

THE ILLINOIS POLLUTION CONTROL BOARD  
November 15, 2022

PARKER'S GAS & MORE,            )  
INC.,                                )  
                                      )  
                  Petitioner,        )  
                                      )    No. PCB 19-79  
          vs.                         )  
                                      )  
ILLINOIS ENVIRONMENTAL        )  
PROTECTION AGENCY,            )  
                                      )  
                  Respondent.      )

TRANSCRIPT FROM THE PROCEEDINGS taken  
before HEARING OFFICER CAROL WEBB, by RHONDA  
RHODES BENTLEY, CSR #084-002706, for the State of  
Illinois, at the Illinois Pollution Control  
Board, 1021 North Grand Avenue East (North  
Entrance), Springfield, Illinois, on the 15th day  
of November, 2022, at 10:00 a.m.

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ALSO PRESENT:

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PROCEEDINGS

10:02 a.m.

HEARING OFFICER WEBB: Good morning.

My name is Carol Webb, and this is the hearing for PCB 19-79 Parker's Gas & More, Inc., v. The IEPA. It is November 15, and we are beginning at 10:00 a.m. For the record although this facility is located in Adams County there was no known public interest in this case so I granted the parties' request to hold the hearing in Springfield. There are no members of the public present to comment but written public comments may be filed with the clerk by November 29.

In this appeal Petitioner alleges that the Agency wrongfully denied part of its request for reimbursement for Petitioner's site located at 101 East Outer Belt Drive in Clayton. The Pollution Control Board members will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner so that we have a clear record of the proceeding. This hearing was noticed pursuant to the act and the Board's rules and will be conducted pursuant to sections 101.600 through

1 101.632 of the Board's procedural rules.

2 At this time I'd like to ask the  
3 parties to please make their appearances on the  
4 record.

5 MR. SHAW: My name is Patrick Shaw.  
6 I'm here for Parker's Gas & More, Petitioner.

7 MS. JARVIS: And I'm Melanie Jarvis,  
8 and I'm here for the Illinois Environmental  
9 Protection Agency.

10 HEARING OFFICER WEBB: Are there any  
11 preliminary matters to discuss on the record?

12 MR. SHAW: No.

13 HEARING OFFICER WEBB: Okay. Would  
14 Petitioner like to make an opening statement?

15 MR. SHAW: I'll waive opening  
16 statement.

17 HEARING OFFICER WEBB: Okay.

18 MS. JARVIS: I will waive opening  
19 statement.

20 HEARING OFFICER WEBB: Okay. Great.  
21 Petitioner may present its case. You may call  
22 your first witness.

23 MR. SHAW: All right.

24 HEARING OFFICER WEBB: Yeah, we'll

1 put the witness over here. And would the court  
2 reporter please swear in the witness.

3 MICHAEL DUDAS,  
4 having first been duly sworn, testifies as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. SHAW:

8 Q. Could you please state your name for  
9 the record.

10 A. Michael Dudas, D-u-d-a-s.

11 Q. Mr. Dudas, what is your highest  
12 educational attainment?

13 A. Bachelor's of science in civil  
14 engineering that I received from Southern  
15 Illinois University-Edwardsville.

16 Q. Do you have any licenses?

17 A. Professional engineering license,  
18 asbestos license, explosive license, probably --  
19 probably all -- yeah, certified ones.

20 Q. Do you have any certifications?

21 A. Yeah, I have a great deal, ACI  
22 certification. I have my asphalt for DOT  
23 certifications, concrete certifications, my  
24 contract quarry course for DOT certification.

1           **Q.     What is your current occupation?**

2           A.     I'm currently a design engineer at  
3           Hanson Professional Services.  So I do a lot of  
4           civil work relevant to airport work, terminal  
5           buildings, lighting, runways, taxiways, roads,  
6           similar to that.  I work part-time with Chase,  
7           assist with reimbursement applications, plan  
8           reviews, CAD drawings, kind of setting up  
9           projects.

10          **Q.     How many years have you worked with**  
11          **underground storage tank projects?**

12          A.     Full-time probably three years.  I  
13          started my career for about two and a half years  
14          in the -- kind of focused in LUST, and then  
15          probably in the last four years I've been more  
16          intimately involved with reimbursement  
17          applications and really reviewing and stamping  
18          corrective action plans and corrective action  
19          reports and things of that nature.

20          **Q.     What is Chase's role with the**  
21          **Parker's Gas site?**

22          A.     Ted Parker is the owner of that site,  
23          and he selected us as the consultant to prepare  
24          his corrective action plan and then kind of

1 pursue that work -- that corrective action work.  
2 So we also do construction activities through our  
3 company in a kind of -- same company, separate  
4 kind of office. Same office but separate people.  
5 So we were selected to pretty much initiate that  
6 corrective action plan to do soil abatement, to  
7 clean up his property that had been impacted by a  
8 petroleum release.

9 **Q. How would you describe the corrective**  
10 **action plan that's under discussion today?**

11 A. Pretty standard. It's just a soil  
12 abatement process. So we would have -- or some  
13 individuals would have went out, took borings,  
14 and then through the EPA delineated the kind of  
15 area of containment -- or contamination, and that  
16 contamination would have been under EPA review  
17 and then been approved in a budget to be  
18 remediated through soil abatement, which just  
19 means removing that contamination, taking it to  
20 an approved landfill, and then bringing back in  
21 clean backfill, and sampling there to make sure  
22 that we've cleaned up what was required in the  
23 plan, the corrective action plan.

24 **Q. Are you aware of any specifications**



1 **for the type of backfill material to be used in**  
2 **this plan?**

3 A. No, typically the plan itself is just  
4 soil abatement. There's not usually -- the soil  
5 itself might get analyzed through a Shelby tube  
6 to see what it is for calculations, but after  
7 that it's kind of left -- really the consultant  
8 engineering practice is to backfill the hole,  
9 compact it, and placement of material is  
10 obviously acceptable. We can't put any kind of  
11 contamination back or any kind of thing that's  
12 harmful to the environment. So long as it's  
13 considered clean backfill, generally it's  
14 acceptable.

15 Q. **So you're not aware of any**  
16 **specifications for the type of backfill material**  
17 **to be used in the UST program?**

18 A. No, there's not typically a -- unless  
19 the owner themselves would have some kind of  
20 specification. You know, they may request, you  
21 know, if they're going to put concrete back or  
22 something, we typically do put some form CA6 or  
23 road base or something along that nature, rock to  
24 cap it, but, you know, typically we can use sand

1 or rock or clay soil or really any kind of  
2 backfill material that's again clean.

3 **Q. How is backfilling budgeted and**  
4 **selected?**

5 A. So the backfill typically is budgeted  
6 -- so once again you delineate the area and then  
7 there's usually a volume that comes from that,  
8 you know, if it's 10 by 10 by 10, that volume's  
9 determined, and then that volume then has --  
10 through the regs is a swell factor is typically  
11 added, which just kind of accounts for bringing  
12 back in backfill, that kind of fluff. And then  
13 that -- that backfill quantity then is put into  
14 that plan, and then that is given a rate in the  
15 plan that's approved by the EPA, and it's not to  
16 exceed the maximum rates that have been  
17 established by the Agency or the regulations  
18 themselves.

19 **Q. How's the particular type of backfill**  
20 **material selected?**

21 A. It kind of varies. So when we  
22 perform this work, we're usually looking at a  
23 bunch of factors. You know, we look at trucking  
24 cost. We're kind of limited. The labor cost is

1 what it is. We need usually an operator too  
2 depending on how big the work is. Laborers.  
3 That's under prevailing wage. That's usually  
4 limited. Our landfill cost, we're usually --  
5 very seldom do we have a -- consider it kind of  
6 competitive landfills. There's usually just one  
7 that's just close, and that's all we can really  
8 use to be economic in what we're doing. And then  
9 typically we look around for -- depending on the  
10 trucks, how many trucks we have, kind of material  
11 take-offs of what we're trying to select.

12           You know, we might find that there's  
13 a sand gravel pit very close to a landfill that  
14 makes it efficient, and so we complete the work  
15 within that rate. There might be a site that has  
16 clean soil that we're able to go to that's close.  
17 Sometimes we run into soft conditions where we  
18 need larger aggregates, we're looking for that.  
19 So really the backfill selected kind of on  
20 conditions, and then kind of costs proximity.

21           So when we look at doing the work,  
22 we're looking at it as a whole, you know, how can  
23 we do it within rate, and so it kind of varies.  
24 Typically we would shoot for sand. It compacts

1 nice and fills in the void, and it's easy to work  
2 with, but we use soil, rock. It just varies  
3 depending on what we can do to kind of complete  
4 the project in budget. That's one of the items  
5 we kind of have control over. Because again  
6 prevailing wage kind of dictates all that.

7 Our equipment costs are what they  
8 are. I mean -- depending on the size of the  
9 excavation. The excavator may change or  
10 whatever, but it's typically pretty well set, and  
11 trucking is what it is. So trucking is a high  
12 expense to what we do. So if there's a quarry,  
13 even if they have soil for \$4 let's say and if  
14 it's an hour away and there's something that's,  
15 you know, 30 minutes and the rocks' \$5, it might  
16 be, you know, more conducive to grab that too.

17 So again since we don't have any kind  
18 of material certification requirements or  
19 requirements for the material and it's just kind  
20 of how we can make it work within budget.

21 **Q. I'm going to turn to -- you're**  
22 **familiar with the reimbursement request in this**  
23 **case?**

24 **A. Yes.**

1           Q.     I'm going to go select a page from  
2     the record. This is page 242. Just for -- to  
3     make sure we're all on the same page of what  
4     we're talking about. Do you recognize the page I  
5     just gave you?

6           A.     Yes. Yes, I do.

7           Q.     It looks like it's referring to  
8     Florence Quarry as the plant site, and could you  
9     describe what kind of materials are identified on  
10    this invoice?

11          A.     Sure. So just for the record so --  
12    typically, like I spoke about earlier, we would  
13    use -- in this case it's a CMO6, which is a  
14    coarse modified aggregate 6. So this is a --  
15    what we'd call a CA6 or it says CMO6 on it. So  
16    it just means modified. So that 079CMO6, that 0  
17    just means aggregate. 7 is the quality of the  
18    type of rock. So 7's just recycled probably, and  
19    9's a special class, but typically since there  
20    are no requirements -- but we do try to do  
21    engineering practice -- we're typically capping  
22    the site with- -- it could be more. We don't  
23    usually kind of calculate, depends on the size,  
24    but typically 6 to 8 inches -- 8 inches of what

1 we consider kind of a course or base course,  
2 which would be kind of what we see at a gravel  
3 lot. It's got fines in it. It's got some rock  
4 in it. It compacts really nice.

5           So this is a material that we would  
6 use typically, and it might be called a grade 8,  
7 a minus 8, you know, minus 1, something like  
8 that. Pretty similar material that we would use  
9 to cap the site. It's not something we would  
10 typically use for backfill because it's --  
11 typically it's cost prohibitive. In this case  
12 it's -- I think -- I believe it was recycled, but  
13 typically when you have certified rock like that  
14 that's used on DOT projects and stuff, it is  
15 costly because they have to meet gradation  
16 requirements for projects. So that's what I  
17 believe this would have been used for then  
18 probably to cap the entire site.

19           **Q.       Okay. I'll approach with another**  
20 **page from the record. This is page 240. Are you**  
21 **familiar with this invoice?**

22           A.       Yes, I am.

23           **Q.       It has the named plant site as**  
24 **Richfield Quarry on it. Could you just describe**

1 **the materials identified on this invoice?**

2 A. Yeah, sure. And this is the same  
3 company Central Stone. So typically sometimes  
4 they'll have this kind of rock otherwise. So  
5 that's why we would have switched quarries, but  
6 -- so it says 3 inch -- well, it looks like it's  
7 cut out with a hole punch, but it's 3 inch clean  
8 commercial. So 3 inch clean means there's  
9 probably a lot of fines in it. Commercial --  
10 it's really when we order aggregate, everything  
11 in the aggregate world is for specifications,  
12 whether it's for rip rap for erosion control, or  
13 sand for asphalt mixes, or rock for concrete, or  
14 French drains or foundations. So 3 inch clean  
15 commercial typically probably something without a  
16 true IDOT cert that they might use for private  
17 work, for kind of a base to -- usually 3 inch  
18 rock's pretty good size, and normally we run into  
19 -- the reason this would have been selected  
20 normally we run into big excavations with a  
21 fairly large soil abatement job.

22 We've got a lot of trucks, usually  
23 tight areas. So when you start digging down in  
24 the soil, the groundwater, the subgrade usually

1 is really soft, and in order to get a material to  
2 bridge that soft subgrades so we can get on it  
3 and roll the material and the rock, we'll have to  
4 usually get something a little bit bigger, and so  
5 this is just a -- they could have some other  
6 fines and stuff, but typically a 3 inch kind of  
7 clean rock that we use to -- to backfill the  
8 majority of the excavation, and that gave us the  
9 ability to dump the trucks, develop a bench for  
10 us to get a Skid-steer out there, push the  
11 material, compact that material in, and then --  
12 and then place that -- that top that we talked  
13 about.

14 **Q. Okay. And there was a third type of**  
15 **backfill material used in this site that I**  
16 **believe was referred to as a washout rock. Are**  
17 **you familiar with that?**

18 A. Yes, I am.

19 **Q. Can you describe what that would be?**

20 A. Yeah, so it's usually -- sometimes --  
21 some of the ready-mix plants will have kind of a  
22 mix of just broken concrete or rock or sand or  
23 dirt, and they -- that they've kind of collected  
24 and they need to usually get rid of. So again



1 when you think about aggregate, there's usually a  
2 use for it. So, you know, if you're doing a  
3 project, you're really looking for something that  
4 meets specification, and in the case of material  
5 like that, there's usually no real use other than  
6 backfill because it's not, you know, you're not  
7 going to use it for a road base because there's  
8 no -- no gradation to it. It can be poorly  
9 gradated. It's got a lot of fines. It could  
10 cause some swell potential. I mean -- so there's  
11 -- it's usually just a mix of various different  
12 aggregates or soil that sometimes ready mixes  
13 have available for use.

14 **Q. Do you know where this material came**  
15 **from on this project?**

16 A. Not off the top of my head.

17 **Q. Did it come from a ready-mix plant?**

18 MS. JARVIS: Do you want to see that?

19 A. I'm -- I -- I believe so. I'm sure  
20 it would.

21 BY MR. SHAW:

22 **Q. Yeah, I'm borrowing counsel's**  
23 **exhibit. I'm showing you page 222.**

24 A. Yeah, it's -- it says Clinard Ready

1 Mix, P.O. Box 112, Mt. Sterling Illinois.

2 Q. In this exhibit what was the price  
3 that was given for the material?

4 A. We received the material for free, no  
5 charge.

6 Q. Is the charging of that material  
7 unique, or is it common?

8 A. It can be. So oftentimes -- so  
9 nothing's free. So oftentimes there's a charge  
10 to haul the material and to wait to use the weigh  
11 scale to get tickets of that nature. So in the  
12 past -- typically again this is material that,  
13 you know, no civil contractor's using because  
14 typically when you have a job, you do have  
15 specified material requirements. So typically  
16 they're trying to get rid of it because it takes  
17 up space and they need that space. So a lot of  
18 times we're paying for the -- either them to load  
19 it or the weigh scale. I mean it can vary, but  
20 usually it's by -- it could be by the load.

21 You know, we had a recent one that  
22 was -- you know, for them to load and to weigh,  
23 they charged 20, \$25 a load, and it's usually to  
24 have somebody out there to weigh and load.

1           **Q.     Does the price for this type of**  
2 **material vary?**

3           A.     Yeah, I can't say -- it could.

4           **Q.     Okay. How readily available is this**  
5 **type of material?**

6           A.     Again it's kind of a variance. It --  
7 it kind of depends on what they have. I mean  
8 some private people might use it for backfill.  
9 It's just whatever's there. Again when you're  
10 talking about quantity, they might have a little  
11 bit, but, you know, we're looking for, you know,  
12 maybe a lot or something, it just kind of varies.  
13 We don't use it very often -- or yeah.

14           **Q.     You had indicated earlier that cost**  
15 **-- the type of backfill material used is often**  
16 **dependent upon proximity costs?**

17           A.     Yeah, certainly. So when we look at  
18 these projects, you know, we -- so some of these  
19 -- and I'm not saying this one in particular that  
20 I'm holding in front of me, but, you know, we  
21 look at these things to determine if we can do  
22 them within budget, we're looking -- there's a  
23 lot of things we just have -- I say we -- really  
24 have no control over. We have to have laborers.

1 We have to have operators. Those are all under  
2 PW. We know those rates. We call up the  
3 landfills. There's really -- anymore there's  
4 really no negotiation. It is what it is. So we  
5 know that rate.

6 The trucking is pretty limited to the  
7 area, and oftentimes if we have a certain amount  
8 of quantity, it's not -- we can't officially do  
9 it if we don't have the right number of trucks.  
10 So oftentimes we're limited there. So -- in  
11 other words, we look at the whole project. When  
12 we're looking at this as a project, you know, in  
13 this case, you know, no one was doing this work  
14 for them so for us to get it done, you know,  
15 we're looking at how can we efficiently get that  
16 done, and oftentimes it's trying to work out  
17 deals with quarries like we'll do so much rocks,  
18 they might give us a break, you know. Oftentimes  
19 even with a landfill, if you do so much for them,  
20 they'll go okay, we'll cut the costs a little bit  
21 to help you guys. So we're trying to -- we're  
22 tied to that budget rate. There's no real  
23 amendment to it so, you know, we don't get to  
24 come in after the fact and, you know, well, it

1 actually cost this. Whatever it cost, we often  
2 just lose, and there's nothing we can do about  
3 that.

4           So, you know, when we look at these  
5 things, we look at it as a totality. So  
6 oftentimes if we can get a quarry that's got a  
7 suitable material, you know, it's always  
8 important -- just like this 3 inch clean, that  
9 was something that my predecessor or somebody  
10 else determined was required so that we could  
11 bench and properly compact the material. You  
12 know, we have to kind of take that into  
13 consideration too. So which is, you know, the  
14 reason why we don't use CA6 and certified IDOT  
15 material for the whole thing.

16           You know, today's rates, some of that  
17 might be, you know, \$30 a ton, and it just -- it  
18 would exceed the maximum rates that we couldn't  
19 even do it. So we're really looking at where can  
20 we -- where can we -- you know, kind of tie  
21 everything together because our trucking cost is  
22 very expensive, and it's actually most of the  
23 cost. So if the truck has to travel and, you  
24 know, two hours, you know, we're -- sometimes

1 it's impossible for us to really do. So --

2 **Q. Well, if -- are you saying is it**  
3 **possible that free material may be too expensive**  
4 **given transportation costs, given the**  
5 **circumstance?**

6 A. Yeah, I mean just because it's -- I  
7 think free is a weird word but just because they  
8 -- you know, that was an opportunity for us.  
9 Again we -- you know, we're working with -- we  
10 call it multiple people, multiple places to try  
11 to make these things work, and I don't know the  
12 individual that was spoken to here at Clinard and  
13 stuff, but, you know, we're still paying that  
14 truck to go pick that material up. We then had  
15 to secure an agreement to go to a weigh scale so  
16 that we could properly document that that  
17 material was in fact delivered and hauled.

18 And so there's -- there's all those  
19 steps that are involved in, you know -- you know,  
20 we deal with purveying on these sites. We deal  
21 -- there's a lot of things that go into this  
22 whole -- total unit rate. It really just isn't  
23 truly a material cost. You know, a lot of it the  
24 Agency, we don't even provide, you know, permits

1 and stuff, that's all stuff we have to do behind  
2 the scene. Any kind of client consideration, any  
3 kind of traffic safety. You know, some of -- you  
4 know, if we work on some jobs next to a road, you  
5 know, we might have to have a density guy out  
6 there. We just had one in Decatur, we had to  
7 have new gauges. That's not something that gets  
8 considered. So, you know, our unit rates are far  
9 more exclusive than just material and trucking.  
10 There's other things that we have to consider  
11 when we do these things.

12 **Q. Well, let me -- can you just tell us**  
13 **what are the other costs associated beyond the**  
14 **cost of material?**

15 A. For the rates. So -- I mean we have  
16 obviously labor, manpower, equipment costs,  
17 permitting and trucking, and sometimes it --  
18 depending where we're at and stuff, traffic  
19 safety type costs. Fencing sometimes or road  
20 signs or sometimes -- things of that nature.

21 **Q. You'd indicated you're generally not**  
22 **providing the Agency in the reimbursement**  
23 **application some underlying costs. Are you**  
24 **usually providing cost of materials in your**

1 **application for reimbursement?**

2 A. Yeah, and I think that, you know,  
3 just quantity and -- or documentation purposes,  
4 yes, we provide that to show that, you know, some  
5 -- that tonnage was delivered, and then that  
6 tonnage is used to verify that that volume was  
7 backfilled or excavated.

8 **Q. Why is the -- why does the Agency**  
9 **need to know the volume that was backfilled?**

10 A. Well, so our unit rate is based on  
11 cubic yards. So that's the volume. So that's a  
12 dimension, you know, volume. And then through  
13 the regulations they use a conversion factor of  
14 1.5 tons per cubic yards, which is relevant to  
15 the density of the material. To back convert  
16 tickets, which -- which is really not -- not how  
17 we typically do this on DOT jobs or other jobs.  
18 Typically volume's paid -- you know, we're paid  
19 on a unit rate per volume, not a unit rate per  
20 ton. So they use the conversion factor to create  
21 the volume off that tonnage, but that 1.5 is --  
22 is a -- it's in the regulation that's a -- that's  
23 independent of the material type.

24 So, you know, when we look at these



1 things we still have to be practical and  
2 pragmatic. You know, any time we're dealing with  
3 CA6 -- and this would be typical of any IDOT  
4 plans or anything you're doing -- now, I'm not  
5 saying we're pugging it or meeting a hundred  
6 percent, you know, compaction to a standard  
7 Proctor or anything like that, but, you know,  
8 oftentimes in plans you're looking at 2.05 tons  
9 per cubic yard. It can go down to 1.8.

10 So when we're dealing with some of  
11 this stuff like the rock and towards the end,  
12 those actually impact -- there's a difference  
13 there that's actually happening in the real world  
14 that, you know, is not maybe getting captured  
15 sometimes.

16 **Q. Outside the UST program are there**  
17 **requirements for certification of material prior**  
18 **to placement that exists?**

19 A. Yes, certainly. Most work I deal  
20 with and -- if we're dealing with any kind of DOT  
21 agency or FAA or anything, it depends on the  
22 agency's level of involvement. Sometimes you're  
23 dealing with the consultant or just an engineer.  
24 Yeah, typically you're looking for -- really DOT

1 manages most of our aggregate quality through the  
2 state. So if the plans call for CA6, they have  
3 to be an approved supplier. So in this case  
4 Central Stone and IDOT's done testing, and so  
5 then they have to meet -- depending on what that  
6 requirement is, that quality could be, you know,  
7 if you're doing asphalt, might be an A quality  
8 rock or B quality. They have to meet that  
9 quality and they have to meet that gradation, and  
10 that's tested. So -- most civil jobs that  
11 involve government money, typically are -- yeah,  
12 there are material certifications that we would  
13 have to -- we wouldn't go -- we don't necessarily  
14 need to do the testing. Sometimes the -- the --  
15 the -- the quarry themselves will provide that --  
16 that testing that would then go to the Agency,  
17 and then they would approve that that based on  
18 once we provided those tickets that we got the  
19 proper material and rock -- or aggregate, rather.

20 **Q. In terms of this washout rock, where**  
21 **did that come from and where does it usually end**  
22 **up going?**

23 A. So I -- for the record I was -- I was  
24 not on-site when this work was taking place, but

1 -- so I didn't -- I don't have any visual  
2 reference to what it looked like, but typically  
3 it could be some of the rock they use in the  
4 concrete, some of the sand. So, you know,  
5 concrete or Portland cement concrete, whatever,  
6 has a mixture of different sand and aggregates or  
7 rock, could be limestone, whatever, and then that  
8 material -- I think this had some broken concrete  
9 in it. So essentially clean construction debris  
10 stuff that was piled up there that they had  
11 stored, and they -- again it just took up space  
12 because typically they just want it off their  
13 lot. I mean, you know, like anything, so.

14 **Q. Is it possible that stuff might end**  
15 **up in a landfill eventually or does it depend?**

16 A. Yeah, I'm certain that they had to  
17 get rid of it because again unless somebody has a  
18 need for something and if they have to find a way  
19 to get rid of it, I mean -- unless another  
20 construction -- clean construction place or  
21 something would take it. You know, that's  
22 possible too. But then they would have to pay to  
23 haul it, so, you know, there's those trade-offs.

24 MR. SHAW: I have no further

1 questions.

2 HEARING OFFICER WEBB: Okay. Ms.  
3 Jarvis.

4 CROSS-EXAMINATION

5 BY MS. JARVIS:

6 Q. Okay. Mr. Dudas, when did you start  
7 working part-time for Chase?

8 A. Actually part-time probably May or  
9 June of this year. I actually -- I -- I -- the  
10 firm I'm with now I worked for previously, and  
11 then I went to Chase full-time in April of '21,  
12 and I made it almost exactly a year before going  
13 back to Hanson.

14 Q. So you started working for Chase in  
15 April '21 full-time?

16 A. That sounds right, yeah.

17 Q. And you worked part-time at Chase now  
18 since 2022?

19 A. Correct. Yeah, and I previously  
20 worked part-time with another firm for two years  
21 previous.

22 Q. I do not have copies of this. I  
23 wasn't expecting to need it. I'm going to show  
24 you page 211 --

1 A. Sure.

2 Q. -- of the record.

3 A. Okay.

4 Q. Did you sign that as a P.E.?

5 A. No.

6 Q. Who signed it as a P.E.?

7 A. So Kelly Tensmeyer signed it actually  
8 as a professional geologist, it looks like.

9 Q. What's the date on it?

10 A. 2015.

11 Q. So that was prior to you working at  
12 Chase?

13 A. Correct. Yes.

14 Q. And that was the certificate from the  
15 plan and budget.

16 A. Okay.

17 Q. I'm now going to show you page 349.

18 A. Sure.

19 Q. And this is the certification from  
20 the billing package.

21 A. Okay.

22 Q. Who signed that as a P.E. or  
23 professional geologist?

24 A. It's a billing package so Matthew

1 Rives signed this, and it looks like it was --  
2 I'm sorry -- June 14 of 2018.

3 Q. Okay. So you were also not working  
4 with Chase at that point in time?

5 A. That is correct.

6 Q. And you just testified that you were  
7 never on this site?

8 A. That is correct. Yes.

9 Q. So you're not familiar with what went  
10 on at the site during this timeframe?

11 A. No, not in -- no, not be involved,  
12 no.

13 Q. And you had no contact with Clinard  
14 Ready Mix?

15 A. No.

16 Q. So you do not know what they would  
17 charge for the material?

18 A. Well, they charged nothing so I don't  
19 -- I'm not certain.

20 Q. I know, but what they would normally  
21 charge for the material.

22 A. I -- I don't --

23 Q. You testified --

24 A. I don't -- I don't -- no, I don't

1 know. I mean if we got it for free at the time,  
2 that's what they charged. I'm not certain --

3 **Q. And it says on this form -- what was**  
4 **the reason on page 222 of the record that they**  
5 **listed for charging it for free?**

6 A. So it says Chase Environmental  
7 Group received 26 loads of washout rock --  
8 (The court reporter asked for  
9 clarification.)

10 MS. JARVIS: I will give you this  
11 just to -- since he's reading that document.

12 A. So this is October 5, 2018. It says  
13 Chase Environmental Group received 26 loads of  
14 washout rock on May 9 to the 11th. No charge for  
15 material. No scale available on site was weighed  
16 at -- or I'm sorry -- no scale available on site  
17 was weighed at Corp Product Services.

18 **Q. So they charged for free because**  
19 **there was no scale?**

20 A. Well, that's not what it says.

21 **Q. It says no scale available on site.**

22 A. Well, that doesn't mean that's why  
23 they charged it for free.

24 **Q. Well --**

1 A. But -- well, I mean --

2 Q. It doesn't say that they charged it  
3 for free for any other reason except the only  
4 reason that they give is no scale was available  
5 on site.

6 A. Well, no. It says no scale. It says  
7 it was weighed elsewhere.

8 Q. Weighed at Corp Product Services?

9 A. Correct.

10 Q. But at their group they had no scale,  
11 correct?

12 A. It's possible.

13 Q. That's what it says, no scale  
14 available on site. It's not possible. It's what  
15 the document says.

16 A. Okay. Sure. Certainly.

17 Q. So --

18 A. But that's not -- that doesn't --

19 Q. I haven't asked you a question. So  
20 you don't need to continue to respond.

21 You testified quite a bit that your  
22 experience seems to be with IDOT sites. This is  
23 not an IDOT site though, is it?

24 A. Right.



1 Q. This is a LUST site?

2 A. That's correct.

3 Q. So the specifications for what goes  
4 in as backfill for an IDOT site where they're  
5 building a road is not necessarily what's needed  
6 at a private LUST site?

7 A. Correct, which is why we did --

8 MS. JARVIS: That's --

9 A. Okay.

10 MS. JARVIS: -- all I needed to hear.  
11 I'm going to object to his testimony and ask that  
12 it be struck for lack of foundation and knowledge  
13 as to this site in that he is not the P.E. that  
14 was present at this site at the time, nor did he  
15 sign any of the documents at the time, and it  
16 seems like his experience is more with IDOT than  
17 it is with LUST sites. So I'm going to ask that  
18 this be stricken and that there's a lack of  
19 foundation of his knowledge of this site.

20 HEARING OFFICER WEBB: Do you care to  
21 respond before I --

22 MR. SHAW: I think the objection is  
23 pretty late. There's foundation given to all of  
24 his testimony. There's no -- there's no

1 requirement that the P.E. has to be the one  
2 person who can testify to the -- to these issues.  
3 I -- the basic standard for evidence at these  
4 hearings is whether or not the witness is  
5 providing information that people could rely  
6 upon.

7 HEARING OFFICER WEBB: Okay.

8 MR. SHAW: If she wants to break down  
9 the foundation, she can do that in  
10 cross-examination.

11 HEARING OFFICER WEBB: I'm going to  
12 overrule your objection.

13 MS. JARVIS: Okay. I have no -- I  
14 have no further questions for this witness.

15 HEARING OFFICER WEBB: Any redirect?

16 MR. SHAW: Just one.

17 REDIRECT EXAMINATION

18 BY MR. SHAW:

19 **Q. Have you worked for underground**  
20 **storage tank sites besides Chase?**

21 A. Yeah, I've -- I've worked with  
22 several companies. So I started my career with a  
23 company. I worked there for two and a half  
24 years, and then I did part-time work with another

1 company, primarily CAD work so I wouldn't say  
2 it's truly relevant to this point, but -- and  
3 then I've assisted -- worked part-time in other  
4 firm that led me into Chase, and I did do all of  
5 the corrective action plan reviews, CAP reviews,  
6 SICR reviews.

7           So pretty much from start to finish.  
8 So early action reviews, which would constitute a  
9 tank pull cleanup, I've reviewed those plans.  
10 I've been on-site on those. I've been part of  
11 those removals. I've done site investigations.  
12 I've been on-site. I've done the drilling. I've  
13 prepared the plans. I've reviewed the plans.  
14 I've stamped the plans. I've done corrective  
15 action plans. I've reviewed them. I've stamped  
16 them. I prepared them. Corrective action  
17 completion reports that lead to a no further  
18 remediation letter. I've stamped those and  
19 reviewed them and prepared them. So -- I  
20 wouldn't say I have 20 years of experience or  
21 anything, but I've certainly been involved.

22           **Q. And is it that experience with the**  
23 **underground storage tanks that you primarily**  
24 **provided your testimony today?**

1           A.       Yeah, it's -- my point was never --  
2 was never that this needed to be certified, just  
3 that we have to deal with that when we're -- just  
4 because the regs don't state something doesn't --  
5 you know, the regs don't state that you need to  
6 do certain permitting activities and things.  
7 It's just kind of all-inclusive.

8                       So when we go out there's a lot of  
9 things we have to do just because there's other  
10 requirements by counties or owners or sanitary  
11 districts to work at or just in general that we  
12 have to meet that -- that are independent of the  
13 regs. They're separate in their own right. So  
14 -- my point wasn't that we couldn't have used  
15 non-certified material, that's just typically  
16 again that we don't -- we try to find cheaper  
17 stuff, and sometimes we can't, so we can get  
18 within rate. I mean there's no -- I wasn't  
19 trying to indicate this was a DOT job by any  
20 means.

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

23                               REXCROSS-EXAMINATION

24 BY MS. JARVIS:

1           **Q.     But you have no personal knowledge of**  
2 **this site? You were not on-site, correct?**

3           A.     I have knowledge of the site. I was  
4 not on-site.

5           **Q.     So your knowledge is that you**  
6 **reviewed somebody else's work?**

7           A.     Correct.

8           MS. JARVIS: No further questions.

9           HEARING OFFICER WEBB: Anything  
10 further?

11          MR. SHAW: Nothing further.

12          HEARING OFFICER WEBB: Okay. Thank  
13 you, sir.

14          THE WITNESS: Thank you.

15          (Witness excused.)

16          HEARING OFFICER WEBB: All right.

17 Mr. Shaw, would you like to call another witness?

18          MR. SHAW: We're going to close our  
19 case.

20          HEARING OFFICER WEBB: Okay.

21          MR. SHAW: At this time at least.

22          MS. JARVIS: Can we have a little  
23 break just to discuss?

24          HEARING OFFICER WEBB: Should we take

1 five, ten?

2 MS. JARVIS: Five or ten is fine.

3 HEARING OFFICER WEBB: All right.

4 Thank you.

5 (A break was taken.)

6 HEARING OFFICER WEBB: We are back on  
7 the record.

8 Ms. Jarvis, you may call your  
9 witness.

10 MS. JARVIS: Okay. We call Brian  
11 Bauer.

12 HEARING OFFICER WEBB: Would the  
13 court reporter please swear in the witness.

14 BRIAN BAUER,  
15 having first been duly sworn, testifies as  
16 follows:

17 DIRECT EXAMINATION

18 BY MS. JARVIS:

19 Q. Please state your name.

20 A. Brian Bauer.

21 Q. And what is your occupation?

22 A. I'm the unit manager in the LUST  
23 section.

24 Q. And how long have you been employed

1 **with the Agency?**

2 A. Almost over -- over 30 years.

3 **Q. Okay. And how long have you been in**  
4 **your current position?**

5 A. I've been in the LUST section for my  
6 whole entire career, and presently I've been as a  
7 -- as the unit manager for -- I don't know --  
8 seven months plus.

9 **Q. Okay. And what was your typical**  
10 **position at the Agency?**

11 A. I started out as a project manager,  
12 reviewing projects, technical -- on technical  
13 side, plans and budgets for many years. Kind of  
14 evolved into running the reimbursement section.  
15 I was the lead worker -- technical expert between  
16 the LUST, the claims group and the technical side  
17 of the program.

18 **Q. And how long did you do that**  
19 **position?**

20 A. Unofficially I think since 2009.

21 **Q. Okay. And do you know Melissa Owens?**

22 A. I do.

23 **Q. And who is she?**

24 A. She was an account technician II that

1 worked for the Agency and reviewed reimbursement  
2 claims.

3 Q. And in regard to her position what  
4 was your position?

5 A. I was the technical liaison between  
6 her and overseeing and actually kind of the lead  
7 worker for all -- for over her.

8 Q. So did you supervise her work?

9 A. Pretty much, yeah.

10 Q. And where is Melissa Owens today?

11 A. Florida.

12 Q. Florida?

13 A. She retired.

14 Q. Okay. Are you familiar with the  
15 Parker's Gas & More site?

16 A. I am.

17 Q. And how are you familiar with that?

18 A. Me and Melissa discussed it when we  
19 were reviewing it, and then I also was the one  
20 that reviewed the letter in all her notes and the  
21 claim and actually reviewed part of the claim. I  
22 got my -- some of my notes are written on part of  
23 it.

24 Q. So if I show you page 294 of the



1 **record, are those your handwritten notes?**

2 A. In the box in the -- in the center  
3 some of it is. The alternate, you know, under  
4 alternative technology, it was a --

5 **Q. Like a sticky note that was placed in**  
6 **there?**

7 A. Yeah, part of that's mine and part of  
8 it Melissa -- some of the little stuff is  
9 Melissa's writing.

10 **Q. Okay. And can you run us through**  
11 **exactly how -- well, first of all, what is the**  
12 **total amount of the claim?**

13 A. It was over half a million dollars, I  
14 believe.

15 **Q. Okay. I'm going to show you page 43**  
16 **of the record, which I did not make copies of.**  
17 **What is the total amount of the claim?**

18 A. The amount requested was \$577,244.80.

19 **Q. And what was the amount paid?**

20 A. \$572,925.56.

21 **Q. So what was the amount that the**  
22 **Agency did not pay?**

23 A. Two amounts. There was \$3,755.42  
24 associated with the backfill, and there was also

1 a \$563.82 deduction. I'm not sure -- for some  
2 material stuff.

3 **Q. Okay.**

4 A. Oh, for grass seed.

5 **Q. For grass seed?**

6 A. Yeah.

7 **Q. Now, if you could run us through**  
8 **exactly how this claim was reviewed as far as**  
9 **communications between the Agency and Chase**  
10 **Environmental?**

11 A. So yeah, Melissa reviewed it. She  
12 noticed that there was some missing documents in  
13 the claim. There was no backfill documentation.  
14 Something that's always been kind of a red flag.  
15 So she contacted Matt Rives -- Rives -- I'm not  
16 sure how you pronounce his name, and through via  
17 email and asked him for additional information  
18 and he -- he submitted it to the -- via email  
19 back to us, the additional information.

20 **Q. Okay. What did that additional**  
21 **information entail?**

22 A. It was basically the backfill  
23 receipts, either trucking tickets, or -- and/or  
24 -- and the receipts from the -- from the purchase

1 of the backfill.

2 **Q. And why is that information important**  
3 **for the Agency?**

4 A. To document how much backfill was  
5 being placed back into the excavation. It pays  
6 for what they actually put into the -- put into  
7 the hole.

8 **Q. And when does -- I believe we had**  
9 **testimony about a fluff factor. When does the**  
10 **fluff factor come into --**

11 A. It's mainly used in the budget -- in  
12 the plans and budget because -- so that allows  
13 them to -- you know, it's a five percent fluff  
14 factor. So that if they go over they don't --  
15 you know, there's a give and take in there so  
16 that they can -- they don't have to come in for  
17 amended budget if they go over a little bit.

18 **Q. And is the fluff factor ever used in**  
19 **reimbursement?**

20 A. Not on the application for payments.  
21 It's not used in there.

22 **Q. Why?**

23 A. Because -- because the landfills and  
24 the -- and the back -- and the company and the

1 quarries and the rock providers always bill on  
2 the tonnage.

3 Q. Okay. And then how do we proceed  
4 with the payment?

5 A. I would proceed --

6 Q. How did you proceed -- you wrote  
7 notes on the one page, page 294. When we got --  
8 I guess I should start with page 222 of the  
9 record. Was this something that Matt Rives gave  
10 us?

11 A. Yeah, we were -- we were short when  
12 he sent -- when he first submitted it, I believe  
13 the first email he sent he was short some stuff  
14 so we asked for additional documentation, you  
15 know, for -- that they actually placed X amount  
16 of backfill in the excavation. So then he got  
17 this additional information, and we asked him  
18 for, you know, something from the -- and this is  
19 what he came back with, this letter saying that  
20 they got it for free.

21 Q. Okay. So what was missing the first  
22 time he sent us information?

23 A. Well, it didn't -- it didn't add up  
24 to the -- the tonnage divided by 1.5 cubic

1 yards -- it did not add up to the 5,244.91 cubic  
2 yards that -- that they had asked for  
3 reimbursement for.

4 **Q. Okay. How did you determine how much**  
5 **should be cut from the budget?**

6 A. So Melissa added up all the tonnage  
7 from all the receipts and stuff like that and she  
8 came up with that and we subtract -- well, we  
9 didn't -- you know, the documentation we had from  
10 what they requested, and the difference was  
11 basically 520.195 tons that we didn't have  
12 documentation for. So that we assume that that  
13 was in the 26 loads that was for free, and then  
14 we -- and then we looked at the -- the invoice  
15 from the company that provided the other backfill  
16 that they charged for.

17 **Q. And would that be on page 242 of the**  
18 **record, which Mr. Shaw already presented?**

19 A. That's correct.

20 **Q. And where on that document does it**  
21 **say the rate?**

22 A. It says it's a rate of -- each line  
23 item is \$6.70, and it was per ton.

24 **Q. Okay. So then how did you then**

1 **continue after you determined the rate?**

2 A. So we took the 520.195 tons times  
3 \$6.70 per ton, gave us \$3,485.31. They also  
4 charged a tax on there of 7.75 percent, which was  
5 \$270.11. So we deducted \$3,755.42 from the  
6 claim. And for those -- for those couple cubic  
7 yards -- cubic yards.

8 **Q. Okay. Was it only the price for the**  
9 **rock, or did you also cut the transportation and**  
10 **other items?**

11 A. No, we just cut the -- the cost for  
12 the rock. We still paid the transportation and I  
13 guess the placement of the backfill material  
14 cost. We paid for that. We only cut a small  
15 portion. They asked for \$24.30 per cubic yard.  
16 I'm not sure what the math is from 6.70, but I  
17 think it was say 13.50 maybe we paid for cubic  
18 yard for the stuff that they got for free.

19 **Q. Okay. So we heard some testimony**  
20 **about how the transportation costs may have been**  
21 **included in this, and that the transportation**  
22 **costs would overrun the cost of the material, but**  
23 **Chase got paid for their transportation costs?**

24 A. Yeah, they got paid the difference.

1 We didn't deduct any transportation costs. We  
2 didn't deduct any placement cost if they had any  
3 of that type of stuff. We just cut clearly --  
4 not clearly I guess -- but just the purchase  
5 material costs.

6 **Q. And just one more question. We heard**  
7 **testimony that the Agency doesn't need to know**  
8 **the tonnage backfill. Why does the Agency need**  
9 **to know that information?**

10 A. Why do we need to -- to document what  
11 is put in there? I mean if we didn't ask for it,  
12 then we could be paying for stuff that never  
13 gets -- you know, we've been -- well, I mean as  
14 an agency we've been ripped off fraudulently  
15 before without it. So we, you know, have been  
16 really clear on requiring that documentation in  
17 all of our claims for a long period of time, and  
18 it's kind of standard operating procedure  
19 actually.

20 **Q. Okay. Is there anything else that I**  
21 **didn't ask you about that we need to know?**

22 A. You know, I will say one thing too  
23 that I think that it's important is that we did  
24 pay -- we didn't reduce -- they did backfill more

1 cubic yards than they excavated. So I mean there  
2 was -- that wasn't an issue here. We paid for  
3 more soil put back into the excavation so that  
4 would cover any, you know, fluff factor type  
5 issues, I think.

6 **Q. So the amount that they took out of**  
7 **the excavation was less than the amount they put**  
8 **back into the excavation?**

9 A. Yeah, they took out 5,175.67 cubic  
10 yards and they put back in 5,244.91. We paid for  
11 everything except for the purchase of the -- of  
12 the 520 tons that they got for free. So we paid  
13 for -- just for backfill alone \$123,000 --  
14 \$123,695.89.

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

17 HEARING OFFICER WEBB: Okay.

18 Mr. Shaw.

19 CROSS-EXAMINATION

20 BY MR. SHAW:

21 **Q. Were you ever at the site yourself?**

22 A. No.

23 **Q. When reviewing a reimbursement**  
24 **request, do you review the type or quality of the**



1 **type of backfill material used?**

2 A. Say that again.

3 **Q. When reviewing a reimbursement**  
4 **request, do you review the quality or type of**  
5 **backfill material used?**

6 A. I wouldn't say we review it in the  
7 nature that was previously testified to about  
8 stuff. We make sure that it comes from a clean  
9 source.

10 **Q. Do you check whether permits are used**  
11 **when reviewing the permit -- when reviewing a**  
12 **reimbursement request?**

13 A. A permit for what? I --

14 **Q. Permits for the work that's in the --**  
15 **that's in the corrective action plan --**  
16 **requirement for corrective action plan?**

17 A. No, it's not pertinent.

18 **Q. Okay. Can LUST sites use recycled**  
19 **materials for backfill?**

20 A. They use CCD material all the time,  
21 yes.

22 **Q. But if it's free, they can't get**  
23 **reimbursed for it?**

24 A. We -- they can get reimbursed for the

1 trucking and the placement of it but not for the  
2 purchase of free material. I mean --

3 Q. Did you -- you were here for the  
4 previous testimony. Did you understand that  
5 Chase may have chosen a different combination of  
6 transportation and materials depending on the  
7 costs associated -- the costs of those?

8 A. Yes.

9 Q. So in other words, in retrospect they  
10 may have gone somewhere else to get the material  
11 if they knew you were going to cut so much from  
12 the reimbursement request?

13 A. You mean they would have gone there  
14 and paid for it because they could have -- I  
15 don't understand.

16 Q. They could have -- they could have  
17 gone ten miles a different direction and gotten  
18 other material.

19 MS. JARVIS: I'm going to object  
20 because this is speculation.

21 MR. SHAW: He's been asked about the  
22 testimony.

23 BY MR. SHAW:

24 Q. Do you understand that that's a

1 **possibility here? That's what I'm asking you.**

2 HEARING OFFICER WEBB: Yes.

3 Overruled.

4 A. Can you repeat the question, please?

5 BY MR. SHAW:

6 **Q. I will re-ask it. Do you understand**  
7 **based upon the testimony earlier that based upon**  
8 **relationship between material costs and**  
9 **transportation costs, that non-reimbursement for**  
10 **materials possibly provides incentive to get the**  
11 **material somewhere else?**

12 A. I've never seen non-reimbursement  
13 material costs like from a -- from a provider for  
14 free. So I guess -- you know, I mean I know that  
15 they choose different materials as they backfill.

16 **Q. Let me --**

17 A. I don't know how the cost makes --  
18 they make their decision based on costs. That's  
19 them. It's not mine.

20 **Q. Okay. That's fair. Are you saying**  
21 **this is the first time you've cut a reimbursement**  
22 **request because of a no charge backfill item?**

23 A. No. It's not true. It's -- we've --  
24 I know of one other one.

1           **Q.     Was that other one also with Chase**  
2 **Environmental?**

3           A.     I do not believe so, no.

4           **Q.     What documentation did the consultant**  
5 **need to submit to receive the payment requested?**

6           A.     Are you specific to the backfill --

7           **Q.     Specifically to the backfill?**

8           A.     -- and the amount we cut?

9           **Q.     Yes.**

10          A.     They would have to provide an invoice  
11 such as this that showed that they bought  
12 backfill material.

13          **Q.     And for the record I believe you're**  
14 **holding up page -- you're holding up an invoice?**

15          A.     I was -- it doesn't have a --

16                   HEARING OFFICER WEBB: 242.

17                   MR. SHAW: It's very small.

18                   MS. JARVIS: Yeah, it's 242.

19          A.     Okay.

20 BY MR. SHAW:

21          **Q.     If that invoice charged say \$1 per**  
22 **ton, would that be reimbursable at the full**  
23 **amount requested?**

24          A.     Possibly.

1           **Q.     Well, why would it not be if you say**  
2 **if it's possible?**

3           A.     I -- I -- we -- I don't know. I  
4 never thought about it.

5           **Q.     Well, let me ask this question. The**  
6 **invoice you're holding, all things the same, if**  
7 **the material that we've talked about as a washout**  
8 **rock was identified on that invoice and it was**  
9 **being billed for a total of \$1 --**

10          A.     If they billed us for \$1 for 26  
11 loads, I don't think that would change my  
12 decision.

13          **Q.     Okay. What dollar amount would**  
14 **change your decision about?**

15          A.     Well, I mean they provided  
16 documentation and within the claim that they paid  
17 \$6.70 for similar backfill materials at this  
18 particular facility, and so that was added -- you  
19 know, that was part of the \$24.30 rate that they  
20 charged the Agency, and we deducted the  
21 difference.

22          **Q.     What is the reasonable rate for**  
23 **backfill?**

24          A.     The purchase of the backfill?

1           **Q.     Yes.**

2           A.     It fluctuates based upon the material  
3 that they're putting in it.

4           **Q.     But you were saying that if an**  
5 **invoice said that the arm's length transaction,**  
6 **they paid \$1 for washout rock, you would deduct**  
7 **all of that cost from the reimbursement just like**  
8 **you did here for zero dollars?**

9           A.     We didn't deduct all the costs. We  
10 just --

11          **Q.     All the costs of the material.**

12          A.     I don't -- I'm not sure of the  
13 question now. If you'll --

14          **Q.     Well, I'm trying to understand your**  
15 **policy here. Is there anything in the**  
16 **regulations that provides for deduction of**  
17 **material costs when it's at a certain rate?**

18          A.     I think the rate it calls for -- it  
19 is -- the rate is for the purchase, placement,  
20 and transportation of the backfill material, and  
21 they didn't purchase it.

22          **Q.     Is the word purchase in the**  
23 **regulations?**

24          A.     I believe it's part of the subpart H

1 rate for backfill.

2 **Q. So if they purchased it for one**  
3 **dollar, then the regulations under your**  
4 **interpretation require reimbursement for the full**  
5 **rate, correct?**

6 A. Yeah, it could be a technicality in  
7 the regulations, yes.

8 MR. SHAW: I have no further  
9 questions.

10 HEARING OFFICER WEBB: Ms. Jarvis.

11 REDIRECT EXAMINATION

12 BY MS. JARVIS:

13 **Q. They didn't purchase it for \$1, did**  
14 **they though?**

15 A. They did not. They got it for free.

16 MS. JARVIS: I had another question  
17 and it -- so just give me a minute. It will come  
18 back to me.

19 HEARING OFFICER WEBB: Take a minute.

20 BY MS. JARVIS:

21 **Q. What is the purpose of the LUST**  
22 **reimbursement program?**

23 A. To reimburse costs incurred by an  
24 owner/operator.

1           **Q.     So if a cost is not incurred by an**  
2 **owner and operator but it's in a rate, would we**  
3 **just reimburse any cost that wasn't paid --**

4           A.     No --

5           **Q.     -- that they got free?**

6           A.     -- the cost -- the subparties' rates  
7 are maximum payment rates, and they have to have  
8 documentation to support that -- to support the  
9 cost that they're asking for reimbursement.

10          **Q.     So without something to show that**  
11 **something was paid for, would the Agency**  
12 **reimburse?**

13          A.     No.

14          **Q.     And are you familiar with the Piasa**  
15 **site?**

16          A.     Yes.

17          **Q.     What exactly occurred at the Piasa**  
18 **site?**

19          A.     They -- it was a -- it was a large  
20 facility. They had -- they got backfill from  
21 another area of the property and dug it up and  
22 brought it over and -- to use it to backfill the  
23 big excavation.

24          **Q.     And did they charge the Agency for**



1 **that?**

2 A. Yes.

3 **Q. And what was the outcome of that**  
4 **case?**

5 A. We denied the costs for the -- for  
6 digging up the soil and bringing it over to the  
7 -- we paid for the transportation charges for  
8 them to haul it to the facility, the trucking  
9 stuff.

10 **Q. And did that go in front of the**  
11 **Board?**

12 A. That did go in front of the Board.

13 **Q. And are you familiar with the outcome**  
14 **of that case?**

15 A. Yeah, the Agency prevailed.

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

18 HEARING OFFICER WEBB: Mr. Shaw.

19 RE-CROSS-EXAMINATION

20 BY MR. SHAW:

21 **Q. Are you familiar with the Board's**  
22 **ruling on the fluff factor in the Piasa case?**

23 A. Yeah.

24 **Q. Is it contrary to some of your**

1 **testimony today?**

2 A. I think it's -- yeah, I think it's  
3 wrong -- it was a wrong decision so.

4 MR. SHAW: Okay. The Board will be  
5 glad to hear that. No further questions.

6 HEARING OFFICER WEBB: Ms. Jarvis.

7 FURTHER REDIRECT EXAMINATION

8 BY MS. JARVIS:

9 Q. **And what exactly was -- since we**  
10 **brought it up, why don't you discuss the fluff**  
11 **factor in the Piasa case and how it applies to**  
12 **reimbursement versus budget.**

13 A. So I think that they took the fluff  
14 factor and they used it as -- as -- as -- as a --  
15 we take action -- what -- on -- the fluff factor  
16 is used on the budget -- plan and budget side  
17 because it's still hypothetical. It's not  
18 actually occurred yet. They have a hole. They  
19 dig out a certain, you know -- say if it's a  
20 hundred cubic yards, they have a fluff factor.  
21 They're allowed to dig out 105 cubic yards in the  
22 plan and budget. It's the five percent fluff  
23 factor.

24 If on the claim side, there -- we're

1 dealing with actuals. How much went to the  
2 landfill based on tonnage. We required the  
3 tonnage from the landfill receipt to show that X  
4 tonnage went to the landfill, and we also provide  
5 tonnage from the -- from the backfill provider to  
6 show how much went into the -- into the -- back  
7 into the -- into the hole.

8 **Q. And you testified on that invoice --**  
9 **or not on the invoice, on the other document that**  
10 **I gave you with the review that we actually --**  
11 **they put in more back into the excavation than**  
12 **they took out?**

13 A. That's correct.

14 **Q. And would that account for the fluff**  
15 **factor?**

16 A. I don't know if it would account for  
17 the fluff factor and all, but I think that it  
18 would account for -- you know I mean what was  
19 actually put back into the thing. We had no  
20 problem with how much was physically put into the  
21 hole. We had -- you know what I mean. We didn't  
22 -- we didn't cut, you know, the difference -- you  
23 cut -- you put -- you excavated 5,000 cubic  
24 yards, we're only allowing you to put 5,000 back

1 in. You know, we put in more soil back into the  
2 pit.

3 MS. JARVIS: Okay. No other  
4 questions.

5 HEARING OFFICER WEBB: Mr. Shaw.

6 MR. SHAW: No questions.

7 HEARING OFFICER WEBB: Okay. Thank  
8 you, Mr. Bauer. All right.

9 (Witness excused.)

10 HEARING OFFICER WEBB: I'll just make  
11 some announcements here. I'm sorry.

12 MR. SHAW: We may have -- I don't  
13 know if you guys --

14 HEARING OFFICER WEBB: I'm sorry, I  
15 just caught myself.

16 Did you have anything further?

17 MR. SHAW: We may need to go to the  
18 hall real quick and figure out if we have any  
19 redirect.

20 HEARING OFFICER WEBB: Okay. Let's  
21 take a five-minute recess.

22 (A break was taken.)

23 HEARING OFFICER WEBB: We are back on  
24 the record. Mr. Shaw, did you have anything else

1 you wanted to --

2 MR. SHAW: I would like to recall a  
3 witness to answer a few questions related to  
4 Mr. Bauer's testimony.

5 HEARING OFFICER WEBB: Okay.  
6 Mr. Dudas, you are still under oath.

7 MR. DUDAS: Oh, okay.

8 MICHAEL DUDAS,  
9 having previously been duly sworn, testifies as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. SHAW:

13 Q. Mr. Dudas, you were present during  
14 the testimony of Mr. Bauer; is that correct?

15 A. Correct, yes.

16 Q. Under the Underground Storage Tank  
17 program, are jobs paid by cubic yard or tons?

18 A. So the budgets themselves that are  
19 approved are under a cubic yard rate which would  
20 match the regulation, and then when we submit  
21 documentation it is paid under a cubic yard rate.  
22 So when we -- when -- what we -- you know, we  
23 have to deal with, you know, we're digging a hole  
24 to the dimensions that are shown in the plan and

1 then the Agency uses a general density across all  
2 materials to back calculate what that volume is.

3 In other lines of work, when you're  
4 paid for cubic yard, it's through survey -- it's  
5 through the size of the excavation, and you don't  
6 get paid for tonnage. The tonnage is used as  
7 documentation purposes. So because -- unless you  
8 have an exact factor of density, you don't really  
9 know because you're taking a material weight and  
10 putting it into a volume. So, you know, that  
11 includes the water content, the air, the  
12 compaction ratio. So, you know, we're always  
13 digging it to the lines and grades that are  
14 established in the plan. So if we're going out a  
15 20 by 20 by 10, that's what we're digging, and  
16 then material's brought in to fill that hole, and  
17 then I think to help make it easy on all parties,  
18 a general conversion factor is used of 1.5 to  
19 back calculate it, but that's not necessarily  
20 true. It's really dependent on material  
21 properties, which is common across other agencies  
22 and work.

23 I mean typically if you're paying a  
24 ton, there's weight checks, there's -- you still

1 have depth checks, you still have volume, you  
2 still have grades, and you're certainly tied to  
3 moisture correction and other factors because  
4 otherwise, you know, you could have material  
5 stuck in the back of a truck. There could be  
6 material that's not compacted. You know, it's  
7 really hard to say.

8 **Q. Is the LUST program written to be**  
9 **precise on many of these factors?**

10 A. No, but we have to live in the -- you  
11 know, we have to live in a situation when we do  
12 these things, we have to have packing material.  
13 We have to bring rock -- I mean lots. These are  
14 active lots a lot of times they're going to use.  
15 So we are bringing in rock that does have a  
16 different density, and so we are, you know, to  
17 Brian's point we didn't -- that wasn't CA6 and a  
18 mix of sand and rock and soil. I don't know what  
19 that density is. Those aren't the same  
20 materials. They're not comparable to any quarry  
21 when you buy it. They're not comparable to  
22 replace it, how they compact. Moisture content's  
23 a big thing. I mean -- these are -- these are  
24 common things that we deal with, and, you know,

1 at the end of the day, that cubic yard is the  
2 payment. So we're paid for the volume of  
3 material, not the tonnage of material.

4 **Q. Mr. Bauer used the term fluff factor.**  
5 **Are you familiar with that term?**

6 A. Not in the sense of construction, no.

7 **Q. Are there similar terms to fluff**  
8 **factor that you're more familiar with?**

9 A. Yeah, I think the term that he was  
10 trying to use is swell, and swell is very  
11 important to us because again it goes back --  
12 we're working in volume and weight. So swell --  
13 when we dig soil out of the ground that's been  
14 sitting there forever, and you scoop it, you add  
15 air to it, there could be water. That swells  
16 when we move in, and then when we bring material  
17 in from a truck, again those densities change,  
18 and anybody that's done construction will tell  
19 you -- you know, I can throw rock on the ground  
20 and get a certain density of it, and then I can  
21 roll it a bunch and tighten it down. So I'm  
22 getting more weight per volume or per lift by  
23 compaction. So swell is very important. When we  
24 -- when we're hauling, we have to think in terms



1 of swell because we're going to compact it.  
2 We're going to bring in material that has been  
3 scooped up with air and thrown in a truck, and  
4 we're going to place it and compact it.

5 MR. SHAW: I have no further  
6 questions.

7 HEARING OFFICER WEBB: Ms. Jarvis.

8 CROSS-EXAMINATION

9 BY MS. JARVIS:

10 Q. The Agency paid for the actual amount  
11 or it didn't discount the amount which was more  
12 than what was taken out, did it?

13 A. I don't -- no.

14 Q. So whether or not other sites have a  
15 particular way that they do things, that doesn't  
16 necessarily transfer over to the LUST sites,  
17 correct?

18 A. I'm not -- you mean like science  
19 physics?

20 Q. Yeah. Yeah. I mean whatever the  
21 standards are for IDOT sites or other civil  
22 sites, that doesn't necessarily transfer over to  
23 a LUST site?

24 A. Well, I would believe that material

1 properties would be the same across any site.

2 **Q. However, the LUST site has specific**  
3 **regulations that other civil sites do not have?**

4 A. In what sense?

5 **Q. They have subpart H rates. They have**  
6 **different elements as to what is paid and what is**  
7 **not paid that might not be applicable to a civil**  
8 **or IDOT site?**

9 A. So --

10 **Q. That's really kind of --**

11 A. So the regulations or the rates may  
12 not be applicable because -- but I would say that  
13 all -- all aspects of construction are  
14 applicable. An excavator doesn't change when I  
15 roll it over across the road.

16 **Q. And the Agency didn't comment on the**  
17 **excavation, did it?**

18 A. Well, it's a unit rate. So unit rate  
19 is inclusive -- per the rate -- all incidentals,  
20 our shovels, our labor, our permitting, our  
21 coordination --

22 **Q. And you heard the testimony of Brian**  
23 **Bauer that all that was paid?**

24 A. Well, how could you -- but you

1 improperly deducted --

2 **Q. How was anything improperly deducted?**

3 A. Because it's a unit rate of volume,  
4 not tonnage. You're deducting a ton and then  
5 you're artificially adding a density to it that  
6 isn't true --

7 **Q. But those items can be converted,**  
8 **correct?**

9 A. With the correct density probably,  
10 correct.

11 MS. JARVIS: Correct. I have no  
12 further questions.

13 HEARING OFFICER WEBB: Okay.  
14 Mr. Shaw.

15 REDIRECT EXAMINATION

16 BY MR. SHAW:

17 **Q. Was the proper calculations for**  
18 **density used in this matter?**

19 A. So in Brian's defense per the  
20 regulatory statute, 1.5 is the conversion rate,  
21 but again -- so I don't have any disagreement  
22 there. He's going to be tied to that, but again  
23 we have to select material in a real sense, and  
24 so when we place that material, that's different,

1 and we have to then -- you know, you're using a  
2 material rock that has a different density that  
3 we wouldn't have used as the initial backfill.  
4 That's a capping material. That's something we  
5 would use in the final stages, and we don't  
6 typically bring in that much, and, you know, if  
7 you were to look through a bunch of them, you'll  
8 see that most places aren't filling the whole  
9 thing with CA6, a certified CA6.

10 MR. SHAW: No further questions.

11 RE CROSS-EXAMINATION

12 BY MS. JARVIS:

13 Q. So you're saying that Chase did this  
14 improperly?

15 A. In what sense?

16 Q. You said that normally under other  
17 circumstances you wouldn't use this type of rock.

18 A. Well -- we --

19 Q. They wouldn't have backfilled it this  
20 way.

21 A. Well, no, he converted a material  
22 that we used -- that we would have used to a rock  
23 that we only used on a capping situation. We  
24 wouldn't have filled the whole hole with that

1 material.

2 Q. Okay. And --

3 A. It's cost prohibitive.

4 Q. -- did Chase Environmental ever  
5 explain that when they were asked to explain it?

6 A. Well, because there's no requirement  
7 of material certification.

8 Q. But they were asked to explain it  
9 knowing it was going to get cut?

10 A. Explain what?

11 Q. Is there any place in the records  
12 that states what you're testifying to?

13 A. What record?

14 Q. The record -- the administrative  
15 record of the Agency and what was before the  
16 Agency when they made this decision. Is there  
17 anyplace in that record that contains the  
18 information that you are testifying to?

19 A. What particular information?

20 Q. Any of it. Any of it. I'm not  
21 seeing how any of this is relevant. How is any  
22 of your testimony relevant, and how is any of it  
23 in the record, and did Chase Environmental submit  
24 any of the things that you're testifying to to

1 **the Agency before they made their decision?**

2 A. Well, we submitted the required  
3 documentation that we felt was necessary.

4 Q. Obviously Chase did not submit the  
5 required documentation or the Agency wouldn't  
6 have had to have asked twice for the supporting  
7 documentation for the rock, and I know that's not  
8 your fault, that's Mr. Rives' fault --

9 MR. SHAW: Objection. Now we're  
10 having a closing statement. You interrupted him  
11 answering the question, and now you're off on a  
12 speech here.

13 MS. JARVIS: He went farther than  
14 what my question asked for.

15 A. That's fair. So --

16 MS. JARVIS: I mean what -- it's  
17 obviously not his fault. It's Mr. Rives' fault,  
18 and we have somebody testifying to things not in  
19 the Agency records.

20 MR. SHAW: That's not in the record  
21 what you're saying here.

22 MS. JARVIS: Me as an attorney I'm  
23 not testifying. I am commenting to the  
24 witness --

1 MR. SHAW: You've giving a closing  
2 argument --

3 MS. JARVIS: -- as to where in the  
4 record is the information that he's testifying  
5 to. Because the Agency is bound by what is in  
6 the record at the time it makes its decision. So  
7 if you're going to go with information that isn't  
8 in the record or before the Agency prior to  
9 making its decision, I get to question this man  
10 as to why it wasn't before the Agency and how we  
11 can now retroactively make decisions based upon  
12 his testimony.

13 HEARING OFFICER WEBB: Okay. May I  
14 interrupt? Let me just summarize here because I  
15 think we are maybe getting into some post-hearing  
16 brief territory.

17 Is it your testimony that you do not  
18 know where in the record there would be the  
19 document that Ms. Jarvis --

20 MR. DUDAS: I'm just not -- I'm not  
21 clear what you're asking here.

22 HEARING OFFICER WEBB: I don't know  
23 is an acceptable answer.

24 MR. DUDAS: Well, I just -- I'm not

1 clear what you're asking. I'd love to -- I'm not  
2 clear what -- what exactly you're asking  
3 particularly what you want to -- I don't want to  
4 say what you want to see -- what you think -- I  
5 don't know what you mean by what's in the record.

6 BY MS. JARVIS:

7 **Q. You've reviewed the record prior to**  
8 **your testimony?**

9 A. Yeah, but I don't know what I've said  
10 that's not -- that you're asking particular about  
11 that's not in there.

12 **Q. You are testifying to the density of**  
13 **materials?**

14 A. Which is in there. Brian -- I agree  
15 with Brian 1.5 --

16 **Q. Your testimony is going beyond what**  
17 **you've testified to yourself about what the act**  
18 **and regulations require, and I'm asking you --**

19 A. Right.

20 **Q. -- where is the information about**  
21 **where this material was placed because you're**  
22 **saying it was used as a cover, and where this**  
23 **other information that you testified to about**  
24 **density is in the Agency record, which you said**



1 **that you reviewed prior to testifying.**

2 A. As far as -- as far as, you know, I  
3 don't -- obviously there's no core, I guess, no  
4 core taken of where that material would be  
5 placed, yeah, that's not in there. So yeah, I  
6 guess that's fair.

7 MS. JARVIS: Okay. I have no further  
8 questions.

9 MR. SHAW: No further questions.

10 HEARING OFFICER WEBB: Okay. Thank  
11 you, Mr. Dudas.

12 THE WITNESS: Yep.

13 (Witness excused.)

14 HEARING OFFICER WEBB: We were  
15 back -- Do you have anything further, Mr. Shaw,  
16 that you would like to present?

17 MR. SHAW: No.

18 HEARING OFFICER WEBB: Ms. Jarvis?

19 MS. JARVIS: I would present  
20 Mr. Bauer.

21 HEARING OFFICER WEBB: Okay.  
22 Mr. Bauer, please take the witness stand. I'll  
23 remind you you are still under oath.

24 BRIAN BAUER,

1 having previously been duly sworn, testifies as  
2 follows:

3 DIRECT EXAMINATION

4 BY MS. JARVIS:

5 Q. I just want you to clarify those --  
6 the testimony about the conversion factor.

7 A. The conversion factor?

8 Q. Yeah. The 1.5.

9 A. 1.5 tons per cubic yard. It's in the  
10 regulations. That was put into the regulations a  
11 long time ago, and we -- we've been using it.

12 Q. And did you use it in this  
13 calculation?

14 A. Yes, we did.

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

17 HEARING OFFICER WEBB: Mr. Shaw?

18 CROSS-EXAMINATION

19 BY MR. SHAW:

20 Q. Mr. Bauer, there are -- besides the  
21 washout rock, there are two different types of  
22 material -- backfill material in this  
23 reimbursement request, correct?

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

1 this is outside the scope of my examination.

2 MR. SHAW: I am going to get to the  
3 question I think underlying this, which is why  
4 did Mr. Brauer use one material than the other  
5 with different densities, and I'm going to ask  
6 that question more directly. If --

7 HEARING OFFICER WEBB: Yes. Go  
8 ahead.

9 MR. SHAW: -- the issue of the  
10 density has to do with that Mr. Bauer chose one  
11 of the invoices to base the cuts from and not the  
12 other. These are different types of backfill  
13 material with different types of densities and  
14 different types of costs.

15 HEARING OFFICER WEBB: Okay. Go  
16 ahead.

17 BY MR. SHAW:

18 Q. Mr. Bauer, now that I got right to  
19 it, you are aware that there were two types of  
20 materials besides the washout rock that were  
21 subject to the reimbursement request; isn't that  
22 correct?

23 A. If you say so. I'm not --

24 Q. You're not familiar --

1 A. No, not real familiar with it.

2 Q. You don't know if this other material  
3 was rock and some of it was more like soil?

4 A. It did -- I -- I -- I'd have to look  
5 at it -- at the record to see that.

6 Q. Okay. You used one of these invoices  
7 to make your deductions though, correct?

8 A. Yeah.

9 Q. And you didn't look to see whether or  
10 not there were different costs for different  
11 invoices for different materials?

12 A. I -- I -- I don't know. I mean --  
13 this was done I think in 2018.

14 Q. So as you sit here today you don't  
15 know why you used one invoice to calculate the  
16 reduction --

17 A. Not without looking at it.

18 Q. -- as opposed to another?

19 A. Not without looking at it.

20 Q. Do you know any basis that you might  
21 utilize to make that decision?

22 A. No, I don't -- I don't -- I don't  
23 know. I'm sure we just grabbed an invoice that  
24 was --

1 MR. SHAW: No further questions.

2 HEARING OFFICER WEBB: Ms. Jarvis?

3 MS. JARVIS: I have nothing further.

4 HEARING OFFICER WEBB: Thank you  
5 again, Mr. Bauer.

6 (Witness excused.)

7 HEARING OFFICER WEBB: Mr. Shaw, do  
8 you have anything further?

9 MR. SHAW: Nothing further.

10 HEARING OFFICER WEBB: Ms. Jarvis, do  
11 you have anything further?

12 MS. JARVIS: No.

13 HEARING OFFICER WEBB: Okay. The  
14 transcript is due by November 22 and will be  
15 posted on the Board's website. The public  
16 comments deadline is November 29. Public comment  
17 must be filed in accordance with section 101.628  
18 of the Board's procedural rules. The  
19 Petitioner's brief is due by December 6, and  
20 Respondent's brief will be due by December 20,  
21 and Petitioner's reply will be due by December  
22 27.

23 Mr. Shaw, would you like to make any  
24 closing argument?

1 MR. SHAW: No, I'd like to reserve it  
2 for a brief -- post-hearing brief.

3 MS. JARVIS: I will also reserve it  
4 for a post-hearing brief.

5 HEARING OFFICER WEBB: Okay. Thank  
6 you.

7 At this time I will conclude the  
8 proceedings. We stand adjourned, and I thank you  
9 all for your participation.

10 (Whereupon, no further proceedings  
11 were had in the above-entitled  
12 cause.)  
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