

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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4 OWENS OIL COMPANY,

5 Petitioner,

6 vs.

No. PCB 98-032

7 ILLINOIS ENVIRONMENTAL

8 PROTECTION AGENCY,

9 Respondent.

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13 Proceedings held on October 24, 1997, at

14 10:00 a.m., at 600 South Second Street,

15 Springfield, Illinois, before the Honorable Michael

16 L. Wallace, Hearing Officer.

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21 Reported by: Darlene M. Niemeyer, CSR, RPR

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24 Belleville, IL 62226

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A P P E A R A N C E S

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

BY: John J. Kim, Esq.
Valerie A. Puccini, Esq.
Assistant Counsel
2200 Churchill Road
Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

MOHAN, ALEWELT, PRILLAMAN & ADAMI

BY: Fred Prillaman, Esq.
Becky S. McCray, Esq.
First of America Center, Suite 325
1 North Old Capitol Plaza
Springfield, Illinois 62701
On behalf of Respondent.

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E X H I B I T S

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Petitioner's Exhibit 1	110	110
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1 P R O C E E D I N G S

2 (October 24, 1997; 10:00 a.m.)

3 HEARING OFFICER WALLACE: Pursuant to the
4 direction of the Illinois Pollution Control Board I
5 now call Docket PCB 98-032. This is the matter of
6 Owens Oil Company versus the Illinois Environmental
7 Protection Agency, seeking a UST fund
8 reimbursement.

9 May I have appearance of Counsel, please,
10 for the petitioner?

11 MR. PRILLAMAN: Fred Prillaman of the
12 firm of Mohan, Alewelt, Prillaman and Adami.

13 MS. McCRAY: Becky McCray. I am from the
14 same firm on behalf of the petitioner.

15 HEARING OFFICER WALLACE: For the
16 Agency?

17 MR. KIM: John Kim, Assistant Counsel and
18 Special Assistant of the Attorney General, on
19 behalf of the respondent, the Illinois EPA.

20 MS. PUCCINI: Valerie Puccini, Assistant
21 Counsel and Special Assistant of the Attorney
22 General, also on behalf of the IEPA.

23 HEARING OFFICER WALLACE: Thank you. Let
24 the record reflect there are no other appearances

1 of Counsel at today's hearing.

2 Are there any preliminary matters we
3 should deal with? Mr. Prillaman?

4 MR. PRILLAMAN: Yes, Mr. Hearing
5 Officer. This morning we had a hearing before Your
6 Honor that disposed of an emergency motion to
7 compel discovery, and as an outgrowth of that
8 motion and that decision I want to offer into
9 evidence as part of our case, for purposes of
10 demonstrating the Agency's position with regard to
11 the issues raised in our discovery request,
12 Plaintiff's Exhibit 5, which is the Agency's
13 response to petitioner's first request for
14 production of documents.

15 Plaintiff's Exhibit 6, which is the job
16 performance guidance of April 1, 1996, which was
17 appended to the Agency's response.

18 Plaintiff's Exhibit 7, which was part of
19 our motion of this morning, demonstrates the
20 Agency's discussion of the LUST Manager's Handbook
21 with the U.S. EPA and the role that it plays in the
22 administration of the Leaking Underground Storage
23 Tank Program under RCRA.

24 MR. KIM: Is that Exhibit Number 3 to

1 your emergency motion?

2 MR. PRILLAMAN: Yes.

3 MR. KIM: Okay.

4 MR. PRILLAMAN: Do you have the emergency

5 motion in front of you?

6 MR. KIM: Yes.

7 MR. PRILLAMAN: Do you have Exhibit 3 in

8 front of you?

9 MR. KIM: Yes.

10 MR. PRILLAMAN: All right. Is it dated

11 December 15, 1992?

12 MR. KIM: Yes, it is.

13 MR. PRILLAMAN: Okay. Plaintiff's

14 Exhibit 8, which was Exhibit 4 to our emergency

15 motion, which is a 1993 letter between the U.S. EPA

16 and the Illinois EPA regarding the role of the LUST

17 Manager's Handbook and the Agency's administration

18 of that program under RCRA.

19 Plaintiff's Exhibit 9, which is the

20 Illinois EPA's letter to our law firm pursuant to

21 FOIA which includes with it the Leaking Underground

22 Storage Tank trust fund status report between the

23 U.S. EPA and the IEPA, again, discussing the role

24 of the LUST Project Manager's Handbook.

1 Plaintiff's Exhibits 10, 11 and 12, which
2 are three versions of the LUST Manager's Handbook,
3 Exhibit 10 being dated 1991, Exhibit 11 being dated
4 April 1992, and Exhibit 12 being dated December
5 1992. These are all for purposes of elucidating
6 the Agency's position upon the request for
7 discovery in this case.

8 HEARING OFFICER WALLACE: All right. Any
9 objection, Mr. Kim?

10 MR. KIM: I would object to Exhibit
11 Numbers 7, 8 and 9 on two grounds. First, that
12 these letters are -- I don't understand what the
13 relevance of these letters are in that the guidance
14 manual that is being offered up in various versions
15 as part of Exhibits 10 through 12 does have a
16 preface statement which states what the purpose of
17 the document is. I don't understand how a letter
18 to the U.S. EPA would add to that.

19 Further, that if the exhibits -- if
20 Exhibits 7, 8 and 9 being tendered are the same as
21 Exhibits 3, 4 and 5 of the emergency motion to
22 compel, then I would assume those would include the
23 attachments which have been apparently copied in
24 short form and attached to the end of the --

1 attached to the end of the letters.

2 MR. PRILLAMAN: Yes, they do. Exhibit 7
3 consists of four pages, just as Exhibit 3 to my
4 motion did.

5 Plaintiff's Exhibit 8 consists of three
6 pages, again, the same as the exhibit to the
7 motion.

8 Plaintiff's Exhibit 9 consists of four
9 pages, again, the same as what we furnished as an
10 appendage to our emergency motion.

11 MR. KIM: It is unclear if -- I assume,
12 but it is not clear that those appendages to the
13 U.S. EPA letters are from the Illinois EPA's
14 application which is referenced in the letter. Is
15 that correct?

16 MR. PRILLAMAN: Yes, they are excerpts
17 from the document referenced, the document itself
18 being lengthy.

19 MR. KIM: The only objection I would have
20 is I think that if we are admitting that it would
21 be helpful to have the entire attachment submitted
22 along with the letter so that nothing in that
23 attachment is taken out of context.

24 MR. PRILLAMAN: We would agree if the

1 Agency wants to proffer those documents. We would
2 not object to the entire document going in.

3 MR. KIM: Well, this is not the Agency's
4 exhibit, so the Agency has no intention of
5 proffering the documents and has no reason to.

6 MR. PRILLAMAN: Well, we had an agreement
7 that Mr. Oakley would not have to appear today
8 because Agency documents taken from Agency files
9 needed to be authenticated, and now there is a
10 question being raised that these may not be
11 authentic and Mr. Oakley is not here because of the
12 prior agreement.

13 Is that the problem? You don't believe
14 these are actually Agency documents taken from
15 Agency files? If so, I think our agreement is it
16 off and Mr. Oakley has to be here.

17 MR. KIM: Mr. Oakley was intended to be
18 called based on Counsel's representation to
19 authenticate certain documents. If these are those
20 documents, we would stipulate that these are
21 authentic letters that were sent to and/or from the
22 Illinois EPA to and/or from the U.S. EPA.

23 Our objection is not on authentication.
24 Our objection is, one, relevance and, two, that the

1 attachments -- I am not contesting the authenticity
2 of the attachments. I am simply stating that it
3 would be helpful if the attachments in their full
4 were provided.

5 HEARING OFFICER WALLACE: All right.
6 Thank you. Only to the point of relevance, Mr.
7 Prillaman, what are the relevance of these three
8 letters?

9 MR. PRILLAMAN: This case involves the
10 reasonableness of a rate, and the reasonableness of
11 a rate is something that the Agency is required to
12 review pursuant to some guidance. The Illinois EPA
13 has told the U.S. EPA on at least three occasions
14 that the way in which this is done is pursuant to
15 the LUST Project Manager's Handbook. We want the
16 record to reflect that that's the representation
17 that the Agency is making to the government that
18 pays a large portion of the Agency's bills to run
19 this program.

20 HEARING OFFICER WALLACE: Okay.

21 MR. PRILLAMAN: I am sorry.

22 HEARING OFFICER WALLACE: I am sorry. I
23 thought you were finished.

24 MR. PRILLAMAN: That's why it is

1 relevant.

2 HEARING OFFICER WALLACE: All right. Any

3 objections to the -- any other objections, Mr.

4 Kim?

5 MR. KIM: No.

6 HEARING OFFICER WALLACE: All right. I

7 will admit Petitioner's Exhibits 5 through 12 into

8 evidence.

9 (Whereupon said documents were

10 duly marked for purposes of

11 identification and admitted

12 into the record as Petitioner's

13 Exhibits 5 through 12 as of

14 this date.)

15 HEARING OFFICER WALLACE: Any other

16 preliminary matters, Mr. Prillaman?

17 MR. PRILLAMAN: I don't believe so.

18 HEARING OFFICER WALLACE: Mr. Kim?

19 MR. KIM: Yes. I would ask that -- I am

20 referring to the administrative record that was

21 filed in this matter. I would ask that at the

22 beginning of this hearing, and I assumed that some

23 or all of this would be entered in anyway, that the

24 entire record be admitted into evidence or at the

1 very least the portion of the record which contains
2 the application for reimbursement that is the
3 subject of this appeal. I am making this now just
4 to try to facilitate things and to try to move
5 things along.

6 MR. PRILLAMAN: Why don't we mark the
7 records as Plaintiff's Exhibit 13.

8 HEARING OFFICER WALLACE: I will tell you
9 what, let's mark it as a joint exhibit.

10 MR. PRILLAMAN: Okay.

11 MR. KIM: That's fine.

12 MR. PRILLAMAN: This is our only copy.

13 MR. KIM: I can provide copies, several
14 copies, if you would like. I assumed, since
15 everyone has a copy, including the Board, that we
16 could just do this --

17 HEARING OFFICER WALLACE: I won't need
18 mine anymore.

19 MR. PRILLAMAN: We are going to call it
20 Joint Exhibit 1?

21 HEARING OFFICER WALLACE: Yes, Joint
22 Exhibit 1.

23 MR. PRILLAMAN: All right.

24 HEARING OFFICER WALLACE: Joint Exhibit

1 Number 1, being the administrative record, is
2 admitted into the record.

3 (Whereupon said document was
4 duly marked for purposes of
5 identification and admitted
6 into the record as Joint
7 Exhibit 1 as of this date.)

8 HEARING OFFICER WALLACE: I would -- did
9 you have anything else?

10 MR. KIM: No, nothing else.

11 HEARING OFFICER WALLACE: I would state
12 for the record, as Mr. Prillaman indicated, that we
13 did have an emergency conference this morning at
14 8:30 in the Board's offices to discuss certain
15 discovery aspects.

16 I don't want to misphrase anyone, but Mr.
17 Kim did represent that certain requests do not
18 exist and, therefore, there was no -- Mr. Kim, you
19 said it better since you said it. No documents
20 existed so that --

21 MR. KIM: Yes. The statement -- the
22 position on the part of the Illinois EPA would be
23 that short of the documents that have already been
24 provided through the response to the request for

1 production and through documents which were
2 provided at this morning's hearing and which have
3 been referenced now, I believe, as Petitioner's
4 Exhibits 10 through 12, there are no other
5 documents that would satisfy the request and,
6 therefore, the Illinois EPA is unable to proffer
7 any further information.

8 HEARING OFFICER WALLACE: Mr. Prillaman,
9 did you want to add anything for the record on the
10 discovery issue?

11 MR. PRILLAMAN: Only to make the record
12 clear that Mr. Kim is stating that the Agency has
13 none of the documents I requested as it relates to
14 the reasonableness of and the manner of judging the
15 reasonableness of monthly rental rates for water
16 treatment plants. Beyond that, the Agency,
17 apparently, is not stating whether they do or don't
18 have rules, regulations, guidance memos, or
19 standards that govern the conduct of its reviewers
20 on the question of reasonableness. Is that
21 correct?

22 MR. KIM: The position of the Illinois
23 EPA is that the response that you have entered into
24 evidence as Exhibit Number 5 is entirely responsive

1 to the requests that were made.

2 HEARING OFFICER WALLACE: All right.

3 There being no further preliminary matters, do you
4 wish to make an opening statement, Mr. Prillaman?

5 MR. PRILLAMAN: Yes, I think a very brief
6 one, Your Honor.

7 This case involves an applicant that had
8 applied to the Agency for reimbursement of costs
9 several times in the past for several corrective
10 action measures that have taken place at his site.
11 Those costs have included, from time to time, a
12 request for reimbursement of \$3,500.00 per month
13 for the rental of a water treatment plant that is
14 necessary to remediate the site.

15 The Agency, in the past, has always
16 before approved the \$3,500.00 per month rate. As a
17 consequence, the last request which is the subject
18 of this hearing, was applied for at the exact same
19 rate of \$3,500.00 a month but denied for no reason
20 stated in the letter other than it was
21 unreasonable.

22 We expect the evidence to demonstrate
23 that the Agency's own prior rulings in this case
24 establish the reasonableness of the rate, and that

1 fact alone obviates the need for the applicant to
2 provide any further back up than the fact that they
3 have been paid that very rate before. The burden
4 shifts to the Agency, then, to demonstrate why it
5 is that it changed its mind. That's what we think
6 this case is about. That's why I asked for the
7 discovery to see the basis upon which the Agency,
8 in fact, changed its mind in this case.

9 The evidence will further demonstrate
10 that \$3,500.00 per month has been considered by the
11 Agency, relatively speaking, a fair and reasonable
12 charge even though the Agency usually pays more
13 than that for the cost to design, construct,
14 operate and maintain water treatment plants
15 throughout the State of Illinois.

16 So we think the evidence will demonstrate
17 that the Agency was wrong when it denied this
18 claim, that it erred on the facts and on the law
19 and it also erred by its own precedential standards
20 and that it did so without reference to any
21 standards or policies or databases or anything that
22 I requested them to produce because they are not
23 there. They, apparently, relied upon the judgment
24 of one person who is not even usually assigned to

1 this kind of a matter.

2 We expect that the Board will find in our
3 favor that the \$3,500.00 a month, in fact, is a
4 fair and reasonable charge and should have been
5 paid in this case.

6 HEARING OFFICER WALLACE: Thank you. Mr.
7 Kim.

8 MR. KIM: Yes, a short statement, as
9 well.

10 The position of the Illinois EPA in this
11 case is simply that based upon well-established
12 Board precedent the burden is upon the applicant in
13 a reimbursement matter to demonstrate that the
14 application that they submitted was sufficient to
15 demonstrate that whatever costs that were included
16 within that application were, in fact, reasonable.
17 The burden or the standard is not whether the
18 Illinois EPA has done this or done that in the past
19 but, rather, whether the application on its own
20 merits satisfies the requirement of the
21 Environmental Protection Act.

22 That is the only standard that is
23 applicable. That is the standard by which the
24 Illinois EPA conducted its activities here, and

1 based upon an application of that statutory
2 standard there it is clear that the information
3 provided within the application falls far short
4 from meeting that standard.

5 Therefore, there is no justification or
6 rationale or any other reason to shift a burden to
7 the Illinois EPA. The Illinois EPA does not have
8 the burden of providing a complete and sufficient
9 application. That's the burden of the applicant.
10 In this case the applicant did not meet that
11 burden.

12 HEARING OFFICER WALLACE: All right.
13 Thank you.

14 Mr. Prillaman, do you have any
15 witnesses?

16 MR. PRILLAMAN: I call Chris Kohrmann.

17 HEARING OFFICER WALLACE: All right.

18 MR. KIM: Is it all right if the witness
19 takes his copy of the record with him?

20 HEARING OFFICER WALLACE: Any
21 objections?

22 MR. PRILLAMAN: No objections.

23 (Whereupon the witness was
24 sworn by the Hearing Officer.)

1 HEARING OFFICER WALLACE: Please speak
2 clearly and loudly so the court reporter can hear
3 your answer. You always have to answer with an
4 affirmative response.

5 THE WITNESS: Yes.

6 HEARING OFFICER WALLACE: Or a negative
7 response.

8 C H R I S T O P H E R K O H R M A N N ,
9 having been first duly sworn by the Hearing
10 Officer, saith as follows:

11 DIRECT EXAMINATION

12 BY MR. PRILLAMAN:

13 Q State your full name for the record,
14 please.

15 A Christopher Kohrmann.

16 Q Mr. Kohrmann, what do you do for a
17 living?

18 A I am a project manager for the Leaking
19 Underground Storage Tank Section.

20 Q How long have you been a project manager
21 for the LUST Section?

22 A For seven years.

23 Q What are your duties and responsibilities
24 as project manager?

1 A To review, approve, modify, or deny
2 20-day reports, 45-day reports, corrective action
3 plans, site classification plans, and site
4 classification completion reports, and also to
5 review billing applications for technical merits.
6 Q On this last point you made, is that what
7 you did in connection with the application that was
8 reviewed by you for Owens Oil in this case?
9 A No.
10 Q Would you repeat again what that last
11 point is that you do for a living? You review
12 what?
13 A I review billing packages for the Leaking
14 Underground Storage Tank Section for technical
15 merits.
16 Q What does that mean?
17 A I review the billing packages to
18 determine if the costs are associated with
19 corrective action.
20 Q In the case of the Owens Oil Company that
21 is at issue here, you did conclude, then, that it
22 had technical merit?
23 A No.
24 Q You did not conclude that?

1 A No. Again, your question was did I
2 perform a review for corrective action for this and
3 I responded no.

4 Q Okay. What is it, then, of the things
5 you just listed that you do as project manager in
6 the LUST Section with regard to the Owens Oil
7 Company application for reimbursement package which
8 is at issue in this case? Which of the items you
9 just checked off for me, the 20-day reports, 45-day
10 reports, classification, the review of billing
11 packages for technical accuracy, which one of those
12 things, if any?

13 A None.

14 Q Okay. So your job at the Illinois EPA
15 does not include the review of applications for
16 reimbursement from the standpoint of determining
17 the reasonableness of the requests?

18 A That is correct.

19 Q That is correct. Is it true -- is it Mr.
20 Kohrmann?

21 A Yes.

22 Q Is it true, Mr. Kohrmann, that the denial
23 letter or the final letter that was issued in this
24 case, and you can refer to Joint Exhibit 1, to

1 refresh your memory.

2 A Page three.

3 Q It was signed by Douglas E. Oakley,
4 manager of the LUST billing audit sub unit of the
5 Illinois EPA?

6 A Yes.

7 Q It is true, isn't it, that Mr. Oakley, in
8 fact, did not review this package for purposes of
9 determining the reasonableness of the request?
10 Isn't that a correct statement?

11 A That's correct.

12 Q Okay. And that, in fact, it says if you
13 have questions please contact Christopher Kohrmann
14 of my staff, and that's you?

15 A Yes.

16 Q You made this determination that appears
17 in Joint Exhibit 1 dated July 18, 1997, on your
18 own; is that correct?

19 A That's correct.

20 Q Okay. And I want to be sure that I
21 understand this. The determination that you made,
22 which appears on Attachment A, to deduct \$6,900.00
23 in costs for the groundwater treatment plant lease
24 was your decision and your decision alone; is that

1 correct?

2 A That's correct.

3 Q How does that work out per month? This

4 was a three-month request and you were deducting

5 \$2,300.00 per month?

6 A That is correct.

7 Q The request was \$3,500.00 per month and

8 you deducted \$2,300.00 per month?

9 A That's correct.

10 Q All right. You did this without the aid

11 or assistance of any other person in the Illinois

12 EPA; is that correct?

13 A Could you rephrase the -- would you

14 please repeat the question?

15 Q You made this determination without the

16 aid or assistance of anyone else within the

17 Illinois EPA; is that correct?

18 A I had discussed part of the -- okay. I

19 discussed the final amount with another project

20 manager.

21 Q You are talking about the deduction of

22 \$6,900.00?

23 A No. What I had done was I had discussed

24 the similar cost for a similar treatment system

1 with another project manager and he had given me a
2 monthly lease cost that he had.

3 Q Okay. Let's talk about that. Who was
4 that other project manager?

5 A Mr. Brian Bauer.

6 Q Mr. Bauer told you that he had a similar
7 application package on his desk at that time?

8 A No, that he had a lease rate for a
9 similar treatment system.

10 Q Okay. Where did he -- where did Mr.
11 Bauer obtain the lease rate for a similar treatment
12 system?

13 A He had contacted a vendor.

14 Q Do you know when he did that?

15 A No, I do not.

16 Q Did Mr. Bauer take with him, when he made
17 the phone call to the vendor, the application
18 package that you have in front of you as part of
19 the administrative record, which is Joint Exhibit
20 1?

21 A No.

22 Q Were you a party to the telephone call
23 that he made?

24 A No.

1 Q Did you hear what the vendor told Mr.
2 Bauer in terms of what that vendor would charge on
3 a monthly rental basis for a plant that was similar
4 to the Owens plant?

5 A No.

6 Q When did Mr. Bauer make that phone call?

7 A I do not know.

8 Q It was before you wrote your letter on
9 July 18 of --

10 A Yes.

11 Q -- 1997?

12 A Yes.

13 Q And was the phone call made at your
14 request?

15 A No.

16 Q So he had made this in connection with
17 another application package; is that right?

18 A I don't know why he made that contact.

19 Q You don't know when he made it other than
20 it was before July 18, 1997?

21 A Yes.

22 Q Do you know the name of the vendor?

23 A Not offhand, no.

24 Q Okay. What kind of plant do you

1 understand Mr. Bauer described to this vendor when
2 he asked for a quote for a monthly rental?

3 A I, again, was not party to Mr. Bauer's
4 phone conversation.

5 Q So you don't know?

6 A Correct.

7 Q Okay. And what did Mr. Bauer tell you
8 that the vendor told him was a reasonable monthly
9 rental charge for what Mr. Bauer described to the
10 vendor was a plant similar to the Owens plant?

11 MS. PUCCINI: Objection. Hearsay. Also
12 compound.

13 HEARING OFFICER WALLACE: All right.
14 Break the question up. The hearsay objection is
15 overruled.

16 Q (By Mr. Prillaman) What did the vendor
17 report back?

18 A Again, I was not party to Mr. Bauer's
19 phone conversation.

20 Q So if I understand it correctly, you
21 don't know what kind of plant Mr. Bauer described
22 to the vendor, you don't know who the vendor was,
23 you don't know when the phone call was made, and
24 you don't even know what the vendor reported back

1 was a fair and reasonable charge, and on that basis
2 you reduced the applicant's \$3,500.00 a month
3 request for reimbursement by \$6,900.00?

4 A Yes.

5 Q Mr. Kohrmann, I am going to hand you
6 Plaintiff's Exhibit Number 2 for identification,
7 and before you review it I want to ask a general
8 question.

9 It is true, isn't it, Mr. Kohrmann, that
10 you had access to the Illinois EPA files in the
11 LUST Section pertaining to the Owens Oil Company as
12 they had been submitted prior to the time that you
13 reviewed this package; is that correct?

14 A That would be correct.

15 Q Okay. Therefore, you had access to the
16 Agency's prior determinations of the reasonableness
17 of the request for reimbursement of \$3,500.00 per
18 month for this water treatment facility; is that
19 correct?

20 A Yes.

21 MS. PUCCINI: Objection as to relevancy.

22 HEARING OFFICER WALLACE: Overruled.

23 Q (By Mr. Prillaman) You did have access to
24 that?

1 A Yes.

2 Q And so --

3 MR. KIM: Mr. Hearing Officer, I am
4 sorry, I don't mean to interrupt but would it be
5 possible for us to just take a moment so we can
6 take a look at these documents before we go any
7 further?

8 MR. PRILLAMAN: That is fine with me.

9 MR. KIM: I just want a moment to take a
10 look and see what we have here and also to give the
11 witness a little time to look at this.

12 HEARING OFFICER WALLACE: Mr. Prillaman
13 was asking some general questions. He had not
14 turned to this document yet.

15 MR. KIM: I am sorry.

16 HEARING OFFICER WALLACE: If Mr.
17 Prillaman is done with his general questions --

18 MR. KIM: I was hoping to head it off
19 before we got to the specific questions. I didn't
20 mean to interrupt if you have some more general
21 questions.

22 MR. PRILLAMAN: Go ahead. I will get
23 right to this.

24 HEARING OFFICER WALLACE: Do you have any

1 objection to Mr. Kohrmann looking at this?

2 MR. PRILLAMAN: No.

3 HEARING OFFICER WALLACE: Let's go off
4 the record.

5 (Whereupon a short recess was
6 taken.)

7 HEARING OFFICER WALLACE: Back on the
8 record.

9 You may continue.

10 Q (By Mr. Prillaman) Mr. Kohrmann, calling
11 your attention to Plaintiff's Exhibit Number 2,
12 does that appear to be an assemblage of Illinois
13 EPA letters on the same Owens Oil Company facility
14 that is the subject of this case?

15 A Yes.

16 Q And it does consist, does it not, of a
17 letter of March 6, 1997, from the Agency granting a
18 request for reimbursement for site remediation for
19 that facility?

20 A Yes.

21 Q And behind it are portions of the
22 application that was approved; is that correct?

23 A It appears so, yes.

24 Q That includes a request for reimbursement

1 of \$3,500.00 per month for the same water treatment
2 facility?

3 A It appears so, yes.

4 Q Okay. That was on March 6, 1997?

5 A Yes.

6 Q Okay. That was actually then issued
7 while the package that you were reviewing was being
8 reviewed by you; is that correct?

9 A That's correct.

10 Q But it was reviewed by Robert L. Mathis,
11 Jr.; is that correct?

12 A Yes, it would appear so.

13 Q Is Mr. Mathis' job at the Agency one that
14 includes responsibility to judge the reasonableness
15 of requests for reimbursements under the LUST
16 program?

17 A Yes.

18 Q Okay. Then turn -- and what time period
19 did that conclude, this March 6, 1997, letter?

20 A It appears that it covers from October
21 1st, 1995 to February 29, 1996.

22 Q All right. I call your attention to the
23 second exhibit in Plaintiff's Exhibit 2, the second
24 package of documents. The cover letter is February

1 19, 1997; is it not?

2 A Yes.

3 Q That is also an approval by the Agency of

4 the reasonableness of the request for reimbursement

5 for this exact same facility, the Owens Oil

6 facility in Greenfield, Illinois; isn't that

7 correct?

8 A It appears so, yes.

9 Q And that also includes an approved rental

10 rate, monthly rental rate of \$3,500.00 per month

11 for the same water treatment facility; isn't that

12 right?

13 A It appears so, yes.

14 Q Okay. That time period, again, was what,

15 Mr. Kohrmann?

16 A The letter states it is between March

17 1st, 1996 through May 31st, 1996.

18 Q Okay. That also, then, was the work of

19 Mr. Robert L. Mathis, Jr., the same one who had

20 written the previous letter you just testified to;

21 is that correct?

22 A That's correct.

23 Q Okay. The application that you were

24 reviewing, which is the Joint Exhibit 1 in this

1 case, was filed with the Agency on what day? Do
2 you remember?

3 A May I look?

4 Q Yes.

5 A Okay. The date of the package is May
6 1st, 1997.

7 Q Okay. I call your attention to the third
8 group of documents within Plaintiff's Exhibit 2.
9 That is a letter from the Illinois EPA, again, to
10 Owens for the same facility dated February 19,
11 1997; is it not?

12 A Yes.

13 Q That covers the time period of June 1,
14 1996 to August 31, 1996?

15 A That's what the letter states.

16 Q That also includes an approval of the
17 requested monthly rental rate of \$3,500.00 per
18 month for the same water treatment facility; is
19 that correct?

20 A I believe so. It would appear so.

21 Q Okay. Now, Mr. Kohrmann, when you
22 reviewed the application package in question, is it
23 true that you did not use the job performance
24 guidance of April 1, 1996, which is Plaintiff's

1 Exhibit 6?

2 A That is correct.

3 Q It is also true, isn't it, that you
4 didn't use a LUST Project Manager's Handbook in any
5 version, either Plaintiff's Exhibit 10, 11 or 12
6 version; is that correct?

7 A That's correct.

8 Q Okay. Do you agree with the position of
9 your Counsel when he filed his response to
10 petitioner's first request for production of
11 documents, which is Plaintiff's Exhibit 5, that no
12 rules, no standards, no Agency policy and no
13 guidance memos exist to govern your work in this
14 case in determining the reasonableness of the
15 monthly rental of the water treatment plant in
16 question?

17 MS. PUCCINI: Objection as to the form of
18 the question. The witness should not be required
19 to testify as to what Counsel's understanding is.
20 The witness may testify as to his own
21 understanding.

22 MR. PRILLAMAN: That's exactly what I
23 asked. Do you agree with your Counsel. If he
24 doesn't, then that's his own statement and he can

1 say I don't agree with Counsel. That's what I
2 asked.

3 MS. PUCCINI: The same objection. He has
4 not laid the foundation at all that this witness
5 can give a legal answer. How can he answer whether
6 he agrees with his Counsel. He can ask this
7 witness what this witness understands.

8 HEARING OFFICER WALLACE: All right. The
9 objection is sustained.

10 Q (By Mr. Prillaman) All right. Let's not
11 ask any legal questions here. I am just going to
12 ask you a factual question.

13 Mr. Kohrmann, is it true that there is no
14 Agency rule, to your knowledge, that you used in
15 guiding your thinking and your decision making in
16 arriving at your conclusion that the application
17 for reimbursement for this treatment plant was an
18 unreasonable request?

19 A Other than the Act, no.

20 Q Other than the Act. Your answer is the
21 same as to standards and as to Agency policy and as
22 to Agency guidance memos; is that correct?

23 A That's correct.

24 Q So you used the Environmental Protection

1 Act to guide your thinking and nothing else; is
2 that correct?

3 A Correct.

4 Q All right. I can't remember what you
5 told me about Plaintiff's Exhibit Number 2. Did
6 you review the documents that we have just
7 discussed in Plaintiff's Exhibit 2, which are the
8 prior applications and approvals of the same rate
9 by the Agency?

10 A No.

11 Q You did not?

12 A I did not.

13 Q They were accessible to you but you just
14 didn't review them?

15 A That's correct.

16 Q Okay. Now, you are also aware that in
17 the Illinois EPA LUST files there are other
18 facilities in the State of Illinois undergoing
19 cleanup for which applications for reimbursement
20 are being made almost daily; is that correct?

21 A That's correct.

22 Q In connection with that, did you have
23 occasion to review any of those other files in the
24 State of Illinois that may have involved the use of

1 water treatment plants and requests to the Agency
2 for reimbursement for either the cost to design
3 those plants, to build those plants, to operate
4 those plants, to maintain those plants, or to
5 repair those plants?
6 MS. PUCCINI: Objection as to relevancy.
7 HEARING OFFICER WALLACE: Overruled.
8 THE WITNESS: Can you repeat the
9 question?
10 MR. PRILLAMAN: I think that is going to
11 have to be read back.
12 HEARING OFFICER WALLACE: Could you read
13 the question back?
14 (Whereupon the requested
15 portion of the record was read
16 back by the Reporter.)
17 THE WITNESS: Yes.
18 Q (By Mr. Prillaman) You did?
19 A Yes.
20 Q Can you list the files that you did
21 review, then, at the Illinois EPA that it did
22 involve those issues in aiding your decision in
23 this case?
24 A I can't recall any offhand.

1 HEARING OFFICER WALLACE: Mr. Kohrmann,
2 you will have to speak up.

3 THE WITNESS: I am sorry. No, I can't
4 recall any of the similar sites that I used in this
5 decision.

6 Q (By Mr. Prillaman) Your testimony is,
7 then, that when you got this application package
8 for your review, you went to other Agency files
9 that involved similar issues; is that right?

10 A No.

11 Q You didn't?

12 A No.

13 Q Okay. One of the issues in the package
14 you were asked to review was whether \$3,500.00 per
15 month for the rental of a water treatment plant is
16 reasonable?

17 A Yes.

18 Q Did you go to any other Illinois EPA LUST
19 reimbursement files that presented that issue?

20 A No.

21 Q All right. So if you did look at any
22 other files, that was for purposes of helping you
23 come to a conclusion on issues other than the one
24 presently before the Pollution Control Board today?

1 A Correct.

2 MS. PUCCINI: Objection as to

3 speculation.

4 MR. PRILLAMAN: He has already answered

5 yes.

6 HEARING OFFICER WALLACE: The answer will

7 stand. The objection is overruled.

8 Q (By Mr. Prillaman) So calling your

9 attention, for example, to Plaintiff's Exhibit 1,

10 which is a rather large exhibit but it is briefly

11 identified on the top of it, is it a fair

12 statement, Mr. Kohrmann, that you did not have

13 occasion to review the Braun Amoco file at the

14 Illinois EPA in connection with the costs for which

15 the owner-operator sought reimbursement to design,

16 construct, operate, maintain and repair that water

17 treatment plant at that facility?

18 A Correct.

19 Q Okay. As you sit here today, you are

20 totally unfamiliar with that file, aren't you?

21 A If I have seen it, I don't recall.

22 Q Okay. Is it a correct statement, then,

23 Mr. Kohrmann, that you did not have occasion to

24 review other Illinois EPA LUST files in which a

1 request for reimbursement of a plant similar to
2 Owens was made for any amount of money?

3 A In response to this?

4 Q During your review period -- is it a
5 correct statement to say that during your review
6 period, you did not have occasion to review any
7 other Illinois EPA LUST files that had as an issue
8 in those files the reasonableness of a plant
9 similar to the plant in the Owens case?

10 A That's correct.

11 Q That's correct. Okay. So you would not
12 be familiar with rental charges of \$3,500.00 a
13 month that have been approved as reasonable by the
14 EPA at plants similar to the Owens plant that were
15 designed and constructed and maintained by the same
16 consulting firm that designed, constructed and
17 operated the plant at Owens?

18 A That's correct.

19 Q That's correct. Is it correct, too, Mr.
20 Kohrmann, that there came a point in time during
21 your review of this application package that you
22 made a determination that \$3,500.00 a month was
23 unreasonable?

24 A Yes.

1 Q All right. And how much time elapsed
2 between the time you made that determination and
3 the date you wrote your final decision letter with
4 Mr. Oakley's signature?

5 A I am not sure exactly.

6 Q Did enough time exist between the time
7 you made that determination and the time you wrote
8 the letter denying the request for reimbursement
9 for the water treatment plant, to pick up the phone
10 and call Mr. Owens or his consultant, to ask for
11 further information?

12 A Yes.

13 Q Did you do that?

14 A No.

15 Q Was there time for you between the time
16 you made that decision and the time you wrote the
17 letter to actually write a letter to Mr. Owens or
18 to Mr. Owens' consultant to ask for further
19 information?

20 A Yes.

21 Q Okay. And you didn't do that?

22 A That's correct.

23 Q And do you know for a fact that the
24 Agency has done that in the past when it has those

1 kinds of questions?

2 A It may have, yes.

3 Q But you don't know that for a fact?

4 A It probably has, but to be absolutely

5 positive, no.

6 Q But you had enough time to make the

7 request and get the information back and satisfy

8 your curiosity or your concerns; isn't that

9 correct?

10 A That's correct.

11 Q Is there some reason why you didn't do

12 that here?

13 A No.

14 Q Mr. Kohrmann, tell us, if you know, how

15 the general public, including Mr. Owens and his

16 consultants, is informed as to the policies that

17 are used by you in determining reasonableness?

18 A I am not aware of any.

19 Q So to the best of your knowledge, people

20 who submit packages for reimbursement to you, such

21 as Mr. Owens and his consultants, are not aware of

22 the guidelines or policies that you use to

23 determine reasonableness; is that a correct

24 statement?

1 A I am not Mr. Owens, so I don't know how
2 he knows.

3 Q Do you know what the Agency has published
4 or disseminated to the general public, in
5 particularly those who are in the LUST program and
6 seeking reimbursement, in the way of guidelines on
7 the question of reasonableness? What is it that
8 you hand out to the public or publish to the public
9 to tell the public how it is that the Agency
10 determines reasonableness?

11 A I am -- I don't know of any --

12 Q Okay.

13 A -- such.

14 Q Well, then that's your answer.

15 A (Nodded head up and down.)

16 Q You determined that the plant in question
17 in this case was necessary to treat the water; is
18 that right?

19 A No.

20 Q You didn't?

21 A No.

22 Q Okay. Who made that determination?

23 A That would be Valerie Davis.

24 Q So the Agency did make that

1 determination?

2 A That would be correct.

3 Q All right. Is Valerie Davis' job one

4 that includes judging the reasonableness of the

5 requested reimbursement?

6 A No.

7 Q How is it, then, that you determined the

8 exact number you came up with as being a reasonable

9 charge for this plant which you say, I think, is --

10 what per month?

11 A \$1,200.00.

12 Q You think \$1,200.00 per month is

13 reasonable?

14 A Yes.

15 Q Can you tell the Pollution Control Board

16 how it is, based on your testimony as to what you

17 used as guidance and what you didn't use, how did

18 you come up with \$1,200.00 per month for the

19 reasonable rental value of this plant at this

20 facility for this time period?

21 A Again, I discussed it with Mr. Brian

22 Bauer.

23 Q Did Mr. Brian Bauer tell you to put down

24 \$1,200.00 a month?

1 A No.

2 Q Okay. Tell us about the conversation.

3 A As I recall, I had reviewed the
4 application for reimbursement.

5 Q Keep your voice up.

6 A I am sorry. I reviewed the application
7 for reimbursement. I had looked over the cost
8 associated in the time and materials breakdown, and
9 I am familiar with most costs except for
10 groundwater treatment systems. So I looked at that
11 and I didn't have a hard and fast number for that
12 amount. So I then went to a Mr. Brian Bauer, who I
13 understood had talked to a vendor for a similar
14 system, and that is the amount that Mr. Bauer had
15 given me.

16 Q All right. So Mr. Bauer is the one that
17 came up with the \$1,200.00 per month?

18 A That's correct.

19 Q You didn't subject that to any further
20 scrutiny?

21 A No, I did not.

22 Q Okay. You said you didn't have a hard,
23 fast number for the fair rental value for a water
24 treatment facility. I take it you did have hard,

1 fast numbers for other requests for reimbursement
2 that were in that package?

3 A No. It is based upon experience and it
4 is also based upon a cost, hourly rates that we
5 have generated as a necessary part for Title 16.

6 Q You said it is based upon experience and
7 it is based upon -- what was the second point?

8 A The numbers that we have developed as a
9 requirement for Title 16.

10 Q The numbers that you have developed as a
11 requirement for meeting Title 16?

12 A Uh-huh.

13 Q Is that called a database?

14 A I don't know if it is a database, per
15 say.

16 Q Those are numbers that would show, based
17 on the experience of the Agency over time, what a
18 fair range of values is, say, for an engineer's
19 time per hour or for the rental of a backhoe per
20 hour and that kind of thing?

21 A For the engineer, yes. For the backhoe,
22 I am not sure.

23 Q Okay. Now, you said that the first thing
24 that you used to determine the \$1,200.00, besides

1 the fact that Mr. Bauer told you what to do, was
2 experience, and the second thing were numbers
3 developed as required to meet Title 16?

4 A Yes.

5 Q But there were no numbers for the fair
6 rental value of a plant; is that correct?

7 A That's correct.

8 Q So you had to go to experience. Now, are
9 you talking about your own experience in reviewing
10 these packages?

11 A Yes.

12 Q Okay. Had you ever before reviewed a
13 package that had a request for a monthly rental for
14 a treatment plant?

15 A When you say "reviewed," are you talking
16 about a determination of whether or not it is
17 corrective action?

18 Q No, the reasonableness of the requested
19 reimbursement.

20 A No.

21 Q You had not. So you had -- well, let me
22 ask you another question. Had you ever before had
23 occasion to review the reasonableness of a request
24 for reimbursement for the cost of designing or

1 building or operating --

2 A No.

3 Q -- a plant?

4 A No.

5 Q Okay. So in the category of experience,

6 as it pertains to this issue, we can put a zero; is

7 that right?

8 A Pretty close to that.

9 Q And for the category of the numbers

10 developed as required to meet Title 16, we can put

11 a zero there, too, correct?

12 A You would be correct.

13 Q Okay. And you don't know, do you,

14 whether Brian Bauer had the technical

15 specifications of this plant when he made the call

16 to the vendor, do you?

17 A I do not know.

18 Q You don't know whether Brian Bauer had

19 the terms of the lease between the consultant and

20 Mr. Owens that told the customer what he got for

21 \$3,500.00 a month, did you?

22 A I did not know it.

23 Q You didn't know it and Mr. Bauer didn't

24 know it, did he?

1 A I cannot speak for Mr. Bauer.

2 Q Okay. How is it, again, that you knew

3 Mr. Bauer had this estimate?

4 A I had overheard him discussing the fact

5 that he had called several vendors for groundwater

6 pumping treatment costs.

7 Q So he called more than one vendor?

8 A Yes.

9 Q Okay. So your testimony is that --

10 A He has since contacted more vendors. At

11 the time, I believe, that he had only contacted

12 one.

13 Q At the time he had only contacted one.

14 That was the basis upon which Mr. Bauer decided

15 that a fair value was \$1,200.00 a month, and that's

16 what you used in your decision; is that right?

17 A That's my understanding of how Mr. Bauer

18 made his determination and, yes, that's how I made

19 my decision.

20 Q Okay.

21 MR. PRILLAMAN: Just a second, Your

22 Honor.

23 HEARING OFFICER WALLACE: All right.

24 MR. PRILLAMAN: No further questions.

1 HEARING OFFICER WALLACE: All right. Mr.

2 Kim.

3 MR. KIM: Ms. Puccini will be conducting
4 the examination.

5 HEARING OFFICER WALLACE: All right. Ms.
6 Puccini. Have you entered an appearance?

7 MS. PUCCINI: Yes, I did.

8 HEARING OFFICER WALLACE: Okay. Thank
9 you.

10 CROSS EXAMINATION

11 BY MS. PUCCINI:

12 Q Chris, let's talk a little bit about the
13 different reviews that take place in reviewing the
14 reimbursement applications. What type of review do
15 you normally conduct in your job duties?

16 A I normally conduct what is known as a
17 technical review.

18 Q What does that involve?

19 A That involves looking at the costs within
20 the reimbursement package and determining whether
21 or not they are a necessary part of corrective
22 action.

23 Q What other types of reviews are done in
24 reviewing a reimbursement package?

1 A What is also known as a fiscal review
2 which looks at the reimbursement package to
3 determine if the costs are reasonable and that they
4 meet some other requirements.

5 Q And what type of review did you do in
6 reviewing the Owens Oil application?

7 A I performed a fiscal review.

8 Q The functions of the fiscal review, what
9 section of the Agency performs those types of
10 duties?

11 A It is the remedial -- it is RPAPU. It is
12 under --

13 HEARING OFFICER WALLACE: Back up. You
14 said RPAPU?

15 THE WITNESS: Yes. Remedial Procurement
16 Accounting -- Remedial Projects Accounting
17 Procurement Unit.

18 HEARING OFFICER WALLACE: And the acronym
19 you were using is RPAPU?

20 THE WITNESS: That's correct.

21 HEARING OFFICER WALLACE: Thank you.

22 Q (By Ms. Puccini) Is there a sub unit to
23 that group that does these types of accounting --

24 A Yes.

1 Q -- fiscal reviews, to use your term?

2 A Yes.

3 Q What unit or section are you currently

4 employed in?

5 A I am currently in the Leaking Underground

6 Storage Tank Section.

7 Q But you reviewed an application that was

8 in a different section from yours?

9 A That's correct.

10 Q Why did you do that?

11 A We did that at the request of our section

12 manager, Mr. Douglas Clay, to expedite and to move

13 billing packages through so that they could be

14 paid. There was quite a large backlog.

15 Q Had you done accounting reviews before in

16 the past?

17 A Yes.

18 Q When was that?

19 A The first time I had performed accounting

20 reviews was approximately four years ago, and then

21 in the past year I have done two sets of accounting

22 reviews.

23 Q Approximately how many accounting reviews

24 prior to the one you did here in Owens Oil had you

1 performed?

2 A Between 10 and 15.

3 Q And how many to date have you done,

4 accounting reviews?

5 A Approximately 25 to 30.

6 Q Are you aware of any special

7 qualifications that are required to do an

8 accounting review?

9 A No.

10 Q Are you qualified to do such an

11 accounting review?

12 A Yes.

13 Q Is it unusual at all that you would be

14 asked to do an accounting review?

15 A Again, under specific circumstances we

16 are requested, yes.

17 Q You have been asked before to do such

18 reviews?

19 A Yes.

20 Q When you are reviewing an application for

21 reimbursement, is there any statutory or regulatory

22 requirement that you review other reimbursement

23 applications for other sites?

24 A Can you rephrase the question?

1 Q Sure. Let's put it in context. When you
2 reviewed the Owens Oil application --
3 A Yes.
4 Q -- are you aware of any statutory or
5 regulatory requirement that would require you to
6 look at other applications that are similar to
7 Owens Oil?
8 A No.
9 Q Do you know of any requirement that you
10 look to other information submitted by other
11 applicants in your determination in the Owens Oil
12 reimbursement package?
13 A No.
14 Q Your review of the reimbursement package,
15 is that based upon the information that is
16 submitted by the applicant?
17 A Yes.
18 Q Where is the requirement that the
19 applicant submit the information?
20 A It is within the Act.
21 Q Did you site the Act in your final
22 decision letter?
23 A Yes.
24 Q Did you state a basis for denying the

1 costs in the final decision letter?

2 A Yes.

3 Q What is the time and materials format?

4 A That's the format that the Act requires,
5 and the Agency has developed forms to help the
6 owner-operator fill them out within that time and
7 material breakdown.

8 Q Could you explain what a time and
9 materials breakdown includes?

10 A Can I use an example?

11 Q Sure.

12 A Such as a -- a time and material
13 breakdown for personnel would be relatively simple.
14 It would be the person, their hourly rate, and the
15 amount of time that they had performed that act and
16 then you would have the total cost.

17 A time and material breakdown for a
18 treatment system, if it was purchased, would be the
19 cost of the material, the necessary time to
20 assemble the material, and that would be the time
21 and material breakdown for that.

22 Q When you receive an application, are
23 costs to be broken down into this time and
24 materials format?

1 A Yes.

2 Q Were the costs relating to the \$3,500.00

3 for the lease rate broken down in a time and

4 materials format?

5 A I believe no.

6 Q That is required by the Act?

7 A Yes.

8 Q What is the specific citation to the Act

9 that has that requirement?

10 A Section 22.18(b)(d)(4)C.

11 Q Was that citation, in fact, in your final

12 decision letter?

13 A Yes.

14 Q Are you aware of any statutory or

15 regulatory requirement that would require you to

16 write a letter to the owner or operator seeking

17 additional documentation?

18 A No.

19 Q Is there any requirement, regulatory or

20 statutory, that would require you to seek

21 additional information from an applicant regarding

22 a cost that you thought was high?

23 A No.

24 Q Mr. Prillaman asked you several questions

1 about your conversation with Brian Bauer.

2 A That is correct.

3 Q Is it normal for you in the course of

4 your duties to discuss an application you are

5 working on with your other coworkers?

6 A That's correct.

7 Q Have you done that before in the past?

8 A Yes, I have.

9 Q Had you not spoken to Brian Bauer in

10 reviewing the Owens Oil application, what would you

11 have done with the \$3,500.00 lease rate?

12 MR. PRILLAMAN: I would object as calling

13 for speculation. What would you have done if some

14 other facts other than the facts that are in this

15 case had been extant. That's objectionable.

16 MS. PUCCINI: I am simply eliciting from

17 the witness what he was required to do and what he

18 isn't required to do. So if there are things that

19 he didn't have to necessarily do, then his decision

20 would have been different.

21 HEARING OFFICER WALLACE: Okay. I think

22 you can rephrase the question.

23 MS. PUCCINI: Okay.

24 Q (By Ms. Puccini) Without any other

1 additional documentation or without the
2 documentation provided in the application to
3 justify the \$3,500.00 lease rate, how would you
4 determine whether the \$3,500.00 is reasonable?

5 A You cannot.

6 Q How would you come up with a -- is it
7 your responsibility to come up with a reasonable
8 rate for a groundwater treatment system?

9 A No.

10 Q Whose responsibility is that?

11 A It is my understanding it is the
12 owner-operator's responsibility.

13 Q And that's because of the provision of
14 the Act?

15 A That's correct.

16 MS. PUCCINI: Could I have a minute?

17 HEARING OFFICER WALLACE: Yes.

18 MS. PUCCINI: That's all I have.

19 HEARING OFFICER WALLACE: Mr. Prillaman,
20 anything further?

21 MR. PRILLAMAN: Yes.

22 REDIRECT EXAMINATION

23 BY MR. PRILLAMAN:

24 Q Mr. Kohrmann, as a person who has

1 declared himself to be qualified to do accounting
2 reviews, don't you agree that it would have been
3 helpful for you to have known that the Agency
4 itself had previously approved as reasonable the
5 requested rate of \$3,500.00 per month for this very
6 plant?

7 A Yes.

8 Q All right. As a person who is qualified
9 to do accounting reviews, wouldn't it have been
10 helpful for you to know that the Agency had
11 previously approved requests for reimbursement on
12 water treatment plants similar to this one
13 elsewhere in the State of Illinois at a rate at
14 least as high as \$3,500.00 a month?

15 A Yes.

16 Q And as a person who is qualified to do
17 accounting reviews, wouldn't it have been helpful
18 for you to have known from the applicant, or the
19 applicant's consultant in this case, further
20 information such as the fact that they had
21 previously been awarded the exact same amount or
22 further information as to the costs involved in
23 this case?

24 A Yes.

1 Q Okay. But your testimony is that because
2 the law didn't require it, you didn't look at the
3 other files, you didn't make any phone calls, you
4 didn't write any letters, you didn't look beyond
5 the bare bones application in front of you; is that
6 correct?

7 A That's correct.

8 MR. PRILLAMAN: Okay. No further
9 questions.

10 HEARING OFFICER WALLACE: All right. Ms.
11 Puccini.

12 MS. PUCCINI: Just real quickly.

13 RECROSS EXAMINATION

14 BY MS. PUCCINI:

15 Q Is it common practice in your review of
16 the reimbursement applications to pull all prior
17 applications of other sites that may deal with an
18 issue that you are reviewing each time a new
19 application comes in that you have to make a
20 determination?

21 A No.

22 Q Would it have been helpful in your review
23 if the application contained a breakdown of what
24 the \$3,500.00 lease rate contained?

1 A Yes.

2 MS. PUCCINI: I have nothing further.

3 HEARING OFFICER WALLACE: Thank you, Mr.

4 Kohrmann. You may step down.

5 (The witness left the stand.)

6 HEARING OFFICER WALLACE: Mr. Prillaman.

7 MR. PRILLAMAN: Yes, I call --

8 HEARING OFFICER WALLACE: Well, actually,

9 why don't we take a short five-minute break before

10 you call your next witness.

11 MR. PRILLAMAN: Okay. Thank you.

12 (Whereupon a short recess was

13 taken.)

14 HEARING OFFICER WALLACE: Back on the

15 record.

16 All right, Mr. Prillaman.

17 MR. PRILLAMAN: I call David Dunn.

18 (Whereupon the witness was

19 sworn by the Hearing Officer.)

20 HEARING OFFICER WALLACE: Again, please

21 speak clearly and loudly so that the court reporter

22 can hear your answers.

23 THE WITNESS: Okay.

24 HEARING OFFICER WALLACE: Thank you.

1 D A V I D P A U L D U N N ,
2 having been first duly sworn by the Hearing
3 Officer, saith as follows:
4 DIRECT EXAMINATION
5 BY MR. PRILLAMAN:
6 Q State your full name for the record.
7 A David Paul Dunn.
8 Q Where do you live?
9 A I live at 6971 Walnut Ridge Road,
10 Grantsburg, Illinois.
11 Q Okay. Mr. Dunn, what do you do for a
12 living?
13 A I am currently a process mechanical
14 engineer for Lockheed Martin.
15 Q Where is that located?
16 A It is located in Paducah, Kentucky.
17 Q Okay. Can you tell the Pollution Control
18 Board briefly your educational experience as well
19 as your work experience since college?
20 A Yes, sir. My previous experience is with
21 an environmental consulting firm in Southern
22 Illinois, Massac Environmental Technologies. I
23 worked at that place of employment for five years
24 as a project manager.

1 Q Is that in the State of Illinois?

2 A Yes, sir, that is in Metropolis,

3 Illinois.

4 Q All right.

5 A My project duties included design of

6 remediation systems, procurement of material and

7 equipment, supervision of construction,

8 installation of remediation systems, monitoring and

9 maintenance plans, and review of corrective action,

10 LUST reimbursement packages.

11 Q All right. Now, the experience you had

12 with Massac Environmental Technologies for five

13 years, was that from May of 1992 to May of 1997?

14 A Yes, it was.

15 Q I don't know if you stated it for the

16 record. What was your educational experience?

17 A I have a Mechanical Engineer's Bachelor

18 of Science Degree from the United States Military

19 Academy at West Point.

20 Q Are you a Registered Professional

21 Engineer?

22 A Yes, sir, I am.

23 Q In the State of Illinois?

24 A Yes, sir.

1 Q In connection with your work at Massac
2 Environmental Technologies in Illinois, from May of
3 1992 to 1997, did you have occasion to design,
4 construct, operate, maintain and cost out the water
5 treatment plants used at LUST cleanup sites?

6 A Yes, I did.

7 Q Did you have considerable experience in
8 that regard?

9 A Yes, that was my basic job description.
10 I had a few other miscellaneous duties but in all I
11 had maybe 8 to 12 ongoing projects through that
12 time period that involved those types of things.

13 Q In connection with those 8 to 12 projects
14 that you had, were all of those projects projects
15 that required interfacing with the Illinois EPA
16 LUST Section?

17 A Yes, they were.

18 Q Okay. In any of those cases were actual
19 requests for reimbursement made for those cleanup
20 costs?

21 A Yes, they were.

22 MR. PRILLAMAN: I would proffer Mr. Dunn
23 at this time as an expert in the design,
24 construction, operation, maintenance and costing of

1 water treatment plants at LUST cleanup sites in the
2 State of Illinois.

3 MR. KIM: Could I ask just a few
4 questions of the witness?

5 HEARING OFFICER WALLACE: Yes, you may.

6 VOIR DIRE EXAMINATION

7 BY MR. KIM:

8 Q Mr. Dunn, I don't know that I am going to
9 have any questions about your qualifications but
10 just a little background, and I might have missed
11 this. You stated that you were previously with
12 Massac Environmental Engineering?

13 A Massac Environmental Technologies.

14 Q Massac Environmental Technologies. What
15 were the dates that you were employed by them?

16 A From May 1992 through May 1997, roughly
17 five years.

18 Q Okay. In that time period how many
19 groundwater treatment system projects would you say
20 you worked on, total?

21 A I would say I worked on about six. The
22 balance of those projects being sole remediation,
23 other alternative technology projects.

24 Q So in your five years at Massac, there

1 were approximately six groundwater treatment
2 systems that you were directly responsible for?

3 A That's correct.

4 Q And your duties included the design of
5 the treatment system?

6 A Yes.

7 Q And the actual construction of the
8 treatment system?

9 A No. I was a supervisor. We had
10 environmental technicians that would fabricate the
11 unit.

12 Q But you are aware of how those units are
13 constructed?

14 A Yes.

15 Q And the operation of a system?

16 A Yes.

17 Q And that involves your performing on site
18 duties and things like that?

19 A That's correct.

20 Q Do you remember, off the top of your
21 head, what the six projects were that you worked
22 on?

23 A Let's see. The Braun Amoco is an example
24 that I have been asked about. The station in

1 Murfreesboro. There is a site in Canton,
2 Illinois. There was a site in St. Louis,
3 Missouri. Obviously, it doesn't really pertain.
4 There was a site in Marion, Illinois.

5 Q And of these sites, were the releases
6 that were the subject of the remediation at the
7 site prior to or after September of 1993?

8 A Were the releases?

9 Q Yes, the release confirmation dates.

10 A Release confirmation dates.

11 Q I ask that because I see your tenure
12 there sort of straddles that time period. You
13 started in May of 1992 and finished in May of
14 1997. Roughly speaking, how many of those projects
15 had a release confirmation date that took place
16 after September of 1993?

17 A Maybe half.

18 Q Okay. Maybe half.

19 A The reason I question some of that is in
20 some cases the groundwater treatment occurred
21 after. There may have been a site investigation
22 and then a LUST incident number assigned but I
23 don't particularly know the date, or my involvement
24 may have been after that particular date.

1 Q Are you familiar with what I am going to
2 call the old LUST law and the new LUST law? If you
3 don't understand that, I can elaborate.

4 A Basically, yes.

5 Q Okay. When I say old law and new law,
6 for the record, what I am referring to as the old
7 law is the statutory provisions contained in
8 Section 22.18(b) of the Environmental Protection
9 Act which has since been repealed. When I say new
10 law, I am referring to Title 16 which would be
11 Section 57 of the Environmental Protection Act. Is
12 that --

13 A I don't particularly recall these as
14 section and statute numbers. We have Agency
15 guidelines that they publish that tell you what the
16 cleanup standards are from year-to-year.

17 Q But you are generally familiar with the
18 terms old law and new law?

19 A Well, now, they had a new law come out
20 this past year so --

21 Q Well, granted. We keep changing it, I
22 know. Well, let's put it this way. I guess what I
23 am asking is, and I think you might have answered
24 this, you said approximately half of those sites

1 were sites that would have been where cleanup or
2 remediation would have been conducted under the old
3 law?

4 A What portion are you distinguishing?

5 Q Your activities -- I am sorry. Could you
6 say that again?

7 A What distinction are you making as far as
8 old law? I am familiar with when the Agency
9 changes their policy or programs.

10 Q Well, the guideline, generally speaking,
11 is whether or not a release was confirmed before or
12 after September 13th of 1993.

13 A Okay.

14 Q Generally speaking, if it happened before
15 that date, it is considered, by my terminology, an
16 old law site. If it happens after, it is generally
17 a new law site.

18 A Okay.

19 Q So then using that guideline, do you
20 know, roughly, how many of your sites were the old
21 law?

22 A I would say about half.

23 Q About half. So of the six, approximately
24 two to three?

1 A That's correct.

2 MR. KIM: Okay. I have no objection as
3 to this witness being offered as an expert in terms
4 of how groundwater treatment systems would be
5 designed and constructed and operated. Any
6 testimony beyond that, though, I think we probably
7 would -- well, I would reserve an objection if the
8 testimony went beyond that scope.

9 HEARING OFFICER WALLACE: We will have to
10 see. You may continue.

11 MR. PRILLAMAN: He is proffered, though,
12 as an expert, also, in the costing of those
13 plants. He is proffered for that basis. I would
14 like a ruling that he is, in fact, an expert on
15 that issue, as well, unless you want to voir dire
16 him further on that.

17 MR. KIM: Well, I guess, then, I would
18 object to his being classified as an expert for the
19 purposes being offered up on the basis that during
20 his five-year tenure at his former place of
21 employment he has testified that he was directly
22 involved with approximately two to three sites
23 which would meet the criteria of the case we are
24 talking about here which would be a groundwater

1 treatment system which would have been constructed
2 and operated under the provisions of Section
3 22.18(b).

4 I don't know that two to three sites over
5 a five-year period would qualify as being an
6 expert. As a matter of fact, I don't think two to
7 three sites over a five-year period qualifies as an
8 expert.

9 MR. PRILLAMAN: I think that distinction
10 is illusory. There is no particular issue as to
11 whether old or new law impacts on the
12 reasonableness of this request that is before the
13 Board now. It is either reasonable or it is not.
14 And to try to draw that distinction and say that a
15 person who has spent five years on these sites in
16 connection with the costing of them, requesting
17 reimbursement for them and so forth, does not know
18 how to establish reasonableness, I think is an
19 illusory objection.

20 MR. KIM: Well, when you consider the
21 Board's standard in reviewing this should be the
22 citation that the Agency provided as the basis for
23 its denial, and that denial is a provision from
24 Section 22.18(b).

1 I don't know that any commentary or
2 discourse as to what might be reasonable under
3 Section 57 would have any direct relevance or if it
4 did it would take an additional step of proving up,
5 and I don't know that we need to go into comparing
6 Section 57 with Section 22.18(b).

7 HEARING OFFICER WALLACE: All right.
8 Thank you. I understand your objection, but I am
9 not sure it goes to Mr. Dunn's qualifications as an
10 expert. I will rule at this time that Mr. Dunn
11 qualifies as an expert.

12 MS. PUCCINI: I am sorry. Could I, as a
13 procedural matter, just ask a question.

14 Since we are getting into a technical
15 area and we are going to have him testify as an
16 expert, I may need to, from time to time, consult
17 with my client. I want to be able to do that
18 freely without effecting the discourse that we may
19 have later, because I will be examining Mr.
20 Kohrmann, and I want it on the record that we will
21 not at all be discussing testimony, but I may need
22 to consult with him on technical issues.

23 HEARING OFFICER WALLACE: Well, keep it
24 down.

1 DIRECT EXAMINATION (continued)

2 BY MR. PRILLAMAN:

3 Q Mr. Dunn, calling your attention to Joint
4 Exhibit Number 1, which is the administrative
5 record in this case --

6 A Yes.

7 Q -- including the application for
8 reimbursement and the Agency's decision, have you
9 had occasion to review that file as it pertains to
10 the water treatment plant provisions or parts
11 thereof?

12 A Yes, I have.

13 Q Okay. Calling your attention, also, to
14 Plaintiff's Exhibit Number 1, which is the Agency's
15 record in the Braun Amoco groundwater treatment
16 system, are you familiar with that file, as well?

17 A Yes, I am.

18 Q Okay. Would you tell the Pollution
19 Control Board where the Braun Amoco facility is
20 located?

21 A The Braun Amoco is located in
22 Pinckneyville, Illinois.

23 Q All right. You previously testified that
24 that was one of the projects while you were at

1 Massac Environmental Technologies that was under
2 your supervision and control?

3 A That is correct.

4 Q Okay. So you are familiar, then, with
5 the elements of the water treatment facility that
6 was constructed and operated at that Pinckneyville
7 site?

8 A Yes, sir.

9 Q Have you had occasion to also go by the
10 Owens facility in Greenfield, Illinois?

11 A Yes, I have.

12 Q Okay. Have you had occasion to review
13 the workings of that plant, the components of it,
14 the capacity of it and so forth?

15 A Yes, I have.

16 Q Okay. So in comparing the two
17 facilities, the Braun Amoco and the Owens facility,
18 is it fair to say that both of them are water
19 treatment facilities?

20 A Yes, they are.

21 Q And both of them are located at LUST
22 cleanup sites?

23 A Yes, they are.

24 Q And both of them have been the subject of

1 requests for reimbursement to the Illinois EPA LUST
2 Section?

3 A Yes.

4 Q Okay. Mr. Dunn, based upon your
5 education, background, and experience, and based
6 upon your knowledge of the Owens facility, do you
7 have an opinion as to whether a request of
8 \$3,500.00 per month reimbursement for the rental of
9 that plant is a reasonable request?

10 A I believe it is reasonable.

11 Q Can you give us the basis for that
12 opinion? And you can use the Braun Amoco as a
13 point of comparison if you wish.

14 A Okay. The Braun Amoco is a request for
15 reimbursement under slightly different
16 circumstances. When I was the project manager for
17 this, the system was purchased and constructed and
18 installed and reimbursement was requested as a lump
19 sum. The ongoing operations of the site were
20 charged out through time as they occurred.

21 The total amount that was spent to design
22 and fabricate and construct this unit, to install
23 it, and to monitor and maintain and to treat the
24 water as it was designed, is comparable, although

1 not submitted in the same form as what we have at
2 the Owens site, which my understanding is the
3 initial charges for the purchase of the equipment
4 and for the construction were billed at a monthly
5 lease rate as opposed to an entire up-front amount.

6 Q Are you testifying that you know what the
7 lump sum cost was to build Braun Amoco and what the
8 ongoing operations cost the owner there, the total
9 amount that was spent on all of these and what has
10 been requested to the Agency for reimbursement at
11 Braun?

12 A I have a rough idea based on what is in
13 here, yes.

14 Q Okay. Based on your knowledge of that
15 site and on the information contained in
16 Plaintiff's Exhibit 1, could you tell the Board
17 when the operations began at that plant and if they
18 have ended?

19 A Okay. The site was put into place in mid
20 1994. It was still running at the time that I left
21 this May. I could not tell you if it is still in
22 operation. I believe that it is.

23 Q Your knowledge and information is that
24 the plant at Braun has been running, up and running

1 for at least three years?

2 A That's correct.

3 Q And what is your testimony as to the

4 total amount of money spent on Braun Amoco that has

5 been reimbursed by the Agency?

6 A The amount that I am aware of up until

7 February of 1997 from the reimbursement packages

8 and, again, I don't have the most recent expenses,

9 but my understanding is it is in the vicinity of

10 \$155,000.00 for the water treatment. Now, I want

11 to make a clarification on that. There is previous

12 work done at the site that will be on the Agency

13 records for soil treatment. But I am not aware of

14 the cost on that.

15 Q We are not talking soil treatment here,

16 though.

17 A Right.

18 Q We are simply talking about water

19 treatment plants that have been built in Illinois

20 under the LUST program that have sought and

21 obtained reimbursement.

22 A Correct.

23 Q All right. And comparing the \$155,000.00

24 down at Braun Amoco to the monthly rental of

1 \$3,500.00 a month, and assuming a three-year
2 running time period, is it your opinion that the
3 \$3,500.00 per month charged out as a monthly rental
4 is comparable to the \$155,000.00 charged out in a
5 different way at Braun?

6 A I believe that -- the two sites are
7 slightly different. I believe that for this -- if
8 you break out the services and the equipment that
9 was provided for the Owens site, that it is
10 equivalent to the same services and the same
11 equipment in an approximate comparison that we have
12 at the Pinckneyville site.

13 Q Did you believe when you submitted your
14 applications for reimbursement at Braun Amoco that
15 those charges were fair and reasonable?

16 A Yes, we did.

17 Q Okay. And then the Agency agreed with
18 you?

19 A Yes, they did.

20 MR. PRILLAMAN: No further questions.

21 HEARING OFFICER WALLACE: All right.

22 Thank you.

23 Okay. Mr. Kim.

24 MR. KIM: Thank you.

1 CROSS EXAMINATION

2 BY MR. KIM:

3 Q Mr. Dunn, before I begin, my statement
4 concerning your number of sites and all of that, I
5 have no reason to believe that you don't know
6 anything. I mean, that you have nothing but the
7 most deep wealth of information about this. It is
8 simply me being a lawyer.

9 A That's okay.

10 Q Let me ask you a little bit about some of
11 the questions that Mr. Prillaman asked you.

12 First of all -- well, let's just go
13 straight to the Braun Amoco site. Do you know who
14 prepared the reimbursement application for the
15 Braun site?

16 A Yes, I do.

17 Q Who was that?

18 A That was Mary Rye (spelled phonetically).

19 Q And what were her job duties there?

20 A She was an office manager. She did
21 bookkeeping, clerical type work.

22 Q Did you contribute to the preparation of
23 the reimbursement application?

24 A Not to the preparation of -- no, not to

1 the preparation.

2 Q During the course of your tenure at
3 Massac, did you prepare any reimbursement
4 applications for reimbursement that would have
5 addressed reimbursement for a groundwater treatment
6 system?

7 A Prepare as opposed to review?

8 Q Prepare.

9 A No, I did not.

10 Q Did you review some?

11 A Yes, I did.

12 Q Who prepared those? Again, the person in
13 your office?

14 A Yes.

15 Q So did you review the Braun application?

16 A Yes.

17 Q I am a little confused or I am little
18 slow on the uptake. When you said that the Massac
19 groundwater treatment system charges were a lump
20 sum; is that right?

21 A The way that we did our billing, which is
22 an approved Agency method, is when we have one of
23 these systems we buy all of the equipment, and we
24 put an acceptable markup on that and charge that

1 out to the Agency as a lump sum. The same thing
2 with the design. That's an hourly rate, depending
3 on how many hours it takes to build the thing. It
4 is submitted as a lump sum, up front, as opposed to
5 being -- we don't split it up and charge it out
6 over several months.

7 Q When you say "lump sum," does that
8 contemplate that whatever price they pay will be
9 the price for the life of the groundwater treatment
10 system?

11 A No. There is additional charges because
12 you basically have the unit and then the equipment
13 inside. There is constant ongoing maintenance and
14 replacement of parts. You have wear of the pumps,
15 the compressors, things that when you do your
16 initial -- your bid and you put the system
17 together, obviously, once it starts running you
18 have replacement costs.

19 Q So you would be separating out operation
20 and maintenance and what other costs would be
21 included, then, in that lump sum? Design costs?

22 A Design.

23 Q The initial equipment purchase?

24 A Correct.

1 Q The construction costs?

2 A Right.

3 Q If this was not constructed on site, the

4 transportation charges to the site?

5 A Correct. Your taxes, and the purchase of

6 the material, and your overhead and profit that you

7 tack on to that.

8 Q So aside from operation -- ongoing

9 operation and maintenance of the equipment,

10 everything else would have been included in your

11 lump sum?

12 A Yes, I would agree with that.

13 Q Okay. Is this -- you understand that the

14 lease rate for the -- or the charge for the

15 groundwater treatment system for the Owens site is

16 done on a monthly lease basis?

17 A Yes.

18 Q When you said that the two charges were

19 relatively comparable, you said you had to -- you

20 said they were slightly different and you had to

21 break out certain charges?

22 A Right.

23 Q What charges did you break out for Braun?

24 Or for Owens, rather?

1 A Well, the difference between the sites --
2 your up-front costs that we talked about, the
3 equipment and the design time, you have that as a
4 lump sum, like I said, up front. The Braun
5 includes -- to my understanding, part of the lease
6 agreement is that ongoing maintenance.

7 Q I am sorry. You mean Owens?

8 A I am sorry. Yes, the Owens site.

9 Q Okay.

10 A As part of that monthly allotment is
11 additional to just paying for the equipment and the
12 lump sum, the initial design. There is also
13 additional services that are provided that need to
14 be taken into account.

15 Q So those are additional things which were
16 not contemplated in your lump sum for the Braun
17 site?

18 A That's correct.

19 Q How do you know that these additional
20 services, or what have you, are included with the
21 monthly lease rate that is charged for the Owens
22 site?

23 A We reviewed their historical records for
24 this site and for some other sites to determine

1 what is in an average month, their expenses are
2 that they have.

3 Q Did you also state, though, that you were
4 looking at what was provided or not provided by the
5 lease?

6 A As far as an agreement, I understand
7 basically what they provide as part of that lease
8 agreement.

9 Q Have you seen the lease agreement?

10 A No.

11 Q Do you know what the lease agreement
12 provides?

13 A I have a general understanding of it,
14 yes.

15 Q What is your general understanding?

16 A My understanding is that the lease
17 provides for the equipment, for the maintenance
18 that is required to replace any items that break
19 down during the course of the project, any
20 additional trips that the field technicians need to
21 go back and replace or repair, the time that is
22 involved in that is included in that amount.

23 Q Okay. Let's say that you don't take out
24 those charges that would be referenced by the

1 lease. In other words, you don't take out the
2 equipment charge or the operation -- whatever
3 operation and maintenance charges you believe to be
4 included within the lease, is it safe to say in
5 your opinion, then, that the charges now are not
6 comparable and that, in fact, the Owens site would
7 be more expensive, by your previous testimony,
8 would be more expensive than the Braun site?

9 A You are asking me if it would be more
10 expensive?

11 Q What I am asking you is -- you said that
12 the two situations were slightly different; is that
13 correct?

14 A That's correct.

15 Q You said that to compare them you had to
16 take out certain factors in the Owens site; is that
17 correct?

18 A That's correct.

19 Q Those factors had to do with certain
20 operation and maintenance that would be provided?

21 A Right.

22 Q And other types of perhaps equipment
23 replacement?

24 A Sure.

1 Q And your understanding is that is covered
2 by the lease?

3 A That's correct.

4 Q If you didn't know that lease existed,
5 and if you didn't know that those things were
6 charged or were covered, then would your testimony
7 be that, in your opinion, the two rates would be
8 different and, in fact, the Owens charge would be
9 more expensive than the Braun charge?

10 A I believe it would be. I believe it
11 would be.

12 Q Okay. Do you know how long a groundwater
13 treatment system is designed to last?

14 A I know typically how long the components
15 in a groundwater system last. They require
16 frequent maintenance and replacement. When we
17 typically design a system we try to keep it in the
18 three to five year time frame for the sake that the
19 client is a little more at ease with the shorter
20 time frame. You can, obviously, design a system
21 that is going to take 20 years to cleanup a site
22 versus spending a huge amount of money up front and
23 clean it in less.

24 Q Is there an understanding when you enter

1 into this agreement, for example, with the Braun
2 site that since this was money being paid up front
3 that the only things that they would need to pay on
4 a regular basis after that would be operation and
5 maintenance as to the life of the -- the design
6 life of the treatment system?

7 A I don't think there is any necessary
8 understanding as far as the client. They are aware
9 that at certain times things break down and have to
10 be replaced so there are additional costs that are
11 associated. The longer the system sits in place
12 the more expensive that becomes.

13 Q Would you say that if a system was going
14 to be at a site for three years, as opposed to that
15 system was going to be at the site as opposed to
16 six years, the six-year site would be more
17 expensive?

18 A Well, yes, it would.

19 Q What about if the treatment system was
20 going to be at the site just for one year as
21 opposed to three years? Would that be less
22 expensive?

23 A Assuming that they were both designed
24 equally. I could design one to sit there for a

1 year that would cost \$500,000.00 versus one that
2 the owner has time, ten years, and they don't care
3 that might --

4 Q So there is --

5 A -- be \$20,000.00.

6 Q I am sorry. So there is a difference in
7 how you design a system?

8 A That's correct.

9 Q What kind of considerations do you take
10 into -- well, let me back up. You are saying one
11 of the primary considerations would be the design
12 life of the system?

13 A That's true.

14 Q And let's say you were designing a system
15 to last longer. What kind of considerations would
16 you take into account?

17 A You generally would use more expensive
18 equipment. If you go get an air compressor at
19 Sam's it is going to last a short period of -- a
20 relatively smaller period of time as opposed to if
21 you were to go and get an industrial grade
22 compressor.

23 Q So I shouldn't go to Sam's to look for
24 compressors?

1 A I didn't --

2 HEARING OFFICER WALLACE: Not if you want

3 it to last a long time.

4 Q (By Mr. Kim) Would other equipment pieces

5 also be similar in that some pieces might be more

6 expensive because they would be designed to last

7 longer?

8 A That is correct.

9 Q What other types of equipment might fall

10 into that category?

11 A Your pumps, blowers, most of your

12 mechanical moving parts.

13 Q Okay.

14 A Some of your items that just will wear

15 because of the nature of treating the groundwater.

16 If it has sediment or things it will wear out your

17 equipment over a period of time.

18 Q Okay. Maybe you can't even do this or

19 maybe this is hard to quantify, but when we are

20 talking about the high end and low end type of

21 thing, in your opinion, let's say -- well, let's

22 talk about compressors. If you were going to buy

23 something for a relatively straightforward site

24 that was not expected to last a long time versus

1 something that you wanted to last for a number of
2 years, what kind of price difference could we be
3 talking about there?

4 A You could go two to three times.

5 Q Two to three times. There is that much
6 fluctuation?

7 A Uh-huh.

8 Q Would that be consistent with some of the
9 other components at the site?

10 A Yes, it would.

11 Q Do you know what the design life is for
12 the Owens site?

13 A I would say I think we looked at three
14 years as what they gave us originally when they put
15 it together.

16 Q When you say they gave you --

17 A Well, part of the -- I wasn't involved in
18 the original design.

19 Q I am sorry. I am talking about the Owens
20 and not the Braun site. Is that what you are
21 referring to?

22 A Oh, okay.

23 Q I am asking you do you know what the
24 design life is for the groundwater treatment system

1 that is at the Owens site?

2 A I believe it is three years.

3 Q Three years. Okay.

4 A Yes, three years.

5 Q And would -- if the design life for a

6 system was going to be three years, would the lease

7 then cover three years?

8 A Well, the -- I would say it would

9 probably extend because at the end of three years

10 you typically have a lot of items that you have to

11 replace, so you still have those ongoing

12 expenses --

13 Q Okay.

14 A -- that you continue to carry through.

15 The longer the site is there, the more

16 deterioration and the more items you generally have

17 to replace.

18 Q Okay. Did you have any opportunity to

19 look at any aspect of the application that was

20 prepared by Owens and that was submitted to the

21 Agency on or about May 28 of 1997, before the date

22 of July 18th, 1997?

23 Let me ask it this way. Did you have a

24 chance to look at the reimbursement application

1 that Owens submitted prior to the time that the
2 Agency made its final decision in this case?

3 A In regard to the treatment system lease?

4 Q Yes.

5 A Yes, I did.

6 Q Oh, you did look at this before that
7 date?

8 A No, I did not.

9 Q Okay. So you did not look at the
10 reimbursement application submitted by Owens in
11 this case before July 18th of 1997?

12 A No, I did not.

13 Q In fact, is it safe to say that you have
14 only been involved with this relatively recently?

15 A That's true.

16 Q How recently would that be?

17 A About a week ago, possibly.

18 Q Okay. We talked about -- you were
19 describing that there could be a fluctuation in
20 charges between the equipment costs depending on
21 how long you were designing a system to last?

22 A That's correct.

23 Q Would the design time for something like
24 that change also?

1 A You mean the engineering expense for --

2 Q Right. I guess what I am saying is if

3 someone came to you and said I would like you to

4 design a facility, a treatment system that is going

5 to last for two years, and I would also like you to

6 design one that is going to last for five years,

7 would it take longer to design one as opposed to

8 the other?

9 A I would think that the shorter period of

10 time would take longer to design.

11 Q Okay. So depending upon the time of

12 the -- depending upon the expected duration of the

13 treatment system, there could be more additional --

14 A Yes, there could be, because the shorter

15 duration systems will generally have more equipment

16 involved. You may have more pumps. You may have

17 more things involved to shorten the time period.

18 It would probably require more design time.

19 Q Okay. What about putting the treatment

20 systems together? Would, like you say, if a

21 shorter term system has more parts would it take

22 longer to construct than something that is maybe a

23 longer term system that is maybe a little more

24 straightforward and simplistic?

1 A It probably would, yes.

2 MR. KIM: Okay. Just one moment.

3 HEARING OFFICER WALLACE: Okay.

4 MR. KIM: I don't think I have anything

5 further.

6 HEARING OFFICER WALLACE: All right. Mr.

7 Prillaman.

8 MR. PRILLAMAN: Yes.

9 REDIRECT EXAMINATION

10 BY MR. PRILLAMAN:

11 Q Mr. Dunn, just some clarification

12 questions. In answer to one of Mr. Kim's

13 questions, you said that under some circumstances,

14 the Owens charges of \$3,500.00 a month could be

15 more expensive than the Braun Amoco charges.

16 Here is my question. If over a

17 three-year period Braun Amoco has run up

18 \$155,000.00 in charges, and over three years at

19 \$3,500.00 a month the cost to Mr. Owens is only

20 \$126,000.00 a month, how is it that you said that

21 the Owens charges are greater than the Braun

22 charges? I didn't understand your answer. That's

23 why I am asking for a clarification.

24 A Okay. The two sites, as far as going

1 through the bookkeeping, are different to separate
2 because they are done under two different methods.
3 The sites basically have a lot of similar things
4 that have to be done to them. The Braun Amoco
5 site, all the equipment and all the work is done as
6 it occurs. It is charged as it occurs. The Owens
7 site, you do some of the same work that is charged
8 as it occurs, some of the monitoring as it occurs.
9 However, some of it has been prorated out over a
10 time period for the lease. So trying to
11 reconcile all these numbers where you have it
12 all the same is where the difficulty is.

13 Q Did you understand Mr. Kim's question? I
14 didn't know what the question was, but your answer
15 was there could be a circumstance under which the
16 monthly rental charge of \$3,500.00 at Owens exceeds
17 the expense at Braun Amoco. I didn't understand
18 your answer. Maybe you didn't understand the
19 question. Can you tell us what you were talking
20 about?

21 A The way that's phrased I don't. I don't
22 know that I necessarily agree with that. I don't
23 recall the question either that brought that up.

24 Q Can you think of a circumstance under

1 which the charges in Owens at \$3,500.00 a month for
2 36 months, which is the life of the plant, or the
3 expected life of the plant, which totals
4 \$126,000.00, would be more expensive to Mr. Owens
5 had he used the accounting method used in Braun
6 Amoco which in three years totaled \$155,000.00?

7 A No.

8 Q Okay. Also, you talked about the lease.
9 Do you understand that is a verbal lease with Mr.
10 Owens?

11 A I was not familiar with the arrangement
12 of how the lease was taken care of.

13 Q You were asked about the way in which the
14 Braun Amoco application was put together, and you
15 said that you reviewed that application for
16 reimbursement?

17 A That is correct. We -- I was not the
18 professional engineer to stamp this. However, the
19 individual that brought it to me, we sat down and
20 went page by page through all of the charges to
21 ensure that they were, in fact, for the site and
22 the hours that were incurred.

23 Q Okay. So you played a major role in the
24 preparation of the application for reimbursement at

1 Braun?

2 A The review of it.

3 Q The review of it. Okay.

4 A I didn't take all of the bills and --

5 that's what I assume by preparation, xerox the

6 bills and make this book.

7 Q The clerical work you didn't do?

8 A No.

9 Q All right. In comparing the charges at

10 Owens at \$3,500.00 a month to what you know has

11 been charged and reimbursed at Braun Amoco, did you

12 take into consideration the number of times that

13 each plant is visited and inspected?

14 A Yes, I did. Looking at the maintenance

15 record and the frequency, the Braun Amoco, when we

16 originally wrote the permit, was for one visit per

17 month for the field technicians to go up and

18 conduct sampling and do whatever maintenance was

19 required. The Owens site is permitted and approved

20 for once a week which, typically, you are going to

21 have a shorter duration project because of that.

22 The Pinckneyville site, you will have a

23 maintenance break down that occurs in the middle of

24 the month, so the system, subsequently, shuts down

1 for two, possibly three weeks until your next trip
2 there and you discover that it has not been
3 functioning. So you lose time in the sense of the
4 entire duration of the project.

5 Whereas, with the Owens, they visit once
6 a week and my understanding is that if they have
7 any maintenance problems they address that
8 immediately, and that is part of the lease
9 arrangement, that they go and do whatever repairs
10 and come back at that time.

11 Q So from the standpoint of cost to the
12 LUST fund, the once a week visit is a better deal
13 for the State, is it not?

14 A I would say in general, from my
15 experience with Braun, that we typically experience
16 maintenance problems in the middle of each monthly
17 event which draws out and, obviously, the longer
18 this project sits open the more permitting time,
19 the more engineering oversight, the more technical
20 field trips, the longer the system sits there, the
21 more expensive, the more replacement items.

22 Q You are referring to Braun now?

23 A Braun, correct.

24 Q Whereas in Owens --

1 A Whereas in the Owens case, I think a lot
2 of that is eliminated or reduced.

3 MR. PRILLAMAN: I have no further
4 questions.

5 HEARING OFFICER WALLACE: All right. Mr.
6 Kim.

7 RECROSS EXAMINATION

8 BY MR. KIM:

9 Q Unfortunately, Mr. Dunn, I have a few
10 more.

11 A Okay.

12 Q Let's go back to the question that I
13 asked you.

14 A Okay.

15 Q The question I asked you was this. When
16 you were comparing the lease rate for the Owens
17 site and the charges, the lump sum that you
18 incurred at the Braun site, I believe your original
19 testimony to Mr. Prillaman's question was you have
20 to play with the numbers a little bit to get an
21 equal comparison because there are certain things
22 that are included within that \$3,500.00 for the
23 Owens site that were not included in the Braun lump
24 sum and, therefore, if you take those out then the

1 numbers get a little closer; is that correct?

2 A Yes, that's correct.

3 Q Otherwise, the Owens numbers, if you

4 don't take those numbers out, in other words, if

5 you don't take that consideration into account,

6 that there is some O&M that would be included or

7 there might be some equipment replacement that is

8 included, if you don't take that into account then

9 the Owens facility is more expensive by comparison

10 than the Braun site; is that correct?

11 A That follows, yes.

12 Q Okay. When you were taking -- when you

13 were making that comparison with the Braun site

14 versus the Owens site, you were assuming that the

15 Owens site had a three-year term, a three-year

16 design life?

17 A That's correct.

18 Q Where did you learn that it had a

19 three-year design life?

20 A The corrective action plan that was

21 developed for this site specified that based on the

22 recovery rate, the constituents that were on site,

23 that were present in a three-year time period was

24 appropriate for the equipment that is installed.

1 Q Okay. Was there information -- you said
2 you referred to the corrective action plan?

3 A Right.

4 Q When you were doing your comparison and
5 when you were arriving at your testimony or your
6 opinions today, was there information outside of
7 the reimbursement application that you took into
8 account aside from the corrective action plan, any
9 other information?

10 A To lead me to believe that it was a
11 three-year system?

12 Q No, to lead you to believe that the costs
13 might be comparable? This goes back to your
14 original answers.

15 A Oh, previous experience. I went and
16 looked at the site, and looked at the equipment
17 that was in there and based upon the capabilities
18 of it, and that was where I generated that.

19 Q But there is also the additional
20 information regarding what charges in terms of
21 operation and maintenance and equipment repair that
22 would be included?

23 A Right.

24 Q That is also information you received

1 from a different source?

2 A No, I received that from the consultant.

3 Q Okay. But I am saying that was outside
4 of the application?

5 A I say that but, again, in my previous
6 experience I compared the -- what they had in their
7 maintenance log as going to a site and having to do
8 repair functions, to my previous experience on our
9 sites as to how frequently we had to change things,
10 and they were comparable.

11 HEARING OFFICER WALLACE: They were or
12 were not?

13 THE WITNESS: They were. I did not just
14 blindly look at their maintenance and say that was
15 standard.

16 Q (By Mr. Kim) I understand what you are
17 talking about how many trips were made or what the
18 frequency of --

19 A The general cost to do it.

20 HEARING OFFICER WALLACE: Don't talk over
21 each other, please.

22 THE WITNESS: I am sorry.

23 MR. KIM: I am sorry.

24 Q (By Mr. Kim) I don't mean to cut you

1 off. I apologize. What I am asking about is not
2 so much information regarding the frequency of the
3 trips to the site. I am asking about the
4 provisions that would state that some of those
5 trips or maybe most of those trips or even all of
6 those trips, I don't know, that some of those trips
7 would be included within the \$3,500.00 a month.
8 Was that information -- where was that information
9 provided to you?

10 A From the consultant.

11 Q Okay. Is it your understanding that the
12 trips to -- the operation and maintenance trips to
13 the site are conducted on a weekly basis for Owens?

14 A I believe it is more frequently. They
15 have a permitting requirement to be there weekly.
16 My understanding is if they encounter a maintenance
17 problem that they cannot address on the spot, when
18 they have to get a part or take something and get
19 it repaired they will go back and some time in
20 between that interval they will make another trip
21 back at their expense as part of the lease to get
22 it up and running as quickly as possible.

23 Q Is it your understanding that those
24 weekly trips, the operation and maintenance trips

1 are included in the price of the lease?

2 A The weekly monitoring trips are -- I
3 understand are billed extra. They are part of the
4 regulatory requirement. Those are done as a
5 separate item that is submitted.

6 Q The monitoring would be separate but the
7 operation and maintenance would be included?

8 A For the most part, yes.

9 Q Okay.

10 A Yes. Like I said, if they show up there
11 to do their sample and if there is something that
12 they can readily fix within a short period of time
13 they would do that.

14 Q Again, the basis of this information is
15 information supplied to you by the consultant; is
16 that correct?

17 A That's correct.

18 Q Okay.

19 MR. KIM: I don't think I have anything
20 further.

21 HEARING OFFICER WALLACE: Just one point,
22 Mr. Dunn. When was your degree completed?

23 THE WITNESS: In 1989.

24 HEARING OFFICER WALLACE: All right.

1 Thank you, sir. You may step down.

2 MR. PRILLAMAN: I did have one

3 clarification question.

4 HEARING OFFICER WALLACE: All right.

5 FURTHER REDIRECT EXAMINATION

6 BY MR. PRILLAMAN:

7 Q Just to make sure I understand this

8 comparison in the case in which the Owens \$3,500.00

9 might be more expensive than Braun, that was

10 comparing equipment only, was it not? That was not

11 comparing maintenance and operations, was it? I

12 thought I understood you to say, and you tell me,

13 the way Mr. Kim asked it the second time, he asked

14 about the lump sum at Braun. There was not a lump

15 sum application at Braun for ongoing activities,

16 was there?

17 A No.

18 Q Okay.

19 A You had periodic submittals.

20 Q Your comparison in answer to Mr. Kim's

21 question had to do with the lump sum portion of the

22 Braun Amoco request --

23 A Correct.

24 Q -- dealing with the design and

1 construction versus the \$3,500.00 a month at Owens?

2 A Correct.

3 MR. PRILLAMAN: Okay. No further

4 questions.

5 MR. KIM: Nothing further.

6 HEARING OFFICER WALLACE: Thank you, Mr.

7 Dunn.

8 (The witness left the stand.)

9 MR. PRILLAMAN: I would offer into

10 evidence at this time Plaintiff's Exhibit Number 1.

11 HEARING OFFICER WALLACE: All right. Mr.

12 Kim?

13 MR. KIM: I was briefly going through

14 Plaintiff's Exhibit Number 1, and I had some

15 questions, I believe. Is it my understanding that

16 Exhibit Number 1 is made up of a series of final

17 decision letters from the Agency and accompanying

18 applications for reimbursement submitted by Braun?

19 MR. PRILLAMAN: Yes. It is the Braun

20 Amoco file, I believe, as obtained pursuant to the

21 Freedom of Information Act.

22 Becky, is that correct?

23 MS. McCRAY: That's correct.

24 MR. PRILLAMAN: Yes.

1 MR. KIM: Okay. Well, for example, and I
2 don't think you did this pagination. I don't know
3 who did the pagination. Maybe you did. I don't
4 know.

5 MS. McCRAY: We did. We did that in our
6 office.

7 MR. KIM: Okay. Fabulous. If you look
8 to page 8 of the exhibit, that references a March
9 27, 1996 letter to Mr. Braun from the Illinois EPA;
10 is that correct?

11 MS. McCRAY: That is the March 26, 1996
12 letter, yes.

13 MR. KIM: And in that letter in paragraph
14 3 it states that on November 13, 1995, the Agency
15 received your complete request for payment for this
16 claim.

17 MS. McCRAY: Right.

18 MR. KIM: Okay. Where is that --

19 HEARING OFFICER WALLACE: What is your
20 objection?

21 MR. KIM: My objection is that the
22 information here -- some of this -- well, first of
23 all, I would object as to relevance. I don't think
24 that the information contained in this exhibit has

1 any bearing, whatsoever, in the review that was
2 conducted by Mr. Kohrmann.

3 Second, I would object that some of the
4 documents in this exhibit are a little bit -- are
5 not consistent in the sense that there is a final
6 decision letter, but then there is no application
7 upon which that decision was made, and then there
8 is another letter, and then there is an
9 application, but then there is sometimes two and
10 three letters together, from what I can tell
11 quickly here, that don't have any accompanying
12 application.

13 I don't know what -- looking at this
14 letter on pages 8 through 9 -- actually, I guess,
15 it goes from 8 through 10. I have no idea what
16 relevance that letter has in any way, shape, or
17 form to the case here because there is no statement
18 in this letter regarding a groundwater treatment
19 system, and there is no application that this
20 letter references that discusses a groundwater
21 treatment system. So I think there are parts of
22 this exhibit which not only don't have any
23 relevance, but are incomplete for purposes of their
24 offering.

1 HEARING OFFICER WALLACE: Okay. Ms.
2 McCray.

3 MS. McCRAY: Although the application may
4 not be located directly behind that letter, we
5 believe it may be in the file. This is the order
6 that the file was sent to CW3M in response to the
7 four-year request, the order that the Agency keeps
8 their file. We have simply copied the Agency's
9 file as they provided it to CW3M.

10 HEARING OFFICER WALLACE: You are
11 representing that this is in the order received by
12 you?

13 MS. McCRAY: Yes.

14 MR. KIM: I have no objections as to the
15 authenticity. I certainly am not going to state
16 that -- I am not going to make any observations on
17 the form that we keep our FOIA files. I am just
18 saying that, again, on page 18 through 19 there is
19 a final decision letter which references a request
20 for payment, and I am not exactly sure where
21 that -- I assume that's the one that is -- well, I
22 don't think that is the one on page 22, because
23 that has a different date. So I don't know what --
24 my problem with this is that there are letters that

1 are not following with the application.

2 HEARING OFFICER WALLACE: Well --

3 MR. KIM: Aside from relevance.

4 HEARING OFFICER WALLACE: Okay. Taking
5 your last objection first, based upon Ms. McCray's
6 representation that this is how the Agency sent it
7 to them, either to the law firm or to CW3M, there
8 is no way of determining what the order should be
9 except that's the order that the Agency sent it
10 in. So that is, I think, presumed the order that
11 it is kept in. So I don't see any valid objection
12 based upon the fact that that is how the Agency
13 responds to FOIA requests.

14 MR. KIM: But I think that is -- I don't
15 mean to interrupt. But I think that's two
16 different issues. The manner in which the Agency
17 responds to a FOIA request is one thing, conducted
18 by certain standards. The manner in which its
19 evidence is offered for being admitted into hearing
20 is entirely another.

21 If they can't show -- this, in my mind --
22 I understand the purposes they are trying to offer
23 this, but if they don't have the second half of the
24 first half -- in other words, here is a letter that

1 says you did this, and here is the application that
2 contains the information that it is based on, and
3 then --

4 HEARING OFFICER WALLACE: Okay. Do you
5 want to recess the hearing and drag Mr. Oakley in
6 here?

7 MR. KIM: No.

8 HEARING OFFICER WALLACE: Okay.

9 MR. KIM: Well, there, again, I don't
10 know what Mr. Oakley would testify to either, other
11 than --

12 HEARING OFFICER WALLACE: His name is on
13 a lot of these letters, isn't it?

14 MR. KIM: Again, I have stated that I
15 have no -- we have no objection as to the
16 authenticity of these documents.

17 HEARING OFFICER WALLACE: Okay. In terms
18 of relevance, I believe that Mr. Dunn testified
19 that he reviewed these files in rendering his
20 opinion. So for that purpose it becomes relevant
21 and it is admitted into evidence.

22 (Whereupon said document was
23 admitted into the record as
24 Petitioner's Exhibit 1 as of

1 this date.)

2 HEARING OFFICER WALLACE: Did you move

3 Number 2?

4 MR. PRILLAMAN: We are going to have some

5 more testimony on Number 2 with the next witness.

6 HEARING OFFICER WALLACE: Okay.

7 MR. PRILLAMAN: I thought we would offer

8 it at that time.

9 HEARING OFFICER WALLACE: Okay. I

10 thought I heard you say 1 and 2. Obviously, I

11 didn't.

12 Okay. Let's go off the record.

13 (Discussion off the record.)

14 HEARING OFFICER WALLACE: Back on the

15 record.

16 MR. PRILLAMAN: Becky McCray is going to

17 handle the next witness.

18 HEARING OFFICER WALLACE: Okay.

19

20

21

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24

1 (Whereupon the witness was
2 sworn by the Hearing Officer.)

3 HEARING OFFICER WALLACE: Again, please
4 speak clearly and loudly so we can all hear,
5 especially the court reporter.

6 C A R O L L Y N N R O W E,
7 having been first duly sworn by the Hearing
8 Officer, saith as follows:

9 DIRECT EXAMINATION

10 BY MS. McCRAY:

11 Q Would you please state your name for the
12 record.

13 A Carol Lynn Rowe.

14 Q And what is your job?

15 A I am President and Senior Environmental
16 Geologist for CW3M Company.

17 Q Could you briefly summarize for us,
18 please, your educational and career experience
19 beginning with college?

20 A I graduated in 1984 from Southern
21 Illinois University as a geologist. I completed
22 grad school in environmental studies and public
23 administration in 1987, I believe. At that time
24 frame I was employed at the Illinois Environmental

1 Protection Agency as an intern, and stayed there as
2 an environmental specialist working in the
3 groundwater section for public water supplies.

4 I left the Agency in I think it was 1988,
5 and I went to work at Old Ben Coal Company doing
6 environmental reclamation and engineering work. I
7 returned back to state government in 1989 with the
8 Department of Agriculture and set up their
9 agricultural chemical containment program.

10 From there I went to the Department of
11 Energy and managed the coal administration
12 program. Then I started this business, and have
13 been doing this part-time since 1991 and full-time
14 since 1993.

15 Q In your work at the CW3M Company, have
16 you had the opportunity to provide consulting
17 services to owners and operators of leaking
18 underground storage tank facilities?

19 A Yes, I have.

20 Q Approximately how many such projects have
21 you worked on?

22 A Approximately 60 to 70.

23 Q Approximately what number or percentage
24 of those projects would have included a corrective

1 action plan which included the design,
2 construction, operation and maintenance of a
3 groundwater treatment system similar to the Owens
4 system?

5 A Approximately 15.

6 Q And you are familiar with the Owens Oil
7 Company facility in Greenfield, Illinois; is that
8 correct?

9 A Yes, I am.

10 Q Can you give us a brief background of
11 CW3M's services that have been provided to Owens?

12 A The incident was recorded in 1989
13 following a tank removal and we entered a
14 contractual agreement with the Owens Oil Company
15 in, I believe, very early 1994 and from there
16 completed 20- and 45-day reports, a site
17 investigation, and developed a corrective action
18 plan and then implemented soil and groundwater
19 remediation.

20 Q So you performed an investigation of the
21 soils and groundwater at the facility?

22 A Yes, we did.

23 Q What did that investigation reveal?

24 A There were levels of soil and groundwater

1 contamination that exceeded the land objectives in
2 force at the time and required some type of
3 remediation.

4 Q Did you discuss with Mr. Owens the
5 alternatives for performing corrective action?

6 A Yes, we did. We looked at several
7 different options when we developed our corrective
8 action plan.

9 Q Which option did you decide on?

10 A Source removal and trench installation
11 and groundwater recovery and remediation treatment.

12 Q And the corrective action plan for
13 design, construction, operation and maintenance of
14 the groundwater treatment system was approved by
15 the EPA?

16 A Yes, it was.

17 Q Did you discuss with Mr. Owens the
18 options for paying for the work required by the
19 corrective action plan?

20 A Yes, we did. He was facing considerable
21 expense. We thought it would be cheaper in the
22 long run, assuming the system would probably
23 operate approximately three years -- that was our
24 estimating year for design and cost and everything

1 else. And we believed at the time that rather than
2 constructing a unit at the facility that it would
3 be cheaper in the long run to put a system on site
4 that we would be responsible for maintaining.

5 Q So CW3M did not purchase a groundwater
6 plant from an outside vendor?

7 A No, we did not.

8 Q You said that you used three years as
9 your estimate of the life of the groundwater
10 treatment plant. How did you arrive at that
11 estimate?

12 A Based on the levels of the contamination
13 at the site and the type of remediation. We
14 expected it to be remediated within three years.

15 Q Did CW3M enter into an oral agreement
16 with Owens to design and construct and operate and
17 maintain the groundwater treatment plant?

18 A Yes, we did. It followed the terms of
19 our standard contract with Mr. Owens.

20 Q What was the lease rate agreed upon?

21 A \$3,500.00 a month.

22 Q Can you tell us, for \$3,500.00 a month
23 what services and equipment and other items that
24 CW3M provides to Owens?

1 A We were responsible for the design of the
2 system and the construction, which included all
3 labor, materials, subcontractors, electricians and
4 so forth, the computer system, the programming of
5 it, and the maintenance of that system. The
6 system, the -- anything external to the system we
7 would have considered, you know, beyond the scope
8 of the lease.

9 But that system, we would keep it
10 operational and any overhead, support, additional
11 parts that we would have to purchase, additional
12 trips to the site to make those repairs would all
13 be included in the lease agreement.

14 Q Are you aware of other instances in which
15 the Agency reimburses costs based upon lease
16 agreements?

17 A In our situation we have had five sites
18 that have had similar type systems, similar type
19 sites with the same lease rate approved.

20 Q Let me clarify for a moment. I guess my
21 question is other types of corrective action items
22 besides groundwater treatment system plants?

23 MR. KIM: Objection. Nothing outside the
24 groundwater treatment system is at issue here.

1 Anything else would be irrelevant.

2 MS. McCRAY: I am just trying to
3 establish that the Agency has in the past accepted
4 items that were leased and not purchased and
5 reimbursed costs for lease of items rather than the
6 purchase of items that were used in corrective
7 action.

8 HEARING OFFICER WALLACE: Objection
9 sustained.

10 Q (By Ms. McCray) Has the groundwater
11 treatment system been designed and constructed for
12 the Owens facility?

13 A Yes, it is operational.

14 Q Can you tell us about when the system
15 became operational?

16 A I believe it was December of 1995.

17 Q Did CW3M charge \$3,500.00 a month for the
18 lease during the design and construction phases?

19 A No, we did not. We didn't -- no charges
20 were assessed until the system was at the site and
21 operational.

22 Q As part of CW3M's services to Owens, have
23 you prepared and submitted to the Agency requests
24 for reimbursement from the Underground Storage Tank

1 Fund?

2 A Yes, I have.

3 Q I am going to hand you what we have
4 marked as Plaintiff's Exhibit Number 2. Can you
5 identify for us, please, what Plaintiff's Exhibit
6 Number 2 includes?

7 A This includes -- first is an Agency
8 review letter dated March 6, 1997, to the Owens Oil
9 Company. It was the billing period of October 1st,
10 1995 to February 29, 1996.

11 Q In general, to lead the witness a bit,
12 would you agree that Plaintiff's Exhibit Number 2
13 includes three previous requests -- excerpts from
14 three previous requests for reimbursement submitted
15 by you to the Agency?

16 A Yes, it does.

17 Q Those excerpts include all documentation
18 you would have presented to the Agency in support
19 of reimbursement of the \$3,500.00 per month lease
20 costs?

21 A Yes, it does.

22 Q And it also -- Plaintiff's Exhibit 2 also
23 includes the Agency's reimbursement determinations
24 with respect to those three packages?

1 A Yes, it does. Each package has the
2 Agency review letter, our summary of the contents
3 of the billing package, a summary sheet identifying
4 expenses for each month, and, again, on the
5 Agency's forms another Agency form listing the
6 equipment used at the site where we identify the
7 groundwater treatment system, and CW3M's project
8 expense summary for that particular month, and then
9 each month has the same items, the same sheets on
10 the Agency --

11 Q And each package would cover several
12 months; is that correct?

13 A Yes. This package --

14 Q Well, that's my next question. The first
15 submittal that is there in Plaintiff's Exhibit 2,
16 can you tell me the period for which those bills
17 were submitted?

18 A October 1st, 1995 to February 29th,
19 1996. It was received by the Agency on October
20 1st, 1996.

21 Q And turning to the first summary page --

22 MR. KIM: I am sorry. October or
23 August?

24 THE WITNESS: I am sorry. What did I

1 say?

2 MR. KIM: I think you said October.

3 THE WITNESS: I meant August 1st.

4 MR. KIM: Okay.

5 Q (By Ms. McCray) Turning to the first page
6 which you have called a summary page, I think it is
7 the fifth or sixth page. It is the sixth page
8 there.

9 MR. KIM: What is the heading on that
10 page?

11 THE WITNESS: It is the Agency's -- it
12 says small table, John.

13 HEARING OFFICER WALLACE: Read the
14 heading for us.

15 THE WITNESS: Illinois Environmental
16 Protection Agency, Underground Storage Tank
17 Program, request for payment of corrective action
18 costs. Summary sheet for all charges in this
19 billing package.

20 MR. KIM: Thank you.

21 Q (By Ms. McCray) For what period does that
22 summary sheet cover?

23 A This sheet covers the month of November
24 of 1995.

1 Q And during the month of November of 1995
2 did you charge Owens \$3,500.00 a month --
3 A No.
4 Q -- for the lease?
5 A No.
6 Q Why didn't you?
7 A The system was not on line yet at that
8 time. It was under construction.
9 Q If you can locate in that package that
10 same type summary sheet for the next month in that
11 billing package.
12 A December 1995 includes what would have
13 been the first charge for the lease of the
14 groundwater treatment system.
15 Q After you submitted that first package
16 there, that first reimbursement package to the
17 Agency, did the Agency call you or write you to
18 request additional documentation to demonstrate
19 that the \$3,500.00 per month was a reasonable lease
20 rate?
21 A No, they did not. We submitted it in
22 this format and it was subsequently approved, so we
23 felt that this was --
24 MR. KIM: Objection. This is a

1 narrative.

2 HEARING OFFICER WALLACE: Yes.

3 Sustained.

4 Q (By Ms. McCray) Did the Agency deem

5 \$3,500.00 per month unreasonable in this case and,

6 therefore, ineligible for reimbursement?

7 A No, they did not.

8 Q Okay. Let's move to the second request

9 there in that package. Can you identify that for

10 us, for what time period are those costs?

11 A This was the billing period March of 1996

12 to May of 1996.

13 Q In that billing package did you include

14 requests for reimbursement of \$3,500.00 per month

15 for each of those months --

16 A Yes, we did.

17 Q -- for lease of the groundwater treatment

18 system?

19 A Yes, we did.

20 Q Is the documentation that you provided to

21 the Agency identical to the documentation that you

22 provided in your first submittal?

23 A Yes, it is.

24 Q After you filed that reimbursement

1 package with the Agency, did the Agency contact you
2 and ask for any additional information?

3 A No, they did not.

4 Q And did the Agency reach a final
5 determination on that package?

6 A Yes, it was approved in full on February
7 19th, 1997.

8 Q Then moving on to the third submittal in
9 that package, can you tell us for what periods the
10 costs there were incurred?

11 A June 1st, 1996 to August 31st of 1996.

12 Q And does that package include a request
13 for reimbursement of \$3,500.00 per month for each
14 of those months for lease of the groundwater
15 treatment system?

16 A Yes, it does.

17 Q After you filed that request with the
18 Agency, did the Agency contact you to ask you for
19 additional information to demonstrate the
20 reasonableness of the \$3,500.00 per month lease
21 costs?

22 A No, they did not.

23 Q Did the Agency approve that for
24 reimbursal, the \$3,500.00 per month?

1 A Yes, it was approved in a letter dated
2 February 19th of 1997.

3 Q Directing your attention now to the
4 administrative record, what has been marked Joint
5 Exhibit 1, I will ask you to look at page 11 of
6 Joint Exhibit 1, and if you could briefly look
7 through pages 11 through 111. Just flip through,
8 and can you identify those documents for me,
9 please?

10 A Yes, this is the request for
11 reimbursement for the period of December 1996
12 through February of 1997.

13 Q Can you identify for me by page number
14 the information included in that request for
15 reimbursement which supports reimbursement of the
16 \$3,500.00 per month lease cost?

17 A It is identified on the summary page,
18 page 15.

19 Q That would be for what month?

20 A December of 1996.

21 Q Are there any other pages that support
22 reimbursement during December 1996?

23 A There is the equipment form for that
24 month on page 23.

1 Q That's an Illinois Environmental
2 Protection Agency form?

3 A Yes.

4 Q Okay.

5 A CW3M expense summary on page 26.

6 Q Are there documents to support the
7 charges during the month of January of 1997?

8 A There is similar documents, the summary
9 sheet on page 40, the equipment summary sheet on
10 page 52, and the expense summary on page 54.

11 Q Can you identify the documents in support
12 of the charges for the month of February of 1997?

13 A The Agency form or the Agency summary
14 sheets for all charges in the billing package on
15 page 80, the equipment summary sheet on page 88.
16 There should be an expense summary sheet in here
17 also that I am not putting my finger on. It is
18 identified in the actual statement on page 99. I
19 don't see the summary sheet, our summary sheet.

20 Q Did you prepare the request for
21 reimbursement?

22 A Yes, I did.

23 Q Would you have included a summary sheet?

24 A Uh-huh, as it is a standard part of our

1 monthly package.

2 Q Is the information that is included in
3 this request for reimbursement in any way different
4 from the information that was included in support
5 of the \$3,500.00 per month lease cost in the three
6 previous packages reviewed by the Agency?

7 A No, this is an identical format.

8 Q After you submitted this request for
9 reimbursement, did the Agency contact you to
10 request any additional information to demonstrate
11 the reasonableness of the \$3,500.00 per month lease
12 costs?

13 A No. To my knowledge there was no request
14 made for additional information.

15 Q Are you aware of the Agency's decision as
16 to the reimbursement of costs requested in that
17 package?

18 A Yes, we are.

19 Q Can you identify that, the Agency's
20 decision letter there in the record, in Joint
21 Exhibit Number 1?

22 A It is found on page 001.

23 Q And what was the Agency's decision?

24 A The lease rate was reduced by \$2,300.00 a

1 month to \$1,200.00 a month.

2 Q For what reason?

3 A It just said it failed to -- the

4 owner-operator failed to demonstrate they were

5 reasonable.

6 Q You have testified that CW3M provides

7 consulting services to other owners and

8 operators -- owners and operators of other LUST

9 sites in Illinois; is that correct?

10 A Correct.

11 Q As part of those services, have you

12 designed, constructed, operated and maintained

13 similar or identical groundwater treatment systems?

14 A Yes, we have.

15 Q As part of your services to those other

16 owners and operators, have you prepared requests

17 for reimbursement of lease costs for review by the

18 EPA?

19 A Yes, I have.

20 Q I am going to hand you what we have

21 marked as Plaintiff's Exhibit Number 3. Can you

22 identify what is included in that package?

23 A This package contains excerpts from

24 reimbursement claims for the Alexander Grade School

1 and Agency review letters as well as Fisher Mobile
2 Station, Steve's Mobile Service and the Ware
3 (spelled phonetically) Oil Company.

4 Q Were you personally involved in putting
5 together the reimbursement packages that are
6 represented in Plaintiff's Exhibit Number 3?

7 A Yes, I was.

8 Q Is it a fair statement that Plaintiff's
9 Exhibit 3 includes the documentation submitted by
10 CW3M pertaining to the groundwater treatment system
11 and the Agency's determination letters?

12 A For each of these sites the information
13 was prepared identically. In the case of the
14 Alexander Grade School, the Agency did on one
15 occasion request additional information to describe
16 what was included in the lease rate.

17 Q But, essentially, these are excerpts of
18 your submittal to the Agency for other sites?

19 A Yes.

20 Q Is this all inclusive? Would this be all
21 the requests for reimbursement that you have ever
22 submitted to the Agency for leases?

23 A No, it is not. This is just a few of the
24 sites that had identical systems.

1 Q Looking at the first reimbursement
2 package that is included there, that is for the
3 Alexander School District; is that correct?
4 A That's correct.
5 Q Was the groundwater treatment system that
6 you designed, constructed, operated and maintained
7 at that site comparable to the Owens system?
8 A It is identical.
9 Q Did you have a lease agreement with the
10 owner or operator?
11 A Yes, we had a lease agreement with the
12 Franklin School District, Alexander Grade School.
13 Q Were the terms of that lease agreement
14 comparable to the terms of the Owens lease?
15 A Yes, they are comparable. They may even
16 be the same.
17 Q What rental charge did you charge the
18 Alexander School District?
19 A \$3,500.00 a month.
20 Q Can you identify for us in that first
21 package the documentation you initially provided to
22 the Agency in support of reimbursement of the
23 \$3,500.00 per month lease cost?
24 A The initial submittal, we had the

1 identical information that was provided in the
2 Owens. It had the Agency -- or the request summary
3 sheet for all of the charges, and there was a
4 monthly equipment summary sheet that identified the
5 treatment system and then an expense summary.

6 Q After you submitted that request for
7 reimbursement, did the Agency contact you and ask
8 you for additional information to demonstrate the
9 reasonableness of the lease costs?

10 A Yes, there was a letter dated April 11,
11 1995, where additional documentation for the
12 groundwater system lease for that billing period
13 was requested in order to --

14 MR. KIM: I am sorry. What document are
15 you looking at right now?

16 THE WITNESS: It is in the first
17 section.

18 MR. KIM: This is dated April 11, 1995?

19 THE WITNESS: Yes.

20 MR. KIM: Okay. I think I found it.
21 Thank you.

22 Q (By Ms. McCray) Did you respond to the
23 Agency's request for additional information?

24 A Yes, I did.

1 Q And what type of information did you
2 provide to the Agency?

3 A We actually provided two letters, and one
4 of the letters included a copy of the written lease
5 agreement.

6 Q Did you explain to the Agency the terms
7 of the lease, what types of services and labor and
8 parts and materials were being provided to the
9 owner-operator pursuant to the lease?

10 A Yes. In CW3M's April 14, 1995 response
11 we elaborated on it, and in a second letter to
12 Cliff Wheeler, also on April 14th, 1995, we
13 provided a copy of the lease agreement which
14 includes a description of what is included in the
15 lease amount.

16 Q Did the Agency subsequently render a
17 final reimbursement determination on that
18 reimbursement package?

19 A Yes.

20 Q What was their decision?

21 A In a letter dated May 15th, 1995, the
22 full amount was approved for payment.

23 Q Directing your attention now to the
24 second set of documents there, the second

1 reimbursement package in Plaintiff's Exhibit 3, is
2 that a request for reimbursement for costs incurred
3 at the same LUST cleanup site as the first set? Is
4 that for the Alexander School District?

5 A No, this is the Fisher Mobile Station.
6 Oh, I am sorry. Yes, this is another request, a
7 reimbursement request on behalf of the Alexander
8 Grade School.

9 Q Was that submitted subsequent to approval
10 of the first package?

11 A Yes, this one was submitted on February
12 26, 1997, for the billing period of November 1996
13 through December 1996.

14 Q What documentation did you provide to the
15 Agency with that request in support of payment of
16 the \$3,500.00 per month lease cost?

17 A The lease was identified on the summary
18 sheet of all of the charges and it was identified
19 on the equipment summary sheet and on the project
20 expense sheet.

21 Q Those are the same forms that we have
22 seen that you have submitted initially in all of
23 these requests for reimbursement?

24 A Yes, they are.

1 Q Did the Agency contact you after you
2 submitted that package to request additional
3 information?
4 A No, they did not.
5 Q Has the Agency rendered its final
6 decision regarding that request for reimbursement?
7 A Yes, a letter dated June 2nd, 1997, and
8 the amount was approved in full.
9 Q Turning next to --
10 HEARING OFFICER WALLACE: I don't think
11 we need to go through each of these.
12 Q (By Ms. McCray) Okay. Can I just ask, to
13 clarify, the next two would be for Fisher Mobile;
14 is that correct?
15 A Yes.
16 Q Each of those -- in both of those you
17 submitted the same documentation as you submitted
18 in the reimbursement package that is at issue
19 today?
20 A Yes, we did.
21 Q In either of those cases did the Agency
22 request additional information?
23 A No, they did not.
24 Q In both of those the Agency reimbursed

1 \$3,500.00 per month in full?

2 A Yes, it was.

3 Q The next three, the final three in the
4 set, I believe, are for Royer (spelled
5 phonetically) Oil Company or did I skip? I am
6 sorry. The next two, I guess, are for Steve's
7 Mobile. Those would be identical to the requests
8 that we have already seen?

9 A Yes, they are.

10 Q And did the Agency reduce the \$3,500.00
11 per month lease cost as unreasonable in either of
12 those requests?

13 A No, it was not reduced.

14 Q And then the final three in the package
15 are for Royer Oil. Are those identical to the
16 others you have testified about today?

17 A Yes, they are.

18 MS. McCRAY: I would like to ask just a
19 few specific questions regarding the second Royer
20 package which is the next to the last package.

21 HEARING OFFICER WALLACE: Is it anything
22 different? If it is repetitive, please go on to
23 something else.

24 MS. McCRAY: We would just like to point

1 out some dates.

2 HEARING OFFICER WALLACE: All right.

3 Q (By Ms. McCray) Can you tell me for that
4 package when was that package submitted to the
5 Agency?

6 A It was submitted on May 28, 1997.

7 Q Is that the same date that the Owens Oil
8 package that is on appeal today was submitted?

9 A Yes, it was.

10 Q And that package includes the identical
11 documentation you submitted in Owens in support of
12 reimbursement of the \$3,500.00?

13 A Yes, it does.

14 Q And the groundwater treatment plant at
15 Owens is identical to the Owens groundwater
16 treatment plant?

17 A The Royer.

18 Q To the Royer, yes. I am sorry.

19 A Yes, it is.

20 Q And in the Royer case that we are looking
21 at, did the Agency reduce the lease costs from
22 \$3,500.00?

23 A No, it was not reduced.

24 Q It was reimbursed in full?

1 A Yes.

2 Q Is there anything that you are aware of
3 which would distinguish the Royer Oil request for
4 reimbursement from the Owens Oil request for
5 reimbursement to justify reduction of the Owens
6 request and not reduction of the Royer request?

7 A No to my knowledge.

8 Q Okay. Finally, the last site I want to
9 ask you about is the Gold Coast facility in
10 Jacksonville, Illinois. Are you familiar with that
11 site?

12 A Yes, I am.

13 Q Can you tell me about CW3M's involvement
14 with that project?

15 A We became involved in this project --

16 MR. KIM: I am sorry. Mr. Hearing
17 Officer, if this is going to be consistent with the
18 past testimony, then if they want to -- if Ms. Rowe
19 wants to summarize what she is going to say, if it
20 is consistent with all this other testimony, I
21 don't know that we have a big objection simply to
22 move on past this.

23 MS. McCRAY: This site is a little bit
24 different. This is not a site where CW3M has a

1 lease agreement with the owner-operator.

2 HEARING OFFICER WALLACE: Then what
3 relevance is it to this?

4 MS. McCRAY: CW3M is providing operation
5 and maintenance. This testimony will tie to Mr.
6 Dunn's testimony to show that the same costs
7 packaged differently have been reimbursed by the
8 EPA.

9 HEARING OFFICER WALLACE: All right.

10 THE WITNESS: I will be brief.

11 HEARING OFFICER WALLACE: I hope so.

12 THE WITNESS: In general, it was a site
13 that was initiated by another consultant. There
14 was a groundwater treatment system built on site
15 and the design components are identical to ours
16 pretty much except for a few parts are a different
17 brand.

18 Q (By Ms. McCray) And CW3M was not involved
19 in the project during the design and construction
20 of the groundwater treatment plant?

21 A No, we were not. No, we became involved
22 some time later. But it was designed and built
23 there, and we compared the cost of design and
24 construction, parts, labor, and the initial

1 operation of that system to ours, and we excluded
2 costs that we didn't think were comparable. One
3 package may have quarterly groundwater monitoring
4 and other ones didn't. The basic design,
5 construction, operation and maintenance of that
6 system versus one of ours at a different site was
7 almost identical.

8 Q Could I show you Plaintiff's Exhibits 4A
9 and 4B. Can you identify what those exhibits
10 contain?

11 A These are the Agency reimbursement files
12 received from the FOIA requests.

13 Q Are those in the order that you received
14 them from the Agency?

15 A Well, I should say they should be. To
16 the best of my knowledge they are.

17 Q Does CW3M have a lease with the owner or
18 operator at Gold Coast?

19 A No, we do not. We operate that facility
20 on a time and materials basis.

21 Q Are you aware of the Agency's decisions
22 regarding reimbursement of costs associated with
23 the Gold Coast groundwater treatment plant?

24 A In reviewing the file I found no

1 deductions for time or materials for design,
2 construction, labor, parts, et cetera.

3 Q So in your comparison of costs, packaged
4 a little differently in the Gold Coast case, not as
5 a lease cost over a period of months, but as a lump
6 sum cost, we will call it, as Mr. Dunn did, for
7 design and construction and then ongoing operation
8 and maintenance charges by CW3M, can you explain to
9 us the comparison of the costs?

10 MR. KIM: Objection. I think this is --
11 I am not sure how many questions were wrapped up in
12 there. What is the question being asked?

13 Q (By Ms. McCray) Can you, for us, compare
14 the costs that the Agency has reimbursed for the
15 two sites?

16 A On a monthly basis, taking the design,
17 construction, installation and everything else, the
18 total cost, and then incorporating into that the
19 monthly -- in this case they had monthly -- I am
20 sorry -- weekly visits to the system for
21 operational purposes, to check the wells and the
22 pumps and took samples and so forth, in most cases
23 they had at least one more visit a week, not
24 consistently, but there were extra visits for

1 maintenance only. We compared the costs of the
2 treatment system that we operate for lease rate and
3 in addition to our additional costs that were
4 included in this package. That comparison made
5 these two projects, on a monthly basis, almost
6 identical. There was less than a \$100.00
7 difference on most of the months of operation.

8 Q (By Ms. McCray) And it is your
9 understanding that the Agency has reimbursed the
10 costs of Gold Coast facility in full?

11 A Yes, for design and construction and
12 there were a few other items that were deducted but
13 not for the treatment system.

14 MS. MCCRAY: Okay. Thank you.

15 We would like to offer Exhibits 2, 3, 4A
16 and 4B into evidence.

17 HEARING OFFICER WALLACE: Any
18 objections?

19 MR. KIM: As to Exhibit 2, the Agency
20 would make an objection based on relevancy. These
21 were not applications or documentation that were
22 provided with the application that is at issue here
23 and so they have no relevance to this appeal.

24 MS. MCCRAY: Well, I think the line of

1 cases that Mr. Kim is relying upon which discuss
2 what the Board should consider in reviewing UST
3 reimbursement decisions are the cases where the
4 Board held that after adoption of the Part 732
5 regulations the owner or operator should have been
6 able to anticipate what the Agency would require to
7 be included in a package to make its decision.

8 I think we have tried to show here, at
9 least, that CW3M could not anticipate that the
10 Agency needed more because the Agency had
11 consistently reimbursed \$3,500.00 a month based
12 upon the same documentation that was submitted in
13 the reimbursement package at issue here.
14 Therefore, we think that including that information
15 is relevant here for the Board's review.

16 HEARING OFFICER WALLACE: Okay.

17 MR. KIM: If I may, maybe I can just make
18 this quicker. First of all, I would -- I did not
19 realize that is exactly what my objection was,
20 although it sounds much better than what I was
21 trying to say.

22 My objection to the exhibits being
23 offered right now would be that they were not
24 submitted -- relevance. They were not submitted as

1 part of this application, same situations. They
2 are for completely different sites, and I don't
3 think they have any bearing on the decision we have
4 here which is whether or not this application
5 satisfied the requirements of the Section 22.18(b).

6 HEARING OFFICER WALLACE: Okay. Well, at
7 this time I will admit Petitioner's Exhibit Number
8 2, and I will admit Petitioner's Exhibit Number 3.
9 I will not admit Petitioner's Exhibit 4A and 4B.

10 (Whereupon said documents were
11 duly marked for purposes of
12 identification and admitted
13 into the record as Petitioner's
14 Exhibits 2 and 3 as of this
15 date.)

16 MR. PRILLAMAN: The basis for the ruling,
17 Your Honor?

18 HEARING OFFICER WALLACE: I am upholding
19 Mr. Kim's objection at least to 4A and 4B. I do
20 not believe that the Gold Coast treatment system is
21 relevant to this proceeding.

22 Off the record.

23 (Discussion off the record.)

24 HEARING OFFICER WALLACE: Back on the

1 record.

2 Mr. Prillaman, you were starting to say

3 something.

4 MR. PRILLAMAN: Strike that.

5 HEARING OFFICER WALLACE: Okay.

6 Cross-examination?

7 MR. KIM: Could I beg the indulgence of

8 the Hearing Officer and ask for a short break.

9 HEARING OFFICER WALLACE: All right.

10 Let's take a five-minute break.

11 (Whereupon a short recess was

12 taken.)

13 HEARING OFFICER WALLACE: Back on the

14 record.

15 All right. Cross-examination, Mr. Kim?

16 CROSS EXAMINATION

17 BY MR. KIM:

18 Q Just a few questions. I am going to try

19 and sort of reconstruct back the questions that Ms.

20 McCray was asking you. I really don't have all

21 that many questions that I need to ask you.

22 First of all, you said that there was a

23 determination made at the beginning of your

24 business relationship with Owens that it would be

1 cheaper to construct the groundwater treatment
2 system, and at this point my notes trail off.
3 Could you explain again what you were saying in
4 terms of the decision to design and construct the
5 groundwater treatment system in the manner that you
6 did?

7 A To have constructed something on site and
8 with all of the construction dollars up front, we
9 felt it was going to be much more expensive to do
10 it that way over a three-year period than to
11 provide a system to the site.

12 Q Okay. When you say "provide," what are
13 you referring to?

14 A That there will be a system up and
15 running for however long it needs to do that, and
16 we estimated about three years.

17 Q So when you say "provide," you mean you
18 would construct the system -- you would design and
19 construct the system and install it?

20 A Yes.

21 Q As opposed to having someone else come
22 out and do that at the site? That's where I am a
23 little bit confused. I guess what I am saying is I
24 can see construction of a treatment system either

1 way. What's the distinction you are saying, doing
2 it at the site versus at your offices?

3 A At a shop or at the site could be in a
4 building, it could be in a trailer. It could be --
5 you have got bodies and personnel that you are
6 going to have to get to the site day in and day
7 out. Maybe they only have two hours to work a
8 particular day to put in certain parts or whatever,
9 so they would have to be traveling back and forth
10 plus the oversight of your labor force. So you
11 have got more bodies traveling a further distance
12 to get there.

13 Q These are all charges related to -- these
14 are all tasks related to the construction of the
15 system?

16 A Correct.

17 Q How long does the system take to
18 construct?

19 A It is variable, John. We have been in a
20 position where we have done more than one at one
21 time. Or we have had lots of other things going on
22 and we are building one as we have time to put one
23 together. So it is -- I couldn't give you an exact
24 like it takes six weeks or two months, but --

1 Q Do you know how many man hours it takes
2 to put together a treatment system?

3 A No, not exactly.

4 Q Do you take something like that -- do you
5 take the construction time into account when you
6 charge a lease rate?

7 A All of the costs of that system are
8 incorporated into the lease rate.

9 Q So included in that would be the
10 construction time?

11 A Yes.

12 Q But you don't know how long that would
13 take?

14 A On that particular plant, no, I don't.

15 Q When you say "that particular plant," are
16 you referring to the groundwater treatment system
17 at the Owens site?

18 A Yes.

19 Q Was it -- wasn't it your testimony that
20 the treatment system there is almost identical to a
21 number of other treatment systems that you have
22 used at other sites?

23 A Yes.

24 Q So would it be safe to say that the

1 decision -- rather, the construction time for those
2 plants would be the same regardless of where it was
3 going to end up?

4 A Yes, it is pretty much the same, but I
5 can't tell you exactly how many hours that is.

6 Q You don't know how long it takes to put
7 it together?

8 A Right, right.

9 Q Do you know how many people are required
10 to construct the treatment system?

11 A We have used different numbers of
12 people. We have always employed electrical
13 engineers and electricians. We usually have an
14 engineer involved in the construction of it, and we
15 have used two to four different type labor
16 personnel to do it.

17 Q So sometimes it takes more people and
18 sometimes it takes less people, is that what you
19 are saying?

20 A Bodies, yes. I don't think the time is
21 any different but, as I said, there is always an
22 electrical engineer involved, electricians,
23 engineering oversight, and I would say on -- well,
24 actually, for the Owens plant there probably would

1 have been two other people that were involved in
2 it.

3 Q How about this, what would be the minimum
4 number of people versus the maximum number of
5 people, in your experience, that would have put
6 together one of these systems?

7 A I am not sure, John.

8 Q So you don't know how many -- you don't
9 know what the range is of employees that it takes
10 to construct one of these systems?

11 MR. PRILLAMAN: She just testified to
12 that.

13 MR. KIM: Well, that is fine. I will
14 take that as a, no, you don't know.

15 HEARING OFFICER WALLACE: Was that an
16 objection?

17 MR. PRILLAMAN: Well, maybe I didn't
18 understand. Yes, I will object to asking the same
19 question over. I thought he just asked that and it
20 was answered.

21 HEARING OFFICER WALLACE: All right. It
22 is sustained.

23 MR. KIM: I will move on.

24 Q (By Mr. Kim) How long does it take to

1 design one of these treatment systems?

2 A There is usually about -- from our
3 standpoint, we will have, I would say -- I would be
4 guessing on hours -- a couple of weeks, and then we
5 start consulting with electrical engineers on we
6 want this system to do this kind of work, we want
7 this kind of three-put, we want the system to have
8 the capabilities of doing these kinds of
9 operations.

10 We also build into this some kind of
11 optimization so that we can -- as site conditions
12 may change, we can alter how this thing works.
13 Maybe you are getting really close to cleaning up
14 the site, how can we enhance this thing to continue
15 it.

16 So we will give that information over and
17 the electrical engineer will work the system and
18 the computer and everything else and then provide
19 information back to us to say, okay, you are going
20 to have it do these kinds of things when you
21 construct it.

22 Q Is it safe to say, then, that depending
23 on the site conditions that one treatment system
24 might be designed differently from another?

1 A There is usually some modifications.

2 Q A great deal of modifications?

3 A On these types of plants not a great deal

4 of modifications.

5 Q So design wise they are pretty much

6 consistent from site to site to site; is that

7 correct?

8 A For the most part. Getting to that phase

9 is usually where the effort is. Does this site

10 take something different, unique, can this system

11 handle what we have got at the site, what we want

12 it to do.

13 Q Okay. Let's put it this way. In all the

14 past facilities that you were testifying to

15 earlier, were there -- what were the design -- what

16 were the different design considerations that you

17 took into account at each one of those sites?

18 A Could you be more exact?

19 Q Sure. Let's start with -- I believe this

20 is Alexander Grade School.

21 HEARING OFFICER WALLACE: What exhibit?

22 MR. KIM: Petitioner's Exhibit Number 3.

23 Q (By Mr. Kim) What were the differences in

24 the design criteria between the groundwater

1 treatment system used at Alexander Grade School and
2 the groundwater treatment system used at the Owens
3 site?

4 A Well, to be honest, I would probably have
5 to go back and look at design notes and files and
6 how we set the computerized system up there, but in
7 general this site worked off of a trench with a
8 singular sump pump. What is similar to this site
9 and the Owens site was we had some unknowns at the
10 site. We had potential contamination of the
11 buildings and other issues that we were trying to
12 leave some room in that system to enhance, change
13 it, later down the line if we needed to.

14 Q Did you have that kind of concern with
15 the Owens site?

16 A Yes, we did.

17 Q So that concern is the same in both Owens
18 and the Alexander Grade School?

19 A (Nodded head up and down.)

20 Q Is that a yes?

21 A I am sorry. Yes.

22 Q Okay. So what would be the design
23 distinctions? You don't know of any design
24 differences off the top of your head between Owens

1 and Alexander Grade School?

2 A Specifically, no. I leave that to the
3 engineers and the electrical engineers to
4 determine.

5 Q Do you know if there were any design
6 differences?

7 A I am not sure, John. I don't know.

8 Q You don't know. Okay. What about the
9 Fisher Mobile site? Did you have any design
10 involvement in that site as well for the
11 groundwater treatment system?

12 A Other than specifying --

13 Q I am sorry. This is still in
14 Petitioner's Exhibit Number 3.

15 A Other than for my end I specify what kind
16 of site conditions we had, what kind of remediation
17 goals we were trying to achieve, what kind of
18 three-put remedial system, and then I handed it
19 over.

20 Q Aside from that, do you know if there was
21 more or less design time required for the Fisher
22 Mobile site compared to the Owens Oil site?

23 A I would say the design time was probably
24 fairly similar.

1 Q Because of the site conditions?

2 A Yes. I am trying to remember this

3 particular site, how we designed it. This one has

4 been closed.

5 Q Let me see if I can find something more

6 recent. Steve's Mobile is older.

7 A That one would probably have had also

8 similar type design considerations and as a matter

9 of fact this system has been altered, optimized.

10 We have changed a lot of things in this system.

11 Q In the Steve's Mobile system?

12 A Uh-huh.

13 HEARING OFFICER WALLACE: Yes?

14 THE WITNESS: Yes.

15 Q (By Mr. Kim) Compared with the Owens

16 system you mean?

17 A (Nodded head up and down.)

18 HEARING OFFICER WALLACE: Yes?

19 THE WITNESS: Yes.

20 Q (By Mr. Kim) I won't go through all of

21 the other sites. I will spare us both that. So

22 you said you were not involved with the actual

23 designing of the systems? You simply give the site

24 specific conditions or the considerations and then

1 someone else does the design work?

2 A The actual design, yes, I do not do
3 that. I provide site data, input data, what I
4 think we need for remediation and I hand that over.

5 MS. McCRAY: Can I clarify here? When
6 you say "you" are talking about Carol Rowe and not
7 the CW3M Company?

8 MR. KIM: I am referring to Carol Rowe,
9 the witness, yes, not the royal you.

10 Q (By Mr. Kim) So just to paraphrase, and
11 if I am wrong correct me, but just to paraphrase,
12 it sounds like some of the sites that we went
13 through and some of the sites you experienced in
14 the past and some of the site conditions are fairly
15 similar to Owens Oil and some of the site
16 conditions required some modifications that went
17 beyond what you have with Owens Oil; is that
18 correct?

19 A State that again, John.

20 Q Some of the site conditions and
21 considerations that you took into account at
22 different sites other than Owens Oil were different
23 so that you had different design criteria and
24 possibly different design time whereas some of the

1 others were fairly similar and, therefore, the
2 design time would have been about the same?

3 A Some of the sites, you are saying, would
4 have been similar so the design criteria would have
5 been similar?

6 Q I am just trying to piece that from
7 yours. I don't know. I am asking you.

8 A Some of the sites had similar criteria,
9 site criteria. Others had a lot of other variables
10 that had to be taken into account into the design.

11 Q Would those variables add to possibly
12 increased design time on the part of whoever it was
13 that was doing the actual design work?

14 A Uh-huh.

15 HEARING OFFICER WALLACE: Yes?

16 THE WITNESS: Yes.

17 Q (By Mr. Kim) But as far as the basic,
18 when we are talking about design what specifically
19 are we referring to? Are we referring to the type
20 of equipment that will be used at the treatment
21 system or are we talking about the way in which you
22 calculate the manner in which the treatment system
23 will operate?

24 A Both.

1 Q Both. Okay. When you prepare a lease
2 rate for each site, do you take all those kinds of
3 things into consideration?

4 A Uh-huh.

5 HEARING OFFICER WALLACE: Yes?

6 THE WITNESS: Yes.

7 Q (By Mr. Kim) What considerations do you
8 take into account when you prepare a lease?

9 A For this type of system -- at the time we
10 established the lease we did kind of a market
11 analysis, what is out there, what types of systems
12 would be comparable to what we think we want in a
13 system, what are others charging, what are they
14 selling them for, can you lease them from someone
15 else, what would they include in a lease
16 agreement. And we use those numbers with what we
17 were going to -- or estimating to put into that
18 system to make it operate efficiently. From there
19 we came up with the \$3,500.00.

20 Q And when did you first begin signing or
21 entering into these leases with the rate being
22 \$3,500.00 a month? Do you know roughly what year
23 you began doing this?

24 A I believe in 1994.

1 Q 1994. Okay. So is it safe to say for
2 the past three years nothing has changed in terms
3 of market status or design criteria or site
4 conditions that would lead you in any situation
5 since then to change your lease rate?

6 A We have felt that this lease for what we
7 still see, you know, as far as other options of
8 constructing systems out there, versus buying one
9 and having to maintain someone else's system, that
10 the \$3,500.00 is still, we feel, a reasonable rate
11 considering what it includes.

12 Q Okay.

13 A For that amount.

14 Q What does it include for that amount?

15 A As we have discussed, it includes the
16 design, the construction, parts, labor, and
17 materials. Once it is operational, we have taken
18 the approach that -- and our permits are written as
19 such -- we are going to visit a site once a week.
20 Not only are we going to do a check on the system,
21 we are going to check external things, sumps, sewer
22 connections, whatever else, float switches, and
23 take samples, if necessary.

24 During that visit, if the technician sees

1 a light bulb is out on a panel or something minor
2 they always carry replacement things with them. If
3 they can make a quick simple repair that's what
4 they do. If something else is identified that
5 either requires repair to continue its operation or
6 they identify something that like now that valve is
7 starting to stick, I better get back over here,
8 they will come back and make all the necessary
9 repairs.

10 Q Okay.

11 A Any other charges, labor, materials or
12 anything, are not charged off to -- I mean, that's
13 part of the lease agreement. We do not charge the
14 clients for those costs.

15 Q Let's be definitive on that. The example
16 where, let's start with this, someone comes out on
17 a weekly basis to give the treatment system a look
18 over; is that correct?

19 A It is one component of visiting that
20 site. It is a site check and there is external
21 components to the system that are also inspected.

22 Q Okay. But I am saying that happens on at
23 least a once a week basis; is that correct?

24 A Yes.

1 Q Is that inspection or that look charged
2 to the client or is that charged as part of the
3 lease or is that included within the lease rate
4 itself?

5 A That is a charged visit.

6 Q Okay. So when the person is out there at
7 the site and they see something small, a fuse that
8 they can replace out of their pocket, the cost for
9 that fuse, is that charged or is that included
10 within the lease rate?

11 A It is included in the lease rate.

12 Q Is whatever the labor charges are for the
13 actual replacement, is that included in the lease
14 or is that charged separately?

15 A Well, we have tried to distinguish if it
16 is not something that you can do in a quick couple
17 of minutes then you are going -- that will be
18 another trip.

19 Q When you say another trip, would that
20 trip be charged then?

21 A No, it would not.

22 Q Okay. So if they see something on a trip
23 that they are charged for, they don't have to --
24 and it is going to require another trip back, the

1 second trip back is not charged, it is part of the
2 lease?

3 A Correct.

4 Q Any labor associated with the repairs,
5 would that be included within the lease?

6 A Yes, it is.

7 Q What about the parts that might be
8 required, would that be included?

9 A That's included in the lease.

10 Q So the only parts that are not covered
11 under the lease are just the small, quick-fix-it
12 type things?

13 A No, we would not -- that charge would not
14 be passed on to the client. That is part of the
15 lease.

16 Q So there are no replacement charges
17 passed on to the client?

18 A No.

19 Q The only charges, then, outside of the
20 lease for those things would just be the actual
21 once a week trip to and from the site?

22 A That's correct.

23 Q When you say that you look at the things
24 that make up the lease rate, included among those

1 is the cost for designing the treatment system; is
2 that correct?

3 A That's correct.

4 Q And included in that would be the
5 manpower and the overhead, what have you, to
6 construct the treatment system; is that correct?

7 A That's correct.

8 Q So when you were saying that on some of
9 the billing summaries where there was not a lease
10 rate showing, and you testified that that is
11 because the treatment was still under design or
12 under construction, it is not as if that work was
13 not ultimately being charged, it simply was not
14 appearing on that billing summary; is that right?

15 A That's correct. If it is included in the
16 lease rate and that system is not operational on
17 the site, there would be no charges assessed to
18 that project.

19 Q Until it became operational?

20 A Correct.

21 Q But the actual design charges, the actual
22 cost for design and construction prior to the
23 operation would be reflected in the lease rate?

24 A Correct.

1 Q Okay. How many -- are you familiar with
2 the terminology I have been employing between new
3 law and old law when we talk about the Underground
4 Storage Tank Program? Do you know what old law
5 refers to?

6 A Yes. I am not sure what you were asking
7 me.

8 Q Let's just -- I am trying to start slow
9 with the terminology. When I refer to old law what
10 I am referring to is Section 22.18(b). You say
11 that you have reviewed the final decision letter in
12 this case?

13 A Yes.

14 Q And you have reviewed Attachment A of
15 that decision letter, is that correct, that is on
16 page 3 of the Joint Exhibit Number 1?

17 A Yes.

18 Q There is a citation on that page which is
19 Section 22.18(b), Subsection (d)(4)C of the
20 Environmental Protection Act. Are you familiar
21 with that provision?

22 A Yes, but I didn't really think it was
23 still in effect.

24 Q So it is your understanding -- it was

1 your understanding that Section 22.18(b) was not in
2 effect; is that correct?

3 A I was not sure. I thought it was
4 repealed. I was not sure how it was being utilized
5 in this instance.

6 Q Did you have any idea as to whether or
7 not that was still being applied by the Agency?

8 A I am not sure what you mean.

9 Q Did you think the Agency was still
10 applying Section 22.18(b) after its repeal?

11 A To be honest, I was not sure, John.

12 Q So, specifically, the subsection that we
13 are talking about, the Subsection (d)(4)C, you
14 didn't know if that provision was being relied upon
15 by -- was being applied by the Agency to your
16 application?

17 A It appeared to be, but I can't say for
18 any certainty. I don't know what they were doing.

19 Q At the time you prepared the application,
20 did you believe that was going to be applied, that
21 Section 22.18(b) would be applied to your
22 application?

23 A I had no idea what they were going to
24 apply to the application.

1 Q What section did you think would be
2 applied to the application?

3 A I am not sure. I have seen different
4 sittings on different packages, so I am not --

5 Q So you didn't know what statutory
6 provisions of the Act would be applied to the
7 application?

8 A No, I did not.

9 Q You said that you were referring to the
10 Gold Coast Oil Company site as a slightly different
11 site from most of your sites in that there was no
12 lease there; is that correct?

13 A When we entered --

14 Q I think that is just a yes or a no.

15 A Can I explain that? It was already --

16 Q That is okay.

17 A -- a system there.

18 Q Let me rephrase the question.

19 A All right.

20 Q Was your method of calculating the charge
21 for the treatment system to pass on to the client
22 in the Gold Coast -- at the Gold Coast site
23 different from the Owens Oil site?

24 A I didn't pass along any cost of the

1 treatment system on the Gold Coast site.

2 Q I am sorry. I misunderstood that you
3 did. There were no treatment system costs passed
4 on by CW3M to the owner-operator to that site?

5 A No, there were not.

6 Q Okay. Why is that?

7 A There was a system that was already built
8 and operating at that facility when our involvement
9 began.

10 Q Okay. So in that case you never had to
11 pass on that cost?

12 A (Shook head from side to side.)

13 Q I am referring to something that you
14 stated in your testimony, and let me fill this
15 phrase out. If you understand what I am talking
16 about just let me know.

17 I think you said that that was a slightly
18 different situation for comparison purposes and
19 that that was more of a time and materials cost
20 basis?

21 A The system was built at the site on a
22 time and materials basis.

23 Q Okay. I tell you what, what does that
24 mean, to your understanding, a time and materials

1 cost basis?

2 A There is an invoice that will show a
3 person working at a certain rate for a certain
4 number of hours, for a total. There will probably
5 be parts, with markups on them. It will just be
6 whatever it took those people to do the job with
7 whatever parts necessary, they are going to bill
8 out each one of those individually.

9 Q Okay. So, for example, if you were going
10 to conduct a time and materials cost basis for that
11 treatment system at the other site -- I don't know
12 why I can't remember the site name -- at the other
13 site --

14 HEARING OFFICER WALLACE: Well, you are
15 going to have to remember, because --

16 Q (By Mr. Kim) At the Gold Coast site, some
17 of the things that would be reflected would be how
18 many people worked on the construction of the
19 facility, is that correct, or the treatment system;
20 is that correct?

21 A Can you rephrase that, please?

22 Q Yes. If you are going to break down the
23 costs for the treatment system, for a treatment
24 system on a time and materials cost basis, such as

1 I believe you said was done at the Gold Coast site,
2 you would take into -- you would demonstrate things
3 like how many people worked on the construction of
4 the treatment system; is that correct?

5 A Uh-huh.

6 HEARING OFFICER WALLACE: Yes?

7 THE WITNESS: Yes.

8 Q (By Mr. Kim) And how long each of those
9 people worked on the construction of the treatment
10 system?

11 A Yes.

12 Q And what hourly rate those people were
13 charging for their construction work; is that
14 correct?

15 A Yes.

16 Q Would that also take into the account the
17 cost of the components that made up the treatment
18 system?

19 A Yes.

20 HEARING OFFICER WALLACE: No. No
21 conferring.

22 MS. McCRAY: She asked for her purse.

23 HEARING OFFICER WALLACE: Oh, okay. Off
24 the record.

1 (Discussion off the record.)

2 HEARING OFFICER WALLACE: Back on the
3 record.

4 All right. Mr. Kim.

5 Q (By Mr. Kim) Is any of that type of
6 information that you were describing that would
7 have been performed, that would have been put
8 together for a time and materials cost basis, found
9 within the application that was submitted for the
10 Owens site?

11 A No, it is not.

12 Q You stated that there are a number of
13 instances in which CW3M has applied -- well, an
14 owner or an operator has applied for reimbursement
15 for a groundwater treatment system, the costs
16 associated with a groundwater treatment system
17 where CW3M had been involved in a lease agreement
18 with the owner-operator; is that right?

19 A Yes.

20 Q And in all the instances that you cited
21 the Agency paid the full amount requested, which I
22 believe was \$3,500.00 per month?

23 A Yes.

24 Q Are you aware of any situations where the

1 Agency has not paid, aside from this case, has not
2 paid in full \$3,500.00 a month as a reimbursement
3 rate for a treatment system that you prepared and
4 provided through a lease agreement?

5 A We have at least one other one, another
6 Owens reimbursement claim for the same -- well, I
7 should say a different rate was applied.

8 Q Do you know of any other --

9 HEARING OFFICER WALLACE: I am sorry. I
10 didn't understand your answer. There was another
11 Owens one where what?

12 THE WITNESS: Another Owens appeal file
13 where the rate was reduced to a different number
14 than \$3,500.00 or the \$1,200.00.

15 HEARING OFFICER WALLACE: It was even
16 different?

17 THE WITNESS: (Nodded head up and down.)

18 Q (By Mr. Kim) Are you aware of any other
19 sites, other than Owens, where the Agency deducted
20 or cut in total the \$3,500.00 a month lease rate?

21 A At least two other sites.

22 Q At least two other sites.

23 MR. KIM: Just a moment.

24 HEARING OFFICER WALLACE: All right.

1 Q (By Mr. Kim) The only other question I
2 had, when I was asking you before about the
3 different things that were taken into account in
4 your calculation of the lease rate for the
5 groundwater treatment system, I think I might have
6 referred to this broadly but, specifically, would
7 the computer programming or the computer
8 calibration for the treatment system, the time and
9 the work for that, would that be reflected in --
10 would that be taken into account when you were
11 calculating the lease rate?

12 A Rephrase, please, John.

13 Q From site to site to site you might have
14 to have different computer calibrations on your
15 treatment system; is that correct?

16 A Correct.

17 Q And does the time taken to recalibrate or
18 to set new computer settings for each site, is that
19 taken into account when you come up with a monthly
20 lease rate?

21 A Yes, it is.

22 Q Okay.

23 MR. KIM: I don't think I have anything
24 further.

1 HEARING OFFICER WALLACE: Redirect, Ms.
2 McCray.

3

4 MS. McCRAY: I just have a few points here to
5 clarify.

6 REDIRECT EXAMINATION

7 BY MS. McCRAY:

8 Q Mr. Kim asked you about costs that were
9 included in the lease rate. Are there other costs
10 of ongoing corrective action for the Owens site
11 that are unrelated to the groundwater treatment
12 system?

13 A There would be quarterly groundwater
14 monitoring which is, I mean, it is related to
15 groundwater remediation, but it is not related to
16 specifically the operation of the plant.

17 Q So there are costs internal to the
18 groundwater treatment system that are included in
19 the lease and then there are other costs of
20 corrective action that are not included in the
21 lease?

22 A Correct.

23 Q Can you describe some of those for us?

24 A At the Owens facility the soil

1 remediation is completed so we have quarterly
2 groundwater monitoring. We have what I call
3 corrective action documentation where we
4 incorporate all of the things going on at the site
5 and keep kind of a running text version of what has
6 happened at the facility.

7 Q You testified that all of the parts or
8 material that might be needed to make a repair
9 internal to the system are included in the lease
10 rate; is that correct?

11 A Correct.

12 Q What if there is materials or parts
13 necessary for some -- that would be external to the
14 system? Are those included?

15 A No, they are not.

16 Q Can you give us an example of one of
17 those types of charges?

18 A We have considered a sump or a pumping
19 well external to the system because those types of
20 things vary, you know, dramatically from site to
21 site. We would have set that up as a separate
22 expense. If repairs were needed to that recovery
23 well, we would have charged that off.

24 Q All right. On another topic, before a

1 corrective action plan is developed, you conduct an
2 investigation at the site, correct?

3 A Correct.

4 Q And the results of that investigation
5 form the basis of your design of the groundwater
6 treatment system; is that correct?

7 A Correct.

8 Q You have testified that there may be some
9 variations in the design from site to site; is that
10 right?

11 A Correct.

12 Q When you consider your lease rates, have
13 any of those variations been significant enough in
14 your formula or determination of the leased rates
15 to justify a change in the lease rate?

16 A Not in these types of groundwater
17 treatment systems.

18 Q John also asked you about the old law and
19 new law. To clarify, is there anything you would
20 have submitted differently depending whether you
21 thought the Agency was reviewing under old law or
22 new law? Would your package have been different?

23 A No, I don't believe so.

24 Q One final point. You testified that you

1 are aware of other decisions by the Agency where
2 the Agency found a \$3,500.00 per month lease
3 unreasonable, right?

4 A Correct.

5 Q They have reduced to various levels the
6 lease rate?

7 A Correct.

8 Q Are you aware that each of those
9 decisions is under appeal also?

10 A Yes.

11 Q Is this case the first of those appeals
12 to go to hearing?

13 A Yes, it is.

14 MS. McCRAY: We would again offer
15 Plaintiff's Exhibit 4A and 4B into evidence since
16 Mr. Kim has now asked questions about the Gold
17 Coast file during his cross.

18 HEARING OFFICER WALLACE: Any objection?

19 MR. KIM: I made no reference to any of
20 the information contained within the Gold Coast
21 documents. All I referenced was her testimony, not
22 the information contained within the exhibit, so I
23 think the objection to the exhibit stands.

24 HEARING OFFICER WALLACE: All right. I

1 am not going to admit Exhibit 4A and 4B at this
2 time. Anything further?

3 MS. McCRAY: Nothing further.

4 HEARING OFFICER WALLACE: Recross?

5 MR. KIM: Two questions, approximately.

6 RECROSS EXAMINATION

7 BY MR. KIM:

8 Q What is the longest and what is the
9 shortest time period that you have ever designed a
10 treatment system, a groundwater treatment system,
11 such as this, in terms of design life expectancy?

12 A Can you rephrase, please?

13 Q Sure.

14 HEARING OFFICER WALLACE: You don't
15 understand the question?

16 THE WITNESS: I didn't understand what he
17 was asking.

18 MR. KIM: I will rephrase.

19 Q (By Mr. Kim) The expert testimony of Mr.
20 Dunn, called earlier, testified that in some
21 situations you might design a treatment system, a
22 groundwater treatment system to last for one year,
23 two years, three years, four years.

24 What I am asking you is what is the

1 shortest period of time that you have ever designed
2 a groundwater treatment system to last and what is
3 the longest period of time that you have designed
4 one to last?

5 A For these types of treatment systems I
6 think they all have been three to four year
7 design.

8 Q Generally speaking, nothing longer,
9 nothing shorter?

10 A Not for these types, no.

11 Q The last question I have was did you ever
12 include a copy of the -- I am sorry.

13 Did you include a copy of the written
14 lease between Owens Oil and CW3M with the
15 reimbursement application that is the subject of
16 this appeal?

17 A No, we did not.

18 MR. KIM: Okay. I have nothing further.

19 HEARING OFFICER WALLACE: Okay. Thank
20 you.

21 MS. McCRAY: One question.

22 HEARING OFFICER WALLACE: No, that is
23 all.

24 MS. McCRAY: Is there a written lease --

1 HEARING OFFICER WALLACE: No, that's
2 all.
3 All right. Thank you. You may step
4 down.
5 (The witness left the stand.)
6 HEARING OFFICER WALLACE: Anything
7 further, Ms. McCray, Mr. Prillaman?
8 MR. PRILLAMAN: We have offered, I
9 believe, into evidence and we have admitted
10 everything but Exhibit 4A; is that correct?
11 HEARING OFFICER WALLACE: Exhibits 1
12 through 12 have all been admitted with the
13 exception of 4A and 4B.
14 MR. PRILLAMAN: All right. The
15 petitioner rests.
16 HEARING OFFICER WALLACE: All right. Mr.
17 Kim, Ms. Puccini?
18 MS. PUCCINI: The Agency would like to
19 call Chris Kohrmann.
20 HEARING OFFICER WALLACE: All right. Mr.
21 Kohrmann, please take the stand.
22 You have previously been sworn and you
23 are still under oath.
24 THE WITNESS: Yes.

1 C H R I S T O P H E R K O H R M A N N ,
2 having been previously duly sworn by the Hearing
3 Officer, saith as follows:

4 D I R E C T E X A M I N A T I O N

5 B Y M S . P U C C I N I :

6 Q In the interest of time, I am going to
7 bypass some of the usual things, because I think we
8 went through it before with the petitioner's case.

9 Just to start out, though, Mr. Kohrmann,
10 you were the individual that reviewed the Owens Oil
11 application?

12 A That's correct.

13 Q And the final decision letter that was
14 drafted in this case, that letter you did draft?

15 A That's correct.

16 Q And the basis for your denying costs on
17 the \$3,500.00 lease rate, the basis for that denial
18 is stated in the final decision letter?

19 A That's correct.

20 Q In that letter you did cite
21 22.18(b)(d)(4)C of the Act?

22 A That's correct.

23 Q Is that statutory provision that you have
24 mentioned before, is that the provision that you

1 used to determine whether the monthly lease rate of
2 the groundwater treatment system was reasonable?

3 A Yes.

4 Q Let's look at the application in the
5 record. If you could turn to the first page and
6 look at page 11. This probably has already been
7 testified to, but is, in fact, this application the
8 one that you reviewed in determining whether the
9 \$3,500.00 lease rate for Owens Oil was reasonable?

10 A Yes.

11 Q And what is the time period that this
12 application covers?

13 A The time period that this application
14 covers is December 1st of 1996 through February 28,
15 1997.

16 Q You conducted an accounting review of
17 this application?

18 A Correct.

19 Q And did you review specifically whether
20 the monthly lease rate in this groundwater
21 treatment system was reasonable?

22 A Yes.

23 Q Let me refer you to page 15 of the
24 record. Do you recognize that?

1 A Yes.

2 Q Is that part of the application?

3 A Yes, it is.

4 Q That is what Owens Oil submitted to you?

5 A That is correct.

6 Q Before we go any further, besides the

7 application that we have in front of us here today

8 in the record, was there any other information

9 submitted or does this contain what you were

10 required to look at in reviewing the Owens Oil

11 application?

12 A This is the information that was

13 submitted for me to look at.

14 Q Okay. Do you see a reference on page 15

15 to the lease rate?

16 A Yes, I do.

17 Q On that page is there any breakdown of

18 the time and materials costs that is required by

19 statute to determine whether the costs are

20 reasonable?

21 A No.

22 Q Is there any explanation as to what is

23 included in the \$3,500.00 lease rate?

24 A No.

1 Q Is there any itemization of what is
2 included in the \$3,500.00 lease rate?

3 A No.

4 Q Is there any indication of any kind on
5 what is included in the \$3,500.00?

6 A No.

7 Q Let's turn to page 23 of the record. Is
8 there also a notation there of the \$3,500.00 lease
9 rate?

10 A Yes.

11 Q Okay. Again, is there any explanation as
12 to what that \$3,500.00 includes?

13 A No.

14 Q Is there any time and material cost
15 breakdown as required by the statute included in
16 the \$3,500.00?

17 A No.

18 Q Is there any itemization of what the
19 \$3,500.00 covers?

20 A No.

21 Q Okay. Could you turn to page 26 of the
22 record. Is there a notation there of the \$3,500.00
23 lease rate?

24 A Yes.

1 Q Is there any explanation as to what that
2 \$3,500.00 covers?

3 A No.

4 Q Is there any itemization or any
5 indication of any kind of what services or
6 materials are covered under that \$3,500.00 lease
7 rate?

8 A No.

9 Q Is there a time and materials breakdown?

10 A No.

11 Q Let's turn to page 40 of the record. Is
12 there a notation there or a reference to the
13 \$3,500.00 lease rate for the groundwater treatment
14 system?

15 A Yes.

16 Q Was there any explanation as to what is
17 included in that \$3,500.00 rate?

18 A No.

19 Q Is there any itemization of what is
20 included in that rate?

21 A No.

22 Q Is there any breakdown as to time and
23 materials as to what is included in that \$3,500.00
24 rate?

1 A No.

2 Q Okay. Turning to page 52. Is the

3 \$3,500.00 lease rate referenced in the application?

4 A Yes.

5 Q Is there any explanation as to what is

6 included in the \$3,500.00 rate?

7 A No.

8 Q Is there any itemization of what is

9 included in that \$3,500.00 rate?

10 A No.

11 Q Is there a time and materials breakdown,

12 as required by statute, in the \$3,500.00 rate as

13 listed?

14 A No.

15 Q Turning to page 54, is there a notation

16 there regarding the \$3,500.00 lease rate?

17 A Yes.

18 Q Any explanation as to what it covered

19 under that \$3,500.00 lease rate?

20 A No.

21 Q Any itemization of what is included?

22 A No.

23 Q Is there any time and material cost

24 breakdown as required by statute provided to

1 explain what the \$3,500.00 covers?

2 A No.

3 Q Turning to page 80 of the record, is

4 there a notation or a reference to the \$3,500.00

5 monthly lease rate?

6 A Yes.

7 Q Is there any explanation as to what is

8 included in the \$3,500.00 lease rate?

9 A No.

10 Q Is there any itemization or breakdown?

11 A No.

12 Q Is there any breakdown of the time and

13 materials cost, as required by statute, included in

14 the \$3,500.00 monthly lease rate?

15 A No.

16 Q Turning to page 88 of the record, is

17 there a notation there regarding the \$3,500.00

18 monthly lease rate?

19 A Yes.

20 Q Is there any explanation as to what is

21 included in the \$3,500.00 monthly lease rate?

22 A No.

23 Q Is there any itemization of what services

24 or materials are included for the \$3,500.00 lease

1 rate?

2 A No.

3 Q Is there a time and materials breakdown

4 as required by statute provided in the \$3,500.00

5 lease rate?

6 A No.

7 Q Turning to page 89 of the record, is

8 there a notation or reference there to the

9 \$3,500.00 monthly lease rate?

10 A Yes.

11 Q Is there any explanation as to what the

12 \$3,500.00 covers?

13 A No.

14 Q Is there any itemization of what is

15 included in the \$3,500.00 monthly lease rate?

16 A No.

17 Q Is there any breakdown for time and

18 materials, as required by statute, to show what is

19 included in the \$3,500.00 lease rate?

20 A No.

21 Q On page 99 of the record, is there any

22 notation to the \$3,500.00 monthly lease rate on

23 this page?

24 A Yes.

1 Q Is there any explanation as to what is
2 included in the \$3,500.00 rate?

3 A No.

4 Q Is there any itemization of what services
5 or materials are included in the \$3,500.00 rate?

6 A No.

7 Q Is there any time and materials cost
8 breakdown, as required by statute to be included,
9 provided in the \$3,500.00 cost?

10 A No.

11 Q Other than the references we just walked
12 through, is there any other information in this
13 application that you reviewed that has a breakdown
14 or explanation as to what is covered under the
15 \$3,500.00 lease rate?

16 A No.

17 Q Does this application provide the cost of
18 the different component parts of the groundwater
19 treatment system?

20 A No.

21 Q Does the application provide where the
22 components of the groundwater treatment system were
23 purchased?

24 A No.

1 Q Does the application provide information
2 as to whether the components of the groundwater
3 treatment system were constructed on site or off
4 site?

5 A No.

6 Q Does the application provide anything
7 about each component of the groundwater treatment
8 system as to when the parts were purchased?

9 A No.

10 Q Is there any reference as to whether the
11 parts that are used in the groundwater treatment
12 system are new or used parts?

13 A No.

14 Q Is there any reference in the application
15 that you were asked to review for Owens Oil as to
16 how many people it required to put together a
17 groundwater treatment system requiring the
18 \$3,500.00 lease rate that was used in the
19 reimbursement package?

20 A No.

21 Q Is there any reference in this
22 application as to how long it took to put together
23 the groundwater treatment system requiring the
24 \$3,500.00 monthly lease rate?

1 A No.

2 Q Does the application that you were asked
3 to review include any types of services such as
4 operation and maintenance, and does it have an
5 indication that that is included in the \$3,500.00
6 lease rate?

7 A No.

8 Q Is there any indication in the
9 application as to installation charges and whether
10 that was included in the monthly lease rate of
11 \$3,500.00?

12 A No.

13 Q Was there any indication that the
14 \$3,500.00 monthly lease rate included any kind of
15 sampling of any kind?

16 A Yes, but not associated with the lease.

17 Q So there were no associated costs to the
18 \$3,500.00 lease rate that would indicate that
19 groundwater sampling was included?

20 A Correct.

21 Q Was there anything in this application
22 that had any indication that the \$3,500.00 covered
23 anything regarding replacement of defective parts?

24 A No.

1 Q Or any kind of repair to the system?

2 A No.

3 Q Is there anything in this application

4 that you were asked to review that the \$3,500.00

5 lease rate covered permits of any kind that needed

6 to be secured in order to operate the system at the

7 \$3,500.00 monthly lease rate?

8 A No.

9 Q Was the groundwater system lease actually

10 provided in the application that you were asked to

11 review?

12 A No.

13 Q Who was responsible for including the

14 appropriate information in the application to

15 demonstrate that the costs are reasonable?

16 MR. PRILLAMAN: I am going to object. It

17 calls for a legal conclusion and it is within the

18 province of the Board to decide that.

19 MS. PUCCINI: I can ask it another way.

20 HEARING OFFICER WALLACE: All right.

21 Q (By Ms. Puccini) Who puts together the

22 application for reimbursement?

23 A The owner-operator.

24 Q Do you determine what costs are

1 reasonable by what is provided by the applicant?

2 A Yes.

3 MS. PUCCINI: May I have just a second?

4 HEARING OFFICER WALLACE: Yes.

5 MS. PUCCINI: All right. That's all I

6 have.

7 HEARING OFFICER WALLACE: Okay. Mr.

8 Prillaman.

9 CROSS EXAMINATION

10 MR. PRILLAMAN:

11 Q Mr. Kohrmann, you were just asked a whole

12 series of questions as to whether the application

13 for reimbursement contained any indication that a

14 number of items were included within the \$3,500.00

15 a month lease charge, such as design, construction,

16 maintenance, and so forth. Do you remember those

17 questions?

18 A Yes.

19 Q Was there any indication in the

20 application that these items were not included in

21 the lease price?

22 A No.

23 Q Okay. Now, you also were asked questions

24 about whether there was a time and materials

1 breakdown each time that the \$3,500.00 a month
2 charge appeared in the application, which is Joint
3 Exhibit Number 1. Do you remember those questions?
4 A Yes.
5 Q Is it your testimony that for every item
6 that you are asked to review as to reasonableness
7 there is a requirement that a time and materials
8 breakdown appear?
9 A Yes.
10 Q Okay. So your testimony is that every
11 one of the items that you approved in this case
12 contained a time and materials breakdown?
13 A I am not sure.
14 Q You don't know. Okay. And you did
15 approve \$1,200.00 a month, didn't you, for this
16 treatment plant?
17 A Yes.
18 Q Where was the time and materials
19 breakdown for that?
20 A There was none.
21 Q There was none. But you knew that there
22 had to be time and materials that went into the
23 design, construction, operation and maintenance of
24 this plant, did you not?

1 A Yes.

2 Q Okay. Would it surprise you to learn
3 that within a short time after you made your
4 decision another member of your staff thought it
5 was worth \$1,900.00 a month for the same plant?

6 MS. PUCCINI: Objection. What happened
7 after the final decision is not before the Board.
8 Only the information that Mr. Kohrmann had at the
9 time that he made his decision and nothing after is
10 relevant.

11 MR. PRILLAMAN: I beg to differ, Your
12 Honor. Mr. Kim opened that up when he asked Mrs.
13 Rowe whether there had been, within her knowledge,
14 other Agency determinations of less than \$3,500.00
15 for this same plant, and she said she knew of at
16 least one and it was on appeal.

17 MR. KIM: But that's beyond the scope of
18 this witness. This witness --

19 HEARING OFFICER WALLACE: It is beyond
20 the scope of the direct of this witness.

21 MR. PRILLAMAN: All right.

22 Q (By Mr. Prillaman) Let me ask you this
23 question. Did you have occasion to review with Mr.
24 Doug Tolin (spelled phonetically) the

1 reasonableness of the charge of \$3,500.00 as
2 requested by the applicant in this case?

3 A No.

4 MS. PUCCINI: Objection as to vague.
5 There is no application that -- Doug Tolin --
6 HEARING OFFICER WALLACE: Overruled.

7 Q (By Mr. Prillaman) You did not?

8 A No.

9 Q Okay. Do you know who Doug Tolin is?

10 A Yes.

11 Q Does Doug Tolin perform the same services
12 that you do for the EPA?

13 A No.

14 Q How do they differ?

15 A He does nothing but the technical --
16 nothing but the fiscal reviews.

17 Q Nothing but the fiscal reviews?

18 A Correct.

19 Q That is something that is outside your
20 scope of responsibility; is that correct?

21 A Normally, correct, yes.

22 Q All right. When you testified in answer
23 to the questions you were asked whether time and
24 materials breakdown was required by statute, were

1 you referring to the statute that was repealed in
2 1993?

3 A Yes.

4 Q Okay. To your knowledge, is this the
5 only review you have ever -- the fiscal review that
6 you have done?

7 A No.

8 Q You have done other fiscal reviews?

9 A Yes.

10 Q So your testimony is that every time
11 there is a submission for reimbursement for, say, a
12 subcontractors efforts on a job, there has to be a
13 time and materials breakdown for that
14 subcontractor?

15 A For a subcontractor?

16 Q Yes.

17 MR. KIM: Objection. I don't think there
18 was ever any testimony on direct on this point.

19 MR. PRILLAMAN: Well, the testimony on
20 direct was that this applicant did not have time
21 and materials for each time the plant appeared. My
22 question, growing out of that series of questions,
23 is is it required that time and materials breakdown
24 always be provided in an application package.

1 That's my question.

2 HEARING OFFICER WALLACE: All right. I

3 think that is slightly different than you

4 originally asked.

5 MR. KIM: Yes.

6 MR. PRILLAMAN: Yes, I asked

7 subcontractor. That was an example.

8 HEARING OFFICER WALLACE: Okay. Do you

9 still object?

10 MR. KIM: No.

11 HEARING OFFICER WALLACE: All right.

12 THE WITNESS: Could you rephrase the

13 question, please?

14 Q (By Mr. Prillaman) Yes. Is it your

15 testimony here today, as a reviewer of these fiscal

16 aspects of a request for reconsideration, that

17 every request for reconsideration including a

18 subcontractors work on a job be broken down by time

19 and material?

20 A No.

21 Q Okay. Is the same true with a laboratory

22 request?

23 A No.

24 Q Okay. So that when a person asks for

1 repayment or reimbursement for costs expended on a
2 site cleanup under the LUST program for lab
3 expenses, you are not requiring the applicant to
4 give a time and materials breakdown of each lab
5 person who worked on that lab sheet, are you?
6 A That's correct.
7 Q Okay.
8 MR. PRILLAMAN: I have no further
9 questions.
10 HEARING OFFICER WALLACE: Redirect, Ms.
11 Puccini.
12 MS. PUCCINI: Just one question.
13 REDIRECT EXAMINATION
14 BY MS. PUCCINI:
15 Q Anywhere in the application that you
16 reviewed, was there any reference to what is
17 included in the \$3,500.00 lease rate, whether it be
18 a time and materials cost breakdown or any kind of
19 explanation anywhere in the application?
20 A No.
21 MS. PUCCINI: That's all I have.
22 HEARING OFFICER WALLACE: Mr. Prillaman?
23 MR. PRILLAMAN: Nothing further.
24 HEARING OFFICER WALLACE: Thank you, Mr.

1 Kohrmann. You may step down.
2 (The witness left the stand.)
3 HEARING OFFICER WALLACE: Anything
4 further, Ms. Puccini?
5 MS. PUCCINI: I have nothing.
6 HEARING OFFICER WALLACE: Mr. Kim?
7 MR. KIM: Nothing.
8 HEARING OFFICER WALLACE: The Agency
9 rests?
10 MR. KIM: The Agency rests.
11 HEARING OFFICER WALLACE: Any rebuttal?
12 MR. PRILLAMAN: One second.
13 HEARING OFFICER WALLACE: Okay.
14 MR. PRILLAMAN: As rebuttal we would
15 simply like the Board to take official notice of a
16 case that was filed on October 6, 1997. I do not
17 have the Pollution Control Board number on it, but
18 it was Owens Oil Company versus Illinois EPA from
19 which an appeal was taken of yet a different
20 determination by the Illinois EPA of this same
21 rental for this same facility at Owens Oil Company.
22 HEARING OFFICER WALLACE: Do you wish to
23 comment?
24 MR. KIM: Yes. It doesn't really --

1 well, yes, I would object simply because this is
2 information which postdates the Agency's decision
3 in this case by a number of months. It is not tied
4 to anything that was brought out today. It has no
5 bearing on whether or not the decision made by Mr.
6 Kohrmann was correct or not correct and, therefore,
7 since it is after the decision involved, it is
8 irrelevant and it is immaterial and it should not
9 be admitted.

10 HEARING OFFICER WALLACE: All right. I
11 think that I will uphold the objection and not take
12 notice of this later filed case due to the fact
13 that the Board is bound by the date on the --

14 MR. KIM: July 18th.

15 HEARING OFFICER WALLACE: By the July
16 18th date on the determination letter.

17 MR. PRILLAMAN: Just for the record --

18 HEARING OFFICER WALLACE: All right, sir.

19 MR. PRILLAMAN: The appeal involves an
20 application.

21 MR. KIM: Objection. He is going to read
22 the information he wants into the record. I think
23 that is what you just said is excluded.

24 MR. PRILLAMAN: I won't even look at it.

1 The appeal involves --

2 MR. KIM: I would object to this.

3 MR. PRILLAMAN: I can explain. The
4 appeal involves an application that was sent over
5 to the Agency on January 10, 1997. There was an
6 overlap of these two files. They were both sitting
7 there at the same time. One decision came out one
8 way on the same plant and another decision came out
9 another way on the same plant for the same
10 request.

11 I think the Board would like to know
12 that. I think the Board would want to take
13 official notice of that and look at its own files.
14 That is a modest request. That's my request.

15 MR. KIM: In response, I would only say
16 that we have had a complete hearing in this case
17 with evidence produced with arguments on both sides
18 and the Board will get briefing on both sides.
19 That case has been filed. It is my understanding
20 that there is a petition for review on file. I
21 think that's about it. I don't even know if the
22 Agency has filed an appearance.

23 I don't know what guidance the Board can
24 take from the fact that there has been a petition

1 filed in a matter which involves the same company.
2 No arguments have been made. No evidence has been
3 offered as to whether or not there are
4 distinguishing factors there, as to whether there
5 were other considerations that should be taken into
6 account.

7 Therefore, I see no way for the Board to
8 possibly take that into consideration or how that
9 would weigh into their deliberations here.

10 HEARING OFFICER WALLACE: All right. My
11 ruling still stands that I believe taking official
12 notice of that case on the Owens Oil Company appeal
13 dated October 6, 1997, would be inappropriate at
14 this time. For the reasons I explained earlier, I
15 believe the Board is bound by the --

16 MR. KIM: July 18th.

17 HEARING OFFICER WALLACE: -- July 18th,
18 1997 date.

19 MR. PRILLAMAN: Thank you.

20 HEARING OFFICER WALLACE: I would also
21 clarify that I did cut Ms. McCray off. It is my
22 understanding that there was testimony that there
23 was an oral lease with CW3M and Owens Oil, and
24 there were questions whether the lease was included

1 in the package, and to the extent that I may allow,
2 if you will stipulate that that was --

3 MR. KIM: We would stipulate that the
4 lease was, in fact, an oral as opposed to a written
5 lease if the petitioner would stipulate to the one
6 question I would have asked, had that gotten
7 through, which would have been that no information
8 relating to the oral -- that would be found in the
9 oral lease, aside from the lease itself, the lease
10 charge itself, was the within the application.

11 MR. PRILLAMAN: Again, I think the
12 application speaks for itself. In fact, the whole
13 last line of questions was what is in the
14 application, so that would be the extent of my
15 stipulation. If it is not in there then it is not
16 in there.

17 HEARING OFFICER WALLACE: I just wanted
18 to point out that I did -- the only reason I bring
19 it up, there was another question later was the
20 lease included. It is obvious, if everyone reads
21 the entire record, it couldn't be included because
22 there was testimony that it was an oral lease.

23 MR. KIM: I guess my point is that -- and
24 I think Mr. Prillaman has just agreed -- that

1 setting aside what type of lease it was, no terms
2 of the lease other than the lease rate itself were
3 included within the reimbursement package. I think
4 he has just stipulated that, in fact, no such terms
5 were included within the application package. If
6 that's the case, we have no problems stipulating
7 that it was an oral lease as opposed to a written
8 lease.

9 MR. PRILLAMAN: Well, I don't know what
10 he is asking because --

11 HEARING OFFICER WALLACE: Well, I am
12 sorry I brought this whole thing up, because we
13 can't stipulate to what has already been testified
14 to. But I did want to clarify that that was in the
15 record, and then I guess I should leave it at
16 that.

17 MR. PRILLAMAN: That's fine.

18 HEARING OFFICER WALLACE: Sorry for
19 that.

20 Okay. No rebuttal? Do you want to write
21 briefs on this?

22 MR. PRILLAMAN: Yes. I think this is
23 kind of a short deadline.

24 HEARING OFFICER WALLACE: I show the

1 decision deadline as being December 18th and there
2 is a board meeting on December 18th. So if you are
3 inclined to grant a waiver we can put it off,
4 otherwise I would say that --

5 MR. KIM: Briefs due tomorrow.

6 MR. PRILLAMAN: Simultaneous briefs?

7 HEARING OFFICER WALLACE: Let's go off
8 the record.

9 (Discussion off the record.)

10 HEARING OFFICER WALLACE: Back on the
11 record.

12 There being no further waiver of the
13 decision deadline, which I believe the clerk's
14 office has calculated to be December 18th, upon
15 which date there is a Board meeting, and the Board
16 prefers to have the record complete approximately
17 30 days ahead of that decision deadline, I will
18 order simultaneous briefs on this matter to be due
19 on November 19th.

20 MR. PRILLAMAN: Thank you.

21 HEARING OFFICER WALLACE: I would note
22 for the record, before I forget, that I find no
23 issue of credibility with the witnesses that
24 appeared here today.

1 I believe that's it. Thank you very
2 much.

3 MR. PRILLAMAN: Thank you.

4 MS. McCRAY: Thank you.

5 MR. KIM: Thank you.

6 MS. PUCCINI: Thank you.

7 (Hearing exhibits were retained
8 by Hearing Officer Wallace.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3

4 C E R T I F I C A T E

5 I, DARLENE M. NIEMEYER, a Notary Public
6 in and for the County of Montgomery, State of
7 Illinois, DO HEREBY CERTIFY that the foregoing 205
8 pages comprise a true, complete and correct
9 transcript of the proceedings held on the 24th of
10 October A.D., 1997, at 600 South Second Street,
11 Springfield, Illinois, in the case of Owens Oil
12 Company v. Illinois Environmental Protection
13 Agency, in proceedings held before the Honorable
14 Michael Wallace, Hearing Officer, and recorded in
15 machine shorthand by me.

16 IN WITNESS WHEREOF I have hereunto set my
17 hand and affixed my Notarial Seal this 4th day of
18 November A.D., 1997.

19

20

21 Notary Public and
22 Certified Shorthand Reporter and
Registered Professional Reporter

23 CSR License No. 084-003677
My Commission Expires: 03-02-99

24