

ILLINOIS POLLUTION CONTROL BOARD

DERSCH ENERGIES, INC.,)	
)	
Petitioner,)	
)	
vs.)	Case No. PCB 17-3
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

HEARING

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

SEPTEMBER 15, 2021

Ann Marie Hollo, CSR, RDR, CRR

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CAROL L. ROWE

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BRAD DILBAITIS

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Petitioner,)
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) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

HEARING BEFORE THE ILLINOIS POLLUTION
CONTROL BOARD on SEPTEMBER 15, 2021, between the
hours of ten o'clock in the forenoon and fifty-five
minutes after eleven o'clock in the forenoon of that
day, at the Illinois Pollution Control Board office,
1021 North Grand Avenue East, Springfield, Illinois,
before Ann Marie Hollo, CSR, RDR, CRR, in a certain
cause before the ILLINOIS POLLUTION CONTROL BOARD,
wherein DERSCH ENERGIES, INC. is the Petitioner, and
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY is the
Respondent.

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A P P E A R A N C E S

Illinois Pollution Control Board
Hearing Officer:

Ms. Carol Webb
ILLINOIS POLLUTION CONTROL BOARD
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P.O. Box 19276
Springfield, Illinois 62794
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ALSO PRESENT: Mr. Matthew J. Saladino, CW3M Company

The Court Reporter:

Ann Marie Hollo, CSR, RDR, CRR
Illinois CSR No. 084-003476

1 IT IS HEREBY STIPULATED AND AGREED, by and
2 between counsel for Petitioner and counsel for
3 Respondent that the hearing may be taken in
4 shorthand by Ann Marie Hollo, RDR/CRR, a Certified
5 Shorthand Reporter, and afterwards transcribed into
6 typewriting.

7 * * * * *

8 (Starting time of the hearing is: 10:00 a.m.)

9 HEARING OFFICER WEBB: Good morning.
10 My name is Carol Webb, and this is the hearing for
11 PCB 17-3, Dersch Energies, Inc. versus IEPA.

12 It is September 15, 2021, and we are
13 beginning at 10:00 a.m.

14 For the record, although this
15 facility is located in Lawrence County, there was no
16 known public interest in this case, so we are
17 holding the hearing in Springfield.

18 There are no members of the public
19 present for comment, but written public comment may
20 be filed with the clerk by September 22nd.

21 This hearing pertains to disputed
22 budget modifications to remediate leaking
23 underground storage tanks at a site formerly known
24 as Croslow's Shell in Lawrenceville.

1 The Pollution Control Board members
2 will make the final decision in this case. My
3 purpose is to conduct the hearing in a neutral and
4 orderly manner so that we have a clear record of the
5 proceedings.

6 This hearing was noticed pursuant to
7 the Act and the Board's rules and will be conducted
8 pursuant to Sections 101.600 through 101.632 of the
9 Board's procedural rules.

10 At this time, I'll ask the parties to
11 please make their appearances on the record.

12 MR. SHAW: This is Patrick Shaw on
13 behalf of the petitioner.

14 MS. JARVIS: Melanie Jarvis on behalf
15 of the Illinois EPA.

16 HEARING OFFICER WEBB: Are there any
17 preliminary matters that you would like to discuss
18 on the record?

19 MS. JARVIS: No.

20 MR. SHAW: No.

21 HEARING OFFICER WEBB: Would
22 Petitioner like to make an opening statement?

23 MR. SHAW: We'll waive the opening
24 statement.

1 HEARING OFFICER WEBB: Okay. Would
2 the agency like to?

3 MS. JARVIS: We'll waive opening
4 statement.

5 HEARING OFFICER WEBB: Okay. The
6 petitioner may call the first witness.

7 MR. SHAW: I'll call Carol Rowe.

8 HEARING OFFICER WEBB: All right.
9 Please have a seat up here, right up there.

10 Would the court reporter please swear
11 in the witness.

12 (Witness sworn.)

13 CAROL ROWE,
14 of lawful age, being produced and sworn, and
15 testifies and says:

16 DIRECT EXAMINATION

17 BY MR. SHAW

18 Q. Would the witness please state your name
19 for the record.

20 A. Carol Rowe.

21 Q. What is your occupation?

22 A. President and senior geologist at CWM
23 Company.

24 Q. And how many -- how many years have you

1 **been with -- been at CW3M Company?**

2 A. Thirty-one years.

3 **Q. What is your highest educational**
4 **attainment?**

5 A. Master's.

6 **Q. Master's in what?**

7 A. Master's in -- and it's actually arts,
8 environmental studies.

9 **Q. Okay. How many years have you worked with**
10 **the Leaking Underground Storage Tank Program?**

11 A. Probably 32 or 33 years.

12 **Q. What did you do before -- before working**
13 **with CWM?**

14 A. I was with the Department of Natural
15 Resources in the coal program, and then I was at
16 Illinois Department of Agriculture in their
17 containment program. Prior to that, I was with Old
18 Ben Coal Company doing all environmental work at all
19 their mine sites and all their prep plants, and
20 that's where I did the rest of my time with
21 underground storage tanks.

22 **Q. And approximately how many underground**
23 **storage tank projects do you have going at any given**
24 **time?**

1 A. 250 to 300.

2 Q. And I take it, you're familiar with the
3 Dersch site?

4 A. Yes.

5 Q. What is CWM's role with the Dersch site?

6 A. We're the consultant to handle their UST
7 incidents, the LUST incidents.

8 Q. How did you become involved in the site?

9 A. Applied Environmental originally had the
10 site, and the owner had passed away, and the company
11 needed a new environmental consultant, so that
12 became us.

13 Q. Basically how much work had been done when
14 you -- when CWM became involved?

15 A. I believe we were still in site
16 investigation.

17 Q. I'm going to move ahead to corrective
18 actions.

19 What was the first corrective action
20 proposal submitted?

21 A. The first proposal was request to do
22 additional borings to determine or define the
23 excavation area.

24 Q. Maybe I should step back a bit.

1 **What was the conclusion of the site**
2 **investigation completion report?**

3 A. Well --

4 **Q. What was --**

5 A. We had off-site contamination, I believe,
6 in at least two directions, and there was soil above
7 the cleanup objectives that would require some type
8 of remediation, and the levels that they
9 were -- modeled, a very far distance.

10 **Q. Was the corrective action proposal**
11 **approved?**

12 A. No. It was denied.

13 **Q. And what was the reason for the denial?**

14 A. To go back and collect new site-specific
15 data for the site. Particularly, I think the FOC.
16 The previous consultant had not collected that
17 sample, and I believe they took the FOC in a
18 contaminated area. So that work needed to be
19 completed in a different fashion in order to do the
20 TACO calculations.

21 **Q. So how did you go about submitting the**
22 **second corrective action submittal?**

23 A. There was correspondence between our
24 office and Brad about what he wanted in the next

1 plan or the next step to do.

2 **Q. And Brad -- by Brad, you mean Dilbaitis?**

3 A. Dilbaitis, uh-huh.

4 (Petitioner's Exhibit 1 was identified for
5 the record.)

6 MR. SHAW: I'm going to -- I haven't
7 done this in a while.

8 Can I just present this to her?

9 HEARING OFFICER WEBB: Sure.

10 MR. SHAW: I have -- do you want a
11 copy, Ms. Webb?

12 HEARING OFFICER WEBB: Please.

13 For the record, I'll just
14 submit that this is -- Petitioner's Exhibit 1 is
15 taken from the administrative record on file with
16 the Board.

17 MS. JARVIS: Which pages?

18 MR. SHAW: It's pages -- record pages
19 83 through and including 89.

20 MS. JARVIS: Okay.

21 BY MR. SHAW

22 **Q. Do you recognize Petitioner's Exhibit 1?**

23 A. Yes.

24 **Q. And what is it?**

1 A. This was the budget from the second
2 corrective action plan.

3 **Q. And what is the purpose of the information**
4 **that's in Petitioner's Exhibit 1?**

5 A. This was to have a plan approved to go out
6 and do the TACO boring, get the results, and then do
7 the TACO calculations.

8 **Q. And how were the -- in general, we'll get**
9 **into the specifics in a bit. In general, how were**
10 **the costs -- what's -- how were the costs derived?**

11 A. For each or a particular one?

12 **Q. Just in general. What is a general**
13 **approach to putting together costs for a corrective**
14 **action plan budget?**

15 A. Well, we usually start out with -- kind of
16 a range of numbers that we normally see is what we
17 spend for corrective action plans.

18 So we'll look at that range, and we'll
19 say, "Well, this particular plan isn't as
20 complicated as that plan, and so this one we're
21 going to assign less hours to it."

22 And then as the plans developed, I had the
23 ability to go check and tell our project manager how
24 many hours they have in to running that plan. So

1 when we get to the point of putting the final number
2 in here -- and it hopefully looks very close to what
3 we have actually put into the plan.

4 Q. And when you say that based upon what you
5 normally see, are you talking about your projects,
6 other -- what specifically --

7 A. Our projects.

8 Q. Projects?

9 It also sounds as if you are working on
10 the plans and the document itself while you're
11 budgeting for those items? Is that -- is that true?
12 Is that correct?

13 A. Yes, yes.

14 Q. Is that correct for some information more
15 than others or some things further in the
16 future or --

17 A. Yeah. All the work is projected, but we
18 try to have -- the only thing that's known at this
19 time is -- almost known is how much time we put into
20 a given plan and that I have access to. By the time
21 we actually finish doing it, you know, that person
22 may have another hour or two to finish up, but we
23 know that we're really close to what we have put
24 into it.

1 **Q. I'd like to turn your attention to the**
2 **first page of the Petitioner's exhibit. I'm going**
3 **to call that R. 83, an entry for a professional**
4 **geologist?**

5 A. Mm-hmm.

6 **Q. Do you see that?**

7 A. Yes.

8 **Q. Could you describe the work of a**
9 **professional geologist as identified as doing here?**

10 A. A professional geologist was assigned to
11 writing a corrective action plan, designing it so
12 that it fit with what happened the last time, where
13 we're going next, and he put all the pieces and
14 documents together.

15 **Q. And how were the costs for the corrective**
16 **action plan -- design, preparation -- estimated?**

17 A. We took the time necessary to develop the
18 framework of the CAP, which was all the setups, the
19 tables, the history information, all the way to the
20 point of actually writing what was going to be in
21 this plan, and we found that we had spent about 12
22 hours doing that setup work, and then we had 17 1/2
23 hours into the actual writing of the balance of the
24 document.

1 **Q. Was some of this work started with the**
2 **first plan?**

3 A. Yes. The first plan was, in some ways, a
4 little bit simple. It requested four borings. So
5 all the time spent to set up a framework for the CAP
6 and add all the history and knowledge and site
7 investigation summary, and all that was already
8 completed for the first cap.

9 THE REPORTER: Excuse me. We're
10 saying "CAP," C-A-P?

11 THE WITNESS: Yes.

12 THE REPORTER: Thank you.

13 BY MR. SHAW

14 **Q. And by CAP, what does that stand for?**

15 A. Corrective action plan.

16 **Q. Okay. I would like to move your attention**
17 **to the next item below that, Draftsperson/CAD IV?**

18 A. Mm-hmm.

19 **Q. Could you describe what work is being**
20 **estimated there?**

21 A. That would be preparations of all the maps
22 that we included in the corrective action plan.
23 Edits and printing and . . .

24 **Q. What does the "CAD" stand for?**

1 A. Auto cad.

2 **Q. And do you recall how many maps were**
3 **included in there in the corrective action plan?**

4 A. I believe there were 11 or 12 maps.

5 **Q. And why were those maps necessary for the**
6 **corrective action plan?**

7 A. We typically include the maps pertaining
8 to the whole project, which if you reference site
9 investigation and completion, you know, you've got
10 all the maps there. And I believe the CAP form
11 tells us to submit, you know, the site maps, the
12 base maps, your sample location map, and those kinds
13 of things, so most project managers want to have all
14 of that in front of them at one time when they're
15 reviewing a plan.

16 **Q. And why would certain project managers**
17 **want those in there, in the corrective action plans?**

18 A. It's one of convenience. It's one step
19 better than referencing a map back in a report
20 prior. Otherwise you have to go back and look at
21 the prior report to have the map in front of them.
22 But the map would describe everything that's been
23 done to date. The maps describe everything that's
24 been done to date at the site.

1 **Q. Okay. I'm going to ask you to turn to**
2 **Page 8 -- R. 86 in Petitioner's Exhibit 1.**

3 **Can you identify what work is being**
4 **estimated on that page?**

5 A. Yes. This is the development of Tier 2,
6 TACO calculations and plan objectives and
7 contaminant transport modeling.

8 THE REPORTER: I'm sorry. What?

9 THE WITNESS: TACO calculations and
10 plan objectives and contaminant transport modeling.

11 BY MR. SHAW

12 **Q. What is meant by the word "preliminary" in**
13 **the one description?**

14 A. Preliminary in this -- in this line item
15 was meant to convey that we would have -- have to do
16 the modeling at this point in time once we get all
17 the variables made available from sampling. The
18 plug -- professional geologist would plug all the
19 input data into the tables and then run the Tier 2
20 calculations and then do the modeling.

21 There's a set of samples that have to be
22 remediated, and doing an excavation was discussed,
23 and we knew that if we did that, we would have to
24 redo the TACO calculations based on the samples that

1 were made on the site.

2 Q. Well, let me ask just more specifically,
3 the first entry for the senior project manager, what
4 is the work that the senior project manager is going
5 to be doing?

6 A. This would be primarily helping and
7 reviewing the TACO calculation development and the
8 modeling as it progressed.

9 Q. Did you have an idea who might be doing
10 that work?

11 A. This would probably have been Vince Smith.

12 Q. What is -- what is Vince Smith's job?

13 A. He's a senior engineer.

14 Q. Is he a professional engineer?

15 A. Yes.

16 Q. He's not -- this work is not identified as
17 being done by a professional engineer. Is there a
18 reason for that?

19 A. Well, he's thought more as a senior
20 project manager-type role and making sure that
21 everything got done as complete as possible, and
22 it's one that he -- a title that he and I shared
23 depending on what he's doing.

24 Q. Would the agency approve the reimbursement

1 **for a licensed PE for that work?**

2 A. No.

3 **Q. Why not?**

4 A. The only allowance for professional
5 engineering time is two hours to review a report, a
6 final report or a budget.

7 **Q. Now, how does that compare with what the**
8 **next entry professional geologist would be doing?**

9 A. Professional geologists can do all the
10 nuts and bolts of doing the TACO calculations.
11 They're going to go through all the inputs.

12 **Q. How did you derive at estimates for the**
13 **time for these tasks?**

14 A. Based on what we normally see our people
15 taking -- you know, at this particular time, they
16 were probably taking 10 to 15 hours to do the TACO
17 and the modeling, and we had additional hours in
18 there to redo it after an excavation.

19 **Q. I'd like to move to Page R. 88.**

20 **Could you identify the first entry on that**
21 **page?**

22 A. A PID rental.

23 **Q. What is the purpose of the PID?**

24 A. It's to detect volatile organics in air.

1 THE REPORTER: I'm sorry. could you
2 repeat the whole answer?

3 THE WITNESS: It's to measure
4 volatile organics.

5 BY MR. SHAW

6 Q. What does the PID stand for?

7 A. Photoionization detector.

8 Q. How was the rate set for that item?

9 A. The initial rate was set probably back in
10 '91. Doug Oakley collected ranges of cost, and I
11 approached him with the need to establish a rate for
12 the PID, and I basically picked the middle of the
13 range.

14 Q. And who was Doug Oakley?

15 A. He used to do reimbursements.

16 Q. Is that still the same rate today, or has
17 it changed?

18 A. No. It's gone up, I believe, twice since
19 1991.

20 (Petitioner's Exhibit 2 was identified for
21 the record.)

22 MR. SHAW: I'm going to approach the
23 witness with Petitioner's Exhibit 2.

24 I'd like the record to reflect that

1 these are taken from the administrative record
2 before the Board, Pages R. 23 and R. 24.

3 BY MR. SHAW

4 **Q. Do you recognize Petitioner's Exhibit 2?**

5 A. Yes.

6 **Q. And what is Petitioner's Exhibit Number 2?**

7 A. This is a full list of environmental
8 equipment that was available for rent from
9 EnviroTech.

10 **Q. And what is EnviroTech?**

11 A. They're an equipment rental company. They
12 have materials and supplies as well.

13 **Q. Okay. And why were -- I mean, strike**
14 **that.**

15 **Who obtained this rental sheet?**

16 A. Vince Smith.

17 **Q. Vince Smith?**

18 **Do you know where he got it from?**

19 A. He got it off line.

20 **Q. What was the reason for obtaining this**
21 **sheet?**

22 A. The agency was trying to set rates for
23 different pieces of equipment, and in one instance
24 it would take the amount of the purchase price

1 divided by the number of times you use it before
2 it's broken.

3 And further discussions were that the rate
4 also needed to include time for, you know,
5 calibrations, breakdowns, repairs, maintenance, and
6 parts, et cetera, and we didn't have those or track
7 those in any way that was -- or really in any way.
8 All those charges just went off the general overhead
9 charges, so we could not provide that information.
10 So the next best thing was really market rates,
11 which was the rental sheets.

12 **Q. Okay. And on Petitioner's Exhibit 2, what**
13 **is the -- which item do you believe reflects the**
14 **market rate for PID?**

15 A. I've got to find that. It's under the air
16 monitoring equipment. It's the third one down.
17 MiniRAE? No. Third? The third unit list down.
18 PP -- ppbRAE, 3,000, 10.6ev lamp.

19 **Q. How does that item compare with the PIDs**
20 **that you have at the -- at your business?**

21 A. It was the most comparable to what we had
22 been using, and we were considering actually
23 purchasing another one. So that would be what we
24 would -- would and have done to replace the old one.

1 Q. And it was above -- a few lines above
2 there, there's a calibration kit. What is a
3 calibration kit for?

4 A. It's basically their gas canisters and
5 your hookups to do a field calibration before you
6 use the meter.

7 Q. I'm going to ask this -- a more general
8 question.

9 What needs to be done to the PID equipment
10 between jobs to make sure it's available and ready
11 to use?

12 A. It's always broken down and cleaned. If
13 we've been to a particular site that had very, very
14 high levels of contamination, or we encounter free
15 product, we usually would break the unit down and
16 clean the entire unit.

17 Q. Do you have calibration equipment at your
18 place?

19 A. Yes, we do.

20 Q. I'm going to skip down to a couple spaces
21 to the water level indicator. Do you see that? I'm
22 back on Petitioner's Exhibit 1.

23 A. Yes.

24 Q. Okay. What is the water level indicator

1 **needed for in this job?**

2 A. Whether we're taking soil samples or
3 groundwater samples, or if we're drilling, we use
4 that to help determine the depth of the groundwater.
5 If we're measuring static wells, it measures the
6 static level of the water before you purge the well.

7 **Q. How was the rate set for the water level**
8 **indicator?**

9 A. That one was -- the original rate was also
10 based off of a rate that I had checked with EPA, and
11 then I saw what others were charging over the years,
12 and we increased it twice over that time frame.

13 **Q. I'd like to turn your attention back to**
14 **Petitioner's Exhibit 2. Which item in Petitioner's**
15 **Exhibit 2 is a water level indicator comparable to**
16 **the one used by CW3M?**

17 A. It's the -- under the water level
18 indicators at the top, the Solinst Heron Dipper, the
19 100-300.

20 **Q. Okay. I'm going to move on to the next**
21 **item on Petitioner's Exhibit 1, the slug.**

22 A. Mm-hmm.

23 **Q. Can you tell me what the purpose of the**
24 **slug is?**

1 A. It's a weighted -- known weighted
2 instrument that records and helps you record the
3 change in water level elevations after a period of
4 time.

5 **Q. And how was the rate for the slug derived?**

6 A. This one -- I actually believe we had
7 rented one a long time ago, and we knew about what
8 the rental rates were, and that's what we had used,
9 and that's a long time ago.

10 **Q. I'd like to turn to Petitioner's**
11 **Exhibit 2. Could you identify which of the items**
12 **there is --**

13 A. It's under dataloggers, Solinst
14 levelogger.

15 **Q. Okay. Is the Solinst levelogger**
16 **comparable to the types of slugs you used?**

17 A. Yes.

18 **Q. Okay. I'm going to move back up a few**
19 **spots to gloves on Petitioner's Exhibit 1.**

20 **What would disposable gloves be used for**
21 **on this project?**

22 A. In this case, it would be handling soil
23 samples.

24 **Q. And given that they're disposable, they**

1 **would just be used and thrown away; is that correct?**

2 A. Correct.

3 **Q. How has CW3M traditionally charged or**
4 **assessed the rate for gloves?**

5 A. This rate was based on what was about the
6 cost of a box of gloves typically, and I've seen
7 what other consultants were charging for gloves, and
8 I thought ours was less than theirs, so we stuck
9 with the 16.

10 **Q. Would you use all of the gloves in a box**
11 **for this project?**

12 A. No.

13 **Q. How do you go about stocking your -- or**
14 **having gloves available? What is your -- what is**
15 **your operations for that?**

16 A. We have a storage area that we house all
17 the -- like, the bulk stuff that we have, which is
18 boxes of gloves. You know, sampling jars, the
19 wipes, the waters, the things that we take out in
20 the field, and they're just sorted by size and the
21 type of glove that we have.

22 **Q. Do you know at the time that the plan was**
23 **submitted who will actually be going to the site?**

24 A. Not with certainty, no.

1 Q. Do different people need different gloves?

2 A. Often.

3 Q. In the record, there was a discussion
4 about whether or not that was an appropriate way to
5 estimate gloves with the project manager. Are you
6 familiar with that?

7 A. Yes.

8 Q. What was the proposal CW3M had for dealing
9 with this at the payment reimbursement stage?

10 A. That we would basically buy the gloves,
11 and it would include the time for ordering the
12 gloves, the shipping and the taxes, and then we
13 would divide that up by the number of gloves that
14 were used.

15 Q. So you'd be seeking a different
16 methodology for charging gloves?

17 A. Yes.

18 Q. How many gloves do you think would
19 probably be needed for the job?

20 A. Five to ten.

21 Q. And can you actually just cite
22 specific -- the ten disposable gloves? Is that what
23 you're saying?

24 A. Mm-hmm.

1 Q. Okay. How much do you think it would cost
2 to buy gloves individually in the fashion that you
3 proposed?

4 A. Probably closer to \$20 a box.

5 Q. So it would be more expensive to purchase
6 them individually like that?

7 A. Yes.

8 Q. And why would it be more expensive?

9 A. Because we wouldn't get the opportunity to
10 do -- if we had to separate them by site and by job,
11 we -- we'd have to order them individually and have
12 the receipt.

13 Q. And receipt is what the agency would
14 require for reimbursement; is that correct?

15 A. Yeah.

16 Q. And at the time that the plan was
17 submitted, you wouldn't know necessarily how many
18 gloves you needed; is that correct?

19 A. No.

20 Q. Okay. A few items down, mileage?

21 A. Yes.

22 Q. Do you identify what that item is in
23 reference to?

24 A. That's for round trip from Springfield to

1 the site to drill, 310 miles at 65 cents a mile.

2 **Q. Okay. What type of vehicle would that be?**

3 A. That would be one of our Duramax diesels
4 or our service truck.

5 **Q. Do you have a general idea of what the gas**
6 **mileage that vehicle obtains?**

7 A. That would be about 20 miles per gallon.

8 **Q. What does the rate for mileage encompass**
9 **on your estimate here?**

10 A. On the budget page?

11 **Q. Yes.**

12 A. We had that raised because we're using the
13 heavy-duty trucks as opposed to just a car that
14 maybe gets 30-ish miles per gallon.

15 **Q. Is a personal automobile suitable for the**
16 **work that's needed here?**

17 A. No.

18 **Q. Why not?**

19 A. We carry a lot of equipment. Some of it
20 is large and bulky, and it is better suited to the
21 back of a truck.

22 **Q. I'm going to turn to -- I guess the last**
23 **four items here are copies, and those are identified**
24 **on Pages R. 88 and R. 89. What is the rate charged**

1 **for copies in the budget?**

2 A. Fifteen cents.

3 **Q. And where was that rate derived?**

4 A. We had a rate lower from that many years,
5 and then it was increased to 15 cents after a new
6 copier, and after I'd seen what -- not just others
7 in LUST were charging, but just other businesses,
8 accounting firms. I contacted our accounting firm
9 and asked them what they charged and had seen
10 reimbursements, and I thought the 15 was fair.

11 **Q. What does the entry for**
12 **field/plan/maps/borelogs refer to?**

13 A. This is -- before we go out in the field,
14 we set up folders with the drilling plans laid out,
15 and it includes, you know, copy of the agency
16 letter, it includes blank borelogs, and it includes
17 multiple maps that we might be interested in having
18 with us. It's got the JULIE log-in sheet. Usually
19 that goes in the folder, too.

20 So this all goes out to the field, gets
21 filled out, and then some of the pieces end up
22 getting copied again, especially the field reports
23 and the maps for a file copy.

24 **Q. There were a number of -- how many**

1 **corrective action plan copies do you usually make in**
2 **a typical case?**

3 A. We have -- excuse me.

4 We have the preliminary draft that goes
5 out for review, and then there's a modified draft
6 that goes back out to verify that all the changes
7 that were needed were made. When that's complete,
8 we send a draft to the client for them to sign and
9 look over, and then we do a submittal to the agency,
10 and we have four copies.

11 **Q. And the number of copies, is that similar**
12 **for budgets?**

13 A. Yeah, the same procedure.

14 **Q. And is it similar for reimbursement**
15 **requests?**

16 A. Yes.

17 **Q. And do you necessarily know how**
18 **many copies -- how many pages each of these**
19 **documents is going to be when you're preparing the**
20 **budget?**

21 A. No. We typically don't count the pages
22 when they're put together. We put an estimate in
23 the CAP budget.

24 **Q. When do you actually determine with**

1 **finality how many copies you needed?**

2 A. At the reimbursement phase. I'll have the
3 actual number log report on the copier that gets
4 logged to the job site.

5 **Q. And all these costs that we've gone**
6 **through, are these the costs that typically are**
7 **incurred in corrective action plans?**

8 A. Yes.

9 **Q. Have these been approved in past cases?**

10 A. Yes.

11 **Q. Did the corrective action plan estimate**
12 **how much time would be necessary or might be**
13 **required to answer agency questions?**

14 A. Every plan includes maybe an hour, maybe
15 two to converse or correspond with the agency.
16 Sometimes it's a matter of a couple of questions, or
17 the project manager wants to move a boring location
18 or -- and if there's no communication in between the
19 plan and the letter, we still have the letter, when
20 it comes in, that has to be logged and tracked and
21 depending on the computer system provided to the
22 project manager.

23 **Q. Do you have any idea how much time was**
24 **spent answering questions about the corrective**

1 **action plan between the time it was submitted and**
2 **the time it was denied?**

3 A. Thirty-two hours.

4 MR. SHAW: No further questions.

5 HEARING OFFICER WEBB: Okay.

6 Ms. Jarvis, your witness.

7 MS. JARVIS: Okay.

8 CROSS EXAMINATION

9 BY MS. JARVIS

10 Q. Okay. I have a few questions.

11 I'm going to start with Petitioner's
12 **Exhibit Number 2.**

13 A. Okay.

14 Q. Okay. Petitioner's Number -- Exhibit
15 **Number 2, are you familiar with where this company**
16 **is located?**

17 A. Yes.

18 Q. **And where is the company located?**

19 A. I believe they're California.

20 Q. **So it's not a company that you would**
21 **reasonably rent from because it's in California?**

22 A. Not necessarily. There was some
23 discussion and about, you know, using local versus
24 California. If there was one local, obviously that

1 would be the first choice.

2 **Q. Okay.**

3 A. We -- if we have to go rent one, we would
4 probably look at St. Louis companies or do a search
5 for this type of meter, and then it would just
6 depend on who could get it there the fastest and the
7 least cost.

8 **Q. Now, in respect to the PID, you own your**
9 **PID, correct?**

10 A. Yes.

11 **Q. How much does a PID cost?**

12 A. Our prior one was \$10,000 a unit. Now
13 they run about \$4,500.

14 **Q. \$4,500?**

15 A. Mm-hmm, approximately.

16 **Q. Okay. And so you do not rent a PID?**

17 A. Not except if we need an extra one.

18 **Q. Okay. And then how long is the life of**
19 **the PID?**

20 A. It's -- it's variable. The ones used in
21 the worst conditions are the ones that don't last as
22 long.

23 **Q. One used in Illinois conditions that you'd**
24 **normally see, the normal life of the ones you have?**

1 A. I'm sorry. Can you back up?

2 **Q. What are the normal life span of the PIDs**
3 **that you have?**

4 A. That we have? Probably five to six years.
5 That's a guess. I'm not a hundred percent on that.

6 **Q. And how long ago were your PIDs purchased?**

7 A. What we have right now is a year
8 and -- about a year and a half old.

9 **Q. Okay.**

10 A. I have two sets.

11 **Q. In regard to the water level indicator --**

12 A. Yes.

13 **Q. -- is that something that you own also?**

14 A. Yes.

15 **Q. And how much does one of those cost?**

16 A. Those are about a thousand four hundred
17 dollars.

18 **Q. And how long is their life span normally,**
19 **the ones that you have?**

20 A. Not -- not terribly long without complete
21 rebuilds. The cables all graze against the metal of
22 the monitoring wells and so forth, so the cables
23 tend to get destroyed first. And it's often better
24 just to buy a new one rather than a big expense of

1 replacing the whole cable system.

2 Q. So do they last a year, two years?

3 A. Yeah, a year, two years.

4 Q. Okay. And then the slug?

5 A. Yes.

6 Q. The same questions. Do you own your own
7 slug?

8 A. Yes.

9 Q. And how much does the slug cost?

10 A. I do not remember how much that one was.

11 Q. And how much does -- how long does a slug
12 usually last?

13 A. They last longer. At least three or four
14 years.

15 Q. Okay. So we were discussing -- or you
16 were discussing gloves, and there is quite a
17 discussion in the record between you and
18 Mr. Dilbaitis about gloves.

19 And you charged \$16 a box?

20 A. Correct.

21 Q. And you use them for handling samples?

22 A. Correct.

23 Q. So if -- you just used one glove out of
24 the box to take one sample, but you charged for the

1 whole box?

2 A. Yes.

3 Q. Okay. Okay. How many maps are needed or
4 required in the CAP?

5 A. It's a little bit of a gray area and a
6 little bit project-manager dependent. Most project
7 managers that we deal with prefer for us to have a
8 complete set of maps in the corresponding analytical
9 report.

10 Q. What's a complete set of maps?

11 A. From the site map through all the
12 drilling, soil sampling, groundwater sampling,
13 elevation maps, it would have concentration levels
14 on the different maps and different depths.

15 Q. Okay. And do you use the last plan to
16 determine the amount of TACO hours that are needed?

17 A. We use what it usually takes our people to
18 perform the work, and we've likely used the same
19 number on different plans or budgets.

20 Q. And is the historical portion of the CAP
21 taken directly from a site investigation completion
22 report?

23 A. Parts of it are, yes.

24 Q. So you used parts of prior reports and

1 **just copy and paste when doing your next report?**

2 A. Well, it's copying -- there are pieces
3 that are copied out. It's hard to -- we don't
4 actually do a copy, paste of one document into the
5 next. We have to extract pieces of it. So we
6 wouldn't use, like, the shell of an SICR and start
7 writing in a corrective action plan.

8 **Q. But you would take parts of this and then**
9 **put it into the next report?**

10 A. Correct.

11 MS. JARVIS: I just need to look over
12 my notes real quick, so just bear with me for a
13 second. I just want to make sure I asked you
14 everything that I had a question about.

15 Okay. I think that's it. That's all
16 the questions I have.

17 HEARING OFFICER WEBB: Any Redirect?

18 MR. SHAW: Just a couple questions.

19 REDIRECT EXAMINATION

20 BY MR. SHAW

21 **Q. Why was a California rental company chosen**
22 **for Petitioner's Exhibit 2?**

23 A. This one that we found had --

24 MS. JARVIS: I'm going to object to

1 this question because Vince Smith was the one who
2 found this company and not the person testifying, so
3 it would be hard for her to know why this company
4 was chosen when she was not the one who chose it.

5 MR. SHAW: Let me just --

6 HEARING OFFICER WEBB: Was that Vince
7 Smith?

8 THE WITNESS: No.

9 HEARING OFFICER WEBB: All right. Go
10 ahead.

11 MR. SHAW: Let me just back up and do
12 some other questions.

13 HEARING OFFICER WEBB: Okay.

14 MS. JARVIS: And it would be hearsay
15 if she heard from Vince Smith, why he chose it.

16 THE WITNESS: It's in the record, I
17 believe.

18 Are you waiting on me?

19 MR. SHAW: Yeah.

20 THE WITNESS: There's a discussion in
21 the email correspondence about it.

22 MS. JARVIS: And if it's in the
23 record, then you can refer to it.

24 MR. SHAW: Yeah. Well, she's giving

1 me advice now.

2 MS. JARVIS: Exactly. Giving you
3 legal advice.

4 THE WITNESS: Am I done now?

5 MR. SHAW: She wants out. I'm going
6 to -- yeah, I'll just -- I'll strike that question.

7 MS. JARVIS: By the way, those are
8 pages, just so you know, about 14 to, like, about
9 18, 19 in the record.

10 BY MR. SHAW

11 Q. Do you have any -- do you have an ability
12 to anticipate how long your equipment is going to
13 last with any certainty?

14 A. With certainty, no.

15 MR. SHAW: I have no questions.

16 MS. JARVIS: I have nothing further.

17 HEARING OFFICER WEBB: Okay. Thank
18 you, Ms. Rowe.

19 THE WITNESS: Mm-hmm.

20 HEARING OFFICER WEBB: Would anyone
21 like to take five before continuing, or are you
22 good?

23 Are you good?

24 THE REPORTER: Yes.

1 MS. JARVIS: I'm good.

2 HEARING OFFICER WEBB: Anyone?

3 THE WITNESS: I want to take five.

4 MR. SHAW: Did you say --

5 THE WITNESS: I'll be right back.

6 HEARING OFFICER WEBB: Mr. Shaw, are
7 you calling another witness?

8 MR. SHAW: No. I'm going to close.

9 I will ask that Petitioner's Exhibits
10 1 and 2 be admitted into the record.

11 MS. JARVIS: We have no objection.
12 It's already part of the record.

13 HEARING OFFICER WEBB: Okay. It is
14 part -- well, let's go ahead and admit them into the
15 record.

16 MS. JARVIS: So that's okay.

17 HEARING OFFICER WEBB: And you'll
18 file them electronically with the Board? Are you
19 aware of that procedural rule?

20 MR. SHAW: No.

21 HEARING OFFICER WEBB: I can't
22 remember the last time we had a hearing. You need
23 to file them electronically --

24 MR. SHAW: Okay.

1 HEARING OFFICER WEBB: -- with the
2 Board within five days of the hearing.

3 MR. SHAW: Okay.

4 MS. JARVIS: Or we can just say it's
5 part of the record.

6 HEARING OFFICER WEBB: We can. I
7 like having the exhibits because it's, you know,
8 it's -- that's how you referred to it, and it's kind
9 of convenient.

10 MR. SHAW: The only reason I would do
11 that is in case someone goes back and doublechecks
12 to see if I've done some fancy computer stuff, and
13 if I'm going to file them online, I can do all kinds
14 of fancy because -- anyway --

15 HEARING OFFICER WEBB: Okay.

16 MR. SHAW: -- I will just not ask
17 those to be admitted.

18 HEARING OFFICER WEBB: Oh, you're not
19 going to ask them to be admitted?

20 MR. SHAW: Well, you are asking? You
21 think it's convenient to have them admitted?

22 HEARING OFFICER WEBB: Yes.

23 MR. SHAW: I will do that then.

24 HEARING OFFICER WEBB: Thank you.

1 (Petitioner's Exhibits 1 and 2 were
2 admitted into the record.)

3 MS. JARVIS: So we're going to take a
4 break? So Carol is just going to take a break?

5 MR. SHAW: Just a few minutes.

6 THE WITNESS: I'll be fast.

7 MS. JARVIS: No. That's okay. Take
8 your time.

9 HEARING OFFICER WEBB: We'll go off
10 the record for a minute.

11 (Whereby a short break was taken.)

12 HEARING OFFICER WEBB: We're back on
13 the record now.

14 We just had a short break, and we are
15 ready for the agency to call their witness.

16 MS. JARVIS: And I call Brad
17 Dilbaitis.

18 HEARING OFFICER WEBB: Have a seat
19 here, please.

20 Would the court reporter please swear
21 in the witness.

22 (Witness sworn.)

23

24

1 BRAD DILBAITIS,
2 of lawful age, being produced and sworn, and
3 testifies and says:

4 DIRECT EXAMINATION
5 BY MS. JARVIS

6 Q. And I'm just going to show you -- or give
7 you a copy of the record. This is pages -- starting
8 at record -- Page 1. I'm going to give you a copy
9 starting on Page 1.

10 A. Thank you.

11 MS. JARVIS: I'll give you a copy at
12 the end, okay? Is that okay?

13 THE REPORTER: Thank you.

14 BY MS. JARVIS

15 Q. I'd like to go to Page 3 of the record.
16 Okay. First of all, let me start
17 after -- before we go to Page 3, let's set the
18 foundation.

19 State your name.

20 A. Brad Dilbaitis.

21 Q. And what is your occupation?

22 A. Project manager in the leaking UST
23 program.

24 Q. And how long have you been so employed?

1 A. About 17 years.

2 Q. Okay. And have you always been a project
3 manager?

4 A. Yes.

5 Q. And is the LUST section the only section
6 that you've been in?

7 A. With the agency?

8 Q. Yes.

9 A. No.

10 Q. What other sections have you been in?

11 A. I worked in air with vehicle emissions for
12 five years before I went to LUST.

13 Q. Okay. And did you hold any jobs prior to
14 coming to the agency?

15 A. No, none of any consequence. I just -- I
16 finished school, college.

17 Q. Where did you attend school?

18 A. University of Illinois in Springfield. I
19 graduated.

20 Q. And what was your degree in?

21 A. I got a degree in biology and a minor in
22 environmental studies, a bachelor's in biology.

23 Q. Master's in biology?

24 A. Bachelor's in biology. Sorry.

1 Q. Okay. And are you familiar with the
2 Dersch Croslow's Shell site?

3 A. I am.

4 Q. What is your relationship to this site?

5 A. I'm the agency project manager for the
6 incident.

7 Q. And have you always been the agency
8 project manager?

9 A. I don't believe so, no.

10 Q. Okay. And when did you become the project
11 manager on the site?

12 A. I believe the first review that I did was
13 a site investigation plan in 2007 from the previous
14 consultant.

15 Q. From the previous consultant?

16 A. Correct.

17 Q. Okay. Now, are you familiar with the
18 decision letter dated July 12, 2016?

19 A. I am.

20 Q. And did you write this letter?

21 A. Yes.

22 Q. Going to Page 3 of the record, let's look
23 at attachment A, and are you familiar with number 1?

24 A. Yes.

1 **Q. Okay. And can you please describe that**
2 **cut and why exactly it was made as a budget cut.**

3 A. The request was for 30 hours for the
4 preparation of the plan, and the documentation in
5 the plan didn't support the 30 hours.

6 **Q. And why did you feel that it didn't**
7 **support the 30 hours?**

8 A. The 30 hours -- the 30-hour request to me
9 described the preparation of the narrative or the
10 executive summary portion and the tables that were
11 in the plan.

12 The plan basically just consisted of the
13 narrative, the maps, tables, and the budget. The
14 tables had already been submitted, some of which
15 were from the previous consultant that I had already
16 reviewed way back when we reviewed the -- I don't
17 know if it would have been one of the plans or the
18 site investigation completion report, but there were
19 no new tables in there.

20 The narrative portion of the plan was
21 about eight pages long. Four of those pages were
22 site history that is commonly taken directly from
23 the site investigation completion report.

24 So to me, that request was basically to

1 put together the narrative, which consisted of eight
2 pages, four of which had already been submitted to
3 the agency for the most part, if not exactly. And
4 the compilation, I believe, was -- I believe the
5 compilation of the plan was probably done by a
6 senior administrative assistant. I think that was
7 in the budget.

8 **Q. Okay.**

9 A. So I believe that's what -- that person
10 put, you know, all of the plan together, the
11 different portions of the plan, but, again, there
12 were only four portions of the plan.

13 **Q. Did you have a discussion with Ms. Rowe**
14 **about this cut prior to making it?**

15 A. Yes.

16 **Q. And what did that discussion entail?**

17 A. I was -- I believe my first question was
18 why are there so many hours for the preparation of
19 the plan? And I don't recall really getting an
20 answer.

21 **Q. Okay. Let's move on to the second cut on**
22 **Page 4 of the record.**

23 **Are you familiar with this cut?**

24 A. Yes.

1 **Q. And it's a cut for \$334.05. And why did**
2 **you make that cut?**

3 A. The maps in the plan were unnecessary.
4 They weren't needed.

5 I get that they previously testified to
6 some project managers -- most, but then I think they
7 may have said want all of these maps. That may be
8 true if we were doing an actual corrective action
9 plan, but this is more of a site investigation plan.
10 We're just going out and collecting one soil sample.
11 We don't need 12 maps for that. We just need one
12 map where that soil sample is going to be located.
13 That's it.

14 **Q. Okay. And were these new maps?**

15 A. Some. I believe the zero to 5 feet, the
16 soil contamination in the different 5-foot zones may
17 have been prepared after the site investigation
18 because they weren't necessarily new maps because
19 they were sent, submitted in the previous plan that
20 was denied. So we had seen them before, but cost
21 had not been approved. The budget had not been
22 approved for the preparation of these maps yet, but,
23 again, none of the maps were needed, other than the
24 one map for the soil boring location. That was it.

1 **Q. Okay. Let's move in -- on to number 3.**
2 **\$2,964.14 for consulting personnel costs. Are you**
3 **familiar with that cut?**

4 A. I am.

5 **Q. And why did you cut that amount?**

6 A. The -- I assumed that the TACO
7 calculations that are to be presented in the next
8 plan, the one that this request is describing, I
9 believe that they are going to be very similar to
10 the ones that were submitted in the last plan. I
11 believe there are probably six site-specific
12 remediation objectives that need to be determined
13 and somewhere around a dozen exceedances that need
14 to be modeled, and I would assume that this would be
15 the same, other than changing the site-specific
16 parameters that come from this boring.

17 There was no indication that it should
18 take that long. I've done -- I don't know that I'd
19 say hundreds of these, but certainly scores, and
20 we're not doing these by hand. They are all being
21 done with spreadsheets. It takes approximately a
22 generous half an hour to fill out the parameter
23 sections, the site-specific sections in there, and
24 then after that, you're just toggling between

1 different contaminants of concern.

2 So I wouldn't expect these six remediation
3 objectives -- which aren't going to change. These
4 are the six that we need, because they
5 are -- they're the ones that exceed. We have these
6 Tier 1 exceedances. The first thing that we do in
7 corrective action is calculate Tier 2 exceedances.
8 So it's not going to change. These are the same
9 exceedances that we have.

10 So I wouldn't expect these six
11 site-specific remediation objectives to take more
12 than maybe two hours at most. I mean, I can do
13 any -- any site-specific calculations, site-specific
14 remediation objectives almost always within an hour,
15 but certainly always within two.

16 **Q. How much did they request?**

17 A. I believe the last one was somewhere
18 around 28 total, but in this one they requested 26.

19 **Q. Okay. Well, let's move on, unless you**
20 **have anything else to say about that one.**

21 A. Also, I didn't know -- I guess I didn't
22 understand that they were also including future
23 possible TACO costs in that.

24 I realize it said "preliminary," and I

1 asked about that, and they said that they may need
2 to model other exceedances after this investigation
3 is done because it's going to produce more data, so
4 they may need to model additional exceedances, but
5 there was no indication. I didn't think that this
6 was included, but those were included in this cost.

7 And, actually, I mean, if there's going to
8 be additional modeling required, they probably
9 shouldn't do any modeling now.

10 **Q. Okay. And why would that be?**

11 A. Well, they were -- their main plan is to
12 come in and do an excavation, which technically we
13 don't know is going to be necessary. The Tier 2
14 numbers, the site-specific remediation objectives
15 that they calculate with this boring could be above
16 what they have on-site.

17 So this -- the extra -- the additional
18 investigation that was proposed in the first plan
19 may not be necessary at all. They might not need to
20 do any additional investigation. It is possible
21 that they produced here two numbers that are above
22 what they have on-site. So we're not even sure that
23 there's going to be any additional soil remediation
24 required.

1 **Q. Until we get the results of the boring?**

2 A. Correct, until we get -- well, actually,
3 yes. After the results -- after we get the results
4 of the boring and when we receive the -- when the
5 Tier 2 -- the site-specific Tier 2 remediation
6 objectives are proposed in the plan. When they
7 present them in the plan, then we can make our
8 decisions based on those Tier 2 remediation
9 objectives, but those are the first part of a real
10 corrective action plan that we actually need.

11 **Q. And that wasn't presented in this plan?**

12 A. No.

13 **Q. Okay. Let's move on to number 4. A**
14 **hundred and forty-eight dollars for the PID, and why**
15 **did you cut this amount?**

16 A. It was unreasonable.

17 **Q. Okay. And you said there was no**
18 **supporting documentation and that it was**
19 **unreasonable. You saw the supporting documentation**
20 **that was submitted?**

21 A. Yes.

22 **Q. So why don't we explain this one.**

23 A. The supporting documentation that
24 we -- and we had received these, I believe, from

1 another consultant as well from California
2 justifying -- in an attempt to justify the rates
3 that were being used.

4 It was a -- first, it was a company from
5 California, and I doubt they would be -- anybody
6 would be using a company from California for PID
7 rentals when there are many, several in the area.
8 I'm sure that can happen. We get them from Chicago
9 all the time. I'm not sure how it is from around
10 Springfield.

11 But at the time we were trying to
12 establish what would be reasonable for the use of
13 their equipment, and I thought that a good way would
14 be to take all of the -- to take the equipment, how
15 much it cost, all of the expected ancillary type of
16 costs for calibration, or, you know, if they needed
17 to send it in occasionally for cleaning or anything
18 like that, and add that together, divide that by the
19 amount of years that they expect to own it and the
20 amount of times they expect to use it in a year.

21 And the rental rates for me didn't seem
22 appropriate. It includes a lot of costs
23 that -- that a -- you know, a piece of equipment
24 that you own doesn't apply. I mean, there's

1 overhead, there's employee salaries. You know, they
2 have a lot to do with that.

3 So I don't personally think it's
4 necessarily appropriate to charge -- even charge
5 rental rates for equipment that you own. I believe
6 the agency has settled on something since then, and
7 that's fine, but at the time we're just trying to
8 establish appropriate rates, and a hundred and fifty
9 dollars for a piece of -- for the use of a PID for
10 one day was just not appropriate. It just wasn't.

11 **Q. What has the agency settled on since then?**

12 **A. Seventy-five dollars.**

13 **Q. Okay. Let's move on to number 5.**

14 **Twenty-one dollars -- oh, no. The**
15 **measuring wheel. Never mind. We've already gotten**
16 **the measuring wheel all settled.**

17 **Number 6. The consultant -- the \$16 for**
18 **gloves. So why don't we explain that one.**

19 **A. I didn't think it was appropriate to**
20 **charge for a box of gloves when you're using one**
21 **pair of gloves, maybe two -- at most, I think maybe**
22 **five they said, but I just don't think it's**
23 **appropriate to charge for an entire box of gloves.**

24 **Q. Okay. Let's go on to number 7 on Page 5**

1 of the record. Twenty-eight dollars for a water
2 level indicator.

3 A. I had asked how they determined the rate
4 or if they could provide some supporting
5 documentation for the rate for the water level
6 indicator. None was provided. It was denied based
7 on that.

8 Q. And you saw the information that was
9 provided by Mr. Shaw during the hearing that's also
10 in the record --

11 A. Mm-hmm.

12 Q. -- which is also from the California
13 company.

14 So is that the same reasoning that you had
15 with the PID?

16 A. That is correct.

17 Q. Okay. And then we go on to number 8 with
18 the slug.

19 A. The slug -- I was under the impression
20 that the slug was a piece of concrete with a hook in
21 it, and I had tried to find what this -- discover
22 what this slug was, and I was asking what this slug
23 was and how the cost was determined and what it was,
24 and the -- them saying that it was a levellogger? It

1 was surprising to me -- now, today. I didn't
2 believe it was. I thought it was just a piece of
3 material that you put in the well to move the water,
4 and then you use a water level indicator to
5 determine how quickly the water is either, you know,
6 filling or coming back in. I guess the slug would
7 be to move the head up. So how far -- measure it
8 coming down.

9 So it was just a lack of documentation. I
10 didn't know what the -- I still don't know to this
11 day -- don't know exactly what the slug is.

12 **Q. Okay. Let's go on to mileage cost, number**
13 **9 on Page 6 in the record.**

14 A. When we don't -- when nothing is provided
15 to indicate that the -- that it's appropriate to
16 charge over federal mileage rates, we don't approve
17 anything over federal mileage rates.

18 **Q. And nothing was provided?**

19 A. No.

20 **Q. And did you ask for that information?**

21 A. Yes, and they did say that they were using
22 a truck, but I don't see that as being really
23 necessarily providing documentation, and that truck
24 gets better gas mileage than my car.

1 **Q. And what kind of documentation would you**
2 **need?**

3 A. How the extra costs were derived, you
4 know, how the additional costs on top of -- I don't
5 know if it had been 12 cents, or I can't remember
6 exactly what the rate was at the time, but how they
7 determined it.

8 **Q. Okay. Copies. We have several items here**
9 **for copies. 10, 11, 12 are all cuts for copies, and**
10 **that's on Page 7, and it goes on to 8 of the record.**
11 **So let's discuss the cuts for the copies.**

12 A. There were two issues with the copies.
13 The first issue was the amount that they
14 were requesting. It was incredible. I don't have
15 it off the top of my head. It's probably in the
16 record how many copies of the plan that they were
17 actually asking for. It's just the amount of paper
18 that they were using was --

19 **Q. Would you like to look at Exhibit**
20 **Number 1, which is the budget sheet?**

21 A. No. The budget sheet, I'm -- it would be
22 in the emails.

23 **Q. Oh, it would be in the emails?**

24 A. Yeah, it would be in the emails or

1 possibly in my notes how many copies of the plan in
2 the budget was, but it was multiple, multiple copies
3 in the plan and budget. We get two copies. That's
4 it. We get two copies of the plan and budget, and
5 these requests were all for two copies of the plan
6 and budget.

7 **Q. Okay. Well, let me get that.**

8 A. Oh, I have it. It's in the letter.

9 **Q. Is it in the letter?**

10 A. Yeah, it's actually in the letter.

11 **Q. Okay.**

12 A. Hang on a second. It says 1,100 copies
13 for the plan. 1,100 copies for the plan and budget.
14 Plan and budget that was submitted were 62 pages
15 long. 1,100 copies represent almost 18 copies of
16 the plan and budget.

17 **Q. Okay. And that's for the 127.80.**

18 **Then we go on to the 37.20.**

19 A. Well, the 37.20, that was -- that was for
20 the 15 cents, I believe. That -- the 15 cents is
21 unreasonable. It's per copy. It's the highest
22 we've seen.

23 **Q. Now, they say that they got that because**
24 **the agency charges that for FOIA.**

1 A. Well, I believe the agency -- we had
2 something on our website that said that, I believe,
3 that after 400 pages, they started charging 15
4 cents. I believe that cost probably covered, you
5 know, personnel for doing it, that sort of thing.
6 It wasn't just the paper copies. So we also charge
7 for personnel doing -- senior administrative
8 assistant usually prints. We get -- you know,
9 we -- that is actually paid elsewhere. So the 15
10 cents was -- it was just -- it was unreasonable.

11 **Q. Okay. And then we go to number 12 for the**
12 **\$150 for the copies.**

13 A. Yeah. The copy costs for the
14 reimbursement claim were only cut for being
15 unreasonable for the cost for the rate that was
16 requested because we didn't have the documentation.
17 I mean, technically speaking, I guess it could have
18 been. They could have submitted a claim that had
19 that many pages in it. Although I doubt it.

20 But the cost themselves -- it was just the
21 rate. We couldn't determine how many pages were
22 going to be needed for the reimbursement claim, so
23 that was only for the 15-cent rate.

24 **Q. Okay. Is there anything else you would**

1 like to add about the deductions that you made?

2 A. No.

3 MS. JARVIS: Okay. Can you give your
4 copy -- well, keep your copy for right now because
5 Mr. Shaw might have questions for you, but after
6 you're done, please give your copy to the court
7 reporter.

8 THE WITNESS: Okay.

9 MS. JARVIS: Okay?

10 HEARING OFFICER WEBB: Okay.

11 Mr. Shaw?

12 CROSS EXAMINATION

13 BY MR. SHAW

14 Q. Good morning, Mr. Dilbaitis.

15 A. Good morning.

16 Q. I'm just going to run through some
17 questions that I jotted down here from your
18 testimony just now.

19 In the first item that was discussed, the
20 corrective action plan, the denial letter indicated
21 that you thought the work needed would be minimal.
22 Can you give me an approximation of what you think
23 the minimal time would be, roughly?

24 A. No.

1 Q. So you don't have an idea of what
2 "minimal" is, but you do have an idea of what
3 "reasonable" is? Is that -- and this was not
4 reasonable in your opinion?

5 A. Well, yes, correct. The 40 requested
6 hours for the preparation of the plan was
7 unreasonable.

8 Q. And do you believe that preparation of the
9 plan necessitates working with the Illinois
10 Environmental Protection Agency answering questions
11 and settling on approaches to the project?

12 A. Not necessarily, no.

13 Q. So a consultant should not respond to
14 project manager emails?

15 A. Well, hopefully they wouldn't be
16 necessary.

17 Q. But you indicated in your letter
18 that your -- the first email, I believe, that you
19 guys were doing something new? Is that -- would
20 that be a fair characterization?

21 A. I'm not following.

22 Q. Let me go back to your testimony a little
23 bit later here.

24 You said at the time we had to establish

1 **rates. Who was "we"?**

2 A. The agency -- well, trying to develop
3 reasonable costs for materials.

4 **Q. Can you give me, like, the name? The head**
5 **of the division, the head, the director? Where is**
6 **this happening at?**

7 A. I believe it's Greg Dunn was trying to get
8 this done.

9 **Q. But he directed the project managers to**
10 **establish rates for materials?**

11 A. No.

12 **Q. No?**

13 **And so at that time, what was being done?**

14 A. We were trying to determine what was
15 reasonable for the materials cost.

16 **Q. And was this correspondence with the**
17 **consultant in this case part of that process?**

18 A. Yes.

19 **Q. Okay. What other processes were going on?**

20 A. I don't understand the question.

21 **Q. Are you trying to establish rates solely**
22 **based upon information derived from consultants?**

23 A. Well, this was just specific to this one
24 consultant. It wasn't an overreaching -- it was

1 just one review. Each one of these reviews are
2 separate and individual, so that's how they're
3 treated.

4 **Q. So a different consultant would get the**
5 **same questions, correct?**

6 A. Likely, yes, if they asked -- if they
7 requested a hundred and forty-eight dollars for the
8 use of a PID for one day, yes, I would certainly
9 request -- I would certainly ask that.

10 **Q. You've never approved a PID rental rate**
11 **for that amount before?**

12 A. Previously, yes.

13 **Q. Previously to what?**

14 A. Before we tried to determine what was
15 reasonable for the daily rate for a PID.

16 **Q. And reasonableness is being determined by**
17 **the correspondence with the consultants? Is that**
18 **it?**

19 A. I don't know if that's it. I mean, for
20 this -- for this letter, that was it, yes.

21 **Q. Is there any effort to reach out**
22 **to -- outside the LUST program to get reasonable**
23 **rates on the market that you're aware of?**

24 A. Not that I'm aware of. I wouldn't have

1 anything to do with that.

2 Q. Did you investigate whether the rates on
3 the California rental sheet were comparable to rates
4 outside of California?

5 A. I don't recall.

6 Q. And the maps that you've seen before, I
7 wasn't clear from your testimony whether those maps
8 were paid for before. Is -- were the maps that you
9 said you'd seen before from the -- all from the
10 first corrective action plan?

11 A. I believe so. Well, from the first
12 corrective action plan? No, those were not -- no.
13 The costs for the maps in the first corrective
14 action plan that was denied, those preparation costs
15 were not approved, no.

16 Q. Okay. So if I'm understanding correctly,
17 you've seen these maps before. That was part of
18 your justification for not paying for them again,
19 but you seem to be indicating they were not paid for
20 before because they were in a corrective action plan
21 that was not approved?

22 A. The applicable maps -- map that we needed,
23 the soil contamination map, I believe it was map 4-A
24 in the plan had been submitted in the site

1 investigation completion report, and the date on it
2 was before the site investigation completion report
3 was prepared.

4 **Q. Okay. So some of those have dates on them**
5 **that you can reference at least?**

6 A. Correct. I believe all of them do.

7 **Q. Okay. And what was the primary purpose of**
8 **this corrective action plan?**

9 A. To collect a geotechnical sample for use
10 in the Tier 2 calculations that would be presented
11 in the next corrective action plan.

12 **Q. And that's Tier 2, TACO analysis?**

13 A. Correct, yeah, the site-specific Tier 2
14 remediation objectives.

15 **Q. Do you know why the site-specific**
16 **remediation objectives weren't used previously?**

17 A. No.

18 **Q. Do you know whether or not you were the**
19 **one who approved that?**

20 A. I'm sorry. Approved what?

21 **Q. The site -- the previous site**
22 **investigation plan that relied upon non --**

23 A. Oh, the corrective action plan?

24 **Q. Site investigation plan.**

1 A. I didn't deny a site investigation plan.
2 I didn't review a site investigation plan from them.

3 **Q. You're saying you never approved a site**
4 **investigation plan for the site?**

5 A. I did, but not for this consultant.

6 **Q. Okay. For another consultant --**

7 A. Correct.

8 **Q. -- who did not use site-specific analysis,**
9 **did you approve that?**

10 A. Did I approve the collection of that
11 sample? Is that what you're asking?

12 **Q. Did you approve the site investigation**
13 **plan that had to be redone at corrective action?**

14 A. I don't believe there was a plan that had
15 been done in corrective action. I don't believe it
16 was submitted previously. I believe that the -- the
17 sample in question that there was a problem with was
18 collected before I came onto the site or before I
19 came onto the project.

20 **Q. Okay. You had -- earlier had described**
21 **the corrective action plan as essentially doing some**
22 **site investigation-type work, and I understand**
23 **there's a technical difference, but it involves**
24 **borings, I think, is the point you're probably**

1 **making, I believe; is that correct?**

2 A. Sure.

3 **Q. I don't want to put words in your mouth.**

4 A. Yes.

5 **Q. What was the purpose of the site -- of the**
6 **corrective action plan that is here today again?**

7 A. To collect a geotechnical sample, soil
8 sample. I believe they were also going to perform a
9 slug test to determine the hydraulic conductivity,
10 and I believe they had also proposed updating
11 groundwater sampling.

12 **Q. Okay. Would this work require analysis of**
13 **the samples pursuant to TACO?**

14 A. Yes.

15 **Q. Okay. And you approved no budget for that**
16 **because you thought the budget was unreasonable; is**
17 **that correct?**

18 A. For --

19 **Q. TACO analysis.**

20 A. Well, the TACO analysis wasn't part of
21 this plan. TACO analysis is part of the next plan.
22 It's a preparation cost for the next plan.

23 **Q. What is this -- does this plan call for**
24 **any analysis?**

1 A. No. It wasn't proposed. In the
2 corrective action -- in the -- and I don't know
3 exactly what section it is in the CAP, but there is
4 a proposed plan portion in the CAP, in the
5 corrective action plan, and they didn't propose
6 preparing the TACO sample -- or preparing the Tier 2
7 remediation objectives.

8 **Q. Do you agree that the budget items are**
9 **intended to be estimates of the cost in this case?**

10 A. I'm not sure that's accurate. They
11 already know the cost. They did them last time, in
12 the last plan that was denied. It's the same work
13 that's going to be done in that plan.

14 **Q. They didn't do the work yet, though; is**
15 **that correct?**

16 A. They did in the last plan. They had
17 actually -- the last plan presented -- well, Tier 2
18 remediation based on the bad boring.

19 **Q. Are we talking about the second plan?**

20 A. The first plan. And I assume that the
21 TACO calculations will be pretty much the same
22 as -- that are coming up in this next one, if not
23 exactly the same -- well, with different parameters
24 changed obviously, which is the -- you know, they

1 need to do the six Tier 2 remediation objectives,
2 and I guess modeling is still -- you know, whether
3 or not that would be appropriate for them to be
4 doing now is still up in the air, but I don't think
5 I had too much of a problem with that at the time.

6 **Q. When the -- when they finish the work**
7 **approved in the plan, is there an opportunity for**
8 **them to document exactly how much time or copies**
9 **were used to perform the plan?**

10 A. Sure. I mean, I would think it would
11 probably -- finalizing the budget would be the last
12 thing before the plan was submitted would be my
13 guess.

14 **Q. I mean, let me just take an example. They**
15 **asked for too many copies. They end up using half**
16 **of those and then they request reimbursement for**
17 **half of those. Isn't that how the system is**
18 **supposed to work?**

19 A. I would say we have to account for the bad
20 apples. There are plenty of times where we -- you
21 know, we're told that. We'll only use what
22 we -- we'll only ask for what we use, but we have to
23 account for those who won't. So I mean, we're in
24 charge of making a determination on whether or

1 not -- whether it's reasonable.

2 **Q. And what you're trying to determine is**
3 **whether or not the estimate is reasonable; isn't**
4 **that correct?**

5 A. The -- which estimate?

6 **Q. The budget.**

7 A. Well, the part of the budget is already
8 known when it's submitted.

9 **Q. Yeah, and we went through some portions**
10 **that are not known yet, correct?**

11 A. The field costs and the reimbursement
12 costs, correct.

13 **Q. Does that -- are you saying that the**
14 **analysis of the field work is not appropriate?**

15 A. I don't understand what you're
16 saying -- the analysis of the field work is not
17 appropriate.

18 **Q. They come back with some samples of soil,**
19 **and they have them tested. Aren't they supposed to**
20 **analyze them?**

21 A. Well, correct, yeah. That's basically
22 when the plan ends. After -- once the field work is
23 complete and the samples are sent to the lab, that's
24 basically in these plans.

1 **Q. They're supposed to get the**
2 **analysis -- they're supposed to get the lab results**
3 **from the lab and then not do anything with them**
4 **until they wait a hundred and eighty days for**
5 **another plan to be approved?**

6 A. No. They're supposed to take the results
7 and do their next plan, prepare their next plan.
8 Their plan, that proposes the site-specific
9 remediation objective.

10 **Q. And they would have to do this analysis**
11 **regardless of whether or not any soil needs to be**
12 **removed; isn't that correct?**

13 A. Yeah, that's correct. They have to
14 analyze the soil sample that's collected, yes.

15 **Q. So in your letter, you indicated**
16 **that -- in one of your emails, you indicated**
17 **willingness to basically set a year rate for the**
18 **consultant if they provided sufficient information**
19 **to base that on?**

20 A. No.

21 **Q. There's nothing in your emails talking**
22 **about we can go for a year on this?**

23 A. Well, I think it was suggested by them,
24 and I said that I would, you know, do what I could

1 to run it up the flagpole, so to speak, to
2 management, but, no, I didn't have anything to do
3 with that. It had nothing to do with me. If they
4 wanted to do it, I would be willing to try to help.
5 I didn't want to go through this a lot.

6 **Q. Does the method you use to determine the**
7 **reasonable -- what rate should be charged for an**
8 **item such as a PID, does that result in different**
9 **rates reimbursed for consultants at different**
10 **levels?**

11 A. I guess in theory, it would, but if
12 they're using a different PID, you know -- but at
13 the same time, that's not how we do it. You know,
14 since then we've come to an agreement -- I guess the
15 agency has come to an agreement with the consultants
16 that we're willing -- we consider \$75 to be a
17 reasonable rate based on rental rates in the area
18 and --

19 **Q. Is this rate published anywhere?**

20 A. I don't believe so, no.

21 **Q. Is this a secret rate?**

22 A. No. It's just if we're going to ask
23 questions if it's over that rate.

24 **Q. So if it's, say -- let me just ask the**

1 backup question.

2 During a given year, how many different
3 consultants do you work with on a project, I mean,
4 in terms of companies? Is it 1 to 10, 10 to 50, 50
5 to a hundred?

6 A. In this case, I'd say 10 to 50.

7 Q. Okay. So any new consultants coming into
8 the system wouldn't know about what rates they can
9 charge; isn't that correct?

10 A. Sure.

11 Q. Because this is -- this is an agreement
12 between industry and the agency. That's just sort
13 of insider knowledge; isn't that correct?

14 A. I would say it's just a reasonable rate.
15 Again, I don't -- I'm not sure that it's insider
16 knowledge, but I would -- you know, it's a
17 reasonable rate.

18 Q. I'm not an industry; I'm just a lawyer.
19 How can I find these rates?

20 A. I believe it was established through
21 multiple consultants submitting documentation.

22 MS. JARVIS: I'm going to object.

23 Is this actual knowledge, or is it
24 just your belief?

1 THE WITNESS: It's my belief.

2 MS. JARVIS: I'm going to object
3 because he has no actual knowledge of this.

4 THE WITNESS: That is correct. I
5 don't.

6 BY MR. SHAW

7 Q. How did you -- you specifically said
8 earlier that the agency has settled on a 75-dollar
9 rate for the PID.

10 A. Mm-hmm.

11 Q. How did you come to know that?

12 A. I have no idea. I don't know. I mean,
13 I'm sure we were probably told sometime that we'll
14 accept \$75 rather than us --

15 Q. So the rate sheet is not secret?

16 A. Well, it's -- it's a reasonable -- it's
17 not really a rate sheet. It's just what we've
18 determined -- what we consider a reasonable rate.

19 Q. Do you have any knowledge that there might
20 be a document that records these rates?

21 A. No.

22 MR. SHAW: I have no further
23 questions.

24 MS. JARVIS: I have some follow-up

1 questions.

2 REDIRECT EXAMINATION

3 BY MS. JARVIS

4 Q. When you were looking at the PID rate,
5 were you looking for a calculation to determine a
6 reasonable rate?

7 A. Yes.

8 Q. And in order to determine the rate, you
9 were looking for a calculation based on the price of
10 a PID, how many times it was used, the length of the
11 use and that type of thing?

12 A. Absolutely.

13 Q. And if you saw a rate come in, would you
14 ask those questions in order to determine a
15 reasonable rate today?

16 A. No.

17 Q. If it was over an amount?

18 A. Yes.

19 Q. So it's really a site-specific,
20 site-by-site basis as to whether or not you're going
21 to determine if a rate is reasonable?

22 A. That is correct, yes, absolutely.

23 Q. So it's basically a floor, and anything
24 above a floor you're going to ask a question?

1 A. That is correct.

2 **Q. But a rate above the floor would be**
3 **accepted if there was documentation provided?**

4 A. Yes. If there's appropriate documentation
5 provided, supportive documentation, supporting
6 documentation, yes.

7 **Q. So if they showed that their PID cost a**
8 **certain amount and it had a life of a year and they**
9 **used it this many times a year, and so the rate**
10 **would be a hundred and twenty-five dollars, that**
11 **would be approved?**

12 A. Yes.

13 **Q. So there's no specific drop-dead rate that**
14 **it has to be a certain amount?**

15 A. No.

16 MS. JARVIS: Okay. I have no further
17 questions.

18 HEARING OFFICER WEBB: Mr. Shaw,
19 anything further for you?

20 MR. SHAW: Maybe just one to clarify
21 because that was clarifying.

22 REXCROSS EXAMINATION

23 BY MR. SHAW

24 **Q. The calculations I understood, and I did**

1 write down was to be the price of the PID, how often
2 it's used in a year, the expected life span of the
3 PID, and then miscellaneous costs that are
4 mentioned, I think, in the emails, but there may be
5 other costs on top of that.

6 The rate that would be established would
7 be for each consultant because each consultant would
8 be using the same factors, correct? Because that's
9 not a site-specific list if they use a PID?

10 A. Well, it kind of -- see, this is nothing
11 official. This was just something that I was using
12 as a jump-off point to try to start a discussion on
13 how we could figure out an appropriate rate for
14 this. It wasn't -- I'm not -- I wasn't trying to
15 set, you know, limits saying this is how it should
16 be done. I was trying to come up with a -- you
17 know, a decent way to determine an appropriate rate
18 for a piece of equipment that they owned.

19 Q. I mean, just as an example, one consultant
20 might use a PID that's \$200 and another one might
21 use a PID that's \$300.

22 A. Mm-hmm.

23 Q. They're going to ultimately end up with a
24 different rate because of that, right?

1 A. No. That's not necessarily true.

2 **Q. Well, because there are other factors.**

3 **How often they use it per year?**

4 A. Well, it depends on how they determine. I
5 mean, it depends on how they determine what rate
6 they're going to request.

7 **Q. Well, didn't you deny reimbursement**
8 **because they didn't give you this information?**

9 A. I denied -- I denied the budget because
10 they didn't give me any information.

11 **Q. You don't think the rental rate sheet has**
12 **any information?**

13 A. Well, the rental rate sheet is
14 appropriate. I mean, it was for -- it was -- we
15 had -- we've seen, I'm sure -- I've personally seen
16 several rental rate sheets submitted after that. I
17 mean, they weren't the only ones that we had this
18 issue with. So I've seen several before that were
19 well below that.

20 **Q. Do you know of any project managers who**
21 **have demanded rental rate sheets?**

22 A. No.

23 **Q. Let's go through this.**

24 **How long a piece of equipment is expected**

1 **to last is just an estimate, correct?**

2 A. That's correct. I mean, it would
3 obviously be based on what equipment they own, how
4 long they have owned it or maybe the last one that
5 they owned that they got -- that broke, how long did
6 that one last.

7 I believe the equipment that we were
8 talking about at the time was discontinued in 2010,
9 and that's what they were using, so I figured they
10 had owned it for at least six years at that point.

11 **Q. And, again, I guess I'm not clear why if**
12 **the price of the PID is determined by the**
13 **consultant's purchase, how often it's used per year**
14 **is going to depend upon the nature of the**
15 **consultant's work. Some consultants may do one**
16 **project a year under the LUST fund and some**
17 **consultants might be doing 50 or a hundred. There's**
18 **going to be possibly 50 to a hundred percent**
19 **difference between the rate that's going to come out**
20 **of that.**

21 A. I doubt that.

22 **Q. You doubt that?**

23 A. Yeah. Well, I don't think -- I would
24 think that if other consultants were not working

1 exclusively with LUST, then they would be doing
2 projects in -- you know, elsewhere and using the PID
3 as well, and it would -- they should take those into
4 consideration as well, those uses that aren't on
5 LUST projects as well. We're just talking general
6 uses of the PID and how much you would assign to
7 each use of the PID. That's not just for leaking
8 USTs or just the ones that are reimbursable. That
9 includes all of them.

10 **Q. So you basically assume that all**
11 **consultants will ultimately have the same rates**
12 **because they'll have the same equipment charges, the**
13 **same estimated usage, the same life expectancy, and**
14 **the same cost associated with maintenance and**
15 **cleaning and calibrating and storage or whatnot?**

16 A. No. I don't expect all consultants to
17 have the same rate.

18 **Q. So you agree with me in saying it would be**
19 **a different rate for different consultants?**

20 A. Well, I mean, each budget is individual.
21 I don't have any expectations for anything. I just
22 look at what is there, and I react to that.

23 **Q. And so if we have a rate that is a**
24 **bit -- you find agreeable, the consultant dealing**

1 with another project manager, wouldn't they find
2 that to be completely not -- where that project
3 manager is coming from; isn't that correct?

4 A. I guess it could be possible, yeah. There
5 are many of us. There's quite a few project
6 managers, yeah.

7 Q. How many? I couldn't hear.

8 A. There's quite a few project managers.

9 MR. SHAW: Okay. Okay. I don't have
10 any further questions.

11 HEARING OFFICER WEBB: Ms. Jarvis?

12 MS. JARVIS: I have a few.

13 FURTHER REDIRECT EXAMINATION

14 BY MS. JARVIS

15 Q. Now, when we determined reasonableness,
16 reasonableness doesn't come down to one specific
17 rate? Is that true?

18 A. That is true.

19 Q. It would be a range?

20 A. Correct.

21 Q. Because what's reasonable for one
22 consultant or one site may not be reasonable for
23 another consultant or another site?

24 A. That's correct.

1 Q. So reasonableness is going to have a
2 range?

3 A. It will vary.

4 Q. And we actually heard Ms. Rowe testify
5 that when she determined her rates, she looked at
6 what other consultants were charging, correct?

7 A. Correct.

8 Q. So she acknowledged that other consultants
9 had other rates that they charged for items.

10 So when you determine reasonableness, what
11 one consultant is charging for something does not
12 come into your determination when you're determining
13 what's reasonable for another site or another
14 consultant?

15 A. That is correct. It's budget specific.

16 MS. JARVIS: Okay. No further
17 questions.

18 HEARING OFFICER WEBB: Mr. Shaw?

19 MR. SHAW: I have no further
20 questions.

21 HEARING OFFICER WEBB: All right.
22 Thank you, sir.

23 THE WITNESS: Thank you.

24 MS. JARVIS: If you could give her

1 that.

2 HEARING OFFICER WEBB: Ms. Jarvis, do
3 you have anything further that you would like to
4 present?

5 MS. JARVIS: We have nothing further.

6 HEARING OFFICER WEBB: Okay.

7 MR. SHAW: I'd like to consult here
8 real quickly to see if we have anything.

9 HEARING OFFICER WEBB: Okay. Go off
10 the record a minute.

11 (Whereby a short break was taken.)

12 HEARING OFFICER WEBB: Let's go back
13 on the record.

14 Mr. Shaw, would you like to make any
15 closing argument?

16 MR. SHAW: No. We'll reserve
17 arguments for the post-hearing brief.

18 HEARING OFFICER WEBB: All right.
19 Ms. Jarvis?

20 MS. JARVIS: We will also reserve
21 arguments.

22 HEARING OFFICER WEBB: The transcript
23 is due by September 22nd and will be posted on the
24 Board's website.

1 The public comment deadline is
2 September 22nd. Any public comment must be filed
3 in accordance with Section 101.628 of the Board's
4 procedural rules.

5 The petitioner's brief is due by
6 October 8th, and Respondent's brief is due by
7 October 22nd, and Petitioner's reply, if any, is due
8 by October 29th.

9 I think that's all we need today. I
10 thank everyone for their participation, and we stand
11 adjourned.

12 (Hearing ended 11:55 a.m.)

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CERTIFICATE OF REPORTER

I, Ann Marie Hollo, Certified
Shorthand Reporter, Registered Diplomate Reporter,
and Certified Realtime Reporter, within and for the
State of Illinois, do hereby certify that the
hearing was taken by me to the best of my ability
and thereafter reduced to typewriting under my
direction; that I am neither counsel for, related
to, nor employed by any of the parties to the action
in which this hearing was taken, and further that I
am not a relative or employee of any attorney or
counsel employed by the parties thereto, nor
financially or otherwise interested in the outcome
of the action.

Certified Shorthand Reporter
State of Illinois

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