is a square tank system installed inside, and that put the
17 unloading station here. That is why the unloading station was
18 there, because the tanks were right inside there. Then when we
19 outgrew that system we then searched for another place to put
20 some tanks. We come up with this area here. We got permission
21 to build the tanks there, and that moved the unloading station to
22 where it is with what you call the new unloading station now, one
23 more time, close to the tanks.

24 Q. Talking about -- going back to the food process --

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1 excuse me -- the process of making the food, does Gilster-Mary
2 Lee observe any certain standards of quality when it is --

3 A. Yes. We are regulated by the FDA. We have no USDA
4 inspected plants, but all FDA inspected plants. Therefore,
5 between the FDA and the State Health Department, they share that
6 responsibility of inspecting and regulating food plants. So we
7 can be inspected by either one or both.

8 Q. Okay. Mr. Hutchinson testified that the Gilster-Mary
9 Lee plant currently employs three shifts of workers. Do you
10 agree with that?

11 A. Yes.

12 Q. For all --

13 MR. MUSKOPF: Excuse me. Can I make an objection. To have

14 a witness affirm uncontradicted testimony I think is simply
15 cumulative. It doesn't really add anything to the case. No one
16 has disputed it and it just keeps us here longer.

17 MR. SAFLEY: I don't disagree. This was all set up for my
18 next question, but I will be happy from now on just to ask the
19 question without the foundation if that is what you prefer.

20 MR. MUSKOPF: Skip it.

21 Q. (By Mr. Safley) How long has Gilster-Mary Lee been using
22 three shifts of employees at its plant?

23 A. I can confirm that they have been using three shifts
24 since 1980.

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1 Q. Okay. How many persons does Gilster-Mary Lee's plant
2 employ?

3 A. 283.

4 Q. Is that just factory workers?

5 A. Just factory workers.

6 Q. Okay. Does anyone else work in these buildings that we
7 have been talking about?

8 A. Yes. We have a staff in the front office, of course,
9 the corporate offices there. And we also have a staff in the
10 central lab.

11 Q. Do you know how much in local property taxes the plant
12 pays each year?

13 A. I was told that we pay between \$35,000.00 and
14 \$40,000.00.

15 Q. Does Gilster-Mary Lee make any donations to charity in
16 the Chester area?

17 A. Yes, we do. We support most all charities, the
18 churches, Boy Scouts, Chamber of Commerce, women's organizations
19 and mens organizations.

20 Q. What kind of donations does Gilster-Mary Lee make?

21 A. Normally monetary. However, we may give them some
22 products, like the Lion's Club has a pancake breakfast and we
23 will provide the pancake mix.

24 Q. Does Gilster-Mary Lee purchase products from other

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1 companies in Chester?

2 A. Yes, we do. All the way from the local hardware store
3 to the Conagra Flour Mill.

4 Q. What do you purchase from the Conagra Flour Mill?

5 A. Most of our flour. Our soft wheat flour comes from
6 Conagra.

7 Q. How much flour is purchased from that mill that is used
8 in this plant in a year?

9 A. This plant will use approximately 25 million pounds of
10 flour a year.

11 Q. And you purchase that from Conagra?

12 A. Most all of it comes from Conagra. Of course, the hard

13 wheat doesn't, but that is not a big amount of it.

14 Q. Do many of the plant's employees live in or around
15 Chester?

16 A. I would say most of them do because of travel time and
17 travel expenses. So most of the people that work here will live
18 in the area, not necessarily inside the city limits of Chester.

19 Q. Do you know whether those employees spend money in the
20 City of Chester?

21 A. Well, I assume they do. I mean, they are going to shop
22 the local Wal-Mart store. Everybody does. And they are going to
23 have to eat, so they are probably going to buy from the local
24 grocery store or -- and they pay their property taxes if they

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1 live in Chester or in Randolph County.

2 Q. How many people live in the City of Chester?

3 A. I don't know the exact count, but I would guesstimate
4 4,500.

5 Q. Is Gilster-Mary Lee Chester's biggest private employer?

6 A. Private employer, yes.

7 Q. Has anyone -- pardon me. I would like to go back to C8
8 just to -- to have you refer to it. I guess before I should do
9 this. Can you tell me what your opinion is on which direction on
10 this map is north?

11 A. Well, if we assume the other map, north was that way

12 (indicating).

13 Q. Right.

14 A. Then north is going to be this way (indicating). Nope.

15 North is going to be this way (indicating).

16 Q. North is going to be towards the bottom of the map?

17 A. Yes, north is this way.

18 Q. Okay. This is again C8. Using that, the residences
19 they are located across High Street from the GML factory and then
20 across Maple Street from those residences, has anyone in those
21 residences ever complained to Gilster-Mary Lee about noise?

22 A. Not to my knowledge.

23 Q. What about the residences that are located between High
24 Street and the alley and across Stacey Street from the --

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1 A. There again, not to my knowledge.

2 Q. What about anyone who lives or works at the businesses
3 or in the area in which the businesses are located across Stacey
4 Street?

5 A. Not that I know of.

6 Q. Anyone from any of the businesses, the National Bank,
7 the car dealer, the office or the, quote, motorcycle place that
8 is located across State Street from the Gilster-Mary Lee plant?

9 A. Not to my knowledge.

10 MR. MUSKOPF: May I interrupt for a second? I just want to
11 make an objection. Other people's complaints are irrelevant.

12 HEARING OFFICER LANGHOFF: Okay. Overruled.

13 Q. (By Mr. Safley) Has anyone who worked or lived -- worked
14 in or lived above the buildings where the McClure building or the
15 McClure Funeral Home or, for that matter, any of the other
16 buildings in between State Street and Swanwick Street ever
17 complained to Gilster-Mary Lee?

18 A. Not that I know of.

19 Q. What about the residences on the other side of the
20 Youngs' house on Light Street?

21 A. Not that I know of.

22 Q. Are you aware of anyone other than the Youngs that have
23 complained to Gilster-Mary Lee about noise emitted by
24 Gilster-Mary Lee?

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1 A. I know of no other people.

2 Q. Okay. Did you hear the Youngs' testimony earlier
3 regarding the removal or the demolition of some houses located in
4 between their residence and the Gilster-Mary Lee factory?

5 A. Yes, I heard that.

6 Q. Okay. Do you know what houses they are talking about?

7 A. I know what houses. I think they may be referring to
8 from many, many years ago, but not in Gilster-Mary Lee's history.

9 Q. Okay. In your memory how long has it been since those
10 houses were torn down?

11 A. My dad was a Sinclair agent in Chester and I worked on
12 the truck a lot, because we made deliveries. And I remember
13 backing across that parking lot delivering fuel into that boiler
14 room back when I was in upper grade school or high school. So
15 that had to be in the mid to late 1950s.

16 Q. Was that before --

17 A. And there were no houses there. It was a parking lot.

18 Q. Was that before Gilster-Mary Lee was in operation in
19 those buildings?

20 A. Yes.

21 Q. So did Gilster-Mary Lee tear down those houses?

22 A. No.

23 Q. Do you know who tore them down?

24 A. I have no idea. I am assuming Prim Hosiery.

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1 Q. But those houses have never been there since
2 Gilster-Mary Lee operated --

3 A. No.

4 Q. Do you know of any other structures between the Youngs'
5 residence and the Gilster-Mary Lee buildings that have been torn
6 down since 1995?

7 A. No.

8 Q. When did the Youngs first complain to Gilster-Mary Lee
9 about noise?

10 A. The first complaint that I heard of was a squeaking

11 drive belt on a cooling tire on the back of the boiler room, the
12 boiler room that is connected to the main building.

13 Q. When did that complaint come in?

14 A. I don't know exactly, but I am just sure it was after
15 the flood. So I am sure it was after 1993.

16 Q. Okay. Was it within the last year or two?

17 A. No, it was not that close. It had to be 1996, 1997,
18 1998, someplace in there.

19 Q. Did Gilster-Mary Lee do anything in response to that?

20 A. Yes. As soon as the complaint was brought to my
21 attention we fixed the problem or we had the maintenance crew fix
22 the problem.

23 Q. Are you aware of any other complaints that the Youngs
24 made to Gilster-Mary Lee?

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1 A. I heard of no other complaints until this situation come
2 up.

3 Q. Do you remember when that was?

4 A. I don't know exactly, but it has been surely a couple of
5 years.

6 Q. Okay.

7 A. Maybe two and a half years ago.

8 Q. So sometime in 1999?

9 A. I think maybe 1998. Late 1998 maybe or early 1999 we

10 started hearing about it.

11 Q. Okay. Now, again, rather than repeating a lot of
12 testimony that has already been given by Mr. Hutchinson, were you
13 here for his testimony when he talked about all of the things
14 that Gilster-Mary Lee had done to try to reduce the noise emitted
15 from the plant?

16 A. Yes, sir.

17 Q. Are you in agreement with --

18 A. I am in agreement with the things that we did, yes.

19 Q. Okay. Anything that you disagree with --

20 A. No, I did not disagree with --

21 Q. -- on this issue as far as the attempts to correct the
22 noise or --

23 A. No, I did not disagree with his testimony.

24 Q. Okay. One thing that Mr. Hutchinson did not talk about

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1 related to the things that he did -- pardon me -- that
2 Gilster-Mary Lee did is the issue of cost. I would like to ask
3 you a little bit about that. How much did Gilster-Mary Lee spend
4 to move the flour unloading station from its former location to
5 its current location?

6 A. Well, to be quite honest with you, as I testified
7 earlier, we were looking at moving unloading stations as close to
8 storage vessels as we can get them, because the shorter the run
9 the faster you unload. Unloading time is important. So you try

10 to keep your runs as short as possible.

11 Q. Okay.

12 A. So as we looked at where to put the bulk tanks, we then
13 looked at where can we put our controls and where can we put our
14 unloading station. And, of course, the closest place or the
15 easiest thing to do was we took down the old dock building and
16 left that foundation and we put that newer style building up so
17 that we could put our sugar dump area and our controls inside
18 that building.

19 And we had room inside the first floor of the old heel
20 factory to put our blower rooms and our inhalator rooms in, and
21 we had the upper dock area for our unloading station. So that
22 was all looked at in relation to the bulk system. Then about the
23 same time the noise complaint come up. And I said, well, it is
24 just a matter of a pipe run from one unloading station over to

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1 the old bulk tanks and they are not that big. So we will just do
2 all of our unloading up there and get as far away as we can from
3 the complaint area.

4 Q. Did the noise complaint affect Gilster-Mary Lee's
5 decision on where to put the flour unloading?

6 A. No, we were going to put a flour unloading station there
7 anyway.

8 Q. Did it affect the manner in which the flour unloading

9 station was constructed?

10 A. No, it did not. The only thing I did do -- well, it did
11 a little bit. Because at the time -- at the old unloading
12 station we were also unloading oil. We did not have an oil
13 unloading pit. And that is why that area is built the way it is
14 with the wall around one side and the sloping floor, because that
15 is an oil unloading pit. And that is required so that in case
16 you have an oil spill while you are unloading that pit can hold a
17 full load of oil. So that is -- there are no drains in that pit.
18 That is pumped out of there so that oil can be trapped in that
19 area and not get into the sewer system of Chester.

20 Q. Now, formerly the tanks that you used for flour
21 unloading are located in what we call the dye house; is that
22 right?

23 A. The old system is in the dye house.

24 Q. Do you still use those tanks?

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1 A. Yes, we do.

2 Q. You mentioned the length. Wouldn't it be easier just to
3 unload flour from, you know, into those tanks from the old
4 station and the new tanks into --

5 A. That is why the old station was placed there because
6 that was the bulk system that they had at the time. And the
7 unloading -- it is always nice to have the unloading as close to
8 the storage vessel as you possibly can.

9 Q. Well, why didn't you just make two unloading stations,
10 then, one at the old location and one at the new?

11 A. Well, because we had the noise complaint we abandoned
12 the old station because it was just a matter of running pipe over
13 there to the old system.

14 Q. Okay. Did it cost Gilster-Mary Lee something to -- some
15 money to build that -- well, I guess let me ask this. First of
16 all, did it cost Gilster-Mary Lee money to run the pipe over to
17 that location?

18 A. Yes, we run that pipe across there. But, of course, we
19 already had bridges and stuff because our oil storage is over
20 there. So we used the same bridges that we had before. So
21 probably for \$10,000.00 or \$15,000.00 we can put that run in.

22 Q. Now, you mentioned the oil unloading. Had your plan
23 been to move the oil unloading before the noise complaint?

24 A. Yes, because I did not have an oil unloading pit. So

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1 because I was building anyway, I went to build the pit.

2 Q. Okay. Was there any other location that you considered
3 for the flour unloading station other than where it ended up?

4 A. No, I did not consider any other location because I was
5 committed to it because of where the bulk tanks were.

6 Q. Okay. Could it have been on the other side of the
7 street than it is now?

8 A. Well, yeah, it could have been.

9 Q. Why wasn't it?

10 A. I had less space there than I have where I am at.

11 Q. Okay.

12 A. Because I was hard-pressed for space.

13 Q. Now, what about the duct work and sound arrestors that
14 were added to the blower in the dye house and the vents in the
15 dye house that Jack -- pardon me -- that Mr. Hutchinson talked
16 about. Did that cost Gilster-Mary Lee money?

17 A. Yeah, that stuff cost some money. Everything costs
18 something. But it is not a great big expense. Probably you are
19 talking -- oh, I don't know. All the work we did there, maybe
20 \$5,000.00, something like that, because it was work -- it was
21 work -- it was not real complicated stuff, and it was not real
22 expensive.

23 Q. We mentioned some other things, Jack taking noise
24 measurements. Have you and Jack devoted any portion of your time

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1 to consideration of the noise complaints and to try to address
2 the noise complaints?

3 A. It is one of the problems that has been addressed in my
4 office and how to handle -- how to handle it and try to come up
5 with options on what to do.

6 Q. So do you take those -- those noise complaints into
7 consideration when you were, for example, laying out the location

8 of the building and the tanks and things like that?

9 A. It was all part of it, but it was not the only thing
10 that was considered.

11 Q. Have other people's time besides yours and Jack's been
12 taken up trying to consider the noise issues?

13 A. Not much else other than Jack and I.

14 Q. Okay. I would like to ask you some questions about
15 whether Gilster-Mary Lee could take further actions to reduce the
16 noise from the plant. I will try to cut this as much as I can
17 given Mr. Hutchinson's earlier testimony. Mr. Hutchinson, it is
18 my recollection of his testimony, that he testified that there
19 would not be anywhere else for the people to park other than
20 where they do now. Do you agree with that testimony? Or at
21 least in a Gilster-Mary Lee owned parking lot.

22 A. We have trouble parking our people, because nobody wants
23 them to park on the street and nobody wants them to park in front
24 of their property, and even though the streets are public

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1 streets, nobody wants our employees parking there. So we have to
2 try to provide parking lots for them. You run into trouble at
3 change of shift because now you have two crews there. So it is a
4 hassle.

5 Q. Has Gilster-Mary Lee received complaints about people
6 parking on the streets?

7 A. Yes, we have.

8 Q. From whom?

9 A. From businesses uptown when they were there. We don't
10 have that trouble anymore, because there are no more businesses.
11 From residences, from the Youngs, from the people on the other
12 side of Maple Street, from the Youngs, all complain about people
13 parking in front of their property.

14 Q. Okay. How often is the trash dumpster emptied at
15 Gilster-Mary Lee's factory now?

16 A. You are going to assume it is going to happen once a
17 day.

18 Q. Okay.

19 A. However, I believe, because of the bulk systems and the
20 fewer and fewer multiple paper bags that we are throwing away now
21 so we might actually miss a day every now and then.

22 Q. When you say because of the fewer bags, what do you
23 mean? Was there a time when --

24 A. Well, when you get the stuff in bulk and you don't

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1 receive it in bags, and for the amount of flour that we are
2 receiving, it is conceptual that we could save 200,000 or 250,000
3 bags a year that we don't have to throw away.

4 Q. So at one point were you receiving bags?

5 A. Sure. At one time everything that come into the Chester
6 plant was in bags. We should qualify that a little bit. We

7 probably didn't have the volume then that we have now.

8 Q. Uh-huh.

9 A. So it may not have been that many more bags, but with
10 the volume we have now we could conceptually save that many bags.

11 Q. But the trash now is less than it used to be?

12 A. I would believe so.

13 Q. Okay. Would it be correct to say that getting bulk
14 delivery reduces the amount of trash you have and, therefore, the
15 amount of trash pick ups that you have?

16 A. Yes.

17 Q. Okay. Mr. Hutchinson testified that he felt that it
18 would be a problem to move the trash unloading station to any
19 other location. Do you agree or disagree with that testimony?

20 A. Well, it is always difficult to move something like
21 that, because in an old building, and when an operation is set
22 up, the way your flow goes through your factory becomes an
23 integral part of that factory. When you change that flow you
24 have to start changing other things. So one problem causes other

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1 problems. But it is also difficult for me or anyone else to sit
2 here and say something can't be done. Because if you got the
3 money and the time, you can -- I can move that building.

4 Q. Is it practical to move the whole building?

5 A. No.

6 Q. Is it practical to move the trash unloading station?

7 A. It is not practical.

8 Q. Okay. Mr. Hutchinson also testified that regarding any
9 change in -- well, first of all, I guess the fact that you have
10 got to have trucks delivering flour somehow to your plant or you
11 just don't have a plant, right?

12 A. If the plant is to stay in operation it has to have raw
13 materials. And flour is a very important part. Flour, sugar and
14 shortening makes up 80 percent of all of our raw materials.

15 Q. Okay.

16 A. You have to have that flow in there. If not, you shut
17 the plant down.

18 Q. Do you agree with Mr. Hutchinson's testimony that
19 receiving that flour in bags as opposed to tanker trucks would
20 create some difficulties?

21 A. It is tough on -- and we did lesser volumes for years.
22 And it is tough on people. And it is tough on the machinery. It
23 is tough on the building. You know, you tear stuff up because
24 you are moving tons of this stuff through the building. Your

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1 people have to handle all of this stuff. So it is hard.

2 Handling 100 pound bags is no fun. If anybody wants to disagree
3 with me, I will help you unload a load.

4 Q. I think you mentioned the trash issue earlier, that the
5 bags create more trash?

6 A. Yes, right.

7 Q. Mr. Tretter, are you aware of any other sources of noise
8 in the area of the Youngs' home other than the Gilster-Mary Lee
9 plant?

10 A. Well, the only thing that I could think of, across the
11 street from the Youngs' residence, of course, is some apartment
12 buildings and a business, one business left there.

13 Q. Okay.

14 A. So they have got to have some trash pick ups. There is
15 the normal traffic going to St. Mary's Church and School, which
16 will cause some traffic there. That is a very busy street. It
17 is not as busy as old Route 3 used to be when I was kid growing
18 up, and you would spend five minutes trying to get across the
19 highway because it was so busy. But that is not true anymore
20 either. But there are times that Swanwick Street is very busy
21 and there are other times that you could take a nap in the middle
22 of it and not get hurt.

23 Q. What is your understanding as to when the furniture
24 business shut down that is across the street from the Youngs'

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1 house?

2 A. That is -- I would guess -- I think just recently. It
3 kind of caught me by surprise, because one day I went by there
4 and they had furniture in the window and then the next day I went

5 by and the windows were all empty, and I didn't know anything was
6 happening. But, yes, it is shut down now.

7 Q. Okay. I would like to direct your attention to some of
8 what has been presented here earlier. Do you remember watching
9 the videotapes earlier?

10 A. Uh-huh.

11 Q. Do you remember the unloading of the trash dumpster that
12 was taking place on the dye house lot?

13 A. Uh-huh.

14 Q. Do you agree that the unloading in that location is no
15 longer taking place?

16 A. We do not do that there. What you really saw in the
17 first video or what I thought I saw in the first video was I saw
18 two dumpster tubes sitting on the ground, and I saw the truck
19 backed up to one of them. And the way it was squalling and the
20 way the truck was having to pull, I am assuming that it was
21 loading the full one.

22 Q. Uh-huh. But it is --

23 A. Because it probably had lots of weight.

24 Q. Okay. But now that operation takes place somewhere

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1 else?

2 A. We do that down on Stacey Street now.

3 Q. Okay. The second tape that was dated February 29th of
4 2000, was that before or after the flour unloading station was

5 moved? Pardon me. I guess I should say in operation, before it
6 was in operation?

7 A. At the beginning of the year 2000 we struggled a little
8 bit getting our unloading station going. So we were finishing up
9 the bulk tanks and, of course, it was wintertime and I was
10 fighting bad weather and I was trying to move the unloading
11 station. So we struggled a bit in there. We finally did get it
12 all settled down and going by early spring, so in March or April
13 or something like that I would say that we were fully
14 operational. But we did struggle a little bit. It didn't move
15 as fast as it should have.

16 Q. Now, were you here for Mr. Zak's testimony earlier
17 regarding his proposals for solutions to noise emitted -- I guess
18 difference ways to reduce the level of noise emitted from
19 Gilster-Mary Lee's plant?

20 A. Yes, I was here.

21 Q. I would like to ask you about those four ideas
22 specifically and ask you whether or not you have any concerns
23 about them. First, the proposal to enclose the new flour
24 unloading station, do you have any concerns about Mr. Zak's

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1 proposal?

2 A. I worry about a big building like that. And my
3 experience tells me because of being around car sheds and rail

4 unloading facilities that -- we at one time had a truck shed at
5 Steeleville that covered all of our outbound trailers. And we
6 had such a bird problem in that and was written up so many times
7 by the FDA that we finally tore it down.

8 Q. Okay.

9 A. Because we could not keep the birds out of that
10 structure. Now, realizing that structure was open on the front.
11 Another thing that I know and from being around semi-trucks, they
12 are going to tear stuff up. Because a semi-truck when it bumps
13 into something it is heavy and it is going to tear something up.
14 So it is going to be hard to -- if you get the area too confined,
15 it is going to be hard to keep it in operation.

16 In the area where we are unloading, I am going to have to
17 build -- if we would put a building up there it would have to be
18 a lean-to style building. I have got to get structural people in
19 before I can put anything up against an old building like that,
20 to study the structure to make sure that we are safe and sound.

21 Q. Uh-huh.

22 A. Another thing is that we do encroach upon Stacey Street
23 with the nose of a tractor and we will cut off the sidewalk where
24 our people are coming up from this parking lot back here.

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1 Q. Okay.

2 A. So I have some other problems. I have got a power
3 supply problem. I have got overheads, 440 and I think that is

4 1660 coming in there.

5 Q. You mean overhead power lines?

6 A. Yes, overhead power lines in that area. So I have got
7 other inherent problems in there, putting structures up. And
8 then, of course, getting city permission also is another hassle.

9 Q. You mentioned that the location in Steeleville was open.
10 Could you just put a door on this facility and solve the bird
11 problem?

12 A. Well, yes, except then you have to enclose the whole
13 truck, and that is where I am encroaching across the sidewalk and
14 out on to Stacey Street.

15 Q. Okay. Are there any other problems that would be
16 associated with having the truck inside the enclosure?

17 A. If you could put the truck inside the enclosure and if
18 you could make sure that you don't let birds in while the door is
19 open, if you are sure that the truck drivers don't knock down the
20 door, it is a whole -- I would say the only way that facility
21 could then be used was to back the truck up, drop the trailer,
22 pull the tractor out and then close the door.

23 Q. What would happen -- well, where are the blowers located
24 now? Are they on the trailer or on the truck?

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1 A. Well, if you put it inside the building it does not
2 matter where you put the blowers anymore. You are supposed to

3 have solved the sound problem.

4 Q. Well, I understand. But where are the blowers located
5 now? Are they located on --

6 A. Well, I have blowers -- there are three different types
7 of blower setups that could come into that plant. One is the
8 power take off driven blower on the tractor that supplies the air
9 to the bulk truck. Those tend to be the noisiest. Gilster-Mary
10 Lee trucks have electric motor driven blowers mounted on the
11 frame of the trailer.

12 Q. Okay.

13 A. And they plug into an electrical source at each plant
14 and they tend to be a lot quieter than the power take off driven.

15 Q. Okay.

16 A. Then I also have blowers -- I have all my material
17 handling blowers right on the other side of the wall from where
18 the truck sits, and I have a blower in there that we use on some
19 trucks that don't have a blower that provides air to unload the
20 truck. And so that's the third way.

21 Q. As to the first scenario that you talked about where the
22 blower is located on the cab of the truck, how could you just
23 drop the trailer?

24 A. We would have to then use an in-house blower.

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1 Q. If you kept the cab of the truck -- well, assuming you
2 could build the building big enough to keep the cab of the truck

3 inside and run the truck and run the blower, how do you get the
4 exhaust out of the building?

5 A. The building has to be -- if the tractor is running
6 inside that building and you close the door down you have got to
7 do some venting, because you will start -- you will start gassing
8 people in there. So that becomes a dangerous situation unless it
9 is properly vented. You have to shut the tractors off or
10 something.

11 Q. Would there be any issue with the noise level in the
12 building from the blower?

13 A. Inside the building, yes, it will be loud inside there,
14 but you wear -- we have areas in our plants where hearing
15 protection is a necessity. And so it would then be declared a
16 hearing protection area, and the people working in there, the
17 people that have to be in there would have to wear hearing
18 protection.

19 Q. Going back to the -- I meant to ask you about the
20 ventilation of the exhaust. Would you have to have some kind of
21 blower to vent the exhaust out?

22 A. That becomes a real problem if they have to run a diesel
23 engine inside of a closed area, because flour is terrible for
24 picking up fumes, picking up smells. So you have to be real

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1 careful and get those diesel fumes out of there because your

2 flour starts smelling like diesel fumes. Then, of course, you
3 have to worry about your people in there, too, because you will
4 be killing them.

5 Q. Would the blower that -- would the blower that you use
6 to the get the fumes out of the building make noise?

7 A. I would guess there are as many different ways to do
8 that as there are people sitting in this room. You are going to
9 get some noise outside. I would assume that you would direct it
10 some way or other.

11 Q. Okay. The next proposal was to move the dumpster area,
12 and we have already spoken about that. But -- well, I am just
13 trying to think back from my cross-examination of Mr. Zak. Is it
14 still your testimony that you don't see any way to -- or there is
15 no practical way to move the dumpster to any other location?

16 A. It would be very tough to move the compactor, which then
17 is the dumpster --

18 Q. Okay. What --

19 A. -- location inside that old facility.

20 Q. What about the issue of the trucks idling on the street
21 outside the plant?

22 A. I will admit, that is a continuing problem. We have
23 tried while we are there, between myself and the plant
24 superintendent, we have tried to police that. I would -- to say

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1 the least, we are getting very little cooperation from the truck

2 drivers. But we have really tried to get them to shut engines
3 off and not be parked along the street. And what we would really
4 like to do is just not have them park along the street. Now,
5 some of those trucks -- I should say the majority of those trucks
6 are ours. Some of those trucks before weren't ours because they
7 were making deliveries to the funeral home or something like
8 that. But, of course, we have UPS and we have the Air Express
9 people coming in there on a regular basis because our packaging
10 department faces that direction.

11 Q. Okay.

12 A. So all of the communications to all over America go out
13 of those doors right back there.

14 Q. Okay.

15 A. So it is a busy area during the afternoon hours.

16 Q. What about Mr. Zak's testimony regarding building some
17 kind of 20 foot sound barrier around the Youngs' home, do you
18 have any concerns with that?

19 A. Can we physically build it? Sure. Can we make it stand
20 up? Sure. But I would guess if I were the Youngs that I would
21 never let that happen, because on an August afternoon you are
22 going to cook, with a wall on both sides of you.

23 Q. And something I should ask going through these, you
24 heard -- did you hear Mr. Zak's testimony regarding the amount of

1 money that he felt it would take to do these various solutions?

2 A. I am really concerned about Mr. Zak's testimony on the
3 time limit given to, like, put up a building or something like
4 that. I can't put a building up in two weeks. I am sorry. I
5 just can't do it.

6 Q. Why is that?

7 A. I can't get permits from the city. I can't get the
8 structural work done, the structural engineering done. If I have
9 to do subsurface engineering, I just can't get that done in two
10 weeks time.

11 Q. Okay.

12 A. I can't order a building in two weeks time.

13 Q. Okay.

14 A. I just can't get it done in two weeks.

15 Q. What about the monetary estimate of \$50,000.00 to build
16 that shed?

17 A. We would get started for that much money, I think.

18 Q. Would you get finished for that much money?

19 A. I don't know. I don't know what all I have to do. You
20 know, I can't say that. If I had to go to my boss and ask for
21 money with no more information than I had today, I would ask for
22 \$100,000.00 for the building to put over the truck. Now, I may
23 bring it in less than that, but I may not.

24 Q. You might bring it in more than that?

1 A. Yeah.

2 Q. Okay. Just, for example, how much did the construction
3 related to the moving of the flour unloading station cost?

4 A. Besides the cost of the system, the contractors that put
5 the pipe up -- that set the tanks and put the pipe up, it was
6 \$150,000.00.

7 Q. Okay. And on top of that you had all the actual
8 material costs?

9 A. We actually had to buy the system. That was just to put
10 it up. To put the tanks up and put the pipe on, it was a
11 \$150,000.00 bill.

12 (Mr. Young exited the hearing room.)

13 Q. (By Mr. Safley) Did you have any other concerns
14 regarding Mr. Zak's testimony about either the types of noise
15 emitted or the solutions for the noise that we have not talked
16 about?

17 A. On the compactor, where the compactor is put -- where
18 the tube is put back against the compactor, which is in between
19 the big building and the boiler room for that building.

20 Q. Uh-huh.

21 A. There, of course, at the corner of that building or
22 maybe just a few feet out from the corner of that building, I hit
23 city property again. And, of course, when you are lifting -- if
24 I remember right, when you lift those totes up in the air, I have

1 to have 25 foot clear to tilt that thing up in the air. I forget
2 the run I have to have to do that. So I -- without us -- one
3 more time, without us encroaching out on to Swanwick Street, we
4 can't do that there.

5 Q. Do you all own Swanwick Street?

6 A. No.

7 Q. And this may be a dumb question, but I will ask it
8 anyway. Could you just build a big wall across Swanwick Street
9 to keep the noise from coming from the plant down to the Youngs'
10 home?

11 A. As long as I guess the city and nobody else objected. I
12 mean, can we build a wall? Sure, we can build walls.

13 Q. You certainly don't have permission from the city to
14 close down Swanwick Street this way, though, I am assuming?

15 A. No. I would say that that would be a hard fight,
16 because there is only two streets that go all the way through
17 Chester. One of them is State Street and the other one is
18 Swanwick. Other than that, every street dead-ends someplace.

19 Q. Any concerns regarding any of the other testimony you
20 have heard today from the Youngs or Jack that you want to
21 disagree with before I finish my questions?

22 A. No, I don't have anything.

23 MR. SAFLEY: Okay. I don't have any further questions.

24 HEARING OFFICER LANGHOFF: Okay. Mr. Muskopf?

1 MR. MUSKOPF: Thank you. I have a few questions.

2 CROSS EXAMINATION

3 BY MR. MUSKOPF:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. You have seen C1 haven't you?

7 A. I have not seen this before, no.

8 Q. Oh, okay. Mr. Hutchinson is your -- you are his
9 immediate supervisor?

10 A. Yes, I am.

11 Q. Did you ask him to perform the noise measurements that
12 are reflected in C1?

13 A. I asked him to take -- when we first found out about the
14 complaint I asked him to take -- I believe those sound meters
15 were for in plant use, to take our in plant sound meter, and to
16 see what we were really dealing with and where our sources were.

17 Q. And he reported to you what his findings were even
18 though he didn't show you that particular document?

19 A. I did not see this document, but he reported his
20 findings to me.

21 Q. Did he also tell you that he compared the numbers on C1
22 with the numbers on the maximum allowable limits on C4?

23 A. No, he didn't tell me that. He just told me what the
24 limit was.

1 Q. So, I mean, you knew that the results from the study
2 reflected in -- the studies reflected in C1 were over the limit?

3 A. Yes, I knew that.

4 (Mr. Young entered the hearing room.)

5 Q. (By Mr. Muskopf) Did you also know that there were
6 numbers on the studies in March and May of 2000 that are
7 reflected in C5, C6 and C7 that were over the limit?

8 A. I don't remember the other studies. I don't -- I know
9 that Jack was working on the situation, and when he come up with
10 something that was different or outstanding he would report it to
11 me. But I don't remember being involved in these other studies.
12 I don't remember knowing about them, but he was working on them.

13 Q. Assuming that he testified that he certainly would have
14 reported the findings of his studies --

15 A. And he did report the findings that we were exceeding
16 the limit. Yes, I knew that.

17 Q. In the March and May --

18 A. I don't remember -- I remember the first group. Okay.

19 Q. Okay.

20 A. Of course, remember, I am getting upgrades all of the
21 time from a dozen different projects. So he may have been giving
22 me upgrades on this, but for some reason I don't remember that.
23 But that don't mean that he was not giving them to me, but I just
24 don't recall them at this time. So if I could -- you know, in

1 time I may jog my memory and bring them back, but right now I
2 don't remember that.

3 Q. I understand. Do you have any -- are there any records
4 that Gilster-Mary Lee would maintain that would tell us how many
5 times that -- do you call it the dumpster -- that the dumpster is
6 emptied in let's say a month?

7 A. I do not have a record of that. I seriously doubt that
8 the plant keeps a record of that. We have done studies, you
9 know, in the past, take a 30-day period and keep track of things
10 like that, but not ongoing type of records. And I don't -- I
11 don't remember the last study we did at Chester. At one time we
12 did all of the plants, and this has been ten years ago, but we
13 did all of the plants to give us a feel of our amount of solid
14 waste. Because way back then we were looking at other ways to
15 get rid of solid waste. We had a problem in Randolph County
16 because our landfills all shut down, and there was no sorting
17 stations. So we were in serious trouble.

18 Q. Are you all paying an outside service to come in and
19 haul that waste away?

20 A. We run our own trucks and deliver our waste to the
21 sorting stations and then pay so much per cubic yard, I believe
22 it is, or per ton yard.

23 Q. Per load?

24 A. It boils down to per load, but they actually charge us

1 by the yard, is what they do. But when you roll in there with a
2 dumpster, it is a 46 yard dumpster and you pay for 46 yards. You
3 may only have ten on it, but you pay for 46 yards.

4 Q. Okay. The solid waste from the other facilities, the
5 other GML facilities goes to the same place?

6 A. It is all handled the same way. There is a number of
7 different sorting stations around now and so they will take the
8 solid waste to the closest sorting station, wherever they are at.

9 Q. Do you know if solid waste from any of the other GML
10 plants besides the downtown cake plant go to a particular solid
11 waste sorting facility that the trash from the cake plant goes
12 to?

13 A. I don't know that for sure, but it stands to reason that
14 the two plants from Chester are going to go to the same sorting
15 station because of the distance of the haul. I don't know which
16 sorting station that is, but it would stand to reason that both
17 of them go to the same spot.

18 Q. Do you haul in flour in any other way besides tanker
19 trucks?

20 A. Sure. There is still flour -- there is still certain
21 types of flour that come in in 100 pound bags.

22 Q. Okay. The soft wheat flour comes in by tanker?

23 A. There are a number of different soft wheat flours, and
24 we use -- like, for instance, 65 percent, 35 percent, unbleached,

1 biscuit, and then, of course, a hard wheat flour. There are four
2 or five different hard wheat flours. They come from the mill
3 down here by the river, and they are kept in different tanks and
4 are used for different products.

5 Q. Do you keep any record of how many times -- how many
6 loads are brought in by tanker truck and unloaded?

7 A. There is a record kept of the amount of flour used
8 because as every batch is mixed it is pulled out of -- its usage
9 is pulled out of inventory. We have reports that show how many
10 pounds of flour are used. But we would probably not have a
11 record other than you have to go back and go through all of the
12 invoices to see whether it was a bag load or a bulk load.

13 Q. Okay.

14 A. So it is not differentiated as bag or bulk flour and
15 what type of flour and what plant and the usage of that plant.

16 Q. So it could be figured out, how many loads, if you know
17 how much a tanker holds. Is it pretty standard?

18 A. They are going to haul everything they can haul legal,
19 whatever that is.

20 Q. So you could take the maximum quantity that one tanker
21 could haul and then you --

22 A. You could get close by back figuring that way.

23 Q. Okay. Has anyone ever asked you to do that?

24 A. No, I have never done that.

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1 Q. Would you have any estimate as to how many tanker loads
2 of sugar and flour come in and are unloaded at the unloading
3 station?

4 A. I don't know, because I don't know just exactly where
5 all of the different flours come from. But I do know that as far
6 as sugar goes they have a sugar and dextrose tank there which is
7 cane or beach sugar or white sugar and then corn sugar. I do
8 know it takes one truck load of white sugar per day to keep it
9 running. I know it takes two truck loads per month of corn sugar
10 to keep that plant running. Those two I do know. The flour gets
11 complicated because of the different flours. I don't know those
12 off the top of my head.

13 Q. Could you take a ballpark guess that would be halfway
14 accurate?

15 A. I have to write down some numbers someplace. I can't do
16 it in my head.

17 Q. Okay.

18 A. If I am handling approximately 20 million pounds of
19 flour and the loads are coming in at 44,000 pounds each -- not
20 all are bulk load, but you can figure out how many loads per year
21 and divide that by working days and you have your loads per day.

22 Q. How long would it take you to figure those numbers?

23 A. If I have a pencil and paper and a calculator it won't
24 take me long.

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1 Q. Okay. Could you do that?

2 A. Give me half a minute and a calculator.

3 Q. Okay.

4 HEARING OFFICER LANGHOFF: Let the record reflect that the
5 witness is doing some math here. Thank you. We will go off the
6 record while he is doing that.

7 (Discussion off the record.)

8 HEARING OFFICER LANGHOFF: Okay. Go ahead now.

9 THE WITNESS: Okay. Of my soft wheat flour -- now,
10 remember, I am getting in a load of sugar a day. So that is one
11 load per day. Actual soft wheat flour usage, I am getting in
12 about two loads a day. But then, of course, I am getting in
13 yellow corn flour and I am getting in hard wheat flour. So
14 yellow corn flour, I am assuming is about a load a week. So in
15 any one day you can have one truck. And hard wheat flour coming
16 down from -- I think it is coming down from Alton, and it may be
17 two or three loads a day. Say three loads a day. So you would
18 have five, seven truckers a day in there.

19 Q. (By Mr. Muskopf) And that's for an average month?

20 A. That is for an average day.

21 Q. I understand that, but -- so how many loads total per
22 day, for an average day?

23 A. I would say it could be as high as seven bulk tankers.

24 Q. And then as low as --

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1 A. I would say it could be as low as four. I don't think
2 it would ever get under four.

3 Q. And you are not including Sundays?

4 A. No. This plant -- now, we have been doing some changes
5 at this plant over the last two years. So this plant has really
6 gone down to a five day work week, and it has worked very few
7 Saturdays in the last year. And so it is basically a five day --
8 it is five 24s now.

9 Q. So you would expect to see this four to seven a day
10 figure drop down substantially on Saturdays?

11 A. Well, I think on Saturday you may get -- see, if there
12 happens to be somebody there -- normally maintenance is pulled on
13 Saturday morning, and by noon everybody is gone out of the plant.
14 So there would be nobody around to receive trucks, so truck
15 unloading stops. I have noticed -- I noticed last Saturday that
16 they did unload a sugar load first thing Saturday morning, but
17 there were no other trucks there.

18 Q. Now, as to times of day that these loads come in, is it
19 ever -- has it ever been that you are aware of, let's say since
20 1995 to -- let's say from 1997 to the present, have they ever
21 come in after 10:00 and before --

22 A. Well, until about halfway through the year 2000 we had
23 24 hour unloading. And about halfway through the year of 2000 we
24 changed the hours. And then, of course, trying to keep everybody

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1 in compliance with those hours, it is a witch-hunt out there
2 really, because you can't get -- truck drivers, they get in
3 trouble unloading someplace, and then it throws them behind on
4 their schedule. And then two trucks land in at one time or three
5 trucks land at one time. It may be the only time that three
6 trucks are there that day, but there are three trucks there at
7 one time. But, yet, you may go hours with nobody in the
8 unloading station. And then, of course, our trucks are short
9 hauling. Gilster-Mary Lee trucks are short hauling from the
10 local mills. And the common carriers are long hauling from the
11 mills that are remote from us. And so it gets to be -- it is a
12 scheduling nightmare.

13 Q. So sometimes it happens even after midway through the
14 year 2000 when you changed --

15 A. Right. More times than we like it happens that you get
16 late unloading. Now, we have, in the last several months, taken
17 on the policy that if they -- that if we catch them and they are
18 going past 10:00 we shut them off and make them wait until
19 morning. But we have to catch them. We have to have somebody
20 there, you see. You take the -- the guy running the plant is a
21 shift foreman on the inside, okay, and he is busy with his shift.
22 So he may not come out of the plant his whole shift. He may not
23 catch that bulk truck sitting out there.

24 Q. So you are saying that the driver of the truck, even if

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1 he is not a GML employee, can unload the sugar or the flour?

2 A. Well, he can't unload without somebody -- without the
3 lead man, who is an hourly employee, from the mixing floor
4 checking him in. He has to bring in his sample and he has to be
5 checked in and the lead man has to hook his hose up. Okay. But
6 these are hourly employees, okay. And they just won't accept the
7 responsibility that the salary employee accepts, and so it
8 happens.

9 Q. So would you just have to --

10 A. The only way I know to really police it is I would
11 assume, and I talked to -- I have talked to the superintendent a
12 half a dozen times about this. It is -- and we are kind of up
13 against it other than putting like our own policeman out there to
14 police the area.

15 Q. Who is your boss?

16 A. My boss is Don Welge.

17 Q. Okay. So are you pretty much second in command?

18 A. Over production, but not over the rest of the company.

19 Q. What was the policy change in mid 2000 about accepting
20 deliveries? What were the hours that you established at that
21 time?

22 A. The hours we established then was 7:00 a.m. to 10:00
23 p.m., and I don't really refer to that as company policy. Those

24 are directives for the plants, operation directives, which to me

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1 is different than company policies.

2 Q. Is it stronger or weaker, a directive than a policy?

3 A. To me, always being a company man, company policy is the
4 law. It is like the Ten Commandments. A directive -- you can
5 argue about directives sometimes. Normally you don't but
6 sometimes you can.

7 Q. The tanks that were installed that are highlighted and
8 numbered one through five on C2 --

9 A. Yes, sir.

10 Q. -- those were actually installed on Swanwick Street,
11 were they not?

12 A. Yes, sir, this is Swanwick Street right here.

13 Q. I mean, literally on the street?

14 A. Well, this area -- this dock area -- way back when this
15 dock area and the area below it and above it was given to
16 Gilster-Mary Lee by the City of Chester, which is part of that
17 street, really. So although it was really in the past part of
18 the street it was, like, given to Gilster-Mary Lee so that they
19 could have a dock in there. We then -- because we quit using
20 that dock, we then took these areas and, of course, with the
21 city's permission put our tanks in that area.

22 Q. But the city didn't actually own that?

23 A. I don't know how that ownership deal works out on
24 something like that when the city gives you part of the street,

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1 because the streets are public domain.

2 Q. But you still had to ask for permission to --

3 A. Oh, yes, we have to get permission. Anything we would
4 alter in a building in Chester has to have a building permit.

5 Q. Have the operations increased or the number of loads of
6 flour, for instance, increased since let's say 1999 to the
7 present?

8 A. Yes, I believe there has been slight growth in the
9 institutional department, which is -- which from my side is good.
10 Growth is good.

11 Q. When you -- I thought you said earlier that you
12 basically outgrew an old loading station. I was just
13 wondering if that --

14 A. That was the bulk tanks. We outgrew the bulk tanks.

15 Q. I see.

16 A. There was more volume than we could get through those,
17 the old bulk tanks.

18 Q. I see.

19 A. That was on our major flours. Of course, those are the
20 ones you want to put in bulk because they require the most
21 handling through the plant.

22 Q. How is the shortening brought in?

23 A. The shortening is brought in in 50 pound cubes and then
24 conditioned in the plant and then added to the mix through a

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1 shortening conditioner that actually extrudes the shortening into
2 the mixes.

3 MR. MUSKOPF: Okay. I thank you very much for your time,
4 sir.

5 THE WITNESS: Okay.

6 HEARING OFFICER LANGHOFF: Mr. Safley?

7 MR. SAFLEY: I do have, I think, just one follow-up
8 question.

9 REDIRECT EXAMINATION

10 BY MR. SAFLEY:

11 Q. Mr. Tretter, you were speaking with Mr. Muskopf
12 regarding the number of loads per day. How many tanker trucks
13 can be unloaded at that station at one time?

14 A. Well, they try to unload two and sometimes they do
15 unload two. But it is -- it really is built for one truck at a
16 time.

17 Q. Okay. But two can be unloaded there?

18 A. Two can be unloaded and it is a real stretch. They have
19 to stretch hoses around and, you know, all this kind of stuff.

20 Q. But that does happen sometimes?

21 A. Yes. Only when the trucks bank in there -- or, you

22 know, all end up in Chester at one time.

23 Q. Okay.

24 A. So we try to unload them and get them out of there. So

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1 they do sometimes crowd two in there.

2 MR. SAFLEY: Okay. That was my only question.

3 HEARING OFFICER LANGHOFF: Okay. Thank you, Mr. Tretter.

4 MR. SAFLEY: Thanks. Sorry to keep you so long.

5 THE WITNESS: That's okay.

6 (The witness left the stand.)

7 HEARING OFFICER LANGHOFF: I think we are going to take a
8 five minute break.

9 (Whereupon a short recess was taken.)

10 HEARING OFFICER LANGHOFF: All right. Back on the record.
11 Could you swear the witness, please.

12 (Whereupon the witness was sworn by the Notary Public.)

13 J A S O N T. W E I S S E N B U R G E R,

14 having been first duly sworn by the Notary Public, saith as

15 follows:

16 DIRECT EXAMINATION

17 BY MR. SAFLEY:

18 Q. Good afternoon, or actually almost evening, to you, Dr.
19 Weissenburger. Could you please state your name for the record.

20 A. Jason Weissenburger.

21 Q. Could you spell your last name for the court reporter.

22 A. W-E-I-S-S-E-N-B-U-R-G-E-R.

23 Q. Dr. Weissenburger, are you currently employed?

24 A. Yes.

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1 Q. By whom?

2 A. Engineering Dynamics International.

3 Q. What is Engineering Dynamics International?

4 A. We are a consulting engineering firm dealing principally
5 in sound and vibration related areas.

6 Q. Where is the firm located?

7 A. In St. Louis, Missouri.

8 Q. What is your position at the firm?

9 A. I am the founder and the president of the firm.

10 Q. What are your activities, just in general, your job
11 activities in that position at the firm?

12 A. You mean my personal involvement?

13 Q. Yes, personally what are your activities?

14 A. They vary all over the place. I personally have a very
15 able assistant who does most of the real management of the
16 company. I deal mostly in the technical matters.

17 Q. Okay. Can you give me some examples of those kinds of
18 technical matters?

19 A. Well, they can range everywhere from room acoustics and
20 things of this sort. We do a lot of environmental noise work.

21 We do a lot of design work for noise barriers, noise enclosures,
22 what have you. Our work goes into, although not as much now as
23 it used to, but a lot of industrial work. That is kind of a full
24 range. We, at one time or another, get involved in anything to

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1 do with sound except probably under water sound.

2 Q. Okay. Can you briefly tell me about your educational
3 history?

4 A. I am a graduate of Washington University, where I
5 received a Bachelor of Science in Mechanical Engineering in 1955.
6 I received a Master of Science in Applied Mechanics in 1959, and
7 a Doctor of Science in Applied Mechanics in 1966.

8 Q. Okay. All of those were at Washington University in St.
9 Louis?

10 A. Yes.

11 Q. Okay. Any other formal education?

12 A. Not of a college nature.

13 Q. Okay. Tell me -- just briefly run through your work
14 history after college or I guess even during college if it is
15 relevant?

16 A. Well, as I graduated from college I began to work as a
17 lab assistant. I got what essentially amounted to a scholarship
18 to go to graduate school. As I went through my Master's work, I
19 was basically teaching half time and going to school half time
20 until I finished my work.

21 I went to work for Emerson Electric in what then was their
22 aviation and space division doing stress analysis work. I did
23 that up until late 1959. Yes. 1959. At which time I also
24 finished my Master's.

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1 I went to work for McDonnell, which became McDonnell
2 Douglas, which is now Boeing, in the structural dynamics area,
3 which dealt mostly with vibrations and flutter and those kinds of
4 things. It was there that I got appointed an expert in acoustics
5 because of some work we had to do with the -- at that time the
6 Mercury capsule and then I began to get involved in other areas
7 that involved acoustics.

8 Q. Okay.

9 A. During the time I was at McDonnell I was finishing up my
10 work on my doctorate plus I was an adjunct professor of applied
11 mechanics at Washington University, so I was teaching at that
12 time. I left McDonnell in late 1969 and started EDI in 1970.
13 And as I say, the rest is history.

14 Q. Okay. Again, I am going to try to shortcut some of your
15 C.V., since we have stipulated to your expert status. I will
16 ask, though, do you currently practice in any certain areas of
17 engineering, other than -- I mean, if you had to say the areas of
18 engineering in which you practice currently, what would your
19 response be?

20 A. A wide --

21 Q. Okay. The things that we talked about earlier?

22 A. It depends on what somebody is willing to pay me for
23 that day.

24 Q. Okay. But it mostly involves noise control, acoustics

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1 and those areas?

2 A. Right. Occasionally some structural dynamics work.

3 Q. Okay.

4 A. Occasionally some other forensic type investigations. I
5 have done industrial accidents a time or two and some things like
6 this.

7 Q. Okay. Do you belong to any professional organizations
8 relating to noise engineering?

9 A. Well, I belong to -- actually, the company belongs to
10 and I am past president of the National Council of Acoustical
11 Consultants. I belong to the Institute of Noise Control
12 Engineers and am a member of and actually was elected a Fellow
13 with the American Society of Mechanical Engineering where I
14 participated in the noise activities of that firm and primarily
15 got elected Fellow because of the work that I have done in the
16 noise acoustics area over the years.

17 Q. Okay. I would like to hand you what I have marked as
18 Respondent's Exhibit C and ask you to take a look at it and let
19 me know when you have had a chance to do that.

20 A. Okay.

21 Q. Can you tell me what this document is?

22 A. It is a C.V. of my experience.

23 Q. Okay. Does that accurately reflect your education and
24 work experience as well as your membership in organizations and

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1 publications, certifications, etcetera, relating to your work?

2 A. Yes, I think it does. There are other lectures and
3 teaching seminars and things that I don't believe are reflected
4 in here.

5 Q. Okay. That is all I wanted to ask you about that.
6 Thank you.

7 MR. SAFLEY: I would offer up Dr. Weissenburger as an
8 expert at this point in the areas that we stipulated to earlier.

9 MR. MUSKOPF: No objection.

10 Q. (By Mr. Safley) Getting now to your involvement in this
11 case, Dr. Weissenburger, have you been retained to provide
12 opinion testimony on behalf of the Gilster-Mary Lee Corporation
13 in this matter?

14 A. Yes.

15 Q. Have you been provided with documents to review in
16 formulating your testimony?

17 A. Yes.

18 Q. Have you been provided with the depositions of Mr. and

19 Mrs. Young?

20 A. Yes.

21 Q. The deposition of Greg Zak?

22 A. Yes.

23 Q. The deposition of Jack Hutchinson?

24 A. Yes.

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1 Q. The plaintiffs complaint?

2 A. Yes.

3 Q. Documents related to the noise measurements taken by
4 Jack Hutchinson?

5 A. Yes.

6 Q. The videotapes produced by the Youngs?

7 A. Yes.

8 Q. Did you review those documents and videotapes?

9 A. Yes.

10 Q. The Youngs have alleged that Gilster-Mary Lee has
11 violated Section 24 of the Environmental Protection Act. Are you
12 familiar with that code section?

13 A. I don't recognize it specifically by number. But I am
14 pretty well familiar with the Illinois regulations.

15 Q. Okay. I am just going to hand you, just to make sure
16 that we are clear for demonstrative purposes, but I am not
17 offering it as an exhibit because it is part of the Illinois
18 code. Does that purport to be Section 24 of the Illinois

19 Environmental Protection Act, 415 ILCS 5/24?

20 A. Yes.

21 Q. Are you familiar with that code section?

22 A. Well, as I say, I don't recognize by number particularly
23 but I am pretty well familiar with all of the regulations in
24 Illinois dealing with the noise and sound.

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1 Q. Okay. Great. Thank you. Are there any other documents
2 that you were provided that you reviewed that were particularly
3 you think important in formulating your opinions in this case?

4 A. No. I was provided some of the zoning and some things
5 like this which had no real bearing on my considerations.

6 Q. Okay. Have you visited Gilster-Mary Lee's plant in
7 Chester, Illinois?

8 A. Yes, I have.

9 Q. Did you take noise measurements when you visited that
10 plant?

11 A. Some noise measurements. I would not call it an
12 extensive investigation by any means.

13 Q. Okay. Dr. Weissenburger, you are aware from the
14 videotapes, I assume, that the Youngs have taken noise
15 measurements of purportedly Gilster-Mary Lee's operations?

16 A. Yes.

17 Q. I would like to ask you a little bit about the manner in

18 which they took those measurements. Are you familiar with --
19 well, I guess I should ask this first, for the record. Were you
20 here previously for the deposition -- pardon me -- for the
21 testimony of petitioner's expert witness or opinion witness, Greg
22 Zak?

23 A. Yes.

24 Q. Did you hear my discussion with Mr. Zak of Section 12.9

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1 of the ANSI regulations regarding noise testing?

2 A. Yes.

3 Q. Are you familiar with those regulations?

4 A. Yes.

5 Q. Would you agree with Mr. Zak that the Youngs -- at least
6 there is no evidence that the Youngs followed those procedures
7 when taking the noise measurements in this case?

8 A. That's true.

9 Q. Okay. Did you observe anything else regarding -- or
10 anything else on the videotapes regarding the Youngs -- the
11 manner in which the Youngs took their noise measurements that
12 causes you any concern regarding those measurements?

13 A. Well, I guess we could probably get into a lot of
14 technicalities about calibration and one thing and another. I
15 don't think that the levels that showed up there are particularly
16 invalid by any means.

17 Q. Okay.

18 A. The one thing that I did find as I examined the tapes, I
19 found it very useful to sit back and let the tapes run and close
20 my eyes to try to understand what I was hearing. You have to
21 realize that any of our five sensual experiences all interrelate
22 to how we react. So I find it very valuable at times in
23 listening for things, and I am sure we all do this when we want
24 to really concentrate on hearing something, we close our eyes.

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1 So I found it interesting, at least, to close my eyes and listen
2 to some of this and try to listen to all of the various sounds
3 that we would hear.

4 Q. What did you hear when you did that?

5 A. Well, it depends on the time of day and that sort of
6 thing. But one of the most noticeable things was traffic
7 presumably along Swanwick Street.

8 Q. Okay.

9 A. Which later as I was on the scene I could see what I
10 must have been hearing on that. During the day you would
11 occasionally hear birds and you would hear other noises that were
12 not identified. And I just a few minutes ago realized what I had
13 heard on there that I could not identify. There is a river boat
14 going up the river, and they really put out a lot of horsepower
15 when they are doing that and they move very slowly. It is a low
16 frequency noise, and I could hear that while I was standing out

17 there. Not so much on the videotapes. But that, apparently, has
18 some involvement in it also.

19 Q. Okay.

20 MR. MUSKOPF: Excuse me a second. I need to object
21 basically on the same basis that Mr. Safley was objecting to Mr.
22 Zak's testimony.

23 HEARING OFFICER LANGHOFF: Okay.

24 MR. MUSKOPF: It was not disclosed in discovery that Dr.

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1 Weissenburger had visited the site or that he based any of his
2 opinions on his own personal site visit.

3 MR. SAFLEY: Oh, I thought that it was. I thought that it
4 was disclosed that he came to the site and took noise
5 measurements and that is why we produced the diagrams that he
6 drew at the site.

7 MR. MUSKOPF: My recollection is that it was Dr.
8 Weissenburger's assistant that visited the site and took the
9 measurements.

10 MR. SAFLEY: Oh. Well, I am not aware of that being -- do
11 you know where we said that? Because I -- I am not the only
12 attorney who worked on this case, but I -- that may have been a
13 misstatement, but I don't remember that disclosure.

14 MR. MUSKOPF: Could we go off the record for a second?

15 HEARING OFFICER LANGHOFF: Yes.

16 (Discussion off the record.)

17 HEARING OFFICER LANGHOFF: Do you want to find that so I
18 can note it for the record?

19 MR. MUSKOPF: Yes. I am sorry. If you don't mind me
20 taking a second. I can't find what I am looking for, but I do
21 have a further -- I do want to make a couple more comments about
22 my objection.

23 First of all, in the document that is entitled supplemental
24 response to petitioner's interrogatories, the answer to

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1 Interrogatory Number 6A, B, and C and D, there is no indication
2 that there was a site visit by Dr. Weissenburger. It certainly
3 does not include any disclosure that any background noise that
4 Dr. Weissenburger heard was associated with the river boat noise,
5 and that is clearly being disclosed for the first time just now
6 within the past five minutes.

7 HEARING OFFICER LANGHOFF: Okay. Thank you. Your
8 objection is overruled.

9 Q. (By Mr. Safley) Dr. Weissenburger, did you ever observe
10 when taking noise measurements on the videotape speaking --

11 A. Yes.

12 Q. -- while they were taking those measurements?

13 A. Yes, quite frequently.

14 Q. Does that affect the noise measurements at all?

15 A. It shows up on the sound level meter, yes.

16 Q. I just forgot what my next question was going to be.
17 Oh, I remember. Earlier today were you present for the testimony
18 of I think it was Mr. Young, that the videotapes, the videotapes
19 were actually made on a small tape in the VCR video recorder and
20 then transferred to the large tapes?

21 A. Yes.

22 Q. Does that at all affect the quality or the way in which
23 the noise is depicted on the tapes that we actually have in front
24 of us?

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1 A. Well, it does nothing significant as far as the visual
2 image goes. However, any time you transfer from one tape to
3 another you lose some degree of it, but I don't think it had any
4 particular bearing on what we are seeing here so long as we don't
5 presume that the sound that comes through on the video is any
6 decent representation of what the sound was if we were there in
7 person.

8 Q. Okay. Would that be true even if the transfer had not
9 occurred?

10 A. Yes.

11 Q. Why is that?

12 A. Mainly because it does not have the fidelity, the
13 recording mechanism. The microphone that is used is not that
14 good a microphone. The tape quality -- the tape is good but
15 getting it through the electronics and on to the tape and then

16 playing it back through small speakers and everything you lose a
17 lot of the fidelity of what is going on at that point.

18 Q. Would it sound different in person standing there than
19 it does hearing it through the television speakers?

20 A. Yes. Oh, yes. This is one of the reasons why when you
21 are doing, you know -- your movie makers, you always see them out
22 there with tape-recorders which are super high-fidelity and they
23 have timing signals that correlate with those. That is -- the
24 reason for that is to get the fidelity captured in a good

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1 electronic medium and on to a good tape, and they time them back
2 into the pictures or videos as they come through with it.

3 Q. Okay. Moving on, the claim that we are here about
4 today, again, as I mentioned earlier, is the alleged violation of
5 Section 24, which I handed you earlier. Based on your review of
6 the documents and other evidence in this case and your visit to
7 the location, do you have any opinion as to whether the record in
8 this case shows that Gilster-Mary Lee has caused or allowed the
9 emission of noise to the Youngs' property that unreasonably
10 interferes with the use of that property?

11 A. Well, I have seen nothing in the record that would
12 definitely let me say yes to that.

13 Q. Okay.

14 A. In other words, you know, it is a subjective matter. It

15 is very difficult for me to put myself into their position. But
16 I see nothing on any of this record that says -- that just jumps
17 out and says, yes, this is unbearable.

18 Q. Okay. What about the fact that the -- what about the
19 numbers that the noise meter shows in the Youngs' videotapes?

20 A. They are numbers. The thing that concerns me about this
21 is the fact that those were taken outside through a window on a
22 second floor. And we are talking about -- as I hear it from both
23 the depositions, we are talking about what occurs in a bedroom on
24 the first floor that is on the opposite side of the building and

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1 towards the back.

2 Now, it is very difficult for me to see that if there is a
3 level of high 70s or something that has showed up on that
4 microphone at times that they are going to get anything higher
5 than, let's say, 40 to 45, at the worst, back in the bedroom.
6 Normally one -- if one is making guesses at the sound
7 transmission lost through more or less modern day buildings which
8 are framed with a brick veneer on it or something, but usually
9 with windows closed, if they get a 25 dB loss through there that
10 is something. But if we look at 80 dB and take off 25, we are
11 getting down to pretty low levels in there. Then they go on
12 through the rest of the house to get to the back room there, that
13 strikes me as not terribly realistic.

14 Now, if they have their windows open, that, of course,

15 would change all of that. But, I assume, since the noise is so
16 objectionable to them, that they keep their windows closed and
17 keep their air-conditioners on. And I assume that the
18 air-conditioner does make some noise and provides for some degree
19 of masking.

20 Q. Have you ever --

21 MR. MUSKOPF: Excuse me a second. I need to make an
22 objection for the record. Opinions about the loss of dB from the
23 facility to the Youngs' home and sound reflection has not been
24 disclosed. And basically what I would like to do is get a

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1 running objection, similar to the one that Mr. Safley had for Mr.
2 Zak. And I would like to object to anything that is beyond the
3 disclosure that I would like to read into the record at this time
4 with Mr. Hearing Officer's permission.

5 HEARING OFFICER LANGHOFF: Go ahead, please.

6 MR. MUSKOPF: Thank you. The response to Interrogatory
7 Number 6, which asks for the name and address of opinion
8 witnesses, it is actually a 213F interrogatory under the Illinois
9 Rules of Civil Procedure and the supplemental response to
10 petitioners' interrogatories indicates that Dr. Weissenburger's
11 opinions and conclusions are as follows: The record in this case
12 does not show that Gilster-Mary Lee caused or allowed the
13 emission of sound from its property to property owned by

14 petitioners in violation of the numerical standards contained in
15 35 Illinois Administrative Code, Sections 901.102, 901.104, and
16 901.106.

17 Second, the record in this case does not show that
18 Gilster-Mary Lee has caused or allowed the emission beyond its
19 boundaries of any noise that unreasonably interferes with the
20 petitioners' enjoyment of life or use of property, particularly
21 given the circumstances of the noise measurements.

22 Finally, Gilster-Mary Lee has taken all technically
23 feasible and economically reasonable steps to reduce the level of
24 sound emitted from its property to petitioners' property

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1 including, but not limited to, the movement of the flour
2 unloading operations and other modifications. The enclosure
3 solution proposed by Greg Zak is neither technically feasible nor
4 economically reasonable, particularly due to safety and
5 operations concerns.

6 My objection is in specifically any opinions that go beyond
7 the level of specificity or exceed the scope of this disclosure,
8 I object to.

9 HEARING OFFICER LANGHOFF: Okay. Thank you. Your
10 objection is overruled.

11 MR. MUSKOPF: Okay. Thank you. That is a running
12 objection.

13 HEARING OFFICER LANGHOFF: Noted.

14 MR. MUSKOPF: Thank you.

15 Q. (By Mr. Safley) Dr. Weissenburger, have you ever seen
16 situations in which people live in residences or areas with noise
17 levels similar to those emitted by Gilster-Mary Lee?

18 A. Yes.

19 Q. What situations would that be?

20 A. Well, apparently, there were some put on the record
21 earlier today about surrounding homes. But also it is not
22 unusual to find in a lot of urban areas where single or even
23 multi-family residences are adjacent to light industrial areas or
24 even commercial areas where there is a lot of rooftop

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1 air-conditioners and things of this sort. So I wouldn't say that
2 this is terribly, terribly different than anything else we are
3 going to find any place.

4 Q. I don't know that you were here for the testimony -- all
5 of the testimony earlier by Jack Hutchinson this morning, and so
6 I want to ask you this question.

7 If the evidence in this case showed that Jack Hutchinson
8 viewed Mrs. Young sitting on her front porch speaking on the
9 telephone while flour unloading was occurring at the new flour
10 unloading station at Gilster-Mary Lee's plant, would you have any
11 opinion as to whether or not the noise emitted by that flour
12 unloading operation unreasonably interfered with the use and

13 enjoyment of the Youngs' property?

14 A. Well, I would answer that in terms of my own experience.
15 As I was on the site in August, I was able to stand on that --
16 basically on the corner by their house at the property line and
17 hold perfectly normal conversations with -- I believe Mr. Welge
18 was there at one time or another -- and quite frequently with Mr.
19 Hutchinson. And I think there was a third person there at one
20 time. It might have been Ron, but I don't recall offhand. But
21 you can perfectly well hear or hold a face-to-face conversation
22 there without interruption from the sound. Now, this is after
23 the thing -- after the unloading was moved up to the corner
24 location.

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1 Q. Okay. Moving on, one of the issues in this case under
2 Section 33 of the Illinois Environmental Protection Act may be
3 the technical practicability and economic reasonableness of
4 further reducing or eliminating noise emitted by Gilster-Mary
5 Lee's plant. I would like to hand you what I have marked as
6 Respondent's Exhibit D, as in dog, and ask you to take a look at
7 that and tell me when you have had a chance to do so.

8 A. Uh-huh.

9 Q. Do you recognize that document?

10 A. Yes.

11 Q. What is it?

12 A. It is a diagram that I did after returning to the office

13 looking at potential ways in which sound would get from the new
14 unloading position to actually two locations at the property line
15 of the Youngs, one of which was -- well, here goes my concession
16 to old age here (witness putting on glasses). Well, it is kind
17 of hard to see. On the left hand third of the page there is an A
18 and a B, and those would be two locations that I was considering
19 because there were noise measurements at that point.

20 Q. Okay.

21 A. I did three considerations. I said what happens, what
22 is the affect of just moving from point D on that diagram to --
23 well, the new unloading station, which does not have a letter on
24 it. But just assuming that there were no buildings there at all.

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1 Q. Okay.

2 A. And we looked at the two distances involved and said,
3 okay, if we did that, if we just moved that back that far, which
4 is a little over approximately twice, two to one, it would, just
5 by virtue of distance, be about a 7.8 dB noise reduction just
6 from that.

7 Q. Okay.

8 A. But we know from the fact that there are all those tanks
9 in the way and the new -- I am not sure what they call the
10 building at the end of the unloading station there. There is no
11 direct sound there. So the only way that sound gets from the

12 truck on the right side to either A or B there is by reflecting
13 off of the building across Swanwick and then from that building
14 back to those two locations there. In fact, it would not -- it
15 does not even reflect on point B because there is no point at
16 which you can get a reflection off of that or almost no point.

17 Q. Okay.

18 A. But if we look at it strictly from the standpoint of the
19 reflections off of the building and assume 100 percent reflection
20 it shows that we get -- physics say that we are going to get
21 almost a 9 dB reduction on that.

22 Q. If you don't mind, if I can interrupt you real quick to
23 ask you a couple of questions. What do you mean -- you mentioned
24 the -- you said the words 100 percent reflection. What do you

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1 mean by that?

2 A. That every bit of sound energy that hits the building is
3 going to be reflected away from the building.

4 Q. Why wouldn't it all be reflected away from the building?

5 A. Well, for two reasons. There is always going to be some
6 absorption of the sound which is depicted in what they call the
7 absorption coefficient. It is small in a case like this,
8 basically brick. It is diffusion, which means that instead of
9 reflecting in a ray sense it scatters it a bit. We know that
10 there is some windows in the building and as I recall there is a
11 fire escape on the corner, and things are going to diffuse the

12 sound a little bit.

13 Q. Okay.

14 A. But those are not taken into account in this.

15 Q. Okay.

16 A. The fact is that it is almost impossible really to do
17 that in a theoretical sense.

18 Q. You also mentioned distance. What does distance have to
19 do with the level of noise that is perceived at the Youngs'
20 property?

21 A. Well, sound decays as a direct result or directly
22 related to the square of the distance. So, for example, if I
23 change the distance by a two to one ratio on there, it is going
24 to reduce it 6 decibels.

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1 Q. Okay.

2 A. In other words, as we say in the trade, 6 decibels for
3 doubling of distance. So every time we double that distance, we
4 are going to lower it 6 dB.

5 Q. Okay. Was there a doubling of distance here as far as
6 how far the noise has to travel?

7 A. A little bit more than a doubling.

8 Q. Okay. Just so I understand, and I guess this is maybe
9 just common sense, but the further away something is the softer
10 the noise is once it reaches where it is going, compared to the

11 level it was at when it was emitted; is that --

12 A. I think that's a fair statement.

13 Q. Okay. I am not -- I don't have a science degree.

14 A. It is not technically correct.

15 Q. Okay. You mentioned that given the distances here you
16 would expect about a 9 decibel reduction?

17 A. Yes.

18 Q. Did you -- you mentioned earlier that you reviewed the
19 noise testing results as well as the videotapes?

20 A. Well, in particular with regard to this I made a number
21 of measurements, which you can see reflected by the numbers here,
22 in a reasonably short time. There was no obvious change in sound
23 level here.

24 Q. Okay.

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1 A. The reason I did those measurements was to check out my
2 analysis and my assumptions on this to see how well it was.

3 Q. What did the measurements show?

4 A. They are in as good agreement as one can expect from
5 something like this.

6 Q. So about a 9 decibel reduction as well --

7 A. Yes.

8 Q. -- from the movement of the flour unloading?

9 A. Yes.

10 Q. Did you see anything in the videotapes or Jack

11 Hutchinson's measurements that would make you think that that is
12 wrong?

13 A. No. When I look at the videotapes and some of the data
14 that are in there which were taken after the unloading was moved,
15 and I am not quite sure of some of Jack's data.

16 Q. Okay.

17 A. It is not entirely clear just what and where, although
18 point A is where I think he made most of his measurements. But I
19 would say within the accuracy of the measurements and the
20 background sounds and the theory that they were in good agreement
21 with this projection here.

22 Q. Do you consider 9 decibels to be a significant noise
23 reduction?

24 A. Yes, I do.

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1 Q. Why is that?

2 A. Well, a 9 decibel reduction means that we reduced -- we
3 take probably 80 percent or even maybe -- well, 80 to 90 percent
4 of the acoustical energy out of that signal. We really need
5 to -- I am trying not to get too technical.

6 Q. I understand. I appreciate that.

7 A. Basically when we are looking at this we are really
8 looking at the amount of power per unit of area, and so as this
9 goes out further and further it gets weaker and weaker on a per

10 area basis. This is what we are showing on this.

11 Q. Okay. Now, when you say 80 percent of the sound power,
12 does that mean 80 percent of the, quote, loudness? I guess I
13 think of noise in terms of loudness.

14 A. No. That means that 80 percent of the energy per
15 square, the power curve square per unit of area --

16 Q. Okay.

17 A. -- has been reduced by that amount.

18 Q. Is there any way to equate that to how loud the sound
19 would be on the Youngs' property?

20 A. One subjectively would think that a 10 dB reduction
21 would be maybe half as loud.

22 Q. Okay.

23 A. This is very subjective and, obviously, different people
24 will react differently. But that's a rule of thumb that is

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1 generally used. And we are showing something in the order of 9
2 dB. So we are close to saying it would be half as loud.

3 Q. Just to make sure this is clear, let's say you started
4 with 70 decibels and you reduced it to 61 decibels, a 9 decibel
5 reduction. That is not just a 14 or 15 percent reduction in the
6 loudness of the sound?

7 A. No, no. That is a 50 percent reduction in the loudness,
8 give or take.

9 Q. Okay. Are there any regulatory standards, a government

10 agency, publications, or anything that you are aware of, you
11 know, that talk about what a significant sound reduction is?

12 A. Well, having worked with OSHA, Occupational Safety and
13 Health Administration, and with the Federal Highway
14 Administration, both of those agencies consider a 5 dB reduction
15 to be a significant reduction in sound. Generally, for example,
16 if OSHA has cited somebody and you can reduce noise by 5 dB, they
17 say you have met the objectives of the law.

18 Q. Okay. Were you here earlier for the Youngs' testimony
19 that in their opinion the moving of the flour unloading station
20 has increased the level of sound on their property, or at least
21 the loudness of the sound, I guess?

22 A. Yes, I was.

23 Q. Does that -- can you explain why that would be?

24 A. Nothing that I can explain that physically -- or

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1 according to the laws of physics I see no way in which that would
2 happen in a case like this.

3 Q. Is that because of what you talked about, the distance
4 issues?

5 A. The distance issues and the blocking of the sound by the
6 buildings and the reflections and that sort of thing.

7 Q. What about the fact that, as Mr. Zak testified, that you
8 have -- this tunnel effect that you have because it is between

9 the two buildings?

10 A. There is no tunnel effect. You have only got a very
11 short portion of the building that is across the street, across
12 Swanwick that reflects sound. The tunnel effect is something
13 that bounces back and forth from the sides of a tunnel. And we
14 have basically only one reflection of significance here.

15 Q. Okay. Dr. Weissenburger, do you have any opinion as to
16 whether Gilster-Mary Lee has taken all technically practical and
17 economically reasonable steps to reduce the level of noise
18 emitted from its property to the Youngs' property?

19 A. Well, when we look at feasibility, I think that they
20 have done a very good job of that from what I see.

21 Q. Okay.

22 A. We heard testimony from Ron. I forget his last name.
23 He testified a few minutes ago. He was talking about some of the
24 difficulties of doing additional things here. And those -- my

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1 general observations as I watched, for example, a truck trying to
2 back into that unloading station and blocking off whatever this
3 street is over here to the --

4 Q. To the right of --

5 A. Yes.

6 Q. Right.

7 A. It blocks off the street. He has to pull into that and
8 he is kind of jockeying around to get into position and go back.

9 So there is some safety issues just with traffic interruption.
10 And as was earlier pointed out, the backing up of trucks like
11 that can be dangerous to the health of a building. You notice
12 that any place that you have got unloading docks where they have
13 to back in there, there are huge steel and cement bollards put
14 there to try to protect the property.

15 Q. Did you hear anything in Mr. Ron Tretter's testimony
16 regarding his concerns about the enclosure proposal that you
17 disagreed with --

18 A. No.

19 Q. -- from your observation?

20 A. I heard some things I was not aware of.

21 Q. Okay. That's fine. If you recall, in Mr. Zak's
22 testimony, he also proposed building a sound -- a wall or some
23 kind of sound barrier on either side of the Youngs' home between
24 the parking lots and the Youngs' house. Do you have any concerns

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1 with that proposal?

2 A. Well, I don't have a concern, but I would think that the
3 Youngs would. As Mr. Tretter pointed out, if you have a hot day
4 if you have those two walls there, they are not going to get a
5 breeze. And I would think they would not like to look out the
6 windows of their home and just see a big blank wall there.

7 Technically it can be done. It might be expensive because a wall

8 that height and that long will have to have some really
9 significant footers in there to resist the wind loads and that
10 sort of thing.

11 Q. Was there anything else about Dr. -- excuse me -- Mr.
12 Zak's testimony that you recall that you took issue with or had
13 any questions about that you would like to discuss?

14 A. Well, there is not too much. I didn't find -- let me
15 rephrase that. I found a lot of lack of specificity in his
16 testimony. So it was really hard to gauge things. I have known
17 Mr. Zak for more years than either of us like to think about. So
18 I appreciate his professionalism. But in this case with not
19 having been on the site and not having had the opportunity to do
20 his own measurements or something to really get the feel of it, I
21 think he was maybe at a little bit of a disadvantage in trying to
22 talk about some of these things.

23 MR. SAFLEY: I think that's all of the questions I have.
24 Thank you.

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1 HEARING OFFICER LANGHOFF: Mr. Muskopf?

2 MR. MUSKOPF: Thank you.

3 CROSS EXAMINATION

4 BY MR. MUSKOPF:

5 Q. Doctor, how are you this evening?

6 A. Well, I am --

7 Q. Hanging in there?

8 A. I am hanging in there.

9 Q. Yes. Aren't we all.

10 A. The seat is getting kind of tired.

11 Q. Yes. I should be fairly brief. First of all, what are
12 your -- are you billing on an hourly rate on this file?

13 A. Yes.

14 Q. What is that charge per hour?

15 A. \$136.00 an hour.

16 Q. Do you know how much time you have in the file up to
17 today?

18 A. Oh, not necessarily to today but up to last week I
19 probably had in the order of 45 hours in it.

20 Q. Okay.

21 A. So in the order of probably a \$5,000.00 bill at this
22 point, if I did the multiplication right.

23 Q. How many videotapes did you review?

24 A. Well, I am not sure that I -- well, wait a minute.

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1 Let's see. How many are there total? One, two, three, four,
2 five, six, seven, eight, nine. I know I did seven of them.

3 Q. That was probably enough, huh?

4 A. Oh, boy.

5 Q. Now, that rate of \$136.00, is that your typical rate for
6 this type of file?

7 A. It is my rate for anything I do. I don't distinguish
8 between the kind of work I am doing.

9 Q. Okay. You are in St. Louis?

10 A. Yes.

11 Q. You are familiar with the publication The St. Louis
12 Business Journal?

13 A. Yes.

14 Q. Are you familiar with their annual book of lists that
15 they publish?

16 A. Yes.

17 Q. Do you recognize them to basically be a reasonably
18 reliable and accurate source of information about businesses in
19 in and near St. Louis?

20 A. So far as I know, yes.

21 Q. Did you happen to notice -- let me hand this to you and
22 ask you to assume that this is a true and accurate photocopy of
23 the 2001 St. Louis Business Journal Book of Lists and ask you to
24 turn to the next page.

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1 A. (Witness complied.)

2 Q. Did you happen to notice that Gilster-Mary Lee is the
3 25th largest privately held company in the St. Louis area?

4 A. I think I did look through this and that caught my eye
5 mostly because it was the bottom of the list and I am involved
6 with them.

7 Q. Right. Did you happen to notice what their annual
8 revenue was for 1999?

9 A. I am not sure that I really bothered to look at that.
10 That is far beyond my capacity of numbers.

11 Q. Okay. Well, it looks like \$470,000,000.00, right?

12 A. Yes.

13 MR. SAFLEY: I am going to object. I don't know anything
14 about this source, anything about where this information came
15 from. I am positive that Dr. Weissenburger does not have any
16 knowledge.

17 HEARING OFFICER LANGHOFF: Mr. Muskopf?

18 MR. MUSKOPF: He is an expert witness. I can ask him what
19 are called hypothetical questions, which means that I don't have
20 to have documents established in evidence to question him about
21 it.

22 HEARING OFFICER LANGHOFF: I am going to sustain the
23 objection. Dr. Weissenburger is not an expert witness on the
24 revenue of Gilster-Mary Lee.

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1 MR. MUSKOPF: I understand, but he is an expert in -- he
2 has been tendered as an expert and with the expert opinion that
3 the solutions suggested by Mr. Zak are not economically
4 reasonable, and that's the purpose of this examination.

5 HEARING OFFICER LANGHOFF: I sustained the objection.

6 MR. MUSKOPF: Okay. Could I make an offer of proof,
7 please?

8 HEARING OFFICER LANGHOFF: Sure.

9 MR. MUSKOPF: Thank you.

10 OFFER OF PROOF EXAMINATION

11 BY MR. MUSKOPF:

12 Q. Okay. Doctor, assuming that this information is
13 accurate, that Gilster-Mary Lee had an annual revenue in 1999 of
14 \$470,000,000.00 and that in 1998 they had annual revenue of
15 \$468,000,000.00, okay. You can assume that with me, can't you?

16 A. Uh-huh.

17 Q. I am turning now through the pages and I am down to 100,
18 the 100th largest company, and that appears to be the St.
19 Louis -- privately held company, and that appears to be the St.
20 Louis Cardinals, doesn't it?

21 A. Yes.

22 Q. Their annual revenue for 1999 appears to be
23 \$100,000,000.00, does it not?

24 A. (Nodded head up and down.)

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1 Q. Correct?

2 A. Yes.

3 Q. Okay. I am sorry. I am just trying to get you to
4 answer out loud --

5 A. I am sorry.

6 Q. -- for the young lady over here. Then tied in 100th
7 place is the St. Louis Rams Football Club. Is that what this
8 appears to be to you?

9 A. Yes.

10 Q. And their revenue for 1999 is also \$100,000,000.00?

11 A. Yes.

12 Q. So that would mean that Gilster-Mary Lee had annual
13 revenue in 1999 that was well in excess of both the St. Louis
14 Rams and the St. Louis Cardinals put together, correct?

15 A. Right.

16 Q. Okay. Part of your determination on whether a
17 particular remedial measure is economically reasonable, wouldn't
18 that by definition have to take into account the ability of that
19 company to make the proposed modifications financially?

20 A. Well, I think that's true. But I don't associate
21 ability to do that with what I am looking at here.

22 Q. Well, let's say you are -- I mean, why not?

23 A. Well, for example, let's take the St. Louis Baseball
24 Cardinals.

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1 Q. Okay.

2 A. They are pleading hardship and they are losing money
3 every year, at least if you listen to their pitch for a new
4 stadium. So to -- for them, even though they have

5 \$100,000,000.00 in revenue, does not mean that they have
6 \$50,000.00 or \$100,000.00 to spend. The same may well be true
7 for Gilster-Mary Lee. I don't know.

8 But if their revenues were -- what did we say,
9 \$470,000,000.00 and their expenditures were \$480,000,000.00, I
10 would think that they would need to think very hard about any
11 expenditures that they make.

12 Q. Okay. Fair enough. Now --

13 MR. MUSKOPF: I am still on my offer of proof.

14 HEARING OFFICER LANGHOFF: Okay.

15 Q. (By Mr. Muskopf) So basically what you would need to
16 take -- you would need to know more than mere annual revenue?
17 You would need to know some more information that would give you
18 an indication of their financial stability and really their
19 financial wherewithal, wouldn't you?

20 A. Yes.

21 Q. And you were not provided with any?

22 A. No.

23 MR. MUSKOPF: Okay. Now, actually, I am out of my offer of
24 proof.

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1 HEARING OFFICER LANGHOFF: Thank you.

2 MR. MUSKOPF: Thank you, Mr. Hearing Officer.

3 CROSS EXAMINATION (continued)

4 BY MR. MUSKOPF:

5 Q. So, Dr. Weissenburger, you have not been -- it is your
6 opinion that it is not economically reasonable for Gilster-Mary
7 Lee to undertake the remedial measures that Mr. Zak has proposed,
8 correct?

9 A. It does not seem to me that it would be.

10 Q. Okay.

11 A. Because it is an expenditure of money for which there is
12 not going to be any kind of return whatsoever.

13 Q. Okay. Wouldn't you agree that in order to make the
14 determination of whether something is economically reasonable you
15 need to know what the ability of the person is to -- or the
16 entity is to pay for that remedial measure?

17 A. I think what needs to be done first is a study made to
18 determine what these measures would be, how much bang for the
19 buck you are going to -- what the cost of the measures would be
20 and how much bang for the buck you were going to get out of it.
21 And then submit it to the financial people and let them make that
22 consideration.

23 Q. Okay.

24 A. But I -- in my opinion some of the things that have been

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1 proposed here are not particularly beneficial, and that's my
2 opinion.

3 Q. Okay. You have not been provided any information by

4 Gilster-Mary Lee as to their financial status, have you?

5 A. Nothing more than you just showed me.

6 Q. Okay. Well, we are not supposed to talk about that.

7 A. Okay.

8 Q. That was different.

9 A. Okay. You didn't hear that.

10 Q. Okay. So what you are saying is that in your opinion
11 the solutions proposed by Mr. Zak basically are not going to --
12 they are not going to work?

13 A. Well, let me --

14 Q. They are not going to work to substantially reduce the
15 noise levels that impact the Young property?

16 A. An enclosure enclosing the unloading area right there,
17 would, I think, reduce noise significantly more -- well, let me
18 hesitate on the word significantly. But I think certainly would
19 block off those sounds that are going across the street. Whether
20 that additional amount -- and just to diverse a minute. If we
21 have gotten these down from say 70 plus to 60 plus decibels, we
22 have gotten it down fairly close to what, in my opinion, looking
23 at my measurements and Mr. Hutchinson's measurements and whoever
24 else gave us measurements on that -- oh, and the Youngs, we are

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1 going to be down pretty close to what the background levels seem
2 to be in that area.

3 I estimate, just from my own measurements, that that

4 background is probably someplace in the range of at least daytime
5 the background is someplace in the range of I would say a low of
6 55 and a high of maybe 63, 64. So we are getting this down
7 pretty close to what that daytime background is. I was not there
8 to make nighttime measurements, so I don't have my own. It
9 looks, from Mr. Hutchinson's measurements, as best I could kind
10 of glean out looking at the time of day of some of his
11 measurements from his dosimeter and all of this that nighttime
12 probably was not a lot different. My guess, from looking at the
13 videotapes, is a lot of that is due just to traffic through the
14 area, not only the trucks coming in and going from Gilster-Mary
15 Lee, but other trucks around and other things that are not
16 identified.

17 Q. Were you able to see any trucks on any of the videotapes
18 that were not taking something from or picking something up from
19 GML?

20 A. My recollection of the videotapes is that they did not
21 focus on anything but what was purported to be the sound. But if
22 you listen to the videotapes, you know there is sound coming from
23 someplace else, voice being one of them, but I think we know
24 where that comes from. But there are other sounds in those

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1 areas. Some of them are maybe some activities on the parking
2 lots, which certainly is there. Some of them certainly are

3 traffic noise of some sort. But there is no real indication on
4 the tapes as to where that traffic is or anything, but we can
5 tell by listening to it that it is there.

6 Q. Okay. You can see -- since you can't see the various
7 trucks passing by on the videotapes to determine whether they
8 are, for instance, all 18 wheelers with tanker trailers going to
9 drop off some flour, you certainly can't say that there is some
10 traffic noise that is in no way attributable to GML?

11 A. Well, that's true. But if my reading of the applicable
12 regulations is correct, that basically legitimate vehicles
13 operating on a vehicular way, or whatever the word is, are not
14 subject to these regulations.

15 Q. Okay. Did you determine how much time it takes for a
16 river boat to pass?

17 A. No, I did not.

18 Q. You said the background levels are what, basically, at
19 the Young property?

20 A. My best estimate is someplace between 55 and 63, 64,
21 something of that sort.

22 Q. That is both day and nighttime?

23 A. Pretty much.

24 Q. What are the sources of those background noises?

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1 A. It is difficult to tell. Some of it is traffic. Others
2 are undefined.

3 Q. Well, if it is undefined then there is no way to rule
4 out that it is not noise emanating from the Gilster-Mary Lee
5 facility, is it?

6 A. Well, I am sure some of it comes from the Gilster-Mary
7 Lee facility, but not necessarily from the unloading activity.
8 Oh, there is no question that some of it comes from their
9 facility.

10 Q. Okay.

11 A. But I think what we are dealing with at this point is
12 the unloading operation.

13 Q. The dumpster and the parking lots?

14 A. Right.

15 Q. That's what you meant, right?

16 A. Right.

17 Q. Okay. We are focusing on those particular --

18 A. Well, the latest conversation has been mostly with the
19 unloading part of it, but you are absolutely correct.

20 Q. How much of the 55 to 63 dB would you attribute -- of
21 this background noise, would you attribute to the normal
22 operation of the facility, or in Mr. Hutchinson's words, like on
23 his Exhibit C1, no activity, condition number four, which is
24 basically no unloading of flour, no dumpster being changed out?

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1 A. Okay. Let me try to understand what I am looking at

2 here.

3 Q. Sure. I am sorry to spring it on you like that.

4 A. Okay. Four is no activity, which I assume what he is
5 meaning there is that there is no activity that he can identify.
6 In other words, there could be a lot of things going on but
7 nobody could tell what they were and he is saying --

8 Q. Okay. If you could let me ask you to assume that what
9 he was -- that his explanation of no activity meant no activity
10 in the yard. That means no trucks coming and going, no dumpster
11 being changed, no flour being unloaded, but that the plant is
12 still up and running.

13 A. All right. Well, that seems to kind of agree with what
14 I was just suggesting on there. I don't know -- he talks about
15 locations A, B, C, D, and E and F, and I don't --

16 Q. You have to refer to C2 for that.

17 A. Okay. Let me see what I am looking at. E down here,
18 that is interesting. E says no activity, 50 to 64, down at E,
19 which is, I guess, the corner with the stop sign there. And your
20 question is now how do I react to this?

21 Q. No, not really. My question was -- where I was trying
22 to go with this was how much of the background noise -- how much
23 of the 55 to 63 dB that you believe to be background noise is
24 attributable to the normal operations of the plant with no --

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1 with the condition of no activity, according to Mr. Hutchinson's

2 definition?

3 A. Let me see what it says. This is very interesting that
4 at the corner of street and street, which --

5 Q. Swanwick and --

6 A. Swanwick and --

7 Q. Is that Maple?

8 A. Yes, Maple. He says it is 65 over there. A is 54. So
9 it would appear that from this -- it is kind of hard to say, but
10 I would -- well, you know, certainly, the plant, the rest of the
11 plant is contributing to that. It is very difficult to estimate
12 from this.

13 I would look down at E at the corner down there and
14 immediately raise the question of, well, what is going on down
15 there that makes it from 50 to 64. But that is -- this would not
16 be unusual for making environmental noise investigations.

17 Even the birds get up in the morning and start chirping and
18 the sound level meter goes up. Crickets at night -- although I
19 don't think -- well, I don't know when he did this. Crickets can
20 be 60 to 65 dB(A) on a nice warm summer evening. So there are
21 all of those kinds of things that enter into it.

22 Q. Okay. You would agree with me that there is a
23 qualitatively different psychological impact of crickets on a
24 quiet summer night than there is a hammer banging on what is, in

1 effect, a very large bass drum --

2 A. Unless you are a boilermaker --

3 Q. -- of a tanker?

4 A. -- getting paid for pounding on the boiler.

5 Q. Exactly, per pound.

6 A. Right.

7 Q. Per strike. I mean, you would agree with that, wouldn't

8 you?

9 A. Yes, certainly. As I said earlier, all of our senses go

10 into our reaction to what we see, what we hear, what we feel.

11 You know, the old story of putting your hand in warm water when

12 you are half asleep or something. So all of the senses play

13 together when you are interpreting something. And this is one of

14 the things that we have to be very careful about in the

15 acoustical area or the psycho-acoustical parts of it. And I

16 don't hold out as an expert in that area.

17 Q. Did you take specific measurements to determine

18 background or ambient noise level with no flour unloading and no

19 dumpster changing?

20 A. What I did, I stood there with my meter and tried to

21 observe. I knew there was no unloading going on and no trucks

22 coming down the street, nothing that I could see that was an

23 obvious sound source on that, with one possible exception, and

24 that was some noise that was over -- there was some kind of a

1 little tin duct type thing at the dye house over there that I
2 could hear. I think -- if I am not mistaken, I think he said
3 they had done something about that. It was discernible because
4 of the quality of the noise more so than the level of the noise.

5 Q. Assuming that you were there on the site taking your
6 measurements after the modification to that dye house blower had
7 been made, you would agree that it is -- that it is an obvious
8 noise source when you are at the corner of Maple and Swanwick
9 looking around to see what is making noise?

10 A. Well, it was a source of noise you could identify. Its
11 contribution in terms of dB is questionable, which is kind of the
12 other side of the story. It is not so much the level but what
13 you hear in it.

14 Q. Right. Now, you didn't perform any study with the plant
15 completely shut down to get a true ambient level of noise from
16 sources absolutely exclusive of the GML facility, did you?

17 A. No. The best place I found for some source of that is
18 what I think was some of the dosimeter data that Jack had from a
19 Sunday, I believe, it was. That was the closest thing that I
20 could see. I was not confident enough of that, that that was
21 exactly what was showing there, but it seemed in agreement with
22 what we are seeing in there.

23 Q. Was that the May 10 or the May 11 date? Was that the
24 Sunday?

1 A. I really don't remember offhand.

2 Q. Okay. If you can bear with me for just a second, I will
3 find out what date that was. Well, did you think, as Mr.
4 Hutchinson did, that the data from the March measurements with
5 the dosimeter were unreliable?

6 A. Not that the data were unreliable. I was unreliable in
7 being able to interpret it, because there was not that supporting
8 information with it.

9 Q. I understand. But you did not necessarily have a
10 question about the instrument itself?

11 A. Well, no more question than I had about any of the other
12 instruments. I think that they are believable numbers.

13 Q. Okay. I am going to ask you to assume that May 10th of
14 2000 was a Wednesday and that May 11th of 2000 was a Thursday.
15 So you must have been thinking of the March date; is that right?

16 A. I don't really remember. I found it interesting and I
17 remembered looking that the date seemed to be a Sunday or maybe a
18 Saturday, a weekend, at any rate. It caught my eye because the
19 levels were down close to the threshold limit of the meter.

20 Q. Okay. I will ask you to assume that March 3rd was a
21 Wednesday.

22 A. Of which year?

23 Q. 2000.

24 A. 2000.

1 Q. Excuse me. That March 1st was a Wednesday of the year
2 2000.

3 A. Okay. Of the year 2000. Okay. Here it is. Yes,
4 uh-huh.

5 Q. So that would basically mean that all the dosimeter
6 readings were taken during the week and would mean that you would
7 expect regular loading and unloading?

8 A. Yes.

9 Q. Okay.

10 A. And that is kind of what it looked like to me that the
11 rest of the measurements were reflecting on that. If all of the
12 levels that I read were just reading 55 I would say oops, it has
13 dropped below the range. But there were some fluctuations in
14 that.

15 Q. Now, don't you think that since we don't have a
16 scientifically accurate measurement of the ambient noise levels
17 at the Young property with the Gilster-Mary Lee plant completely
18 shut down, that you simply can't say, to a reasonable degree of
19 scientific certainty, that the ambient levels to which you have
20 already testified are not attributable to Gilster-Mary Lee? Do
21 it again?

22 A. Yes. Let me make sure I understand you before I --

23 Q. Sure. Okay. My question is this, basically. Since we
24 don't have a scientifically valid study, basically, done at the

1 Young property where the Gilster-Mary Lee plant was completely
2 shut down, there is really no way to say, to a reasonable degree
3 of scientific certainty, that the ambient noise levels to which
4 you testified between 55 and 63 are not attributable to GML?

5 A. That's true.

6 Q. Okay. Thank you.

7 A. We often have to make our best educated guesses in
8 situations like this. That's all that is.

9 Q. Did you ever ask to -- ask for them to shut down the
10 plant?

11 A. No.

12 Q. Do you think every homeowner should be allowed to open
13 their windows in good weather and enjoy fresh air and not have to
14 deal with noise that is at an unreasonable level?

15 A. Now, let's define noise here. Are we going to put the
16 crickets and the birds in the noise category? So, again, it is
17 what you are hearing, I think, is the key and not the level of
18 the noise.

19 Q. Okay. It just seemed to me that you might have been
20 suggesting earlier when you were assuming that they would have
21 the windows down because they don't like the noise from GML and
22 that they would be running their air-conditioner all of the time
23 that that was really an acceptable condition, that they be in a
24 position where they have to run their air-conditioner or heater

1 all of the time and can't really open their windows?

2 A. Well, again, they are in a way kind of a fish out of
3 water. They are located in the middle of an industrial area. So
4 I think that it is not unreasonable to expect with all of the
5 surroundings that they are not going to hear something.

6 Q. Right. But now GML is the only industrial use anywhere
7 around there, is it not?

8 A. As far as I know.

9 Q. I am curious to know how you got a 9 decibel reduction,
10 dB(A) reduction with the new loading area, with the loading area
11 moved to its now location, when basically the Youngs'
12 measurements have been absolutely consistent from tape one to
13 tape nine. And I will ask you to assume that the completion of
14 the new loading area occurred in mid 2000, which would be
15 somewhere in tape seven or six maybe. I mean, why don't we see
16 the Youngs' measurements dropping? Why are they consistent?

17 A. I am not so sure I didn't see them dropping. I think
18 that if one looks at the tapes before and after, there was a
19 tendency to hold the -- before to hold the meter out and say here
20 is what we are getting. Afterwards they seem to be hunting
21 around at times for a sound source on it. When they are doing
22 that, the levels were not up to what they had been used to
23 before. I think that is very clear on the tapes.

24 Q. So you think before the flour unloading operation was

1 moved that GML was in violation basically of the Illinois regs?

2 A. I can't -- certainly, I don't know whether the noise,
3 the numerical regs were violated.

4 Q. Right. But I am not talking about the numerical regs.

5 A. It is a judgment call. I can't say they were and I
6 can't say they weren't. It is not the kind of environment I
7 might like to live in, but I don't live in the middle of an
8 industrial area either.

9 Q. So if you assume that the Young data is, in fact, valid,
10 and I will ask you to make that assumption. I understand that
11 you may have some disagreement with that. If you assume that the
12 Young data is, in fact, valid some of their values were as high
13 as 80 and beyond dB(A)?

14 A. Correct, and so were some of mine.

15 Q. So if you -- even if you assume a 9 dB(A) reduction, I
16 mean, that is still significantly over 51, correct?

17 A. Well, we are talking about a 9 dB reduction of the sound
18 from the unloading operation. Now, the 80 and 90 dB(A) that I
19 observed were from trucks coming down, the loudest of which,
20 incidentally, happened to be a Budweiser, I guess, delivery van
21 or something like that.

22 Q. Well, that was going to the Youngs' house.

23 (Laughter.)

24 A. I don't make those kinds of judgments.

1 (Laughter.)

2 A. But they can invite me over if they would like.

3 (Laughter.)

4 Q. Yes, if that's the case. Now, you would agree that the
5 Illinois regulations are what are applicable to this controversy
6 and not the transportation standards that you mentioned? You
7 were discussing that the transportation department views a 5
8 decibel reduction as being significant and that basically if you
9 reduce your noise by 5 decibels that you won't be in violation
10 anymore?

11 A. What I was saying -- I mentioned that and the OSHA
12 situation as an example of what some people consider to be a
13 significant reduction. I am not saying that puts anybody in or
14 out of compliance with the regulations.

15 Q. You agree that it is the Illinois regulations that are
16 applicable to this dispute?

17 A. Yes.

18 MR. MUSKOPF: I guess I really just have, I think, probably
19 one last little line of questioning. May I write on this?

20 MR. SAFLEY: Of course.

21 MR. MUSKOPF: Thank you.

22 Q. (By Mr. Muskopf) I have Respondent's Exhibit D in front
23 of us both. I noticed that you plotted these lines.

24 A. Uh-huh.

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1 Q. And I am wondering why you didn't plot lines that would
2 go -- the noise sources, can you indicate --

3 A. Basically the noise source is right here between the
4 truck and the trailer.

5 Q. Okay. So why wouldn't we get lines that are plotted
6 like that (indicating)?

7 A. We do.

8 Q. And basically rays that go out in every different
9 direction and which would cause different trajectory and would
10 get basically a straight shot off of the opposing building to the
11 Young property?

12 A. It is just like optics. Here is the source. Here is a
13 reflecting surface. So we have a virtual source over here. So
14 if I wanted to look at a sound and say it bounced back to here,
15 and I go over there and that's where this -- yes, that bounces
16 off of the building here to go to there.

17 Q. Like figuring out where two vehicles traveling in
18 different directions will go when they collide?

19 A. No, like looking at something in a mirror.

20 Q. Okay. More like --

21 A. Like a virtual image back here.

22 Q. -- the travel of light?

23 A. Excuse me?

24 Q. More like the travel of light?

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1 A. Yes. That is why I say it is very much like optical --

2 Q. Okay.

3 A. -- rays.

4 Q. Okay.

5 A. So when you look at that -- and I wanted to say, for
6 example, where is the one that would glance off of the far corner
7 of the building, and I draw through here and I go over and I say
8 here, so it should be getting it up there.

9 Q. Okay. I think I understand.

10 A. That is basically what that is doing.

11 Q. Okay. Thank you. Now, in the measurements that you
12 took, how many vehicles that passed by that you didn't associate
13 with GML equaled the noise levels from the GML facility or
14 exceeded them?

15 A. There were a couple of trucks. I have to look back at
16 my notes to be sure, and I think you have copies of those
17 someplace. There were a couple of semi-trucks that went through
18 that were transients of some sort, just looking at the --

19 Q. The beer truck?

20 A. Well, the beer truck was a smaller truck, but for some
21 reason it was very loud. There were a number of cars that went
22 through. Some cars you hardly noticed. The VW with the bad
23 muffler was an obvious thing going through. Obviously, it wasn't
24 making, I don't think, a delivery to Gilster. There was -- I had

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1 a surprising amount of traffic that seemed to come along
2 Swanwick, apparently a lot of it coming down from Route 3 going
3 basically toward the river, and then others going the other way.

4 Q. Did you make a record of those particular vehicles? For
5 instance, did you say VW, bad muffler, or --

6 A. There are notations on my work sheet there that just
7 said car or truck, although I do remember identifying the Bud
8 truck. I didn't -- I had some notations, as I recall, diesel
9 idling and some things like this that occurred during the period.

10 MR. MUSKOPF: Okay. Well, Dr. Weissenburger, it has been a
11 pleasure. Thank you for your time.

12 HEARING OFFICER LANGHOFF: Mr. Safley?

13 MR. SAFLEY: Yes. Thank you. I just have a couple of
14 follow-up questions.

15 REDIRECT EXAMINATION

16 BY MR. SAFLEY:

17 Q. Dr. Weissenburger, Mr. Muskopf asked you about how much
18 you are being paid in this case. Has the fact that you are being
19 paid or the amount that you being paid affected your testimony at
20 all here today?

21 A. Not at all.

22 Q. Would you testify the same if -- assuming you would be
23 here, would your testimony have been the same if we were not
24 paying you anything?

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1 A. I have got to think about that.

2 (Laughter.)

3 Q. Would your conclusions and opinions have been the same?

4 A. Given the data and the circumstances, my opinions and
5 the data would reflect the same regardless of whether you or the
6 State of Illinois were paying me or requiring my testimony here.

7 Q. You also had a discussion with Mr. Muskopf about the
8 article from the St. Louis Business Journal and the amount of
9 money that Gilster-Mary Lee makes. Do you have any knowledge as
10 to Gilster-Mary Lee's expenses as opposed to its revenues?

11 A. None whatsoever.

12 Q. Do you have any knowledge as to Gilster-Mary Lee's
13 revenues or expenses for this plant?

14 A. None whatsoever.

15 Q. Okay. You also had a discussion with Mr. Muskopf about
16 economic reasonableness. I guess what I -- I just want to make
17 sure I understand. What I got from that conversation from you
18 was that there is more to economical reasonableness than just
19 cost and ability to afford. Would that be accurate?

20 A. Correct.

21 Q. So if I would give you a hypothetical that said I could
22 get a 30 decibel reduction for a dollar, would you say that is
23 economically reasonable?

24 A. I would buy it right away.

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1 Q. Okay. If I said I can get a .1 decibel reduction but it
2 is going to cost me \$1,000,000.00, would you say that is
3 economically reasonable?

4 A. No, I would not.

5 Q. All right. So would it be safe to say that at least
6 part of the equation in your mind for whether something is
7 economically reasonable is, as you put it, the bang for the buck,
8 not only the amount of money that is going to be spent and
9 whether the person can afford it, but whether it is worthwhile
10 doing for the return that you are going to get?

11 A. Correct.

12 MR. SAFLEY: Okay. Those are all of my questions.

13 HEARING OFFICER LANGHOFF: Mr. Muskopf?

14 MR. MUSKOPF: Nothing further, Mr. Hearing Officer. Thank
15 you.

16 HEARING OFFICER LANGHOFF: Dr. Weissenburger, I have a
17 question for you, sir.

18 THE WITNESS: Certainly.

19 HEARING OFFICER LANGHOFF: Looking at Respondent's D, the
20 diagram that you made, I believe.

21 THE WITNESS: Yes.

22 HEARING OFFICER LANGHOFF: And you testified about sound
23 bouncing off the walls?

24 THE WITNESS: Yes.

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1 HEARING OFFICER LANGHOFF: What would happen if someone
2 would build a solid fence from the corner of this building out,
3 say, somewhere this way to the sound?

4 THE WITNESS: Well, if I may refer to this, if you are
5 going to block this path, for example, you are going to have to
6 bring that wall out past where the source is. If -- you know, if
7 I bring it out to here, obviously, it is not going to block that.
8 So you have to make sure you come out here far enough.

9 HEARING OFFICER LANGHOFF: What would happen if you built
10 the wall that far?

11 THE WITNESS: Basically you block this sound path here
12 (indicating).

13 HEARING OFFICER LANGHOFF: What would it do? Would it go
14 up somewhere? Would the sound radiate up and out?

15 THE WITNESS: Well, what generally would happen is we have
16 a three-dimensional picture here. What would come off at the
17 same level would bounce back and bounce back and hit the truck.
18 Some of that is going up like this now would bounce back to the
19 building here and then higher to the building and so on. So in
20 effect it would pretty well eliminate that particular part of the
21 sound.

22 HEARING OFFICER LANGHOFF: Okay. Thank you.

23 MR. SAFLEY: I have no further witnesses.

24 HEARING OFFICER LANGHOFF: Okay. Thank you.

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1 (The witness left the stand.)

2 HEARING OFFICER LANGHOFF: Let's go off the record for a
3 second.

4 (Whereupon a short recess was taken.)

5 HEARING OFFICER LANGHOFF: Okay. We are back on the
6 record.

7 (Mr. & Mrs. Young, Mr. Zak and Dr. Weissenburger are not
8 present in hearing room after the recess. Mr. Don Welge is
9 present.)

10 HEARING OFFICER LANGHOFF: We just had an off-the-record
11 discussion regarding filing of the post hearing briefs. The
12 parties have agreed to a briefing schedule. I will go ahead and
13 read the schedule into the record at this point. The transcript
14 is due in eight business days or on April 20th. The
15 complainant's brief will be due in 30 days or May 21st. The
16 respondent will then have 30 days or June 20th. The mailbox rule
17 will not be in effect, so it needs to be served and filed by
18 those dates.

19 Since the transcript of the proceedings will be available
20 from the court reporter by April 20th, I will establish a short
21 public comment period of seven days in case anyone from the
22 public wishes to comment. All post hearing comments must be

23 filed in accordance with Section 101.628 of the Board's
24 procedural rules. The transcript is usually put on the Board's

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1 web site within a few days of its receipt. I will just note our
2 web site address is www.ipcb.state.il.us.

3 And at this point I think we need to address the admission
4 of all of the exhibits. Mr. Muskopf?

5 MR. MUSKOPF: Thank you. I would like to tender --

6 HEARING OFFICER LANGHOFF: C1 through C46?

7 MR. MUSKOPF: With the exceptions of C38 and -- well,
8 excuse me. That is the sole exception. Otherwise, I would like
9 to tender all of those exhibits.

10 HEARING OFFICER LANGHOFF: Okay. Thank you. Mr. Safley, I
11 will give you a minute.

12 MR. SAFLEY: Yes. My first -- I kind of lost track of
13 everything that had been put in. I guess your C46 is the same as
14 one that we did through Ed Fisher, so it is six of one and half
15 dozen of another. The only other one that I didn't think -- I
16 didn't remember being introduced was the second supplemental
17 response to petitioner's interrogatories.

18 HEARING OFFICER LANGHOFF: Okay. That is part of the
19 record. Is there a problem with admitting that?

20 MR. SAFLEY: Was that -- I think I was served before the
21 date on which -- obviously, the rules for filing changed.

22 MR. MUSKOPF: Right.

23 MR. SAFLEY: The rules for filing with the Board changed as
24 of January 1st, so I am just -- do you consider any interrogatory

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1 response to be part of the record regardless of whether it was
2 filed with --

3 HEARING OFFICER LANGHOFF: Actually, that had not come up
4 yet.

5 MR. SAFLEY: I think the rule is different now. I think
6 that was served before that date. I don't really care. I just
7 don't remember that coming in, and I don't know what it is about.

8 MR. MUSKOPF: I can't remember. It is basically --

9 HEARING OFFICER LANGHOFF: Is there an objection to that,
10 Mr. Safley?

11 MR. SAFLEY: No.

12 HEARING OFFICER LANGHOFF: Okay. Is there an objection to
13 anything else?

14 MR. SAFLEY: Yes, briefly.

15 HEARING OFFICER LANGHOFF: Okay. Go ahead, please.

16 MR. SAFLEY: I don't know the date of that. The only
17 objection I have, and Mr. Muskopf and I discussed this earlier,
18 two of the videotapes, one of which was evidently just completed
19 a week ago or so, were never produced to us.

20 HEARING OFFICER LANGHOFF: Right. Is that number eight and
21 nine?

22 MR. SAFLEY: Number eight and nine.
23 HEARING OFFICER LANGHOFF: So that would be C28 and C30?
24 MR. SAFLEY: I think it is C29 and C30. I am looking --

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1 HEARING OFFICER LANGHOFF: Excuse me. Yes, C29 and C30.

2 MR. SAFLEY: -- at the stickers on the videotapes. I did
3 indicate to Mr. Muskopf beforehand that given the fact that we
4 had never had a chance to review those that we were going to
5 object to the introduction, and I do make that objection.

6 Also, just for the record, I would like to renew the
7 objection to all of the videotapes made in the motion in limine
8 in order to preserve that issue for appeal if that becomes
9 necessary, assuming that you are going to continue with your
10 previous ruling on that.

11 HEARING OFFICER LANGHOFF: Yes. I am not going to change
12 that ruling. You can appeal that to Board if you wish.

13 MR. SAFLEY: Okay.

14 HEARING OFFICER LANGHOFF: You can address a lot of these
15 issues in your post hearing briefs, too.

16 MR. SAFLEY: Right.

17 HEARING OFFICER LANGHOFF: Mr. Muskopf, concerning the
18 objections to C29 and C30, the two videotapes that were the most
19 recent videotapes the Youngs took.

20 MR. MUSKOPF: Let's see. Well, I am under a different

21 understanding. Actually, I thought we had provided eight tapes
22 to them. I know I didn't provide nine, because I just got it
23 yesterday. Greg Zak looked at eight. I am sure we have given
24 you everything or made available everything that is --

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1 MR. SAFLEY: Well, what I think happened is that we got
2 seven twice. I really do. I know that is strange, but I think
3 that we got number seven twice. That may be our error. Maybe
4 that should have been something that we should have brought to
5 your attention. I just realized it recently when I was looking
6 through them and I was looking at the same video and I was, like,
7 wait, I have seen this before. I think what happened is we
8 got -- and we may have just picked up the wrong one from your
9 office. I don't know how to handle that, Jeff, other than --

10 MR. MUSKOPF: Right. You know, I like to get everything
11 disclosed to me, too. And certainly the last one has not been
12 provided until this morning. And the reason why is basically
13 that it was not given to me, and they didn't finish it until
14 recently and, you know, the truth of the matter is if eight is
15 not good enough then nine is not going to be good enough to prove
16 the case either, I mean, one through eight. I would like to see
17 it go in just because I think it is relevant evidence and it is
18 sort of a technical reason to exclude, if it is no different in
19 substance I am sure, not much different than the previous eight.

20 HEARING OFFICER LANGHOFF: I am going to admit the

21 evidence. I am going to overrule your objection as to those two
22 exhibits, C29 and C30. I will let the Board give them their due
23 weight.

24 MR. SAFLEY: I guess the only thing I would ask is -- what

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1 I will probably do is ask to get a copy of them after this
2 hearing. If there is something that is completely out of the
3 realm of anything we have seen before I may bring that up to the
4 Board.

5 HEARING OFFICER LANGHOFF: If you would like you can make
6 some sort of offer of proof now or you -- I am going to keep
7 these. So I will be more than happy to let your courier or
8 whoever come and make a copy or whatever.

9 MR. SAFLEY: Okay.

10 MR. MUSKOPF: The Youngs have them. I know they have an
11 extra copy of this one. I have it here today.

12 HEARING OFFICER LANGHOFF: I will just give you that.

13 MR. SAFLEY: Okay. That's fine.

14 MR. MUSKOPF: This one?

15 HEARING OFFICER LANGHOFF: For a copy.

16 MR. MUSKOPF: Okay. And he will be the custodian of the
17 evidence?

18 MR. SAFLEY: Oh, you are going to give it to me now?

19 HEARING OFFICER LANGHOFF: Well, if you want it now or if

20 you want to come by the office or whatever.

21 MR. SAFLEY: Where is --

22 HEARING OFFICER LANGHOFF: In Springfield.

23 MR. SAFLEY: In Springfield?

24 HEARING OFFICER LANGHOFF: Yes.

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1 MR. SAFLEY: We will just come by the office.

2 HEARING OFFICER LANGHOFF: I thought so.

3 MR. SAFLEY: Yes, that is fine.

4 HEARING OFFICER LANGHOFF: I am going to admit, then, C1
5 through C46, with the exception of C38, and C29 and C30 over the
6 objection of counsel.

7 (Whereupon said documents were duly marked for purposes of
8 identification and entered into evidence as of this date.)

9 HEARING OFFICER LANGHOFF: And, Mr. Safley, your exhibits?

10 MR. SAFLEY: A through F.

11 HEARING OFFICER LANGHOFF: You move to admit those?

12 MR. SAFLEY: Yes, I sure do. Thank you.

13 HEARING OFFICER LANGHOFF: Any objection?

14 MR. MUSKOPF: No, I don't have any objection to those.

15 HEARING OFFICER LANGHOFF: Okay. Thank you. Those are
16 admitted.

17 (Whereupon said documents were duly marked for purposes of
18 identification and entered into evidence as of this date.)

19 HEARING OFFICER LANGHOFF: Anything further from either of

20 the parties before we conclude?

21 MR. SAFLEY: The only other thing I would note is I
22 personally did not see any member of the public throughout the
23 entire hearing. That may be implicit in this, but just for the
24 record to note that I don't think there is anyone else that has

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1 come in other than the parties associated with this case. That's
2 all I have.

3 HEARING OFFICER LANGHOFF: I would concur with your
4 observation. At this time I do want to ask again if there are
5 any members of the public present that want to make statements on
6 the record? Seeing none, I am required to make a statement as to
7 the credibility of the witnesses testifying during this hearing.
8 This statement is to be based on my legal judgment and experience
9 and accordingly I state the following. While I found the
10 testimony of Roger Young to be slightly hostile, I would find
11 that that does not affect the weight or the credibility deserving
12 or going to his testimony. Accordingly, I state that I found all
13 of the witnesses testifying to be credible. Credibility should
14 not be an issue for the Board to consider in rendering a decision
15 in this case.

16 At this time I will conclude the proceedings. It is
17 Tuesday, April 10th, 2001, at approximately 7:25 p.m., and we
18 stand adjourned. Thank you all for your participation.

19 MR. MUSKOPF: Thank you.

20 MR. SAFLEY: Thank you.

21 (The hearing exhibits were
22 retained by Hearing Officer
23 Langhoff.)
24

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E
4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 415 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 10th of April A.D.,
9 2001, at the Randolph County Courthouse, One Taylor Street,
10 Chester, Illinois, in the case of Roger L. Young and Romana K.
11 Young v. Gilster-Mary Lee Corporation, in proceedings held before
12 Steven C. Langhoff, Hearing Officer, and recorded in machine
13 shorthand by me.

14 IN WITNESS WHEREOF I have hereunto set my hand and affixed
15 my Notarial Seal this 19th day of April A.D., 2001.
16
17
18

19

Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

20

21

22 CSR License No. 084-003677
My Commission Expires: 03-02-2003

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