VOLUME II

COUNCIL OF THE CITY OF PHILADELPHIA

COMMITTEE ON TRANSPORTATION AND

PUBLIC UTILITIES

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Room 400, City Hall
Philadelphia, Pennsylvania
Tuesday, November 15, 2005
2:30 p.m.

- - -

PRESENT:
COUNCILMAN MICHAEL A NUTTER, CHAIRMAN
COUNCIL PRESIDENT ANNA C. VERNA
COUNCILMAN DARRELL L. CLARKE
COUNCILMAN JACK KELLY
COUNCILWOMAN DONNA REED MILLER

RESOLUTION 050148 - Resolution authorizing City Council's Committee on Transportation and Public Utilities to hold public hearings to investigate the operations of CSX Transportation [CSX] in and around the City of Philadelphia and their impact on the public health, safety and welfare of the residents...

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COUNCILMAN NUTTER: This is the Committee on Transportation and Public Utilities. This is a continuation of a hearing regarding Resolution No. 050148.

I'm Councilman Nutter, Chair of the Committee. Committee members in attendance presently are Councilwoman Miller and Councilman Kelly.

This is a resolution authorizing City Council's Committee on Transportation and Public Utilities to hold public hearings to investigate the operations of CSX Transportation, also known as CSXT, in and around the City of Philadelphia and their impact on the public health, safety and welfare of the residents of Philadelphia, and authorizing the issuance of subpoenas by the Chair of the Committee to compel the attendance of witnesses and the production of documents to the full extent authorized under Section 2-401 of the Home Rule Charter.

We have a witness list. The

11/15/05 - TRANSPORTATION - RES. 050148

first person to speak today will be Mr. Richard Glazer.

Mr. Glazer, please identify yourself for the record and proceed.

MR. GLAZER: Good afternoon. I'm Richard Glazer, Senior Advisor to the Managing Director. I'm here today in connection with a request made by you, Mr. Chairman, at the October 18th, 2005 hearing with regard to convening a committee to study and report back concerning transportation of hazardous materials.

In that connection, a status report today. At this time, the Law Department, specifically attorneys from the Regulatory Affairs unit and specifically the Environmental Division of that unit, are meeting with and exploring with an existing committee, Philadelphia Local Emergency Planning Committee, under the Director of the Office of Emergency Management, and in that connection, a report will be

11/15/05 - TRANSPORTATION - RES. 050148

forthcoming from those folks.

The second part of this is, later on in the hearing, Mr. Chairman, you had expanded the request to relate to odor, noise issues and other Health Department issues. In that connection today, present to provide testimony are two witnesses from the Department of Public Health, Mr. Fey and Mr. Ferraro, and I would request, with your permission, that they be able to provide that testimony at this point.

COUNCILMAN NUTTER: Absolutely. Why don't you have them come up.

We've also been joined at the Committee by Council President Verna.

MR. FEY: Good afternoon, Chairman Nutter and members of the Committee on Transportation and Public Utilities. My name is Roger Fey, Engineering Supervisor, Air Management Services in the Department of Public Health, and with me today is William Ferraro, Director of Vector Control

11/15/05 - TRANSPORTATION - RES. 050148

Services. Thank you for the opportunity to present testimony on the resolution on CSX Transportation operations in Philadelphia.

One of the responsibilities of the Department of Public Health is to investigate environmental conditions that will lead to the spread of disease or injury or creates public nuisance. In this role, we respond to requests from the public and other City agencies to investigate complaints of odor complaints and insanitary or unsafe conditions in public places.

Under the Philadelphia Health and Air Management Codes, the Department of Public Health has jurisdiction in public places on matters concerning environmental and air pollution nuisances and conditions such as rodent infestations and the emissions of odors.

Environmental regulations associated with the storage, transportation and disposal of solid

11/15/05 - TRANSPORTATION - RES. 050148

waste are enforced by the Pennsylvania Department of Environmental Protection, which is the permitting agency for solid waste handling entities under the Pennsylvania Solid Waste Act.

The following are issues the Philadelphia Department of Public Health has had during recent years with CSX. Location: East shore of Schuylkill River near 25th and Locust, south street siding. The Department of Public Health, Air Management Services Division, AMS, in response to odor complaints performed inspections for this location on the following dates: September 1st, 2nd, 3rd, October 28th, November 1st, 2nd, 19th, and December 8th of 2004.

No violations issued. However, on July 16, 2004, the Pennsylvania Department of Environmental Protection, PADEP, responded to a complaint regarding rail cars spotted at CSX Transportation's south street siding. During this investigation, PADEP observed a strong

11/15/05 - TRANSPORTATION - RES. 050148

putrescent odor and issued a Notice of Violation, NOV, to CSX on July 28, 2004.

It is our understanding that CSX responded to this NOV on September 3, 2004, in which CSX indicated they requested the shipper to increase the amount of odor enzyme to be applied to the municipal solid waste, MSW, and they informed the trainmaster to no longer locate these types of rail cars near residential neighborhoods when operational considerations allow.

In addition, PADEP performed a second inspection in response to a complaint on September 1st, 2004. During this inspection, PADEP once again observed strong odors and issued an NOV to CSX on September 3rd, 2004.

In the CSX response to this NOV, CSX agreed to continue to move the trains to areas that do not impact the community, but they also indicated that it is their belief that CSX falls only under certain federal regulations and not

11/15/05 - TRANSPORTATION - RES. 050148

under PADEP solid waste regulations.

Location: 15000 Liberty Lane, far Northeast. The Department's AMS issued odor violations to CSX on December 28th, 1999, February 19th, 2000 and March 30th, 2000 for odors coming from rail cars that contained municipal solid waste, MSW.

On May 25, 2000, CSX submitted a remedial action plan and agreed to pay a fine of $1,250 to settle all of the violations. This remedial action had three parts. One, CSX Transportation's operations have been substantially modified to minimize impacts on Philadelphia, including elimination of the Byberry siding for trains transporting MSW.

Two, CSX has a high standard for municipal solid waste shipments, requiring shippers to apply enzymatic odor suppressants and regularly clean containers.

And, three, CSX has implemented

11/15/05 - TRANSPORTATION - RES. 050148

quality control site assessments of MSW customers' facilities, including requirements for procedures for loading MSW, applying odor enzyme suppressants, container inspections/maintenance, et cetera.

Location: East shore of Schuylkill River, Schuylkill River Park. The Department Environmental Services unit received numerous calls from citizens concerning odors at this location in July 2004. The Department was advised that the Pennsylvania Department of Environmental Protection issued a Notice of Violation to CSX on July 28th, 2004 for transporting solid waste in such a manner as to create a public nuisance and for allowing a municipal waste transportation vehicle to remain in a residential area for more than four hours. There were numerous cars parked on the tracks filled with municipal waste in the middle of the summer months.

11/15/05 - TRANSPORTATION - RES. 050148

The Department's Vector Control Services, VCS, receives ongoing complaints from residents in various locations throughout the City whose properties are near or adjacent to railroad property. VCS inspects and provides abatement services where needed and attempts in each case to determine the responsible party.

Because more than one entity, CSX, Amtrak and SEPTA, often uses tracks in any one rail corridor in Philadelphia, determining the responsible party in many of their corridors has proven to be a difficult task. It is often more expeditious for Vector Control workers to conduct minor abatement procedures without actually determining the responsible party.

An example is 4600 block of North Palethorp Street where on August 25th, 2005 several rat burrows were observed. Vector Control workers treated the area, and a Notice of Violation

11/15/05 - TRANSPORTATION - RES. 050148

notice was sent to CSX for the rat infestation and high weeds on railroad property.

There are about 15 additional problem sites with ongoing rodent issues, railroad embankments that Vector Control workers routinely investigate and treat for rat infestations when necessary, whether or not Notices of Violations are issued. Sites most often in this category include Aramingo and Lehigh Avenues, 20th and Lippincott Streets, 5th Street and Champlost Avenue, 12400 Academy Road, 12400 Dunks Ferry Road, 9th and Ontario Streets, Front Street and Pattison Avenue, Hog Island, Fort Mifflin, 12th and Cumberland Streets, I and Tioga Streets, 4200 block Clarissa Street, 5200 Rubicam Street, 1800 West Somerset Street.

The approximate cost to the Department to provide inspection and treatment of these problem sites is more than $5,000 annually.

11/15/05 - TRANSPORTATION - RES. 050148

Thank you for the opportunity to present testimony today. We will now answer questions.

COUNCILMAN NUTTER: One question about your testimony. Thank you, Mr. Fey. The $5,000, is that per site?

MR. FERRARO: I can answer that one, Councilman. William Ferraro --

COUNCILMAN NUTTER: Please identify yourself for the record.

MR. FERRARO: William Ferraro, F-E-R-R-A-R-O, Chief of Vector Control Service for the Department of Public Health.

That would be the annual for pretty much all 15 sites for the year.

COUNCILMAN NUTTER: Okay. Now, did you have some testimony as well?

MR. FERRARO: No. That was included with Mr. Fey's.

COUNCILMAN NUTTER: Okay. Well, let me ask you a couple questions.

Mr. Fey, you're saying that

there are violations that have been issued?

MR. FEY: Yes.

COUNCILMAN NUTTER: And have any of them been resolved?

MR. FEY: Yes. The violations issued from Air Management Services regarding odor at the Liberty Lane location were issued and were settled, and that's where the plan was submitted by CSX addressing those violations.

COUNCILMAN NUTTER: Okay. So where does that leave us?

MR. FEY: Today we haven't received any complaints from odors at that location.

COUNCILMAN NUTTER: At which location?

MR. FEY: This is the 15000 Liberty Lane in the far Northeast.

COUNCILMAN NUTTER: Okay. And what's the latest with the east shore of Schuylkill River, Schuylkill River Park?

MR. FEY: After the violations

11/15/05 - TRANSPORTATION - RES. 050148

issued from the Department of Environmental Protection, we haven't received any odor complaints at that location either.

COUNCILMAN NUTTER: Okay.

And, I'm sorry, Mr. Ferraro. You're?

MR. FERRARO: Vector Control.

COUNCILMAN NUTTER: So you're directly involved in these matters?

MR. FERRARO: My staff is, with Palethorp Street and the problem site areas. Palethorp has been rectified. Normally the problem is an ongoing problem. The residents call there a few times a year because the weeds and the problems just reoccur.

COUNCILMAN NUTTER: So is there an ongoing method of dealing with this or is it just basically when the neighbors get tired of it and start making complaints, then that sets the whole system back in motion again?

MR. FERRARO: Yes.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCILMAN NUTTER: Is there any regular protocol? Is there an agreement about how these issues are going to be dealt with?

MR. FERRARO: No. We rarely get to contact CSX. We usually send the violations to them.

COUNCILMAN NUTTER: And so, in essence, the City ends up being the entity that always has to follow up on this activity?

MR. FERRARO: Yes.

COUNCILMAN NUTTER: And have there been any discussions with CSX about their role in this or recovering some of these costs or some mutual agreement or anything of that nature?

MR. FERRARO: No. The difficulty always is is determining -- it seems like most of the violations that my inspectors investigate or issue, they come back with, We're not sure who the property belongs to. It's not CSX, it's not SEPTA, it's not Amtrak's. So it

becomes very difficult for our staff to protect the public. We're basically trying to make sure that they're protected from the rats. So we actually provide the service, but it's difficult to get any response.

COUNCILMAN NUTTER: So the bottom line here is, the one party that I think we can probably be fairly certain is not the owner, which is the City --

MR. FERRARO: Yes, in most cases. There are some areas that are public, but we take care of those.

COUNCILMAN NUTTER: But in the others, it's not our property, there's a danger to health, safety and welfare of citizens, we end up on the public side engaging in remediation and basically are left holding the bag and the cost?

MR. FERRARO: Yes.

COUNCILMAN NUTTER: Okay. Have you or through the Department or through the Managing Director sought to develop such a protocol or even the analysis of

11/15/05 - TRANSPORTATION - RES. 050148

what we believe, the City government believes, to be the ownership issues? Have we asked either the Survey Bureau or Records or anyone to do the kind of analysis that would lay out for us who owns what?

MR. FERRARO: No, we have not. I think that's something we need to address.

COUNCILMAN NUTTER: Mr. Fey, can you add that to your list for these problem areas, that we literally be able to figure out by, I guess it's, metes and bounds who owns what piece of property, and then that would put the Health Department in a much better situation to be able to -- and then put the property owners on notice as to what we believe the various property lines to be, and then give Health the added back-up to know who to cite.

MR. FEY: Yes, Mr. Chairman, in cooperation with the Managing Director's office.

11/15/05 - TRANSPORTATION - RES. 050148

MR. GLAZER: Yes.

COUNCILMAN NUTTER: Council President Verna.

COUNCIL PRESIDENT VERNA: Thank you.

I don't think we're really very clear as to how many sites are really troublesome as far as rodents are concerned, and I believe in testimony that was given, it was stated that the approximate cost to the Department to provide inspection and treatment of these problem sites is more than $5,000 annually. How much of that is actually paid by the violators? Do we know?

MR. FERRARO: None of that would be paid. There are problem sites that the Health Department has addressed since rat control has been in existence, where we actually physically abate by using rodenticide treatments. A violation is issued to whoever the owner might be, whether it be a homeowner, in this case a property owner.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCIL PRESIDENT VERNA: Well, it's not a homeowner. You go out and you find that there is a rodent problem at these locations. I'm sure that you bore holes and put bait into the holes. Who pays for that? The City?

MR. FERRARO: Yes.

COUNCIL PRESIDENT VERNA: Even though it's not City property?

MR. FERRARO: Yes.

COUNCIL PRESIDENT VERNA: I find that troublesome.

When we were doing the excavation at the Vets Stadium, we didn't pay for the test borings and the baiting.

I just find it very troublesome. I don't know how any of my colleagues feel, but if it's not City property and we are having situations like this existing because of CSX not being conscious of the community as a whole, why should we pay? Would you agree with me?

MR. FERRARO: Yes.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCIL PRESIDENT VERNA: You're nodding your head.

MR. FERRARO: Yes, I do agree. However, from the Health Department standpoint, we need to protect the residents. And when these properties, personal properties, residential properties, butt up against there, we're protecting them from being bitten by rats, and that's --

COUNCIL PRESIDENT VERNA: That's our responsibility, to protect the community, but I think that CSX has a responsibility, too, and if in fact we are doing what you say we do, I don't know why the City should be paying.

MR. FERRARO: Yes. True.

COUNCIL PRESIDENT VERNA: Well, that's something else we should be looking into.

COUNCILMAN NUTTER: Exactly. Councilwoman Miller.

COUNCILWOMAN MILLER: Right. Or else they should at least be

11/15/05 - TRANSPORTATION - RES. 050148

reimbursed by CSX.

Is there some system in place that the City can maybe confiscate some cars if they don't pay, if they don't do a reimbursement? We do things out in the community to individual property owners and whatnot that won't follow a particular law or policy.

What is the repercussions to CSX? It sounds like they can just continue to get away with this. It's been an ongoing practice forever. And I agree, the City ends up doing it because we do have to protect our constituents, and we get many, many, many calls from constituents regarding the rodent problem.

There's no enforcement arm or is there some triple fine? I mean, there has to be something. Is there nothing?

MR. FERRARO: The Health Department does not fine people for these violations. That comes under License and Inspections. The problem is, we are not

the enforcement agent here.

COUNCILWOMAN MILLER: We know that.

MR. FERRARO: We're the inspectional agency.

COUNCILWOMAN MILLER: Right. We know you're not enforcement, but I know you guys work together in certain situations.

Okay. Thank you.

COUNCILMAN NUTTER: Councilman Kelly.

COUNCILMAN KELLY: Thank you, Mr. Chairman.

The first question I have is, the $5,000 annually that you spend on the cost to provide inspection and treatment of these problems, is that per site or is that a combination of all the sites listed in your testimony?

MR. FERRARO: That's for all the sites. That's an approximation.

COUNCILMAN KELLY: Now, as far as I know, all the members of this

11/15/05 - TRANSPORTATION - RES. 050148

Council, as far as listening to their testimony, the Chairman and Council President and Councilwoman Miller, we all agree there doesn't seem to be any procedure, any policy to, number one, identify the sites, who owns it, and then, of course, we can take the steps to recoup the $5,000 for clean-up of the site.

Do you anticipate any movement in that direction as far as the City is concerned? In other words, you actually take it upon yourself to clean up the site, of course, for the health problems that that entails there for the general public, but what I'd like to see is a policy if we identify who owns the site, then we can recoup some of the costs involved that the City spends for their citizens.

MR. FERRARO: Yes. I think that's something we can actually look into, try to work with other departments.

COUNCILMAN KELLY: Okay.

11/15/05 - TRANSPORTATION - RES. 050148

Thank you, Mr. Chairman.

COUNCILMAN NUTTER: You're welcome, Councilman.

Any other questions for this panel?

(No response.)

COUNCILMAN NUTTER: Thank you very much.

I'm sorry. Mr. Glazer, what was your timetable on the report that we had discussed?

MR. GLAZER: As soon as possible. We're in the organizational mode at this point, Mr. Chairman, but we would expect to get something back to you --

COUNCILMAN NUTTER: I don't want to press you too much, but "as soon as possible" is kind of between now and never.

MR. GLAZER: We would hope to do it in 30 days.

COUNCILMAN NUTTER: I like that. There's a certain definitiveness

to it. Thank you.

MR. GLAZER: Thank you.

COUNCILMAN NUTTER: The next witness is Mary Tracy.

Ms. Tracy, I know you have some displays. Whenever you put them together, just go to the witness table and identify yourself for the record and proceed.

MS. TRACY: Good afternoon. My name is Mary Tracy, Council President, Councilman Kelly, Councilwoman Miller, I think Councilman Nutter. I think you're here somewhere. Yes, there you are. I'm the President of SCRUB, Society Created to Reduce Urban Blight.

SCRUB is a City-wide organization dedicated to improving Philadelphia's scenic character and quality of life. We work with citizens and community groups to ensure that all residents, regardless of income, education or neighborhood, benefit from laws protecting their environment.

11/15/05 - TRANSPORTATION - RES. 050148

I commend members of Council for holding this hearing today and providing citizens with the opportunity to work with you and the representatives of CSX Railroad Transportation on a plan to improve the railroad corridors, which have been a source of degradation and blight in so many areas.

Philadelphia's history as an industrial manufacturing center has created an urban landscape of industrial corridors, and along our river corridors and our neighborhoods, there are many railroads. And as we look toward the redevelopment of Philadelphia for the next generation, we need to look seriously at how we incorporate those industrial corridors, including freight rail lines, into our overall City planning.

Too often industrial areas are viewed as wasteland, a place where ugliness and blight are accepted and too common. But in Philadelphia, our

11/15/05 - TRANSPORTATION - RES. 050148

industrial areas are intermingled with residential areas. Redevelopment of old warehouses for lofts, redevelopment of river corridors for parks, it necessitates a new way of thinking of blight and community appearance and what we can do with railroad corridors.

SCRUB, with the assistance of the Pennsylvania Resources Council, did an assessment of 328 billboards located along railroad corridors in Philadelphia. The exhibit from one of those corridors is there. It's a passenger railroad. We didn't have one of those prepared to bring today, but it just shows you what we're talking about when we talk about what's happening along these railroad corridors. And Lynn McConville, who organized that survey, will speak in more detail about what we found.

But one of the things I would like to just point out is that in those areas where the railroad corridors intersect with major roadways, billboards

proliferate on railroad property. Some of those billboards are licensed and permitted; that is, they exist legally, but for many billboards, we could not find any evidence of licenses or permits, including billboards on CSX Railroad right-of-ways.

As part of our survey, we also noticed an abundance of trash, weeds and ditches of stagnant water, with the combined effect of making these rail corridors through our neighborhoods corridors of blight.

In the '40s through the '60s, people campaigned for highway beautification to ensure that our major transportation corridors were not corridors of blight. Railroad property owners such as CSX, Conrail, Amtrak and Norfolk Southern need to be more responsible in this area and address the issue of rail corridor beautification or, at the very least, begin working with Philadelphia to remove the blight.

11/15/05 - TRANSPORTATION - RES. 050148

For starters, CSX should remove all illegal billboards from their railroad property. This unsightly signage has proliferated in our neighborhoods, and residents deserve better treatment and respect from railroad owners.

Philadelphia's City government has successfully initiated a campaign for revitalization, and we urge CSX and other rail property owners to move forward with us. SCRUB is quite willing to work with the rail property owners, as it has worked with neighborhood groups throughout the City, to improve community appearance and fight visual blight in all areas of the City.

As part of these efforts, we recommend that CSX provide Philadelphia's Department of Licenses and Inspections with copies of all sign site applications for outside advertising on CSX property in Philadelphia, along with the copies of City permits for each sign. We found in

11/15/05 - TRANSPORTATION - RES. 050148

looking at the application, which you have in this packet, and Lynn will talk further about that, but in the application for a company who wishes to erect a billboard, they need to get insurance and they need to make sure that it's 15 feet away from the middle rail and all kinds of things that they need to do before they can put up a billboard, but they never are asked to make sure that the billboard is legally permitted, that it's allowed to be there, that it doesn't violate the size and the height restrictions. So we would ask that CSX add that to this application.

We'd also ask -- and I think, Councilman Kelly, this might address your idea there -- is that a BRT number be assigned, parcel identification number, to railroad property by individual railroad ownership. For example, everything that's owned by CSX would have the same number, and Amtrak, Norfolk.

It's a tremendous problem

11/15/05 - TRANSPORTATION - RES. 050148

trying to figure out who owns the property and where it's located. And it's been very difficult for us to figure out with the billboards whether they're legal or not because of the problem with identification of the property.

And I also ask that CSX would cancel leases and order the immediate removal of all outdoor advertising signs located on their property that are unpermitted and that violate the requirements of Philadelphia's 1991 sign control ordinances.

And for those outdoor advertising signs that do not have permits with the City but they would comply with our ordinances, that CSX would require the lessee to apply immediately for a permit and pay all applicable sign license fees.

And I think we already spoke about modifying that current outdoor advertising site application form that would include that requirement to abide

by our laws and all state permits as well.

Thank you for the opportunity to present testimony today, and I'd like to ask Lynn McConville now to go over this packet, and then we both can answer questions, because she's most knowledgeable on this issue.

Thank you.

COUNCILMAN NUTTER: Please proceed.

MS. McCONVILLE: Thank you. Thank you for having me here today to speak. I work with the Pennsylvania Resources Council. My name is Lynn McConville. We're a state-wide organization that's worked on issues of billboard and outdoor advertising for a number of years. We work closely with Mary Tracy and SCRUB on issues of outdoor advertising in Philadelphia.

In the summer of 2003, we conducted a survey of billboards on railroad property in Philadelphia. We

11/15/05 - TRANSPORTATION - RES. 050148

had the assistance of an intern funded by the Fels Foundation. We looked at all railroad property, both freight lines and passenger lines. The document you have before you is basically some of the information we pulled out that's representative of the billboards that were found on the CSX rail lines in Philadelphia.

The difficulty, which has been highlighted by the previous speakers, is, for those of us who are not with CSX in particular, to understand what property they do own, which real corridors they have operating rights over, which corridors they actually own outright.

We estimate there's anywhere from 63 to close to 120 billboards on CSX property. However, in working with the Department of License and Inspections, they only have a handful of permits for billboards on railroad property. The issue is, all permits are handled under a partial ID number, and there are no

11/15/05 - TRANSPORTATION - RES. 050148

partial ID numbers for railroad property.

If you look at some of the pictures that we have, these are some of the billboards that we have identified on CSX property. We don't know at this point whether they are legal or illegal. It's difficult for even the Department of License and Inspections to get any information from CSX, even though CSX, if they follow their nationwide procedures, does have a site application for every billboard that's on their property in Philadelphia.

You'll notice on the first page of photographs, we have an issue of some of the smaller illegal eight-sheet billboards that have been a persistent problem in a number of our neighborhoods. These are often accompanied in low-income areas where there's a fair amount of trash, dumping, weeds in these lower-income neighborhoods. It's very difficult to look at issues of redevelopment when these corridors are

11/15/05 - TRANSPORTATION - RES. 050148

not addressed along with that issue.

When you go back to the parcel base maps, I have on the second-to-last page a parcel base map which shows the area of the one billboard by Bartrum's Garden, Southwestern Philadelphia. You can see just in this parcel map as far as Philadelphia's BRT and ten-code identifications, the railroads are just blank. There's no identification. There's no number.

There's no way for a citizen to file a complaint, because if you wish to file a complaint with the Department of License and Inspections, the first thing they ask you is, What is address, what is the BRT parcel ID. And, therefore, there's no way to express some of the issues if you were to see problems with trash, vector control, that type of thing, no way for citizens to address that in their neighborhoods, because it's difficult to identify who owns the railroad and even to file a complaint

11/15/05 - TRANSPORTATION - RES. 050148

with the City, because there's no way to specifically identify the address.

These were some of the things that we found in our survey.

We would like to work with the City in getting these billboard locations and some of these other blight issues fully identified, mapped on a geographical information system that the Department of License and Inspections could use. If there's anything that we could do to provide that type of support for the City or for L&I, both myself and Mary Tracy at SCRUB would be more than eager to work with the City and CSX on clarifying some of these problems.

COUNCILMAN NUTTER: Councilman Kelly.

COUNCILMAN KELLY: Thank you for your testimony this afternoon. You've given us a lot of food for thought, but, unfortunately, I think, Mr. Chairman, I don't know if there's anyone from L&I here, because it seems

like this is a real job for them to do. They have to do a better job of finding out where these billboards are and to making sure they're legal, number one, and if they are legal, do they have permits even to put them up there.

So I think that L&I is the one that we really have to address a lot of your issues that you have brought to our attention today. And I want to thank you very much for that, but I think you're being very observant and, of course, you've been very helpful to this Committee this afternoon.

MS. TRACY: Thank you, Councilman. Just so that you know, we do work very closely with L&I on these issues. In fact, there has been a recent survey conducted by the State of Pennsylvania, PennDOT, on the railroad, and I think it may have included some of the railroad corridors that are along interstate highways. They actually went in on Saturdays and went through all the

files pulling that stuff out.

COUNCILMAN KELLY: I'm just curious here about the amount of billboards goes from -- your estimation is from 63 to 120. Somewhere in between there; is that what your best guess is?

MS. McCONVILLE: On CSX property. And the range is because we don't actually know what lines are all CSX property.

COUNCILMAN KELLY: Again, it's the property that's the question.

MS. TRACY: What's happening with a lot of the billboards, that we don't know -- we can see who the billboard company is, and we've been relying sometimes on their information, do they have a permit or do they not have a permit. So I would think maybe that onus could also be going to CSX even here today to ask if they could furnish the information that they have in their records already, and then we could take a look at that and see how it gels with

ours.

COUNCILMAN KELLY: Thank you.

MS. TRACY: Thank you.

COUNCILMAN NUTTER: Thank you, Councilman.

Thank you very much for your testimony. I appreciate it. Thank you.

MS. TRACY: You're welcome. Thank you.

COUNCILMAN NUTTER: Mr. Al Caporale.

MR. CAPORALE: My name is Al Caporale. I would like to submit these pictures. You can have them.

COUNCILMAN NUTTER: Great. Thank you.

MR. CAPORALE: I want to thank Mr. Nutter, Anna Verna and the other Councilmembers for the opportunity to appear here today.

My concern is with CSX Railroad. I live in Southwest Philadelphia. I lived there all my life. And I'm Vice-President of the Community

11/15/05 - TRANSPORTATION - RES. 050148

Labor Refining Tracking Committee, which is commonly known as CLRTC, and we are a local community environmental group which comprise of residents that reside both in South and Southwest Philadelphia, and we meet once a month to address the various issues that affect our communities.

And my concern with CSX is, I oppose them carrying the dangerous chemicals through our neighborhoods. And I would like to submit the pictures that I just have of an event that took place on April 12th, 2005. I live approximately one half mile from where those pictures were taken.

COUNCILMAN NUTTER: Sir, can you just tell us for the record -- I'm looking at one picture, which either this is -- I don't know if this is a house or an apartment building.

MR. CAPORALE: I'll tell you what that is, Mr. Nutter.

COUNCILMAN NUTTER: It's got ethylene oxide, inhalation hazard.

What's the location of that, sir?

MR. CAPORALE: That is 56th and Gibbons Place. That's Bartrum Village. That's comprised of 41 buildings, and it houses 500 families. And you can see by the pictures, the close proximity to the trains. The trains were approximately -- the railroad cars were approximately four blocks long.

COUNCILMAN NUTTER: Did you take these pictures?

MR. CAPORALE: I took the pictures. I was at Bartrum's Gardens.

COUNCILMAN NUTTER: At the time you took the picture, was the train moving?

MR. CAPORALE: It wasn't moving. That's what I plan to describe. The trains come and they stop for 15, 20 minutes at a time, and then they proceed very slowly to their destination. It is a little hub that runs from 58th south of Lindbergh Boulevard to pass Bartrum Gardens. It goes underneath the little

11/15/05 - TRANSPORTATION - RES. 050148

bridge and it makes a turn there. It's a little hub there.

And my concern is -- I've lived in Southwest Philadelphia all my life -- the ties, the railroad ties, are in very poor condition. Most of them haven't been replaced in years. Many of them are rotten, and they're heavily scored. And since 9/11, this is now a great concern to our community, because this was the most recent incident, which occurred on April 12th, approximately between 3:30 and 5 o'clock in the afternoon. I'm concerned because these trains come at any time. They stop for 15, 20 minutes at a time. The reason why they stop is because a lot times they have to clear the tracks, because a lot of the debris, tires are on the side of the tracks and also because the tracks are in such poor condition, the railroad ties.

And there's no coordination between the local police and any personnel from CSX. In other words, when

11/15/05 - TRANSPORTATION - RES. 050148

these trains pass through our community, the local police do not block off traffic at all at 58th Street south of Lindbergh Boulevard or at 54th Street. So if you should have a terrorist or anybody who wants to do harm, it could be very easy for them to do so.

This also takes place where historical Bartrum Park is, Bartrum Gardens. It's the first botanical garden in the nation. And there's also people that work there in the administration building, which is very close to where this occurred.

And also, the 36th trolley runs on Elmwood Avenue, which is not too far from Lindbergh Boulevard. So if there should be a mishap, there could be many people that would be impacted.

And I'm also concerned if we have enough trained emergency medical personnel that would be able to treat 500 families in the 41 buildings where this train hub goes by. And I have this

concern. This has been going on for years, and I don't know what could be done, but I would like to see someone take some type of action to either have them fix up the tracks or somehow try to reroute this train that goes through our neighborhood at various times.

Most of those pictures were taken with a telephoto lens, so it's approximately 600-millimeter lens on there.

COUNCILMAN NUTTER: So you weren't too close.

MR. CAPORALE: Well, I was maybe 25 feet, 30 feet inside Bartrum Gardens when I took the pictures. But the housing projects, the 41 houses, which come under the Authority, the Philadelphia Housing Authority, I would say they were approximately 35 to 40 feet from these trains. So if there were an accident, I don't know how you would treat that many people.

COUNCILMAN NUTTER: All right.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCIL PRESIDENT VERNA: And we still have many children that tour Bartrum Gardens; do we not?

MR. CAPORALE: Exactly. There are many tour buses that visit Bartrum Gardens. There's approximately 8,000 children that go there during the year and they receive training about the environment and about the floral. And there's also tour buses that bring other people from different parts of Pennsylvania to visit the park.

So I'm concerned we have a potential dangerous situation here, and I was hoping that somehow the City could address -- try to avoid a future problem and do something to prevent something like anything disastrous to take place.

COUNCIL PRESIDENT VERNA: Thank you.

Well, I think we do have a representative from CSX here; do we not?

COUNCILMAN NUTTER: We do, Madam President.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCIL PRESIDENT VERNA: So we could discuss with them about their maintenance procedures and about the tracks being in such deplorable condition that gives you great concern, and justifiably so. We will certainly ask them that.

MR. CAPORALE: Thank you.

COUNCILMAN NUTTER: Thank you. You'll be able to stay around for a little bit?

MR. CAPORALE: Thank you very much.

COUNCILMAN NUTTER: Thank you very much, Mr. Caporale.

Lastly, there were a series of photos taken, which I'd like to enter into the record as an exhibit, of what is commonly referred to as the Columbia Bridge. And there are picture displays. These photos were taken by Councilman Kelly's staff person, Holly Maher.

Columbia Bridge spans both Kelly and King Drives. It is in

11/15/05 - TRANSPORTATION - RES. 050148

deplorable condition and is located within Fairmount Park in that part of the Fourth Councilmanic District right near Montgomery Drive and King Drive, that particular intersection.

I wish to enter these photos in the record. The steel -- I assume this is steel reinforcement bars, or are often known as rebar, are exposed. Pieces of the bridge have fallen on the ground. If you look at Page 9, there is exposed metal. If you look at Page, I think, 3, you see Ms. Maher holding a piece of the bridge in her hand.

This is a very dangerous condition. You got a recreational path on Page 5 that people run and/or ride their bikes under. This bridge is in a very serious condition.

Mr. Eichert, could you come up, as well as Mr. Glazer.

Mr. Glazer, if you don't have a copy of this pictorial display, we'll be sure to get it to you. If you could have

your team make an assessment of the condition of that particular bridge, the Columbia Bridge, which, as I mentioned, spans both King and Kelly Drives. The easiest access point, of course, is from King Drive at Montgomery. You can see all of this, which is, I believe, where most of these pictures were taken.

I also know from the previous discussions at least, Council President Verna can identify a similar bridge that has its own issues.

Council President.

COUNCIL PRESIDENT VERNA: Thank you.

Mr. Chairman, for years, and it seems to be forever, we've been complaining about the bridge 25th Street from Grays Ferry Avenue all the way down, and we have written letters to no avail to CSX. And I assure you there are times when huge chunks of concrete have fallen, and I keep saying somebody has to be seriously injured or killed before people

are going to take this problem seriously.

As I was looking at the photographs presented to us just minutes ago, I said to Councilman Kelly just before, I know the bridge at 25th Street after we had complained and complained, they did send someone out to make necessary repairs, so they said. And it literally looks as though there are icicles that are falling, and it looks just like this. And one of the workers, I guess -- I don't know whether he was being facetious to one of the nearby residents -- indicated that they were using epoxy glue to correct some of the horrible conditions that were really present.

I don't know what we're doing. Are we waiting for someone to be killed or seriously injured? It's a very, very serious problem. We have called the City. We have called CSX, who have shown little or no interest other than going out after these hearings, I guess, had

11/15/05 - TRANSPORTATION - RES. 050148

started to put what they want to call epoxy glue to this concrete monstrosity that's there that's falling by the chunks. It is a very, very serious problem and it should be addressed yesterday. And I don't think that any of us could sit here and allow this to go on, because I will not be a part of something as dangerous as all of that existing in my community and not doing anything about it. I think it's a disgrace, and we have to take action on it.

COUNCILMAN NUTTER: Mr. Glazer, will you have the appropriate agencies inspect these --

MR. GLAZER: I will convene whatever needs to be done to address it, and presumably the Law Department will assist in the enforcement.

COUNCILMAN NUTTER: Mr. Eichert --

MR. EICKERT: Certainly.

COUNCILMAN NUTTER: -- you'll

11/15/05 - TRANSPORTATION - RES. 050148

get a report back to us on these two, and there may be others?

MR. GLAZER: Yes.

COUNCILMAN NUTTER: Councilman Clarke.

COUNCILMAN CLARKE: Thank you, Councilman.

With respect to this issue, is this similar to, say, for instance, a vacant property that's imminently dangerous where it could potentially fall on the street or on an adjacent property?

MR. EICKERT: I would think it poses many of the same risks.

COUNCILMAN NUTTER: Can you pull the microphone closer to you, please. Please identify yourself for the record.

MR. EICKERT: Yes. Chief Deputy City Solicitor Michael Eichert.

Certainly the risks to life and limb are the same. Whether the jurisdictional issues in terms of what L&I can do with respect to this property

is the same, I don't know.

COUNCILMAN CLARKE: Well, L&I is charged with the responsibility for ensuring that issues of safety are dealt with in a reasonable way.

MR. EICKERT: Yes, of course.

COUNCILMAN CLARKE: We don't care who owns it. If we see a dangerous condition, it could be privately owned property, publicly owned, we're supposed to go out there and first cite the owner, give them a certain time period to respond to that citation; am I correct?

MR. EICKERT: Sure.

COUNCILMAN CLARKE: In the event that it is deemed imminently dangerous, we have on some occasions gone out and abated the problem ourselves over night.

MR. EICKERT: Of course.

COUNCILMAN CLARKE: So in a situation such as this that some people would construe as imminently dangerous, if a piece of cement fell on a car or

11/15/05 - TRANSPORTATION - RES. 050148

window, somebody is going to get hurt. Why can't we just treat that the same way we would treat any other imminently dangerous --

MR. EICKERT: I don't know as I sit here today that we can't treat it the same way. There is a possibility that because it's a railroad and because historically other governmental agencies have been responsible for supervising and regulating railroads, there may be limited --

COUNCILMAN CLARKE: We're not talking about the operation of the railroad. We're talking about a physical structure that's imminently dangerous.

MR. EICKERT: I agree.

COUNCILMAN CLARKE: And L&I is charged with responding to that. I guess what I'm saying is that we can look at that and we can make a determination that this is going to fall on somebody any day now, go out and issue a citation on the spot and say, You have 24 hours, like we

do with other people, to abate this nuisance or this imminently dangerous situation, and if they don't respond, then we, the government, could take action and place a lien on the property owner for the cost of --

MR. EICKERT: Councilman, I would love to be able to proceed in just that way. I don't know that that is legally correct without going home and doing some research. But I'm with you. I would love to be able to say to L&I that's the formula. And we will check if that is the correct way to proceed.

COUNCILMAN CLARKE: How long will it take you to check? As I said, this is an imminently dangerous situation.

MR. EICKERT: Again, this is something that would fall within, I guess, the Code Enforcement and possibly Regulatory Affairs units of the Law Department. I will go this afternoon or tomorrow morning and ask the Solicitor to

get some answers.

COUNCILMAN CLARKE: Thank you.

COUNCIL PRESIDENT VERNA: Excuse me. Are you finished?

COUNCILMAN CLARKE: I actually had another line of questioning, but, Council President, you proceed, please.

COUNCIL PRESIDENT VERNA: While we're on this, the previous witness testified about the tracks in Southwest Philadelphia.

MR. EICKERT: Yes.

COUNCIL PRESIDENT VERNA: Whose responsibility is to check the safety of the tracks?

MR. EICKERT: The tracks themselves?

COUNCIL PRESIDENT VERNA: The tracks themselves.

MR. EICKERT: Again, I don't know that it falls within any City --

COUNCIL PRESIDENT VERNA: See, I think it's important that we have these hearings. Nobody seems to know whose

11/15/05 - TRANSPORTATION - RES. 050148

responsibility it is for the maintenance of these bridges, tracks, whatever. Whose responsibility is it? And I think that that will be one benefit from this hearing, if nothing else.

Can you find out for us whose responsibility it is?

MR. EICKERT: Yes, I can.

COUNCIL PRESIDENT VERNA: Thank you.

I'm sorry. Councilman Clarke, thank you for yielding. I appreciate it.

COUNCILMAN CLARKE: I actually had one other question, Mr. Eichert. At the last hearing, we discussed an issue, the signal --

MR. EICKERT: The signal shed.

COUNCILMAN CLARKE: -- shack, for lack of a better term. There was some question about the ownership of the parcel that it was placed on. Can you tell me where we are with that?

MR. EICHERT: I have some limited information about it. It

11/15/05 - TRANSPORTATION - RES. 050148

appears, after some digging and looking at survey drawings, it appears to be on City property. At least about 90 percent of the physical structure is on City property.

I don't know what that means in terms of our legal rights. There is language in the 1979 construction agreement between the City and the railroad that may or may not be controlling in the event that a demand is made to relocate with respect to who pays for the relocation and that sort of thing. The language in the construction agreement is not clear as to whether or not it covers the signal shed, and it's something that I need to look at further.

I really was only just able to determine with some assurance where this thing is located, because the property lines are kind of skewed at that location.

COUNCILMAN CLARKE: So at least 90 percent of the shack is on City

property?

MR. EICKERT: It certainly seems to be that way from the survey documents that I've looked at, yes.

COUNCILMAN CLARKE: You're saying that you're not sure if it's covered by some other agreement?

MR. EICKERT: I'm not sure what that means. The fact that it's on our property, I don't know what that means as to rights that we have over that signal shed. I mean, if, for example, we were to make a demand that the railroad relocate the signal shed, it may be the case that the City would have to pay for it under the agreement. That's what I'm unsure about.

So that being said, I don't know what our legal options are right now with respect to that signal shed. I mean, we may want to leave it alone. We may want to find out more about what it's really being used for. We may want to try to understand whether we're entitled

to ask that rent be paid for it. We may want to demand that it be relocated. I don't know which way to really go with that.

COUNCILMAN CLARKE: So assuming that there is no contractual relationship between the shack and the parcel of land that we own, our options are what?

MR. EICKERT: If it's not covered by the construction agreement in any way and if it is not somehow protected by any kind of federal regulation regarding the railroad operations, if it's not essential or protected in that respect, we could demand that it be removed or relocated at railroad expense.

COUNCILMAN CLARKE: Okay.

MR. EICKERT: But I need to know the answers to those other questions.

COUNCILMAN CLARKE: How long do you think it will take?

MR. EICKERT: Again, I would

11/15/05 - TRANSPORTATION - RES. 050148

ask the Law Department's Regulatory Affairs people to respond to that and come up essentially with some options. A couple of weeks.

COUNCILMAN CLARKE: How long will that take?

MR. EICKERT: A couple of weeks, two to three weeks.

COUNCILMAN CLARKE: Okay. So two weeks you'll have a response to the Chair and the Committee?

MR. EICKERT: Yes, I will.

COUNCILMAN CLARKE: Okay.

COUNCILMAN NUTTER: As a follow-up to Councilman Clarke's question, is there a lease agreement or any rent being paid?

MR. EICKERT: No, not at this time.

COUNCILMAN NUTTER: Why? Do we normally let people put things on our property and do what they want to do?

MR. EICKERT: Historically, no, I don't think we do. I don't know the

background of it. I mean, I know that when the City -- certainly initially it was on railroad property. Then the City acquired the land and evidently did not address this issue of the signal shed, at least not explicitly.

COUNCILMAN NUTTER: When did that happen?

MR. EICKERT: Well, the agreement was executed in 1979.

COUNCILMAN NUTTER: All right. Okay.

Anything else?

Councilman Kelly.

COUNCILMAN KELLY: Thank you, Mr. Chairman.

I just want to follow up with what the Council President was saying a little earlier, and it's about the deplorable conditions of the tracks and the bridges and whatnot.

If we can identify who owns it and, for instance, if it is the railroad, what kind of, I guess, pressure can we

11/15/05 - TRANSPORTATION - RES. 050148

put on the railroad to repair and put them in first class condition? Do we do anything?

In other words, if we find out it's CSX property, on their lines, what do we do? How do we get them to comply with our request to make that a much safer track and a much safer bridge?

MR. EICKERT: I would think the first options that need to be explored are the usual L&I code enforcement procedures, if there is any code --

COUNCILMAN KELLY: What would be the procedure now? Would you know?

MR. EICKERT: You know, again, it's not my area.

COUNCILMAN KELLY: I mean, would it just be sending them a notice saying clean up or repair the tracks or repair the bridges?

They don't seem to do a very good job as far as answering any of these requests that we make. Is there anything we can do to really force them to do the

right thing? That's my question.

MR. EICKERT: At this point, I would be looking at, I guess, monetary fines. I mean, I don't think any kind of cease operation or anything that the City could do affirmatively to go in and repair the bridges itself. But I don't know. Again, this is something I would have to --

COUNCILMAN KELLY: Again, I just want to follow up with what the Council President was saying. It's going to take probably a disaster. It's going to take someone from being killed or maimed or seriously injured before, I guess, we in the City and a lot of other people really find out what the answers are or how we can get these people who own those tracks and who own those bridges to do the right thing and to put them in first class condition and safe for everyone. That's pedestrian and automobiles and everybody else that's in that vicinity of the bridge.

11/15/05 - TRANSPORTATION - RES. 050148

MR. EICKERT: Well, my intent is, as I said, to ask the Solicitor to direct the other units of the Law Department, whose job it is to enforce code provisions, to research this.

COUNCILMAN KELLY: I would strongly urge you to really get the City Solicitor to see if they can come up with a way that can really put some force behind these requests that we make as far as these railroads are concerned. They don't seem to give us too much time or response to any of our requests.

Thank you.

COUNCILMAN NUTTER: Thank you, Councilman.

Any other questions?

(No response.)

COUNCILMAN NUTTER: Gentlemen, thank you very much. I look forward to your reports.

MR. GLAZER: Thank you.

COUNCILMAN NUTTER: Okay. Mr. Robert Sullivan, Mr. Mike Hoey,

11/15/05 - TRANSPORTATION - RES. 050148

Mr. Joe Pewdo, Mr. Larry Koster and Mr. Bill Getz.

Please identify yourself for the record.

MR. SULLIVAN: Mr. Chairman, my name is Robert Sullivan. I'm the Regional Vice-President for Public Affairs for CSX Transportation.

COUNCILMAN NUTTER: Mr. Sullivan, I'm going to need you to maybe either bring that microphone a little closer or speak up or both.

MR. SULLIVAN: All right. Again, it's Robert Sullivan, Regional Vice-President for CSX Transportation.

COUNCILMAN NUTTER: And, Mr. Sullivan, I called the names of four other CSX personnel. Are they here today?

MR. SULLIVAN: They are not, Mr. Chairman.

COUNCILMAN NUTTER: And these four individuals were duly served or their representative was served a

11/15/05 - TRANSPORTATION - RES. 050148

subpoena, as authorized by the resolution and voted upon by this Committee. Are you aware of that?

MR. SULLIVAN: Mr. Chairman, I know that I responded to you in a letter and I believe there was another letter that was sent --

COUNCILMAN NUTTER: I'm sorry. I'm having trouble hearing you.

MR. SULLIVAN: I responded to you in a letter that said I would be representing the corporation. They asked me to respond. And I know that there has been subsequent conversation and that we are anxious to enter into a dialogue with you with the appropriate people of authority who are in a decision-making level within the company, and I believe that commitment has been made to try to do that in the near future.

COUNCILMAN NUTTER: Well, I don't know if I received a letter. I see a copy of a letter from an attorney, Mr. Dunlap, to Mr. Masters, who is on the

City Council technical staff. Yes, we have had some conversations, but I think you will agree that in none of those conversations did I agree that the individuals could not or would not attend or that they could ignore a duly authorized subpoena as issued by this body. I believe the conversation was your opinion that these individuals were not necessarily the proper individuals for the subject matter and that you would seek to supply the correct individuals. Is that an accurate representation of our conversations?

MR. SULLIVAN: That's correct, Mr. Chairman, and there has been, I know, subsequent conversation that's been had with you.

COUNCILMAN NUTTER: So why did these individuals not appear?

MR. SULLIVAN: Mr. Chairman, because I was asked to represent the company at this hearing, and I'm here and I'm prepared to make a statement and to

11/15/05 - TRANSPORTATION - RES. 050148

try to answer your questions to the best of my ability and to work with others to make sure that we have subsequent discussions with you.

COUNCILMAN NUTTER: Okay. So the individuals are ignoring the subpoena of the City Council?

MR. SULLIVAN: I don't believe anybody is ignoring a subpoena, sir. I'm here, Mr. Chairman.

COUNCILMAN NUTTER: Okay. But they're not here and they were subpoenaed?

MR. SULLIVAN: They are not here.

COUNCILMAN NUTTER: Now, who is Mr. Dunlap?

MR. DUNLAP: I'm Mr. Dunlap, sir.

COUNCILMAN NUTTER: Why don't you come to the table. Please identify yourself for the record.

MR. DUNLAP: I'm Benjamin Dunlap and I am counsel for CSX

11/15/05 - TRANSPORTATION - RES. 050148

Transportation in this matter.

COUNCILMAN NUTTER: Mr. Dunlap, you're with the firm of, is it, Nauman Smith?

MR. DUNLAP: Nauman Smith Shissler & Hall.

COUNCILMAN NUTTER: Your position there?

MR. DUNLAP: I'm a partner.

COUNCILMAN NUTTER: You're a partner in the firm?

MR. DUNLAP: Yes.

COUNCILMAN NUTTER: And I have a document dated October 24, 2005 signed by Benjamin C. Dunlap, Jr. Is that your name?

MR. DUNLAP: That is correct.

COUNCILMAN NUTTER: And the document I have, did you receive on behalf of CSX, your client, subpoenas properly issued by this Committee?

MR. DUNLAP: Yes. We received and I signed for a subpoena that was directed to the corporation.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCILMAN NUTTER: So you did receive it?

MR. DUNLAP: Correct.

COUNCILMAN NUTTER: So we don't have to dispute as to whether or not the subpoena was issued?

MR. DUNLAP: No.

COUNCILMAN NUTTER: Okay. And you accepted it?

MR. DUNLAP: Correct.

COUNCILMAN NUTTER: And then you've written to Mr. Masters a letter indicating that notwithstanding your receipt of the subpoenas and that they are duly authorized, that you have decided for your own purposes to not supply the individuals that we requested.

MR. DUNLAP: I wouldn't characterize it in that way, sir. We --

COUNCILMAN NUTTER: Are the individuals here?

MR. DUNLAP: They are not here, sir, but under the rules --

COUNCILMAN NUTTER: You at

least agree to that?

MR. DUNLAP: I do not disagree with that. But, sir, under the Pennsylvania Rules of Civil Procedure, as I mentioned in my letter to Mr. Masters, when a subpoena is issued upon a corporation, only officers, directors or managing agents need come to -- are authorized, rather, to appear at a hearing.

COUNCILMAN NUTTER: Well, as you can imagine in any legal matter, you very well know that that is subject of dispute, because apparently one of the provisions of the statute or the rule that you're citing would seem to argue against your position with regard to the party wishing to have either such testimony or documents produced is contrary to the same rule if you issue a subpoena.

MR. DUNLAP: Well, I would disagree with that, sir.

COUNCILMAN NUTTER: Well, I

knew that that would be your position.

This is not a deposition. This is a public hearing. The Committee is authorized and the Council is authorized by state statute to issue subpoenas. We take this very seriously.

MR. DUNLAP: As does CSX, sir.

COUNCILMAN NUTTER: Well, apparently you didn't take it as seriously as we would like you to take it because you didn't produce the people that we want.

MR. DUNLAP: We followed the Rules of Civil Procedure in the matter and we supplied someone who has knowledge of the matters that are the subject of the Council's resolution.

COUNCILMAN NUTTER: Well, notwithstanding your opinion, maybe that's a matter that the Court should decide, and we'll subsequently take the necessary action to get to a resolution.

You're going to be with us for the rest of the time?

11/15/05 - TRANSPORTATION - RES. 050148

MR. DUNLAP: Yes, if you'd like me to be, sir.

COUNCILMAN NUTTER: Okay. That may be the only thing that I've asked that you might do today, since you did not do what the Committee asked in the first place.

So let's start. First, Mr. Sullivan, I wish to have you sworn.

MR. SULLIVAN: That's fine.

COUNCILMAN NUTTER: Do you swear to tell the truth, the whole truth and nothing but the true, so help you God?

MR. SULLIVAN: I do.

COUNCILMAN NUTTER: You understand that there are penalties for false testimony in Pennsylvania?

MR. SULLIVAN: I do, sir.

COUNCILMAN NUTTER: CSX has what I found is a Code of Ethics for the company. You're aware of that?

MR. SULLIVAN: Yes, sir.

COUNCILMAN NUTTER: I'm going

11/15/05 - TRANSPORTATION - RES. 050148

to read into the record the CSX Code of Ethics. This is from your website. "CSX Values. At CSX, we believe that living by a set of fundamental core values helps define the true measure of a company. They guide the way we treat each other and how we make business decisions. When all employees are aligned to fundamental guiding principles, companies consistently deliver superior financial results that ensure long-term success.

"At CSX, we have developed a core ideology that is the foundation for everything we do and is embodied in the motto 'right results, right way.' This creates an environment that allows us to maintain a focus on what is important, while challenging everything else in a drive for continuous improvement. There is nothing magical about this concept. It is the discipline of execution that distinguishes great companies. It is about building an organization that has purpose, focus and alignment; that lives

11/15/05 - TRANSPORTATION - RES. 050148

its values every day; and that creates an environment that allows employees to grow and to produce superior results.

"This core ideology - our vision, purpose and values - is the heart and soul of our Company. We believe that adhering to this core ideology will help us become an even stronger and sustainable organization - a leader in an evolving business world."

Now, Mr. Sullivan, could you explain to the Committee how parking your trains on our streets; the nature and substance of whatever is in those trains, in some instances yet to be determined; interfering with the proper crossing at at least two locations; disrupting a growing, thriving neighborhood; negatively impacting a neighborhood park that has seen tremendous investment by public and private and philanthropic institutions; and the general behavior that's been exhibited so far in this matter, how that matches with the CSX

11/15/05 - TRANSPORTATION - RES. 050148

Code of Ethics?

MR. SULLIVAN: Mr. Chairman, I address the issue of the park and some of the issue of the trains that are stopped at times in the statement that's been given to you, which I would hope will be read into the record or would ask to be read into the record. I'm certainly willing to read it, if you want.

COUNCILMAN NUTTER: We'll get to that. Can you just try to answer my question?

MR. SULLIVAN: Yes, sir. Our job, we believe, is to serve the customers and to serve the community as best we can and to provide the underlying functions that are needed to make this economy work. We are an important part of the economic life of this City, of the port, of all of the customers here, and we do everything that we can to see that service is provided to them and all across our 23,000-mile system.

We believe that we do

everything that we possibly can to make life in a community better, and we will continue to work at that.

COUNCILMAN NUTTER: All right. Let's get a little background information, maybe a little better understanding.

Now, your position is what? Regional Vice-President for Public Affairs; is that right?

MR. SULLIVAN: Yes, sir.

COUNCILMAN NUTTER: Does your job have anything to do with trains?

MR. SULLIVAN: I don't operate trains or run trains, no, sir.

COUNCILMAN NUTTER: So your position is what?

MR. SULLIVAN: I'm in government affairs or state relations. I also deal with the news media at times.

COUNCILMAN NUTTER: So you're not involved in the day-to-day train operations?

MR. SULLIVAN: No, sir.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCILMAN NUTTER: Okay. But you're here to testify at a hearing that is specifically about train operations?

MR. SULLIVAN: I was asked to come and represent the company at this hearing, yes, sir.

COUNCILMAN NUTTER: Okay. But you're not involved in train operations?

MR. SULLIVAN: I am not, sir.

COUNCILMAN NUTTER: Is there an organizational chart for the company?

MR. SULLIVAN: Is there a? I'm sorry. Say that again.

COUNCILMAN NUTTER: An organizational chart for the company.

MR. SULLIVAN: Yes, there is. I don't have one with me, but there is, yes.

COUNCILMAN NUTTER: Can you provide us one?

MR. SULLIVAN: Yes.

COUNCILMAN NUTTER: And who are the individuals who are in charge of train operations?

11/15/05 - TRANSPORTATION - RES. 050148

MR. SULLIVAN: They are going to vary in the region. There is going to be a Division Manager. There's going to be --

COUNCILMAN NUTTER: Who is that?

MR. SULLIVAN: The Division Manager for this district is Bob Babcock.

COUNCILMAN NUTTER: Bob?

MR. SULLIVAN: Babcock.

COUNCILMAN NUTTER: And where does Bob operate from?

MR. SULLIVAN: Baltimore.

COUNCILMAN NUTTER: Baltimore?

MR. SULLIVAN: Yes, sir.

COUNCILMAN NUTTER: And what's his position?

MR. SULLIVAN: Division Manager, I believe. I've got to double-check the exact title, but I believe it's Division Manager.

COUNCILMAN NUTTER: And what's he responsible for?

MR. SULLIVAN: He is

11/15/05 - TRANSPORTATION - RES. 050148

responsible for train operations in an area that would extend roughly from Richmond, Virginia to Northern New Jersey.

COUNCILMAN NUTTER: And who does he report to?

MR. SULLIVAN: He would report to a gentleman who is the -- I believe his title is Vice-President of Operations -- I'm going to have to double-check the precise title -- who is based in Chicago, and his name is Tony Tuchek.

COUNCIL PRESIDENT VERNA: I'm sorry. Tony what?

MR. SULLIVAN: Tuchek, T-U-C-H-E-K.

COUNCILMAN NUTTER: T-U-C-H-E-K?

MR. SULLIVAN: Yes.

COUNCILMAN NUTTER: And he's in Chicago?

MR. SULLIVAN: Yes.

COUNCILMAN NUTTER: What's his

title?

MR. SULLIVAN: Again, I'm going to have to double-check the title. I believe it is Vice-President of Railroad Operations for the North.

COUNCILMAN NUTTER: And who does he report to?

MR. SULLIVAN: He, I believe, reports to -- I believe his title now is Executive Vice-President of Operations.

COUNCILMAN NUTTER: Is that the Executive Vice-President and Chief Operating Officer?

MR. SULLIVAN: Yes.

COUNCILMAN NUTTER: Would that be Mr. Tony Ingram?

MR. SULLIVAN: That would be, yes.

COUNCILMAN NUTTER: Where is he based?

MR. SULLIVAN: Jacksonville, Florida.

COUNCILMAN NUTTER: He's the EVP and COO, right? Okay. And you

report to?

MR. SULLIVAN: I report to a gentleman named John Casselini.

COUNCILMAN NUTTER: And is he in Albany?

MR. SULLIVAN: He splits his time between Albany and Jacksonville.

COUNCILMAN NUTTER: So with regard to operations, who are the decision-makers or who is the decision-maker on train operations for anything affecting Philadelphia?

MR. SULLIVAN: That is a question that I can't give you a direct answer, because it's going to involve several different people. It's going to involve overall network operations, which are directed out of Jacksonville. It's going to involve specific local customer operations, which is going to come out of both Baltimore and Philadelphia, but in general, it starts, if you will, in Jacksonville.

COUNCILMAN NUTTER: With whom?

11/15/05 - TRANSPORTATION - RES. 050148

MR. SULLIVAN: It would start with the people down there who report to Mr. Ingram.

COUNCILMAN NUTTER: I understand that, and that's been a part of the problem over the past week or so since we called for this hearing and issued the subpoenas. Why is it so difficult to identify the responsible individuals?

MR. SULLIVAN: I think we're trying to do that, sir, and get you the people who can come up here and deal with the questions, and I know, Mr. Chairman, that that's what Mr. Casselini is trying to do right now as we speak.

COUNCILMAN NUTTER: So you have your testimony. We've gone a little around the chart here a little bit. Before we get into that, how long has CSX been operating in this area? Did CSX buy somebody or merge?

MR. SULLIVAN: Yes. The history of it is, CSX operated here as a

predecessor railroad, I believe. I joined CSX in 1998. It was the Baltimore and Ohio and then the Chessie system merged together. And then in 1998 was financial control, 1999 was operating control. A couple of railroads, including CSX, took over control of most of what is known or was known as Conrail. And so you already had CSX operating here with a presence and in fact operating in that area that we've been talking about at Schuylkill River Park. That area was not Conrail. That was CSX or B&O, I guess, dating back over time, and then in 1999, CSX took over some additional operations as well.

COUNCILMAN NUTTER: And how long have you been blocking the tracks on Locust and Race Street?

MR. SULLIVAN: That, I can't tell you exactly how long we've been doing that. I know that that is a long-standing operation down there that's used for serving customers in the

Philadelphia area, and it's also served --

COUNCILMAN NUTTER: What's a long-standing operation?

MR. SULLIVAN: Everything that comes out of East Side Yard and that moves between East Side and moving up toward what I guess would be called the Art Museum Tunnel.

COUNCILMAN NUTTER: I understand that. My question was, how long have you been blocking the tracks?

MR. SULLIVAN: And, sir, I know we've been doing railroad operations down there for many years, and I'm going to have to assume that the processes down there have not changed considerably in all of those years.

COUNCILMAN NUTTER: And --

MR. SULLIVAN: I don't have the data to say exactly how far back that goes.

COUNCILMAN NUTTER: And what is it that possesses you to think that you

11/15/05 - TRANSPORTATION - RES. 050148

have the authority to block City streets --

MR. SULLIVAN: Mr. Chairman --

COUNCILMAN NUTTER: -- with your rail?

MR. SULLIVAN: I'm sorry. Mr. Chairman, I think that there is a dispute as to what exactly we do or don't have the right to do down there and that that is one of the reasons that we're involved in --

COUNCILMAN NUTTER: Do you think you have a right to block our City streets?

MR. SULLIVAN: We think that we have a right to operate down there and that that is why we're involved in the litigation that we're involved in today.

COUNCILMAN NUTTER: Your definition of "operate" is blocking streets?

MR. SULLIVAN: Mr. Chairman, as I address in the testimony, railroads operate in different ways, and when you

get into a terminal area, there is going to be stopping and starting and there is going to be movement. It is not a smooth functioning thing.

COUNCILMAN NUTTER: Okay.

Any questions?

Councilman Clarke.

COUNCILMAN CLARKE: Good afternoon.

MR. SULLIVAN: Mr. Clarke.

COUNCILMAN CLARKE: You're the eastern regional public affairs person?

MR. SULLIVAN: I'm more midatlantic, I guess. I don't have the entire east.

COUNCILMAN CLARKE: To your knowledge --

MR. SULLIVAN: A smaller area.

COUNCILMAN CLARKE: To your knowledge, have you had a similar situation as this where you have a rail line going through a city that's either adjacent to or in close proximity to a neighborhood where you've had problems

11/15/05 - TRANSPORTATION - RES. 050148

with neighbors, their objections to you denying access to the other side of the rail line at all?

MR. SULLIVAN: Councilman Clarke, I know that there is -- and, again, as I address in my testimony at some length, there is a real growing tension between the demand for rail transportation and freight transportation in general, the ability to serve communities, the ability to juggle demands like traffic for the Port of Philadelphia, which is actually trying to incent shippers now to put more traffic on the rails, the demand to keep certain materials off of the highways and the growing or the rapidly changing nature of neighborhoods in many of our cities.

Some of the details in each city are going to vary, but the conflict, if you will, is a common one and it is one that is, to be perfectly honest, is growing. And so there is increasing pressure to move, if you will, railroad

infrastructure out at the same time that there is more pressure to have increased use of rail and to put more demands on that infrastructure.

It's a long-winded answer, but --

COUNCILMAN CLARKE: I understand. I read that portion of your testimony.

Should I assume that there's been different levels of response in different municipalities as it relates to this issue about access and rail lines and its impact on neighborhoods?

I know in Washington there was legislation, and you talked about Baltimore. Have there been different levels of response, legally, protests? I mean, off the top of your head, can you tell me about --

MR. SULLIVAN: A couple of different issues, Councilman. In terms of what's going on in Washington and Baltimore, that really relates to the

11/15/05 - TRANSPORTATION - RES. 050148

movement of hazardous materials and what can or can't be done there, which I'd be happy to address.

I think the other issues are ones that really are extremely difficult in terms of saying public policy. You see neighborhoods changing, and I think what's happening in the area of Schuylkill River Park is a terrific example of that. At the same time, you see increased demand for rail transportation.

It is an issue that is becoming more and more difficult to deal with for everybody.

I'm happy to address the hazardous materials issue as well.

COUNCILMAN CLARKE: Let me ask you this question more directly.

MR. SULLIVAN: Sure.

COUNCILMAN CLARKE: Have you ever had a situation in any municipality or locale throughout the eastern region that you're familiar with where you've

had to deal with civil disobedience?

MR. SULLIVAN: No, sir. No, Councilman.

COUNCILMAN CLARKE: Where people said, You're blocking our street. You know what, we think we'll block your trains.

Have you ever had to deal with anything like that?

MR. SULLIVAN: Councilman, we've never had that, and I certainly hope that we never would, because I think that's an invitation to a real safety issue and a real problem, and I hope that it just would not ever come to that. I really do.

COUNCILMAN CLARKE: Well, in the City of Philadelphia, we are a city that's steeped in history and tradition of protests, so we do it in a real civilized way. We actually have -- and I don't know if I should be saying this in the public way, but we actually have an environment where we actually call the

police and tell them that we're going to protest, and they actually provide protection for the individuals who are protesting, and in most cases, they notify the entities, the organizations or whomever that the protest is going to be lodged against. So it's kind of orchestrated so people will know that people are going to be out there and they're going to block traffic and they're going to do whatever they have to do.

Not too long ago we had a group of truckers who were upset about something. We had the taxi cabs who were upset about something, and we actually got wind of it early on and we knew that there was going to be a lot of noise around City Hall, so we closed the window so we could conduct our public business.

And this is not a threat, but I'm just kind of throwing something out there. If in fact there was a situation where the community and some of the

11/15/05 - TRANSPORTATION - RES. 050148

elected officials just got fed up because of the lack of response by CSX that they felt the need to go to that level, the good-old grassroots protest, it would probably be a situation where the safety issue could be dealt with, people would not go and jump in front of a moving train. There would be appropriate notification to CSX, and I'm assuming that subsequently you would notify your drivers that there are probably going to be people on the tracks, there are probably going to be a group of people protesting this particular issue in blocking traffic, and those people will probably be surrounded by police to ensure that all of the safety issues are resolved.

You've never had to deal with anything like that?

MR. SULLIVAN: Councilman, never. Never had to deal with anything like that. I would just make one other observation. Obviously we work very hard

to maintain safety. We don't encourage people on the tracks. I wouldn't want to be in a position where anybody at any level who was condoning that kind of an activity.

I think the other thing to keep in mind is that when you disrupt that freight traffic, it would disrupt the flow of commerce, which sounds like this wonderful thing, but, in fact, it means that somebody is going to go to work tomorrow morning and the assembly plant is shut down because the parts to work on that product aren't there. It means that a distribution center is not going to have the product that it needs to get out to people. It means that a ship is going to be having a problem getting material to flow out of the Port of Philadelphia. That's in Philadelphia or in another city. And if it happened in another city, you would have the same problem here.

We operate as a network, and

when you do something in one city, it affects the entire network. So it's a --

COUNCILMAN CLARKE: So that means that your customer base will probably not be very happy about this particular action and not be very happy about you as an operator?

MR. SULLIVAN: I think it would mean that there would be an economic issue for the economy in general and for the people who work in the economy.

COUNCILMAN CLARKE: So the likelihood that you would see the need to resolve this issue, if this happened on a consistent basis, would probably be elevated, because you don't want to have unhappy customers?

MR. SULLIVAN: Councilman, I just hope that it wouldn't come to that.

COUNCILMAN CLARKE: All right.

MR. SULLIVAN: And that it wouldn't be condoned.

COUNCILMAN CLARKE: Well, the fact that I'm even having this

conversation with you today, right, because this is probably a conversation I shouldn't be having in public --

MR. SULLIVAN: I understand.

COUNCILMAN CLARKE: -- that's the level of frustration I have with you guys. This is like ridiculous. You don't respond to the subpoenas.

I think we've been more than fair. I've sat at this table numerous occasions and I've seen Councilmembers, my colleagues, virtually rip people's heads off, right, but we haven't done that. We've been extremely civil. We've had discussion after discussion with members from CSX. We've bent over backwards to try to accommodate individuals. You've put us in a position where we've had to issue subpoenas, and you've essentially ignored them in spite of what your colleague is saying here or your legal representation. You've ignored the subpoenas. And the fact that I'm having this level of conversation,

you should understand that the level of frustration with this is just that bad. This is like ridiculous.

You talk about commerce. We believe that the investment that we've made on the waterfront is going to support a level of commerce as it relates to the City. This particular section of town is increasingly becoming a more attractive area for people to move in, and a lot has to do with access to the waterfront. A lot has to do with access to the park.

So it affects our commerce also not having the ability to access that particular location. So this is kind of a two-way street.

So while I'm not promoting here today in public that there will be some sort of civil discord, I think that people are at the level where that will now at some point in the very near future be an option, because I think that people will be willing to do that. I think that

11/15/05 - TRANSPORTATION - RES. 050148

the Philadelphia Police Department will accommodate us to ensure that all of the safety issues are dealt with, and if we can't get more cooperation out of CSX, I can seriously see us trying to do something like that.

I got to tell you, I'm a politician. There's nothing better than a politician standing in front of a protest with a sign. That's a great photo op for my reelection campaign. And I wouldn't be doing it for that reason, but understanding that this is something that will not hurt me as a political figure.

So you need to talk to your people, tell them that this thing is reaching a level of frustration that we're getting ready to start talking about some really, quote/unquote, unreasonable measures. So if you can just understand the level of seriousness that this is here, it would be very helpful to us.

11/15/05 - TRANSPORTATION - RES. 050148

MR. SULLIVAN: Thank you.

COUNCILMAN CLARKE: All right, sir? Thank you.

Thank you, Mr. Chairman.

COUNCILMAN NUTTER: Thank you, Councilman.

Council President and then Councilman Kelly.

COUNCIL PRESIDENT VERNA: Thank you very much.

Mr. Sullivan, for the record, would you please describe the bridge maintenance schedule and plan for the Columbia Bridge and the 25th Street viaduct? And while you're at it, would you tell us if you think that CSX consider these two bridges to be in good condition?

MR. SULLIVAN: Council President Verna, good afternoon.

We inspect those bridges -- they are thoroughly inspected for structural integrity once a year. Again, in the testimony, I did not address

11/15/05 - TRANSPORTATION - RES. 050148

Columbia Avenue, but I did address 25th Street viaduct in there. It's a critical rail link for the City. Everything that goes down to the port moves there.

We inspect the bridges. The bridge structure itself was being inspected once a year for structural integrity. The tracks are inspected, because I believe they are main line tracks. If they are main line tracks, and I've got to double-check that, they're inspected twice a week on -- this is going to sound crazy, but they're inspected twice a week on non-consecutive days, so you can't go back to back.

In -- well, I guess it was the spring. I don't have the precise date, but this spring we entered into an agreement. The City asked the Pennsylvania Public Utilities Commission --

COUNCIL PRESIDENT VERNA: I'm sorry. My husband keeps telling me I hear too well. I'm having difficulty

11/15/05 - TRANSPORTATION - RES. 050148

hearing you. Can you pull the microphone closer to you, please?

MR. SULLIVAN: The Pennsylvania --

COUNCIL PRESIDENT VERNA: Won't you try again.

MR. SULLIVAN: The Pennsylvania Public Utilities Commission entered into an agreement with us or we entered into a consent -- how would you describe it?

MR. DUNLAP: Yes.

MR. SULLIVAN: A consent agreement -- I want to make sure I've got it right -- that we are going to inspect that bridge, the exterior part of the bridge, the precise thing that concerns the Committee and that concerns the community and that concerns us, twice a year, and that probably in the spring and the fall, the necessary repairs would be made at that time. And that is something that is now, I think, under the purview, if you will, of the Pennsylvania PUC. And we entered into that agreement with

them and would have to answer to them if there was an issue.

COUNCIL PRESIDENT VERNA: So both the tracks and the construction, the concrete, will be inspected twice a year?

MR. SULLIVAN: No. I'm sorry. The concrete, the exterior of it, the facade, whatever, will be inspected twice a year. The tracks themselves are inspected on a maintenance schedule. It depends upon the classification of the track. That is all established by the Federal Railroad Administration. I will have to determine or find out, and I will do this for you quickly, exactly what the class level is of that particular track.

In general, main line track -- an example of that would be the line along Schuylkill River Park -- is inspected twice a week. That's a visual inspection by the company. There are also inspections that are done. I don't know the schedule, but they are done independent of that by the Federal

Railroad Administration, and there are additional inspections that are done of track with computerized equipment that tests for track geometry and that checks for rail alignment and that checks for defects within a rail.

COUNCIL PRESIDENT VERNA: The gentleman that testified from Southwest Philadelphia who was very concerned about the condition of the tracks in that community, are they also inspected as frequently?

MR. SULLIVAN: They are inspected. I don't know precisely what the class of those tracks is. I will find out. We've got that written down, and we'll find out what they are.

COUNCIL PRESIDENT VERNA: And can we have something in writing on that, please?

MR. SULLIVAN: Yes.

COUNCIL PRESIDENT VERNA: For the record, sir, can you tell us what kinds of hazardous materials are

transported by CSX through Philadelphia? Please describe all types of chemicals.

MR. SULLIVAN: I can provide that to you after the hearing. We do a density study that's done on request for emergency management agencies and for response agencies, and I can have one available to the Emergency Management Director and provide it to you very quickly. That would --

COUNCIL PRESIDENT VERNA: You'll provide it to the Chairman, please, and he will make certain that we all get copies.

MR. SULLIVAN: And that can be done very quickly.

COUNCIL PRESIDENT VERNA: Thank you.

Let me ask another question, if I may. If CSX could not bring HAZMAT freight cars through Philadelphia, where would those cars be rerouted?

MR. SULLIVAN: At this point, I don't know. This is our main route up

and down the East Coast. This is what we refer to as the I-95 Corridor. This is where all of that traffic goes.

I think it's important to understand, again, as I mentioned in the prepared testimony, when an individual city, such as Washington or Baltimore or Philadelphia, says, You may bring into this city that which is originating in or leaving from this city but nothing else can move through, you're very quickly going to bring a system essentially to gridlock, because what you're saying is, what one city is saying, Baltimore, for example, is saying, Stuff for Baltimore can move here, but if it's going some place else, it can't. Then Washington is saying the same thing and Philadelphia is saying the same thing, and what you then confront is a situation where nothing can move anywhere and you end up with customers who don't have materials.

We had a situation -- we've had a couple of situations, but the railroad

industry itself back, I believe it was, shortly after September 11th when the troops invaded, I believe it was, Afghanistan embargoed temporarily after talking with the Federal Government all of those movements, and within a matter of days, we had cities calling the government because their municipal water supplies were in desperate straits. They didn't have chlorine.

So the materials that we move are moved for a very real purpose, and when they can't move through certain areas, they can't move and we can't fulfill that basic mandate we have as a common carrier to move things as safely and directly and efficiently as we can, we've got a problem, "we" society.

COUNCIL PRESIDENT VERNA: We all have a problem.

Does CSX have an inventory of all billboards on their property?

MR. SULLIVAN: I don't know. I do know and I heard the testimony earlier

and have written it down, and we are certainly prepared to work with and help the City department -- I believe you said Licensing and Inspections and whomever -- to make sure that any billboards that are on our property are properly permitted and legal. And we will work with them to take whatever action is necessary to address those that are not.

COUNCIL PRESIDENT VERNA: Well, apparently you have quite a number of them. I think that we should be provided information as to how many billboards are on your property, do you have permits from L&I for all or any of them, and I'd like to know if you are complying with the City's billboard ordinance, how many are legal, how many are illegal, and I would also like to know how much revenue do the billboards generate for CSX each year.

MR. SULLIVAN: We will try to get answers for --

COUNCIL PRESIDENT VERNA: So I

11/15/05 - TRANSPORTATION - RES. 050148

would appreciate your forwarding that information to the Chairman of the Committee, please.

I'm finished.

COUNCILMAN NUTTER: Thank you. As an add-on to the Council President's request, and then I know Councilman Kelly has questions as well, Mr. Sullivan, if you could provide to us a listing by locations of all of the bridges and viaducts owned by CSX and a copy of your regular inspection reports. Can you provide that to us?

MR. SULLIVAN: Yes.

COUNCILMAN NUTTER: Thank you.

Councilman Kelly.

MR. SULLIVAN: Mr. Chairman --

COUNCIL PRESIDENT VERNA: Excuse me. I'd like to know when did these inspections start, because I just cannot believe that we would find chunks of concrete falling if you have inspections as you contend you do, and it's happening too frequently. It's a

problem.

MR. SULLIVAN: I will get that --

COUNCIL PRESIDENT VERNA: It's not only a problem for us, our constituents, but you, and it's something that has to be addressed.

MR. SULLIVAN: Agreed. Agreed.

Mr. Chairman, excuse me. If I may, just for one quick second.

(Pause.)

MR. SULLIVAN: I just wanted to make sure we were getting all of the things that we're committing to do. Thank you.

COUNCILMAN NUTTER: Councilman Kelly.

COUNCILMAN KELLY: Thank you, Mr. Chairman.

MR. SULLIVAN: Councilman, good afternoon.

COUNCILMAN KELLY: Mr. Sullivan, you mention in your testimony here that CSX spends more than $1 billion

a year in maintaining and upgrading its physical assets. Is this the budget for maintaining your facilities and equipment for the entire country?

MR. SULLIVAN: 23,000 miles of railroad, yes, sir.

COUNCILMAN KELLY: How much is spent for maintaining the property that you have in the Delaware Valley area or specifically the Philadelphia area?

MR. SULLIVAN: I will get --

COUNCILMAN KELLY: Is it a thousand dollars out of the 1 billion? Because it seems to me from the pictures that I've been seeing and the testimony I'm hearing from people throughout this hearing today that you don't evidently spend too much money in this area. I would like to know how much is spent in the Philadelphia area for maintaining your structures here. Do you have that information? Do you have a breakdown of that?

MR. SULLIVAN: Councilman, I

don't have it with me, but we can certainly get you a number for a specific year.

COUNCILMAN KELLY: Would you provide that to the Chair, then?

MR. SULLIVAN: Absolutely.

COUNCILMAN KELLY: Another item of interest is that you mention in your testimony that your interest is in keeping the trains moving. "A standing train consumes resources and produces no value. When any train is delayed on our network, we do everything in our power to restore motion to the system."

Well, we couldn't on this Council agree with you more. What we would like to see you do is keep those trains moving in a way and not parked so it prevents people from using that Schuylkill River project. And we could put up the barriers that would prevent people from getting in the road of a moving train, but, unfortunately, that's not what's happening today. What's

happening today is that you're parking the trains there, sometimes for hours, sometimes for days probably. I don't know. I don't know. I would like to get, if it's possible, how many trains go through that facility or that location and how many of them are parked.

MR. SULLIVAN: Councilman, there are approximately 15 to 20 trains a day that go through there. It's going to vary by day.

COUNCILMAN KELLY: How many is that?

MR. SULLIVAN: 15 to 20.

COUNCILMAN KELLY: To 20 trains?

MR. SULLIVAN: Yes, per day.

COUNCILMAN KELLY: Now, are they moving trains or are they parked trains?

MR. SULLIVAN: They are going to be both. There are going to be trains that go all the way through. There are going to be trains that do stop.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCILMAN KELLY: When you say you park the trains there, generally how many hours are you talking about?

MR. SULLIVAN: Again, Councilman, that's going to vary. It's going to vary by --

COUNCILMAN KELLY: It's going to vary?

MR. SULLIVAN: Yeah, it really is.

COUNCILMAN KELLY: The minimum would be an hour or --

MR. SULLIVAN: The minimum could be 10 to 15 minutes. It could be a period of time where what you actually have is a train that's setting off cars to go into East Side Yard or to go to a customer here. It could be as simple as -- as quick as a rapid crew change. There could be a problem with the train. There could be a problem on the tracks ahead that causes that. There are any number of issues that could cause a train to hold.

11/15/05 - TRANSPORTATION - RES. 050148

COUNCILMAN KELLY: I would like to follow up on the Council President's line of questioning about hazardous materials. Are you familiar with a train derailment that happened in South Carolina in a small little rural area and that I believe that at least nine people were killed by one of the tanks leaking out some chlorine gas, I believe it was?

MR. SULLIVAN: Yes.

COUNCILMAN KELLY: How are you going to prevent something like that happening in Philadelphia? For instance, if something happened like that near the location of our Center City of the Schuylkill River Park, that gas could travel throughout the City, and there could be literally thousands of people affected.

What kind of plans do you have to prevent such an occurrence?

MR. SULLIVAN: Councilman, we do the same thing that we do in every other community and that every railroad

11/15/05 - TRANSPORTATION - RES. 050148

does, and, that is, work with local emergency response agencies in terms of training. We do a great deal of inspection and training of our own forces. We also do a great deal of work with customers to make sure that the cars that those things are transported in --

COUNCILMAN KELLY:

Mr. Sullivan, what I'm really concerned about is that when you're moving these hazardous materials through our area -- according to the testimony that I've been listening to today, your tracks aren't in very good shape, your bridges certainly aren't in any good shape, and I don't know if you're going in the right direction as far as providing safety for the citizens of Philadelphia. I really don't. I have questions about that.

And another question that I have is, what do you do when Philadelphia or a department, License and Inspections or some health department or whatever department it is in the City, sends you a

request to do something on your tracks? What do you do with that? Do you follow it up? Do you contact the City? Do you make immediate repairs?

MR. SULLIVAN: Councilman, when you -- and I'm not being funny here. Are you speaking in terms of the condition of the tracks or the condition of the property around the tracks?

COUNCILMAN KELLY: The tracks themselves.

MR. SULLIVAN: The tracks themselves are inspected by not just our forces but the Federal Railroad Administration. I'm not personally aware -- I'm not saying it hasn't happened, but I'm not aware of any --

COUNCILMAN KELLY: I know in your testimony you say you make two inspections a year, I believe, but according to the testimony from the gentleman from Southwest Philadelphia, he's made his own inspection and they're deplorable. I don't know. I'm not an

11/15/05 - TRANSPORTATION - RES. 050148

expert on tracks, don't get me wrong, but I think somehow or other, I don't know if your company is really on top of these inspections. I really don't know.

MR. SULLIVAN: Councilman, let me make clear that the twice-a-year issue related to the 25th Street viaduct, and I've committed to the Council President that we will get more information back.

Tracks are inspected. It can be once a week or it can be every other day, depending on the class of track. Track is inspected on a regular basis and --

COUNCILMAN KELLY: Well, I appreciate the inspection. I think that's fine, but what I want to do is to follow up on seeing that if the inspection at least gets you to notice that there are serious flaws in the tracks or whatever, at least you're going to make immediate repairs to that track.

MR. SULLIVAN: If there are immediate repairs that need to be made,

we do make them, Councilman.

The other thing that needs to be noted is that condition of track varies based on the track speed that's authorized there. So if you have a track that trains are going 40 miles an hour over, that's maintained to one level. A track that trains are going 15 miles over is maintained to a different one. It's the equivalent of a side street and an interstate highway, I suppose.

COUNCILMAN KELLY: Well, I would just like to end by saying that I hope somewhere along the line that you could become a good corporate neighbor to Philadelphia, to its citizens, and to do something to resolve the issue of that Schuylkill River Park. That's very, very important for the people throughout the City and throughout the Delaware Valley really who use and want access to that park. I know it's in litigation right now, but I think that even so, that I think you would come to the conclusion

that we are serious about wanting that access to continue, and I believe that we're asking you to become the good corporate neighbor I think that you would like to be and giving access to that park.

Thank you.

MR. SULLIVAN: Thank you, Councilman.

COUNCILMAN KELLY: Thank you, Mr. Chairman.

COUNCILMAN NUTTER: Sure. Thank you, Councilman.

Just a couple facts on the record and then I want to ask you an operational question.

Mr. Sullivan, what were the company's revenues last year?

MR. SULLIVAN: Councilman, I don't have an annual report with me. I will get that for you and provide it to you, and I can provide that to you tomorrow.

COUNCILMAN NUTTER: Do you have

a sense off the top of your head?

MR. SULLIVAN: It would have been several billions dollars, but, again, I don't have the answer.

COUNCILMAN NUTTER: Would $8 billion sound familiar to you?

MR. SULLIVAN: It may. Again, I'm not...

COUNCILMAN NUTTER: It was $8 billion in revenues last year.

MR. SULLIVAN: Okay.

COUNCILMAN NUTTER: The operating income of a billion dollars.

Your testimony, which I appreciate your submitting, in essence, while talking about Schuylkill River Park, only points out, of course, the danger and the concern and safety issues that you've been talking about for some time. It naturally and unfortunately does not provide one new thought, one new idea, one new way of looking at this situation.

So we have your testimony.

11/15/05 - TRANSPORTATION - RES. 050148

I've talked to the members of the Committee. We've read it, so there's really no need to go through that. We have it. It will be a part of this hearing.

MR. SULLIVAN: Thank you.

COUNCILMAN NUTTER: What I've yet to understand and is not laid out in your testimony is, when we look at these surveys that have been done, we see, of course, the spikes in crossings or crossing closures, in essence, in July, August and September.

Can you explain why the trains seem to only sit at these particular locations, Race and Locust, and why there's such an increase in their layovers during the summer into fall? Why do you park the trains there?

MR. SULLIVAN: If a train is being held there, it's because there is a reason that it can't move forward, and we very much want them to move forward.

COUNCILMAN NUTTER: I kind of

figured that. Why?

MR. SULLIVAN: It may be because there's track work being done on the track ahead. It may be that we're waiting for a crew. It may be that there is a problem with the train. There can be any number of reasons why a train would be held.

COUNCILMAN NUTTER: Why do you just sit at that location? I mean, don't you have a yard somewhere for these trains to go?

MR. SULLIVAN: The intent, and this is typical of railroad operations, is to get that train on the move as quickly as you can. Once you start putting trains into yards that are meant to be through trains, you actually delay the entire system. So that if you have traffic -- and, again, I keep going back to this point --

COUNCILMAN NUTTER: So you're saying people over there because of your operational issues, people in the

11/15/05 - TRANSPORTATION - RES. 050148

neighborhood, people trying to access a new park, they should be all inconvenienced so that you're not inconvenienced as you try to do what you do? Is that the way this works?

MR. SULLIVAN: I think we're going to an area of an agreement that we believe we have and that we're trying to resolve with the City at this point.

COUNCILMAN NUTTER: I'm sorry. I didn't understand that. You said you're going into an area --

MR. SULLIVAN: The question of the ability to do something there I think gets to a question of the litigation and the settlement discussions.

COUNCILMAN NUTTER: I haven't asked you anything about the litigation. I'm asking you, why don't you move them somewhere else. You have a yard. And if someone is going to be inconvenienced, I don't understand why it's the general public as opposed to it's a part of your business operation. That's the issue.

11/15/05 - TRANSPORTATION - RES. 050148

I'm not asking you about the litigation.

MR. SULLIVAN: Mr. Chairman, what we try to do, not just in Philadelphia but everywhere, is to keep things moving in such a way that all of our customers get service as quickly as possible. So if we're holding trains in Philadelphia, we're going to be holding trains perhaps in other communities as well, and we definitely want to keep them moving.

COUNCILMAN NUTTER: Now, you understand that the streets in question have a certain significance in Philadelphia. Do you know about that?

MR. SULLIVAN: I'm not sure, Mr. Chairman.

COUNCILMAN NUTTER: These streets are called charter streets. Have you ever heard that term?

MR. SULLIVAN: Yes. Yes. That -- yes.

COUNCILMAN NUTTER: And what that means is that they're actually owned

by the City and they had their origin in the Charter of William Penn, who just happened to be the Founder of the City.

MR. SULLIVAN: Yes, Mr. Chairman.

COUNCILMAN NUTTER: And you're blocking these streets with your trains. The agreement and the ordinance from 1885 -- we all love wonderful irony -- that ordinance from 1885 came as a result of a legal dispute between your predecessors and the City of Philadelphia 120 years ago, which you're now disputing in court as to what that means.

So you've been in litigation with us 120 years ago, the result of which was an ordinance that was passed to make it clear what you can and cannot do, and now 120 years later, you're disputing that.

MR. DUNLAP: Sir, with all due respect, this does directly go to the litigation. I mean, in the litigation CSX is contending that the City's rights

11/15/05 - TRANSPORTATION - RES. 050148

in those streets were modified by a construction agreement that the City voluntarily entered into in 1979, and that's directly what the litigation is about. So I would advise Mr. Sullivan to not answer that question.

COUNCILMAN NUTTER: I didn't ask him a question. I put a statement on the record of fact. There was an ordinance that was passed -- it's not a secret -- that comes as a result of a previous litigation directly on point. I was merely pointing out that 120 years ago, apparently that City Council was dealing with your predecessor on virtually the same issues, which are now under dispute 120 years later.

So I appreciate your effort to protect your client. I haven't asked him about the litigation. I haven't asked him to reveal any of the deep, dark secrets that are going on between you guys and the City of Philadelphia down at the Federal Courthouse.

So what are you prepared to do here today? How are we going to move this forward and get a resolution with regard to Locust and Race Street? As I mentioned, there's nothing in your testimony that lays out any action that you're prepared to take. You've not supplied the individuals that we asked for. You have very long testimony that lays out, of course, every possible doom and gloom scenario that anyone could imagine, with no end in sight but also no solution.

So where does that leave us?

MR. SULLIVAN: Mr. Chairman, I think it leaves us where we began the hearing in the sense that we have --

COUNCILMAN NUTTER: The company is going to send whoever you want. You're going to ignore any further efforts for us to get the proper personnel here. We don't know who the proper personnel is, because you're still trying to figure that out from a

11/15/05 - TRANSPORTATION - RES. 050148

Jacksonville perspective. You're over in court with the City, and are you just going to continue to ignore the increase of this City Council?

MR. SULLIVAN: Mr. Chairman, I think we're trying to be responsive to them, and I think we've committed to getting you the names of some people as quickly as we can --

COUNCILMAN NUTTER: Okay. Are there any other names?

MR. SULLIVAN: -- and to working with you --

COUNCILMAN NUTTER: What can you tell me today? We're all here together today.

MR. SULLIVAN: I don't know, because that's something that's being determined down there to say who are the best people who can come up, and I think we committed to having those names to you in the conversation that you had with Mr. Casselini earlier today.

COUNCILMAN NUTTER: I

understand that. We have pretty much the same discussion. It went in a fairly circular fashion, similar to this discussion here. He's working on getting me some names. We're going to have some conversations, and as much as I love to have a conversation, and my colleagues know I love to talk, what I'd really like is action and results, and so far, you've been a bit short on that. So I'm not sure exactly where that leaves us.

You've got a ton of people doing a ton of things, but no one seems to be able to come up with an answer to this particular issue.

We want access to the park. You're insisting on blocking our streets and denying people that access and creating, without the appropriate procedures in place, a very dangerous condition. You have bridges that have chunks falling off of them. You got containers carrying all types of materials in them, some of which we can

read on the side, some of which we may not know anything about.

What are you prepared to do? Shall we issue just another round of subpoenas?

MR. SULLIVAN: No, Mr. Chairman. We're going to be cooperating with you and we are going to work with you on each of those subjects.

COUNCILMAN NUTTER: Well, I appreciate that, but you understand, Mr. Sullivan, that there is no City Council, and certainly not one here in Philadelphia, that would allow someone to just ignore a subpoena. So more than likely, we'll probably proceed to ask for enforcement by the courts here for a subpoena that was properly issued. That is just not something that is acceptable under the circumstances.

We'll continue this conversation, but we're going to have enforcement of the subpoena. You're here today, recognizing that a subpoena was

11/15/05 - TRANSPORTATION - RES. 050148

issued. You're not disputing that it was issued, that you received it or that you're functioning here today in response to it, correct?

MR. SULLIVAN: That's correct.

COUNCILMAN NUTTER: Well, if I were you, I wouldn't be surprised at what happens next.

But this Mr. Ingram here, he's kind of the main guy?

MR. SULLIVAN: He's our top operating officer.

COUNCILMAN NUTTER: Top operating officer. He's in Jacksonville?

MR. SULLIVAN: Yes.

COUNCILMAN NUTTER: All right. Maybe we need to reach out to him in a certain special way.

Are there any other comments, questions from members of the Committee?

(No response.)

COUNCILMAN NUTTER: Okay. I do have one request of the Committee just to make sure that our actions are

11/15/05 - TRANSPORTATION - RES. 050148

consistent. In light of what has happened here today and what has not happened, I would ask the Committee that we have authorization to pursue an emergency motion with regard to enforcement of the subpoena that was issued, notwithstanding the response by CSX in this particular matter.

Is there a motion?

COUNCILMAN CLARKE: So moved.

COUNCILMAN NUTTER: Is there a second?

(Duly seconded.)

COUNCILMAN NUTTER: All in favor indicate by saying aye?

(Aye.)

COUNCILMAN NUTTER: Any opposed, say nay.

(No response.)

COUNCILMAN NUTTER: The ayes have it. The motion is unanimously approved. We'll direct our attorneys to take the appropriate action.

Councilman, I didn't see you.

Do you have any more?

COUNCILMAN CLARKE: I'm actually okay, although I was informed that in Darby, I believe, approximately eight, nine years ago, there was some levels of civil disobedience and it was a blockage of a CSX rail line that was actually led by the Mayor of Darby, Ms. Brown. So there already has been the precedence set. I'm actually going to do some research to find out what the outcome of that action was. It's quite interesting. It seems like other people were as frustrated as we are.

MR. SULLIVAN: Councilman, as you bring that up, I do remember that, and I'm sorry I didn't remember it at the time.

COUNCILMAN NUTTER: I can't hear you.

MR. SULLIVAN: I remember that. I remember being involved in that at the time, and I believe that ended up with Federal Court barring the City from or

its officers, certainly the Mayor, from taking any such action.

COUNCILMAN CLARKE: She was told she couldn't block the trains anymore? You said you got a Federal Court to say she couldn't block the trains anymore?

MR. SULLIVAN: Yes, Councilman.

COUNCILMAN CLARKE: Okay. All right.

COUNCILMAN NUTTER: One last question. Does your Chairman know what's going on down here in Philadelphia?

MR. SULLIVAN: I don't know, Mr. Chairman.

COUNCILMAN NUTTER: Has anyone decided to tell him? I mean, how far --

MR. SULLIVAN: He may --

COUNCILMAN NUTTER: How far do things have to get before someone tells the Chairman that there's a serious problem here in Philadelphia?

MR. SULLIVAN: I'm sure he may very well be aware of it. I can't sit

here and say to you specifically that --

COUNCILMAN NUTTER: I'm looking at your annual report from last year. The Chairman has a statement here and appears to be his signature. He talks about, By living our core values, quote, it starts with the customer. Quote, People make the difference. Quote, Safety is a way of life. Quote, Fact based. And, of course, that one from your ethics statement, "right results, right way."

This would seem pretty much to be the wrong result, the wrong way. So someone might want to let the Chairman know that there's a very serious issue and problem here in Philadelphia. And I don't know what it will really take and maybe, as Councilman Clarke indicated earlier, maybe it's because we've had meetings with the President, we've had other discussions, we've been very, I think, patient and decent in our public hearings, and maybe that decency is just

really being taken for granted and that other kinds of actions, whether it's what Councilman Clarke has alluded to or additional legal actions, I mean, maybe the company would just like to spend the bulk of its time in litigation with us, whether it's with one part of the government or the City Council part of the government, and decimate whatever it thinks its reputation is here in the area and that we should just become that much more aggressive until somebody decides to pay a little more attention to this particular issue. And if that's what it takes, I mean, we know how to do those kinds of things. We have the ability to get the attention of the appropriate people.

So you may really want to let the Chairman know that there's a very serious storm brewing here in Philadelphia as it relates to CSX, because we've really had it with the attitude and the behavior. I'm really at

11/15/05 - TRANSPORTATION - RES. 050148

my limit. I can't speak for my colleagues, but we've had some conversations, and I just think that we need to probably take it to another level so that the company really understands that we're not playing. We're very decent people, but we're very serious about this particular issue, and I don't think they've heard that yet. I just don't think they've heard that yet.

So we'll be in touch.

Mr. Dunlap, I guess we obviously know how to reach you.

MR. DUNLAP: Yes.

COUNCILMAN NUTTER: You're going to continue to be the attorney for CSX?

MR. DUNLAP: Yes.

COUNCILMAN NUTTER: You'll receive any other documents that we send over to you?

MR. DUNLAP: Yes.

COUNCILMAN NUTTER: All right. We look forward to seeing you soon. All

11/15/05 - TRANSPORTATION - RES. 050148

right? Thank you.

MR. DUNLAP: Sure.

COUNCILMAN NUTTER: Any other questions?

(No response.)

COUNCILMAN NUTTER: This hearing will stand in recess until Tuesday, December 13th at 2 o'clock in the afternoon.

Thank you.

MR. SULLIVAN: Thank you, Mr. Chairman.

(Committee on Transportation and Public Utilities adjourned at 4:40 p.m.)

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CERTIFICATE

I HEREBY CERTIFY that the proceedings, evidence and objections are contained fully and accurately in the stenographic notes taken by me upon the foregoing matter on November 15, 2005, and that this is a true and correct transcript of same.

_____

MICHELE L. MURPHY

RPR-Notary Public

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