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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DALEE OIL COMPANY,

Petitioner,

vs.

Nos. PCB 03-118
PCB 03-119
PCB 03-150
(UST Fund)

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

The following is a transcript of the above-entitled matter taken stenographically before ANN MARIE HOLLO, CSR, RPR, RMR, a notary public within and for the County of Montgomery and State of Illinois. Said hearing was taken on the 24th day of July A.D., 2003, commencing at 10:00 o'clock a.m. at 1021 North Grand Avenue East, Springfield, Illinois.

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APPEARANCES:

ILLINOIS POLLUTION CONTROL BOARD
600 South Second Street
Suite 402
Springfield, Illinois 62704
By: Carol Sudman, Esq.; Hearing Officer

Shaw & Martin, P.C.
123 South Tenth Street
Suite 302
Mt. Vernon, Illinois 62846
By: Curtis W. Martin, Esq.

Appearing on behalf of the Petitioner

Illinois Environmental Protection Agency
1021 North Grand Avenue East
Springfield, Illinois 62704
By: John J. Kim, Esq.

Appearing on behalf of the Respondent

I N D E X

Page

Joseph Kelly	
Examination by Mr. Martin.	5, 51, 60
Examination by Mr. Kim.	43, 56
 Brian Bauer	
Examination by Mr. Kim.	63, 81
Examination by Mr. Martin.	67, 85

E X H I B I T S

Petitioner's Exhibit No. 1 marked on page 27
Petitioner's Exhibit No. 2 marked on page 62
and admitted on page 63

1 HEARING OFFICER SUDMAN: Good morning. My name is
2 Carol Sudman, and I'm a hearing officer with the
3 Pollution Control Board. This is a consolidated hearing
4 for PCB 03-118, 03-119 and 03-150, Dalee Oil Company
5 versus IEPA.

6 It is July 24th at 10 o'clock a.m. This
7 hearing is continued from July 21st.

8 I'll note for the record that there are no
9 members of the public present, and no one was present on
10 July 21st. Members of the public are allowed to provide
11 public comment if they so choose.

12 At issue is the EPA's reimbursement of
13 Petitioner's corrective action costs regarding a leaking
14 underground storage tank site at Route 177 West in
15 Okawville, Washington County. The costs were incurred
16 for three separate periods. For PCB 03-118, the dates
17 are September 1, 2001 through November 30, 2001. For
18 PCB 03-119, the dates are July 1, 2001 through September
19 30, 2001. For PCB 03-150, the dates are November 1,
20 2001 through August 31, 2002.

21 You should know that it is the Pollution
22 Control Board, and not me, that will make a final
23 decision in this case. My purpose is to conduct the
24 hearing in a neutral and orderly manner so that we have

1 a clear record of the proceedings. I will also assess
2 the credibility of any witnesses on the record at the
3 end of the hearing.

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

8 At this time, I'd like to ask the parties
9 to please make their appearances on the record.

10 MR. MARTIN: Curtis Martin for Petitioner
11 Dalee Oil Company.

12 MR. KIM: John Kim for the Illinois EPA.

13 HEARING OFFICER SUDMAN: Thank you.

14 Are there any preliminary matters to
15 discuss on the record?

16 MR. MARTIN: Not that I'm aware of.

17 MR. KIM: I don't think so.

18 HEARING OFFICER SUDMAN: Mr. Martin, would
19 you like to give an opening statement?

20 MR. MARTIN: No. The petitioner will waive
21 opening statement.

22 HEARING OFFICER SUDMAN: Okay. Mr. Kim?

23 MR. KIM: The Illinois EPA waives any
24 opening statements.

1 HEARING OFFICER SUDMAN: Mr. Martin, you
2 may present your first witness.

3 MR. MARTIN: Thank you. I'd like to call
4 Joe Kelly.

5 HEARING OFFICER SUDMAN: Mr. Kelly, would
6 you come have a seat up here. And would the court
7 reporter please swear him in.

8 [Witness sworn.]

9 JOSEPH KELLY,
10 being produced and sworn, testifies and says:

11 DIRECT EXAMINATION

12 QUESTIONS BY MR. MARTIN:

13 Q. Would you state your full name please.

14 A. Joseph Martin Kelly.

15 Q. And, Joe -- you go by Joe?

16 A. Correct.

17 Q. How old are you?

18 A. 45.

19 Q. Where are you employed, Joe?

20 A. With the United Science Industries in
21 Woodlawn, Illinois.

22 Q. And how long have you been employed there?

23 A. Since January of 1994.

24 Q. What is your current position with United

1 Science Industries?

2 A. VP of engineering.

3 Q. Have you held any other positions with
4 United Science throughout your employment since '94?

5 A. I started as a project manager in 1998.
6 The title was changed, and I had a promotion to chief
7 operating officer. And then from there, VP of
8 operations, and now VP of engineering.

9 Q. As the chief operating officer from 1998,
10 did you have access to financial information with regard
11 to United Science Industries?

12 A. Yes.

13 Q. And from now on, I'll refer to it as USI
14 for short.

15 What is your educational background?

16 A. I have a Bachelor's degree in mining
17 engineering, and a Master's degree in business
18 administration.

19 Q. Do you hold any licenses?

20 A. I'm a licensed professional engineer in
21 Illinois and other states.

22 Q. How long have you been employed in the
23 environmental remediation industry?

24 A. July of 1991.

1 Q. Are you familiar with the project known as
2 Dalee Oil Company in Okawville, Illinois?

3 A. Yes.

4 Q. And what has been your role with regard to
5 that project?

6 A. From working with the project manager at
7 the time in developing a corrective action plan
8 regarding remediation of groundwater and soil off site.
9 Basically remediation design and helping them out in
10 that regard.

11 Q. All right. Are you also the certifying
12 professional engineer for this project?

13 A. Yes.

14 Q. The Dalee project is known as a 731
15 project; is that correct?

16 A. Right.

17 Q. As opposed to a 732 project?

18 A. Yes.

19 Q. And is that correct?

20 A. Correct.

21 Q. And when we refer to a 731 or a 732
22 project, are we referring to the regulations applicable
23 to environmental remediation sites?

24 A. Correct.

1 Q. Okay. Can you describe just briefly what
2 the difference between a 731 project is as opposed to a
3 732 project, just in general terms?

4 A. Generally speaking, there's regulations
5 regarding the submission and plans and reports and
6 differences in the -- whether you have to submit a
7 budget or not.

8 In 731, basically you're submitting a
9 corrective action plan. And if it's considered what the
10 agency would consider conventional technology, i.e.
11 excavation, transportation, disposable soils or a pump
12 and treat system for groundwater, those historically
13 have been submitted and approved.

14 Where as in 732 regulations, you have to
15 submit a budget for approval, or it's recommended that
16 you submit a budget for approval prior to initiation of
17 the corrective action plan, and wait for that approval
18 in the form of an agency letter. Where as in 731,
19 normally you don't have to have an agency approval.
20 Although in this site we did.

21 Q. So in a 731, can you develop the corrective
22 action plan and begin to do the work under the
23 corrective action plan prior to submitting a --

24 MR. KIM: Objection. Leading question.

1 MR. MARTIN: Just for clarification
2 purposes, I would ask for some leeway just to clarify.

3 HEARING OFFICER SUDMAN: Well, okay. Could
4 you rephrase it, though?

5 MR. MARTIN: Sure.

6 Q. The difference between a 731
7 and a 732 is you submit a corrective action plan in 731
8 and begin work?

9 A. You can, yes.

10 Q. Generally speaking?

11 A. You submit a plan, and as long as the
12 agency has that plan, you can begin work.

13 Q. Is there an approval required of the plan
14 in 731?

15 A. No.

16 Q. Before work begins?

17 A. No.

18 Q. Was the -- or is the Dalee project unique
19 in terms of the contamination encountered and the steps
20 required for remediation of the contamination?

21 A. The design was unique in that we were
22 dealing with groundwater plume, an area of contamination
23 that not only was on site, but had migrated off site.
24 And also soil, evidence of soil contamination off site

1 in a residential area.

2 So we employed a treatment system that was
3 not -- it was different from our other groundwater
4 treatment systems, in that we employed a soil vapor
5 extraction in addition to the groundwater treatment unit
6 on site.

7 Q. There's reference in the record to the
8 approval of a quote, "pilot study," end quote. Can you
9 describe what that pilot study refers to?

10 MR. KIM: Objection. What letters are we
11 referring to?

12 MR. MARTIN: Specifically referring to PCB
13 03-119 of page 17. There's reference to the top third
14 of the page to the right-hand side. I quote, RL 5082000
15 approved pilot study. Did that address your objection,
16 John?

17 MR. KIM: Yes. I'm sorry. Thank you.

18 Q. (By Mr. Martin) Joe, can you describe what
19 the reference to approval of the pilot study meant
20 there?

21 A. We were asking the agency to approve a
22 pilot study, which is basically a field demonstration, a
23 small scale demonstration on the particular site, where
24 you're collecting data that would be utilized for a full

1 scale design.

2 And in this particular instance, we rented
3 a liquid ring pump, which is a dual phase extraction
4 unit to hook up to some recovery well that we had put in
5 place at the site, and some piezometers, which are used
6 to monitor vacuum pressures beneath the soil surface.

7 And we were utilizing that data and taking
8 measurements to determine if the number of wells we had
9 proposed were adequate, and collect data on yield rate
10 of the groundwater table and other information -- vapor
11 concentration, and other data to employ in our full
12 scale design.

13 Q. So when you talk about a full scale design,
14 a full scale design of what?

15 A. Full scale design of the groundwater
16 treatment unit and soil vapor extraction unit.

17 Q. Are these two separate units we're talking
18 or one unit together?

19 A. They're working in combination in what is
20 called a dual phase extraction approach, because you are
21 extracting groundwater for treatment as well as soil
22 vapor, but they're used in conjunction because you're
23 pulling air and water, two phases of material, at the
24 same time.

1 Q. And is this unit also built such that it
2 will monitor what is being extracted in terms of the
3 contamination?

4 A. Those measurements have to be derived from
5 samples that are taken in the groundwater table and also
6 samples that are collected in the influent, which is the
7 water coming in, and samples that are obtained from the
8 effluent, which is the treated water coming out and or
9 the vapors that are emitted from the soil vapor unit.

10 Q. And so what we're dealing with then that
11 was the full scale design was the groundwater treatment
12 and soil extraction unit? Is that what it's called?

13 A. Correct.

14 Q. So if we talk about a unit from this point
15 forward, that's what we're talking about?

16 A. Correct, the unit specific to this site.

17 Q. Okay. Was this unit considered to be
18 conventional remediation?

19 A. Conventional from the standpoint that we
20 utilized a pump and treat system through the
21 groundwater. And we asked for the pilot study to
22 evaluate not only the groundwater portion, but
23 specifically the soil vapor extraction portion of the
24 unit.

1 So in that respect, that may be considered
2 alternative technology to a degree, but it was employed
3 in conjunction with what at the time was considered
4 conventional technology.

5 Q. And the agency was provided with the
6 specifications for this unit, this full scale unit that
7 was developed?

8 A. Correct.

9 Q. And was the agency provided with this
10 information prior to the use of the unit at the Dalee
11 site?

12 A. Yes. It was in a corrective action plan
13 that gave site maps, information about the type of unit
14 that would be employed.

15 Q. Can you give us a little bit of a
16 description of the unit, its size, its components, its
17 function, etcetera.

18 A. At this particular site, we were dealing
19 with -- we proposed to put in 15 recovery wells or
20 recovery well, being a well whereby you use a
21 submersible pump to extract groundwater from the
22 surface, from beneath the surface.

23 And in addition, I think seven or eight
24 off-site wells where the screen interval was utilized up

1 until the soil layer, and piping was placed so that the
2 soil vapor extraction unit could extract vapors from
3 those particular wells in conjunction with the pumping
4 in the groundwater treatment system.

5 This particular unit in relation to the
6 other units that we had employed at other sites, and
7 each of those being site specific, was much larger. I
8 don't remember the building dimensions, but it was a
9 large scale unit because of the fact it had a large
10 groundwater treatment unit and the soil vapor extraction
11 unit all inside one building.

12 It operates remote control. It uses a
13 control panel mounted to the outside so that there are
14 switches and switches, and that basically allow the unit
15 to run on automatic, unless there's an alarm condition
16 or some malfunction.

17 But pumps kick on when the water level and
18 the probes in the wells tell the pumps to initiate
19 pumping water into a holding tank. The holding tank, at
20 some point when it fills up, tells the transfer -- the
21 pump to pump water into what's called a low profile air
22 stripper that strips the contaminants from the
23 groundwater before it's discharged.

24 And at the same time, the soil vapor

1 extraction unit is running. It can run one well or a
2 number of wells depending on how many valves are open.
3 And it runs continuously as it's in operation in regard
4 to the off-site soil vapor extraction wells.

5 Q. I think you just said you don't remember
6 the dimensions or the size of the unit. Do you have an
7 approximate size that you could give, just to give us a
8 picture?

9 A. The building is about somewhere between 8
10 and 10, or 10 by 12. This one was probably -- it was
11 somewhere, I think, in the order of about 12 by 30 or
12 something like that. I'd have to look at a site map.

13 Q. 12 feet by 30 feet?

14 A. 12 feet by 30 feet, yeah. Maybe even
15 larger than that. I'm just going by recollection.

16 Q. For this particular job or project, rather,
17 at Dalee, did this full scale unit seem to be the right
18 tool for the right job?

19 A. Based on the data that we have collected
20 since it was put into operation, we have seen a decrease
21 in the amount of groundwater contamination on site and
22 also noticed that the concentration of the vapors from
23 the soil vapor extraction unit have diminished.

24 The design was based on data collected from

1 that site, groundwater contamination levels, the amount
2 of flow we expected from the number of wells that we had
3 placed on site. So the design was to match the site
4 characteristics.

5 Q. Have you had any prior experience with this
6 type of unit?

7 A. I've been involved in the permitting and
8 the design and obtaining equipment for probably about
9 eight other sites.

10 Q. This particular unit with regard to the
11 Dalee project, was it larger than any other that you've
12 dealt with?

13 A. It's the largest unit that we have had in
14 operation, yes.

15 Q. As far as physically obtaining a unit such
16 as this and including reference to the other eight
17 projects you mentioned you've been involved in, how do
18 you usually obtain it? I mean, is it obtained by lease?
19 Does the owner/operator lease it? Does the
20 owner/operator purchase it? Do you understand my
21 question?

22 A. Yes. Typically, the units are -- again, we
23 go through picking a manufacturer to help and then
24 design in obtaining the particular equipment.

1 You know, historically the agency had not
2 been in the business of buying remediation units. So we
3 had been employing basically a process whereby we would
4 purchase a unit, and then utilize a rental schedule
5 pretty typical of the industry. Because you can go to a
6 manufacturer, ask for a unit to be -- a rental unit, but
7 you have to rent whatever they have basically on the
8 shelf, and it may or may not match the site
9 characteristics.

10 So we found it was better to get a unit
11 that was designed specifically for that site, and go
12 through and work on a means of purchasing that unit and
13 then renting it out over a period of time.

14 Q. This was obviously not a unit that USI was
15 able to manufacture itself?

16 A. Correct. We're not in that business.

17 Q. Did you, in developing this full scale
18 unit, did you explore the possibility of Dalee Oil
19 Company purchasing the unit or renting the unit directly
20 from the manufacturer?

21 A. No. Mainly because, again, back to that
22 day and time, our understanding of working with the
23 Illinois EPA was that they were not wanting to purchase
24 and go out and actually purchase a remediation unit.

1 Plus, this particular unit was designed for
2 that specific site, and therefore we were wanting to
3 basically apply a rental typical of the industry for a
4 particular unit. And rather than ask them to purchase
5 this unit, we didn't think that would be considered a
6 reimbursable cost by the agency that typically had not
7 done that before. Therefore, applying a rental rate for
8 a unit or a groundwater unit over a course of time had
9 been a previously approved method of working on a
10 particular site.

11 Q. Had you or anyone else on behalf of United
12 Science Industries looked into both the option of
13 purchasing and or leasing?

14 A. Well, in looking at how much it would cost
15 to rent a unit, because past experience with much
16 smaller units costing as much or more than the unit that
17 we have employed now, we were able to obtain information
18 from the manufacturer and say, well, out of curiosity,
19 if we were to rent this unit from you, had you had this
20 unit sitting on the shelf and we rented it from you,
21 what would be -- you know, approximately, what would be
22 the cost? And they indicated that it would be close to
23 \$5,000 a month. If we just rented it and passed those
24 costs on directly to the owner/operator had the

1 owner/operator rented directly either way, it would have
2 been close to \$5,000.

3 Q. So based on that information then, you
4 checked into the possibility of purchasing the unit
5 directly from the manufacturer, you being USI?

6 A. Correct.

7 Q. And what manufacturer did you come in
8 contact with in regard to this particular unit?

9 A. Carbon Air Environmental Systems.

10 Q. Carbon Air Environmental Systems, Inc.?

11 A. Yes.

12 Q. And they're in New Hope, Minnesota?

13 A. Correct.

14 Q. When you began to work with Carbon Air
15 Environmental Systems, Inc., did you provide Carbon Air
16 with the specifications necessary for the unit at the
17 Dalee site?

18 A. We gave them information that had been
19 collected from the site in regard to the number of wells
20 that we wanted to place pumps within, the groundwater
21 contamination concentrations and what we expected to be
22 an average or an average concentration as well as a
23 maximum concentration, the amount of flow rate through
24 the system. Basically the systems are designed based on

1 the flow rate and the concentration and also what
2 effluent standards we wanted to meet, which we have to
3 meet with the Bureau of Water discharge permits.

4 Q. Speaking of permits, did you on behalf of
5 USI have to obtain permits to operate the unit at the
6 Dalee site?

7 A. Yes. You have to have a permit from the
8 Bureau of Air, an air discharge permit. And you also
9 have to have a permit to construct and operate from the
10 Bureau of Water. And we also obtained an MPDS permit,
11 which is a permit to discharge treated water from the
12 Bureau of Water.

13 Q. And so based on the remediation
14 requirements that you had passed on to Carbon Air,
15 Carbon Air manufactured the unit?

16 A. Correct.

17 Q. Prior to Carbon Air's manufacturing of the
18 unit, did Carbon Air provide USI with options of
19 specifications for a unit?

20 A. In the quote that they gave us, there was
21 another option. And I think the options, if I recall
22 correctly, were dealing with rather what type of soil,
23 vapor extraction we wanted to use, whether it was a
24 liquid ring pump system or regenerative blower. And we

1 chose the regenerative blower because less maintenance
2 cost and less cost of operation, and therefore we went
3 with that option.

4 Q. And the options that were provided by
5 Carbon Air, for reference to the record, are in PCB
6 number 03-150, volume II, beginning at page 146.

7 Carol, if I might ask that you hand that
8 volume II to Mr. Kelly so he might look over that with
9 me.

10 HEARING OFFICER SUDMAN: Sure.

11 Q. (By Mr. Martin) You're looking at pages
12 146 through 150?

13 A. Correct.

14 Q. Now, if you'll look at page 150, it looks
15 like at the top there's reference to option one and
16 option two?

17 A. Correct.

18 Q. And are those the two options you just
19 described, the DPE and the CE? Does that tailor with
20 what you just said a moment ago?

21 A. Yes. Option two is the option that we went
22 with.

23 Q. And that purchase price was \$83,176?

24 A. Correct.

1 Q. Now, the purchase price for this unit was
2 actually \$83,691; is that correct?

3 A. Yes.

4 Q. Do you know why there's a difference
5 between the \$83,176 quoted here on page 150 of the
6 record and the \$83,691 purchase price?

7 A. I don't have the actual invoice in front of
8 me, but I suspect based on page 150 here, it mentions
9 the fact that shipping charges are not included. And
10 that would be my guess, that it would be shipping of the
11 unit to the site.

12 Q. Did USI purchase the unit from Carbon Air
13 then around June of 2000? Or was it a little bit later
14 than that? Or do you recall?

15 A. It was between June of 2000 and the
16 beginning of 2001. I'm not sure which particular month
17 we began the purchase.

18 Q. In fact, let me refer you to page 152 of
19 volume II of PCB number 03-150, if I may have you look
20 at that. There is at the top a stamp, it looks like,
21 September 21st of 2000.

22 A. Okay, yes.

23 Q. Does that ring a bell of the approximate
24 time of the purchase?

1 A. Correct. And it shows the amount of the
2 down payment that is due.

3 Q. And there was a down payment of \$8,691?

4 A. Correct.

5 Q. Bringing a balance due of \$75,000 even,
6 correct?

7 A. Correct.

8 Q. Was the purchase of this unit from Carbon
9 Air financed with Carbon Air? Was it an outright
10 purchase? What was the circumstances surrounding the
11 purchase?

12 A. We had approached Carbon Air about a
13 purchase owned, leased own, however you want to describe
14 it, and they were not interested in doing that at this
15 particular site. They had done that previously, and so
16 directed us toward a leasing company that is in the
17 business of financing, financing purchases.

18 Q. I'm sorry. That leasing company is known
19 as Preferred Capital Corporation?

20 A. Yes.

21 Q. Let me refer you to page 145 of volume II
22 of PCB 03-150.

23 A. Okay.

24 Q. Do you have that before you?

1 A. Yes.

2 Q. Is that the lease to own agreement entered
3 into between United Science Industries, Inc., and
4 Preferred Capital Corporation?

5 A. Yes.

6 Q. Referenced there is \$75,000, equipment
7 cost. Do you see that to the right-hand side there at
8 the top?

9 A. Yes.

10 Q. Now, the lease to own arrangement is fairly
11 self-explanatory, but at the end of the lease term, was
12 it the intent of the agreement that USI would own the
13 unit?

14 A. Yes.

15 Q. The period of the lease referred to in the
16 document is 36 months?

17 A. Correct.

18 Q. Do you see that? Where did the 36 months
19 come from; do you know?

20 A. We were looking at trying to pick a time
21 frame in which we thought this unit might be deployed on
22 this particular site and tried to keep that time frame
23 within a lease agreement. We didn't want to have, you
24 know, pay for it for 48 months and only use it for 36.

1 We were trying to match a time frame that we thought the
2 unit may at a minimum would be on site.

3 Q. Okay. So this was the anticipated time
4 that the unit would be on site to do the remediation
5 intended?

6 A. Correct.

7 Q. To the left there, the payment referred to
8 is -- it looks like \$2,520.11, plus \$157.51. And it
9 looks like there's been some marking out of some
10 typed-in figures. These figures I just referred to look
11 to be written-in figures?

12 A. Correct.

13 Q. And then we have a 2,677.62. It looks like
14 it's circled there?

15 A. Yes.

16 Q. A written-in number? Is that the monthly
17 lease payment to Preferred Capital Corporation?

18 A. Yes.

19 Q. To your recollection, when this was unit
20 put into operation at the Dalee site?

21 A. Around -- it was actually turned on for
22 actual remediation around January or February of 2001.
23 It was delivered on site, I think, around December of
24 2000, but it wasn't deployed until after the first of

1 the year.

2 Q. All right. Let me now, Joe, refer you to

3 page 156 of PCB 03-150, volume II, 156 and 157.

4 A. Okay.

5 Q. Have you seen that document before?

6 A. Yes.

7 Q. That's entitled, "Groundwater Treatment

8 System Rental Agreement"?

9 A. Correct.

10 Q. And that agreement is between United

11 Science Industries, Inc., and Dalee Oil Company?

12 A. Correct.

13 Q. And about three quarters of the way down,

14 there's reference to monthly lease fees, and there's a

15 blank, and a typed-in figure of \$3,750?

16 A. Yes.

17 Q. Is that the rental fee charged by USI to

18 Dalee Oil Company for the operation of the unit?

19 A. Yes.

20 Q. And did that rental charge begin -- I see

21 reference to February of 2001. Is that when the rental

22 charge began then?

23 A. Yes.

24

1 [Petitioner's Exhibit Number 1 was
2 marked for identification.]

3 Q. Joe, I want to hand you what I have marked
4 as Petitioner's Exhibit 1. Do you recognize that
5 document?

6 A. Yes.

7 Q. It's entitled, "Lease Breakdown," correct?

8 A. Correct.

9 Q. And did you prepare this document or have
10 an input into its preparation?

11 A. I worked with the project manager at the
12 time and gave him the information on how the costs were
13 derived.

14 Q. And for demonstrative purposes, we have the
15 equipment costs referred to at the top of \$75,000 and
16 then the lease term of 36 months, correct?

17 A. Yes.

18 Q. And the down payment of 8,176?

19 A. Yes.

20 Q. Now, the down payment amortization, the
21 next entry below the 8,176 has 24 months, correct?

22 A. Yes.

23 Q. Why is that 24 months as opposed to 36
24 months like the lease term?

1 A. That was decided upon to try and recoup the
2 cost within the first two years of the down payment.

3 MR. KIM: I'm going to object to the
4 document, to the testimony. It's unclear to me when
5 this document was prepared, and it's unclear to me
6 whether the information contained in this document is
7 somewhere found within the administrative record. And
8 if that could be clarified, then I withdraw my
9 objection.

10 MR. MARTIN: All right. Well, I'll address
11 the two parts.

12 Q. First of all, Joe, do you
13 recall when this lease breakdown was prepared
14 approximately?

15 A. Was this prepared prior to the invoicing?
16 Or this particular document?

17 Q. Well --

18 A. Or the information from the document?

19 Q. The information from the document.

20 A. The information contained on this document
21 was prepared prior to invoicing for the rental of the
22 groundwater treatment unit.

23 Q. And the document itself was prepared
24 approximately when?

1 A. After receiving correspondence from the
2 agency asking for information regarding how the costs
3 were derived, or additional information that they wanted
4 to know about. I couldn't give you the date and month.
5 I don't remember.

6 Q. Was this lease breakdown document provided
7 to the agency?

8 A. I don't know.

9 MR. MARTIN: And, again, for the hearing
10 officer and for Mr. Kim, I'm using this for
11 demonstrative purposes. I can have him testify to these
12 numbers, but it seems to me it would be a little bit
13 easier to have it in writing, so we could see how the
14 breakdown was developed.

15 MR. KIM: My objection is he didn't know
16 when this document was prepared. He doesn't know
17 whether this document was ever submitted to the agency.

18 So it's unclear, first of all, whether or
19 not it was prepared before or after the final decisions
20 that are under appeal. It's unclear whether the agency
21 ever actually had this documentation in its process and
22 therefore relied upon it.

23 If the information found within this is
24 somewhere else in the record, and he could point to

1 that, then I would have no objection, but if it's not
2 found within the record, then I would again maintain my
3 objection.

4 MR. MARTIN: Well, I will refer you,
5 Mr. Kim, and you, Ms. Sudman, to pages, I think, 151
6 through 155 of PCB number 03-150 for reference to these
7 numbers.

8 And Mr. Kelly did testify that this
9 document or this information was provided at a time when
10 the agency had requested further information. And I can
11 find the request for further information in the record,
12 if you want me to do that, to give us a time frame, if
13 that will allow more foundation to this.

14 I'm merely using this for demonstrative
15 purposes, just so we can get a handle on the numbers.

16 HEARING OFFICER SUDMAN: I understand
17 that. I think Mr. Kim's concern is, since we haven't
18 seen this document, we're not certain that these figures
19 are somewhere in the administrative record. If they
20 are, if you could point that out, then there wouldn't be
21 a problem. Is that your --

22 MR. KIM: That's correct. And I'm
23 just -- looking at this, for example. That's exactly
24 right.

1 There is a reference here to a number of
2 months to down payment amortization term. There's a
3 percentage reference for overhead markup. I've looked
4 through pages 151 through 155 of the record volume that
5 Mr. Martin cited, and I didn't see that information
6 anywhere on those pages.

7 And, again, since there's no time frame
8 that's been set as to when this information was prepared
9 and whether or not it was actually submitted to us, it's
10 totally unclear that this was ever information that was
11 relied upon. Certainly this document itself is not
12 found within the record.

13 And I understand the purpose of using a
14 demonstrative exhibit. I have no objection to that
15 if -- you know, certainly it makes more sense if this is
16 found in several different pages, and you're just
17 putting it on to one page. That makes perfect sense.
18 But my objection is, I don't think this information is
19 found in the record or at least some of this.

20 MR. MARTIN: Well, I'll tell you what is
21 and what isn't. And Mr. Kelly is going to be testifying
22 to some of these other numbers.

23 So I mean, I can tell you the \$75,000
24 equipment cost that's in the lease, he's already

1 testified to. The 36-month term is already there. The
2 down payment, actually, I think is -- the down payment
3 is different in the record than what is shown here.

4 But for purposes of calculating the 3,750
5 lease request, it actually is less. The 8,176 down
6 payment referred to on Petitioner's Exhibit 1 is what
7 I'm talking about. The down payment amortization term,
8 Mr. Kelly has just simply testified that that was USI's
9 purpose in recouping the down payment. So they
10 amortized it over 24 months.

11 The overhead, we haven't gotten to yet, and
12 he will testify to that.

13 We have the payment of 2,677.62. I believe
14 that's referred to in the document. I think it may vary
15 in terms of cents, but that's referred to in the lease
16 with Preferred Capital. Yeah, that's the exact figure,
17 as a matter of fact, on page 145, PCB 03-150, volume
18 II.

19 MR. KIM: Well, I would agree. Some of
20 this information is found within the record, and I
21 maintain this information is not found within the
22 record. It was not submitted to the agency at the time
23 of our decisions. It was not something that was
24 considered by the agency. And therefore the document

1 itself should not be considered by the board, and the
2 exhibit shouldn't be admitted. And I'd also ask that
3 any testimony related to this document be stricken as
4 well.

5 HEARING OFFICER SUDMAN: Well, okay.
6 Mr. Martin hasn't moved to enter this yet as a record,
7 as an exhibit.

8 MR. KIM: I agree. My concern was, I was
9 basically just trying to head off the testimony.

10 HEARING OFFICER SUDMAN: Right, I
11 understand. Are there any figures on this document that
12 you would agree to?

13 MR. KIM: I would agree that \$75,000 figure
14 is found within the record, that the lease term is found
15 within the record. The down payment figure is
16 different. The down payment amortization figure is not
17 found. The overhead presented is not found. The amount
18 that's listed under line item amount of each payment,
19 that is found within the record. And then the chart
20 calculations, that calculation is not found within the
21 record.

22 So there is one, two, three numbers on this
23 sheet that are in the record, and the rest of the
24 information is not.

1 HEARING OFFICER SUDMAN: Do you expect to
2 present any testimony that would refute anything Mr. Kim
3 just said regarding any of this information being in the
4 record, the figures that he said were not in the record?

5 MR. MARTIN: I plan to have Mr. Kelly
6 testify to information that's not in the record, yes,
7 that's shown on this document. I'm not offering the
8 document for the truth of the matter of certainty. I'm
9 offering it solely for demonstrative purposes so we can
10 all follow along. I'm going to have the same testimony
11 coming from Mr. Kelly whether we look at this document
12 or not.

13 HEARING OFFICER SUDMAN: Do you have any
14 response to that, Mr. Kim?

15 MR. KIM: Again, I maintain the objection.
16 The document itself and the testimony that would be
17 drawn from the document is information that was not
18 presented to the agency at the time of our decision.
19 It's unfair to somehow characterize or to try to
20 back-door that information in.

21 The board's been very clear that when
22 reviewing agency decisions, that you should consider
23 only information that was before the agency at the time
24 of the decision. If this information was not before the

1 agency at the time of the decision, if this explanation
2 wasn't before the agency at the time of decision, then
3 it clearly presents a problem for us because we are
4 arguing against information that we never had.

5 HEARING OFFICER SUDMAN: Right. Well, my
6 thought is I don't know what he's going to testify to
7 because he hasn't testified. So I think what I'll do
8 is -- I agree that if the agency didn't have this
9 information, it's not part of the record and should not
10 be considered, but I'm going to go ahead and allow him
11 to testify as an offer of proof because I don't know
12 exactly what he's going to testify to. So I can't
13 really say right now if it's proper or not.

14 MR. KIM: I have no objection to that if
15 it's being offered in its contents as an offer of proof,
16 as long as we clearly delineate when that offer of proof
17 is beginning and when it ends. And, again, I would
18 imagine, at least for what we're talking right now, the
19 offer of proof would only address those figures on this
20 exhibit that are not found within the record.

21 HEARING OFFICER SUDMAN: Yes, that would be
22 correct.

23 Is that okay with you?

24 MR. MARTIN: That's fine. I'll present it

1 that way, yes.

2 HEARING OFFICER SUDMAN: Thank you.

3 MR. MARTIN: So my intent now is to make
4 the offer of proof.

5 HEARING OFFICER SUDMAN: Yes, please.

6 MR. MARTIN: All right.

7 Q. Joe, with regard to
8 reference to the down payment amortization of 24 months,
9 I think you already testified to this, but I'll ask you
10 again. Why was 24 months used as opposed to 36 months
11 as the original lease term indicated?

12 A. It was looking at recouping the costs of
13 the down payment.

14 Q. On a quicker basis --

15 A. Two years as opposed to three years.

16 Q. Because that had already been a cash
17 outlay?

18 A. Correct.

19 Q. Then with regards to the overhead
20 percentage markup of .25, that's 25 percent?

21 A. Correct.

22 Q. Where does that figure come from?

23 A. That came from a number that was based on
24 our overhead percentage based on from financial

1 information, just kind of an average.

2 Q. A cost of doing business for United
3 Science?

4 A. Yeah, overhead of general administrative
5 costs and other costs that are included in what you
6 would call an overhead number.

7 Q. All right. Then taking the \$75,000
8 amortized over 36 months, the down payment amortized
9 over 24 months, and the overhead markup at least with
10 reference to Petitioner's Exhibit 1, you come to a
11 figure of \$3,772.86?

12 A. Correct.

13 Q. And is that where USI developed the monthly
14 lease rate of 3,750?

15 A. Yes.

16 Q. Basically a rounding down of the 3,772.86
17 to 3,750?

18 A. Correct.

19 Q. That 3,750 then is the monthly lease cost
20 for this unit that USI charged to Dalee?

21 A. Correct.

22 Q. And that is what Dalee sought for
23 reimbursement from the agency, that 3,750?

24 A. Correct.

1 MR. MARTIN: I guess that would conclude my
2 offer of proof. By the way, I should stop there.

3 HEARING OFFICER SUDMAN: Okay.

4 Q. (By Mr. Martin) Now, USI submitted its
5 request for reimbursement for the equipment charges for
6 this unit to the agency for the 3,750 per month; is that
7 correct?

8 A. Yes, that's one way of looking at it. I
9 mean, we were trying to come up with what you would
10 consider a rental rate, you know. And I think the
11 emphasis needs to be on this was trying to establish a
12 rent amount per month, as if we were a manufacturer of
13 the unit, only at a lesser amount than the manufacturer
14 would charge.

15 Q. And the submittal of the request for
16 reimbursement covers the various times that are
17 reflected in the three consolidated records we have here
18 today?

19 A. Yes.

20 Q. Now, you're aware that the agency has
21 approved for reimbursement \$2,457.31 per month?

22 A. Correct.

23 Q. In your experience, have you had smaller
24 units reimbursed at a greater rate by the agency?

1 A. Yes, we've had a couple different units.
2 One in particular is a unit that we have deployed at a
3 site in Alton, Illinois. I don't have the incident
4 number with me. But that was a little different case.

5 But for purposes of answering your
6 question, we had an emergency response. The agency
7 asked that we deploy a groundwater treatment system. We
8 obtained a rental unit, which is much smaller than the
9 unit we've got at Rocky's. And the rental for that is
10 \$3,000 a month, and those charges have been submitted.
11 It's just a direct rental, and there may be a handling
12 charge. But other than that, it's a direct rental from
13 the manufacturer to the owner/operator through us, and
14 those costs have been reimbursed.

15 Q. You mentioned Rocky's just a moment ago.
16 That's another term used for the Dalee Oil Company site?

17 A. Correct. I'm sorry. Dalee Oil Site in
18 Okawville has been referred to also, I think, on agency
19 correspondence and our correspondence has Rocky 66 or
20 Rocky's Station.

21 Q. Is the unit that is at the Dalee site now
22 providing the remediation of soil and groundwater that's
23 needed in order to reach the cleanup objective as far as
24 your data reflects?

1 A. The data we collected so far and I believe
2 has been submitted to the agency in various reports,
3 quarterly reports or whatever, have indicated decrease
4 in the groundwater contamination, and based on the
5 readings we've taken from the soil vapor extraction
6 unit, have shown the decrease in the amount of vapor
7 concentration.

8 Q. The unit's been there now for over two
9 years; is that right?

10 A. Correct.

11 Q. Do you have any idea how much longer that
12 unit would be needed at the Dalee site?

13 A. I'd say at least the remainder of this
14 year, maybe beyond, based on the data that we collect as
15 the remediation progresses.

16 Q. You just have to wait and see primarily on
17 that; is that correct?

18 A. Correct.

19 Q. Now, you've testified that this particular
20 unit was tailor made for the Dalee site, correct?

21 A. Yes.

22 Q. When the Dalee site is remediated to the
23 cleanup objective and the unit's no longer needed, will
24 you be able to use this unit at another site?

1 A. The only way the unit could be utilized in
2 other site would be if a site had similar
3 characteristics, but mainly inventory of the equipment
4 and the associated parts of the system would have to be
5 evaluated. It is unlikely that, you know, most of the
6 system could be used.

7 For instance, the submersible pumps
8 typically only have a three- to five-year life. There
9 may have to be replacement of other components. So an
10 evaluation would have to be made at the end of the use
11 of the unit on this particular site.

12 Q. So it may be, it may not? You just don't
13 know?

14 A. It may or may not be. It may not have any
15 salvage value.

16 Q. Within the 3,750 monthly lease rate charged
17 by USI to Dalee, are there included in that maintenance
18 repair or operations or design charges?

19 A. No. That's a rental -- what we call lease
20 fee, rental fee, for that particular unit. Any costs
21 associated with cleaning or sample collection or
22 maintenance, or whatever, would be in addition to that.

23 Q. Okay. Has USI ever been requested by the
24 agency to provide information regarding USI's costs for

1 a backhoe?

2 A. No.

3 Q. Ever been asked by the agency for
4 information regarding USI's costs for tractor trailer?

5 A. No.

6 Q. Has USI ever been asked by the agency for
7 information regarding the wages it pays to its laborers?

8 A. No.

9 Q. Based on your experience with this type of
10 groundwater and soil treatment unit, do you deem the
11 3,750 per month charge to Dalee a reasonable charge?

12 A. I do, based on experience in asking for
13 rental rates on just even a simple groundwater unit.
14 And the point I made with the Alton site, you know, is
15 just one example.

16 But based on the information contained from
17 Carbon Air, what they would rent this unit for and
18 rental rates for units that are much smaller in scale, I
19 felt that this was a reasonable rate.

20 Q. And you're asking the board to reimburse
21 Dalee Oil the 3,750 monthly charge to it?

22 A. Correct.

23 MR. MARTIN: I don't think I have any other
24 questions.

1 HEARING OFFICER SUDMAN: Okay. Mr. Kim?

2 CROSS EXAMINATION

3 QUESTIONS BY MR. KIM:

4 Q. Mr. Kelly, the Illinois EPA was never
5 provided with the -- let me rephrase the question.

6 USI's requested rate for the lease was
7 \$3,750; is that correct?

8 A. Correct.

9 Q. And the information provided by USI stated
10 that the lease payment that was owed to Preferred
11 Capital Corporation was \$2,677.62; is that correct?

12 A. Yes.

13 Q. USI never provided a breakdown of the
14 difference between \$2,677.62 and \$3,750 charged for
15 monthly lease; is that correct?

16 A. All I know for sure is that we requested
17 additional information. And to my knowledge, we
18 provided what the agency asked, which included the
19 breakdown of these costs.

20 Q. And when did you provide that information?
21 You don't know when you provided that information, do
22 you?

23 A. I know the project manager provided that
24 information, but I did not specifically.

1 you prepared that provides that breakdown; is that
2 correct?

3 A. The information I provided is similar in
4 nature to this document that -- right here. Maybe not
5 in this particular format, but this particular
6 information was provided, to my knowledge, to the
7 agency.

8 Q. When was that provided? You don't know, do
9 you?

10 A. No.

11 Q. Did you ever sign a letter that contained
12 that information?

13 A. No.

14 Q. Do you recall seeing a letter signed by
15 someone else that contained that information?

16 A. No, but I don't recall from August 2001
17 until now a lot of events. So I couldn't say right off
18 the top of my head.

19 Q. That's a fair statement. So unless the
20 Illinois EPA was provided with the specific breakdown,
21 the EPA would not know what USI's overhead calculations
22 were; is that correct?

23 A. Correct.

24 Q. Unless the EPA was provided with a specific

1 figure, the EPA would not know what any kind of
2 amortization terms would be; is that correct?

3 A. Right.

4 Q. Now, you said that you're familiar with the
5 731 regulations; is that correct?

6 A. Yes.

7 Q. And when we say 731 regulations, we're
8 referring to Part 731 of Title 35 of the Illinois
9 Administrative Code; is that right?

10 A. Correct.

11 Q. And you're aware that there's a concept of
12 handling charges included in Section 731; is that
13 correct? Well, let me take that back.

14 Are you familiar with the statutory
15 references that Section 731 were adopted pursuant to?

16 A. I'm not sure I understand the question.

17 Q. When we say Section 731, that refers to a
18 system whereby underground storage tanks would be
19 remediated; is that correct?

20 A. Correct.

21 Q. And that relates to underground storage
22 tanks that had a release date that was reported prior to
23 September of 1993; is that correct?

24 A. Correct.

1 Q. And aside from the 731 regulations, do you
2 know if there's any other authorities, specifically any
3 kind of statutory authority that also addresses cleanup
4 of those type of tanks?

5 A. 742 deals with their remediation
6 objectives.

7 Q. But you're not aware of any
8 statutory -- and I'm not going to press this too far.
9 I'm just saying there's regulations, and then there's
10 statutes. And I'm just asking, are you aware of any
11 statutes that go along with Section 731?

12 A. I don't recall.

13 Q. Okay. Are you familiar with the concept of
14 handling charges related to costs for 731 sites?

15 A. Yes.

16 Q. And what's your understanding of what a
17 handling charge is in that context?

18 A. Handling charge is based on a tiered level
19 of costs incurred.

20 For instance, in our application, it's
21 been -- if we have a charge from a laboratory, for
22 instance, and that fee is associated with a particular
23 sample, then you're allowed to apply a handling charge
24 to that cost.

1 Q. And you said sort of a sliding scale?

2 A. Correct.

3 Q. So it depends based upon the amount of
4 money you're talking being cost, the scale sort of goes
5 up and down accordingly; is that right?

6 A. Yes. The percentage decreases as the
7 amount increases.

8 Q. And do you know if a handling charge was,
9 in your opinion, appropriate for the costs of the lease
10 rate of the groundwater remediation system we're talking
11 about?

12 A. In our particular application, the initial
13 submission of the fee, it would have been a rental rate,
14 and you could have applied a handling charge, but we
15 just chose to provide a rental rate at that time.

16 Subsequent to that, the agency asked for
17 additional information, and based on that information,
18 decided that they would only reimburse a lesser amount.
19 And therefore that's when this concept of handling
20 charge started entering into the negotiation of what the
21 agency deemed acceptable as to what they would
22 reimburse.

23 Q. And do you know what handling, what type of
24 costs, or what kind of -- well, do you know what type of

1 costs, handling charges, are supposed to include?

2 Obviously it's got to represent something, right?

3 A. Correct.

4 Q. What, in your opinion, does the handling
5 charge include?

6 A. It's the cost associated with a direct cost
7 to a project.

8 Q. Okay.

9 A. Subcontractor, contractor, whomever.

10 Q. Do you think handling charges include
11 overhead charges?

12 A. At the time that these rates were
13 determined, a handling charge was not applied.

14 Q. I understand that, but what I'm saying is,
15 is your understanding of a handling charge, does that
16 include overhead charges?

17 A. It might, because that may be what the
18 subcontractor or contractor put into their fee. I don't
19 know what their fee is based on.

20 Q. Okay. You also made reference to a
21 different site. I think it was located in Alton; is
22 that right?

23 A. Correct.

24 Q. And you said that there was some higher

1 lease rates that had been accepted for that site; is
2 that right?

3 A. Correct.

4 Q. But you also said that the site there was a
5 little bit different. It was a little bit different
6 case, I think you said, than what we're talking about
7 here; is that right?

8 A. Only that --

9 Q. I'm just asking you for "yes" or "no."

10 A. Yes.

11 Q. It's a different type of unit; is that
12 correct?

13 A. Yes.

14 Q. And it's a different lease term; is that
15 correct?

16 A. It's not -- it's just a pure rental.
17 There's no term.

18 Q. There's no term associated with the Alton
19 site; is that correct?

20 A. Correct.

21 MR. KIM: I don't have anything further.

22 HEARING OFFICER SUDMAN: Okay. Thank you.

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REDIRECT EXAMINATION

QUESTIONS BY MR. MARTIN:

Q. Joe, to your recollection, -- well, let me strike that and start over.

You were asked by Mr. Kim if you ever provided information regarding the difference between the 3,750 requested for reimbursement and the 2,677.62 lease payment obligation to Preferred Capital. Do you recall that question?

A. Yes.

Q. Were you ever asked that question for that information from the agency?

A. Yes. There was documentation provided to USI requesting more than one page of information regarding how much did the unit cost, what was the salvage value, what were the terms. There was an agreement with the owner/operator and a number of other items that they requested.

Q. And let me refer you then to volume II, PCB number 03-150, page 142. Again, have you seen that document before?

A. No.

Q. Starting at 142, it should be a letter dated September 28, 2001.

1 A. Yes, yes.

2 Q. And that goes for three pages, 142 through
3 144 signed by Brad Richards, project manager.

4 A. Yes.

5 Q. Did you provide any information that's
6 reflected in this letter signed by Brad Richards? Did
7 you provide any information to Mr. Richards that's
8 contained in this letter?

9 A. He was provided the page 142, a copy of the
10 lease, from Preferred Capital Corporation.

11 Q. My question, Joe, is, did you provide
12 information?

13 A. Yes.

14 Q. To Mr. Richards?

15 A. Yes. I thought you wanted specific
16 information. Yes, I provided data to him for this.

17 Q. I want to now refer you to PCB 03-150,
18 volume I, page 31.

19 MR. KIM: I'm sorry. Could you say that
20 again?

21 MR. MARTIN: Yeah. It's volume I of
22 03-150, page 31. I said volume I, page 31. Actually,
23 while you're wasting your time going there, I may direct
24 you somewhere else. Just a moment.

1 Let me take you back, Joe, to volume II. I
2 hope you haven't done away with that letter yet.

3 HEARING OFFICER SUDMAN: No.

4 Q. (By Mr. Martin) Volume II, page 142 of PCB
5 03-150.

6 A. Okay.

7 Q. Do you see there that there's a
8 subparagraph A through H in that letter?

9 A. Yes.

10 Q. And it's bolded?

11 A. Yes.

12 Q. And at the beginning of the letter, there's
13 reference to information provided in response to the
14 agency letter dated August 1, 2001?

15 A. Correct.

16 Q. And as you review this letter, does it
17 appear that the bolded part is the request of the agency
18 for information?

19 A. Yes.

20 Q. And then the non-bolded part after that,
21 each subparagraph that's bolded would be USI's answer to
22 the question for the request?

23 A. Correct.

24 Q. In that letter, there is not a request by

1 the agency for an overhead breakdown or an explanation
2 for the difference between 3,750 requested and the lease
3 payment to Preferred Capital of 2,677.62, is there?

4 A. No, there's not.

5 Q. So USI didn't provide that information
6 because it was never requested by the agency?

7 A. It appears not at this time.

8 Q. Do you recall that request by the agency
9 ever being made?

10 A. Not specific to the components of the cost
11 breakdown, but at some point it was my understanding
12 that we had provided the data that included how this
13 3,750 was derived. And if it was not in this particular
14 letter, it must have been addressed in a letter later
15 on.

16 Q. But you don't specifically recall that as
17 you sit here today?

18 A. No.

19 Q. Now, this was a charge, a lease charge,
20 that Dalee was seeking reimbursement from the agency
21 for, correct?

22 A. Correct.

23 Q. What would USI's overhead have to do with
24 the lease charged to Dalee anyway?

1 A. To me, it would not. Our stance on this
2 was that we were -- this goes back to charging a rental
3 for a piece of equipment similar to a rental for
4 excavation or backhoe or whatever. You're trying to
5 derive a rental fee.

6 And, actually, the components of how that
7 was derived really felt like that that wasn't
8 necessary. I mean, we don't provide breakdowns for
9 other types of equipment utilized that are rented out.
10 All we were trying to do was come up with what we
11 considered a fair rental rate based on the size of the
12 unit.

13 Q. And the 3,750 is what you believe to be a
14 fair rental rate?

15 A. Correct.

16 Q. Now, based on the information that was
17 provided to the agency through the lease with Preferred
18 Capital, the lease payment that USI was required to make
19 to Preferred Capital Corporation is 2,677.62, correct?

20 A. Correct.

21 Q. And the agency has approved to date a
22 reimbursement of 2,457.31, correct?

23 A. Right.

24 Q. If I did my math right, that's a difference

1 of \$220.31 per month. That is what is called a base
2 amount that USI is required to pay on the lease versus
3 what the agency has approved to be reimbursed?

4 MR. KIM: I'm going to object. That's a
5 leading question, and that counsel is now testifying.

6 HEARING OFFICER SUDMAN: Would you please
7 rephrase your question, Mr. Martin.

8 MR. MARTIN: No. I'll withdraw it.

9 Q. And the Alton site, you had
10 described when you were asked by Mr. Kim, that was a
11 smaller unit than is involved with Dalee; is that
12 correct?

13 A. Yes.

14 Q. And there's more money being reimbursed by
15 the agency for that rental unit -- I mean for the rental
16 for that unit there at Alton than is being reimbursed by
17 the agency with regard to the Dalee project; is that
18 correct?

19 A. Correct.

20 MR. MARTIN: I don't have any questions.

21 HEARING OFFICER SUDMAN: Mr. Kim?

22 RE CROSS EXAMINATION

23 QUESTIONS BY MR. KIM:

24 Q. Just a few. I'm going to engage in a

1 little math as well.

2 So you said that you think the 3,750 was a
3 reasonable rate for the rental; is that correct?

4 A. Correct.

5 Q. And the lease rate that USI had to pay to
6 your financier was 2,677; is that correct? I'm dropping
7 off the cents.

8 A. Yes.

9 Q. So that leaves a difference of about a
10 little over \$1,000; is that right?

11 A. Correct.

12 Q. 3,750 minus 2,677, roughly a little over a
13 thousand dollars. So your testimony is that out of that
14 thousand dollars a month for 36 months, that represents
15 a reasonable figure above what USI had to pay to the
16 lender; is that correct?

17 A. No. I'm saying that 3,750 is reasonable as
18 compared to industry rates for the rental of a
19 groundwater treatment or groundwater treatment SVE
20 unit. That's my testimony.

21 Q. So your testimony is not that the
22 difference between what USI had to pay to the lender and
23 what USI was charging to Dalee was -- that difference
24 represented a reasonable profit? Is that not what your

1 testimony is?

2 A. I'm not saying it's reasonable or
3 unreasonable. I'm evaluating that rate based on the
4 industry, not on -- because, for instance, I don't go to
5 Diamond Equipment and ask them about their rental of
6 their equipment, saying, well, now what you're charging
7 me and what you paid for this, and evaluate their cost.
8 I don't have that opportunity. Therefore, just like the
9 owner/operator doesn't have the opportunity to evaluate
10 rental rates for equipment and other types of
11 equipment.

12 Q. So when you made your statement that that's
13 a reasonable rate, you're not taking into consideration
14 what USI has to pay? You're simply basing that on what
15 you think the market bears; is that correct?

16 A. Correct, what the market bears and
17 recouping our cost.

18 Q. When you say recouping your cost, recouping
19 your cost comes out of that \$1,000 a month difference;
20 is that correct?

21 A. The recouping of the cost is how much we
22 are paying, plus other factors. But that, and in
23 combination with the evaluation of the rental rate as
24 compared to what the industry would charge for that

1 particular unit.

2 Q. Right, but you said you take into account
3 recouping your cost. And, again, since USI has to pay
4 out 2,677 and USI's charging 3,750, which leaves a
5 difference of about a thousand dollars, you're saying
6 recouping your costs comes somewhere out of that \$1,000;
7 is that correct?

8 A. The costs reflected in that calculation
9 were based on the amount -- partially on the amount that
10 we paid to obtain the unit.

11 Q. I'm going to ask you again. When you say
12 recouping your costs, you're not recouping your costs
13 out of the money you're paying to the financier; is that
14 right? That's money you have to pay out; is that
15 correct?

16 A. Correct.

17 Q. And then you receive in money to USI, which
18 is more than what you're paying out; is that right?

19 A. Correct.

20 Q. So in the end, you're left with more money
21 that you've received than what you paid out; is that
22 correct?

23 A. Correct.

24 Q. So whatever costs are that you have that

1 you need to recoup, you take out of that difference; is
2 that correct?

3 A. Correct.

4 MR. KIM: Okay. I have nothing further.

5 MR. MARTIN: One further question.

6 FURTHER REDIRECT EXAMINATION

7 QUESTIONS BY MR. MARTIN:

8 Q. Joe, the difference Mr. Kim was asking you
9 about, the roughly 1,000, the difference between the
10 3,750 and the 2,677, that doesn't take into account the
11 down payment that USI had to make?

12 A. That's correct.

13 Q. And, again, you're basing this on an
14 industry -- what you believe the industry rate, the
15 reasonable rate is; is that correct? For a lease of the
16 unit of this size?

17 A. Yes.

18 Q. And USI is a profit corporation, correct?

19 A. Yes.

20 Q. It means you're in the business to make
21 money?

22 MR. KIM: Objection. These are leading
23 questions.

24 HEARING OFFICER SUDMAN: Sustained.

1 Q. (By Mr. Martin) Do you believe that to be
2 a reasonable charge based on the industry standard?

3 A. Based on the information we obtained from
4 the manufacturer regarding this unit, and experience
5 with asking for rental of units that are much smaller in
6 size and scope, I feel that this is more than fair.

7 MR. MARTIN: That's all I have.

8 HEARING OFFICER SUDMAN: Anything further?

9 MR. KIM: Nothing further.

10 HEARING OFFICER SUDMAN: Nothing further
11 for this witness?

12 MR. KIM: No.

13 MR. MARTIN: No.

14 HEARING OFFICER SUDMAN: Thank you very
15 much, Mr. Kelly.

16 MR. KIM: Can we take a short break?

17 HEARING OFFICER SUDMAN: Yes.

18 MR. MARTIN: That's fine with me.

19 HEARING OFFICER SUDMAN: Did you want to do
20 anything with Petitioner's Exhibit 1 at this time?

21 MR. MARTIN: Well, I'll tender it as an
22 exhibit for demonstrative purposes.

23 HEARING OFFICER SUDMAN: And, Mr. Kim, do
24 you maintain the same objection?

1 MR. KIM: Same objection.

2 MR. MARTIN: One other thing I will tender
3 as part of Petitioner's evidence, and that is with
4 regard to the possibility of attorney's fees being
5 awarded by the Board, and I'll produce an affidavit of
6 these, which I present to the Board as evidence. If
7 Mr. Kim would like testimony of the reasonableness of
8 the hours spent and charges for the hours, I'll do so.

9 HEARING OFFICER SUDMAN: But, Mr. Kim,
10 would you like to object to Petitioner's Exhibit 2?

11 MR. KIM: No, I have no objection.

12 HEARING OFFICER SUDMAN: Okay.

13 MR. MARTIN: Did I mark it?

14 [Petitioner's Exhibit Number 2 was
15 marked for identification.]

16 HEARING OFFICER SUDMAN: With respect to
17 Petitioner's Exhibit 1, I am not going to admit this to
18 the record, but I will file it with the Board so that
19 they will be able to follow it along with your offer of
20 proof.

21 MR. MARTIN: Okay.

22 HEARING OFFICER SUDMAN: And I will admit
23 Petitioner's Exhibit 2.

24

1 [Petitioner's Exhibit Number 2 was
2 admitted into evidence.]

3 HEARING OFFICER SUDMAN: We will take a
4 5- or 10-minute break and return.

5 [Brief break.]

6 HEARING OFFICER SUDMAN: We will go back on
7 the record.

8 Mr. Martin has no further witnesses. So we
9 will proceed to Mr. Kim's first witness.

10 MR. KIM: I call Brian Bauer.

11 HEARING OFFICER SUDMAN: Would the court
12 reporter please swear the witness in.

13 [Witness sworn.]

14 BRIAN BAUER,
15 being produced, sworn, testifies and says:

16 DIRECT EXAMINATION

17 QUESTIONS BY MR. KIM:

18 Q. Could you please state your name and spell
19 your name for the record.

20 A. Brian Bauer. B-r-i-a-n B-a-u-e-r.

21 Q. And, Mr. Bauer, what is your current
22 employment?

23 A. I'm a project manager with the Illinois
24 EPA.

1 Q. And what specifically do your job functions
2 include as a project manager?

3 A. I review technical plans and reports and
4 reimbursement requests for the LUST program.

5 Q. How long have you been in that position?

6 A. Since April of '92.

7 Q. And are you familiar with the site that's
8 been referenced as the Dalee Oil Company site?

9 A. Yes, I am.

10 Q. And did you work on that site in terms of
11 review of documents?

12 A. I reviewed the reimbursement request for
13 the site, some of them.

14 Q. And there are a number -- there are
15 actually three appeals that are sort of being
16 consolidated today, but each appeal involves a reduction
17 based upon a lease rate. Were you responsible for the
18 decisions, involved in those three decisions?

19 A. Yes.

20 MR. KIM: I'd also note Mr. Bauer has his
21 own copy of the record, just to make it easier for
22 reference.

23 Q. Could you please turn to
24 page 11 of volume I of the record for PCB 03-150. And

1 are you familiar with what that document is?

2 A. Yeah. These are a copy of my notes.

3 Q. And these notes were prepared for what
4 happened?

5 A. They were prepared in conjunction with my
6 review of the three reimbursement requests.

7 Q. Could you just explain how you calculated
8 or how you came up with the figures that are shown on
9 this page?

10 A. Okay. The first figure is the system cost,
11 \$83,691. That was taken from their document indicating
12 what their system cost. The second value, \$1,250, was
13 the salvage value, and that was again taken from USI's
14 letter, one of their letters indicating when we
15 requested the salvage value. That was what they
16 provided us. \$82,441 is the difference between what the
17 system cost and the salvage value. The proposed use of
18 the system was 36 months.

19 We then calculated a handling charge based
20 on the sliding scale from the \$82,441, and that came to
21 \$6,022.05. I added those two figures together to get a
22 total cost of \$88,463.05. I divided that by 36 months,
23 the number of months that the system was to be leased
24 for Dalee Oil from USI, and I came up with \$2,457.31 per

1 month for a max of 36 months.

2 Q. And is that \$2,457.31 per month, the figure
3 that was later memorialized to the three decisions that
4 are under appeal?

5 A. I believe so, yes.

6 Q. Did you consult any documents outside of
7 what's contained within the record in the course of your
8 calculations here?

9 A. No.

10 Q. Can you explain how you calculated the
11 handling charge?

12 A. It was calculated on the sliding scale
13 that's in -- in this case, it would be in the
14 Environmental Protection Act, 2218 something.

15 Q. That's a long cite.

16 And in the course of your review of the
17 documents, did you ever find a dollar breakdown of the
18 \$3,750 lease rate that USI was charging to Dalee Oil
19 Company, which was the subject of the reimbursement
20 request?

21 A. No. They never really provided a breakdown
22 for that.

23 Q. And were you aware of any figure that USI
24 provided that detailed what their overhead charges would

1 be for this case, for this site?

2 A. No.

3 MR. KIM: I have nothing further.

4 HEARING OFFICER SUDMAN: Thank you.

5 Mr. Martin?

6 CROSS EXAMINATION

7 QUESTIONS BY MR. MARTIN:

8 Q. Did you ask for a detailed breakdown of the
9 3,750 charge?

10 A. Yes.

11 Q. Where? Show me in the record.

12 A. It would be in the -- I believe it would be
13 in the August 2001 letter. I know their response, like
14 you indicated before, is on 142 of PCB 03-150, volume
15 II. I don't know where the letter is. It would be
16 page 1. Page 1, 2 -- there's a page missing.

17 Q. What page in the record are you referring
18 to?

19 A. Well, the August 1, 2001 letter is on
20 page 1 of volume II of PCB 03-150, but there seems to be
21 a page missing, I believe. It goes from -- it would be
22 between 2 and 3.

23 Q. Okay. So, yeah, it does appear that there
24 is a page missing. For clarification purposes, would it

1 be better to refer to page 142 of volume II?

2 A. Sure.

3 Q. Would you say that that accurately -- and
4 this, by the way, is the letter dated September 28, 2001
5 from Brad Richards of USI, correct?

6 A. Yes.

7 Q. 142?

8 A. Yes.

9 Q. Would you say that that accurately restates
10 the information you requested and then which is
11 reflected in bold type?

12 A. Yes.

13 Q. And then the answers appear in the
14 typed -- that's not bold after that?

15 A. Yes.

16 Q. But find for me within that document pages
17 142 through 144 where you requested a breakdown of the
18 costs, and in particular, the overhead.

19 A. Letter B on page 143, it asks for a
20 breakdown of the items or activities that are
21 specifically included on the lease.

22 Q. And the answer given is monthly lease rate
23 is for the equipment only?

24 A. Correct.

1 Q. And there was also, I guess, itemized
2 technical specifications between the manufacturer
3 included in this letter; is that correct? I'm just
4 looking at that answer after letter B.

5 MR. KIM: You're just paraphrasing that
6 last sentence?

7 MR. MARTIN: Yes, I am.

8 Q. Is that correct?

9 A. Yes.

10 Q. Well, let me ask you what you meant
11 by -- well, let me take you back.

12 Subparagraph or paragraph A, page 142, you
13 asked for a copy of the lease associated with the
14 treatment system, correct?

15 A. Correct.

16 Q. And then paragraph B is a breakdown of the
17 items or activities that are specifically included in
18 the lease?

19 A. Correct.

20 Q. And you were provided with a copy of the
21 lease?

22 A. We were provided with a copy of the lease
23 between USI and Preferred Capital Corporation.

24 Q. Yes.

1 A. That wasn't what we were concerned about.

2 Q. What was it you were concerned about?

3 A. We wanted the copy of the lease between USI
4 and Dalee Oil.

5 Q. And you were provided with that?

6 A. We were provided with that in a later
7 document, which came in on February 27, 2002 or dated
8 February 27, 2002.

9 Q. So the information you requested in B was
10 provided to you by USI? Maybe not all at once, but it
11 was eventually provided?

12 A. It was provided, yes.

13 Q. So, again, I ask you where in this letter
14 did you ask for breakdown of the overhead cost for USI?

15 A. I asked for an itemization of all costs
16 associated with the lease in B, a breakdown and
17 itemization of all -- breakdown of items or activities
18 that are specifically included in the lease.

19 Q. What lease are you referring to? The lease
20 between USI and Dalee, or the lease between USI and
21 Preferred Capital Corporation?

22 A. USI and Dalee.

23 Q. And that was provided to you? I mean, I
24 know we've gone down this path already. What I'm

1 getting at is, where did you request USI's overhead in
2 this letter or any other document that's reflected in
3 this record?

4 A. Well, I believe it's in item B there.

5 Q. It doesn't say that, though, does it?

6 MR. KIM: Objection. It's argumentative.

7 HEARING OFFICER SUDMAN: Sustained.

8 MR. MARTIN: I'm asking what it says.

9 Q. Does it say breakdown for
10 USI?

11 MR. KIM: Objection. He's answered this.

12 And otherwise the statement speaks for itself.

13 MR. MARTIN: It speaks for itself.

14 Q. Why did you feel you need
15 this information from USI? This, being the lease
16 between USI and Preferred Capital Corporation.

17 A. It's needed to determine the reasonableness
18 value of what we reimburse.

19 Q. Let me ask you this, and it's from a
20 hypothetical standpoint. If USI had submitted a 3,750
21 equipment cost reimbursement request based upon a lease
22 from ABC Leasing, between ABC Leasing and Dalee Oil
23 Company, what would you have asked for?

24 MR. KIM: Objection. Calls for

1 speculation.

2 MR. MARTIN: I'm asking him in a
3 hypothetical manner.

4 MR. KIM: I understand.

5 HEARING OFFICER SUDMAN: Yeah. I'll
6 sustain that. Please, let's address Dalee Oil.

7 Q. (By Mr. Martin) Well, all right. Let me
8 ask this then.

9 What right did you think you had to obtain
10 financial information from USI with regard to its cost,
11 overhead or otherwise associated with the lease?

12 MR. KIM: I'm going to object, and I'm
13 trying to form my objection. I'm not sure what's meant
14 by "what right."

15 HEARING OFFICER SUDMAN: I'm not exactly
16 sure I understand the question either, Mr. Martin.

17 Q. (By Mr. Martin) Why did you need the
18 information, and in particular, the overhead costs of
19 USI to determine whether this was a reasonable lease
20 rate when it's Dalee Oil that is seeking the
21 reimbursement at that particular rate?

22 A. We need the information. We asked Dalee
23 Oil for the information.

24 Q. You asked Dalee Oil?

1 A. That's who we send the letters to. We
2 correspond with Dalee Oil. We copy USI.

3 Q. And what difference does it make to the
4 agency what USI's overhead rate is, profit rate markup,
5 however you want to characterize it, what difference
6 does it make in determination of the value lease rate
7 that they seek to be reimbursed?

8 A. I really don't know how to answer that. I
9 guess we need all information that went into that rate
10 in order to determine if it was a reasonable rate or
11 not.

12 Q. If USI had not been the lessor here, what
13 information would you want to obtain from a third party
14 lessor?

15 MR. KIM: Objection. Just calls for
16 speculation again.

17 MR. MARTIN: I don't think that calls for
18 speculation. He's testified that he is a reviewer of
19 reimbursement applications. And as part of his process,
20 he needs to gather the information to determine whether
21 a lease rate requested for reimbursement is reasonable.
22 I'm asking him what information does he need in order to
23 determine that reasonableness.

24 MR. KIM: And I think you can ask that

1 question without posing hypotheticals.

2 HEARING OFFICER SUDMAN: Why don't you ask
3 the way you just --

4 Q. (By Mr. Martin) What information do you
5 request from a lessor to determine if a lease rate
6 sought to be reimbursed by a owner/operator is
7 reasonable?

8 A. The total cost of the piece of equipment
9 and a salvage value.

10 Q. And do you obtain that from third party
11 lessors as a regular course of your investigation into
12 the reasonableness of the lease charges?

13 A. I suppose if they were a subcontractor, we
14 would get that information, yes.

15 Q. Have you done that before?

16 A. Yes.

17 Q. And that information has been provided to
18 you by third party lessors?

19 A. I don't know if it was a third party.

20 Q. And that's my question. If it's a third
21 party lessor, you asked for and you obtain the third
22 party lessor's cost of the equipment and their salvage
23 value for that equipment?

24 A. No. I want an invoice from the

1 manufacturer of the equipment for the cost of the
2 equipment. That's what I want. I don't want a lease
3 agreement from the other people, but if they have a
4 lease agreement with the owner/operator, and they're
5 leasing it, they sometimes will probably provide that
6 information. But we base our costs on the cost of the
7 system, the salvage value and the appropriate handling
8 charges.

9 Q. Regardless of what the lessor asks for from
10 the owner/operator in terms of a lease charge?

11 A. Yes.

12 Q. Your calculation for purposes of the Dalee
13 request included the handling charges, I think you
14 described those as being on a sliding scale according to
15 statute. Did your calculations also include a sales tax
16 applicable to the unit cost?

17 A. If it was included in the \$83,691 cost that
18 USI provided us.

19 Q. In other words, if you knew that
20 information, you would have included it in your
21 calculation?

22 A. If they provide documentation that they had
23 it, we would have included it.

24 Q. Well, in the lease that was provided to

1 you, between USI and Preferred Capital Corporation,
2 again, which is found at page 145, of volume II of
3 03-150. Do you have that in front of you?

4 A. Yes.

5 Q. The upper left-hand corner there, beside
6 terms, it looks like a written-in figure of 15751, and
7 it looks like it refers to the tax? Do you see that
8 there?

9 A. I do see it.

10 Q. Would you agree that refers to tax?

11 A. If you say so.

12 MR. KIM: Which page are you on again?

13 MR. MARTIN: 145.

14 MR. KIM: Okay. Thank you.

15 Q. (By Mr. Martin) You're saying you don't
16 know?

17 A. I'm being honest. I did not understand
18 when I looked at it, because I did not see an invoice
19 where there was tax. So I really never kind of
20 correlated that with the tax.

21 Q. So your reimbursement calculation did not
22 include any tax because you didn't understand that to be
23 tax?

24 A. No. Because on page 152, their total

1 invoice was \$83,691, and it doesn't show there was any
2 tax included on that, on that invoice.

3 Q. Let me turn you to page 153. Do you see
4 reference to about the middle to the lower part of the
5 page, sales tax 15351? Do you see that?

6 A. Yes.

7 Q. And, again, you didn't include that in your
8 calculation?

9 A. No, unless it's part of that 83,691 on that
10 invoice.

11 Q. Can you tell me, did you determine the
12 maximum of 36 months at the reimbursement rate of the 24
13 hundred and some odd -- that it's determined to be
14 reasonable? Why was it a maximum of 36 months?

15 A. Because the system would be paid off during
16 that period of time.

17 Q. Would there not be any reimbursement for
18 the system if it operated at the site, the Dalee site,
19 for longer than 36 months to perform the remediation
20 necessary at the site?

21 A. For the equipment, no.

22 Q. So if the remediation were necessary beyond
23 36 months, there would be no reimbursement for it
24 regardless of its need for the remediation?

1 MR. KIM: Objection. That's not the
2 question that was asked.

3 MR. MARTIN: I believe it was, and it is
4 now.

5 MR. KIM: I'll withdraw the objection.

6 HEARING OFFICER SUDMAN: Okay. Proceed.

7 Q. (By Mr. Martin) Do you need me to ask it
8 again?

9 A. Please.

10 Q. All right. If the unit were required to be
11 on the Dalee site for remediation purposes beyond 36
12 months, is it your testimony that there would be no
13 reimbursement available to Dalee with costs to the
14 operation of that unit beyond 36 months?

15 A. There would be cost for the operation, but
16 not for the equipment rental itself.

17 Q. When I said "operating," I mean for the
18 equipment there. There would be no reimbursement for
19 the equipment beyond 36 months?

20 A. No.

21 Q. Regardless of its need for remediation
22 purposes?

23 A. No.

24 Q. And you believe that to be a reasonable

1 determination?

2 A. Yes.

3 Q. And that's based upon the fact that the
4 equipment would be paid for?

5 A. Correct.

6 MR. MARTIN: So I'll withdraw that
7 question.

8 May I take a two-minute break here? I
9 think I may be done here, and I just want to confer with
10 them.

11 MR. KIM: That's fine.

12 HEARING OFFICER SUDMAN: We'll take a
13 two-minute break.

14 [Brief break.]

15 HEARING OFFICER SUDMAN: We'll go back on
16 the record now.

17 MR. MARTIN: Just a couple more questions,
18 Mr. Bauer.

19 Q. Have you ever requested for
20 the costs of a -- I mean, an example, of a bulldozer or
21 some other equipment other than a groundwater treatment
22 unit from a third party subcontractor in order to
23 determine the reasonableness of the lease rate charge by
24 the third party contractor?

1 MR. KIM: I'm going to object as to
2 relevance. That's not what we're talking about here.
3 We're not talking about any backhoes or tractors or
4 anything like that. We're just talking that particular
5 unit.

6 MR. MARTIN: Well, I'm trying to determine
7 how he determines the reasonableness of a lease charge
8 for equipment at a remediation site. And he's already
9 testified, I think, that he has asked for the equipment
10 costs and the salvage value. And I'm asking for a
11 particular incident in which he's asked for that
12 information, and it's been obtained.

13 MR. KIM: And my objection is that the
14 question did not relate to the unit that we're talking
15 about here. It related to different types of equipment
16 that, again, are not the subject of any kind of appeal.
17 And I don't see how they're relevant at all to this
18 determination. All we're talking here is the
19 determination based upon this particular unit and the
20 costs associated thereto. Nothing else.

21 HEARING OFFICER SUDMAN: And we've already
22 addressed that, have we not, how he arrived at that? I
23 agree. I don't think -- he's already discussed how he
24 made this determination. I don't know that it's

1 especially relevant to know how he's made others.

2 MR. MARTIN: Okay. I don't have any
3 questions.

4 HEARING OFFICER SUDMAN: Mr. Kim?

5 REDIRECT EXAMINATION

6 QUESTIONS BY MR. KIM:

7 Q. Mr. Bauer, who is responsible for
8 submitting information in a reimbursement request to
9 demonstrate if costs sought for reimbursement are
10 reasonable?

11 A. The owner/operator.

12 Q. Does the Illinois EPA have any
13 responsibility that you're aware of to ask for
14 additional information beyond what's presented?

15 A. We do.

16 Q. Is it a statutory requirement?

17 A. No.

18 Q. Is it a regulatory requirement?

19 A. No.

20 Q. How would you characterize it then?

21 A. I guess it would be a courtesy because we
22 could cut the costs otherwise.

23 Q. And just to clarify. There's been some
24 reference made -- and this is not a major point, but

1 let's see. For example, if you look at page 142 of
2 volume II of 03-150 --

3 A. Yes.

4 Q. -- that's a letter dated September 28,
5 2001; is that correct? Is that right?

6 A. Yes.

7 Q. Who is that letter addressed to?

8 A. Sam Hale.

9 Q. And do you know who wrote the letter that
10 this letter is responding to?

11 A. Probably Sam.

12 Q. So when questions are made as to, you know,
13 what did you ask for, and when you say "you," are you
14 speaking about specifically you? Or are you speaking
15 more of in terms of the agency?

16 A. The agency.

17 Q. And you stated that the lease that you
18 think that was sought by that letter was the lease
19 between USI and Dalee; is that right?

20 A. Correct.

21 Q. Would you look on page 156 of volume II of
22 PCB 03-150.

23 A. Yes, sir.

24 Q. What is that document as far as you know?

1 A. It's the lease agreement between USI and
2 Dalee Oil.

3 Q. And I guess actually it does go to page
4 157; is that right?

5 A. That's correct.

6 Q. Is there a breakdown of the monthly lease
7 rate found on that agreement?

8 A. I do not believe so, no.

9 Q. Just to clarify. I believe there was a
10 question asked as to what would happen if after 36
11 months, the treatment system in question was still
12 needed for remediation purposes at the site. Do you
13 remember that?

14 A. Yes.

15 Q. And I believe the question was whether or
16 not equipment charges related to that system would be
17 reimbursed beyond that time period. Do you remember
18 that?

19 A. Yes, I do.

20 Q. Would any cost associated -- let's say
21 using Mr. Martin's hypothetical. Let's say that the
22 system was needed for remediation purposes beyond 36
23 months. What costs, if any, would be considered for
24 reimbursement associated with that unit?

1 MR. MARTIN: I'm going to object to that.
2 That's speculation. We're not there. He's going to be
3 guessing about what costs would be reimbursed, and what
4 wouldn't be reimbursed.

5 MR. KIM: Well, the specific
6 question -- there were a number of questions Mr. Martin
7 asked. He at one point asked would the operation of the
8 unit be paid for. The answer was yes. And that's not
9 my question. The question was, would the equipment be
10 paid for? The answer was no. I'm just trying to
11 clarify his two questions. And we can -- I mean, I can
12 just phrase it in terms of that, explain the distinction
13 between what his two different answers were.

14 HEARING OFFICER SUDMAN: Well, he did
15 testify to what would be considered after the 36
16 months. So go ahead and clarify.

17 MR. KIM: That's all I'm asking.

18 Q. What kind of costs would be
19 considered after 36 months?

20 A. The operation and maintenance cost would
21 be.

22 MR. KIM: Okay. And that's all I have.

23 HEARING OFFICER SUDMAN: Okay. Mr. Martin?

24

1 RE CROSS EXAMINATION

2 QUESTIONS BY MR. MARTIN:

3 Q. Do you normally get a breakdown from the
4 third party lessor when you're presented with a lease
5 that provides for the lease rate?

6 A. If someone leases a piece of equipment, we
7 ask for a breakdown as to how that monthly lease was
8 figured out. If it was from -- whatever information we
9 get could be from a third party. I suppose it could be
10 from the consultant directly.

11 Q. Is that the normal course of operations?

12 A. For certain pieces of equipment, yes.

13 MR. MARTIN: That's all I have.

14 HEARING OFFICER SUDMAN: Anything further,
15 Mr. Kim?

16 MR. KIM: Nothing further.

17 HEARING OFFICER SUDMAN: Okay. If there's
18 no further questions for this witness, you may step
19 down. Thank you.

20 THE WITNESS: Thank you.

21 MR. KIM: Before we go any further and --

22 HEARING OFFICER SUDMAN: Okay.

23 MR. KIM: I apologize. I did not look at
24 Petitioner's Exhibit 2 probably as carefully as I

1 should. This is the affidavit of attorney's fees that
2 Mr. Martin provided.

3 And I certainly have no objection as to the
4 content of the costs and the breakdown and so forth.

5 I'm just noting that in the affidavit,
6 paragraph four states that such fees and costs were
7 necessarily incurred for the protection and enforcement
8 of Dalee Oil Company's rights and are recoverable by
9 pursuant to 415 IL CS 5/57.8. I think that's L?

10 MR. MARTIN: Yes.

11 MR. KIM: And 35 Illinois Administrative
12 Code 732.606 (g). And I would just note this proceeding
13 is not pursuant to Section 732 or Section 57 of the
14 Act.

15 And, frankly, I don't know, since I don't
16 usually ask for it, I don't know whether attorney's fees
17 are recoverable under Section 731 and Section 22.18 (b)
18 of the Act. So it may very well be that they are, but I
19 simply meant to note that the citations that are
20 provided here are not the citations that the case under
21 the cases under appeal are being brought.

22 HEARING OFFICER SUDMAN: I will note that
23 in the record. I will still go ahead and admit this
24 into the record, and the Board will do a complete

1 analysis on that.

2 Before we hear closing arguments, I'd like
3 to go off the record to discuss the transcript
4 availability and a briefing schedule, which I will then
5 read into the record. So we will go off the record for
6 a moment.

7 [Off-the-record discussion.]

8 HEARING OFFICER SUDMAN: We've just had an
9 off-the-record discussion regarding post-hearing
10 briefs.

11 The transcript of these proceedings will be
12 available from the court reporter by August 5th and will
13 be posted on the Board's web site as soon as possible
14 thereafter. The public comment deadline is August 12.
15 Public comment must be filed in accordance with Section
16 101.628 of the Board's procedural rules.

17 Petitioner's brief is due by September 2,
18 and Respondent's brief is due by September 30th. There
19 will be no reply brief. Also the mailbox rule will not
20 apply.

21 Mr. Martin, would you like to make a
22 closing argument?

23 MR. MARTIN: No. I think the petitioner
24 will waive closing argument and include it in the brief.

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HEARING OFFICER SUDMAN: Mr. Kim?

MR. KIM: We would waive closing arguments.

HEARING OFFICER SUDMAN: At this time, I would like to ask if there are any members of the public that would like to make statements on the record.

Seeing none, I will proceed to make a statement as to the credibility of witnesses testifying during this hearing. Based on my legal judgment and experience, I find both of the witnesses testifying to be credible.

At this time, I will conclude the proceedings, and we stand adjourned. Thank you for your participation.

[End of hearing.]

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COURT REPORTER'S CERTIFICATION

I, Ann Marie Hollo, Certified Shorthand Reporter, Registered Professional Reporter, Registered Merit Reporter of the State of Illinois and Notary Public, do hereby certify that said hearing, before the Illinois Pollution Control Board, was held on the 24th day of July, A.D., 2003, with Carol Sudman, Esq., Hearing Officer, presiding, at 1021 North Grand Avenue East, Springfield, Illinois.

I do hereby certify that I did take stenographic notes of the proceeding and that said notes were reduced to typewritten form under my direction and supervision.

I do further certify that the attached and foregoing is a true, correct and complete copy of my notes.

I do further certify that I am not related in any way to any of the parties involved in this action and have no interest in the outcome thereof.

Dated at Litchfield, Illinois, this 31st day of July, A.D. 2003 and given under my hand and seal. My commission expires April 5, 2006.

Ann Marie Hollo, CSR, RPR, RMR