

OFFICE OF ZONING AND ADMINISTRATIVE HEARINGS
FOR MONTGOMERY COUNTY

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:
PETITION OF COSTCO WHOLESALE : Case No. S-2863
CORPORATION : OZAH No. 13-12
:
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A hearing in the above-entitled matter was held on
January 10, 2014, commencing at 10:05 a.m., at the Office of
Zoning and Administrative Hearings, 100 Maryland Avenue, 2nd
Floor Council Hearing Room, Rockville, Maryland 20850
before:

Martin L. Grossman
Hearing Examiner

A P P E A R A N C E S

For the Applicant:

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P R O C E E D I N G S

1 MR. GROSSMAN: This is the 24th day of a public
2 hearing in the matter of Costco Wholesale Corporation, Board
3 of Appeals No. S-2863, OZAH No. 13-12, petition for a
4 special exception pursuant to Zoning Ordinance Section
5 59-G-2.06 to allow petitioner to construct and operate an
6 automobile filling station which would include 16 pumps.
7 The subject site is located at 11160 Veirs Mill Road, Silver
8 Spring, Maryland, Lot N, 631 Wheaton Plaza, Parcel 10, also
9 known as Westfield Wheaton Mall, and is zoned C-2, general
10 commercial.

11 This hearing was begun on April 26, 2013, and
12 resumed numerous times. It was noticed to resume again
13 today. The next session has been noticed for Thursday,
14 February 13, 2014, here in the second floor hearing room of
15 the Council Office Building at 9:30 a.m.

16 This hearing is conducted on behalf of the Board
17 of Appeals. My name is Martin Grossman. I'm the Hearing
18 Examiner, which means I will take evidence and write a
19 report and recommendation to the Board of Appeals which will
20 make the decision in the case. Will the parties identify
21 themselves, please, for the record?

22 MR. BRANN: Erich Brann for Costco.

23 MR. GROSSMAN: Mr. Brann.

24 MR. BRANN: Good morning.

C O N T E N T S

Witnesses:	Direct	Cross	Redirect	Recross
Abigail Adelman				
By Ms. Rosenfeld	11			122
By Mr. Goecke			98	
Karen Cordry	142			
Maria Jison	194			

E X H I B I T S

Exhibit No.		Marked/Received
381(a)	Karen Cordry's corrected net parking space comparison	143
425	Series of charts on the regional environment from the Metropolitan Washington Council of Governments	74

1 MS. HARRIS: Pat Harris on behalf of Costco.
2 MR. GROSSMAN: Ms. Harris.
3 MR. GOECKE: Good morning. Mike Goecke for
4 Costco.
5 MR. GROSSMAN: Mr. Goecke.
6 MS. CORDRY: Karen Cordry, Kensington Heights.
7 MR. GROSSMAN: Ms. Cordry.
8 MS. ROSENFELD: Michele Rosenfeld, Kensington
9 Heights.
10 MR. GROSSMAN: Ms. Rosenfeld.
11 MR. SILVERMAN: Good morning. Larry Silverman,
12 the Coalition to Stop Costco Gas.
13 MR. GROSSMAN: Mr. Silverman.
14 MR. ADELMAN: Happy New Year, Mr. Grossman.
15 MR. GROSSMAN: Thank you, Dr. Adelman.
16 MR. ADELMAN: Dr. Mark Adelman for the Coalition.
17 MR. GROSSMAN: All right.
18 MS. ADELMAN: And Abigail Adelman for the
19 Coalition --
20 MR. GROSSMAN: In the seat of honor. It --
21 MS. ADELMAN: -- and Happy New Year.
22 MR. GROSSMAN: Thank you. It seems to me,
23 Mrs. Adelman, that having waited all these months to
24 testify, we should have had a band at least, not frozen rain
25 for you, but all right.

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1 I have a few preliminary matters. Since our last
2 session, there were the following significant filings or at
3 least e-mail exchanges: Exhibits 408 through 424. 408 are
4 e-mails between the parties regarding hearing dates; 409,
5 notice of additional hearing dates; 410, e-mails between me
6 and Renee Kamen regarding comments on the supplemental needs
7 analysis; 411, August 13, 2001, letter -- 2001, hmm. It's
8 from the Planning -- oh, okay, that's correct, August 13,
9 2001, letter from the Planning Board to the County Council,
10 recommending changes in the zoning ordinance with regard to
11 special exceptions, with two attachments. Attachment 1 was
12 the Planning Board's summary of proposed special exception
13 changes listed by categories, and Attachment 2 was an
14 excerpt from the Planning Board's list of proposed changes
15 to the zoning ordinance and the more specifics in the
16 record. This was part of my research of the legislative
17 history of the changes regarding, to the zoning ordinance,
18 regarding the requirement for showing of need.
19 MR. GOECKE: The prelude to poetry.
20 MR. GROSSMAN: Right. Exhibit 412, September 27,
21 2001, memorandum from Ralph Wilson regarding the same
22 legislative history; 413 is Zoning Text Amendment 01-10,
23 which is that same legislative history; 414, also memos
24 regarding that same legislative history. 415 was also
25 Zoning Text Amendment 01-10, the cover page and legislative

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1 history. And 416 is a December 19, 2013, e-mail from me to
2 the parties regarding proposals for conditions. 417 was an
3 e-mail from Renee Kamen of technical staff, transmitting the
4 evaluation of staff of supplemental, on the supplemental
5 needs analysis; 418, an e-mail from Michele Rosenfeld for a
6 witness list for the remaining hearings; 419, an e-mail from
7 Ms. Rosenfeld, requesting electronic copies of certain
8 exhibits and my response; 420, an e-mail from Michele
9 Rosenfeld regarding the February 13, 2014, hearing time;
10 421, a submission from Mrs. Adelman regarding her proposed
11 testimony; 422, submission from Mrs. Rosenfeld which
12 included Dr. Jison's résumé; 423, a submission from
13 Ms. Rosenfeld regarding Dr. Cole's PowerPoint presentation;
14 424, a submission from Ms. Rosenfeld with a variety of
15 attachments, I think mostly regarding air quality from the
16 Federal Register and a CD.
17 The witnesses scheduled for today are
18 Mrs. Adelman, Ms. Cordry, Dr. Jison, and perhaps Doug Sims,
19 Andrea Silver, and Ann Statland, depending on timing.
20 Witnesses scheduled for February 13, as I understand it,
21 Dr. Breyse, Ms. Savage, and Ms. Adelman is listed as a
22 backup; I'm not sure exactly what for. And we turn now to
23 any other preliminary or procedural matters. Ms. Harris?
24 MS. HARRIS: We have none.
25 MR. GROSSMAN: Ms. Rosenfeld?

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1 MS. ROSENFELD: A couple of things. Dr. Breyse
2 has plans to be overseas and would like to leave on the
3 13th, and we were wondering, if the parties were available,
4 if it would be possible to schedule a date on February 10th,
5 and that was one of the dates you had originally said was
6 available. We didn't choose it at the time because, at the
7 time, Dr. Breyse was not available, but his schedule is
8 changing.
9 MS. CORDRY: Yes. I believe he was going to be
10 overseas and not coming back until the 13th. Now the
11 schedule is moving, and he won't be leaving until the 13th
12 probably, the 12th or 13th. That would also --
13 MR. GROSSMAN: All right.
14 MS. CORDRY: -- solve her problem with the end
15 time on the, on February 13th if we moved it off that date.
16 MR. GROSSMAN: I'll have to check my --
17 MS. ROSENFELD: Yes.
18 MR. GROSSMAN: -- calendar, and of course, we have
19 to send out notice --
20 MS. ROSENFELD: Yes, I understand.
21 MR. GROSSMAN: -- which is always problematic in
22 this case --
23 MS. CORDRY: Right.
24 MS. ROSENFELD: Right.
25 MR. GROSSMAN: -- because there's so many people

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1 to mail it to, yes.
2 MS. HARRIS: So the suggestion is, instead of the
3 13th, the 10th, correct?
4 MS. CORDRY: Yes.
5 MS. HARRIS: Okay.
6 MS. ROSENFELD: I didn't think we would give up
7 the 13th.
8 MS. HARRIS: So we all --
9 MS. ROSENFELD: Well, I guess from my point of
10 view, I'm not -- I'm satisfied with keeping the 13th, the
11 10th and the 13th --
12 MS. HARRIS: I don't --
13 MS. ROSENFELD: -- and we can end early, assuming
14 we're done sooner, but I leave that up to the -- I don't
15 know how the Coalition feels about that or how you feel
16 about that.
17 MS. ADELMAN: I don't have my calendar with me.
18 So I don't --
19 MR. GROSSMAN: All right. Why don't, why doesn't
20 everybody e-mail me in the next couple of days as to your
21 availability on the 10th of February and as to whether or
22 not you think we should have it as an additional day or just
23 as a substitute.
24 MS. CORDRY: And we have checked with Donna
25 Savage, and she would also be available on the 10th. So

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1 that was --
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: -- the two we had set for sure for
4 the, for the 13th.
5 MR. GROSSMAN: All right. Have you checked with
6 the cafeteria to see what they're serving?
7 MS. CORDRY: No, we have not done that yet --
8 MR. GROSSMAN: I note that --
9 MS. CORDRY: -- we have faith in them.
10 MR. GROSSMAN: -- cruelly, they have scheduled
11 meatballs and spaghetti for today. So I -- all right. Any
12 other preliminary matters?
13 MS. ROSENFELD: The legislative history that's not
14 available electronically, could we get copies of that?
15 MR. GROSSMAN: Sure. We'll make the file
16 available --
17 MS. ROSENFELD: Okay, great. Thank you.
18 MR. GROSSMAN: -- and then you can have them copy
19 it. Okay. All right. Anything else?
20 (No audible response.)
21 MR. GROSSMAN: Okay. So are we ready to move
22 ahead with Mrs. Adelman?
23 MS. ROSENFELD: I believe we are.
24 MR. GROSSMAN: All right. Mrs. Adelman, will you
25 state your full name and address for the record, please?

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1 MS. ADELMAN: Yes, sir. My name is Abigail
2 Brassil Adelman, and I live at 3206 University Boulevard
3 West in Kensington, and I've resided there for 33 years.
4 MR. GROSSMAN: Okay.
5 MS. ROSENFELD: And -- oh, she needs to be sworn
6 in, doesn't she?
7 MR. GROSSMAN: Yes.
8 MS. ADELMAN: No. I've been sworn in over in that
9 awful room.
10 MR. GROSSMAN: All right. Well, just, I can't
11 recall. So we'll --
12 MS. ADELMAN: Oh, okay. Okay.
13 MR. GROSSMAN: -- do it again just for old times'
14 sake. Would you raise your right hand, please?
15 MS. ADELMAN: Yes, sir.
16 (Witness sworn.)
17 MR. GROSSMAN: All right.
18 DIRECT EXAMINATION
19 BY MS. ROSENFELD:
20 Q And, Ms. Adelman, would you please explain briefly
21 your educational and professional background?
22 MR. GROSSMAN: But before you do, are you here
23 testifying on behalf of the Stop Costco Gas Coalition?
24 THE WITNESS: Yes, sir.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: My educational background, I hold a
2 bachelor of science degree in biology, cum laude, from the
3 College of Saint Elizabeth in New Jersey and that was
4 conferred in 1963. That fall I began a career as a
5 histologist and electron microscopist at Harvard Medical
6 School. I continued on to the University of California-San
7 Francisco Medical School and then on to the Rockefeller
8 University in Manhattan doing that work.
9 BY MS. ROSENFELD:
10 Q And could you explain what a histologist does and
11 what a microscopist -- actually, if you would --
12 A Microscopist.
13 MR. GROSSMAN: Something like that.
14 BY MS. ROSENFELD:
15 Q -- if you would pronounce it correctly for me --
16 does.
17 A Well, histology is the study of the structure and
18 function of cells, tissues, and organs, and a microscopist
19 is a person who works with two of the traditional tools for
20 the study of histology, which are the light microscope and
21 the electron microscope. And in my case, I work much more
22 with the electron microscope than the light microscope
23 because that was the, at that time, the latest tool that we
24 had; so that was my focus. And then from 1984 through 1985
25 I pursued a master's degree in architecture at Catholic

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1 University, and I also hold a B.S. degree in interior design
2 from, magna cum laude, from the University of Maryland at
3 College Park and that was conferred in 1988. And I owned
4 and was, and am principal designer of AVT Design Group, and
5 I started that business in 1989, and I still work at that
6 business.
7 Q And in the course of your design studies, did you
8 take any general land planning or site design courses?
9 A Well, my architecture studies were not in the area
10 of urban design but in the area of traditional building
11 architecture. However, there's no architecture project that
12 you'll get in school that doesn't include site planning as
13 part of their program, and indeed, in the real world, site
14 planning is part of any architecture job that you get.
15 Q Okay. Are you a member of Costco?
16 A Yes. I've been a member of Costco for
17 approximately 18 years. Until the Wheaton Costco warehouse
18 opened, I shopped at the Beltsville Costco. I have never
19 purchased gas at Costco, including Costco's gas station in
20 Beltsville, because there was always a line of cars idling,
21 waiting to fuel, which I found most inconvenient.
22 Costco says they offer convenience, but in my
23 opinion, long lines, idling, waiting to fuel is not
24 convenient. In fact, throughout 2011 and 2012 I counted the
25 number of cars idling at the Beltsville station when I was

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1 shopping at Costco. The shortest line was 10 cars idling
 2 while 12 cars fueled, and the longest line I counted was 64
 3 cars idling while 12 cars fueled and that was on a very hot
 4 day, July 11th of 2011. So it makes no sense to me to waste
 5 time, waste fuel, pollute the air, and sit in polluted air
 6 to use Costco's pumps. The waste of time and fuel would
 7 erase any savings from the often minimally lower cost of
 8 gas.

9 Q And how long have you been involved in this Costco
 10 special exception process?

11 A Well, I attended the first community meeting with
 12 Costco on February 4th of 2010, the night before
 13 Snowmageddon. We were living abroad then, and I had
 14 returned home for a brief time -- to shovel, as it turned
 15 out -- and when I heard of this proposal, I joined the
 16 effort to block this proposed mega gas station in the fall
 17 of 2010 after we returned to Kensington. Next month, in
 18 February, our community will enter its fifth year of hard
 19 work fighting this special exception application.

20 Q And why do you oppose the gas station?

21 A I have an overriding concern about the potential
 22 adverse health effects to humans or receptors, as they're
 23 called in Mr. Sullivan's reports, and I -- my objections
 24 fall into three categories, and the first is location,
 25 location, location. Based on all the evidence I've reviewed

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1 and the testimony that I've heard in this case, locating a
 2 high-volume, members-only mega gas station 120 to 125 feet
 3 from residential homes and 840 feet from a school risks the
 4 health, safety, and well-being and quality of life of
 5 neighborhood residents and school pupils.

6 The neighborhood of Kensington Heights never
 7 imagined that Costco, a major corporation, would attempt to
 8 wedge or indeed to force a mega gas station into a parking
 9 lot proximal to their backyards. This station, if built,
 10 will operate for 15-and-a-half hours each weekday and 13
 11 hours per day on weekends. According to Mr. Brann, there
 12 will be a particular high volume of traffic on Saturdays
 13 around noon -- the same time that families, children,
 14 parents, and grandparents will be in their gardens, playing
 15 outside or, at this time of year, shoveling snow. All of
 16 these activities will occur in close range to the fumes from
 17 fueling, slow-moving, and idling cars.

18 Second, placing a high-volume, members-only mega
 19 gas station in the southwest parking lot of Wheaton Mall
 20 will only add to the pollution burden and poor air quality
 21 that Mr. Sullivan's report confirms exists now, thus
 22 increasing the adverse health risk of visitors, patrons of
 23 Costco and the mall who use this parking lot.

24 The increased traffic from the new Costco
 25 warehouse creates congestion in the southwest parking lot.

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1 Significant numbers of cars drive slowly around the lot as
 2 they look for a parking space or idle as they wait for a
 3 parking space to be vacated. Pedestrians are forced to
 4 dodge these cars as they walk towards the mall and as they
 5 return to their vehicles. Yes, this is parking lot behavior
 6 in general, but in a congested parking lot, such as this
 7 one, the dodging of vehicles, carts, and people is more
 8 difficult and dangerous.

9 Having approximately an additional 225 to 250 cars
 10 per hour idling, fueling, and then exiting the proposed mega
 11 gas station directly into this parking lot adds to this
 12 already dangerous congestion. It's certainly an adverse
 13 health-risk experience. Patrons of the proposed mega gas
 14 station forced to breathe the emissions of cars tightly
 15 packed around them will experience, directly, a uniquely
 16 heavy dose of toxic tailpipe emissions and evaporative
 17 fueling emissions as they idle and move slowly towards the
 18 fueling pumps. If you already have asthma, a cardiac
 19 condition, or COPD, well, you're a sitting duck.

20 Third, placing a mega gas station close to workers
 21 at the warehouse and at the Costco loading dock increases
 22 their exposure to the gas station fueling evaporation and
 23 tailpipe emissions. Indeed, the loading dock workers'
 24 exposure is greatest due to the proximity of the proposed
 25 location combined with the length of their shifts. Since

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1 the loading dock is enclosed on three sides, workers will
 2 likely be exposed to increased concentrations of pollutants,
 3 including NOx, PM2.5, and ultrafine particles.

4 Workers and indeed customers in the Costco
 5 warehouse are also exposed to evaporative and emission
 6 pollutants, as the rooftop warehouse handlers are close to
 7 the proposed location. Workers' indoor exposure will again
 8 be the length of their shift while customers' exposure will
 9 be in the range of one hour. So it all boils down to
 10 location, location, location. In my opinion, the proposed
 11 location of this mega gas station must be changed to a safer
 12 site, away from residences and a school in order to reduce
 13 the risk to public health.

14 Mr. Brann testified on April 26 that for Costco,
 15 quote, the primary goal is to make it -- he means the gas
 16 station -- unobtrusive to the parking area so people can get
 17 in and out of the warehouse, and additionally, he stated, we
 18 typically do not go into mall areas. This proposed location
 19 negates that goal and will have the opposite effect. People
 20 using the warehouse will be inconvenienced by the proposed
 21 mega gas station. Costco's gas station and warehouse
 22 patrons will be exposed to additional air pollution and the
 23 associated health risks from the gas station and idling
 24 cars. The proposed mega gas station will not only be
 25 obtrusive to members, it will create a health risks for them

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1 and for their own employees. I formally ask on the record
2 that Costco acknowledge these adverse effects, which, in my
3 opinion, have been overwhelmingly substantiated in this
4 case, and withdraw its application.
5 Q Ms. Adelman, you testified that Mr. Brann said
6 that the goal of the gas station is to make it unobtrusive.
7 Do you have any evidence to show that the proposed layout,
8 instead, will be obtrusive within that parking lot?
9 A Well, I have a -- I have a comparison, if you
10 will. I reviewed Costco's application to place a 16-pump
11 gas station, similar to the S-2863 proposal, in a mall on
12 West Ox Road in Fairfax, Virginia. In fact, I do have some
13 photographs. Would you, would you be interested in just
14 taking a look at that installation?
15 MR. GROSSMAN: Have these photographs been shared?
16 MS. HARRIS: No.
17 THE WITNESS: No.
18 MR. GOECKE: No.
19 MR. GROSSMAN: Okay. Well, it's --
20 THE WITNESS: And that was December 16th. So --
21 BY MS. ROSENFELD:
22 Q Do you have extras?
23 A Just this extra, just this one, that's all. In
24 the application, Costco --
25 MR. GROSSMAN: Well, hold on. Hold on one second

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1 while we have --
2 THE WITNESS: Oop, sorry.
3 MR. GROSSMAN: -- a chance, counsel has a chance
4 to look at these photographs. When were these taken?
5 THE WITNESS: December 16th.
6 MR. GROSSMAN: And why weren't they shared in
7 advance of the hearing?
8 THE WITNESS: Actually, I had hoped that
9 Dr. Adelman would be able to do a global search and have an
10 aerial view of the project, but I didn't get around to
11 asking him until a couple of days ago and that was not
12 possible. So I, I had not anticipated using the photographs
13 I took on the 16th, but that's my fallback.
14 MR. GROSSMAN: You're using the tactic I usually
15 use and blame it on the spouse.
16 THE WITNESS: He looks very guilty, don't you
17 think?
18 MR. GROSSMAN: Definitely.
19 MR. ADELMAN: I'm blaming it on Google.
20 MR. GROSSMAN: That's Apple's technique.
21 MR. GOECKE: We would object, therefore,
22 Mr. Grossman, to this being a violation of the 10-day rule.
23 MR. GROSSMAN: Yes, I don't know that these are
24 going to -- and what's your purpose for wanting to introduce
25 these photographs?

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1 THE WITNESS: I just want you to see the -- well,
2 I'm going to review it in my testimony if you --
3 MR. GROSSMAN: But --
4 MS. ROSENFELD: Oh, Ms. Adelman is prepared to
5 testify without benefit of the pictures if there's an
6 objection.
7 THE WITNESS: Yes. I'm happy --
8 MR. GROSSMAN: All right. Well, let's avoid --
9 MR. GOECKE: Our exhibit.
10 THE WITNESS: The problem, sorry.
11 MR. GROSSMAN: -- the issue and --
12 THE WITNESS: Uh-huh.
13 MR. GROSSMAN: All right. So --
14 THE WITNESS: I'm sorry about that.
15 MR. GROSSMAN: Okay. Go ahead.
16 THE WITNESS: In that application, Costco designed
17 circulation improvements to reduce vehicle stacking and
18 improve circulation in the parking lot. In its testimony,
19 residential areas are specifically addressed, and Costco
20 notes that the strategic location of the gas facility,
21 quote, has the added benefit of being located furthest away
22 from the residential townhomes to the east. These houses
23 are located across, or townhomes, are located across a
24 highway from the new gas station. So Costco can be
25 sensitive to the location of existing residential

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1 installations in the vicinity of their proposed mega gas
2 stations. It just has not chosen to do so here.
3 BY MS. ROSENFELD:
4 Q And, Ms. Adelman, I just would like to clarify for
5 the record the quotation that you just referenced. That is
6 from the Statement of Justification for Costco Gas dated
7 11 --
8 A Yeah.
9 Q -- 7/06, which is filed as Exhibit 421(a)?
10 A Well, actually, it was revised on February 17th of
11 2009. So I'm working from that one.
12 MR. GROSSMAN: That's the exhibit 421(a)?
13 THE WITNESS: I don't know that we've -- have you
14 exhibitized? Oh, yes, that's right, you read it. Is that
15 what it is?
16 MR. GROSSMAN: All right. And what was the date
17 of that one again?
18 THE WITNESS: The revised date on the application
19 of the Statement of Justification is February 17th -- what
20 was it? 421(a), did you say?
21 MR. GROSSMAN: It's 421(a), yes.
22 THE WITNESS: Thank you. February 17th of 2009.
23 MR. GROSSMAN: Okay.
24 BY MS. ROSENFELD:
25 Q And what makes the design of the West Ox Road

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1 Costco gas station different from the Wheaton proposal in
2 this case?
3 A Well, when I went out there on December 16th to
4 see the West Ox Road gas station installation, the
5 difference in site design from the Wheaton proposal is
6 striking. I had asked Mr. Brann in November if this station
7 was built, and he responded it was under construction, due
8 to open in December. Is it next to the warehouse, I asked?
9 Yes, he replied. Well, that is debatable; it depends on how
10 you look at it. It is true that there are no additional
11 structures between the warehouse and the gas station, but
12 because I went to the site before the warehouse opened, I
13 had the luxury of measuring with my tape the distance
14 between the warehouse and the gas station.
15 MR. GROSSMAN: When you say it's debatable, you
16 mean the question of what the words next to mean?
17 THE WITNESS: Yes.
18 MR. GROSSMAN: Okay.
19 THE WITNESS: Uh-huh. The total distance between
20 the bollards at the entrance to the warehouse and the curb
21 of the 16-pump gas station is 290 feet, and the distance is
22 about 310 feet to the first gas pump. That gives the gas
23 station customers plenty of room to maneuver, far away from
24 the warehouse itself. The West Ox Road distances bear no
25 resemblance to this project, where the very active warehouse

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1 loading dock will be a mere 40 feet from the curb of the
2 16-pump gas station.
3 BY MS. ROSENFELD:
4 Q And is the West Ox Road gas station located in a
5 regional mall parking lot?
6 A No, it's not in a regional mall, as I understand
7 the definition or -- but it is in a commercial area.
8 Q Okay. Are there other design features that
9 distinguish the West Ox Road project from the Wheaton Mall
10 project?
11 A Yes, quite a number, actually. Access to the gas
12 station is directly off of West Ox Road, not from an
13 interior private road into a mall parking lot. The exit is
14 onto a circulation lane that goes directly out to West Ox
15 Road, not through a mall parking lot. There is no
16 pedestrian danger whatsoever that I could see from this gas
17 station installation. There are no residences close-by.
18 There is no loading dock nearby; in fact, the loading dock
19 is at the rear of the store, with plenty of space for
20 semi-trailer trucks to safely maneuver. Also, the loading
21 dock is wide open, as there is no community nearby to
22 protect from noise and lights connected with the dock;
23 therefore, workers are somewhat protected by free air
24 circulation from tractor-trailer emissions.
25 As you might imagine, this experience raised

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1 several questions in my mind when I compared the West Ox
2 site to what Costco proposes at Wheaton Plaza. I wondered
3 for the millionth time why Costco is attempting to force
4 this installation. Is it because Costco perceives the
5 surrounding community in the Wheaton area as a poorer
6 community with a higher immigrant population that doesn't
7 have the money or the skills to fight a major corporation?
8 I have to wonder.
9 Costco certainly doesn't seem concerned about the
10 potential adverse health effects on the medically fragile
11 and severely disabled students at Stephen Knolls School who
12 visit the mall, nor do they seem concerned about the
13 potential health effects on its workers at the loading dock
14 or the effect on its patrons at its own gas station, who'll
15 be exposed to NO2 levels above NAAQS limits while in the
16 queue, while pumping gas, and while parking, walking, and
17 unloading purchases into their cars nearby.
18 Q Are you familiar with the relevant special
19 exception condition that addresses health?
20 A The code reference is Division 59-G-1, Special
21 Exceptions-Authority and Procedure; 59-G-1.21, General
22 Conditions, (a)(8): Will not adversely affect the health,
23 safety, security, morals, or general welfare of residents,
24 visitors, or workers in the area at the subject site,
25 irrespective of any adverse effects the use might have

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1 elsewhere in the zone.
2 Q And what is your understanding of the relationship
3 between potential adverse health effects and that zoning
4 regulation?
5 A Well, in July --
6 MR. GROSSMAN: I'm not sure I understand that
7 question. What do you mean? What is her understanding of
8 the relationship between that zoning regulation and adverse
9 health effects? I don't understand your question. And
10 you're asking to interpret the -- make a legal
11 interpretation?
12 THE WITNESS: No. No, no.
13 MS. ROSENFELD: I'm asking her if there is, she
14 has cited to Division 59-G-1 and -- maybe I should rephrase
15 the question.
16 BY MS. ROSENFELD:
17 Q What is your view of the application of Division
18 59-G-1 to this special exception application?
19 A Well, I think it has everything to do with this
20 special exception application. An interesting quote is
21 coming from the July 20th, 2012, memorandum to the County
22 Council on ZTA 12-07. Mr. Jeffrey Zyontz, legislative
23 attorney for Montgomery County, to the County Council
24 stated, and I quote, the source of all zoning authority is
25 the power to protect health, safety, and welfare of a

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1 community.
2 MR. GROSSMAN: This is part of the legislative
3 history of the ZTA --
4 THE WITNESS: Yes.
5 MR. GROSSMAN: -- that modified the gasoline
6 special -- the gasoline filling station special exception?
7 Is that what you're talking about?
8 THE WITNESS: Modified, yes --
9 MS. ROSENFELD: That's --
10 THE WITNESS: -- and it created a setback for
11 certain sensitive uses.
12 MR. GROSSMAN: And that's in the record already?
13 MS. ROSENFELD: And she's --
14 THE WITNESS: Yes.
15 MR. GROSSMAN: Right.
16 MS. ROSENFELD: -- she's quoting from Exhibit
17 290 --
18 THE WITNESS: Uh-huh, that -- it's 290, uh-huh.
19 MS. ROSENFELD: -- at page 7.
20 MR. GROSSMAN: Right.
21 THE WITNESS: And in the same memo, Mr. Zyontz
22 also states, and I quote, staff concludes that there is a
23 rational basis for treating gas stations pumping more than
24 3.6 million gallons of gas per year differently from other
25 stations, end quote.

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1 The fact is Costco bears the burden of proof to
2 show that there will be no adverse health effects from this
3 proposed gas station. That is in the statute. Having
4 listened to Costco's entire case, it is --
5 MR. GROSSMAN: Are you still quoting from
6 Mr. Zyontz, or are you --
7 THE WITNESS: No, I'm finished with Zyontz. It
8 ended at stations.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: So now it's me.
11 MR. GROSSMAN: All right.
12 MR. GOECKE: But is she giving a legal opinion?
13 Now I'm confused.
14 MR. SILVERMAN: Giving her opinion.
15 MR. GROSSMAN: It is --
16 THE WITNESS: No. This is my --
17 MR. GROSSMAN: It is --
18 THE WITNESS: -- opinion from reading it.
19 MR. GROSSMAN: Right. Well, it is a quasi-legal
20 opinion, I'd say, but we traditionally allow members of the
21 community to testify as to their opinion on the application
22 of zoning ordinance to their situation. So I will allow it.
23 MR. GOECKE: Thank you.
24 THE WITNESS: The fact is, in my opinion --
25 MR. GROSSMAN: Yes.

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1 THE WITNESS: -- Costco bears the burden of proof
2 to show that there'll be no adverse health effects from this
3 proposed gas station. That is in the statute. Having
4 listened to Costco's entire case, it is clear to me they
5 have not met that burden.
6 BY MS. ROSENFELD:
7 Q Do you have a specific area of health concern?
8 A Yeah. In particular, I'm concerned about the
9 chronic diseases associated with the proximity and exposure
10 to polluting tailpipe emissions from idling or slow-moving
11 vehicles. I have focused particularly on the pollutant
12 particulate matter 2.5, otherwise known as PM2.5.
13 The Washington Metropolitan Council of Governments
14 air quality report states that the Washington region is a
15 non-attainment area for ground-level ozone and the EPA PM2.5
16 standard. Particulate matter is increasingly implicated as
17 a major contributor to the development of lung and
18 cardiovascular disease. PM2.5 pollution can be high any
19 time of the day or the night or the year. It often peaks
20 mid-afternoon on a warm sunny day when children are most
21 likely to be playing outside.
22 MR. GROSSMAN: Hold on one second, Mrs. Adelman.
23 Are you now reading from something?
24 THE WITNESS: No.
25 MR. GROSSMAN: Okay. This is, once again, your

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1 opinion?
2 THE WITNESS: Yes.
3 MR. GROSSMAN: I think this is a problematic area
4 for a non-expert to be testifying about, and there's ample
5 expert testimony, and I presume there'll be additional, from
6 what you've proffered, will be additional expert testimony
7 regarding the effects of PM2.5. To have a non-expert opine
8 on it is of questionable value and questionable
9 admissibility as well. I think it's one --
10 MS. ROSENFELD: We --
11 MR. GROSSMAN: -- it's different to have her offer
12 a general opinion as to her concerns about pollution and
13 quite another for her to express her opinions about the
14 effects of PM2.5, et cetera.
15 MS. ROSENFELD: I think her testimony is not
16 offering her opinion as to the health effects. Ms. Adelman
17 has surveyed a number of articles and a number of treatises
18 and other regulatory standards and is giving you an overview
19 of some of those standards and some of those findings and --
20 MR. GROSSMAN: She didn't state that. What she
21 stated was, she launched into her opinion. There's a
22 question as to whether she should be allowed to do what you
23 suggested now, but that's not what she has started to do
24 here. She has started to give her own opinion about it or
25 did not clearly indicate that she was not.

1 MS. ROSENFELD: Okay. In that case, I think what
2 Ms. Adelman can do is give you a citation to the authority
3 that she's referencing in support of her statements.

4 They're not, these are not her opinions --

5 MR. GROSSMAN: Right.

6 MS. ROSENFELD: -- per se. These are, as I said,
7 offered in overview of --

8 MR. GROSSMAN: I'm just going by what she said.
9 She --

10 MS. ROSENFELD: I understand.

11 MR. GROSSMAN: -- launched into it as her opinion,
12 but --

13 MS. ROSENFELD: Sure.

14 MR. GROSSMAN: -- well, let me ask you this since
15 I know that you intend to call Dr. Jison on this point,
16 directly regarding, from what I've read in her submissions
17 to the Planning Board, directly regarding this issue.
18 Wouldn't it be better to have this particular evidence come
19 in through Dr. Jison?

20 MS. ROSENFELD: Well, to the extent that the
21 standards are objective and set out in independent authority
22 and Ms. Adelman has, is in a position to sort of set that
23 regulatory framework. Dr. Jison's testimony really is going
24 to the specific medical and physiological effects of these
25 pollutants within, as these standards are applied.

1 MR. GROSSMAN: You're saying that the articles in
2 reference here are not the health effects but, rather,
3 regarding the air dispersion issues of PM2.5, and wouldn't
4 that be better from Dr. Cole? I don't quite understand
5 where Mrs. Adelman fits into the expert area of this, and
6 she's not an expert on it.

7 MS. ROSENFELD: Go ahead.

8 MR. SILVERMAN: Yes. Mrs. Adelman, as I think
9 you'll hear, has done an extensive literature review. She's
10 done really excellent research, and she's an excellent
11 researcher and she has a scientific background. She's not
12 giving scientific opinions. She's just summarizing what an
13 educated layperson would learn from looking at the
14 literature, and I think that's kind of important to get that
15 point of view. Now, whether you consider it totally
16 dispositive, I think -- of the particular issue, is it safe
17 or not safe -- I think it's helpful for the Board and the
18 Hearing Examiner to understand what an educated layperson
19 who has researched the issue would understand about this
20 situation. I think it might influence how you make your
21 final decision.

22 MR. GROSSMAN: Well, yes, it's the latter question
23 that's the issue: should I be influenced by something that
24 may be inadmissible as a matter of law? That's the, that's
25 the question.

1 MR. SILVERMAN: Well, I think she's not -- she's
2 giving us a summary. She's not really giving us expert
3 opinions. We'll hear those. She's giving us a summary of
4 what she's read and what any person who wants to research
5 the matter would read and that's how the public will test
6 you. I mean --

7 MR. GROSSMAN: Well, usually, if you wanted to put
8 in expert text or expert publications, you'd have an expert
9 testify that these are, these reflect some expert opinion
10 that's extant. You don't generally put it in through a
11 layperson, just in terms of insuring the reliability of what
12 is in effect hearsay. I'm not saying that this kind of
13 hearsay should be inadmissible if put in in the proper
14 context, but there is a question about it coming in through
15 this witness. And I'm especially just wondering, why do it
16 in that fashion when I think the issue can be avoided by
17 your other experts on the point? I mean, I don't have a
18 problem with -- I understand that Mrs. Adelman has done the
19 work, in a sense --

20 MS. ROSENFELD: Exactly. She --

21 MR. GROSSMAN: -- and she has an interest in doing
22 it, but I --

23 MS. ROSENFELD: She has spent an extensive amount
24 of time in preparing for her testimony, and --

25 MR. GROSSMAN: Right.

1 MS. ROSENFELD: -- as you know, this has been a
2 shared effort among many people --

3 MR. GROSSMAN: Yes.

4 MS. ROSENFELD: -- to try and focus testimony so
5 that --

6 MR. GROSSMAN: I just want to avoid --

7 MS. ROSENFELD: -- given people would --

8 MR. GROSSMAN: -- potential error here in the way
9 this is done. Let me hear from the applicant's counsel.

10 MR. GOECKE: Right. I think in spite of her
11 obvious efforts in this case, it doesn't change the fact
12 that she is a laywitness and that she's relying on articles
13 that while an expert qualified in this area may be qualified
14 to talk about this otherwise inadmissible hearsay, a lay
15 expert is not. We have no foundation for her expertise in
16 this particular field, much less any testimony on about what
17 she has reviewed. But even if we get testimony about what
18 she has reviewed, she still is not an expert in this field
19 and therefore not qualified to opine on these articles.

20 MR. GROSSMAN: I mean, I don't know that there's a
21 problem in her identifying these articles --

22 MS. ROSENFELD: Yes.

23 MR. GROSSMAN: -- and them being listed as
24 exhibits to be later determined whether or not they were
25 admissible. As we have indicated previously, at the end of

1 all of this, you all will submit any objections you have to
2 any exhibits coming in. And it may just be that after she
3 identifies what articles she has referenced and your later
4 testimony of any witnesses you have indicate the reliability
5 of it, that there's not going to be a viable objection. I
6 don't know. I just want to alert you to this issue, and it
7 was not presented by Mrs. Adelman as, at least when she
8 launched into this -- she just launched into a statement of
9 what appeared to be an expert opinion on the impacts of
10 PM2.5.

11 MS. ROSENFELD: I understand, and I think more of
12 it is really an effort to just sort of summarize and give an
13 overview of these issues.

14 MR. GROSSMAN: I mean, perhaps simply stated --

15 MR. GOECKE: But again, Mr. Grossman, before she
16 launches into it --

17 MR. GROSSMAN: Right.

18 MR. GOECKE: -- what value is it for a layperson
19 to talk about these articles if she's not qualified to opine
20 on them?

21 MR. GROSSMAN: I understand. On the other hand,
22 I'm trying to balance around the usual practice here, which
23 is to allow people from the community to express their
24 concerns about any potential adverse effects from a special
25 exception. So to that extent, she's expressing her

1 concerns, and I would treat her evidence as that -- that is,
2 her expression of concerns -- rather than establishing on an
3 expert basis that there is in fact a problem with PM2.5. We
4 know that there is an EPA standard on PM2.5, and we know
5 that there's going to be evidence here because they have
6 already filed copies of Dr. Jison's statements regarding the
7 impacts of PM2.5 and subparts of PM2.5, ultrafine particles.
8 So we know that is going to happen in the record.

9 So I don't see that it -- I don't see that it's a
10 significant issue to allow her to identify these articles,
11 and then they can be objected to later on if you feel that
12 they haven't been sufficiently tied into the expert evidence
13 to make them admissible. Right now it's just a question of
14 identifying the exhibits, isn't it --

15 MR. GOECKE: Okay.

16 MR. GROSSMAN: -- assuming we direct the testimony
17 that way, because that's why I stopped her, because it
18 appeared that she wasn't doing that. She was stating the
19 concerns about PM2.5, which was on a more technical, kind of
20 expert thing, rather than saying I'm worried, as she said
21 earlier, about the effects on people's health of air
22 pollution, which is a more general thing.

23 MR. GOECKE: Right, and --

24 MR. GROSSMAN: Right.

25 MR. GOECKE: -- I appreciate that, and if I may, I

1 think that she has gone beyond her opinion now and now it's
2 potentially prejudicial, because in contrast to a case like
3 Eger v. Stone, where Judge Raker went out and did actual
4 research and had facts and did, you know, personal
5 examinations of situations and that hearsay testimony was
6 allowed in, that laywitness testimony was allowed in in that
7 form, we don't have that same sort of personal experience
8 here. She's reading articles written by other people about
9 other topics, and now she's trying to draw a conclusion from
10 them.

11 MS. ROSENFELD: Well, I think she's --

12 THE WITNESS: No. It's a review.

13 MS. ROSENFELD: No. If I may respond to that --

14 MR. GROSSMAN: Right.

15 MS. ROSENFELD: -- I think what she's doing, what
16 she's trying to do is explain the basis for her concerns
17 about the health impacts of this station --

18 MR. GROSSMAN: Right.

19 MS. ROSENFELD: -- and she's not doing it because
20 she woke up this morning and said I have some unspecified,
21 unidentifiable basis for my concern; I'm concerned because
22 I've reviewed this information and, based on this
23 information and what I've seen in the record from
24 Mr. Sullivan's reports, I do have a concern, and I think
25 that's a legitimate way for a layperson to testify.

1 MR. GROSSMAN: Yes, and I'm going to allow it in
2 in that context, Mr. Goecke. I'm not going to -- I don't
3 think there's going to be prejudice, in a sense, because I'm
4 not going to view what Mrs. Adelman says as an expert
5 opinion. I'm going to view it as an expression of her
6 concern based on her research, and community concern has
7 always been allowed to be testified to in this kind of
8 proceeding. But I agree with you -- if I relied on the
9 underlying opinion, as such, to reach an expert conclusion
10 on it, yes, I think that would be problematic, but I'm not
11 going to do so.

12 All right. So why don't we proceed and allow
13 Mrs. Adelman to identify what she has read, and I don't know
14 if -- I don't think these have already been introduced.
15 Have they been?

16 MS. CORDRY: A number of them are --

17 MS. ROSENFELD: Actually, a number of them have --

18 MR. SILVERMAN: Yes. Yes.

19 MR. GROSSMAN: Okay.

20 MS. ROSENFELD: -- and if I may, if I may approach
21 Ms. Adelman and refresh her memory? May I approach the
22 witness?

23 MR. GROSSMAN: Certainly. As long as you don't
24 hit her, you can approach her.

25 MS. ROSENFELD: Never.

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1 MR. GROSSMAN: But you can't whisper to her.
2 THE WITNESS: You can't whisper?
3 MR. GROSSMAN: You cannot.
4 THE WITNESS: Oh, Mr. Grossman.
5 MR. GROSSMAN: Anything you say up there has to
6 be, has to be out on the record, okay?
7 BY MS. ROSENFELD:
8 Q All right. Ms. Adelman, I'm going to refer you to
9 several exhibits that are in the record. If I can turn your
10 attention first to Exhibit No. 87(g) --
11 A Uh-huh.
12 Q -- identified as Statement on Health Concerns by
13 Abigail Adelman.
14 A Uh-huh.
15 Q Did you submit a statement --
16 A Yes.
17 Q -- on health concerns in the record in this case?
18 A Yes, both, health -- health matters, and it was
19 submitted in March of, March 26th of 2013.
20 MR. GROSSMAN: Right.
21 BY MS. ROSENFELD:
22 Q And I'm going to refer you to Exhibit No. 365 and
23 (a) through (g).
24 A Uh-huh.
25 Q It's captioned, E-mail sent from Abigail Adelman

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1 on 11/12/13 --
2 A Uh-huh.
3 Q -- submitting seven articles that may be
4 referenced during testimony.
5 A Yes.
6 Q Are you familiar with those articles?
7 A Yes, indeed.
8 Q Well, I think for the record, perhaps you should
9 read them and identify -- and explain whether or not those
10 reflect the articles that you reviewed and submitted into
11 the record.
12 A Well, these are partial, partial articles of my
13 total submission. The first is EPA Sets a Lower Limit for
14 Soot Particles in the Air; second, The Harmful Effects of
15 Vehicle Exhaust; third, The Hidden Tolls of Traffic Jams;
16 fourth, the Ambient Air Pollution: Health Hazards to
17 Children -- that is a Journal of Pediatrics article;
18 Particulate Matter Air Pollution and Cardiovascular Disease;
19 American Health, America's Health Rankings in Maryland; and
20 Infant Inhalation of Ultrafine Air Pollution Linked to Adult
21 Lung Disease.
22 Q And, Ms. Adelman, I also will turn your attention
23 to Exhibit No. 372.
24 MR. GROSSMAN: Before you go on, you said that
25 this is a partial, these are partial articles of something.

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1 THE WITNESS: Uh-huh.
2 MR. GROSSMAN: Did you mean that there are more
3 articles, or did you mean that the exhibits are only pieces
4 of the articles? What did you mean by that?
5 THE WITNESS: In November I submitted -- oh, gosh,
6 I'd have to look at it and see -- several more articles, and
7 then in the 30th of December I submitted two more articles.
8 MR. GROSSMAN: So the answer to my question is
9 that you did not mean that 365(a) through (g) are portions
10 of articles. What you meant was --
11 THE WITNESS: Oh, that's right.
12 MR. GROSSMAN: -- that you have additional
13 articles?
14 THE WITNESS: Yes. I'm sorry. I --
15 MR. GROSSMAN: Okay.
16 THE WITNESS: -- didn't understand, yes.
17 MR. GROSSMAN: All right.
18 BY MS. ROSENFELD:
19 Q And, Ms. Adelman, if I could turn your attention
20 to Exhibit No. 372 --
21 A Yeah, uh-huh.
22 Q -- would you just identify those exhibits and
23 confirm that you submitted those into the record?
24 A I did, and that is a letter from Angela -- Angelo,
25 it should be -- Bianca, deputy director of Air and Radiation

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1 Management in MDE, and the Metropolitan Washington Council
2 of Governments-Air Quality Information.
3 MR. GROSSMAN: Were those part of that legislative
4 history of that ZTA?
5 THE WITNESS: No.
6 MR. GROSSMAN: No? Okay.
7 THE WITNESS: No. Well, Angelo's, Angelo's letter
8 wasn't -- was it part of the ZTA?
9 MR. GROSSMAN: Well, you can't --
10 THE WITNESS: Oh, I can't do that?
11 MR. GROSSMAN: Yes. You're testifying. So if you
12 remember -- if you don't remember it, fine.
13 THE WITNESS: You know, Mr. Bianca's letter might
14 possibly have been part of the ZTA. I --
15 MR. GROSSMAN: Okay.
16 THE WITNESS: -- honestly don't remember,
17 Mr. Grossman.
18 MR. GROSSMAN: Okay. That's fine.
19 BY MS. ROSENFELD:
20 Q And, Ms. Adelman, if I could turn your attention
21 to Exhibit No. 421. If you could identify those and confirm
22 that you submitted --
23 A Uh-huh.
24 Q -- those into the record.
25 A Yes, the Statement of Justification for Costco

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1 Gas, that's the, what I call an application to build a gas
2 station on West Ox Road in Virginia, and --
3 MR. GROSSMAN: I'm sorry. This is -- which
4 exhibit number are we talking about now?
5 THE WITNESS: 421.
6 MR. GROSSMAN: 421, okay.
7 THE WITNESS: And then, lastly, the World Health
8 Organization's Air Quality Guidelines, Global Update 2005;
9 there are selected pages from that.
10 MR. GROSSMAN: Okay. So that's 421(a) and (b).
11 BY MS. ROSENFELD:
12 Q Okay, thank you. Ms. Adelman, I'm going to --
13 MR. GROSSMAN: That completes the articles that
14 you're referencing, the articles and items you're
15 referencing?
16 THE WITNESS: Those were submitted, yes.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Uh-huh.
19 BY MS. ROSENFELD:
20 Q Ms. Adelman, if I go back to the question do you
21 have a specific area of health concern, could you answer
22 that and, in answering that, could you reference the
23 material that you reviewed to support your concerns about
24 the potential health effects of this gas station?
25 A Well, I am concerned about the chronic diseases

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1 associated with exposure to tailpipe emissions, as I've
2 stated earlier, and so -- so as I see it, the rest of this
3 testimony is in support of that concern, but -- so the
4 Washington Metropolitan Council of Governments' statement
5 about non-attainment area comes from their air quality page
6 in November 11th of 2013.
7 MR. GOECKE: I'm sorry. Which Exhibit is this?
8 MS. ROSENFELD: 372(b).
9 THE WITNESS: I don't know the numbers,
10 Mr. Goecke. So I'm going to have to rely on --
11 MS. ROSENFELD: I provided --
12 MR. GROSSMAN: Well, Ms. Rosenfeld --
13 THE WITNESS: -- Ms. Rosenfeld, yeah.
14 MR. GROSSMAN: -- identified it.
15 MR. GOECKE: Thank you.
16 THE WITNESS: And shall I just continue,
17 Mr. Grossman? I don't know.
18 MR. GROSSMAN: When there's a question. I don't
19 know if there's a question posed.
20 MS. CORDRY: Yes. I think that was an ongoing
21 question. What else --
22 MR. GROSSMAN: Well, I don't know. What's the
23 ongoing question here?
24 MS. ROSENFELD: Does she have a specific area of
25 health concern --

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1 MR. GROSSMAN: Okay.
2 MS. ROSENFELD: -- related to the gas station.
3 MR. GROSSMAN: Okay. So she answered the concern
4 about the chronic diseases associated with tailpipe
5 emissions and the Council of Governments' statement --
6 THE WITNESS: Uh-huh.
7 MR. GROSSMAN: -- in Exhibit 372(b) regarding
8 non-attainment.
9 THE WITNESS: Okay.
10 MS. ROSENFELD: That's correct.
11 MR. GROSSMAN: All right. Anything else?
12 THE WITNESS: Well, yeah, I'm going to continue,
13 and please, I am sure you'll tell me when I'm out of line
14 because I'm not sure I quite understand the lines of all
15 this. So --
16 MR. GROSSMAN: Maybe Mr. Goecke will tell you when
17 you're, when he thinks you're out of line, and then I'd rule
18 on it.
19 THE WITNESS: I think he always thinks I'm out of
20 line.
21 MR. GOECKE: That's not true.
22 THE WITNESS: In urban areas, motor vehicles are
23 the largest source of PM2.5. The Federal Highway
24 Administration documents the relationship between vehicle
25 speed and emissions as speed decreases. Higher emissions

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1 result from vehicles idling and moving slowly due to
2 incomplete gasoline combustion --
3 MR. GROSSMAN: Okay. So I understand --
4 THE WITNESS: -- and that is from Dr. --
5 MR. GROSSMAN: Excuse me one second. I
6 understand. What you're doing now is you're essentially
7 summarizing things that you've garnered from the articles
8 that you've submitted; is that, is that what you're doing?
9 THE WITNESS: And testimony that I've heard here.
10 MR. GROSSMAN: And --
11 THE WITNESS: So, for instance, that comes from
12 Dr. Cole's testimony.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And that's Slide -- Slides 1, 27,
15 and 28.
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: Of Exhibit 406.
18 MR. GROSSMAN: Once again, I'm taking this as an
19 expression of your concerns rather than as, in effect,
20 factual expert testimony as to the connection between these
21 things, these emissions and diseases, because you don't
22 purport to have an expertise in that.
23 THE WITNESS: It is not expert testimony from me.
24 MR. GROSSMAN: Right. Okay. I just want to make
25 sure that that's clear.

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1 THE WITNESS: Uh-huh.
2 MR. SILVERMAN: Mr. Grossman, just one, I
3 appreciate your ruling, but just one item. Ms. Adelman is
4 speaking for the Coalition --
5 MR. GROSSMAN: Right.
6 MR. SILVERMAN: -- and she is letting you know and
7 the Board know what the members of the Coalition have
8 learned in their research and what they believe.
9 MR. GROSSMAN: Well, it's not what they have
10 learned. She's letting me know the concerns that she and
11 the Coalition have over what they, what they interpret the
12 meaning of what other experts have said are concerns. So I
13 just, you know, I don't want there to be a confusion here in
14 the record as to what I might be relying on in any finding I
15 might make.
16 MR. GOECKE: And just briefly, for the record, in
17 addition to the objection I raised before, I would object to
18 this as duplicative of earlier testimony.
19 MR. GROSSMAN: I understand. Well, there is,
20 there is -- there can be a limit of cumulative testimony.
21 I'm loathed to prevent the Coalition, having sat here for
22 23-and-a-half sessions now, from expressing their concerns.
23 So I'm going to overrule that objection as far as
24 duplicative. Okay. You may continue expressing your, the
25 concerns of the Coalition.

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1 THE WITNESS: And for particulate matter it is
2 possible to derive a quantitative relationship between the
3 concentration of the pollutant, as monitored, and ambient
4 air and specific risks to health. Do you want me to tell
5 you what that's from?
6 MR. GROSSMAN: I'll leave that to your, to
7 counsel.
8 BY MS. ROSENFELD:
9 Q Yes. Yes. Identify your sources.
10 A Okay. World Health Organization Air Quality
11 Guidelines, Global Update 2005, page 7.
12 MS. ROSENFELD: And that's Exhibit 421(b), as in
13 boy.
14 MR. GROSSMAN: Okay.
15 THE WITNESS: An increase range of adverse health
16 effects has been linked to air pollution at ever-lower
17 concentrations. Since current research has not identified
18 thresholds below which adverse effects do not occur,
19 regulatory agencies stress that their standards slash
20 guidelines cannot fully protect human health. That's from
21 World Health Organization Air Quality Guidelines.
22 Three categories of particulate matter are found
23 in vehicle emissions: PM10, the largest; PM2.5, the most
24 studied and implicated; and ultrafine particles or UFPs.
25 All sizes are inhaled into the lungs, causing inflammation,

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1 impaired breathing, and pulmonary diseases. Those are my
2 words.
3 MR. GROSSMAN: All right. Let's try to, since
4 this is a summary of the concerns of the Coalition, let's
5 try to keep it to what your concerns -- but, okay, you're
6 identifying what is your, your concern --
7 THE WITNESS: Okay.
8 MR. GROSSMAN: -- about what might be the effects.
9 You understand the kind of tightrope I'm walking here. I
10 don't want to prevent you from expressing your concerns, but
11 you're not an expert in this area, and we also know that
12 there is other evidence from the opposition, directly expert
13 evidence, regarding these. So I'm trying to let you express
14 your concerns, but at the same time, I want it understood
15 that I cannot rely on them in terms of expert evidence.
16 So --
17 THE WITNESS: Yeah. Yes, and I guess where I'm --
18 I'm beginning to understand where you're going, yes. I've
19 done more of a review of all of the work that I've read --
20 MR. GROSSMAN: Yes.
21 THE WITNESS: -- and I've not cited all of it in
22 here, specifically. So please just tell me you don't want
23 to hear the review. I mean --
24 MR. GROSSMAN: Well, no. Once again, it's not
25 that I don't want to hear it. It's that I have to be

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1 concerned about the rules of evidence because they fairly
2 place burdens on parties and allocate what can be heard and
3 considered and to what extent in order to ensure fairness to
4 both sides --
5 THE WITNESS: Uh-huh.
6 MR. GROSSMAN: -- and so when somebody is not an
7 expert and they're talking in an area that clearly is an
8 area that, of expert matters and they're garnering it from
9 what they have read in articles, then I have to consider it
10 for what it is, what the testimony is, which is your
11 concerns based on articles you've read --
12 THE WITNESS: Yeah.
13 MR. GROSSMAN: -- rather than some level of
14 expertise of understanding what these statements really mean
15 and how they fit into the --
16 THE WITNESS: Uh-huh.
17 MR. GROSSMAN: -- the general context. So --
18 MR. SILVERMAN: Well --
19 MR. GROSSMAN: -- I'm not stopping you from giving
20 your testimony about your concerns but that's the, that's
21 the caveat that I have to place on it. Mr. Silverman, do
22 you have something you want to add?
23 MR. SILVERMAN: We don't want to lead you into
24 error. So I'm very sensitive to your position, but I --
25 MR. GROSSMAN: Okay.

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1 MR. SILVERMAN: -- do think there's some degrees
2 of nuances of a person who has been trained in science
3 reading a scientific report. Perhaps her view in that
4 report might be given a little bit more light than a person
5 who has not been trained --
6 MR. GROSSMAN: Well --
7 MR. SILVERMAN: -- and it would be --
8 MR. GROSSMAN: -- I'm not going to do that in a,
9 especially in a case where there's ample expert evidence --
10 MR. SILVERMAN: Okay.
11 MR. GROSSMAN: -- on both sides here. I think
12 that would be taking an undue risk.
13 MR. SILVERMAN: Okay, appreciate that.
14 MR. GOECKE: And I just would object. She's
15 either an expert or she's not. There's no quasi-expert
16 status. And even if she's well educated and well trained
17 and a very smart person, that doesn't elevate --
18 MR. GROSSMAN: Right.
19 MR. GOECKE: -- her testimony.
20 THE WITNESS: Yeah.
21 MR. GROSSMAN: We've let laywitnesses testify in a
22 way that one could consider usually coming from experts in
23 this kind of a case, but -- I mean, for example,
24 Mr. Silverman's own testimony regarding the way the EPA
25 functions, we allowed it as a functional explanation of how

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1 the EPA works rather than expertise, but it clearly is, you
2 know, it sloshes over. So it's hard to make the clear
3 delineation, but I think the way I've set it out is the way
4 I would approach it here. That is, I take this as an
5 expression of her concerns based on what she has read and
6 what she has studied but not as an expert opinion.
7 MS. ROSENFELD: Yes.
8 MR. GROSSMAN: All right. You may continue.
9 MS. ROSENFELD: Thank you.
10 BY MS. ROSENFELD:
11 Q Ms. Adelman, do you have an understanding as to
12 why the EPA lowered its standard for PM2.5, and could you
13 explain the basis for that understanding?
14 A Well, in -- a federal court found the previous
15 1997 EPA annual PM2.5 standard of 15 micrograms per cubic
16 meter of air too weak to protect public health.
17 Q And where did --
18 MR. GROSSMAN: What federal court are you talking
19 about?
20 BY MS. ROSENFELD:
21 Q Where did you get that understanding from?
22 A There was an article called EPA Sets Lower Limit
23 for Soot Particles.
24 MS. ROSENFELD: And, Mr. Grossman, that's Exhibit
25 365(a) in the record.

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1 MR. GROSSMAN: She said a federal court. Is there
2 a reference to a federal court decision?
3 THE WITNESS: I don't know what federal court it
4 was, sir.
5 MR. GROSSMAN: All right.
6 MS. CORDRY: That would have been the D.C.
7 Circuit, and it's in the Federal Register notice, that when
8 they made their new standard, that the 2013 Federal Register
9 notice that's in the record references the court decision --
10 MR. GOECKE: And, again, same objection. Now
11 Ms. Cordry is testifying on behalf of --
12 THE WITNESS: Yeah.
13 MR. GOECKE: -- Ms. Adelman. Either she's relying
14 on this or she's not, and if she doesn't know what she's
15 relying on, then that should be the limit of her testimony.
16 MR. GROSSMAN: Well, all right, she referred to,
17 she referred to a reference to it. I understand. Once
18 again, it's her concerns based on her understanding of her
19 reading. With that caveat, I'm going to overrule that
20 objection because I'm not considering it as part of the
21 direct evidence on the scientific point.
22 MS. ROSENFELD: Mr. Grossman, could we take a
23 break for five minutes, and let me confer with Ms. Adelman.
24 MR. GROSSMAN: Okay.
25 MS. ROSENFELD: I don't want to spend the entire

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1 morning arguing the procedural merits of each question that
2 we pose.
3 MR. GROSSMAN: Okay, fair enough.
4 MS. ROSENFELD: Thank you.
5 MR. GROSSMAN: Let's come back at 11:15, okay?
6 (Whereupon, a brief recess was taken.)
7 MR. GROSSMAN: All right. So we're all ready to
8 proceed. Back on the record now.
9 BY MS. ROSENFELD:
10 Q Ms. Adelman, Mr. Grossman has asked during the
11 course of these proceedings about the World Health
12 Organization Air Quality Guidelines. Could you provide some
13 background on the purpose of those guidelines?
14 A Uh-huh.
15 MR. GOECKE: Her opinion of the purpose or --
16 MR. GROSSMAN: What do you mean by on the purpose
17 of the guidelines? What does that mean? What WHO says --
18 MS. ROSENFELD: What WHO says its goals and
19 purposes are, yes.
20 MR. GROSSMAN: All right. And is that somewhere
21 documented?
22 THE WITNESS: Yes.
23 MS. ROSENFELD: Yes, and they are in the record.
24 Indulge me one moment. Yes, Ms. Adelman submitted them on
25 12/29/13, and it's Exhibit No. 421(b).

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1 THE WITNESS: What is it? What is --
 2 MR. GROSSMAN: 421(b), as in boy.
 3 BY MS. ROSENFELD:
 4 Q 421(b) is the exhibit number.
 5 A Oh, that's wrong.
 6 MR. GROSSMAN: So it's your understanding of the
 7 purpose of their guidelines based on Exhibit 421(b),
 8 their --
 9 THE WITNESS: Yes.
 10 MR. GROSSMAN: -- their Air Quality Guidelines,
 11 Global Update?
 12 THE WITNESS: Yes, sir.
 13 MR. GROSSMAN: You may proceed.
 14 THE WITNESS: The World Health Organization Air
 15 Quality Guidelines were first produced in 1987, and they --
 16 purpose is, and I quote, intended to inform policy makers
 17 and to provide appropriate targets for a broad range of
 18 policy options for air quality management in different parts
 19 of the world, end quote.
 20 The World Health Organization does not publish
 21 regulations or standards but, rather, guidelines to
 22 acknowledge the different contexts of developed countries
 23 and developing countries. WHO, which is the acronym, WHO
 24 expects that developed countries, such as the United States,
 25 will meet WHO's guidelines, and they encourage developing

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1 countries dealing with difficult technological, economic,
 2 and political issues and social factors to use their
 3 guidelines as a goal to be met, as national capability
 4 allows.
 5 MS. HARRIS: Excuse me. What page are you
 6 reading?
 7 THE WITNESS: I don't know what -- it's from the
 8 air quality global update. I don't --
 9 MS. HARRIS: Right, but there's 30 pages or
 10 something. You don't know what page?
 11 THE WITNESS: No, no, there's not 30 pages.
 12 There's -- oh, you took it off the web? Yes, it would be 50
 13 pages, but my submission was the first, I believe, seven.
 14 MR. GROSSMAN: The selected pages --
 15 THE WITNESS: Yeah.
 16 MS. HARRIS: Okay, got it.
 17 MR. GROSSMAN: -- in Exhibit --
 18 THE WITNESS: And I don't --
 19 MS. HARRIS: And do you know what, from which page
 20 you're reading?
 21 THE WITNESS: -- I don't know what page it is
 22 from.
 23 MR. GOECKE: Or what section it's under?
 24 MR. GROSSMAN: I might be able to help in that.
 25 Let's see, 421 --

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1 THE WITNESS: I have to find it.
 2 MR. GROSSMAN: All right. Here's (b).
 3 THE WITNESS: Page 3 to page 12, Ms. Harris, is
 4 what I submitted, I believe.
 5 MS. HARRIS: Right. I'm looking at that --
 6 THE WITNESS: Yeah.
 7 MS. HARRIS: -- but do you know from what page,
 8 what you just read?
 9 THE WITNESS: That particular sentence I do not
 10 know. I did not note the page.
 11 MR. GROSSMAN: I don't know. I don't, I can't
 12 spot it in the -- given the size of the writing here, I
 13 can't spot it in just a quick look there, so can't tell you
 14 the exact page. You say it's part of those pages that you
 15 submitted, though, correct?
 16 THE WITNESS: Yes, sir.
 17 MR. GROSSMAN: All right. All right. Go ahead.
 18 So the WHO submits guidelines --
 19 THE WITNESS: Yes.
 20 MR. GROSSMAN: -- for developing countries?
 21 THE WITNESS: Yes.
 22 MR. GROSSMAN: Of course, we're already a
 23 developed country, maybe some people would say an
 24 overdeveloped country, but does it say anything about their
 25 guidelines regarding developed countries that have EPAs?

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1 THE WITNESS: Their guidelines are for, are
 2 worldwide. So they don't make a distinction between what --
 3 MR. GROSSMAN: They did make a distinction,
 4 according to what you said.
 5 THE WITNESS: Yes. Well, I'm --
 6 MR. GROSSMAN: Okay. Go ahead.
 7 MR. GOECKE: And I'm sorry. Are you reading from
 8 the document? Are you quoting or paraphrasing it,
 9 because --
 10 MR. GROSSMAN: She quoted a portion.
 11 THE WITNESS: I'm quoting it, yeah.
 12 MR. GOECKE: And --
 13 THE WITNESS: So where am I? World --
 14 MR. GOECKE: I mean, my concern, Mr. Grossman, is
 15 I just don't --
 16 MR. GROSSMAN: I couldn't find it either, but I
 17 didn't --
 18 MR. GOECKE: I can't find it either, and so my
 19 concern is that she's not quoting from the document that
 20 she's provided. I would just like the opportunity to find
 21 out where we are.
 22 MR. GROSSMAN: Do you know the page?
 23 MS. ROSENFELD: Perhaps after our next break we
 24 can provide the page number.
 25 MR. GROSSMAN: Okay.

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1 MR. GOECKE: Well, can we have that before she
2 testifies about it so I can follow along?
3 MR. GROSSMAN: That's fair. Let's find the page
4 number then. Do you have the document, Mrs. Adelman?
5 THE WITNESS: I do.
6 MR. GROSSMAN: Are you going to find the --
7 THE WITNESS: Probably not.
8 MR. GROSSMAN: Please turn the -- well, that's a
9 computer?
10 MR. SILVERMAN: I'm trying to find the document.
11 MR. GROSSMAN: I see.
12 THE WITNESS: No, I won't be able to find it in
13 this environment, Mr. Grossman.
14 BY MS. ROSENFELD:
15 Q Ms. Adelman, perhaps at the top of page 7? Oh,
16 no.
17 A You know, Mr. Goecke, I might have misspoken, and
18 perhaps this isn't an absolute quote. My first paragraph
19 was a quote. My second paragraph perhaps is more of an
20 explanation of their approach without an absolute quote.
21 MR. GOECKE: And that's my concern, Mr. Grossman,
22 is now she's giving her explanations about a document for
23 things that doesn't say what she's purporting to say that
24 they say, and this is the prejudice that I was concerned
25 about.

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1 MR. SILVERMAN: Mr. Grossman, I think Mr. Goecke
2 will have ample opportunity to cross-examine the witness.
3 MR. GROSSMAN: He will, but by the same token, we
4 want to make sure that -- and that's a legitimate objection,
5 that he know the page that she's quoting from if she's
6 submitting a quote. So, all right, so let's take that as
7 not a quote and let's go forward.
8 THE WITNESS: The World Health Organization does
9 not publish regulations of standards but, rather, guidelines
10 to acknowledge the different contexts between, of developed
11 countries and developing countries. WHO expects that
12 developed countries, such as the United States, will meet
13 WHO's guidelines, and they encourage developing countries
14 dealing with difficult technological, economic, and
15 political issues and social factors to use their guidelines
16 as a goal to be met, as national capability allows. WHO
17 does urge --
18 MR. GOECKE: And I'm sorry to interrupt. This is
19 her opinion, not a quote, for the record.
20 MR. GROSSMAN: That's correct.
21 MR. GOECKE: Thank you.
22 THE WITNESS: Yeah. WHO does urge developing
23 countries to set and meet interim targets to promote steady
24 progress as they move toward compliance with WHO guidelines.
25 BY MS. ROSENFELD:

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1 Q And, Ms. Adelman, before you continue forward, do
2 you have a copy of the 2005 global update --
3 A Yes, I do.
4 Q -- in front of you?
5 A Uh-huh.
6 Q Would you look at the last sentence of the first
7 full paragraph on page 5, please?
8 A Page 5? Updated Air Quality Guidelines?
9 MR. SILVERMAN: Of the preface.
10 BY MS. ROSENFELD:
11 Q Of the preface.
12 A I don't have the preface here. I didn't submit
13 the preface.
14 MR. GROSSMAN: She selected pages 8 through 17.
15 THE WITNESS: I don't think you're looking at the
16 global update, are you --
17 MR. SILVERMAN: Yes.
18 THE WITNESS: -- Ms. Rosenfeld?
19 MR. SILVERMAN: Yes.
20 BY MS. ROSENFELD:
21 Q Yes.
22 MS. ROSENFELD: I have here the global update from
23 2005, and the last sentence of the second full paragraph of
24 the preface is the quote that Ms. Adelman referenced from
25 earlier.

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1 MS. HARRIS: We weren't provided that. I think
2 you're looking at something different. Michele, our page 5
3 says, Updated Air Quality Guidelines.
4 THE WITNESS: And Introductory Comments.
5 MS. ROSENFELD: Okay. All right. Okay.
6 THE WITNESS: Yes. This is, this is a document --
7 did I submit this to you? This is a document that --
8 MR. GROSSMAN: What are you referencing? What
9 pages?
10 THE WITNESS: This is a World Health Organization
11 document.
12 MR. GROSSMAN: Not one you submitted --
13 THE WITNESS: No. This one is 2000. This one is
14 the update, which is 2005.
15 MR. GROSSMAN: Right. You submitted a portion of
16 the update.
17 THE WITNESS: Yes, that's correct.
18 MR. GROSSMAN: Right. Okay. We're only going to
19 look at the portion that you submitted because, in fairness
20 to the other side --
21 THE WITNESS: Yes.
22 MR. GROSSMAN: -- we can't surprise them at the
23 hearing.
24 THE WITNESS: Right.
25 MR. SILVERMAN: With regard to surprise, Dr. Chase

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1 testified about the World Health Organization guidelines.
2 MR. GROSSMAN: I don't recall if he introduced any
3 WHO guidelines --
4 MR. SILVERMAN: No, he didn't --
5 MR. GROSSMAN: -- did he? Oh, well, all right.
6 So I'm not --
7 MR. SILVERMAN: -- he didn't introduce any
8 literature, but he --
9 MR. GROSSMAN: I know, but --
10 MR. SILVERMAN: Yes.
11 MR. GROSSMAN: -- once again, and I don't know
12 that we need to have a big argument about it because I'm not
13 going to substitute WHO guidelines for EPA national air
14 quality standards in my review. So --
15 THE WITNESS: My memory of Dr. Chase's testimony
16 is that he dismissed them as guidelines and not
17 regulations --
18 MR. GROSSMAN: Right.
19 THE WITNESS: -- and so part of my approach to
20 this and following up to your question, which Ms. Rosenfeld
21 referenced, is to explain why they are guidelines and not
22 regulations.
23 MR. GROSSMAN: Okay.
24 THE WITNESS: So --
25 MR. GROSSMAN: But how does that help me? I mean,

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1 you're not suggesting I should, if there's a difference
2 between standards that are in the guidelines for WHO and the
3 EPA's national air quality standards, that I should apply
4 WHO rather than the EPA standards, are you?
5 THE WITNESS: No, I'm not suggesting that at all,
6 but --
7 MR. GROSSMAN: So why do I --
8 THE WITNESS: -- I would like to point out, and I
9 will point out to you, that WHO's guidelines are more
10 stringent than EPA's.
11 MR. GROSSMAN: Right, but if I can't -- the
12 problem here is that, in fairness, I have to apply a
13 standard, even -- I'll assume that what you say is correct,
14 that they're more stringent. I don't know, but I have to
15 apply a standard here, not one that I, that I make up myself
16 and not one that's not nationally accepted and peer-reviewed
17 here. I've got to apply a standard that's accepted in the
18 United States as the standard in fairness to any business
19 that's trying to establish some operation here. I can't
20 just pick something out of the air that's not the standard
21 applied in the United States. Now, you know, I've let
22 people testify --
23 THE WITNESS: Uh-huh.
24 MR. GROSSMAN: -- about what is considered
25 elsewhere, but I just can't on my own establish standards

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1 that don't exist here --
2 THE WITNESS: Well, this --
3 MR. GROSSMAN: -- and I think I said that at the
4 outset. I'm --
5 THE WITNESS: Uh-huh.
6 MR. GROSSMAN: -- not going to impose my own
7 standards --
8 THE WITNESS: Uh-huh.
9 MR. GROSSMAN: -- to this evaluation or garner
10 them from, you know, just individual opinions about it. If
11 there are national standards that apply, I'm going to apply
12 national standards.
13 THE WITNESS: Uh-huh, yes. These are guidelines,
14 not standards --
15 MR. GROSSMAN: Right.
16 THE WITNESS: -- and they are international
17 standards. So --
18 MR. GROSSMAN: Right.
19 THE WITNESS: -- WHO's approach is they're
20 everybody's standards, and my point to you is to tell you
21 that their -- I'm interested in PM2.5. So I just wanted to
22 tell you that they, their standard for PM2.5 is 10
23 micrograms per cubic meter of air. So it's two micrograms
24 below EPA's --
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: -- and therefore, just to quickly
2 summarize --
3 MR. GOECKE: And just for the record, you meant
4 their guidelines, not their standards.
5 MS. ROSENFELD: I think she testified to that.
6 MR. GROSSMAN: Yes, I understand. This is their
7 guidelines.
8 THE WITNESS: These, they don't publish standards.
9 MR. GOECKE: Exactly.
10 THE WITNESS: Yes.
11 MR. GOECKE: You had referred to them as standards
12 just now.
13 THE WITNESS: Oh, I'm sorry. I didn't mean to do
14 that. There's, there's a difference. EPA's are standards,
15 regulations.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: World Health Organization has
18 guidelines, and the reason for that is they cover the world.
19 So there are many countries, developing countries, that
20 cannot reach those standards. Their air quality is poor and
21 their governments aren't strong and they just don't have the
22 wherewithal. WHO recommends in that case that they
23 establish interim targets to meet as they move towards
24 meeting WHO's guidelines.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: My point in all of this is to point
2 out that their standard is two micrograms per cubic meter of
3 air lower than EPA's regulatory -- their guidelines.
4 MR. GROSSMAN: Their guidelines.
5 MR. GOECKE: Thank you.
6 THE WITNESS: I heard myself.
7 MR. GOECKE: Thank you.
8 THE WITNESS: Sorry.
9 MR. GOECKE: Thank you.
10 THE WITNESS: Their guidelines. If I do it again,
11 Mr. Goecke --
12 MR. GOECKE: I'm here, here all day.
13 MR. GROSSMAN: We understand. We understand.
14 THE WITNESS: Is two micrograms per cubic meter of
15 air lower than the EPA regulation, and therefore, just to
16 quickly go through this, I point out that Mr. Sullivan's
17 revised urban annual standard of PM2.5, ranging at the home,
18 school, and pool receptors, were 10.8 to 10.9 micrograms per
19 cubic meter of air, just within EPA's new annual standard of
20 12 micrograms per cubic meter of air but not in attainment
21 with the WHO annual guideline, and we are a developed
22 country. So that's my point.
23 The research literature on ambient air pollution
24 is expanding exponentially. Dr. Norman Adelman of the
25 American Lung Association states that scientists -- this is

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1 not a quote -- that scientists are finding important adverse
2 health effects from air pollution at levels once considered
3 safe, and that's from the EPA Sets Lower Limit for Soot
4 Particles. Indeed, there is little evidence to suggest a
5 threshold below which no adverse health effects would be
6 anticipated, WHO Air Quality Guidelines, Global Update.
7 Therefore, it is spacious to argue that since there exists
8 pollution at the proposed site, adding more pollution will
9 not make a difference. Public health studies suggest, at
10 every stage of life, motor vehicle emission fumes enact a
11 measurable toll on adverse health effects, mental capacity,
12 and intelligence, and that is from Hidden Toll of Traffic
13 Jams, November 8th, 2011, page 1.
14 MR. GROSSMAN: But let me just say, if there --
15 what you just said to me is that there is no amount of
16 pollution that is safe, in effect, and how does one factor
17 that in other than just to rely on the EPA standards? I
18 mean, if there's no amount that's safe, then are we to say
19 nothing, no activity that can produce any pollution can be
20 allowed? I mean, clearly, that's not what the policy makers
21 have decided. So they have set a standard.
22 THE WITNESS: I, I'm not --
23 MR. GROSSMAN: Even if we assume that you're
24 correct in your summary or your understanding of what the
25 authorities say, it's an argument for saying that you can

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1 never have any activity that produces any pollution if you
2 say yes, every act -- every emission is a danger. Let's
3 assume it's correct. I mean, you still -- policy makers
4 have still decided that a certain amount of activity in the
5 public is necessary, and therefore some activity is allowed,
6 even though it may produce pollution and even though it may
7 have some effect. Don't I then have to just rely on a
8 standard that is set nationally?
9 THE WITNESS: Well, just, just for
10 clarification --
11 MR. GROSSMAN: Yes.
12 THE WITNESS: -- I have said it, but I'm just
13 saying what I've read, and --
14 MR. GROSSMAN: Right.
15 THE WITNESS: -- science is an incremental
16 discipline and that's one of the beauties of science. What
17 they're saying is, we're studying this, we're studying this,
18 and the literature is amazing of what's coming out daily,
19 but we still haven't found a level at which no -- a
20 threshold at which there will be no adverse health effects,
21 but we recognize we all have to live.
22 So, at some point, we're going to establish
23 something that we think is a good regulatory position or a
24 guideline, something, a target to meet that, yes, they're
25 recognizing some people are going to be affected by these

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1 pollution issues and some people are going to die from them,
2 but again, there's a statistical issue of how many people do
3 we allow to have happen, have that happen to before we say
4 you have to meet this standard, and that's really all the
5 point is. They keep making the point, we don't know what
6 the threshold is below which there will be no effects.
7 MR. GROSSMAN: Okay.
8 BY MS. ROSENFELD:
9 Q Ms. Adelman, are there regional studies that
10 address the local air quality?
11 A Yes. A fine particle summary, published by the
12 Metropolitan Council of Governments, showed that from April
13 through September 6 of 2012, our region had 59 Code Yellow
14 days with high 24-hour particulate matter 2.5 readings.
15 MR. GOECKE: And I'm sorry. Which document are
16 you referring to now? Which summary?
17 THE WITNESS: That one right there.
18 MR. GROSSMAN: Which is --
19 MR. GOECKE: As of September 6, 2012?
20 THE WITNESS: Yeah, uh-huh.
21 MR. GROSSMAN: What document is that one? What
22 document?
23 THE WITNESS: Mike, could you show --
24 MR. GOECKE: I don't know the exhibit. It's --
25 MS. ROSENFELD: Actually, this is --

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1 THE WITNESS: Somebody, I didn't -- did I get mine
2 back?
3 MS. ROSENFELD: Michael, this one?
4 MR. GOECKE: Oh, no. I'm looking at something
5 different.
6 MS. CORDRY: Well, you still got part of --
7 MS. ROSENFELD: Mr. Grossman, this --
8 MR. GOECKE: I think we have that one, yes. Let's
9 see.
10 MS. ROSENFELD: -- this exhibit was handed in, and
11 copies were given to opposing counsel in November, I believe
12 November 22nd, an e-mail to you. I cannot find it in the
13 exhibit list.
14 MR. GROSSMAN: Okay.
15 MS. CORDRY: We need a new number, but they have
16 it.
17 MS. HARRIS: It's that, right?
18 MS. ROSENFELD: It's that --
19 MS. HARRIS: Yes.
20 MS. ROSENFELD: -- these black-and-white --
21 THE WITNESS: Do you have my little -- I had a
22 little sticky pad with the date that I had submitted --
23 BY MS. ROSENFELD:
24 Q You did.
25 MS. CORDRY: 11/22.

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1 THE WITNESS: I know, but I don't have the --
2 MS. CORDRY: Okay.
3 MR. GROSSMAN: And you're saying that this was --
4 I understand it was supplied to counsel. Are you saying it
5 was filed with us but you don't see --
6 MS. ROSENFELD: It was supplied to counsel; it was
7 filed with your office, both --
8 THE WITNESS: By hand.
9 MR. GROSSMAN: And do you know when it was filed?
10 MS. ROSENFELD: -- both in --
11 THE WITNESS: It was delivered by hand to --
12 MS. ROSENFELD: -- on November 22nd.
13 THE WITNESS: -- Ms. Harris, Ms. Rosenfeld, and
14 Mrs. Forbes on 11/22.
15 MR. GROSSMAN: Okay.
16 MS. ROSENFELD: And I believe the transmittal
17 e-mail -- oh, you had a question in Exhibit No. 400 where
18 you asked for clarification on electronically filed
19 documents that Ms. Adelman had provided. Again, I don't see
20 the documents themselves exhibitized.
21 MS. CORDRY: Right. In the November 21st hearing,
22 there was a discussion about that you had gotten these, this
23 e-mail with a list of files and the names didn't really
24 match up, they were obscure names and that you were having
25 trouble, and Mr. Adelman was going to resupply you the list

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1 with renamed names and that was, that was referring to this
2 whole set of documents that were handed in physically at
3 that time. And I don't have a copy of the e-mail, I don't
4 believe it was sent to me, but he re-emailed all of those to
5 you, I believe, on, or at least Exhibit 400 refers to when
6 he re-emailed -- the discussion of when he re-emailed all of
7 that to you, but I don't believe the documents themselves
8 were put into the record at that point, but --
9 MS. ROSENFELD: And Mr. --
10 MS. CORDRY: -- everyone's had them now for about
11 six weeks.
12 MS. ROSENFELD: And Mr. Goecke and Ms. Harris do
13 have hard copies.
14 MS. HARRIS: Yes, we do.
15 MR. GROSSMAN: I understand. I'm just trying to
16 find --
17 MS. CORDRY: Okay. Right.
18 MR. GROSSMAN: -- it shouldn't be a problem. I
19 just want to make sure that --
20 MS. CORDRY: Right.
21 MR. GROSSMAN: -- that we have everything
22 that's --
23 MS. CORDRY: Yes. So it doesn't look like that
24 was ever, exhibit numbers given to that --
25 MR. SILVERMAN: We looked and couldn't find it in

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1 the exhibit list.
2 MR. GROSSMAN: Okay.
3 MS. CORDRY: -- because that's when that was done.
4 MR. ADELMAN: I can't find the number.
5 MS. CORDRY: Doesn't look like it has a number, so
6 it needs a new number.
7 MR. GROSSMAN: All right. So November -- let's
8 see, Exhibit 400. Okay. So we'll give this, this will be
9 Exhibit, we're up to, this will be Exhibit 425, and what is
10 this?
11 THE WITNESS: I ended up with two copies. So if
12 you want a copy back.
13 MR. GROSSMAN: And what is this exhibit,
14 Mrs. Adelman, that's --
15 THE WITNESS: This is exhibit of various charts
16 that COG has put, Council of Governments --
17 MS. ROSENFELD: Actually, Mr. Grossman, I'd like
18 to give you a color in copy, a copy in color.
19 MR. GROSSMAN: Okay.
20 THE WITNESS: Isn't that one in -- oh, no. Some
21 of it's in black and white; some of it's in color.
22 MR. GROSSMAN: Okay. So Exhibit 425 --
23 THE WITNESS: Does he have a color copy that --
24 MR. GROSSMAN: I do now.
25 THE WITNESS: Okay.

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1 MR. GROSSMAN: And this is Metropolitan Washington
2 Council of Governments -- how am I going to identify what
3 exactly this is for the record? This is a series of --
4 THE WITNESS: Charts.
5 MR. GROSSMAN: -- charts?
6 THE WITNESS: Yes.
7 MR. GROSSMAN: All right. Charts on the
8 environment?
9 THE WITNESS: On the regional environment.
10 MR. GROSSMAN: On the regional environment, okay.
11 All right. So now, what's the testimony going to --
12 (Exhibit No. 425 was marked
13 for identification.)
14 THE WITNESS: But if you look at this one, is what
15 I'm speaking of right now.
16 MR. GROSSMAN: This one being?
17 THE WITNESS: Twenty-four-hour PM2.5
18 concentrations from April 2012 through --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- September, I believe it's the
21 6th.
22 MR. GROSSMAN: Yes, as of September 6th.
23 THE WITNESS: I'm going to jump ahead a bit and
24 just say for the record that the Council of Governments
25 publishes the air quality index for PM2.5 daily --

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1 MR. GROSSMAN: Yes.
2 THE WITNESS: -- rating days as green, being
3 healthy, and then ranging through yellow, moderate health
4 danger for sensitive people, such as those with chronic
5 respiratory or cardiovascular disease; orange, unhealthy for
6 sensitive groups, children, older adults, and those with
7 heart and lung disease; red, unhealthy for all; and purple,
8 very unhealthy for all.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: So that having been said, I'm going
11 to jump back now to this 24-hour PM2.5 concentration chart
12 and say in 2012, in our region, nearly two months out of
13 these five months and six days our region had days of
14 moderate air quality of concern to unusually sensitive
15 people. Especially frequent in the months of July and
16 August, no day reached the 35 micrograms per cubic meter of
17 air 24-hour EPA standard, but the readings were high, in the
18 high 20s for days on end, and many days the readings
19 exceeded the WHO guideline for, of 25 micrograms per cubic
20 meter of air. So their standard -- their guideline is 10
21 micrograms lower than EPA's.
22 In June of 2013 -- and now I'm going to go follow
23 that to the charts, following that one that you have in your
24 hand -- in June 2013, COG rated one day as orange, unhealthy
25 for sensitive groups, and 17 days as yellow, moderate

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1 caution days. Mr. Grossman, that's over 50 percent of the
2 month that COG recorded unhealthy levels of air pollution.
3 In July of 2013, COG rated three orange days, days
4 when air quality is unhealthy for sensitive groups, and 14
5 days, nearly 50 percent of the month, as yellow, moderate
6 cautionary days. In August COG rated 19 days as yellow
7 cautionary days. That's over 60 percent of the month. In
8 September there were seven yellow moderate days; in October,
9 nine; and as of November 14th, 2013, there were six yellow
10 moderate days.
11 Please note that the hottest months had
12 correspondingly higher numbers of days with poor air quality
13 ratings. As you can see, all too often local air quality
14 elevates the health risk of sensitive populations and
15 healthy populations, also, as continued exposure to toxic
16 poor air quality correlates with the development of chronic
17 disease.
18 In 2012 the addition of America's Health Rankings,
19 which was begun in 1990, placed the State of Maryland 40th
20 out of 50 states for high levels of particulate air
21 pollution, at 10.9 micrograms per cubic meter of air. That
22 value, 10.9 for particulate matter, is out of attainment for
23 the World Health Organization at 10 micrograms per cubic
24 meter of air guideline and very close to EPA's standard of
25 12 micrograms per cubic meter of air. Considering these

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1 ratings, should adding a mega gas station to an already
2 compromised air quality area be allowed?
3 BY MS. ROSENFELD:
4 Q And, Ms. Adelman, has a Maryland state agency
5 issued a statement on large gas pumping stations -- on large
6 gas stations pumping more than 10 million gallons of gas a
7 year?
8 A Yes. This is Exhibit 90(b). In a letter of July
9 2012, Mr. Angelo Bianca, who is deputy director of Air and
10 Radiation Management Administration in the Maryland
11 Department of the Environment, noted, and I quote, there are
12 a number of petroleum-based toxic air pollutants emitted
13 from gas stations that pose some level of risk to public
14 health from the delivery and dispensing of fuel and the
15 idling of vehicles. The difficulties are quantifying that
16 risk, especially the incremental risk beyond existing
17 levels, quantifying and determining what risk level is
18 acceptable.
19 Mr. Bianca also notes that models have
20 limitations; their accuracy is only as good as the inputs
21 used. And he quotes -- I quote, the models often do not
22 have available for input meteorological data that closely
23 represents long-term conditions at or near the site, end
24 quote. Given these issues, he concludes, and I quote, the
25 more distance that can be placed between a source --

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1 parenthetically, in this case, a mega gas station -- and
2 residences and community gathering places is certainly
3 beneficial to minimizing risk, end quote.
4 Both --
5 MR. GROSSMAN: But if I recall that letter, he
6 didn't set a distance.
7 THE WITNESS: No, he did not set a distance. He
8 acknowledges that distance is an important part of the
9 entire problem.
10 California Air Resources Board and EPA support the
11 concept that distance from mega gas stations, those pumping
12 over 3.6 million gallons of gas a year, can play a role in
13 reducing exposure to gasoline fueling evaporation and toxins
14 from vehicle tailpipe emissions. Distance from the
15 pollutant source will reduce the risk to public health. A
16 300-foot minimum buffer from sensitive sites, such as homes,
17 schools, and hospitals, is recommended by both agencies. It
18 is reasonable to consider that large stations -- and this
19 proposed mega gas station is 3.3 times larger than what EPA
20 defines as a large gas station --
21 MR. GOECKE: And for the record, is she reading
22 from a document now, or this --
23 THE WITNESS: No.
24 MR. GOECKE: -- her opinion? This is your
25 opinion?

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1 MR. SILVERMAN: It's her statement of fact.
2 MR. GOECKE: I just want to be clear.
3 THE WITNESS: Oh, whatever. Where was I? It is
4 reasonable to consider that larger stations would be, would
5 likely warrant a wider buffer.
6 In a paper entitled Assessing the Impact of Petrol
7 Stations on Their Immediate Surroundings, Morales, Terrés,
8 et al., evaluated a small four-pump gas slash diesel station
9 in Murcia, Spain, using a specific methodology to assess the
10 extent to which pollution from gas stations affects the
11 surroundings.
12 MR. GROSSMAN: All right. So now you're
13 referencing that study in Spain that --
14 THE WITNESS: Yes. Yes.
15 MR. GROSSMAN: I've seen that study. Okay.
16 THE WITNESS: One goal of the study was to help
17 local land management authorities establish a belt around
18 gas stations where housing vulnerable populations and
19 activities such as schools, hospitals, and community centers
20 should be restricted. They noted that the results of their
21 study suggest that the pollution impact from small- and
22 medium- -- they don't reference large, and they certainly
23 don't discuss megastations -- from small- and medium-size
24 gas stations will be within 100-meter radius or about 315
25 feet. By their finding, Costco's proposed mega gas station

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1 location would pose a significant public health risk to our
2 Kensington Heights residents living --
3 MR. GROSSMAN: Well, now you slipped into your
4 opinion.
5 THE WITNESS: Now this is my opinion, yes.
6 MR. GROSSMAN: Yes. I mean, the -- of course, I
7 think the problem that has been pointed out is that those
8 gas stations in Spain may have been very old technology
9 stations, allowing a lot more pollution. I don't know, I
10 don't know the specific facts, but I recall that as being an
11 issue in terms of relying on that study to project what a
12 modern American station with an Arid Permeator and so on
13 would produce, but in any event, go ahead. So this is now
14 your take on what that study shows.
15 THE WITNESS: Yes, and I want, I would like that
16 you would consider that this is only a four-pump station,
17 not a 16-pump station. I --
18 MR. GROSSMAN: You mean the Spanish?
19 THE WITNESS: Murcia, Spain, Spanish. I do not
20 know the age of the station --
21 MR. GROSSMAN: Right.
22 THE WITNESS: -- so I can't address that.
23 MR. GROSSMAN: But that's, I mean, that's a
24 critical issue as you compare statistically the pollution
25 observed from older stations compared to modern ones in the

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1 charts that I've seen, but in any event, go ahead as to
2 your --
3 THE WITNESS: Yeah. I don't --
4 MR. GROSSMAN: -- as to your, your take from the
5 study.
6 THE WITNESS: -- I'd have to look at the paper
7 again, which I do have with me, and, and see. I do not
8 remember that they gave the age of the station,
9 Mr. Grossman; so I don't know.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: To summarize, we have EPA, CARB, and
12 scientists from University of Murcia, Spain, all
13 recommending a minimum 300-foot distance from small, medium,
14 and large gas stations to home, schools, and community
15 recreation areas. This 300-foot setback cannot be met at
16 the site under discussion. Caution is called for. Adequate
17 margins of safety from the proposed location of this
18 application must be provided. A hundred and twenty-five
19 feet from residential homes is not adequate, as noted above.
20 Three hundred feet is recommended as a minimum.
21 It is especially puzzling that given the most
22 vulnerable population to vehicle tailpipe population are our
23 children, that Costco testified with pride that, quote, one
24 of our largest charities is the Children's Medical Network,
25 end quote. That's Mr. Brann on 4/26. Also, Costco

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1 testified, we are very big in Children's Hospital campaigns
2 -- that's a quote -- end quote. Despite their charitable
3 endeavors, Costco is most willing to install a proven source
4 of pollutants, creating a certain adverse health risk to
5 children, to increase their corporate profit at this site.
6 MR. GROSSMAN: I guess I should make it clear, I
7 don't and will not address the question of whether or not
8 Costco is charitable, nor will I address the question of
9 whether or not something is profitable. That's not an
10 issue, neither of those are issues before me and are
11 non-considerations. Okay.
12 THE WITNESS: It's a contradiction.
13 MR. GROSSMAN: It's not a contradiction. It's not
14 an issue before me. I don't --
15 THE WITNESS: Yes, I understand.
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: And, Mr. Grossman, for the record,
18 the Ambient -- the last comments Ms. Adelman made were drawn
19 from an article called Ambient Air Pollution, American
20 Academy of Pediatrics, which is Exhibit No. 365(d), as in
21 dog.
22 MR. GROSSMAN: Which comments are you talking
23 about?
24 MS. ROSENFELD: The children are the most
25 vulnerable population to vehicle tailpipe emissions.

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1 MR. GROSSMAN: All right. It's --
2 THE WITNESS: Do you want me to quit?
3 MR. GROSSMAN: -- it's just not, I mean -- never
4 mind. Go ahead. You understand. I can't --
5 THE WITNESS: I do understand.
6 MR. GROSSMAN: -- reach any conclusions from any
7 of that. So -- I mean, you're going to have Dr. Jison
8 testifying not only with children, but as I read her
9 materials, even prenatally there are issues. So, you know,
10 I'm going to consider the evidence on these points. That is
11 the best evidence that deals with -- from experts on these
12 points. All right. Go ahead, Mrs. Adelman.
13 While we're waiting, Mrs. Adelman, I think you
14 should file a complaint that Blue Lagoon is not here to film
15 you.
16 THE WITNESS: I was raised into a family where
17 birth is noted and death is noted and perhaps a marriage and
18 that's it. So I am thrilled that he's not here.
19 MS. ROSENFELD: Mr. Grossman, I apologize for
20 asking for a break again. May I ask for just a two-minute
21 break to speak with the witness?
22 MR. GROSSMAN: Well, it's not usually, not usually
23 the policy to have a break to speak to a witness who's on
24 the stand. So --
25 MS. ROSENFELD: Well --

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1 MR. GROSSMAN: I understand. What you're trying
2 to do is --
3 MS. ROSENFELD: -- I'm in the awkward position of
4 -- Ms. Adelman is the chair of the Stop Costco Gas
5 Coalition, and before making some substantive determinations
6 on the scope of her testimony, I'd like to consult with her
7 in that role.
8 MR. GROSSMAN: Shall we agree --
9 MR. GOECKE: That's fine.
10 MR. GROSSMAN: -- to allow that, Mr. Goecke?
11 Okay.
12 MR. GOECKE: Yes.
13 MS. ROSENFELD: Thank you.
14 MR. GROSSMAN: Thank you. We'll -- so until what
15 time? When do you want to resume?
16 MS. ROSENFELD: Two minutes is really all --
17 MR. GROSSMAN: Two minutes. Okay. We'll have a
18 two-minute recess.
19 (Whereupon, a brief recess was taken.)
20 MR. GROSSMAN: You may proceed.
21 MS. ROSENFELD: Thank you.
22 BY MS. ROSENFELD:
23 Q Ms. Adelman, have you done any, made any
24 investigation or done any research on the student population
25 at the Stephen Knolls School?

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1 A Yes.
2 Q And could you explain what you've learned?
3 A Yeah. Well, just to remind Mr. Grossman that the
4 EPA issued a guideline, not a regulation, recommendation on
5 school siting, recommending a thousand-foot buffer from gas
6 stations pumping more than 3.6 million gallons of gas per
7 year.
8 MR. GROSSMAN: That's not an accurate statement.
9 They recommended that it be studied if it's a thousand -- if
10 it's within a thousand feet, not that it not be located.
11 That's my recollection of it.
12 MR. GOECKE: That's correct.
13 MR. GROSSMAN: Maybe my recollection is incorrect,
14 but --
15 MR. GOECKE: No --
16 BY MS. ROSENFELD:
17 Q Ms. Adelman, you can --
18 MR. GROSSMAN: -- that's my recollection of the
19 EPA School-Siting Guideline.
20 MR. GOECKE: You're correct, Mr. Grossman.
21 MR. SILVERMAN: I don't think they, I don't think
22 they said a study. I don't think, why don't -- I don't
23 think that's quite right either, and I don't have the
24 language in front of me, but we'll get it and we'll --
25 MR. GROSSMAN: Okay.

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1 MR. SILVERMAN: -- have exactly as it is.
2 MR. GROSSMAN: That's what Mr. Sullivan testified
3 to --
4 MR. SILVERMAN: That is indeed what he testified
5 to, yes.
6 MR. GROSSMAN: -- and that he went on to say
7 that's exactly what Costco did in this case: they studied
8 it. That's the --
9 MR. SILVERMAN: Yes.
10 MR. GROSSMAN: -- but if I'm incorrect -- go
11 ahead. I understand. Your understanding of it may be
12 different, but it'll speak for itself.
13 THE WITNESS: The Stephen Knolls School is a
14 downcounty school for severely disabled and medically
15 fragile children. It will be 340 feet downhill from this
16 proposed mega gas station. This location --
17 MR. GROSSMAN: When you say 340 feet, I thought
18 that it was -- I thought it said 800.
19 THE WITNESS: Oh, I'm sorry. Did I say 300?
20 Eight hundred and forty feet, 840 feet, you're right.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: Two Stephen Knolls School's parents,
23 with their children, have expressed directly to this hearing
24 their concerns about the adverse health effects this
25 proposal will have on their children.

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1 A few facts about the student population that
2 attends Stephen Knolls School. The total student population
3 is 98. Forty-seven students are school-age, and 51 students
4 attend preschool. Student ages range from 3 to 21 years.
5 Attendance at the school can be as long as 18 years. The
6 school year runs from the end of August through June, and
7 most students enroll in the summer camp program held in
8 July. Thus most students will be at the school for about
9 10-and-a-half months out of the year.
10 BY MS. ROSENFELD:
11 Q And what are some of the medical needs among the
12 student population?
13 MR. GOECKE: Objection. Foundation.
14 MR. GROSSMAN: I mean, we've already had testimony
15 from a teacher there on this point. Does Mrs. Adelman have
16 greater knowledge of this than her testimony would supply?
17 I'm not --
18 MS. ROSENFELD: I believe she does.
19 MR. GROSSMAN: Okay.
20 BY MS. ROSENFELD:
21 Q Ms. Adelman --
22 A Wider than what --
23 MR. GROSSMAN: Okay.
24 THE WITNESS: -- Mary Ann Carter --
25 MR. GROSSMAN: All right.

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1 THE WITNESS: -- more specific, I guess, is a
2 better way of putting it.
3 MR. GROSSMAN: All right. And so where are you
4 getting your information from?
5 THE WITNESS: From the school directly.
6 MS. HARRIS: From the what?
7 MR. GROSSMAN: And so you spoke to somebody at the
8 school?
9 THE WITNESS: Yes --
10 MR. GROSSMAN: Okay.
11 THE WITNESS: -- spoke to somebody at school, and
12 some -- and they, in turn, contacted the school board
13 offices, administration, and fleshed out the information.
14 MR. GROSSMAN: Well, when you say they fleshed it
15 out, did they report it back to you orally or did they send
16 you a letter or --
17 THE WITNESS: The school sent me an e-mail.
18 MR. GROSSMAN: All right. Do you have a copy of
19 that e-mail?
20 THE WITNESS: Not with me, no.
21 MR. GROSSMAN: Okay. Let's have that -- that
22 e-mail is really what the, should be the evidence here.
23 Even that's hearsay, but I think it's, would be a relatively
24 reliable form of hearsay. Here it's kind of double hearsay.
25 I'm going to let you state what your understanding is of

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1 what they said subject to your supplying a copy of that
2 e-mail for the record and giving the applicant's counsel an
3 opportunity to garner any rebuttal information, if there is
4 rebuttal information to garner, but go ahead. What's your
5 understanding?
6 THE WITNESS: The e-mail pretty much states what
7 I'm about to say.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: The medical needs of the school-age
10 children, students, include oxygen, five students are on
11 oxygen tanks or ventilators; nursing, eight students have
12 private-duty nurses with them throughout the day; nursing
13 services, 28 medical treatments are provided daily; ten
14 students have medicines regularly dispensed, and one student
15 requires regular suctioning.
16 The list of student medical disabilities includes
17 chronic lung disease, asthma, respiratory distress syndrome,
18 environmental allergies, cerebral palsy, Down syndrome, and
19 Rett's disease. Several of these medical conditions --
20 these are my words now -- are related to lung and
21 respiratory disease. Additional exposure to toxic tailpipe
22 emission pollutants will negatively add to already
23 compromised health. I'm off this e-mail now and on to --
24 yeah.
25 MR. GROSSMAN: This is your statement and your --

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1 THE WITNESS: Right.
2 MR. GROSSMAN: -- your opinion --
3 THE WITNESS: Yes.
4 MR. GROSSMAN: -- based on your concerns from the
5 e-mail.
6 THE WITNESS: Right.
7 MR. GROSSMAN: But I definitely want to have the
8 e-mail.
9 THE WITNESS: Yes.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: You'll get the e-mail. Thirty-five
12 to 40 Stephen Knolls School students go up to Wheaton Mall
13 several times a week to practice life skills. That was the
14 testimony from Mary Ann Carter.
15 MR. GROSSMAN: Right.
16 THE WITNESS: This is an important part of their
17 educational experience and highly valued by students,
18 teachers, and families alike. Since students often take the
19 path to the crosswalk on the ring road to access the mall,
20 there is a concern that the increase in slow traffic and
21 vehicle idling will render this approach to the mall unsafe
22 for those medically fragile students. The same concern
23 holds for the students who use and enjoy the school's
24 playground located between the school building and the ring
25 road.

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1 To be forced to withhold the use of the playground
2 and the educational experience of the mall is patently
3 unfair, but if the station is built, there is reason to be
4 concerned that any outdoor experience for the children will
5 be too close to the ring road and have significant health
6 dangers. So children whose activity is already severely
7 curtailed will lose two major, much beloved opportunities to
8 enhance their lives.
9 BY MS. ROSENFELD:
10 Q Ms. Adelman, could you, in conclusion, summarize
11 the concerns, the overall grounds for opposition to the gas
12 station from the point of view of the Stop Costco Gas
13 Coalition?
14 A Yes. So these are my words now, completely.
15 MR. GROSSMAN: I understand. Thank you.
16 THE WITNESS: Costco has not met the burden of
17 proof required by 59-G-1.21, General Conditions,(a)(8), in
18 the special exceptions requirements for gas stations. We
19 know the applicant defined and continued to define the
20 neighborhood as the boundaries of Westfield Wheaton Mall,
21 that is, until very recently when, once again, they changed
22 their position and eagerly embraced the staff definition of
23 neighborhood, but let's look at their definition of
24 neighborhood held and defended for the past four years.
25 So defined as the mall boundary, their

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1 neighborhood has no residential area, no homes, no school
2 that would be impacted by this application; therefore, there
3 is no one vulnerable to any adverse health impacts. From
4 their point of view, the applicant bears no burden of proof
5 on any adverse health risks attendant with the special
6 exception application because, by their reckoning, there is
7 no risk; there is no one at risk.
8 MR. GROSSMAN: Well, I think I announced early on
9 in this case that I was accepting the staff's definition of
10 neighborhood. So everything that's -- everything we've
11 heard in terms of testimony in this case is based on the
12 staff's definition of neighborhood.
13 THE WITNESS: That is true, but Costco's,
14 Costco's --
15 MR. GROSSMAN: Including Costco's evidence that's
16 been submitted.
17 THE WITNESS: -- evidence -- a question was asked
18 of Dr. Chase during his testimony if he, how he saw the
19 neighborhood, and he defined it as the mall boundaries. So
20 his work was all with their original definition of
21 neighborhood.
22 MR. GROSSMAN: Well, I don't think that's a full
23 recollection of his testimony because I know we asked him
24 other things, but all right, go ahead.
25 THE WITNESS: Not so fast.

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1 MR. GROSSMAN: Go ahead.
2 THE WITNESS: No, that's my next sentence.
3 MR. GROSSMAN: All right. All right.
4 THE WITNESS: Since no serious analysis of the
5 possible adverse health risks to the population included the
6 neighborhood as defined by planning staff has been
7 undertaken by the applicant, you, Mr. Grossman, when making
8 your recommendation and considering the possibility of
9 adverse health effects, adverse effects on the health and
10 general welfare of the neighborhood, must rely on the
11 significant findings from relevant, current, peer-reviewed
12 medical and epidemiological research studies provided by the
13 opposition.
14 Research studies on the adverse health effects of
15 toxic air pollutants have exploded in the scientific
16 literature. They show dramatic positive correlation between
17 environmental pollutants released from fueling evaporation
18 and tailpipe emissions, particularly from slow-moving and
19 idling vehicles, and significant adverse health effects.
20 These studies consistently recommend a minimum buffer from
21 large gas stations of 300 feet. Logic would, in this case,
22 urge an even wider buffer from gas stations of this size,
23 but please note that even the suggested 300-foot buffer
24 cannot be met at this location.
25 Also, one must not dismiss the health risk placed

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1 on visitors and workers in the applicant-defined
2 neighborhood -- again, within the mall boundaries. Of
3 particular concern is the southwest parking lot, the
4 location of the proposed mega gas station. This gas
5 station, if built, will place a significant potential
6 adverse health-risk burden on persons using the same parking
7 lot.

8 Mr. Sullivan's reports do not assess health risk,
9 particularly with respect to NO2. He can only evaluate
10 whether pollution levels meet or exceed EPA NAAQS.
11 Dr. Chase has provided a conclusory report with no
12 meaningful analysis of the specific impact of the gas
13 station on air quality or health impacts. The applicant
14 cannot meet and did not meet the required burden of proof
15 that visitors to the mall and workers at the loading dock
16 will be safe from the risk of adverse health effects.

17 The Stop Costco Gas Coalition members and members
18 of KHCA, who are property owners, taxpayers, citizens of
19 Montgomery County, have been successful with the planning
20 staff and before the Planning Board in arguing against this
21 special exception to build a mega gas station in Westfield
22 Wheaton Mall. Both entities recommended denial of the
23 special exception. While we have won four major battles, we
24 continue to fight to win the war. We do not have might on
25 our side, but we have right on our side.

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1 MR. GROSSMAN: All right.
2 MS. ROSENFELD: I have no further questions.
3 MR. GROSSMAN: Okay. Is there any
4 cross-examination from Kensington View Civic Association?
5 MS. DUCKETT: No. No, sir.
6 MR. GROSSMAN: And since Kensington Heights Civic
7 Association actually did the direct exam, I don't think that
8 it would be appropriate for you --
9 MR. SILVERMAN: No.
10 MS. ROSENFELD: No. We -- no. No.
11 MR. GROSSMAN: -- to have an opportunity to
12 cross-examine. So --
13 MS. CORDRY: We don't need to cross her.
14 MS. ROSENFELD: We understand that.
15 MR. GROSSMAN: All right. So now
16 cross-examination by, by the applicant.
17 MR. GOECKE: Thank you, Mr. Grossman.
18 MR. SILVERMAN: Mr. Grossman, tell me the right
19 time, but I have the language for the school-siting
20 guidelines.
21 MR. GROSSMAN: Okay. What is the language?
22 MR. SILVERMAN: Okay. So on page 59 there's a
23 chart identifying gas stations and other fuel-dispensing
24 facilities, and the description says: Large gas stations
25 dispense more than 3.6 million gallons per year. And then

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1 it says, on Evaluation, it says: Evaluate on a case-by-case
2 and site-specific basis. See Exhibit 5 for potential
3 variables and mitigation options. Consult with state,
4 tribal, and local authorities for applicable requirements
5 and evaluate for spills, leaking underground storage tanks,
6 potential air emissions. And then Exhibit 5, which is
7 referenced, if I go to that, it says, Air Pollution, and it
8 talks about the kind of things you're, the mitigation
9 options: Adopt an area-wide approach to address air
10 pollution issues -- that's not been done here -- maximize
11 distance from transportation or other pollution sources;
12 vegetation buffers; anti-idling practices; limiting bus or
13 personal car use on or near campus; enhanced indoor
14 filtration/air cleaning; locating sensitive activities and
15 outside air intakes away from sources, locate playgrounds
16 and classrooms --

17 MR. GOECKE: We were looking for the
18 thousand-foot.
19 MR. GROSSMAN: Yes. Is there anything that says
20 -- the question is --
21 MR. SILVERMAN: Yes.
22 MR. GROSSMAN: -- do the EPA School-Siting
23 Guidelines call for a 1,000-foot buffer between a gas
24 station of this size and a school, or does it say that if
25 it's within that thousand feet, that it should require

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1 additional analysis?
2 MR. SILVERMAN: Well, what it says is that -- and,
3 again, keep in mind, these guidelines are for school boards
4 who don't always have the freedom to be a thousand feet away
5 -- it says, but here are some, if you are within a thousand
6 feet, these are some things you could do: you could limit
7 outdoor play, you could change your ventilation systems, you
8 could put restrictions on the number of cars that come to
9 the school. So it's speaking to that. And so that's the
10 kind of evaluation they're talking about, not, not the kind
11 of evaluation we've heard. That's a small element of it but
12 that's not the major thing. And to say, as has been said,
13 oh, well, if we do a study, it's all all right, that's
14 really not the --

15 MR. GROSSMAN: I don't think anybody said that.
16 What they said is that the -- the statement made by this
17 witness was that the EPA School-Siting Guidelines said that
18 the gas station should be a thousand feet from a school, and
19 the evidence that came in before from Mr. Sullivan was that
20 the, that's not what the siting guidelines say. They say
21 that if they are within a thousand feet, then additional
22 study and analysis is required to determine the safety and
23 whatever steps should be taken. Those are different
24 statements.
25 All right. I don't think we have to spend any

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1 more time on this. Those guidelines speak for themselves,
2 whatever they say.
3 MR. SILVERMAN: All right. Page 59, I encourage
4 you to look at it and go to the reference.
5 MR. GROSSMAN: Okay. All right.
6 Cross-examination.
7 MR. GOECKE: Right.
8 CROSS-EXAMINATION
9 BY MR. GOECKE:
10 Q Ms. Adelman, you testified about your observation
11 of queues at the Beltsville gas station --
12 A Uh-huh.
13 Q -- and you said that, I think it varied from 10 to
14 64 cars, depending on when you went there, is that correct?
15 A Yes, that's correct.
16 Q How long did it take the cars to move through the
17 queue?
18 A I have no idea. I never stood there and watched.
19 I just -- every time I went to Costco, which, I would say, a
20 good 75 percent of the time was at noon --
21 Q On what day of the week?
22 A -- I counted cars. Oh --
23 Q I'm sorry.
24 A -- it depended, yeah. I counted cars, but I never
25 did wait to see if X car took how long to move through.

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1 Q Yes. So is it your testimony that --
2 A I did time -- you know, Mr. Goecke, we happened to
3 be at the Gateway installation Costco in the last year or
4 so, and I did time at that point how long a car took to
5 fuel, which ended up being what somebody testified to, which
6 was about four minutes.
7 Q That was not at Beltsville; that was at the
8 Gateway?
9 A That was at Gateway, yeah.
10 MR. GROSSMAN: That was time of fueling or time of
11 waiting in line plus fueling?
12 THE WITNESS: No, no, make this very clear, just
13 fueling --
14 MR. GROSSMAN: Okay.
15 THE WITNESS: -- just getting out of your car,
16 opening your gas tank, all that took four minutes. So that
17 was the testimony earlier in this case, and I was interested
18 to see that it was spot on. So, you know, you could do some
19 math there if, but --
20 BY MR. GOECKE:
21 Q Yes.
22 A -- I don't know the answer to your question.
23 Q Do you remember how many queues there were at the
24 Beltsville location?
25 A Well, the Beltsville location is a really

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1 interesting design. They come around a corner. So they
2 have 12 pumps. So what is that, four lanes? Four lanes,
3 but unlike other Costco stations where you're directed into
4 a lane pretty specifically, there it's kind of a
5 free-for-all until you're probably 20 feet away from the
6 pumps and then, then they fall into the four lanes.
7 Q But you agree that there's four lanes --
8 A Yes.
9 Q -- four queues there as opposed to the eight that
10 would be at Wheaton?
11 A That's correct.
12 Q Okay. Is it your position that any wait is an
13 inconvenience? And let me rephrase that, because you had
14 testified, I believe, that --
15 MR. GROSSMAN: Wait being W-A-I-T.
16 MR. GOECKE: W-A-I-T, that's right.
17 MR. GROSSMAN: I consider this weight to be an
18 inconvenience; so I just wanted to make sure the record was
19 clear.
20 THE WITNESS: I want to make sure you're speaking
21 for yourself, Mr. Grossman.
22 BY MR. GOECKE:
23 Q I believe you testified that you've never bought
24 gas there because you saw the queues as an inconvenience,
25 and I want to understand, at what point does a queue become

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1 an inconvenience? One car? Two cars?
2 A I don't know how to answer that question. I mean,
3 one car. I think, I think you just selected part of what I
4 stated. I also went on to state that you're waiting and
5 you're wasting fuel, you're wasting time, and you're also
6 sitting in tailpipe emission pollutants. So those are also
7 negatives, why I find it an inconvenience.
8 Q Yes. But obviously other people elect to wait in
9 the queue and purchase their gas there despite the things
10 that you perceive to be an inconvenience.
11 A Yes. I find this behavior rather unimaginable,
12 that people will do all that, plus travel maybe 20 minutes
13 to even get there. So this is something that maybe a Ph.D.
14 person should do a study on, find out what they're thinking.
15 Q Moving to the Wheaton proposed Costco gas station,
16 you testified that there's going to be an additional 250
17 cars per hour coming to the gas station. Did I hear you
18 correctly?
19 A Yeah, 225, I said, to 250.
20 Q Twenty-five to 250.
21 A Two twenty-five to 250.
22 Q And on what basis are you claiming that there's
23 going to be at least 225 cars going there every hour?
24 A Just doing some math. I think, in fact,
25 Ms. Cordry did some math on that ages ago, but it was a long

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1 time ago. We did math and figured out, if you have 16
2 pumps, you're open so many hours a day, comes out to be
3 about 225, 250 cars an hour.
4 Q But to be clear, you're talking about the highest
5 possible number --
6 A Yes. Oh, indeed, yeah.
7 Q Okay.
8 A Uh-huh.
9 Q You don't believe that every hour there's going to
10 be at least 225 cars there?
11 A I don't believe. It's not a matter of belief. I
12 think logic would dictate that not every hour 225 cars will
13 go through.
14 Q Yes. And would you mind just walking me through
15 your math quickly as to how you got that number?
16 A Oh, I would. I'm a math-challenged person.
17 Q Okay. So despite your many degrees and expertise
18 you have in different fields --
19 A I'm an idiot in math.
20 Q Okay.
21 A Ask Dr. Adelman.
22 MS. HARRIS: Should have become a lawyer.
23 MR. GROSSMAN: We're going to let him
24 cross-examine you later. So that's --
25 THE WITNESS: He will. He will tonight.

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1 BY MR. GOECKE:
2 Q Is it fair to say you relied on other people for
3 that calculation and did not do it yourself?
4 A No. I did do it myself, absolutely, but I also
5 ran it by other people, and these were the numbers we had.
6 Q Yes. When you spoke before, you expressed concern
7 about the loading dock workers. What's your understanding
8 of how many loading dock workers are actually in the loading
9 dock at Costco?
10 A I don't, I don't know. I have no idea. I've
11 observed the loading dock twice now from 4:00 a.m. to 6:00
12 a.m., and I can't -- it's been in the winter; so I can't see
13 a lot of people outside, but boy, you could certainly hear
14 them inside, but I, I couldn't begin to tell you what
15 numbers.
16 Q Well, isn't it true that there are no outside
17 workers, that they're all inside?
18 A I saw plenty of outside workers moving in and out.
19 So --
20 Q And these were Costco employees or --
21 A Costco employees.
22 Q -- these were the truck drivers?
23 A Oh, the truck drivers, of course, but no, these
24 are Costco employees. They come out to talk to the truck
25 drivers. Believe it or not, they actually have a picnic

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1 table there that they sit on, sit at and have coffee and
2 chat. I assume it's a break in their, their day, their
3 shift.
4 Q Yes. And you agree that the gas station would not
5 be open at that time of day, 4:00 a.m. to 6:00 a.m.?
6 A The gas station opens at 6:30, isn't that correct?
7 MS. CORDRY: 6:00.
8 THE WITNESS: 6:00?
9 MS. CORDRY: 6:00.
10 THE WITNESS: 6:00.
11 BY MR. GOECKE:
12 Q Yes. So the gas station would not be open --
13 A No, I was -- yeah.
14 Q -- right?
15 A Pardon?
16 Q So the gas station wouldn't be open during the
17 4:00 to 6:00 a.m. hours when you observed workers --
18 A When I was sitting there, no, uh-huh.
19 Q Okay. Moving to your testimony about the Costco
20 gas station on West Ox Road --
21 A Uh-huh.
22 Q -- at that location is the gas station visible
23 from the nearby townhomes?
24 A I suppose it would be almost a dot on the horizon.
25 I'm trying to think of what the townhomes looked like to me

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1 when I was standing in the gas station, and they are
2 sufficiently distant that -- visible, yes, but intrusive,
3 no.
4 Q But it is visible?
5 A Well, a dot on the horizon, that's as far as I'll
6 go.
7 Q Okay. And there's no change in topography from
8 the Costco gas station there to where the townhomes are
9 located, correct?
10 A I couldn't address that.
11 Q And there's no green-screen wall?
12 A No green-screen wall, no.
13 Q Do you agree that each location is unique for
14 Costco gas stations?
15 A No, I don't, I don't agree with that, no. I would
16 say that Costco's, with the exception of this station, this,
17 this proposed installation, Costco's site plans have a focus
18 and a definitive approach where their differences have to do
19 with drain issues, but by and large, their approach is very,
20 very much the -- very much, I can't say like West Ox, but
21 for instance, in Beltsville, their gas station is reasonably
22 distant from the warehouse.
23 Q But putting aside, or including distance, I guess,
24 I mean, you haven't seen two Costco gas stations that are
25 identical, have you?

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1 A Well, I've seen so few of them. I really don't --
2 I've seen Gateway, I've seen West Ox, I've seen Beltsville,
3 and I've seen your plans for this proposal. That's it.
4 Q And you would agree that each of these stations
5 have different characteristics?
6 A I would say the closest relationship is West Ox
7 and Gateway, yes. So -- well, no, I'm not going to -- no.
8 I'm going to say I don't, I can't really agree to that. The
9 characteristics are more site-determined than anything else.
10 Q That's exactly my point, that each site determines
11 the characteristics of the gas station. You would agree on
12 that?
13 A Yeah.
14 Q For example, if Costco has certain property rights
15 under their lease at the Wheaton Westfield Mall that are
16 different than the one in Virginia that you talked about --
17 MS. ROSENFELD: Objection.
18 THE WITNESS: Uh-huh, I can't address that.
19 MS. ROSENFELD: Yes. He's talking about --
20 MR. GROSSMAN: Well, he hasn't finished the
21 question yet --
22 MS. ROSENFELD: Okay.
23 MR. GROSSMAN: -- had you? So let him finish his
24 question, and then you can determine if you have an
25 objection. Go ahead. You said, for example, if.

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1 MR. GOECKE: Yes. I lost my train of thought.
2 Let me try it again.
3 BY MR. GOECKE:
4 Q Would you agree that Costco may be limited by
5 their property rights at each different location?
6 A I have no idea.
7 Q So you don't know?
8 A I have no idea what Costco's business model is or
9 what their contractual obligations are. I can't address
10 that at all.
11 Q But if I understood your testimony correctly, you
12 wish the proposed Wheaton Costco gas station had certain
13 things in common with the, with the West Ox Road location
14 but you don't know whether or not that's even possible for
15 Costco to duplicate?
16 A I didn't say that at all. I was drawing a
17 comparison between this proposal and the brand-new
18 installation at West Ox Road, and I was comparing the two,
19 and I was saying one, in my opinion -- and I'm not an
20 engineer or air, anything like that -- the West Ox Road
21 installation appeared to me to be a superbly designed,
22 meeting all possible land use requirements installation, and
23 it's diametrically opposed to what the proposal is here.
24 Q Are you aware that Costco had to drain a pond on
25 the location at the West --

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1 A No.
2 Q -- West Ox Road site?
3 A No. No. No.
4 Q If that had to happen at Wheaton, would you
5 support it?
6 A This is, this is all --
7 MS. ROSENFELD: Objection. I --
8 THE WITNESS: -- high-in-the-sky stuff. I --
9 MS. ROSENFELD: Mr. Grossman, it's a totally
10 hypothetical question, and I have no idea what he's asking.
11 Actually, two objections -- first, it's totally
12 hypothetical, and second, I have no idea what he's asking.
13 MR. GROSSMAN: Well --
14 MS. CORDRY: I mean, it's one of those ones, it's
15 one of those questions, if I had, if I had, you know, a
16 shoe, I would do this, but I don't have a shoe and I
17 don't --
18 MR. GROSSMAN: Yes. I -- all right. I think
19 that --
20 MS. CORDRY: -- I mean, it's like there are no
21 ponds there; there's nothing to be drained.
22 MR. GROSSMAN: Yes. I think, I think -- she's not
23 an expert; experts you can ask hypotheticals -- I think that
24 goes a little bit far afield. So let's try to phrase it in
25 a way that's more susceptible to an answer.

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1 MR. GOECKE: Okay.
2 BY MR. GOECKE:
3 Q Assuming that Costco did have to drain a pond to
4 build the gas station at the West Ox Road site, do you still
5 consider it to be the superb design that you mentioned a
6 moment ago?
7 MR. SILVERMAN: Objection.
8 THE WITNESS: My --
9 MR. GROSSMAN: Well, what's your objection?
10 MR. SILVERMAN: If she's not an expert witness on
11 her direct, she should not be asked expert witness questions
12 on her cross.
13 MR. GROSSMAN: No. In fairness, she --
14 MS. ROSENFELD: I have an objection. It's beyond
15 the scope. I mean, she hasn't talked about any kind of
16 water-related environmental concerns with respect to this
17 application at all.
18 MR. GROSSMAN: No, but I don't think that's what
19 his question goes to. I mean, she's held it up as being
20 kind of a model of what the proposed station in Wheaton is
21 not, and so I think he's entitled to inquire as to, as to
22 this. However, I'm not so sure that it really is going to
23 help me in, whatever her answer is, in deciding this case,
24 but I think that it's fairly within the scope of the direct,
25 and I will overrule the objections. You may answer.

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1 THE WITNESS: I need the question repeated,
2 unfortunately.
3 MR. GROSSMAN: Go ahead.
4 BY MR. GOECKE:
5 Q You're making me work on this one. Assuming what
6 I told you is true, that Costco had to drain a pond on the
7 site of the West Ox Road site that you think is such a
8 superb design, do you still hold that opinion about its
9 superb design and construction?
10 A I can't -- what does, what does draining a pond
11 have to do with good site planning and, well, that's all,
12 good site planning? What does a pond have to do with that?
13 I'm missing something. I can't answer your question because
14 I don't understand.
15 Q Okay. So it doesn't, it doesn't change your
16 opinion, I guess is what I'm hearing?
17 MR. GROSSMAN: Well, she said he couldn't -- she
18 couldn't answer the question.
19 MR. GOECKE: Because she didn't -- okay.
20 BY MR. GOECKE:
21 Q Moving on to the zoning text amendment, you read a
22 portion of a statement from Mr. Zion in which --
23 MR. GROSSMAN: Zyontz.
24 MR. GOECKE: I'm sorry?
25 MR. GROSSMAN: Zyontz.

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1 MR. GOECKE: Zyontz.
2 MR. GROSSMAN: Jeffrey Zyontz.
3 MR. GOECKE: Z-I-O-N-S-T?
4 MR. GROSSMAN: T-Z.
5 MS. CORDRY: Z-Y-O-N.
6 MR. GROSSMAN: Oh, Z-Y, yes.
7 MS. ROSENFELD: Z-Y-O-N-T-Z.
8 MR. GOECKE: Thank you.
9 BY MR. GOECKE:
10 Q That the ZTA was intended to protect the health
11 and welfare of the community, is that correct?
12 A No, that isn't correct. Mr. Zyontz's -- the quote
13 I used from Mr. Zyontz's memo to the County Council was just
14 a statement of what he sees the source of all zoning
15 authority.
16 Q So the purpose behind zoning is to protect the
17 health, welfare --
18 A Yes.
19 Q -- and morals of the community?
20 A Welfare of community, yeah, that's what --
21 Q Yes.
22 A -- that's what he stated.
23 Q Yes. And so that's what they did with the ZTA?
24 A No, not in my opinion.
25 Q That's what they aspired to do?

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1 A No, not in my opinion.
2 Q But you agree, they did pass the ZTA that created
3 a 300-foot buffer?
4 A Yeah, the Council --
5 Q Yes.
6 A -- passed ZTA 12-07 that created a 300-foot buffer
7 from certain sensitive sites.
8 MR. GROSSMAN: Right, not from residences. So --
9 MR. GOECKE: Not from residences.
10 BY MR. GOECKE:
11 Q And that --
12 A Lobby, though, I did to get residence included.
13 MR. GROSSMAN: I understand.
14 BY MR. GOECKE:
15 Q And in spite of your best efforts that the, your
16 -- what you advocated did not, was not adopted by the
17 Council?
18 A Well, Mr. Goecke, I was very involved in that. So
19 I guess, I guess I -- that seems to be correct.
20 Q And you would agree that the proposed Costco gas
21 station complies with ZTA 12-07?
22 MS. ROSENFELD: Could Mr. Goecke be more specific?
23 ZTA 12-07 encompassed a number of issues and not simply the
24 one.
25 MR. GROSSMAN: Well, I don't think he has to be.

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1 I mean, she's given her opinion about what the zoning
2 ordinance means in terms of, in terms of the health
3 requirement. I think she can answer this question.
4 THE WITNESS: Can you rephrase the question?
5 MR. GROSSMAN: He doesn't have to rephrase it, but
6 he can repeat it.
7 THE WITNESS: Or restate it, please.
8 BY MR. GOECKE:
9 Q Yes. Yes. You would agree that the proposed
10 Costco gas station at Wheaton complies with the ZTA?
11 A Yes.
12 MS. CORDRY: I apologize.
13 BY MR. GOECKE:
14 Q Moving along to the WHO guidelines that you talked
15 about, you are aware that the CASAC committee considered the
16 WHO guidelines in making their recommendations to the EPA,
17 do you?
18 A Yes.
19 Q Okay. So that those guidelines were considered
20 before EPA promulgated its final National Ambient Air
21 Quality Standards?
22 A On PM2.5.
23 Q On PM2.5?
24 A Yes.
25 Q Do you contest that they did not consider them for

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1 other particulates or emissions or toxins?
2 A EPA?
3 Q Yes.
4 A I only focused on PM2.5. I can't speak to that.
5 Q Okay.
6 A CASAC recommended a range of 11 to 13 micrograms.
7 Q Yes. And EPA adopted a number within that range?
8 A Yes, in the middle, uh-huh.
9 Q Moving along to the documents you talked about
10 regarding the air quality index, and I apologize, I'm not
11 sure which exhibit number this is, but I'll hold it up so
12 that you can see it. This is the chart with --
13 A Oh, yeah.
14 Q -- the color-coded chart --
15 A Right.
16 Q -- showing the different levels.
17 MS. ROSENFELD: Number 425.
18 MR. GOECKE: Thank you.
19 THE WITNESS: Oh, I think I may have been mistaken
20 putting that away.
21 MR. GROSSMAN: Here, you can look at my copy if
22 you promise to give it back. I'm not sure which page.
23 Which page was that?
24 MR. GOECKE: It's not numbered.
25 MR. GROSSMAN: All right. Particle pollution?

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1 The one that --
2 THE WITNESS: Yeah.
3 MR. GROSSMAN: -- has particle pollution?
4 THE WITNESS: It's that page.
5 MR. GOECKE: Particle pollution, that's correct.
6 THE WITNESS: Thank you. I don't know what I did
7 with mine.
8 MR. GOECKE: Page 7.
9 MR. GROSSMAN: Okay.
10 THE WITNESS: Uh-huh, yes.
11 BY MR. GOECKE:
12 Q And looking at that chart, so as you testified, it
13 goes from green to yellow to orange to red to a maroon or
14 purple color.
15 A Uh-huh.
16 Q Good is zero to 50 AQI value. The second level is
17 yellow, moderate. That's 51 to 100 AQI value, and the
18 actions to protect your health from ozone that are
19 recommended on that chart say unusually sensitive people
20 should consider reducing prolonged or heavy outdoor
21 exertion, is that correct?
22 A That's right, uh-huh.
23 Q And so that's moderate?
24 A Yes, that's moderate.
25 Q And then the next level up is unhealthy for

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1 sensitive groups.
2 A Uh-huh.
3 Q And the recommendation there is, the following
4 groups should reduce prolonged or heavy outdoor exertion.
5 A Uh-huh.
6 Q And that's the orange category.
7 A That's correct.
8 Q So it's the orange category that's unhealthy, not
9 the yellow category.
10 A The yellow category is a moderate air quality, not
11 good air quality, and unusually sensitive people should
12 consider reduced, reducing heavy outdoor exertion.
13 Q Right, but you characterized yellow as unhealthy
14 when in reality it's the orange, red, and maroon or purple
15 categories that are the only ones listed as -- that use the
16 word unhealthy.
17 A Did I?
18 MR. GROSSMAN: That's actually my recollection of
19 what you said as well.
20 THE WITNESS: One day it's orange, unhealthy for
21 sensitive groups, and 17 days as yellow, moderate caution
22 days.
23 MR. GROSSMAN: No, I know, but then subsequently,
24 when you discussed their recommendations, you characterized
25 it as unhealthy. That's my recollection, but I understood

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1 the distinction. I saw the chart.
2 MR. GOECKE: Okay.
3 BY MR. GOECKE:
4 Q And so when we move along then to --
5 A Moderate health danger for sensitive people is
6 what I said.
7 MR. GROSSMAN: Okay, whatever. I understand what
8 the chart says; that's what counts.
9 THE WITNESS: Thank you, Mr. Grossman.
10 MR. GROSSMAN: Sure.
11 BY MR. GOECKE:
12 Q And so when you testified about the designations
13 of different days in June, July, August --
14 A Well, I'm going to need it again.
15 Q So I guess, yes, first let's focus on the fine
16 particle summary you talked about as of September 6, 2012,
17 and again, I apologize, I don't have the exhibit number.
18 A Well, I think it's all one exhibit, is it not?
19 MS. CORDRY: Yes.
20 MR. GOECKE: This is all 425?
21 MR. GROSSMAN: Exhibit 425.
22 THE WITNESS: Yeah, uh-huh.
23 MS. ROSENFELD: Yes, it's all still in 425.
24 MR. GOECKE: Thank you.
25 BY MR. GOECKE:

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1 Q So this is page 9 of Exhibit 425.
2 A Yeah, uh-huh.
3 Q So all of the days listed on this chart are either
4 green or yellow?
5 A That's correct.
6 Q So there's no unhealthy days listed on this chart?
7 A There are, yes, there are yellow days of moderate
8 air quality.
9 Q Moderate air --
10 A Uh-huh.
11 Q -- excuse me. And then turning to the
12 month-by-month --
13 A Uh-huh.
14 Q -- charts that you talked about, there were --
15 A Now we're jumping to 2013.
16 Q We're jumping to 2013, yes. So in the month of
17 June there was one day that was orange?
18 A That's correct.
19 Q No red, no purple?
20 A Dear God, hopefully not. If it's purple, none of
21 us go outside.
22 Q My point is that you testified that more than half
23 the days were unhealthy when in reality only one day in the
24 month of June was. Correct?
25 A Let me see. In June?

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1 Q Right. There's one day that's unhealthy for
2 sensitive groups.
3 A Right, and 17 days as yellow, moderate caution
4 days. That's over 50 percent of the month, Mr. Grossman.
5 MR. GROSSMAN: Yes. I think his distinction he's
6 making is, I believe you used the word to describe that as
7 unhealthful, but he's just saying it really falls into
8 either moderate or okay except for one day.
9 THE WITNESS: But those are the words I used, as
10 yellow, moderate caution days; yellow --
11 MR. GROSSMAN: Well, we all have a different
12 recollection of that, but it doesn't --
13 THE WITNESS: But it's right here.
14 MR. GROSSMAN: -- it doesn't really matter.
15 THE WITNESS: Oh.
16 MR. GROSSMAN: The record will speak for itself on
17 the point, but the point --
18 THE WITNESS: Okay.
19 MR. GROSSMAN: -- the important point is that --
20 the distinction he's making is that the days that are
21 specified on that chart indicate, except for one day, they
22 were all in the green or the yellow. I think that's the
23 point.
24 THE WITNESS: Oh, yes, indeed, uh-huh.
25 MR. GROSSMAN: If that's not --

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1 MR. GOECKE: That is the point, thank you, and
2 I'll move on.
3 BY MR. GOECKE:
4 Q You also testified, Ms. Adelman, that certain
5 information shows that Maryland has a background, I believe
6 you said, background of PM2.5 of 10.9 micrograms per cubic
7 meter, is that correct?
8 A That's in the America Health Rankings.
9 Q Thank you.
10 A The State of Maryland rated 40th out of 50 states
11 for high levels of particulate air pollution at 10.9
12 micrograms per cubic meter of air.
13 Q And you agree that 10.9 is below the current EPA
14 National Ambient Air Quality Standard?
15 A It is 1.1. micrograms below the current EPA
16 standard.
17 Q Yes. And how much of an increase at the Stephen
18 Knolls School, for example, will the Costco gas station
19 increase that number?
20 A I have no idea. I've looked at that as it will be
21 an increase, but what the increase is I couldn't tell you.
22 Q So is it your position that any increase is
23 unhealthy?
24 A Yes. Yes. At that site, any increase is
25 unhealthy because it is too close to residential homes, it

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1 is too close to the school and, if you have a pollution
2 burden that is already extant at a site, one should not add
3 to it.
4 Q And so if we assume that there's -- I believe
5 there's been testimony that the contribution to the Stephen
6 Knolls School of PM2.5 from the gas station would be .003
7 micrograms per cubic meters. In any of the articles that
8 you looked at or relied on, did they show that to be an
9 unhealthy level?
10 A I didn't read any articles that specifically
11 pointed out what, what the additional pollution burden would
12 be at Stephen Knolls School.
13 Q Did you read any articles about incremental
14 increases at that low level?
15 A I didn't read any articles that said that if you
16 have an incremental increase, it is safe. I read articles
17 that addressed that question, and my impression from those
18 articles was that given that there is no known threshold
19 below which everything is fine, adding, adding pollution to
20 any given site is not recommended.
21 Q So, in your opinion, any, any additional pollution
22 coming from that location where the proposed gas site is to
23 be located is unacceptable?
24 A Yes.
25 Q Thank you.

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1 MR. GOECKE: No further questions.
2 THE WITNESS: Uh-huh.
3 MR. GROSSMAN: Okay. Any redirect? I can't let
4 your husband cross-examine you because he's not here.
5 THE WITNESS: Where is he?
6 MR. GROSSMAN: So --
7 MR. SHEVEIKO: He stepped out.
8 MR. GROSSMAN: -- we're going to have to skip him
9 and go directly to any redirect.
10 THE WITNESS: He's probably gone to lunch.
11 MR. GROSSMAN: Any redirect?
12 REDIRECT EXAMINATION
13 BY MS. ROSENFELD:
14 Q Ms. Adelman, when you testified that the station
15 complies with the ZTA, were you simply stating that the
16 station complied with the 300 --
17 MR. GROSSMAN: No, this is redirect. It's not --
18 you can't lead the witness that way.
19 MS. ROSENFELD: Okay. I have no further
20 questions.
21 MR. GROSSMAN: Okay. All right then, I thank you
22 very much, Mrs. Adelman. I'm --
23 THE WITNESS: I'm sorry, Mr. Grossman.
24 MR. GROSSMAN: -- glad you finally got a chance to
25 state your opinions and that of the Coalition. All right.

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1 So what's the pleasure of the group? Should we move
2 directly to Dr. Jison, or should we break for lunch?
3 MS. CORDRY: Lunch.
4 MR. GOECKE: Lunch break.
5 MS. ROSENFELD: Actually, Ms. Cordry is next.
6 MR. GROSSMAN: Oh, I thought that we were going
7 to --
8 MS. CORDRY: I will have a very small piece, but
9 it makes sense to do it.
10 MS. ROSENFELD: Yes, but I sent, I sent an e-mail
11 that said --
12 MR. GROSSMAN: Oh, yes, I saw the e-mail. I
13 just --
14 MS. ROSENFELD: -- she's just going to intercede
15 for very limited testimony on some EPA regulations followed
16 by Dr. Jison.
17 MR. GROSSMAN: How long will that very limited
18 testimony take?
19 MS. CORDRY: I would expect no more than to say
20 about 10 or 15 minutes and if they want to cross on that at
21 all, but let's do it after lunch, and then we can do it all
22 together.
23 MR. GROSSMAN: Everybody's hungry here; is that
24 the --
25 MS. CORDRY: Yes. I didn't actually eat breakfast

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1 this morning.
2 MR. GROSSMAN: All right.
3 MS. HARRIS: May I clarify, though? So once
4 Ms. Cordry testifies, then Dr. Jison will testify?
5 MS. CORDRY: Yes.
6 MS. ROSENFELD: Oh, yes.
7 MS. HARRIS: And she will take about how long? Do
8 you have a sense?
9 MS. ROSENFELD: I'm going to guess, a couple of
10 hours on direct.
11 MS. HARRIS: Okay. And then Ms. Cordry goes back
12 on? Is that the way it was?
13 MS. ROSENFELD: No, no, cross-examination.
14 MS. CORDRY: No, no. You can cross her, yes.
15 MS. HARRIS: Right, but then --
16 MS. CORDRY: Right. Oh, right.
17 MS. HARRIS: -- after we're done Ms. --
18 MS. ROSENFELD: Yes.
19 MS. HARRIS: -- Dr. Jison, then Karen is --
20 MS. CORDRY: Yes.
21 MS. ROSENFELD: Yes. Yes.
22 MS. CORDRY: I would doubt we'll get to me again
23 today, but --
24 MS. HARRIS: Okay. That's what I'm trying to
25 figure out because we hadn't -- we wanted one of our

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1 consultants to be here if you were going to be crossed, I
2 mean, direct testimony.
3 MR. GROSSMAN: I wasn't quite sure what you're
4 getting -- I saw the listing of the things --
5 MS. CORDRY: Right.
6 MR. GROSSMAN: -- but I thought you finished your
7 testimony, and I'm not sure -- and in that regard, I'm not
8 sure what else --
9 MS. CORDRY: What I'm talking about today is
10 talking about the EPA, the notice requirements and the EPA
11 standards and the pieces of legal analysis there. The other
12 part is some supplemental pieces that have come up since
13 what I testified about before.
14 MS. ROSENFELD: Information that wasn't available
15 when she testified.
16 MR. GROSSMAN: All right. I guess we'll deal with
17 it on a case-by-case basis as I hear it, because I'm not
18 sure what exactly we're talking about here. All right. So
19 it's five to 1:00. Let's return here -- let's recess for
20 lunch until 1:45.
21 MR. GOECKE: Thank you.
22 MS. HARRIS: Thank you.
23 MR. GROSSMAN: Okay.
24 (Whereupon, at 1:53 p.m., a luncheon recess was
25 taken.)

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1 MR. GROSSMAN: Yes. You look like you have a --
2 MS. ROSENFELD: I understand that someone from the
3 community is here.
4 MR. GROSSMAN: I understand a gentleman from the
5 community appeared.
6 MS. CORDRY: Is that you?
7 MR. ERSLEV: Sorry?
8 MR. GROSSMAN: Are you, sir, are you the gentleman
9 who said you wanted to testify?
10 MR. ERSLEV: Yes.
11 MR. GROSSMAN: And would you state your name and
12 address, please?
13 MR. ERSLEV: Yes. My name is Henrik Erslev at
14 10610 Dunkirk Drive, Wheaton, Maryland 20902.
15 MR. GROSSMAN: Okay. The problem -- I understand,
16 initially this gentleman said he was here to represent an --
17 MR. ERSLEV: Right.
18 MR. GROSSMAN: -- association, and my staff
19 informed him that they have to give at least 10 days' notice
20 and a statement has to be filed, explaining, and he
21 indicated then that he would like to speak on behalf of
22 himself, and my staff explained that we did have other
23 people here who have been waiting around. And so he's
24 welcome to stay at the hearing and at the next session of
25 the hearing and we try to fit you in --

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1 MR. ERSLEV: Thank you.
2 MR. GROSSMAN: -- but there are other people who
3 have been waiting around, and we certainly want to get to
4 our expert witness today. So --
5 MS. CORDRY: Okay. So we just want to move
6 forward then?
7 MR. GROSSMAN: We'll just go on --
8 MS. CORDRY: Okay.
9 MR. GROSSMAN: -- go on forward.
10 MS. HARRIS: Mr. Grossman, I had a preliminary
11 matter --
12 MR. GROSSMAN: Yes.
13 MS. HARRIS: -- at the appropriate time. Now?
14 MR. GROSSMAN: Yes. What is that?
15 MS. HARRIS: Over the break we had received a
16 number of documents from the opponents, and we do have some
17 objections to those documents. And right before the lunch
18 break you had indicated, well, we'll deal with that as it
19 comes along, but for efficiency purposes I really think it
20 may make sense to be able to identify now whether --
21 MR. GROSSMAN: Okay.
22 MS. HARRIS: -- things come in or out for
23 preparation purposes of moving forward.
24 MR. GROSSMAN: Did they pertain to Ms. Cordry's
25 testimony?

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1 MS. HARRIS: Ms. Cordry's, yes.
2 MR. GROSSMAN: Okay.
3 MS. HARRIS: There were three documents in
4 particular.
5 MR. GROSSMAN: Let's let Ms. Cordry take the
6 stand, and we'll -- and duke it out.
7 (Witness previously sworn.)
8 MR. GROSSMAN: Ms. Cordry, you are still under
9 oath --
10 THE WITNESS: Okay.
11 MR. GROSSMAN: -- having testified before. You
12 understand that?
13 THE WITNESS: Yes, I do.
14 MR. GROSSMAN: Okay.
15 MS. HARRIS: So, first of all, there was one
16 document -- and I certainly understand updated information
17 -- so I believe there was a 2014 DOE document.
18 THE WITNESS: Yes.
19 MS. HARRIS: I have no, we have no issue with
20 that; that's updated information. But there's, there were
21 three documents, one of which was a document regarding a
22 parking scenario, and it seems to me that there was -- this
23 information has been in the file for, in the record for at
24 least six months and that Ms. Cordry has testified
25 previously, there was no reason that this couldn't have been

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1 presented previously --
2 THE WITNESS: Right.
3 MS. HARRIS: -- and so I don't know why we're
4 getting --
5 MR. GROSSMAN: What's the -- hold on one second,
6 Ms. Cordry.
7 THE WITNESS: Yeah.
8 MS. HARRIS: Sorry. It is called --
9 MR. GROSSMAN: Let's identify what document we're
10 talking about.
11 MS. HARRIS: I don't know that it has a name.
12 It's called --
13 MR. GROSSMAN: Has this been exhibitized yet?
14 THE WITNESS: Yeah.
15 MS. HARRIS: Yes, and actually, this isn't it. It
16 is --
17 THE WITNESS: Right. I believe --
18 MS. HARRIS: -- it had to do with the parking
19 spaces.
20 THE WITNESS: Right. This is one -- if I could
21 just address it as we go along?
22 MR. GROSSMAN: Yes.
23 THE WITNESS: I actually put it in before, and
24 there was one typo of the number, and I was doing -- I said
25 I would just go back and review it and just make sure that

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1 it was absolutely correct. So this is just a revision --
2 MR. GROSSMAN: A revision or a correction?
3 THE WITNESS: One number is corrected. You know,
4 I wanted to just go through it and make sure that I had
5 everything correct. So it's basically the same document
6 that was in there before. I --
7 MR. GROSSMAN: Do you remember what the exhibit
8 number was on the earlier document?
9 THE WITNESS: I could probably find it while we're
10 doing this. I rearranged the way I counted up the numbers
11 because I thought it wasn't very clear the first way in
12 terms of what was before and what was after, but the basic
13 -- do we have the exhibit list?
14 MS. ROSENFELD: Yes.
15 THE WITNESS: Can you find it there?
16 MS. ADELMAN: Here's an exhibit list.
17 THE WITNESS: Okay. The basic, I mean, discussion
18 in there would take probably about two minutes to just
19 explain, again, what was there. I had said, when we left at
20 that time, that I would put a corrected exhibit in. So --
21 MR. GROSSMAN: Okay.
22 THE WITNESS: -- that's what that is.
23 MS. HARRIS: Okay. Well, I have less issue with
24 that than --
25 THE WITNESS: Right.

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1 MR. GROSSMAN: Right.
2 MS. HARRIS: Then that leaves two documents. One
3 is --
4 MS. ROSENFELD: Before we move on, is that exhibit
5 going to get a new number since it's a revision?
6 MR. GROSSMAN: Well, if it's a revision, we'll
7 probably just put a letter after it --
8 MS. ROSENFELD: Okay.
9 THE WITNESS: Right.
10 MR. GROSSMAN: -- if we can find out what number
11 it is.
12 THE WITNESS: Yeah. I should be able to find it
13 as we're going through here. Okay.
14 MR. GROSSMAN: Plus it'll throw every page off in
15 the --
16 MS. ROSENFELD: Right.
17 MR. GROSSMAN: -- lengthy exhibit list and you'll
18 have to deal with an angry administrative staff, and I'm
19 going to refer them to you.
20 MS. ADELMAN: She can deal with it.
21 MR. GROSSMAN: They're very nice, though. You get
22 a break. I'll tell you what. Rather than have you do it on
23 the stand --
24 THE WITNESS: Yeah. I mean, I'm --
25 MS. HARRIS: Okay. So keep --

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1 MR. GROSSMAN: -- let's move on to the other two
2 and --
3 THE WITNESS: Yeah.
4 MS. HARRIS: Okay. So the next one was, didn't
5 have a title. It said, Intersection Comparisons. It was a
6 chart, a four-page chart that set forth information that,
7 again, has been in the record for quite a long time. It
8 looks like the various traffic counts, and I'm not sure why,
9 having had the opportunity to testify once about traffic --
10 MR. GROSSMAN: Right.
11 MS. HARRIS: -- why we're rehashing things.
12 MR. GROSSMAN: What about that?
13 THE WITNESS: Well, it is a further summarization
14 of the comparisons between what Mr. Guckert had done and
15 what we had done in the way that Mr. Sullivan has come back
16 and testified about his numbers repeatedly, again and again
17 and again. This was some additional comparisons that I was
18 doing that I wanted to put in there that help illustrate
19 this question of -- it also goes to Dr. Cole's testimony in
20 terms of whether there's -- I think there was one question
21 in your mind, for instance, in his testimony, whether there
22 was, whether we had shown that the, in fact, the numbers
23 were higher than what Mr. Guckert had said, and some of this
24 comparison is just going to really showing very clearly how
25 much more of these, the overall intersections were and where

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1 the peak periods were and so forth.
2 MS. HARRIS: But, I mean --
3 MR. GROSSMAN: It sounds to me like something that
4 you've already covered, and I'm not sure that we need any
5 more --
6 THE WITNESS: I don't --
7 MR. GROSSMAN: -- additional evidence on this,
8 this point. I don't --
9 THE WITNESS: I can tell you, we -- I did not make
10 these particular comparisons before because, if I had, I
11 wouldn't be wanting to put them in now. We've talked about
12 some of them. Again, I don't think --
13 MR. GROSSMAN: I know, but I think --
14 THE WITNESS: -- this will take more than about
15 five or 10 minutes to go over that.
16 MR. GROSSMAN: Yes, but I mean, we can't have
17 continually going back over the same area over and over
18 again. I mean, in fairness, you testified at great length
19 over all of these things. What's the other one?
20 MS. HARRIS: The final one is something, the
21 Integrated Science Assessment for Oxides of Nitrogen-Health
22 Criteria. It's dated November 2013. So most particularly
23 about that one, on every single page of the document it
24 says: Draft, do not cite or quote. So I'm not sure what
25 there is to testify about that either.

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1 THE WITNESS: Well --
2 MR. GROSSMAN: What's --
3 THE WITNESS: -- in the first place, I'm not going
4 to testify about that, particularly. This is something
5 where, to the extent we referred to it -- what we put in as
6 No. 1, this is a new document; so we certainly couldn't have
7 testified about it before. It's the next stage in the
8 process by the EPA to do its next round of revisions on NO2,
9 and it is their first draft of all the new studies they've
10 gotten, what they're looking at, what they're doing, and so
11 forth.
12 So we are, we -- to the extent we pulled some
13 studies from it or charts from it or something like that,
14 these are studies and charts and things like that that are
15 in studies that can be referred to in and of themselves.
16 So, yes, we are definitely not going to try to ask you to,
17 at this point, take the draft analysis and considerations
18 they've made, but --
19 MR. GROSSMAN: Thank you.
20 THE WITNESS: -- I understand, because I
21 understand exactly what that says --
22 MR. GROSSMAN: Right.
23 THE WITNESS: -- but to the extent it says here's
24 a study, we can certainly say the study is out there and you
25 can look at the study, even if it happens to be referenced

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1 on that, you know, in that study. But we do want you to
2 know that this approach is going on, that the analysis is
3 being done.
4 MR. GROSSMAN: When you say I can go out there and
5 look at the study --
6 THE WITNESS: Right.
7 MR. GROSSMAN: -- I'm not sure what you mean by
8 that, because I am definitely not going out there and
9 looking at studies --
10 THE WITNESS: No. No. No, but --
11 MR. GROSSMAN: -- I'm only going to look at what's
12 in evidence before me.
13 THE WITNESS: Right, but what Ms. Jison can,
14 Dr. Jison can do, for instance -- Dr. Jison, I should say --
15 is take studies that she'd gotten from there, that she can
16 pull from there and ask you to look at what those studies
17 are saying and what the results are of them and so forth.
18 MS. HARRIS: But Dr. Jison is testifying today.
19 Those studies have been available. They weren't provided
20 previously. We received this document, which, again, says
21 do not cite or quote, 10 days ago, wasn't even accessible
22 until eight days ago.
23 MR. GROSSMAN: Right, but what she's saying is,
24 first of all, as far as the document itself, she's not
25 attempting to introduce that document for its, for purposes

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1 of citing any conclusions or fact-finding in it. What she's
2 saying is that it lists some studies and she might want to,
3 she might want to have Dr. Jison reference the studies.
4 Now, her objection is that, I mean, Ms. Harris's
5 objection is that if the studies were made previously, you
6 know, why weren't they given in advance if Dr. Jison is
7 going to testify today.
8 THE WITNESS: Well, we gave them 10 days of these
9 reports and the charts and the pages that have things that
10 Dr. Jison may reference. I mean, I'm not sure how many more
11 times we have to give that and --
12 MR. GROSSMAN: You're saying that you gave 10
13 days' advanced notice of these particular studies? Is that
14 what you're saying?
15 THE WITNESS: I pulled out of the 900 pages -- and
16 I actually reviewed all of it briefly --
17 MR. GROSSMAN: Well, I saw the reference to the --
18 THE WITNESS: Right.
19 MR. GROSSMAN: -- 900-page study and then the
20 summary that Ms. Rosenfeld forwarded to us.
21 THE WITNESS: Right, and I pulled some pages out
22 of that, and they have charts or references of studies,
23 lists of studies and so forth that are ones that we can
24 reference.
25 MS. HARRIS: I didn't count how many studies are

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1 referenced in that report, but I would --
2 MR. GROSSMAN: Right.
3 MS. HARRIS: -- venture to say there's probably
4 100. If in fact the studies were going to be referred to,
5 should not --
6 MR. GROSSMAN: Well, I don't know. I mean, what
7 Ms. Cordry appears to be saying is that she forwarded those
8 references earlier. Is that not correct?
9 THE WITNESS: No, no. No, no, no. We forwarded
10 the pages that listed these things.
11 MS. HARRIS: Ten days --
12 THE WITNESS: I mean, I don't think the -- that
13 document itself I don't think really has to be the issue. I
14 think you can look at what Ms. Jison puts in, and when she
15 puts in a, there are -- to the extent that she may pull a
16 chart or reference a study, those are within the pages that
17 we gave them. I mean, yes, there's a lot of studies there,
18 but you know, we're not the EPA. We don't, we don't really
19 have the resources to do an entire literature, you know,
20 survey and --
21 MR. GROSSMAN: No, but I'm trying to maintain a
22 fair procedure here --
23 THE WITNESS: Right.
24 MR. GROSSMAN: -- that's all, and I want to make
25 sure that with Dr. Jison testifying today, that, that the

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1 applicant's counsel has had the opportunity to review any
2 studies upon which Dr. Jison is relying. And so that's the,
3 that's the concern, and I'm just trying to ascertain whether
4 or not this, whatever you forwarded, has sufficiently given
5 any of that notice --
6 THE WITNESS: Right.
7 MR. GROSSMAN: -- and I'm, so far I haven't heard
8 an answer quite to that.
9 THE WITNESS: Well, I don't know. I mean, there
10 is a lot there to look at, yes, but this study -- this EPA
11 report did not come out until the very end of November. I
12 didn't find it until mid-December when I was doing my due
13 diligence to continue looking at what was going on in this
14 process.
15 MR. GROSSMAN: Let's keep that out for the time
16 being, because let's hear Dr. Jison's testimony and then
17 whatever references she gives, and if there's an objection
18 made to whatever reference she gives, we'll deal with that
19 at that point, okay --
20 MS. HARRIS: Okay.
21 MR. GROSSMAN: -- so we don't have to deal with
22 100 studies that we don't know are going to be relied upon.
23 MS. HARRIS: Thank you. Okay. And then just to
24 circle back and to clarify, so but for your clarification on
25 the parking chart, there'll be no further testimony

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1 regarding traffic, is that correct?
2 MR. GROSSMAN: That's Item No. 2 in the list. The
3 parking one is just clarification --
4 MS. HARRIS: Right.
5 MR. GROSSMAN: -- or a correction and that's,
6 that's okay. As far as the traffic, I don't see any reason
7 to go back to that again. You testified at great length
8 about that, including --
9 THE WITNESS: Actually -- I'm sorry.
10 MR. GROSSMAN: -- with videos and so on --
11 THE WITNESS: Right.
12 MR. GROSSMAN: -- and I just don't see any reason
13 for us to reenter that, you know, that phase of it.
14 THE WITNESS: Okay. I did put in another
15 document, which is not referenced, which was supplemental
16 observations on traffic at the mall during the holiday
17 period, which obviously I could not have put in before we
18 got to the holiday period. So --
19 MR. GROSSMAN: I know, but I just don't think it's
20 -- I don't think it's necessary for this case, and once
21 again, I mean, the witnesses have testified at great length
22 about traffic. Dr. Adelman testified at great length about
23 traffic. I think there's enough now from the opposition
24 side without having witnesses come back and revisit that
25 which they've already testified about.

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1 MS. ROSENFELD: Mr. Grossman --
2 THE WITNESS: No, I have not testified about
3 whether the traffic has become even worse during the holiday
4 period, which is really a --
5 MS. ROSENFELD: If I might interject, you know,
6 Mr. Sullivan's report relies a great deal on his estimations
7 as to what the peak hour of traffic will be and how many
8 peak hours there might be with respect to pollution
9 concentrations, and at the time that those studies were
10 done, we had not been through a holiday season. We now
11 have. And I do think -- the holiday season is not a 24-hour
12 period of time; it's protracted; it extends over a number of
13 weeks -- and I do think that that information is directly
14 relevant to the findings and the modeling assumptions that
15 Mr. Sullivan made, and I would ask that -- and it was not
16 available to us. We could not have testified; we would have
17 been speculating, and I do think that that testimony is
18 appropriate and relevant.
19 MR. GROSSMAN: Of course, if this hearing ended in
20 December, it wouldn't have been available either.
21 MS. ROSENFELD: If we had only had one report --
22 MR. GROSSMAN: I just, I mean, at what point --
23 MS. ROSENFELD: -- from Mr. Sullivan, it might
24 have been.
25 MR. GROSSMAN: -- at what point in the course of

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1 this do we stop collecting information that is then added to
2 further extend the hearing procedure? This hearing has gone
3 on since April of 2013. So, at some point, we have to draw
4 a close and say we're going to rely on the data that's been
5 established up to that point. I just don't see any benefit
6 in further extending the traffic discussion on this point.
7 MS. ROSENFELD: Well, with respect to that
8 document and the testimony on that point, I would note our
9 objection --
10 MR. GROSSMAN: Okay.
11 MS. ROSENFELD: -- to precluding any additional
12 evidence.
13 MR. GROSSMAN: Okay.
14 THE WITNESS: And that, that is not something I
15 was planning on testifying today in any case, but I --
16 MR. GROSSMAN: I'm sorry. You were not planning
17 to testify?
18 THE WITNESS: Not that, not the traffic today, no.
19 MR. GROSSMAN: Okay.
20 MS. HARRIS: Not today, but subsequently.
21 THE WITNESS: Yes. Yes.
22 MS. HARRIS: Right. My issue isn't whether it's
23 today or tomorrow. It's that it's at any time.
24 THE WITNESS: And we -- I guess I would just join
25 my counsel's position that the question of traffic is one of

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1 the fundamental questions in the hearing --
2 MR. GROSSMAN: I know and there's been --
3 THE WITNESS: -- to not be able to deal with the,
4 the worst traffic position --
5 MR. GROSSMAN: There's been ample evidence from
6 the opposition on the point, and you've had two witnesses
7 testifying at great length on the point. So I just don't, I
8 don't see that as a need to further supplement the record on
9 this point. There has to be a point at which we say the
10 data collection is over and we're going to look at the
11 evidence that's been presented.
12 Okay. So what's today's event?
13 DIRECT EXAMINATION
14 THE WITNESS: Today was discussion about part of
15 what's in the EPA regulation on NO2, in particular, and how
16 that standard works and how it relates to the, to the
17 measurements on the mall and so forth. So, and this is
18 dealing with -- and this has been put into the record
19 before. I'm sorry. I don't actually have the number right
20 now, but the -- actually, let me move back, one thing.
21 First, the parking space comparison that we're going to be
22 amending is --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- Exhibit 381.
25 MR. GROSSMAN: Okay. Let me look back here. All

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1 right. So the amended parking space comparison will be
2 381(a), and fortunately, it's on a page where there's room
3 at the bottom to expand. So --
4 THE WITNESS: Okay. Okay.
5 MR. GROSSMAN: All right. So revised, or let's
6 say, corrected net, Cordry net parking space comparison.
7 And do you have that with you, that document?
8 (Exhibit No. 381(a) was marked
9 for identification.)
10 THE WITNESS: I do. We can go ahead and put it in
11 today if you, if you wanted.
12 MR. GROSSMAN: Sure.
13 THE WITNESS: Okay.
14 MR. GROSSMAN: We identified it and you've
15 identified it. So let's --
16 MS. HARRIS: And can you remind me what that one
17 looks like, or do you have an extra copy?
18 THE WITNESS: Yeah. Yeah.
19 MS. HARRIS: Oh, that, right. Okay. Okay, thank
20 you.
21 MR. GOECKE: Thank you.
22 MR. GROSSMAN: Thank you. Okay.
23 THE WITNESS: Okay. All right. So this is the
24 Federal Register report of February 2010 that dealt with the
25 NO2 standards, and I believe this is No. 424(b), looks like,

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1 the highlighted excerpts from --
2 MR. GROSSMAN: Okay.
3 THE WITNESS: -- which I highlighted primarily
4 because this is small print and it's hard to find things and
5 it does go on and on and on. But in any case, in looking at
6 the NO2, the Register discusses the fact that unlike PM2.5
7 -- which is a fairly generalized pollutant, is not
8 dramatically different from area to area -- that NO2 levels,
9 on the other hand, have a fairly steep gradient of
10 exposures. So that the peak exposures on the roadways are
11 considerably higher than those a few hundred meters away; it
12 drops off fairly, fairly quickly over a several
13 hundred-meter gradient. It discusses that at page 6479. It
14 talks about that, in general, at this point, they were
15 seeing that, overall, roadway concentrations might be about
16 80 percent higher, on average, than concentrations away from
17 the roadways.
18 MR. GOECKE: And just again, this is lay opinion
19 about what the Federal Register says, or what --
20 MR. GROSSMAN: Yes. What --
21 MR. GOECKE: -- is this testimony right now?
22 THE WITNESS: Well, I --
23 MR. GROSSMAN: -- we're talking -- first of all,
24 which page are we looking at in the Federal --
25 THE WITNESS: Okay. We're looking at page 6479,

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1 and I really --
2 MR. GROSSMAN: Okay. And I see highlighted --
3 THE WITNESS: Yes.
4 MR. GROSSMAN: -- highlighted portions of 6479 --
5 THE WITNESS: Yeah.
6 MR. GROSSMAN: -- and there are three columns.
7 THE WITNESS: Right.
8 MR. GROSSMAN: Which column are you in?
9 THE WITNESS: Okay. In the middle column there --
10 MR. GROSSMAN: Right.
11 THE WITNESS: -- it says, where it starts out:
12 On-road and non-road mobile sources account.
13 MR. GROSSMAN: I see that. Okay.
14 THE WITNESS: Okay. About halfway down there, it
15 says, estimates presented in the REA, which is the risk
16 exposure and assessment, I believe that's what that stands
17 for --
18 MR. GROSSMAN: Well, I haven't found the word
19 estimates yet. Wait a second. Halfway down. I see.
20 THE WITNESS: Okay.
21 MR. GROSSMAN: For example, estimates presented --
22 THE WITNESS: Presented in the REA, yes, which
23 stands for --
24 MR. GROSSMAN: Right.
25 THE WITNESS: -- risk and exposure assessment,

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1 suggest that on slash near roadway NO2 concentrations could
2 be approximately 80 percent higher, on average, across
3 locations than concentrations away from roadways and that
4 roadway-associated environments could be responsible for the
5 majority of the peak NO2 hour exposures. It also goes on to
6 point out that monitors in the current network are not
7 really sited to measure these peak roadway concentrations.
8 So, at this point, in the rule they're discussing why
9 they're going back, and this is -- this rule is discussing
10 why they put a one-hour peak kind of standard into place.
11 MR. GROSSMAN: Right.
12 THE WITNESS: One of the things that Dr. Chase
13 mentioned is that, oh, because we didn't have a peak
14 concentration.
15 MR. GROSSMAN: Right.
16 THE WITNESS: And they are talking about dealing
17 with this gradient, and on page 6494, 6493 and 94 it's
18 discussing some more about this gradient and the levels of
19 exposure and how they vary. I'll refer you to those, see if
20 we can get the right place here. Okay. At the very bottom
21 of page 6493, it talks about the variability in the NO2
22 concentration gradient, and it suggests that while the
23 average was just 80 percent, that the concentrations could
24 be anywhere from 30 to 100 percent higher in the area but
25 away from the roadway peaks.

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1 MR. GROSSMAN: I don't understand that reference.
2 THE WITNESS: Okay.
3 MR. GROSSMAN: They, you're saying -- where are
4 you reading from?
5 THE WITNESS: At the very bottom of page 6493.
6 MR. GROSSMAN: The very bottom, middle column?
7 THE WITNESS: No, the left -- the rightmost column
8 there.
9 MR. GROSSMAN: All right. Where it says: The
10 Administration also noted?
11 THE WITNESS: Well, the highlighted part there.
12 MR. GROSSMAN: 6493 or 94?
13 THE WITNESS: 93.
14 MR. GROSSMAN: Oh, okay. I'm on 94. I thought --
15 THE WITNESS: Yeah.
16 MR. GROSSMAN: -- we were on this --
17 THE WITNESS: Sorry.
18 MR. GROSSMAN: All right. So you're saying where
19 it says: In considering?
20 THE WITNESS: Yes.
21 MR. GROSSMAN: Okay. So hold on a second. So I'm
22 not sure I understand what that sentence means, because it
23 says --
24 THE WITNESS: Right.
25 MR. GROSSMAN: -- it says that the NO2

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1 concentrations could be 30 to 100 percent higher than those
2 in the same area but away from the road. Are they saying on
3 the on-road concentrations would be --
4 THE WITNESS: Yes. Yes. Actually, let me go
5 back --
6 MR. GROSSMAN: Well --
7 THE WITNESS: -- let me go back to 6479 because it
8 makes the same point there again, I think in a little more
9 clearer way. If you go back up to 6479, on the right-hand
10 column there in the middle of 6479, there's a highlighted
11 section.
12 MR. GROSSMAN: Okay.
13 THE WITNESS: And they say, say -- the middle
14 section talks about an 80 percent average. On the
15 right-hand side, it says: As a result, we've identified a
16 range of concentration gradients in the technical literature
17 which indicate that, on average, peak NO2 concentrations on
18 or immediately adjacent to roads may typically be between 30
19 and 100 percent greater than concentrations monitored in the
20 same area but further away from the road.
21 MR. GROSSMAN: Okay.
22 THE WITNESS: So, in other words, the average --
23 MR. GROSSMAN: That is a clearer statement of the
24 other.
25 THE WITNESS: Right.

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1 MR. GROSSMAN: Right.
2 THE WITNESS: Exactly. I'm sorry. I missed
3 seeing that one the first time around.
4 MR. GROSSMAN: All right.
5 THE WITNESS: So the average is perhaps 80
6 percent, but there can be a variant anywhere from 30 to 100
7 percent.
8 MR. GROSSMAN: So the peaks are higher closer to
9 the source.
10 THE WITNESS: Right. Right.
11 MR. GROSSMAN: So that's no surprise. I mean, why
12 is that a revelation?
13 THE WITNESS: It's not a revelation. What I'm
14 trying to get to is what --
15 MR. GROSSMAN: Okay.
16 THE WITNESS: And in the middle there, it talks
17 about, while this concentration gradient is present in
18 almost all roads, the characteristics can be differentiated,
19 are heavily dependent on factors such as traffic volumes and
20 so forth. So, again, as compared to PM2.5 -- which is more
21 of a global sort of pollutant, it doesn't vary nearly as
22 much -- the NO2 has a very, relatively, a very steep
23 gradient, which --
24 MR. GROSSMAN: Well, wait a minute. What's your
25 expertise to testify about that comparison between the

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1 global incidence of --
2 THE WITNESS: Okay.
3 MR. GROSSMAN: -- PM2.5 versus NO2 concentrations?
4 THE WITNESS: I can go back to -- it's really not
5 that important, the PM2.5. My real point here is trying to
6 talk about the NO2.
7 MR. GROSSMAN: All right.
8 THE WITNESS: I can find you something that says
9 that PM2.5 is much more globally there, but my point was
10 simply, the NO2 regulations, in terms of dealing with, are
11 dealing with this concentration gradient, and it goes
12 through how they set the standard and how the standard is
13 supposed to be applied.
14 MR. GROSSMAN: Well, I guess my question is,
15 what's your expertise to tell me how to apply an EPA
16 standard as opposed to --
17 THE WITNESS: The rule says it, and I'm trying to
18 go through the rule and come to where we, what --
19 MR. GROSSMAN: Why isn't this testimony from one
20 of the opposition experts on this area, not --
21 THE WITNESS: Because none of them are expert in
22 reading legal documents. None of them want to try to
23 interpret a document. They want to tell you about what the
24 EPA measurements were. I'm walking you through the document
25 and the rule.

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1 MR. GROSSMAN: Well, I think there's a difference
2 between walking me through the document and giving your own
3 perception --
4 THE WITNESS: I am not --
5 MR. GROSSMAN: -- and that's the, that's my
6 concern here.
7 THE WITNESS: Okay. I am not trying to give you
8 anything that is not in this document.
9 MR. GROSSMAN: All right.
10 MS. ROSENFELD: Mr. Grossman, if I might
11 interject, I mean --
12 MR. GROSSMAN: Yes.
13 MS. ROSENFELD: -- you've seen the rules. This is
14 excerpted from a much larger rule --
15 MR. GROSSMAN: Right.
16 MS. ROSENFELD: -- and to -- this really is just
17 designed to walk you through the different pieces of the EPA
18 regulation with respect to NO2 and monitoring and how the
19 EPA applies its guidelines with respect to monitoring.
20 And --
21 MR. GROSSMAN: Then what I need is the citation to
22 the portion that says how they apply their rule. My concern
23 is that you have a non-expert in this area trying to tell me
24 her opinion as to how the EPA applies the rules.
25 MS. ROSENFELD: Well --

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1 MR. GROSSMAN: If there's something in the
2 language here that says we apply the rule as follows, I'll
3 be happy to look at that.
4 THE WITNESS: Right, and --
5 MS. ROSENFELD: And I think what she's trying to
6 do is point you to the sections of the rule that do that.
7 MR. GROSSMAN: That's fine. I don't think that's
8 exactly what she was doing. So --
9 THE WITNESS: Okay.
10 MS. ROSENFELD: Okay.
11 THE WITNESS: So far all I've done is say the
12 first part of what the EPA was doing in doing its rule is to
13 explain that they're setting the rule in view of the fact
14 that they're dealing with this fairly steep concentration
15 gradient. That's all I've said so far --
16 MR. GROSSMAN: All right.
17 THE WITNESS: -- and I've pointed you to the
18 place, some of the places in the rule where they say that.
19 MR. GROSSMAN: I don't want to put too fine a
20 point on this, but I think you're putting too fine a point
21 on this. My feeling is that what you're doing here is, is
22 going beyond what my analysis is or should be in this case
23 probably.
24 MS. ROSENFELD: In --
25 MR. GROSSMAN: I'm not going to cut it off because

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1 I want to see and make that determination after I hear what
2 Ms. Cordry has to say on the point, but there is a national
3 standard out there and I'm going to try to apply that
4 national standard. I'm not sure that this background
5 information, as to how it was developed, in effect, is going
6 to really help me apply that standard as opposed to just
7 applying it, but --
8 THE WITNESS: Okay.
9 MS. ROSENFELD: And I proffer to you, in the
10 context of Ms. Cordry walking you through this regulation,
11 that the standard is not as black and white as you might
12 think, that --
13 MR. GROSSMAN: Okay.
14 MS. ROSENFELD: -- there's more nuanced
15 application of that, and so that's why we're walking you
16 through this particular piece --
17 MR. GROSSMAN: Okay. Well, I'm --
18 MS. ROSENFELD: -- of this rule for this one
19 pollutant.
20 MR. GROSSMAN: -- I'm listening.
21 MS. ROSENFELD: Thanks.
22 MS. CORDRY: Okay. All right.
23 MR. GOECKE: And we would object to this testimony
24 for the reasons you stated, Mr. Grossman.
25 THE WITNESS: Okay. If I give you --

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1 MR. GROSSMAN: All right, but I -- well, I don't
2 know that when -- the reasons I stated were my concerns
3 about whether or not this goes to something that is beyond
4 what I, in effect, should be applying and whether this
5 witness is giving me her own expert opinion when she's not
6 an expert, qualified as an expert in the area, but let's
7 hear what she has to say and then we can make that --
8 MR. GOECKE: Well, may I further my objection
9 then? So this document talks about the process the EPA
10 underwent in formulating its standards, which I think is not
11 relevant to these proceedings, nor is she qualified to
12 testify about it. If the opposition wants to brief this as
13 a legal issue instead of her giving legal opinions from the
14 witness stand, then they may do that, I think --
15 MR. GROSSMAN: Right.
16 MR. GOECKE: -- but I think that in this format
17 it's inappropriate.
18 MS. ROSENFELD: Well --
19 MR. GROSSMAN: Yes, and I'm -- you don't have to
20 say anything more because I think that -- I'm going to
21 listen to what she has to say on this, and we'll weight it
22 accordingly, depending on whether or not it is, in effect,
23 an unexpert expert opinion or it is going beyond or it's
24 actually satisfying what Ms. Rosenfeld says it'll satisfy,
25 which is that the regulation is not as black and white as I

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1 might think and therefore this is necessary to understand
2 the application of the regulation as distinguished from how
3 it was derived --
4 THE WITNESS: Right.
5 MR. GROSSMAN: -- because how it was derived
6 really is not my, in, not in my bailiwick, but --
7 THE WITNESS: Right.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: Okay.
10 MR. GROSSMAN: Go ahead.
11 THE WITNESS: Yeah. How it's derived is simply
12 the part that goes to how it was set and what the setting --
13 anyway, we'll go forward. Okay. Because of this
14 variability in the concentration levels and because it could
15 be anywhere from 30 to 100 percent, the EPA states in here
16 we have to look at two different ways to set the level, and
17 they discuss this on 6493 and 6494. I can read it
18 precisely. I'll paraphrase slightly, but I think I --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- can read you the pieces. So,
21 basically, look, we can do it one of two ways: we can set a
22 standard for the entire area with the notion that if we set
23 the standard here and the peak roadway exposures are higher,
24 then we'll, you know, then we'll keep the peak roadways down
25 if we set the area-wide standard low enough, or we can set

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1 the standard on the roadway at this high of a point, knowing
2 that that will mean that the area standards will be lower if
3 there's this gradient. Okay? They say that several times
4 in here on 6394.
5 One of the things I just said is, look, if it was
6 an absolute number that the roadway was always exactly twice
7 as much as the peak, you could set one at 50 and you'd know
8 the other one would be 100 or you could set it at 100 and
9 know the other one would be 50. Because there's some
10 variability, they say it makes the analysis a little more
11 complicated. So they had to look at these two different
12 approaches of which way do we set: do we set an absolute
13 peak number in order to keep the other exposures lower, or
14 do we set an area-wide number with the assumption that that
15 will keep the peak down? Then they -- as I say, that's
16 discussed in detail on 6493 and 6494.
17 One, the first approach that they looked at was to
18 set a maximum roadway peak concentration between 80 to 100
19 parts per billion, which would translate into 150 to 190
20 micrograms per meter cubed -- the 100 parts per billion, one
21 hundred ninety is --
22 MR. GROSSMAN: Right. I remember.
23 THE WITNESS: -- what we have. Alternatively,
24 they said, we can set an area-wide NO2 concentration between
25 50 to 75 parts per billion, which would be intended to limit

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1 the roadway exposures to that same 100. In other words, if
2 you set one at 50 and it was 100 percent higher, then you
3 would know you would never go beyond 100 parts per billion
4 on the roadway, or you could set -- if it was only 30
5 percent higher, then maybe if you set 75, that would be good
6 enough. So they discuss ad nauseam in here the potential
7 back-and-forth of how to deal with these things and the fact
8 that, because there's this variation in the multiple, it's
9 hard to decide which one to do.
10 One of the things they explicitly state in here is
11 that, on page 6493, is that, quote, the adverse health
12 effects with respect to NO2 can be seen in as little as 30
13 minutes and that, quote, such health effects have been
14 associated with higher short-term -- i.e., peak -- exposure
15 concentrations, such as those that can occur on or near
16 major roadways and near other sources of NO2, as well as the
17 lower short-term exposure concentrations that can occur in
18 areas not near major roadways or other sources of NO2. So
19 that's what they're saying they're trying to deal with: the
20 health effects not only on the peak roadways but near the
21 roadways.
22 What it says is, setting the -- then on page 6494
23 they say that setting the level at 100 parts per billion,
24 the 190 micrograms per meter cubed, quote, would be expected
25 to maintain peak area-wide NO2 concentrations, in other

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1 words, the concentrations away from the roads in the area,
2 the peak but over the overall area, not the peak peak, but
3 the peak area-wide -- this got really, I had to keep
4 scratching my brain, while I was reading this, to keep these
5 two peaks separately -- but the peak area-wide NO2
6 concentrations, and this is a quote again, considerably
7 below those measured in locations where key U.S.
8 epidemiological studies have reported associations with more
9 serious respiratory effects, as indicated by increased
10 emergency department visits and hospital admissions, and
11 refers to levels in the range of 93 to 112 parts per
12 billion.
13 MR. GOECKE: I'm sorry. Where are we now?
14 THE WITNESS: This is on 6494, I believe, yeah,
15 6494, and it is --
16 MR. BRANN: Middle column, towards --
17 MR. GOECKE: Which column?
18 THE WITNESS: Yeah, let me find this.
19 MR. BRANN: Middle, down at the bottom.
20 MR. GOECKE: The bottom paragraph?
21 THE WITNESS: I'm not sure if I got it all
22 highlighted or not. Oh, I'm sorry. Actually, I'm sorry,
23 yeah, it is on 6494. I turned the page too far, yeah. In
24 the middle of the middle column there, at the bottom of the
25 middle column on 6494: The Administrator also noted that a

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1 standard level at or somewhat below 100 parts per billion,
2 and so forth of what I was quoting there. And it refers to
3 studies where the 99th percentile of the one-hour
4 contributions were in the range of 93 to 112 parts per
5 billion.
6 It says, it says those studies also provided
7 support for setting an area-wide standard at a 98th
8 percentile measurement of 85 parts per billion, which is 160
9 micrograms per meter cubed; that using the 100 parts per
10 billion peak level, peak level on the roadway -- so, in
11 other words, if there's anywhere in the vicinity that was
12 100 parts per billion, if you made sure that never went
13 above 100 parts per billion anywhere in the area, that would
14 be expected to limit area-wide levels to 75 parts per
15 billion or below -- and it noted one major study that
16 supported even setting a limit, an area-wide limit of 50
17 parts per billion, or 94 micrograms per meter cubed, which,
18 if you'll recall, was right at the level of the background
19 monitors that we have been discussing in this case. So the
20 alternative, again, was to set an area-wide standard of 50
21 to 75 parts per billion in order to try to keep the roadway
22 at 100 or below.
23 MR. GROSSMAN: Well, Ms. Cordry, I mean, all of
24 this is background as to why they ultimately set a 24-hour
25 or a one-hour NO2 concentration.

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1 THE WITNESS: Right.
2 MR. GROSSMAN: What is it that, that you're, point
3 to me --
4 THE WITNESS: Okay.
5 MR. GROSSMAN: -- the spot in the regulations that
6 you want me to look at that shows me how I should interpret
7 that rule.
8 THE WITNESS: Okay. The point is that this is a
9 standard that says there is a violation under the EPA if
10 anywhere in an area goes above 190, and I'm going to come
11 back to the charts in just a moment, but it is not saying
12 that we expect any particular point -- that every point in
13 the area must be above 190 in order to have a problem.
14 They're saying, if anywhere in a general area is above 190,
15 there's a problem because that means exposures in the area
16 near there are probably also going to be exceeding the
17 levels that we consider problematic, and they make clear
18 that they consider it problematic to be having levels in the
19 range of 50 to 75 parts per billion. That's why we're
20 limiting the very peakest concentrations to no more than
21 190.
22 MR. GROSSMAN: Okay.
23 THE WITNESS: So, in other words, this regulation
24 is not saying you can have 190 everywhere in the area. So
25 I'll come back to the exposure charts in just a moment.

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1 MR. GOECKE: I object to that characterization. I
2 don't think that's what it says.
3 THE WITNESS: It absolutely says 190 anywhere in
4 the area.
5 MR. GOECKE: That's her opinion.
6 THE WITNESS: I'll let you read these again, but
7 I'm going to say that's what it says. You can read it
8 again, and I think you will agree because, again, they're,
9 they are contrasting two ways of doing this: an area-wide
10 number, which they were looking at in the range of 50 to 75
11 in order to keep the peak from not going above 100, or a
12 peak of 100 in order to keep the area-wide in the range of
13 50 to 75.
14 So the point is, you can't just say that because
15 some particular place is at 50 to 75, there's no problem.
16 If the area -- if there's a point in the area that is at 190
17 or above, you are violating the standard. And like I say,
18 I'll come back to this in just a moment, but that's, that is
19 the basic point about this that you get from the
20 regulations.
21 So if we look at the various charts that were done
22 by Mr. Sullivan --
23 MR. GROSSMAN: Yes. Which charts are you looking
24 at?
25 THE WITNESS: Okay. So I'll start with the one

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1 that was done in November, and here, I made copies of these
2 because these are all, have been in the record already.
3 MR. GROSSMAN: Right.
4 THE WITNESS: This is --
5 MR. GROSSMAN: This is --
6 THE WITNESS: -- Figure 1-16 from, I believe this
7 was Exhibit 15 --
8 MR. GROSSMAN: Okay.
9 THE WITNESS: -- was his original report. If you
10 look at this one, which was done with the incorrect --
11 MR. GROSSMAN: Right.
12 THE WITNESS: -- background --
13 MS. ADELMAN: Right.
14 THE WITNESS: -- numbers, this particular one
15 shows levels on the roadways and around the station. It
16 does not show an isopleth going above 175, and it doesn't
17 show you what the max is. So --
18 MR. GOECKE: And I'm sorry. This is Exhibit 116,
19 you said?
20 THE WITNESS: Yes --
21 MR. GOECKE: Okay.
22 THE WITNESS: -- Figure 1-16, yeah, out of
23 Exhibit --
24 MS. ROSENFELD: 1-16.
25 MR. GOECKE: Okay.

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1 THE WITNESS: I believe this is --
2 MR. GROSSMAN: 1-16.
3 THE WITNESS: Yes.
4 MR. GOECKE: As part of the November 2012 report.
5 THE WITNESS: Right --
6 MR. GROSSMAN: Out of the Sullivan report.
7 THE WITNESS: -- which I believe is Exhibit 15.
8 This one, as I say, in particular, does not show an isopleth
9 above 175, but again, as we remember, this one has a
10 background level which is 70 micrograms per meter cubed too
11 small. So, at a minimum, you're adding the 70 on to these
12 various numbers here, which means clearly on the roadways
13 you're well above 190 and also in that central area there
14 you're well above --
15 MR. GROSSMAN: Wait one second. At a minimum,
16 you're adding the 70? Well, I didn't follow that.
17 THE WITNESS: Okay. If you remember, this was
18 when we had -- this was done when we had the incorrect --
19 MR. GROSSMAN: Right.
20 THE WITNESS: So rather than 98 micrograms per
21 meter cubed in the background, it should actually be -- I
22 mean, instead of 28 micrograms, it should actually be 98.
23 MR. GROSSMAN: Yes, I remember the translation
24 problem and the correction --
25 THE WITNESS: Right.

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1 MR. GROSSMAN: -- but I'd prefer, if I'm going to
2 reach a conclusion, to see a chart that says what you're
3 saying.
4 THE WITNESS: We will come to that one. We'll
5 come to that one.
6 MR. GROSSMAN: Okay.
7 THE WITNESS: This was his original one.
8 MR. GROSSMAN: Right.
9 THE WITNESS: This one did not show a 190. In
10 December of 2012, there was an exhibit put in, and I think
11 this, this one I do not believe has been -- the December 12
12 report was put in and then they withdrew it, but this is
13 the --
14 MR. GROSSMAN: Right.
15 THE WITNESS: -- equivalent chart from the
16 December 12th chart, and this one they drew --
17 MR. GOECKE: I'm sorry. Do you have copies of
18 this?
19 THE WITNESS: Yes. If you could give her that
20 one, please.
21 MS. ROSENFELD: Oh, which one was this?
22 MR. GOECKE: December 2012.
23 THE WITNESS: This is the one that's labeled
24 December 18th, 2012.
25 MR. GROSSMAN: And then they, he substituted the

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1 January 1. Is that what you're talking about?
2 MS. ROSENFELD: Oh, maybe -- wait. Maybe --
3 MS. HARRIS: Michele, I think you gave us the
4 wrong one first.
5 MS. ROSENFELD: I gave you the wrong one the first
6 time. Okay.
7 THE WITNESS: Right, and I will --
8 MS. ROSENFELD: This is the November --
9 THE WITNESS: Right.
10 MS. ROSENFELD: -- I thought she said December.
11 Hold on.
12 THE WITNESS: Right. No, I want the -- well,
13 they've got the November one and then the December one.
14 MS. ROSENFELD: That's the first one. You have
15 November. Then you have December.
16 THE WITNESS: Yes.
17 MS. ROSENFELD: Right.
18 MR. GOECKE: So November is Exhibit 15 --
19 THE WITNESS: Right.
20 MR. GOECKE: -- and then the December one is what
21 exhibit?
22 THE WITNESS: It would be a new exhibit.
23 MS. ROSENFELD: No, no, no, no.
24 THE WITNESS: This one I put in simply to show
25 that in December --

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1 MR. GOECKE: Wait. This --
2 MS. ROSENFELD: Wait. Wait.
3 MR. BRANN: Wait. Wait, wait.
4 THE WITNESS: Okay.
5 MS. ROSENFELD: Wait.
6 MR. GOECKE: There's no exhibit or --
7 THE WITNESS: Right. This would be a new exhibit
8 number, December 16th, 2012.
9 MS. ROSENFELD: December 16th --
10 THE WITNESS: Oh, no. I'm sorry, December 18th,
11 2012.
12 MS. ROSENFELD: December 18th, 2012, which came
13 from his December report --
14 THE WITNESS: Report.
15 MR. GROSSMAN: Yes, there was a December report
16 that was --
17 MS. ROSENFELD: -- which did have an exhibit
18 number. So --
19 MR. GOECKE: I thought it did, yes.
20 THE WITNESS: Oh, did it?
21 MR. GROSSMAN: Yes.
22 THE WITNESS: Oh, it did? Okay. I'm sorry.
23 MS. ROSENFELD: Of course it did.
24 MR. GROSSMAN: But then they withdrew the report
25 and substituted the January 2013 report.

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1 THE WITNESS: Right.
2 MR. GOECKE: Correct.
3 THE WITNESS: But I put this one in simply to show
4 that in December they drew an additional isopleth line which
5 shows that in the roadways, even without the correction,
6 they were showing it was at 190 at that point. And this
7 was, this chart was withdrawn, never any explanation given.
8 Perhaps they didn't want to show a 190 anywhere in the area.
9 MR. GROSSMAN: Where are you seeing the 190?
10 THE WITNESS: Okay. On the roadways there, if
11 you --
12 MR. GROSSMAN: Oh, I do see, I see a 190.
13 THE WITNESS: It's 190 -- basically, the length on
14 University Boulevard and then pretty much the entire skinny
15 length of Georgia Avenue there is all above, at 190 or
16 above.
17 MR. GROSSMAN: Okay.
18 THE WITNESS: Okay. So even with the original
19 uncorrected numbers, they were at 190, and as I said --
20 MR. GROSSMAN: Is this showing the concentrations
21 assuming the gas station were located there --
22 THE WITNESS: Yes.
23 MR. GROSSMAN: -- because I don't know, it
24 doesn't, or is this --
25 THE WITNESS: Yes.

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1 MR. GROSSMAN: -- showing it before the gas
2 station?
3 THE WITNESS: No, this is the one that has the gas
4 station included.
5 MR. GROSSMAN: Okay.
6 THE WITNESS: Now, there's a sufficient distance
7 there, that it's fairly unlikely that the gas station
8 actually is having any particular effect on the roadways --
9 MR. GROSSMAN: Right.
10 THE WITNESS: -- I'll, that's my opinion.
11 Mr. Chase or Mr. Sullivan --
12 MR. GROSSMAN: They'll take that opinion.
13 THE WITNESS: Right. If Mr. Chase or Mr. Sullivan
14 wants to dispute that, you can, but, but my guess is that I
15 don't think anybody would dispute that this gas station is
16 not having any particular effect up on University or Georgia
17 there in terms of changing those levels.
18 MR. GROSSMAN: Well, since you raised that point,
19 let me ask you this question. If it is not -- let's say,
20 let's say there's something that's 195 on the roadway --
21 THE WITNESS: Right.
22 MR. GROSSMAN: -- and the gas station is not
23 having any effect on it. How would I factor that in in
24 terms of my applying the standard to this gas station?
25 THE WITNESS: The factoring which you would do is

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1 that -- this area is already out of compliance with the,
2 with the EPA standard, overall.
3 MR. GROSSMAN: In one isolated spot and you
4 consider that to be a violation from what you testified.
5 THE WITNESS: It says you should not be above 190
6 anywhere in the area.
7 MR. GROSSMAN: Well, I know. That's --
8 THE WITNESS: Right. Right.
9 MR. GROSSMAN: -- they dispute that
10 interpretation, but that's what you said. So --
11 THE WITNESS: Right. You --
12 MR. GROSSMAN: -- so I'm just saying, let's assume
13 that following your interpretation of it, that it is an
14 exceedance of the standard at some location that will not be
15 affected by the gas station --
16 THE WITNESS: And what I would say is, my reading
17 of this, of the EPA standard is that if you're above it
18 anywhere, your problem, and their whole goal is to reduce
19 the area, to reduce the levels, and if we're at 190 and you
20 see the gradient coming down, there is still a problem far
21 off the roadway because they're trying to keep the levels --
22 if it's 190 maximum on the roadway, we want to reduce that
23 because we want to keep the surrounding areas well below
24 190. That's the whole point of keeping that roadways not
25 even go above 190. And if you look at this, what you see is

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1 that, you can sort of really see what happens. The roadways
2 are there at 190. You see it dropping off, away from the
3 roadways, and then -- which is what would have happened
4 without the gas station -- and then you see this gas
5 station, and as it drops off, all of a sudden it spikes back
6 up again right at the gas station and you have a new source
7 of additional pollutions going --
8 MR. GROSSMAN: But no, but go back to my, my --
9 THE WITNESS: Okay.
10 MR. GROSSMAN: -- question, and that is, let's
11 assume that you're correct in your interpretation that based
12 on EPA regulations, an exceedance anywhere is considered to
13 be an exceedance of the regulation but that exceedance is
14 not affected at all by the gas station. How do I factor in
15 that --
16 THE WITNESS: Okay. What I would --
17 MR. GROSSMAN: Let me finish the question.
18 THE WITNESS: I'm sorry.
19 MR. GROSSMAN: How do I factor that into the
20 question of whether or not I find the, that the gas station
21 special exception is going to affect somebody's health?
22 THE WITNESS: Well, what I would factor in is that
23 if you're above the EPA standards in an area, you should not
24 be adding an additional pollution source.
25 MR. GROSSMAN: Even if it doesn't have any impact

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1 on that area that --
2 THE WITNESS: No, no. No. What I'm saying is the
3 station here may not have an impact up on people living on
4 the far side, for instance, of Georgia Avenue --
5 MR. GROSSMAN: Right.
6 THE WITNESS: -- but that's not to say that it
7 does not have an impact on the people in this general, in
8 the area near it, which is what we're measuring right here.
9 MR. GROSSMAN: Well, then nobody can, they can't
10 add another hamburger stand either, obviously, anywhere near
11 it --
12 THE WITNESS: Well --
13 MR. GROSSMAN: -- because that's going to add
14 something --
15 THE WITNESS: Well, it may --
16 MR. GROSSMAN: -- but it's not going to affect
17 that, that area that's in -- I don't understand your
18 concept, how your concept can really be applied to this kind
19 of case.
20 THE WITNESS: Okay. Your question -- at different
21 times you've asked what happens if they are above the
22 standard --
23 MR. GROSSMAN: Right.
24 THE WITNESS: -- and I think our view has, our
25 stated position, and I think the law is, generally, that if

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1 you're above the standard, you're not supposed to be adding
2 to the standard. And, again, let me start with this: This
3 is, this is the case where we have not gotten to the point
4 where it's above the standard back at the gas station. This
5 was just talking, under their incorrect standard, they were
6 even having a problem --
7 MR. GROSSMAN: Right, but I'm saying, even if we
8 assume that it's, it's measuring 220 instead of 190, I'm
9 saying, how do I apply your interpretation of the EPA
10 standards to the gas station application here if in fact
11 it's conceded that the gas station would not anywhere cause
12 an exceedance of the standards -- I know you may dispute
13 that it wouldn't -- but if that's the case?
14 THE WITNESS: Okay. Because, if the standard says
15 you're not supposed to exceed 190 anywhere --
16 MR. GROSSMAN: Yes.
17 THE WITNESS: -- because we are trying to keep the
18 levels everywhere far below 190, then that means everywhere
19 in this area we're already in exceedance of the standard
20 before we put the gas station in. Now, when we add the gas
21 station on top of an area that's already out of compliance
22 with the EPA standards, you're adding an additional
23 pollution source that is creating an additional violation
24 above and beyond what is already there. And I think it's --
25 we've certainly been from the position that if the area is

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1 out of compliance, you shouldn't be adding more pollution to
2 it.
3 MR. GROSSMAN: Well, I'll tell you right now, I
4 can't accept your method of applying the standards the way
5 you want to do it because it seems to me that means nothing
6 can happen anywhere, even if it's not a -- not bringing
7 things into or worsening the noncompliance situation.
8 That's what, that's the essential bottom line of what you're
9 saying, is that if it's in exceedance anywhere, that you
10 can't do anything anywhere that might, even though it
11 wouldn't make the exceedance itself worse, you just can't do
12 it. I can't see that as --
13 MS. ROSENFELD: Well --
14 THE WITNESS: Okay. Well --
15 MR. GROSSMAN: -- I can see that as --
16 THE WITNESS: Okay.
17 MR. GROSSMAN: -- being a sensible application of
18 the standard of whether or not the gas station is going to
19 affect people's health.
20 THE WITNESS: Okay. First off, I will come to
21 you, and our things show we have exceedance in other ways,
22 but if the standard says -- and I believe this is the way
23 the standard should be read -- that it should not go above
24 190 on a roadway, it should not be, by definition then, it
25 should not then be above 175, 100 feet off the roadway, not

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1 above 150, 200 feet off, and so forth. All of these are the
2 standards that are being exceeded.
3 Now, the gas station, at this point, is clearly
4 raising those levels. Back here -- yes, the people living
5 right up here have their own problems -- absent the gas
6 station, those levels would have continued to drop off and
7 you would have continued to have the kind of low levels that
8 you have back here. When you add the gas station in, now
9 all of a sudden those areas spike way up and you have people
10 who were well away from the roadways now being put in a
11 situation as bad as or worse than the roadways. And if
12 we're not supposed to exceed on the roadways, we're not
13 supposed to exceed with the gas station. And --
14 MR. GROSSMAN: All right.
15 THE WITNESS: -- if you look at then his August
16 report --
17 MR. GROSSMAN: This is the August 2013 report?
18 THE WITNESS: Yes --
19 MR. GROSSMAN: Okay.
20 THE WITNESS: -- which I believe is 255.
21 MR. GROSSMAN: Do you have a copy of that page?
22 MS. ROSENFELD: I do.
23 THE WITNESS: Yeah, here.
24 MR. GOECKE: Thank you.
25 THE WITNESS: Here it is.

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1 MR. GROSSMAN: Thank you.
2 MR. GOECKE: 255?
3 THE WITNESS: Yes.
4 MR. GOECKE: All right.
5 THE WITNESS: So this is the one that is --
6 essentially, Figure 1 is the corrected version of the charts
7 we've been looking at before there, and they show again, now
8 that when you add the corrected dispersion in, that the
9 roadways are, of course, much higher now; there's even
10 levels of 300 on, down on Georgia Avenue. And, again, the
11 levels drop off and they drop off and they drop off, as you
12 would expect with this gradient, and with people living
13 far --
14 MS. ROSENFELD: Excuse me. Ms. Cordry, could you
15 point out where it's at 300?
16 MR. GROSSMAN: Yes. I don't see that as being
17 over at --
18 THE WITNESS: It's, it's --
19 MR. GROSSMAN: -- Georgia Avenue. I don't --
20 THE WITNESS: It's a little hard to read in the
21 black-and-white. If you, in his color version there --
22 MS. ADELMAN: It's in the mid right-hand, midway
23 down on the right-hand side.
24 THE WITNESS: Right here, there's a little
25 squiggle right here that is 300.

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1 MS. ADELMAN: Michele, it's right here.
2 MR. GROSSMAN: Right --
3 MS. ROSENFELD: Yes, I got it.
4 THE WITNESS: On Georgia Avenue --
5 MR. GROSSMAN: Oh.
6 MS. HARRIS: Just to be clear, you're talking
7 about the first sheet that says, Rural Dispersion? Is that
8 the one you're talking about?
9 THE WITNESS: Yes. The one that says, Figure 1.
10 MR. GROSSMAN: Okay.
11 THE WITNESS: And then about halfway down on that
12 right-hand side there, the contour that comes out there has
13 a 300 marked on it. It's on the right-hand side, this
14 contour here.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: So, yes, we are, under his original
17 assumptions and with the proper calculation of the
18 background -- under Mr. Sullivan's original background
19 calculation, with the proper multiplication being used, and
20 using the rural dispersion factor --
21 MR. GROSSMAN: Right.
22 THE WITNESS: -- you have levels, very high
23 levels, very problematic levels on the roadways, which means
24 we're seriously problematic in this area and you really
25 shouldn't be adding additional pollution sources.

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1 MR. GROSSMAN: Okay.
2 THE WITNESS: I would be happy to tell you what
3 the urban version of this is, but Mr. Sullivan has never
4 prepared that. So I can't give you the urban version of
5 this particular chart, but again, what you see is, as the
6 levels drop off, as you would expect them to do, all of a
7 sudden there is a spurt. It goes right back up and creates
8 the hot spot that I think the Planning Board staff referred
9 to back at the gas station area there.
10 And then -- so now you have a new pollution source
11 well away from the roadways, creating levels akin to those
12 on the roadways, and those levels are then percolating back
13 into the neighborhood in ways that they would not have been
14 exposed to absent the gas station. And you could, you can
15 see those levels are 200 at the edge of the mall, 175 in the
16 backyard of the property, about 160 at the, in the homes
17 there, the closest homes, which will include the homes that
18 are being planned for Mount McComas, 150 at the next level.
19 And, again, if you look at the regulation that says we're
20 trying to keep things at 190 as the absolute peak anywhere
21 in the area, in order to keep exposures in the surrounding
22 area, where we have seen health effects, to levels in the
23 range of 50 to 75 parts per billion, which translates into
24 -- I have this calculation, hold on -- 94 to 141 micrograms
25 per meter cubed, those are the kind of levels that we are

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1 seeing all the way out to -- 135 is well into the second
 2 level and third level of homes there; 125, still out there.
 3 The regulation makes clear that it is not saying that it's
 4 fine to have levels of 125 to 135. It's saying there are
 5 still health effects that are going to be visible there and
 6 we are setting the level at 190 any place in the area in
 7 order to keep the levels in the entire area well below 190.
 8 So that's the standard that you're being asked to
 9 deal with and that's the way the standard is supposed to be
 10 applied. It is not simply a, if it's -- if you can't find a
 11 190 at any given spot, it doesn't count. One ninety is the
 12 peak point, and it's supposed to fall off from there. And,
 13 again, if you go back, the other two pages there were
 14 Figures 9 and 10, the urban and rural dispersions, using a
 15 lower background, using a, a, all sorts of different factors
 16 and so forth. I mean, the one thing that's interesting here
 17 is that these charts now no longer show the roadways. So I
 18 can't tell you, again, on these what the roadway numbers are
 19 going to be.
 20 MS. ROSENFELD: And, Ms. Cordry, you're talking
 21 about --
 22 THE WITNESS: The second two -- the second and
 23 third page of that --
 24 MS. ROSENFELD: -- Figure 9 and Figure 10 of the
 25 handout that's --

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1 THE WITNESS: Again, these are in the August
 2 report. These are the ones where all of a sudden we're just
 3 doing a little bull's-eye right at the station and we're not
 4 measuring out on the roadways anymore.
 5 MR. GROSSMAN: Okay.
 6 THE WITNESS: But the kind of factors that he was
 7 changing to get to these, to these charts are not factors
 8 that affected the roadways. So there's no particular reason
 9 to think the roadway numbers are going to change --
 10 MR. GROSSMAN: Right.
 11 THE WITNESS: -- from what they were. So, again,
 12 I can tell you that even with these changes, he's likely to
 13 still have the roadway numbers at 300 on the rural
 14 dispersion. Again, since he's never done an urban
 15 dispersion, I can't tell you what the roadway numbers are
 16 there, but you've got a lot of pollution coming in. There's
 17 a long way between 300 and 190. So there's a long way you'd
 18 have to go before you had any possibility the roadway wasn't
 19 going to be a problem.
 20 MR. GROSSMAN: Okay.
 21 THE WITNESS: So looking at these particular
 22 charts, if you, again, stay with the rural dispersion --
 23 which was the original way we did this -- and where it's
 24 dispersing back into the neighborhood, you're 200 at the
 25 center there --

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1 MR. GROSSMAN: Well, it wasn't the original. He
 2 did both ways.
 3 THE WITNESS: No, he didn't do both ways
 4 originally.
 5 MR. GROSSMAN: I think originally he did --
 6 THE WITNESS: There is no urban isopleth chart
 7 anywhere done in November, December, and January.
 8 MR. GROSSMAN: All right. Go ahead.
 9 THE WITNESS: There were a few points, 16 points
 10 that he eventually gave us in August --
 11 MR. GROSSMAN: Okay.
 12 THE WITNESS: -- but there's no chart anywhere,
 13 similar to this, done for an urban dispersion model.
 14 MR. GROSSMAN: Okay.
 15 THE WITNESS: That's why I said I can't give you a
 16 lot of comparisons, because we don't have it, and these
 17 charts now no longer go out and show you the whole area.
 18 But starting with this one, under the rural model, you have
 19 the 200 at the center; so we're exceeding. It goes out.
 20 You have 170 in the backyards and 160, a couple of isopleths
 21 that aren't labeled. I'll assume they're 150 and 140. So
 22 in the backyard of, say, for instance, Mr. Sheveiko's home,
 23 it's 140. When he or his mother is out there for hours on
 24 end, she's gardening out there for hours on end, she's at a
 25 level which the EPA clearly says we're trying to avoid

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1 having, because we're trying to not have peak exposures ever
 2 go above 190.
 3 MR. GROSSMAN: Well, once again, that's where I
 4 have the problem. I understand your point, but I have a
 5 problem with interpreting it the way you do. And you are --
 6 THE WITNESS: Well, I --
 7 MR. GROSSMAN: -- interpreting it as saying that
 8 even a 140 is above the EPA guidance because somewhere in
 9 the area it's above 190.
 10 THE WITNESS: That's exactly -- I'm going to ask
 11 you to read --
 12 MR. GROSSMAN: I understand. I --
 13 THE WITNESS: -- I'm not going to ask you to
 14 decide this, this minute.
 15 MR. GROSSMAN: I understand what you're saying. I
 16 don't, I don't read it that way, but I'll listen to -- I
 17 listened to you say it, your evidence is in the record, and
 18 we'll go on from there.
 19 THE WITNESS: I would ask you to read it again
 20 very carefully and read what the standard says, because
 21 standards can be set in many different ways and this one
 22 makes very clear the difference between a peak point
 23 anywhere and an area-wide concentration.
 24 MR. GROSSMAN: I understand. I understand your
 25 point. You said it a couple of times --

1 THE WITNESS: Okay.
 2 MR. GROSSMAN: -- maybe even three times, and I
 3 understand your point.
 4 THE WITNESS: And when you say I am setting a peak
 5 at 190 because that will keep the area-wide
 6 concentrations --
 7 MR. GROSSMAN: You don't have to say it again.
 8 You've said it three times, maybe now four.
 9 THE WITNESS: All right. So, in any case, even
 10 the urban dispersion model shows the number going down, as
 11 high as 110 in the backyards, and again, that's still a
 12 level of about 60 parts per billion, which is still within
 13 the range of what they're saying: we are trying to keep
 14 this below these levels because we have seen health effects
 15 at these kind of levels --
 16 MR. GROSSMAN: Okay.
 17 THE WITNESS: -- and that is exactly what we're
 18 trying to deal with here. So when you are looking at these
 19 numbers -- and, again, I will ask you to read those portions
 20 of, the highlighted portions of here again -- it is not
 21 saying that if you're below 190, there's --
 22 MR. GROSSMAN: You don't have to say it again.
 23 THE WITNESS: Okay. That is what my conclusion
 24 piece is and that's what --
 25 MR. GROSSMAN: All right.

1 THE WITNESS: -- we are dealing with here.
 2 MR. GROSSMAN: All right.
 3 MS. ROSENFELD: Mr. Grossman, there's one comment
 4 that you made that I'd like to respond to, and --
 5 MR. GROSSMAN: Okay.
 6 MS. ROSENFELD: -- it was your statement that if
 7 you're above the peak, that you can't ever add anything; you
 8 can't add a hamburger stand, I think, was your example, but
 9 that's not the case. If you wanted to build a hamburger
 10 stand here, you could build 10 of them because they're
 11 permitted by right in this zone. What we are talking about
 12 here is a special exception. It requires a specific finding
 13 of no adverse health effects. And so --
 14 MR. GROSSMAN: Well, let's say a drive-through
 15 that's not permitted by a right, of-right zone.
 16 MS. ROSENFELD: That's correct. So a
 17 drive-through --
 18 MR. GROSSMAN: So let's say you couldn't put a
 19 drive-through --
 20 THE WITNESS: Well --
 21 MR. GROSSMAN: -- a drive-through which doesn't
 22 create any, necessarily create any traffic pollution but it
 23 creates hamburger pollution --
 24 MS. ROSENFELD: And --
 25 MR. GROSSMAN: -- a Wendy's.

1 MS. ROSENFELD: And depending on where it's
 2 located and the impact it would have here, it may well be it
 3 shouldn't be approved, but my point is this: We are in a
 4 special exception setting and there is a specific finding,
 5 and so I just didn't want you to leave with the thought that
 6 you couldn't build anything anywhere if you're at this
 7 level. We're talking about this specific regulatory
 8 proceeding.
 9 MR. GROSSMAN: Well, wait a minute. You're saying
 10 you can build it as a matter of right under zoning, but
 11 you're suggesting that you would be, at the very least,
 12 violating the spirit of the EPA regulations if you built it
 13 anywhere in the zone, anything, that anything that would
 14 create any pollution anywhere in this zone, if you're in
 15 this area, if --
 16 MS. ROSENFELD: And I --
 17 MR. GROSSMAN: -- because there's an exceedance on
 18 Georgia Avenue.
 19 MS. ROSENFELD: And I would agree that you would
 20 be violating the spirit of the regulation, but I also would
 21 submit to you that there's no regulatory way to prevent that
 22 from happening, you know. So --
 23 MR. GROSSMAN: Maybe. I mean, it would apply to
 24 every drive-through restaurant, which requires a special
 25 exception in the area. So I'm not sure that that's correct,

1 but you know, I just find, I -- I will look at that
 2 regulation again, but I find it difficult to accept that
 3 interpretation of the intent of the regulation being that
 4 prohibitive --
 5 MS. ROSENFELD: And here you're talking about --
 6 MR. GROSSMAN: -- as Ms. Cordry suggested.
 7 MS. ROSENFELD: Here you're talking about a
 8 specific area where you do have roadway monitors that are at
 9 or above that point. I'm --
 10 MR. GROSSMAN: Right.
 11 MS. ROSENFELD: -- sure you can find many, many
 12 locations in the county where that wouldn't be the case, and
 13 so you would be able to build.
 14 THE WITNESS: Yeah.
 15 MR. SILVERMAN: Yes. Also --
 16 MR. GROSSMAN: I'm not talking about other
 17 locations.
 18 MS. ROSENFELD: I understand that.
 19 MR. SILVERMAN: Mr. Grossman --
 20 MR. GROSSMAN: Mr. Silverman --
 21 MR. SILVERMAN: Yes.
 22 MR. GROSSMAN: -- is chafing at the bit here. So
 23 we'll give him --
 24 MR. SILVERMAN: I am chafing at the bit.
 25 MR. GROSSMAN: -- let him give his say.

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1 MR. SILVERMAN: This is not the first time that
2 this issue has been discussed, and I think the approach that
3 policy makers and planners take is to say, well, what can we
4 do to offset this new source of pollution? So it's not
5 unusual for a power plant, for example, to buy up other
6 emitters in order to reduce the lower levels. And I think
7 the -- I mean, if you have made the decision that the EPA
8 standard is a surrogate for all health but if --
9 MR. GROSSMAN: Well, I haven't made that, I
10 haven't made the decision quite that way. I think you're
11 asking for me to do it both ways. You want it both ways
12 here. What my decision is, is I'm not going to apply -- I'm
13 not going to make up a standard going beyond EPA, but that
14 doesn't mean that I would interpret the application of the
15 EPA standards the way Ms. Cordry is suggesting, because if
16 I'm trying to look at whether or not the gas station has a
17 health effect under these EPA standards, even applying the
18 EPA standards, I'm not sure that I could interpret it the
19 way she's suggesting and say even though it wouldn't add
20 anything, is what she's saying, wouldn't add anything to
21 that peak value, it's going to add some pollution and
22 therefore it has a health impact and therefore it can't be
23 allowed. I don't think I can apply it that way.
24 THE WITNESS: Right. I'm not quite sure I was
25 saying it that way. If I could clarify it --

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1 MR. GROSSMAN: Well, I --
2 THE WITNESS: -- if I could try to say what I was
3 saying, number one, the gas station --
4 MR. GROSSMAN: Can I stop you? Go ahead. Go
5 ahead.
6 THE WITNESS: What I clearly have said -- and I
7 think it's very clearly evident here -- is the gas station
8 itself creates a huge additional source of pollution. It is
9 not a minor source. It is not below the significant impact
10 level. It is a major eruption of pollution of itself.
11 MR. GROSSMAN: Well, let's not use significant
12 impact level because that's a term of art, as I've learned,
13 in the EPA --
14 THE WITNESS: I understand exactly that.
15 MR. GROSSMAN: Okay.
16 THE WITNESS: And I believe that looking at these
17 numbers --
18 MR. GROSSMAN: I don't --
19 THE WITNESS: -- it is well above any significant
20 impact.
21 MR. GROSSMAN: Well, wait a minute. Wait a
22 minute. As I recall reading the statute, the significant
23 impact level analysis applies to what they call major
24 sources, and under EPA statute this is not defined in the
25 major-source category. So --

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1 THE WITNESS: Okay.
2 MR. GROSSMAN: -- I think you're going to confuse
3 the issue --
4 THE WITNESS: All right.
5 MR. GROSSMAN: -- by citing -- just from the
6 education I got from the case, the U.S. Court of Appeals
7 D.C. case, and then looking back at the regulations that
8 they were interpreting there, that's, that's the sense I get
9 from that.
10 THE WITNESS: Right. If you do look at that case,
11 it does make clear that if you're above the standard, you're
12 above the standard and you don't get to add even little
13 sources on --
14 MR. GROSSMAN: Well, no, no. That case, it
15 clearly, by its own language, applies only to the defined
16 area of major -- such as power plants.
17 THE WITNESS: I understand, but its point was, its
18 point was, for those kind of categories, if you were above
19 the standard, you couldn't add something new, even if it was
20 little.
21 MR. GOECKE: Objection.
22 MR. GROSSMAN: All right. So we can, that,
23 well --
24 THE WITNESS: And you can read the case yourself.
25 That's what it says.

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1 MR. GROSSMAN: I did.
2 THE WITNESS: The point of -- what I'm saying here
3 is that you have different sources of pollution. You have
4 the pollution on the roadways; you have the pollution on the
5 station. The station is clearly adding a big source of
6 additional pollution to people in this area at a place
7 where, if the roadways were maintained where they were
8 supposed to be and you had the drop-off from the roadways,
9 these people would be at a lower level that would not --
10 that would be below the level the EPA has decided to
11 determine as problematic. We're already at a level where
12 these people are being exposed to problematic levels, and
13 now we add an additional source that, for the people in this
14 area, adds more pollution then.
15 Now, does the gas station add more pollution to
16 the people on the far side of Georgia Avenue? No. But does
17 the overall area that is being affected by the roadways and
18 everything else that is already above the standard, is it,
19 for the people near the gas station, going to be also
20 affected substantially by the gas station? Absolutely, yes.
21 MR. GROSSMAN: Yes, but I can reach that
22 conclusion without going through your interpretation of the
23 EPA regs. I don't -- what I don't buy is your particular
24 interpretation of the application of the EPA regs, but the
25 latter statement you made about whether or not the gas

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1 station might have health effects, I can interpret the
2 evidence one way or the other on that point. That is not a
3 question directly --
4 THE WITNESS: Okay.
5 MR. GROSSMAN: -- directly requiring your
6 interpretation of the, of the EPA regs, which I do not, I do
7 not buy, but anyway, okay.
8 MS. ROSENFELD: And one final comment on that
9 point -- the regs that she was discussing in her testimony
10 earlier is specific to NO2. It's specific to that one
11 pollutant.
12 MR. GROSSMAN: Right.
13 MS. ROSENFELD: It's not a global --
14 THE WITNESS: Right.
15 MS. ROSENFELD: -- interpretation for all
16 pollutants.
17 THE WITNESS: Right, and as far as restaurants are
18 concerned --
19 MR. GROSSMAN: Well, you're suggesting that. Now,
20 I know that the, that particular reg she was discussing
21 arose out of the desire to deal with the concern about NO2
22 and that's why they devised the one-hour limits, if I
23 understand it --
24 THE WITNESS: Yes.
25 MR. GROSSMAN: -- but the suggestion she's made

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1 about how to interpret the, how they intend to interpret the
2 EPA regs, it seems to me, would be globally applicable if
3 she's correct.
4 MR. SILVERMAN: No.
5 MS. ADELMAN: No.
6 THE WITNESS: No. I mean, they were very --
7 MS. ROSENFELD: No. It's specific to --
8 THE WITNESS: Yeah.
9 MS. ROSENFELD: -- it's specific to how this one
10 particular pollutant is monitored.
11 THE WITNESS: Yeah. Most --
12 MR. GROSSMAN: I don't know that I'd read it that
13 way either, but anyway, we don't have to get into that. I
14 don't have to reach any global conclusions about other --
15 THE WITNESS: Right. Most of them are area-wide
16 standards, not peak-point standards.
17 MR. GROSSMAN: All right. Okay.
18 MS. ROSENFELD: Okay.
19 MR. GROSSMAN: Have you finished your 10-minute
20 testimony?
21 MS. HARRIS: Yes, and don't we have --
22 THE WITNESS: I have finished my 10-minute
23 testimony, yes.
24 MR. GROSSMAN: All right. Thank you. Well, we
25 do, we do allow --

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1 THE WITNESS: Oh, I'm sorry. I guess I could be
2 cross-examined.
3 MR. GROSSMAN: -- cross-examination.
4 MS. ADELMAN: Nice try.
5 MR. GOECKE: Can we have five minutes?
6 MR. GROSSMAN: You want five minutes before you
7 cross-examine?
8 MR. GOECKE: Yes, please.
9 MR. GROSSMAN: Okay. So we'll come back at about
10 seven minutes after 3:00.
11 (Whereupon, a brief recess was taken.)
12 MR. SILVERMAN: Mr. Grossman, if I may, we had a
13 discussion before this testimony about the, what the
14 school-siting guidelines said.
15 MR. GROSSMAN: Yes.
16 MR. SILVERMAN: I made copies and I'd like to give
17 it out.
18 MR. GROSSMAN: I think they're already in the
19 record. So --
20 MR. SILVERMAN: No, the whole thing is in the
21 record. I just -- the two applicable pages, if you'd like
22 to see them.
23 MR. GROSSMAN: Sure, but I mean, I'm not sure that
24 those are the only applicable pages.
25 MR. SILVERMAN: What's that?

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1 MR. GROSSMAN: I'm not sure those -- page 59 that
2 you referenced --
3 MR. SILVERMAN: Yes.
4 MR. GROSSMAN: -- to me I'm not sure is the only
5 applicable page, but -- so why don't, let's --
6 MR. SILVERMAN: All right, fine.
7 MR. GROSSMAN: -- finish with the witnesses first
8 because I want to make sure we get to Dr. Jison here. All
9 right.
10 MR. GOECKE: We have no questions.
11 MR. GROSSMAN: All right. Then we're ready --
12 thank you very much, Ms. Cordry. Next witness.
13 MS. ROSENFELD: Dr. Maria Jison.
14 MR. GROSSMAN: Welcome, Dr. Jison. It's a
15 pleasure to meet you.
16 MS. JISON: Nice to meet you. Thank you.
17 MR. GROSSMAN: You waited a long time to get your
18 shot here. Would you state your full name and address,
19 please, for the record?
20 MS. JISON: Maria Jison, spelled with a J-I-S-O-N.
21 My address is 10818 Torrance Drive, Kensington, Maryland
22 20895.
23 MR. GROSSMAN: Would you raise your right hand,
24 please?
25 (Witness sworn.)

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1 MR. GROSSMAN: All right. You may proceed.
2 DIRECT EXAMINATION
3 BY MS. ROSENFELD:
4 Q Dr. Jison, you just gave your address. For the
5 record, I have here Exhibit 159. Just for record purposes,
6 would you please show Mr. Grossman where you live?
7 A I live, well, here it's labeled Torrance Court,
8 but it's really Torrance Drive, and I live right here at the
9 end of this circle, at the end of Torrance Drive, which is
10 just below the steps that go up to the ring road on the
11 mall --
12 MR. GROSSMAN: All right.
13 THE WITNESS: -- behind the Sears Outlet building.
14 BY MS. ROSENFELD:
15 Q So you live within --
16 MR. GROSSMAN: So you're quite close to the ring
17 road, just south of the --
18 THE WITNESS: Yeah.
19 MR. GROSSMAN: -- of the ring road. What's the
20 building that's the --
21 THE WITNESS: This is the Sears Outlet building --
22 MR. GROSSMAN: Sears Outlet building, right.
23 THE WITNESS: -- and this is the Westfield South
24 Building.
25 MR. GROSSMAN: Okay.

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1 THE WITNESS: So I'm basically right here in front
2 of the circle.
3 MR. GROSSMAN: Okay.
4 BY MS. ROSENFELD:
5 Q Just south, south of the --
6 A Pretty much, yeah.
7 Q -- adjacent --
8 MR. GROSSMAN: Thank you.
9 BY MS. ROSENFELD:
10 Q And your property abuts the subject property, the
11 mall parcel --
12 A Uh-huh.
13 Q -- is that correct?
14 A The townhome complex that I'm in, and I'm one in
15 from the end unit that's right next to the, the creek that
16 separates us from the mall.
17 MR. GROSSMAN: And you're within the defined
18 neighborhood, or the neighborhood as defined by the
19 technical staff?
20 THE WITNESS: Yes.
21 MR. GROSSMAN: Okay.
22 BY MS. ROSENFELD:
23 Q Dr. Jison, would you please just outline your
24 educational background, please?
25 A I have a bachelor's degree in biology from the

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1 University of Chicago. I received a medical doctor degree
2 from the University of Chicago. I completed an internal
3 medicine residency at the University of North Carolina
4 Hospitals in Chapel Hill. I completed a combined
5 pulmonary/critical care fellowship, where critical care was
6 at NIH and pulmonary medicine is in, was at Johns Hopkins.
7 That's my education.
8 Q Okay. And would you please describe your
9 professional experience?
10 A I have -- I'm board-certified in internal medicine
11 by the American Board of Internal Medicine. I'm also
12 board-certified by the same board in pulmonary disease and
13 critical care medicine. I have over 10 years of clinical
14 attending experience as a pulmonary/critical care physician
15 in the inpatient and outpatient settings, over 10 years'
16 experience as an ICU physician, three years' experience as a
17 pulmonologist, having had a solo practice as an outpatient
18 practice.
19 I've had experience as a volunteer pulmonologist
20 for a local community clinic that serves uninsured patients
21 in Montgomery County, about eight years' experience there.
22 I have three years of translational research experience from
23 NIH, and recently I, for the last two years, I've been
24 working at the Food and Drug Administration as a medical
25 device reviewer for respiratory devices. And I continue to

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1 practice medicine part-time, clinically, including the
2 volunteer and ICU practice, even now.
3 Q And, Dr. Jison, have you lectured at medical
4 conferences or on medical topics in the past?
5 A I have given presentations regarding my research
6 and summary of current research in a particular field at
7 some professional society meetings.
8 Q And have you published any articles or studies?
9 A I have published some studies related to the
10 research that I had done at NIH and -- during fellowship.
11 MR. GROSSMAN: They're listed in Exhibit 88(g).
12 BY MS. ROSENFELD:
13 Q And they include studies that relate to pulmonary
14 issues, is that true?
15 A Yeah. The research that I did at NIH was related
16 to pulmonary complications due to sickle cell disease, and I
17 did both bench and clinical studies there, and the
18 publications are related to that.
19 MS. ROSENFELD: Mr. Grossman, I would like to move
20 Dr. Jison as an expert, both as an expert physician and, in
21 particular, an expert in pulmonary and respiratory matters.
22 MR. GROSSMAN: Okay. Do you wish to question the
23 witness?
24 MR. GOECKE: I do. I'm sorry. An expert
25 physician, pulmonary matters?

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1 MS. ROSENFELD: Pulmonary.
2 MS. CORDRY: Respiratory also.
3 MS. ROSENFELD: Pulmonary and respiratory,
4 general, as a general physician, but with particular
5 expertise in -- with respect to pulmonary and respiratory
6 medical conditions.
7 MR. GOECKE: Yes, I would like to ask some
8 questions. Dr. Jison, is it fair to say that you have no
9 training developing ambient air quality standards?
10 THE WITNESS: Yes.
11 MR. GOECKE: And your practice focuses on treating
12 patients and their symptoms and their health issues?
13 THE WITNESS: Yes.
14 MR. GOECKE: But you don't, you're not involved in
15 establishing air standards for any community --
16 THE WITNESS: No.
17 MR. GOECKE: -- or area?
18 THE WITNESS: No.
19 MR. GOECKE: Has it ever been your job to analyze
20 the effects of fine particulate as it affects the general
21 population?
22 THE WITNESS: No.
23 MR. GOECKE: Okay. Do you have any work
24 experience regarding air quality analysis?
25 THE WITNESS: No.

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1 MR. GOECKE: And you don't conduct any
2 health-related research studies on air quality?
3 THE WITNESS: No.
4 MR. GOECKE: Have you ever participated in any EPA
5 scientific panels that make judgments on appropriate ambient
6 air quality standards?
7 THE WITNESS: No.
8 MR. GOECKE: And you're not a toxicologist?
9 THE WITNESS: No.
10 MR. GOECKE: And you're not an epidemiologist?
11 THE WITNESS: No.
12 MR. GOECKE: And you're not a statistician?
13 THE WITNESS: Statistician?
14 MR. GOECKE: Statistician, rather.
15 THE WITNESS: No.
16 MR. GOECKE: Thank you. And you are not
17 credentialed, boarded, or recognized as an expert in
18 occupational or environmental medicine?
19 THE WITNESS: No.
20 MR. GOECKE: Okay. Subject to that information, I
21 have no objection to her qualification as a general
22 physician and governing, how did they put it, pulmonary and
23 respiratory -- with a special emphasis on pulmonary and
24 respiratory matters.
25 MR. GROSSMAN: I'm not sure what you mean by

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1 subject to that information.
2 MR. GOECKE: That her expertise is limited towards
3 the individuals, not -- treating individuals in
4 pulmonary/respiratory matters, treating individuals, not as
5 how, as far as ambient air quality affects general
6 populations.
7 MR. GROSSMAN: Have you ever had occasion to
8 testify as an expert before?
9 THE WITNESS: No.
10 MR. GROSSMAN: Okay. All right. Based on --
11 MS. ROSENFELD: Oh.
12 MR. GROSSMAN: Yes.
13 MS. ROSENFELD: I did not limit her qualifications
14 as an expert to the inability to testify about how certain
15 pollution levels might affect the general population. She
16 is an expert in pulmonary conditions, respiratory
17 conditions, and her medical background and training would
18 allow her to have a professional opinion on what certain
19 levels of pollution might, what those effects might be. We
20 certainly are not suggesting she conducted modeling or
21 developed any EPA standards, but I certainly think she's
22 more than qualified to testify about the effects of certain
23 pollutants on respiratory --
24 MR. GOECKE: In that case, I would object to her
25 qualification as an expert to the extent she intends to

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1 testify about how ambient air affects general populations.
2 MR. GROSSMAN: Well, I'll overrule that objection.
3 First of all, an expert, as we've talked about before, is
4 not necessarily somebody who even has a degree in something
5 but somebody who can produce information that will assist
6 the fact finder that goes beyond the ken of layman, and
7 certainly Dr. Jison qualifies for that. But she also
8 qualifies as an expert physician and as an expert in
9 pulmonary and respiratory medical conditions as her
10 suggested field of expertise, and to the extent that that
11 sloshes over not only to an individual person but -- groups
12 of people are made up of individuals; so I'm not sure --
13 well, I understand where you're coming from, Mr. Goecke. It
14 certainly doesn't eliminate her as an expert to testify in
15 this area. It may go to the weight, depending on the
16 questions that are asked, of some of her opinions in some
17 areas but certainly does not, is not a basis for denying her
18 testimony as an expert. So I do find her and accept her as
19 an expert physician and an expert in pulmonary and
20 respiratory medical conditions. All right.
21 MS. ROSENFELD: Yes. Thank you.
22 BY MS. ROSENFELD:
23 Q And, Dr. Jison, just a little, since you do live
24 within the affected neighborhood, I would like to start with
25 just some personal testimony of you as an individual. Do

1 any, does anybody in your family have any specific
2 respiratory-related ailments?

3 A Yeah. I have -- my husband has asthma, and my two
4 children, age 2 and 4, both have asthma, and my 4-year-old
5 actually is treated, seen and treated at the Asthma and
6 Allergy Institute that is in the Westfield South Building on
7 the mall property.

8 Q And could you identify on Exhibit 159 where the
9 Asthma and Allergy center is actually located?

10 A It's inside the Westfield South Building, which is
11 right here.

12 Q Okay. So just to the east of the Sears Outlet
13 building?

14 A Yes.

15 MR. GROSSMAN: So in the southeast corner of the
16 mall.

17 BY MS. ROSENFELD:

18 Q And, Dr. Jison, do you have concerns about
19 potential adverse health effects on your family as a result
20 of the gas station?

21 A Absolutely.

22 Q And could you describe what those concerns are?

23 A Well, I think -- I'll go into a little more detail
24 about some asthma background, but you know, because everyone
25 in my family besides me has asthma, particularly two young

1 children, patients with asthma can have very sensitive lungs
2 and I'm very concerned about the adverse effects on asthma
3 from increased pollution due to putting a large gas station
4 so close to the neighborhood.

5 Q Before you talk about the effect of specific
6 pollutants on human health, could you give just a general
7 overview of what the disease asthma is?

8 A Asthma is a chronic disease. It's one of the
9 diseases or sensitive populations that are considered by the
10 EPA in their air quality standards. Asthma is characterized
11 by increased inflammation in the air passages and increased
12 mucus production, which results in the temporary narrowing
13 of the airways that transport air from your nose and mouth
14 into your lungs.

15 Asthma symptoms can be caused by many things,
16 including allergens or irritants, such as pollution, that
17 are inhaled into the lungs and resulting in inflammation,
18 clogged and constricted airways, which could lead to
19 wheezing, which is a common symptom of asthma, difficulty
20 breathing, coughing, tightness in the chest.

21 It's a chronic disease that's characterized by
22 periods of quiescence and seemingly normal respiratory
23 status that is interspersed with acute exacerbations or
24 asthma attacks, which can range from mild to severe, and in
25 the severe cases, asthma can sometimes be deadly. Again,

1 there's many triggers that can lead to an acute asthma
2 attack, including environmental exposures, and the
3 progression from a mild attack to a severe attack that could
4 be life-threatening can be very rapid and unpredictable.

5 Q And are there many people in the United States who
6 are affected by asthma?

7 A Yes, there are many people affected by asthma. It
8 accounts for a large amount of the burden of health care.
9 One in 12 people in the United States have asthma, one in 11
10 children. Just to kind of give you an idea of the burden
11 of, burden of asthma in America, on a daily basis 44,000
12 people have an asthma attack, 36,000 kids miss school due to
13 asthma, 27,000 adults miss work, 4,000, almost 5,000 people
14 visit the emergency room due to asthma on a daily basis,
15 1200 admissions to the hospital due to asthma, and you know,
16 about nine people die on a daily basis due to asthma.

17 MR. GROSSMAN: Nationally, you said?

18 THE WITNESS: Yes.

19 MR. GROSSMAN: Is this trending up, by the way?

20 THE WITNESS: Yes, the incidence of asthma is
21 trending up, and asthma is also often underdiagnosed. So
22 it's probably likely higher than what we think it is because
23 a lot of people don't recognize they have asthma, they don't
24 necessarily seek attention for it because the symptoms of
25 breathlessness are non-specific and a lot of people may

1 attribute it to something else, like being out of shape or
2 overweight or due to another condition that they may have.
3 So it's often underdiagnosed.

4 MR. GROSSMAN: Okay.

5 BY MS. ROSENFELD:

6 Q And could you talk a little bit about the
7 hospitalization rates and emergency visit rates that are
8 induced by -- that asthma would cause?

9 A So asthma accounts for about a quarter of all
10 emergency room visits in the United States each year with
11 1.75 million, roughly, visits to the emergency room. It
12 accounts for about 10 million outpatient visits and 479,000
13 hospitalizations. The average length of stay for an asthma
14 attack admission is about 4.3 days. Nearly half of all
15 asthma hospitalizations are children, roughly 44 percent.
16 It's the third-ranking cause of hospitalization in children.
17 It's the number one chronic cause of school absenteeism in
18 children, accounting for more than 13 million total missed
19 days of work, accounts for more than 10 million total, total
20 missed days of work for adults each year, and you know, like
21 I said, one in 12 people in the U.S. have it.

22 About 12 million people with asthma have had an
23 attack in 2008, and asthma costs the United States about 56
24 billion in medical costs, lost school and work days, and
25 really, that's from numbers in 2007. So the burden is

1 pretty significant.

2 Q So just because someone might physically recover

3 from an asthma attack in a short period of time, does it --

4 in your opinion, does that suggest that there are no other

5 potential adverse effects --

6 MR. GOECKE: Objection. Leading.

7 BY MS. ROSENFELD:

8 Q -- to that individual?

9 MR. GROSSMAN: Hold on a second. Yes, I'm going

10 to sustain that objection. Why don't you rephrase that

11 question.

12 BY MS. ROSENFELD:

13 Q If one were to suffer from an asthma attack, are

14 the consequences simply that physical symptom that they

15 might suffer?

16 MR. GOECKE: Same objection, still leading.

17 MR. GROSSMAN: No, I think that's okay.

18 THE WITNESS: Well, there are a lot of

19 consequences from an asthma attack. There's the physical

20 and health consequences, and just because it's transient, an

21 attack may be transient, doesn't mean that there are no

22 other consequences. The -- I'm trying to understand the

23 question. There are adverse health consequences to having

24 an asthma attack. An asthma attack is an adverse health

25 consequence. I think just because it's transient doesn't

1 mean that it is not an adverse health effect. It has other

2 non-health-related effects with regards to the socioeconomic

3 burdens due to missing work and school and having been

4 hospitalized and the effects of an acute illness and a

5 hospitalization illness.

6 MR. GROSSMAN: Well, I won't have you go into that

7 because that's -- the socioeconomic things, I think, are --

8 THE WITNESS: Uh-huh.

9 MR. GROSSMAN: -- beyond your expertise area,

10 but --

11 BY MS. ROSENFELD:

12 Q During his testimony on September 16th, 2013, in

13 response to a question by -- Dr. Adelman was questioning

14 Dr. Chase, and his question was:

15 What does clinically insignificant mean?

16 The answer from Dr. Chase was: Producing no

17 lasting damage.

18 And Dr. Adelman followed up with the question: So

19 does that mean it could produce damage which is treatable?

20 Is that what you mean by no less than damage?

21 And the answer: No, that's not what I mean. It

22 might be transient, it might be temporary, but it doesn't

23 produce a permanent health effect. That's what I mean by

24 negligible.

25 Do you agree with Dr. Chase's characterization of

1 what clinically insignificant health effects are?

2 A No. What that suggests -- what Dr. Chase

3 suggested in those statements is that if an effect is

4 transient and resolves, that it is insignificant. I would

5 not agree with that. An asthma attack is a clinically

6 significant effect that has -- you know, they can be

7 life-threatening; so it's clearly clinically significant.

8 There have been -- I have, in my written

9 testimony, have cited numerous studies that have been

10 conducted and that the EPA has also cited in their

11 scientific analyses that demonstrate that, adverse effects,

12 and Dr. Chase's definition of an insignificant effect is, is

13 just not a good definition of an adverse effect.

14 Q And specific to asthma, do repeated asthmatic

15 attacks have a cumulative effect on a person?

16 MR. GOECKE: Objection. Leading.

17 MR. GROSSMAN: No, once again, I don't think

18 that's leading. The distinction here is whether or not

19 counsel is putting words in your mouth, is suggesting

20 something that's not in evidence already. I mean, perhaps

21 one could have phrased that a little bit differently, you

22 know, in terms of what are lasting effects, but I think it's

23 borderline. So I will overrule the objection.

24 THE WITNESS: So the question is, do repeated

25 asthma attacks have adverse effects?

1 MR. GROSSMAN: Right.

2 THE WITNESS: Well, I'm -- well, each individual

3 asthma attack is adverse. If someone suffers from repeated

4 attacks, that can impact their overall and general health.

5 And an asthma attack is, you know, like with anything in

6 health care, in medicine, there are, there can be

7 consequences of that attack that affect your general health,

8 not necessarily just related to your asthma. I mean, if you

9 become hospitalized for an asthma attack, you could suffer

10 other health complications from being in the hospital. So

11 if you suffer repeated attacks, not only may your

12 respiratory health be affected but your general health could

13 be affected from suffering repeated attacks.

14 BY MS. ROSENFELD:

15 Q And you said that if you had repeated attacks,

16 your overall respiratory health could be affected. Could

17 you describe what those potential affects would be?

18 A Well, if you have chronic -- I mean, asthma is a

19 disease characterized by underlying chronic inflammation.

20 It can be controlled, attacks can be prevented with

21 medication, but if you have chronic inflammation and

22 recurrent attacks, which means acute exacerbations and

23 spikes in that inflammation, it can affect your lung

24 function and can contribute to a decline, an overall decline

25 in lung function over time.

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1 MR. GROSSMAN: What physically causes the decline
2 in lung function? Is there scarring? Is there -- what is
3 it that --
4 THE WITNESS: The chronic inflammation and you get
5 remodeling of your airways, not necessarily scarring per se,
6 but with asthma, over the long term you can get airway
7 remodeling, whereby your air passages or your air sacs that
8 exchange gas can thicken, you can produce more mucus and
9 just have a higher state of inflammation such that that
10 would affect your lung function and your ability to, you
11 know, exchange air, exchange gas, move air.
12 MR. GROSSMAN: Okay.
13 BY MS. ROSENFELD:
14 Q And, Dr. Jison, are you familiar, do you know if
15 the EPA has any definition of adverse health effect?
16 A Well, they do and it's quite opposite of what
17 Dr. Chase suggested in his testimony that you quoted. And I
18 think the best way to convey what their definition of an
19 adverse health effect is to really just quote from their
20 final rule, from their Integrated Science Assessment for the
21 NO2 final rule, where they explained how they defined their
22 adverse health effects. So I'm going to quote from that.
23 MR. GOECKE: Is this the do-not-cite document or
24 is this an older --
25 THE WITNESS: No, this is the -- I think this has

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1 been submitted. Sorry. Can I answer his question?
2 MR. GROSSMAN: Sure, go ahead. What are we
3 talking about, what document?
4 MR. GOECKE: That's my question.
5 MR. GROSSMAN: Yes.
6 THE WITNESS: This is the final rule from the 2010
7 Federal Register. This --
8 BY MS. ROSENFELD:
9 Q Yes.
10 A -- is not the draft. This was the final rule,
11 which I understand --
12 MS. ROSENFELD: Oh, I'll give you --
13 MR. GROSSMAN: Let's find out the exhibit number
14 first, Dr. Jison.
15 MS. ROSENFELD: I'll give you an exhibit number in
16 a moment.
17 THE WITNESS: It's the NO2 ISA final, final draft.
18 MS. ROSENFELD: 424(a), the Tuesday, February 9th,
19 2010, Federal Register.
20 MR. GOECKE: February 9th, 2010?
21 MS. ROSENFELD: Yes, and it's Exhibit No. 424(a).
22 THE WITNESS: I'm afraid I don't know the page
23 number.
24 MR. GROSSMAN: And what portion of it are you
25 reading from?

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1 THE WITNESS: It's in the area where they define,
2 defining adverse health effects, how the EPA defines adverse
3 health effects. Unfortunately, I can't remember the page
4 number.
5 MR. GROSSMAN: Ms. Rosenfeld, do you know the page
6 number?
7 MS. ROSENFELD: I might be able to get that for
8 you in just a moment.
9 THE WITNESS: If I can get a copy of the document,
10 I might be able to sift through it and find it. Thanks.
11 MR. GROSSMAN: Yes.
12 THE WITNESS: I think it's from actually the
13 excerpts that Karen Cordry had provided.
14 MS. ROSENFELD: I have those. Just one moment.
15 THE WITNESS: Karen, it was the NO2 ISA from your
16 Dropbox, the new ones.
17 MS. CORDRY: Okay. Here. It is from the new
18 materials.
19 MS. ROSENFELD: Old materials.
20 MS. CORDRY: No, it's from the new ones, the stuff
21 from 2013.
22 MR. GOECKE: The document that says do not cite --
23 MS. CORDRY: Yes.
24 MR. GOECKE: -- you're talking about?
25 MS. CORDRY: It's on page LV of the preface there.

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1 That's where that was cited from.
2 THE WITNESS: Otherwise, I can just give an
3 interpretation instead of citing from it.
4 MR. GOECKE: Yes. Again, we would object to the
5 use of this document, Mr. Grossman. There's a --
6 MR. GROSSMAN: But there is a, in the February 9,
7 2010, EPA, there is a discussion of health effects, but I'm
8 not sure about the particular language defining adverse
9 effects. I haven't found that --
10 MR. GOECKE: Yes.
11 MR. GROSSMAN: -- yet. All right. Why don't we
12 -- what do you consider, Dr. Jison, an adverse health
13 effect?
14 THE WITNESS: So, in addition to producing
15 symptoms, clinically apparent symptoms of an exacerbation of
16 some chronic disease -- like, you know, in the example of
17 asthma, respiratory symptoms: cough, shortness of breath,
18 you know, shortness of breath with exertion, wheezing --
19 there's also effects that aren't necessarily clinically
20 apparent but, when taken as a whole, would be considered
21 adverse. Like, for example, the American Thoracic Society,
22 which the EPA has drawn on for their definition of adverse
23 health effects, considers that -- an effect that changes the
24 distribution of, say, lung function within a population such
25 that no one individual may experience an actual adverse

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1 effect but clearly the shift in distribution of lung
2 function within a population in the wrong direction would be
3 clearly adverse because it would lead to or predispose those
4 individuals to an increased risk from subsequent exposures
5 or other environmental exposures. So that would be
6 considered an adverse health effect in addition to, you
7 know, clinically detectable adverse health effects.
8 MR. GROSSMAN: Okay.
9 THE WITNESS: Can I add to that?
10 MR. GROSSMAN: Sure.
11 THE WITNESS: So another example would be that,
12 something that leads to maybe an increase in biomarkers or
13 markers of inflammation -- cytokines, you know, particular
14 hormones that are released by cells, increased levels of
15 reactive oxygen species. Those may not necessarily be
16 associated with a clinically apparent health effect, but the
17 increase in them in the general population predisposes such
18 individuals, particularly individuals with chronic diseases
19 or sensitive populations, like asthmatics, the elderly,
20 children, you know, would predispose them to having an
21 increased risk of adverse health effects. So --
22 MR. GROSSMAN: So you're saying an adverse health
23 effect does not have to be apparent clinically; it could be
24 something that exists in the increase or changes in
25 important biomarkers?

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1 THE WITNESS: Right.
2 MR. GROSSMAN: Okay.
3 BY MS. ROSENFELD:
4 Q And, Dr. Jison, I'm going to show you what's been
5 marked as Exhibit No. 424(a), and I'm going to ask you to
6 look at the section on --
7 MS. HARRIS: Excuse me. There's a phone that
8 keeps going off.
9 MS. ROSENFELD: I'm sorry.
10 MS. HARRIS: It's sort of been doing it all day
11 long. I don't know if you can hear it, but --
12 MR. GROSSMAN: No, I didn't.
13 MS. HARRIS: Yes.
14 MR. GOECKE: Yes.
15 MS. ADELMAN: Is that that buzz?
16 MR. GOECKE: Yes.
17 MS. HARRIS: Yes.
18 MR. GROSSMAN: It's Mrs. Rosenfeld getting her
19 buzz on.
20 MR. GOECKE: It's not 5 o'clock.
21 MS. ROSENFELD: You ain't seen nothing yet.
22 BY MS. ROSENFELD:
23 Q What's been marked as Exhibit No. 424(a), and I'm
24 going to refer you to page 6480, and on the first column is
25 a paragraph that starts: Number 1, Adverse Respiratory

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1 Effects and Short-Term Exposure to NO2. Would you please
2 take a look at that section and tell me whether or not
3 that's consistent with your earlier testimony about
4 potential health effects and NO2?
5 A So the paragraph says: The ISA concluded that the
6 findings of epidemiologic, controlled human exposure, and
7 animal toxicological studies provide evidence that is
8 sufficient to infer a likely causal relationship for
9 respiratory effects following short-term NO2 exposure.
10 MR. GROSSMAN: I'm sorry. Which, where are we
11 reading from here?
12 MS. ROSENFELD: This is --
13 THE WITNESS: This is page 6480.
14 MR. GROSSMAN: On?
15 MS. ROSENFELD: Of Exhibit 424(a).
16 MR. GROSSMAN: 424?
17 MS. ROSENFELD: (A).
18 MS. ADELMAN: (A).
19 MR. GROSSMAN: (A)? All right.
20 MS. ROSENFELD: The Federal Register for NO2,
21 February 9th, 2010.
22 MR. GROSSMAN: And the page number again?
23 THE WITNESS: 6480.
24 MR. GROSSMAN: 80, okay.
25 MS. ROSENFELD: And --

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1 THE WITNESS: Down at the bottom left.
2 MR. GROSSMAN: Okay.
3 THE WITNESS: Under No. 1, where it says: Adverse
4 Respiratory Effects and Short-Term --
5 MR. GROSSMAN: Right. Hold on one second. Let me
6 -- okay.
7 THE WITNESS: So I'll continue the paragraph. It
8 says: The ISA concluded that the strongest evidence for an
9 association between NO2 exposure and adverse human health
10 effects comes from epidemiologic studies of respiratory
11 symptoms, emergency department visits, and hospital
12 admissions. These studies include panel and field studies,
13 studies that control for the effects of co-occurring
14 pollutants, and studies conducted in areas where the whole
15 distribution of ambient 24-hour NO2 concentrations was below
16 the current N-, double A, -Q-S level of 53 parts per billion
17 annual average. With regards to this evidence, the ISA
18 concluded that NO2 epidemiologic studies provide little
19 evidence of any effect threshold. In studies that have
20 evaluated concentration-response relationships, they appear
21 linear within the observed range of data.
22 BY MS. ROSENFELD:
23 Q And, Dr. Jison, in your words, can you explain
24 what that means?
25 A So the EPA, when they consider their rules, looks

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1 at a large body of evidence, scientific evidence, and they
2 consider many factors when they look at that. They look at
3 toxicological studies, concentration-response studies, human
4 studies, and they also consider the robustness of the data
5 when they look at that. And they've concluded that they
6 have seen and these studies have demonstrated health effects
7 at levels below the current standard for NO2 and that there
8 does not appear to be a threshold level in that the
9 concentration-response relationships that they have observed
10 in these studies appears to be linear and that they have not
11 yet found the lower level where you would not see health
12 effects.

13 Q And, Dr. Jison, if you would take that same
14 exhibit and turn to the following page. Is there more
15 information on that page that further describes EPA's
16 health-related determinations with respect to NO2?

17 A I'm sorry. Can you repeat the question?

18 Q Is there more information in that rule on the
19 following page with respect to EPA's findings of adverse
20 health effects related to NO2?

21 A There are. I just have to read through it a bit.
22 I mean, basically, Section 4 goes, goes into NO2-related
23 impacts on public health and specific groups that are at an
24 increased risk. I mean, you know, they mention that factors
25 that increase susceptibility to effects of air pollution are

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1 those, you know -- I'll just read it here.
2 Factors that may influence susceptibility to the
3 effects of air pollution include age, for example, infants,
4 children, the elderly; gender; race/ethnicity; genetic
5 factors; and preexisting disease slash conditions, for
6 example, obesity, diabetes, respiratory disease, asthma,
7 chronic obstructive pulmonary disease, and cardiovascular
8 disease, airway hyperresponsiveness, which is another term
9 for wheezing related to asthma and other respiratory
10 conditions, respiratory infection, and adverse birth
11 outcomes. In addition, certain groups may experience
12 relatively high exposure to NO2, thus forming a potentially
13 vulnerable population. And factors that may influence
14 susceptibility and vulnerability to air pollution include
15 socioeconomic status, education. So the ISA discussed
16 factors that can confer susceptibility and/or vulnerability
17 to air pollution with most of the discussion devoted to
18 factors for which NO2-specific evidence exists. These
19 factors include preexisting disease, asthma; age, infants,
20 children, older adults; genetic factors; gender;
21 socioeconomic status; and proximity to roadways.

22 Q Okay. Thank you. In Dr. Chase's testimony on
23 September 16th, 2013 -- this comes from page 139 --
24 Dr. Chase testified, quote, I don't think there's going to
25 be any health impacts from this gas station, and if it goes

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1 forward, there's no one in the world who would be able to
2 design a study that would be able to show that there's been
3 any incremental contribution to adverse health in the
4 Wheaton community, the neighborhood, however you define it;
5 it's just not possible.

6 In your opinion, is it possible to study the
7 adverse health effects of these pollutants?

8 A I think it is, and the published literature and
9 the EPA scientific assessments clearly demonstrate that you
10 can.

11 MR. GROSSMAN: Well, I don't think that's what --
12 I think Dr. Chase's comment referred to the adverse effects
13 from, studying the adverse effects from the gas station
14 itself as opposed to, in general, the adverse effects of
15 these pollutants.

16 MR. GOECKE: I agree.

17 MR. GROSSMAN: So, I guess, if that question were
18 posed to Dr. Jison, Dr. Chase said there's no way you can
19 design a study to show the adverse effects from this gas
20 station, I guess, given the levels of pollutants that would
21 be expected to be produced by it, do you disagree with that?

22 THE WITNESS: I don't think it would necessarily
23 be impossible. I mean, you could measure before -- measure
24 levels before and after and then measure health effects, you
25 know, before and after a particular intervention has been

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1 made at that site and, in the same manner that these
2 epidemiologic studies have done, you know, determine whether
3 there was a health effect related to that particular
4 exposure or the intervention.

5 MR. GROSSMAN: Could you do a reliable scientific
6 study over that small an area, with that small a population?

7 THE WITNESS: I mean, I don't know that I can
8 answer that question, quite frankly.

9 MR. GROSSMAN: Okay.

10 BY MS. ROSENFELD:

11 Q Dr. Jison, I'd like to turn for moment about --
12 MR. GOECKE: I'm sorry. I didn't hear that
13 answer.

14 MR. GROSSMAN: She's not sure she could address
15 that issue.

16 MR. GOECKE: Thank you.

17 BY MS. ROSENFELD:

18 Q I'd like to turn for a moment to the health
19 effects caused by PM2.5. Can you explain adverse health
20 effects caused by PM2.5 on sensitive populations, and in the
21 course of answering that, what is a, quote/unquote,
22 sensitive population?

23 A So let me first start with the sensitive
24 populations.

25 Q Yes.

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1 A I would consider sensitive populations to be
2 people with chronic diseases that would be at increased risk
3 to an exposure, such as asthma or chronic respiratory
4 disease or chronic cardiovascular disease, certainly
5 children and the elderly and even pregnant women and
6 asthmatics in particular. Asthma is a particular disease
7 that has been cited by the EPA as a particular sensitive
8 population.
9 With respect to the adverse effects of PM2.5 on
10 those sensitive populations, I think it might be important
11 to discuss the mechanism of injury that might be at play in
12 that relationship and then also the dose, some discussion
13 about the dose or cumulative dose of the exposure, and then
14 there are studies that demonstrate the health effects that I
15 could go into.
16 So with respect to the mechanism of lung injury,
17 fine particle pollution or PM2.5 is of particular concern
18 because fine particles are the perfect size to be inhaled
19 deep into the lungs. Because of their size and their
20 increased surface area, they are also perfect for being
21 deposited onto the, what's called interstitial tissues of
22 the lungs, the tissues surrounding the lungs in your air
23 sacs and that are between other various anatomical parts
24 throughout your body. But particularly in the lungs, PM2.5
25 is the perfect size for depositing there and can be

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1 translocated through into the general circulation and
2 circulate into the rest of your body. Fine particles are --
3 MR. GROSSMAN: You're saying, in general, certain
4 blood circulation?
5 THE WITNESS: Yeah. Yeah. So --
6 MR. GROSSMAN: So they're fed through the lungs
7 into the bloodstream?
8 THE WITNESS: Uh-huh. Uh-huh, it can because fine
9 particles also are retained longer within the lungs. Animal
10 studies shows that fine particles can be retained even up to
11 a year, and when you have retention of those particles, it
12 can affect the functioning of alveolar macrophages, which
13 are cells that are responsible for clearing debris from the
14 lungs and also responsible in the immune response of the
15 lungs. And fine particles can induce an inflammatory
16 response in the lung and that inflammatory response can
17 persist for a long period of time after the exposure, and
18 then repeated insults can be additive to that.
19 So injury, lung injury from pollution is really
20 from a combination of exposure and dose. So you have an
21 exposure; then there's a dose, whatever that amount is, and
22 then you see an effect, and the longer particles are
23 retained and the more chronic the exposure, the more
24 frequent you're, frequently you're exposed to that, you can
25 get a cumulative dose.

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1 Another physical characteristic of PM2.5 is that
2 they can adsorb onto -- because of their increased surface
3 area and the physical properties of them, they can adsorb
4 onto lung surfactant molecules. Lung surfactant is a
5 lung-lining fluid. It lines the insides of your lungs and
6 your air sacs. It plays an important role in protective
7 immunologic and physiologic functions in your lungs. It
8 helps keep, clear bacteria and other infectious matter and
9 debris from the lungs. It also helps keep your air sacs
10 open so that they can be, you know, optimally functional.
11 So the interactions of PM2.5 with surfactant is
12 thought to be fundamentally important in the health effects,
13 and this is thought to be one potential mechanism of action,
14 that PM2.5 could cause injury to the lungs in addition to
15 inciting inflammation, and this, of course, would lead to
16 impairment of lungs expansion, impairment of immunity within
17 the lungs.
18 So sensitive populations, people with asthma or
19 chronic respiratory disease or chronic preexisting
20 cardiovascular disease, would be more sensitive to the
21 effects of pollution or PM2.5. Children are especially
22 vulnerable because their lungs haven't completely developed.
23 Air sacs continue to grow after you're born, and your lung
24 function continues to evolve and that can be affected by
25 exposure to pollution and particulate matter. People with

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1 chronic conditions are at increased risk because their
2 disease is already characterized by a state of chronic
3 underlying inflammation, particularly asthma or certain
4 cardiovascular diseases. So that's how -- that's, that's
5 the injury part and the dosing part.
6 Now, there have been --
7 BY MS. ROSENFELD:
8 Q Dr. Jison, I have a couple of questions.
9 A Uh-huh.
10 Q You used the phrase repeated insults --
11 A Uh-huh.
12 Q -- can increase the dose. I'm not sure what that
13 means.
14 A Well, repeated exposure. So given that fine
15 particles can be retained for long periods of time from a
16 single exposure event, if you have repeated exposures, you
17 can have a cumulative effect; so that essentially you're
18 getting, your dose is accumulating to whatever it is you
19 were exposed to.
20 Q I think you said the phrase adsorb.
21 A Yeah.
22 Q Do you mean absorb, or is that a different word?
23 A No, it's adsorb. Basically, the particles will
24 stick to other particles --
25 Q Oh, okay.

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1 A -- so that PM2.5 can stick and aggregate with
2 amino acids and proteins in the lungs, like surfactant, and
3 basically sequester it or, you know, aggregate it to the
4 point that it doesn't function normally.

5 Q Okay.

6 MR. GROSSMAN: How do you spell surfactant?

7 THE WITNESS: S-U-R-F-A-C-T-A-N-T --

8 MR. GROSSMAN: Okay.

9 THE WITNESS: -- surfactant. Would you like me to
10 use it in a sentence?

11 MR. GOECKE: She's done that before.

12 MS. HARRIS: Or she's been in a spelling bee.

13 MR. GOECKE: Well, that's what I mean.

14 MR. GROSSMAN: All right.

15 MS. CORDRY: She even used it in a sentence.

16 THE WITNESS: So with respect to the actual
17 adverse effects that you would see from PM2.5, clinical
18 studies show that high levels of fine particulate pollution
19 are associated with the greater odds of having asthma
20 symptoms exacerbated, having a more severe asthma attack and
21 increased use of rescue inhalers, medications that would
22 alleviate symptoms of asthma. Studies show that even what
23 would be categorized by industry and EPA as low levels of
24 PM2.5 are associated with increased asthma symptoms and
25 clinically relevant declines in lung function and increased

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1 cardiovascular risk.

2 Small incremental increases in PM2.5, you know,
3 10-microgram-per-cubic-meter increments, are associated with
4 increased cardiovascular mortality. Studies show that
5 central site monitoring stations may reflect fine
6 particulate pollution levels that are below EPA limits but
7 that the exposure to fine particulates, as a result of daily
8 activities and point-source exposures for individual, as
9 measured by personally worn monitors in some of these sites,
10 may actually be far higher than what the central monitors
11 would reflect and often exceed the EPA standards.

12 MR. GROSSMAN: That's your personal cloud?

13 THE WITNESS: Yeah. Yeah.

14 MR. GROSSMAN: You referenced that in your
15 materials.

16 THE WITNESS: Right.

17 MR. GROSSMAN: Okay.

18 THE WITNESS: Right. Right. That's the -- that's
19 that. Children, especially younger children, are at
20 increased risk because their lungs are still developing,
21 physically and functionally, and children with asthma are at
22 an even greater risk. Short-term exposures lasting minutes
23 to hours have clinically relevant negative respiratory
24 effects.

25 Prenatal exposures to PM2.5 have been associated

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1 with increased risk of respiratory infections early in life,
2 early in childhood, and in a dose-dependent manner, even at
3 levels that are below EPA standards. And prenatal exposure
4 also can, has been shown to be associated with lung function
5 deficits in early childhood.

6 Studies have shown that local exposure to traffic
7 has adverse effects on children's lung development and is
8 independent of regional air quality. One study in southern
9 California communities show that children who grew up within
10 less than 500 meters from a freeway had lower lung function
11 levels by age 18 compared to kids who lived further away
12 from a freeway, and the distance was over 1500 meters. And
13 in another southern California study of 12 communities,
14 clinically low lung function levels were correlated with the
15 levels of exposure to various pollutants, including fine
16 particulates. Low lung function in children was observed
17 even in communities where the average level of fine
18 particulate matter over the eight-year study period was
19 within EPA limits.

20 So this -- that particular study showed that the
21 lung development from ages 10 to 18 years is reduced in
22 children who are exposed to higher levels of background
23 pollution, and you know, this kind of speaks back to the
24 EPA's definition of adverse health effect in that
25 distribution shift in function, where, you know, a

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1 population experiences a shift.

2 One, I want to mention that even -- there are
3 studies that also show effects in healthy individuals.
4 People -- there have been studies showing that people who
5 exercise in an environment that has increased levels of
6 pollution have decreased performance. There have been
7 studies in marathon runners and cyclists who have done
8 routes in an urban area that's, you know, according to
9 central monitor readings, have had higher levels of
10 pollution compared to another route and have shown decreases
11 in those performance, in their performance.

12 MR. GROSSMAN: In their performance in a
13 particular marathon or performance --

14 THE WITNESS: Well, performance of a marathon
15 distance run or a particular distance, you know. These are
16 somewhat elite athletes who are, have very consistent
17 performance times, and the studies were done comparing their
18 performance in one area versus another --

19 MR. GROSSMAN: Okay.

20 THE WITNESS: -- because it had differing levels
21 of pollution. And this is relevant because the swimming
22 pool is, you know, situated near the mall and the proposed
23 gas station. People in the -- people go to the mall to
24 exercise. There's a lot of people who go there to walk
25 around inside the mall as part of their exercise routine.

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1 My neighbors, who have chronic illnesses, walk daily for
2 what appears to be hours on end but, you know, directly in
3 the neighborhood adjacent to the mall, and so it's relevant.
4 And when you're exercising, you're also, you know, you
5 increase your respiratory -- you know, you're being
6 physically active. So I'm sure everybody would know because
7 you've taken the stairs. Your respiratory rate increases;
8 you're breathing deeper and faster; you're moving a larger
9 volume of air. So your exposure is greater when you're
10 exercising. So that's just what I wanted to mention about
11 that.

12 BY MS. ROSENFELD:
13 Q Dr. Jison, I'd like to turn for a moment, again,
14 to Dr. Chase's testimony, and --
15 MR. GROSSMAN: I'll tell you what. Before you do
16 that, let's take a five-minute break.
17 MS. ROSENFELD: Oh, sure.
18 MR. GOECKE: Great.
19 MS. ROSENFELD: Sure.
20 (Whereupon, a brief recess was taken.)
21 MR. GROSSMAN: All right. You may proceed.
22 BY MS. ROSENFELD:
23 Q Dr. Jison, in addition to the materials that you
24 cited earlier from the EPA, are you familiar with any
25 additional EPA discussion of what constitutes adverse health

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1 effects?
2 A Yeah. Can I go back -- before we go into that,
3 can I --
4 Q Oh, certainly, yes.
5 A -- go back and just add a little something with
6 regards to the sensitive populations and the PM2.5?
7 MR. GROSSMAN: Sure.
8 MR. GOECKE: And for the record, I think her
9 testimony about adverse health effects was her own opinion.
10 We didn't actually get to the, any document that she was
11 quoting from.
12 MR. GROSSMAN: We never found a --
13 MR. GOECKE: Definition.
14 MR. GROSSMAN: -- specific reference to the term
15 adverse health effects. They talk about health effects --
16 MR. GOECKE: Right.
17 MR. GROSSMAN: -- in the parts of the --
18 MR. GOECKE: Federal Register.
19 MR. GROSSMAN: -- that are in effect, but I don't
20 know that we ever found the term adverse health effects, but
21 I don't know that there's really a dispute about an adverse
22 health effect if you, in fact, have an impact on your asthma
23 or any of these other things. The question I guess you
24 could raise is whether or not it's an adverse health effect
25 if you don't have a clinical observation, and I guess that

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1 goes to the distinction between Dr. Chase and Dr. Jison. I
2 mean, is the applicant contending -- don't we have somebody
3 messing with our --
4 MS. HARRIS: Dr. Chase.
5 MR. GROSSMAN: Dr. Chase, no, no, no.
6 MS. HARRIS: That's a no-no. You haven't been
7 here long enough.
8 MR. GROSSMAN: You can be prosecuted for that.
9 MR. CHASE: Mr. Grossman --
10 MR. GROSSMAN: Yes, sir.
11 MR. CHASE: -- how can I turn the fan up?
12 MR. GROSSMAN: Our court reporter will adjust it.
13 THE REPORTER: Mr. Grossman, how about we turn the
14 heat down but leave the air-conditioning off? Does that
15 work?
16 MR. GROSSMAN: All right. How about turn the
17 whole system to -- turn the system to off.
18 THE REPORTER: Okay.
19 MS. ADELMAN: Is the air-conditioning on?
20 MR. GROSSMAN: Yes. I did that.
21 MR. SILVERMAN: Thank goodness.
22 MR. BRANN: Thank you.
23 MR. GROSSMAN: It got the biggest response I've
24 gotten doing anything here --
25 MR. SILVERMAN: Right.

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1 MS. CORDRY: Right. Right.
2 MR. GROSSMAN: -- in six months. All right.
3 MR. GOECKE: Ambient air.
4 MR. GROSSMAN: That's it. Does the applicant
5 contend that it's not an adverse health effect if pollution
6 caused by the gas station -- I'm not saying it will -- but
7 if there were pollution caused by the gas station which
8 would cause a change in biomarkers in a way that would make
9 a person more susceptible to health problems, would you
10 consider that -- not consider that an adverse health effect?
11 MR. GOECKE: That's a fair question. I would like
12 to consult with our consultants before I respond to that.
13 MR. GROSSMAN: Okay. All right, fair enough. You
14 can keep going.
15 THE WITNESS: So with respect to the PM2.5 and
16 sensitive populations, you know, children are sensitive
17 populations, but particularly with regards to some of the
18 potential pathophysiologic mechanisms of injury, premature
19 infants would be at an especially increased risk because
20 premature infants, depending on how early they're born, have
21 a deficiency in surfactant, and so something that would
22 affect the functioning of surfactant would be all the more
23 injurious.
24 MR. GROSSMAN: Okay.
25 THE WITNESS: So can you repeat your question?

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1 BY MS. ROSENFELD:
2 Q Sure. Did you have any other EPA references to
3 discussion of what adverse health effects could be for NO2?
4 A Well, only in that the EPA, in their final rule
5 for the NO2, from the 2010 Federal Register final rule,
6 considered an even lower standard of 80 but that -- evidence
7 at the time of that review was insufficient for that.
8 Notable in that final rule was that multiple professional
9 medical societies, including the American College of Chest
10 Physicians, the American Lung Association, the American
11 Medical Association, the American Thoracic Society, all
12 supported setting the short-term NO2 standard to below 80,
13 to even --
14 MR. GROSSMAN: Eighty what?
15 THE WITNESS: Parts per billion.
16 MR. GROSSMAN: Okay.
17 THE WITNESS: And to even below 50 based on
18 scientific studies that were available at the time.
19 MR. GROSSMAN: For the 24 -- for the one-hour?
20 THE WITNESS: For the short-term, the one-hour.
21 MR. GROSSMAN: Okay.
22 BY MS. ROSENFELD:
23 Q And, Dr. Jison, on page 6488 of the 2010 Federal
24 Register, the NO2 rule discusses certain transient effects
25 of NO2.

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1 MR. GOECKE: I'm sorry. 6488?
2 MS. ROSENFELD: 6488.
3 MR. GOECKE: That's not part of the excerpts?
4 MS. ROSENFELD: It is --
5 THE WITNESS: No, it's in this.
6 MS. CORDRY: The entire rule is in. It's not part
7 of the highlighted excerpts.
8 MS. ROSENFELD: That's correct.
9 THE WITNESS: This is the Federal Register.
10 MS. CORDRY: Need to put the whole rule in as
11 well, right?
12 MS. ROSENFELD: Yes.
13 MR. GOECKE: It jumps around. It skips some.
14 MS. HARRIS: What was the cite?
15 MR. GOECKE: 88, 6488.
16 MR. BRANN: 83, 84, and it jumps to 93.
17 BY MS. ROSENFELD:
18 Q Oh, do you --
19 A Oh, I was waiting for you guys to --
20 Q Oh, do you see the language on 6488 there? It
21 starts in the middle of the sentence, I believe: The ISA
22 concluded the transient increases in airway responsiveness.
23 A Yeah. So it says: The ISA concluded that
24 transient increases in airway responsiveness following NO2
25 exposure have the potential to increase symptoms and worsen

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1 asthma control.
2 So, basically, the uncertainty over the adversity
3 of a response from controlled human exposure sites doesn't
4 mean that the NO2-induced increase in airway responsiveness
5 is not adverse but that there's a risk of an adverse health
6 effect, especially for asthmatics with more than mild
7 asthma, but that this risk can't be fully characterized
8 based on the studies that were existing at the time.
9 Q So is that consistent with the statements of
10 Dr. Chase that transient health effects don't have, don't,
11 can't be characterized as adverse effects?
12 A No. It's quite the opposite, that clearly,
13 transient health effects are adverse.
14 Q Okay. Thank you. Has the EPA studied whether
15 adverse health effects occur at pollution concentrations
16 even below the existing EPA standards for PM2.5 and NO2?
17 A I'm sorry. Can you repeat that question?
18 Q Sure. Has the EPA studied whether adverse health
19 effects occur at pollution concentrations below the existing
20 EPA standards for PM2.5 and NO2?
21 A They have, and for both PM2.5 and NO2, they have
22 reviewed several studies that show health effects that are
23 seen even at levels below the current standards in that
24 they're --
25 MR. GROSSMAN: Isn't that what the witness just

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1 testified to before the break, about there being a linear --
2 THE WITNESS: Right. There is a dose response.
3 MS. ROSENFELD: That's correct, that they're --
4 MR. GROSSMAN: She's already covered that area as
5 far as -- actually, as far as both.
6 MS. ROSENFELD: That was her testimony, and I'd
7 proffer that she'll supplement that with EPA citations to
8 support her testimony.
9 MR. GROSSMAN: Okay. All right.
10 THE WITNESS: Yeah, so the studies that they have
11 evaluated demonstrated dose response, and -- for both PM2.5
12 and NO2 -- and that we're not, we haven't seen the bottom
13 yet. You know, we're never -- the standards get revised.
14 You can only study what the levels are at the time, and if
15 the standards, you know, are at a certain level, that's what
16 -- you'll see health effects. So they've done studies, and
17 you're seeing health effects at that level, and then -- so
18 because they saw studies at that, or effects at that level,
19 you know, it was recommended by the EPA to lower the
20 standards even further, and so now more studies have come
21 out that had showed effects at even lower levels than the
22 previous standard, and so there appears to have not been a
23 bottom yet identified by the studies.
24 MR. GROSSMAN: My concern is one I've raised
25 before, is that how do I apply that information to this kind

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1 of situation, where they set a standard but there is
2 evidence out there that there may be health effects below
3 that standard? How do I apply that to this situation?
4 MS. ROSENFELD: My response to that would be the
5 standards for, in particular, NO2 and PM2.5 were recently
6 revised. There are currently EPA studies underway to
7 evaluate whether those standards should be lowered further,
8 and there certainly is scientific evidence to support the
9 findings that there are adverse health effects at lower,
10 lower levels. And what we're looking at here is an
11 application for a special exception for a mega gas station
12 that will be in place presumably for decades, and the
13 question is, is there sufficient evidence to show that there
14 are adverse health effects at these marginally lower levels?
15 Let's be candid. We're not talking about levels
16 that are half of these standards. We're talking about
17 marginally lower than what the EPA has set, and the evidence
18 in the record shows that there's very high likelihood that
19 the EPA will lower those standards in a very near term when
20 you're talking about decades, probably within the next
21 several years. And so on balance, the question is, with the
22 standard that's come -- that has every indication of
23 dropping along the continuum in the near term and a special
24 exception that's going to be on the ground for decades, is
25 there in fact enough evidence to show that there is an

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1 adverse health effect? Not only do I think the studies that
2 are being presented to you show that there is an adverse
3 health effect, but in fact, every regulatory indication is
4 that soon the standards will be lowered themselves.
5 MR. GROSSMAN: Don't I also have to take into
6 consideration the evidence that the pollution levels are
7 being reduced gradually, especially from, produced by cars?
8 MS. ROSENFELD: The pollution levels are being
9 reduced; however, you have a very unique situation here
10 because you are not talking about where, a situation where
11 you are, have a point source that is neutral. You are
12 bringing the point source to this location. No matter how
13 far the background ambient air levels drop, you are creating
14 a situation that by Mr. Sullivan's own evidence shows you
15 are creating a hot spot, you are bringing those vehicle
16 emissions --
17 MS. HARRIS: Objection.
18 MS. ROSENFELD: -- to this location.
19 MR. GROSSMAN: Well, you can't object to that
20 because I'm asking her a question and she's answering it.
21 But the point source you're talking about is one that is a
22 point source of vehicles producing emissions, but it's the
23 emissions from those vehicles that the -- some evidence
24 shows that those emissions are going down gradually as the
25 standards have brought that about, as federal standards have

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1 brought that about.
2 MS. ROSENFELD: I don't think that there's been
3 any quantifiable evidence in the record that shows how much
4 the vehicles that will be coming to this site will, will
5 reduce over time. I do think that there's evidence in the
6 record from Dr. Cole that shows very clearly that,
7 particularly with NO2, there is a significant increase in
8 the levels of NO2 generated by the special exception -- not
9 by the loading dock, not by background, but by the vehicles
10 coming to this location and in the face of an NO2 rule that
11 appears to be subject to revision at lower levels within
12 probably three or four years, it would appear. It looks
13 like they're conducting studies that will be concluded
14 within less than five years, and they're already underway.
15 MR. GROSSMAN: All right.
16 MS. CORDRY: And that, in fact, was why we put the
17 ISA, the new ISA standard in, because that picks up the
18 studies that took place over the last several years since
19 the last, the last EPA rule was done.
20 MR. GROSSMAN: I understand. Mr. Goecke, did you
21 want to say something?
22 MR. GOECKE: Well, what I wanted to say before was
23 I objected to the mischaracterization of Mr. Sullivan's
24 testimony as creating a hot spot. That's definitely not
25 what he testified to.

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1 In terms of responding to their points generally,
2 it sounds to me that they're trying to argue that the
3 applicant has not met its burden because the standards may
4 change in five years from now. Well, a lot of things may
5 change in five years. You know, technology may change such
6 that the emissions that are modeled today are the absolute
7 peak and, because of technology, those are only going to go
8 down with time. And if fewer people are driving cars and
9 people are driving less and consumption is going down, that
10 could drive numbers down as well.
11 So I think that, while interesting, we need to
12 keep focused, and I think that the code requires us to keep
13 focused on what the standard is today, what are, what's
14 going on now, and I think that's where the most relevant
15 evidence is.
16 MR. GROSSMAN: Okay.
17 MS. ROSENFELD: And to respond to that, you know,
18 the applicant has made it perfectly clear that from their
19 point of view the standard is the standard, and Kensington
20 Heights and, I believe, the Coalition and Kensington View
21 have never conceded that there are not adverse health
22 effects that can result from pollution exposures below those
23 EPA standards, just --
24 MR. GROSSMAN: Well, I understand that.
25 MS. ROSENFELD: Okay.

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1 MR. GROSSMAN: I understand that. That's true. I
2 mean, that's true that you've never conceded that.
3 MS. ROSENFELD: Right.
4 MS. CORDRY: And I guess, if I could just add,
5 while exposures may drop in the future, what she is going to
6 be talking about is studies that are showing at those levels
7 right now that we are showing in these charts that people
8 are exposed to right now.
9 MR. GROSSMAN: Well, no. Let her testify to it --
10 MS. CORDRY: Okay. Well --
11 MR. GROSSMAN: -- don't tell me what she's going
12 to --
13 MS. CORDRY: All right. I'm sorry, but that's the
14 point, that we are talking about --
15 MR. GROSSMAN: You've got counsel --
16 MS. CORDRY: -- current exposure levels and
17 current studies.
18 MR. GROSSMAN: -- already stated her position.
19 MS. CORDRY: I'm sorry.
20 MR. SILVERMAN: I just wanted to add, I think
21 EPA's approach to these types of questions is to, is to look
22 at places where you're close, in other words, where you have
23 yellow days, and their great concern is, will this put you
24 over? Yellow means caution. So if you're in a yellow
25 range, that is their, that is their greatest concern because

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1 that's where they can do the most good. So --
2 MR. GROSSMAN: Well, yellow means moderate,
3 according to the, what the EPA says.
4 MR. SILVERMAN: Well, I think it means what a
5 yellow finding is.
6 MR. GROSSMAN: Yes, but EPA called it --
7 MR. SILVERMAN: Caution.
8 MR. GROSSMAN: -- moderate. They called it
9 moderate.
10 MR. SILVERMAN: Yes.
11 MR. GROSSMAN: Okay.
12 MR. GOECKE: I mean, Mr. Grossman, if I understood
13 you correctly, you wanted to know what do you do with these
14 studies, what do you do with this information, and I haven't
15 heard an answer to that yet --
16 THE WITNESS: Can I comment on that?
17 MR. GOECKE: -- except that, well, the standards
18 may change sometime from now.
19 MR. GROSSMAN: One second. Okay. Let's let the
20 witness respond.
21 MS. ROSENFELD: Okay.
22 MR. GROSSMAN: Yes, please.
23 THE WITNESS: So I wanted to comment on your
24 question about what do you do with that. I mean, yes,
25 studies are showing that there is no threshold and that

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1 there are health effects at these levels below the EPA, but
2 the -- EPA standards -- but the EPA standards are not the
3 be-all/end-all of effects. I mean, just because the
4 standard is at a particular level doesn't mean that there is
5 zero, absolutely no risk related to that level. But I think
6 what we're trying to show here is that there are effects
7 below levels and that adding sources of pollution to a
8 particular area, based on these scientific studies, are
9 going to be associated with increased risk to those who are
10 being exposed in that area and an increased risk of adverse
11 health effects. So that just because you're within an EPA
12 standard doesn't guarantee that there's not going to be any
13 effects.
14 MR. GROSSMAN: I understand that, but the problem
15 is, for the County in deciding -- in this case, the Hearing
16 Examiner making a recommendation, and the Board of Appeals
17 deciding it -- is that we are not, we should not be in a
18 position where we are creating our own standard to evaluate
19 this. So we have to look to some objective source
20 scientifically establishing this kind of standard. The
21 logical place to look is the EPA standards.
22 It's a little unfair to any applicant to have
23 standards that are so loosey-goosey that -- they're not
24 written by the EPA, even though they studied it very
25 carefully and even though it may change later -- and maybe

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1 there can be conditions on a special exception which take
2 that into account -- it's problematic for the government to
3 establish, just pick a standard out of the air, when you
4 have what you've described as no level of this pollution
5 that has been determined to be safe; it's perfectly a linear
6 relationship, and they don't know where the bottom is at a
7 safe level. So from that standpoint, it's almost impossible
8 to set a standard where anybody can, you know, that we can
9 establish. So we turn back to that standard that has been
10 scientifically studied and established by formal government
11 action and that's the EPA standards. So that's, that's more
12 or less what I've hewn to in this --
13 THE WITNESS: Uh-huh. I completely understand
14 that you have a very difficult job in front of you. The EPA
15 standards are designed to protect public health. There is
16 no possible way that regulations can cover every possible
17 situation. This is an incredibly unique situation here and
18 an incredibly unique community given, you know, the
19 residents and the other surrounding people who are going to
20 be affected.
21 So I don't think that the EPA standards are going
22 to be the be-all/end-all of this. I think it's going to
23 have to be based on the scientific evidence of the adverse
24 health effects. And it is going to be difficult to apply
25 the EPA regulations, but I think the scientific evidence

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1 shows that there will be health effects and that the -- you
2 know, what I understand from the county code in the special
3 exception is that there should be no adverse health effects
4 related to --
5 MR. GROSSMAN: Well, that's not exactly -- I mean,
6 it's a little bit of misleading because of the way it's
7 phrased in that portion of the code. There's another
8 portion of the code that says that, for example, you cannot
9 deny a special exception based on adverse effects that are
10 inherent in the special exception. So you can deny it if
11 there are adverse effects that are both inherent and
12 non-inherent, but the concept that's embodied in that is
13 that it's expected that there are going to be some adverse
14 effects on a community from a special exception, from any
15 given special exception, and yet it's allowed as long as
16 they are inherent special effects, to some extent.
17 I mean, that's a simplification of it, but the
18 point I'm trying to make is that when you say there are
19 going to be adverse health effects or there are going to be
20 adverse effects on the community, it's not as simple as just
21 looking at the statute and saying, well, we have to not
22 allow it because there may be some health effects, and
23 especially in a situation, it seems to me, where the
24 opposition is establishing that there is no bottom to this.
25 So then there's no -- if there's no bottom, there's no

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1 standard that you're supplying to me that I can apply here.
2 So I'm, in a way, forced back to the EPA standards, because
3 you're telling me there is no gas station that can be
4 allowed here because every gas station is going to create
5 some pollution, right? Is that not so?
6 THE WITNESS: Well, this particular gas station is
7 unique in that the volume --
8 MR. GROSSMAN: I understand --
9 THE WITNESS: Yeah.
10 MR. GROSSMAN: -- but you're telling me no --
11 THE WITNESS: Well --
12 MR. GROSSMAN: -- under your standard, no gasoline
13 station can be allowed.
14 THE WITNESS: Yeah. Well, I believe that you
15 shouldn't add pollution to --
16 MR. GROSSMAN: To Montgomery County.
17 THE WITNESS: Well, no, that's not what I'm
18 saying, but --
19 MR. GROSSMAN: Well, I mean, that's, that's the
20 problem. That's the problem with the opposition's theory
21 here, and it is a problem. I'm not, you know, I haven't
22 made any decisions in this case, but it is a concern to me
23 that, yes, there's evidence that you present studies and say
24 that there could be health impacts below, even the levels
25 below the standards. The question is, what do I apply here?

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1 I can't just say across the board there can't be any, no gas
2 stations, because the County Council establishes the policy
3 and the policy they've established is gas stations are
4 permissible. So then you have to decide whether or not,
5 what effects are inherent and non-inherent in gas stations.
6 So, yes, this is an unusual situation. There are
7 lots of site conditions that are different from other areas
8 where gas stations might be. There are lots of things that
9 distinguish this from others, but they're all a bunch of
10 factors. It's not -- I just can't assume that, that this
11 gas station should be prohibited or not allowed, I guess, a
12 better word, just because there may be some adverse effects,
13 because that's not the law here. Anyway, but go ahead.
14 Let's continue on.
15 MS. ROSENFELD: Okay.
16 BY MS. ROSENFELD:
17 Q Dr. Jison, has the -- notwithstanding all of that,
18 I'd like to continue my line of questioning --
19 MR. GROSSMAN: Yes.
20 BY MS. ROSENFELD:
21 Q -- has the EPA studied whether adverse health
22 effects occur at pollution concentrations below the existing
23 EPA standards for PM2.5 and for NO2?
24 A They have. Again, I mean, without being too
25 repetitive, I mean, they have. The, for -- I'm going back

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1 into, you know, that they've studied it and they haven't
2 seen the threshold. I was trying to see, without repeating
3 myself, what, how I can answer that question. I mean, we've
4 already talked about, you know, dose response with PM2.5 and
5 NO2. The -- I guess I'm not completely understanding the
6 question.
7 Q Based on the studies that the EPA conducted in
8 setting the standards, the current standards for PM2.5 and
9 NO2, did the EPA review studies or cite to studies that
10 indicate that there are health, adverse health effects at
11 dosages lower than those EPA standards?
12 A Yes, they did. I'd have to look through my notes
13 to see if, to give individual examples. Let's see. You're
14 talking about for PM2.5, right?
15 Q That's correct, and NO2.
16 A I mean -- I mean, I have some summary of studies
17 that they've done. I have some charts here.
18 MR. GROSSMAN: Are you talking about language in
19 the -- Ms. Rosenfeld, are you talking about language in
20 the --
21 MS. ROSENFELD: Yes, I am. I am.
22 MR. GROSSMAN: -- the regulation itself or --
23 MS. ROSENFELD: Yes.
24 MR. GROSSMAN: -- language in what -- what
25 language?

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1 MS. ROSENFELD: I'm looking, in particular, at the
2 Federal Register 2013 -- this is for NO2 -- at page 6484.
3 The notice reports that, quote, the ISA concluded that the
4 result of epidemiological and experimental studies form a
5 plausible and coherent data set that supports a relationship
6 between NO2 exposures and respiratory end points, including
7 respiratory systems and respiratory-related hospital
8 admissions and emergency department visits, at ambient
9 concentrations that are present in areas that meet the
10 current NO2 NAAQS.
11 MR. GROSSMAN: All right. So what's the -- where
12 are you reading from again exactly, which exhibit?
13 MS. ROSENFELD: This is Exhibit No. --
14 MR. GOECKE: 424(b).
15 MS. ROSENFELD: -- 424(b).
16 MR. GROSSMAN: (B)? Okay.
17 MS. ROSENFELD: And this is page 6484.
18 THE WITNESS: Is that this 2010 Federal Register?
19 BY MS. ROSENFELD:
20 Q Yes.
21 MR. SILVERMAN: Yes.
22 THE WITNESS: 6480? And I'm sorry. Can you point
23 to the --
24 BY MS. ROSENFELD:
25 Q Sure. There's a sentence in there that starts:

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1 The ISA concluded.
2 A Under Section 2, 2a?
3 Q I don't have it in front of me.
4 A Because I have your copy.
5 Q That's right.
6 MS. HARRIS: It is 2.
7 THE WITNESS: Okay. The ISA concluded that the
8 epidemiologic evidence is suggestive but not sufficient to
9 infer causal relationship between short-term exposure to NO2
10 and all-cause cardiopulmonary-related mortality. Results
11 from several large United States and European multicity
12 studies and a meta-analysis study indicate positive
13 associations between ambient NO2 concentrations and the risk
14 of all-cause mortality, with effect estimates ranging from
15 .5 to 3.6 percent excess risk in mortality per standardized
16 increment, 20 parts per billion for a 24-hour averaging
17 time, 30 parts per billion for a one-hour averaging time.
18 In general, the ISA concluded that NO2 effect estimates were
19 robust to adjustment for co-pollutants. Both cardiovascular
20 and respiratory mortality have been associated with
21 increased NO2 concentrations in epidemiologic studies;
22 however, similar associations were observed for other
23 pollutants, including PM and sulfur dioxide, SO2. The range
24 of risk estimates for excess mortality is generally smaller
25 than that for other pollutants such as PM. In addition,

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1 while NO2 exposure, alone or in conjunction with other
2 pollutants, may contribute to increased mortality,
3 evaluation of the specificity of this effect is difficult.
4 Clinical studies showing hematologic effects and animal
5 toxicological studies showing biochemical, lung host
6 defense, permeability, and inflammation changes with
7 short-term exposures to NO2 provide limited evidence of
8 plausible pathways by which risks of mortality may be
9 increased, but no coherent picture is evident at this time.
10 MR. GROSSMAN: So --
11 BY MS. ROSENFELD:
12 Q And, Dr. Jison, in your words, can you give us
13 your opinion as to what the EPA is saying in that section?
14 A So, I mean, I remember reading this whole section,
15 but I think what I got from this whole section was that
16 while there may have been some limited evidence for
17 mortality, cardiovascular and respiratory mortality effects,
18 there were clearly robust evidence for respiratory health
19 effects, non-mortality-related respiratory health effects.
20 Q And is that at the standards that were imposed by
21 the EPA or at something lower than the current standards?
22 A It's definitely -- definitely there was a large
23 number of what the EPA characterized as robust studies that
24 showed health effects below the current standards.
25 Q And in EPA speak, what does a robust study mean?

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1 A Well, I mean, they, you know, their process -- I
2 don't know if this is what, you know, you want to get into
3 -- but the EPA process for reviewing scientific studies and
4 rule-making involves a review of the current scientific
5 data, and they, they do a comprehensive search of current
6 data, and then they determine based on what statistical
7 methods were used, whether there was a
8 concentration-response evaluation, whether individual
9 pollutant levels were measured and effects were correlated
10 with individual pollutant levels as opposed to, you know, a
11 whole general level of pollution, things like that, you
12 know, studies in peer-reviewed journal. They perform their
13 own scientific assessment, and then there's a, kind of an
14 interchange between the EPA and the public and experts,
15 scientists, you know regarding the quality of those studies
16 in that data, and there's a back-and-forth before they make
17 their final recommendation or final draft of, you know,
18 their recommendation. And then the CASAC, the scientific
19 advisory committee also looks at what the EPA has, or you
20 know, the ISA, the EPA's integrated science assessment, what
21 they have concluded, and they make an opinion or
22 recommendation, you know, based on what their review of the
23 scientific data is, and then the EPA administrator comes up
24 with their decision based on all of that.
25 Now, in saying all of that, I forgot what your

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1 question was.

2 Q My question was, in establishing the NAAQS

3 standards that currently are set for PM2.5 and NO2, do those

4 studies show evidence that there can be adverse health

5 effects of something lower? And I believe you testified

6 yes --

7 A Right.

8 Q -- and I asked you what does a robust study mean

9 and that's, then you started --

10 A Right, yeah. That was the process of determining

11 what the --

12 Q Right. Right.

13 A -- the robustness of the studies.

14 MR. GROSSMAN: So if I understand you, the

15 conclusion of robust connections as to respiratory effects

16 but not necessarily as to morbidity --

17 MS. CORDRY: Mortality --

18 MR. GROSSMAN: -- mortality --

19 THE WITNESS: Right. Right. My general

20 conclusion was that the EPA felt that the studies --

21 MR. GROSSMAN: Were suggestive but not --

22 THE WITNESS: Right.

23 MR. GROSSMAN: -- conclusive --

24 THE WITNESS: Exactly.

25 MR. GROSSMAN: -- as I read it. Okay.

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1 MS. ROSENFELD: Thank you.

2 BY MS. ROSENFELD:

3 Q Dr. Jison, did you review the reports that

4 Dr. Chase has submitted in these proceedings?

5 A I did.

6 Q And were you either present or have you reviewed

7 his testimony in this case?

8 A I reviewed his, the transcripts of his testimony.

9 Q And in your review of his reports and his

10 testimony, did you find any evidence or testimony that in

11 your opinion would refute your testimony here today?

12 A Not really. I mean, the -- I think the juice of

13 his testimony was in the November 19, 2012, memo, and I know

14 in his testimony he had mentioned that he had reviewed 80 to

15 100 articles. Some of those included articles that

16 Dr. Breyse and I referenced, including the one he

17 referenced directly in his November 19 report.

18 What I remember from his report is that all the

19 studies were really not relevant to this case. They were

20 all dealing with diesel and cancer risk, and you know, we're

21 concerned with respiratory health effects here, and he

22 didn't really address those. I mean, he mentioned asthma

23 once but didn't really provide any, any details about

24 supporting or any supportive data regarding his conclusion.

25 You know, his -- Dr. Breyse and I reviewed a set

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1 of articles, much of which overlapped with the articles that

2 the EPA has evaluated, and Dr. Breyse and I and the EPA and

3 multiple professional medical societies have come to the

4 opposite conclusion that Dr. Chase came to, that there would

5 not be a health effect. So --

6 MR. GROSSMAN: Well, let me stop you. Dr. Chase

7 is looking at the gas station, the effects from the gas

8 station, whereas the other studies you're talking about are

9 whether or not there are health effects to the pollutants in

10 question. I don't think that Dr. Chase would dispute that

11 there are health, potential health effects from the

12 pollutants listed. That was not the, that was -- so I think

13 you're -- you're making a false comparison there, I think.

14 MS. ROSENFELD: Well, if I might follow up on

15 that, I do believe that his testimony was that even if you

16 suffered a transient adverse health effect, somebody --

17 MR. GROSSMAN: I know, and you've covered that

18 point, and I --

19 MS. ROSENFELD: Right.

20 MR. GROSSMAN: -- understand that point that you

21 made.

22 MS. ROSENFELD: So --

23 MR. GROSSMAN: I'm just saying that I think it's a

24 mischaracterization to suggest that Dr. Chase was saying

25 that the, these pollutants could not have health effects.

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1 He was talking about whether or not the gas station caused

2 pollutants would result in health effects. The studies and

3 the EPA is talking about whether or not the pollutants cause

4 health effects. Those are two different things.

5 MS. ROSENFELD: I read his testimony a little bit

6 differently, and it was that even if somebody, for example,

7 were at the gas station and suffered an asthmatic attack

8 directly from the pollutants at the gas station, if that

9 person recovered, then there were no adverse health effects.

10 MR. GROSSMAN: Well, all right, I don't recall

11 that statement being made, but I can understand where you

12 would draw a distinction there. But anyway, I think the way

13 the witness testified, she made a, what I consider a false

14 comparison there, because his testimony, I think the

15 substance of it went to the effects of the gas station, not

16 to the effects per se of these pollutants, which I think is

17 what the EPA and the other studies go to, different things.

18 There are some gas station studies, that's true, but the

19 bulk of these studies that are being referenced are studies

20 of the health effects of the pollutants per se. So anyway,

21 do you disagree with that, what I said, Dr. Jison?

22 THE WITNESS: I would accept your rationale.

23 MR. GROSSMAN: Okay.

24 BY MS. ROSENFELD:

25 Q Was there anything in Dr. Chase's testimony or

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1 evidence where he specifically addressed or gave an answer
2 to the studies that either you or Dr. Breyse referenced in
3 your analysis?
4 A I mean, no. It really is unclear how -- clearly,
5 Dr. Chase disagrees with Dr. Breyse and my's opinion, but
6 it is not clear to us or to me how because he did not really
7 comment on any of the articles that, and studies, that we
8 submitted or referenced. So we really have no idea on what
9 he has based his conclusions on.
10 Q And you mentioned that the studies that he did
11 reference, did they exclusively deal with diesel or
12 primarily?
13 A They were exclusively with diesel. I mean, they
14 really did not address PM2.5 or NO2 or those.
15 Q And were those articles written by a variety of
16 authors, or were the authors largely similar? Do you
17 recall?
18 A I think they were pretty similar authors. There
19 was a lot of overlap, but I can't really recall details of
20 names or who.
21 MR. GROSSMAN: Since it's five to 5:00, I should
22 ask you, how much longer do you think your direct
23 examination will be?
24 MS. ROSENFELD: I assume, at least an hour.
25 MR. GROSSMAN: So we're not going to finish in

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1 five minutes?
2 MS. ROSENFELD: We're not going to finish today,
3 and I'm looking at my notes, and I think that we might
4 actually be at a good breaking point.
5 MR. GROSSMAN: Okay.
6 MR. GOECKE: Okay.
7 MR. GROSSMAN: Everybody agree with that? All
8 right. Okay. So we're either going to be back here on
9 February 10 or February 13 --
10 MS. HARRIS: Or both.
11 MR. GROSSMAN: -- and we may or may not have
12 February 13, period, right --
13 MS. ROSENFELD: And --
14 MR. GROSSMAN: -- depending on what everybody
15 tells me in their e-mails.
16 MS. ROSENFELD: And we're going to have to check
17 with Dr. Jison's availability, because the reason she was
18 here today was to hopefully finish with her because she's
19 got a very difficult work schedule in February, but we'll
20 figure something out.
21 MR. GROSSMAN: All right. We had February 14 as
22 well, is that correct?
23 MS. ADELMAN: Yes.
24 MS. HARRIS: Right.
25 MR. GOECKE: Yes.

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1 MR. BRANN: Correct.
2 MR. GROSSMAN: That'll be three, three of these
3 hearings in one week. Want my head to explode?
4 MS. ADELMAN: Yes.
5 MR. GROSSMAN: Thank you very much. All right.
6 MS. SAVAGE: So we're doing 10 and 13 and 14
7 possibly?
8 MR. GOECKE: We don't know yet.
9 MS. ROSENFELD: Again, we need to --
10 MS. SAVAGE: It's either 10 or 13?
11 MR. GROSSMAN: We don't know. I'm waiting --
12 MS. ADELMAN: Not decided.
13 MR. GROSSMAN: -- to hear back from everybody.
14 MS. SAVAGE: Okay. But --
15 MR. GROSSMAN: They're going to e-mail me and tell
16 me if the 10th is available --
17 MS. SAVAGE: Okay.
18 MR. GROSSMAN: -- for them and for Dr. Jison, and
19 then we may well substitute that for the 13th, if that's
20 available --
21 MS. SAVAGE: Okay.
22 MR. GROSSMAN: -- if the 10th is available.
23 MS. ROSENFELD: And in any event, whichever day we
24 pick I expect that we will have a full day of witnesses.
25 MR. GROSSMAN: Yes. Okay. Anything further of a

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1 post-liminary matter?
2 MS. HARRIS: Well, just to be clear on that, so if
3 Dr. Jison is available, we'll do Dr. Jison, Dr. Breyse, and
4 then Donna Savage, is that correct?
5 MS. ROSENFELD: Well, since we're trying to get
6 the 10th in order to accommodate Dr. Breyse before he goes
7 to Tahiti or wherever he's going --
8 MS. CORDRY: Nepal.
9 MS. ROSENFELD: -- I think we're going to have to
10 start with Dr. --
11 MR. BRANN: I'll say, if he's going to Tahiti, I
12 think I should go in his place.
13 MR. GROSSMAN: Yes, I think --
14 MS. ROSENFELD: Nepal.
15 MR. GROSSMAN: -- that would be fair, send us all
16 to Tahiti and we'll let him go to --
17 MR. BRANN: Exactly.
18 MS. ROSENFELD: Nepal. Nepal I hear it is.
19 MR. GROSSMAN: All right.
20 MS. ROSENFELD: So it would, I mean, we're
21 making --
22 MR. GROSSMAN: So we --
23 MS. ROSENFELD: -- we're requesting this change to
24 accommodate his travel plans.
25 MR. GROSSMAN: I understand.

1 MS. ROSENFELD: So we would start with him.
2 MR. GROSSMAN: So, all right, well, figure it out.
3 We'll accommodate whichever way. If we have to start on
4 Dr. Breyse and that accommodates the doctor's schedule,
5 that's fine with me.
6 MR. GOECKE: That's fine.
7 MS. ROSENFELD: Okay. Thank you.
8 MS. HARRIS: Thank you.
9 MR. GROSSMAN: Anything else?
10 (No audible response.)
11 MR. GROSSMAN: All right. Then we are adjourned
12 until either February 10 or the 13th or whatever and hope
13 you all have a good weekend. Thank you.
14 MR. GOECKE: You too. Thank you.
15 MS. HARRIS: Thank you.
16 MS. ROSENFELD: Thank you. You as well.
17 (Whereupon, at 4:58 p.m., the hearing was
18 adjourned.)
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C E R T I F I C A T E

DEPOSITION SERVICES, INC., hereby certifies that the attached pages represent an accurate transcript of the electronic sound recording of the proceedings before the Office of Zoning and Administrative Hearings for Montgomery County in the matter of:

Petition of Costco Wholesale Corporation
Special Exception No. S-2863
OZAH No. 13-12

By:

Wendy Campos, Transcriber

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