

ILLINOIS POLLUTION CONTROL BOARD

IN THE MATTER OF:

PROPOSED AMENDMENTS TO: R04-22
REGULATIONS OF PETROLEUM LEAKING (UST Rulemaking)
UNDERGROUND STORAGE TANKS
(35 ILL. ADM. CODE 732)

IN THE MATTER OF:

PROPOSED AMENDMENTS TO: R04-23
REGULATION OF PETROLEUM LEAKING (UST Rulemaking)
UNDERGROUND STORAGE TANKS
(Consolidated)
(35 ILL. ADM. CODE 734)

The Rulemaking Proceeding, before the Illinois Pollution Control Board, was held June 21st, 2004, at 10 a.m. at the offices of the Illinois Pollution Control Board, 1021 N. Grand Avenue East, Training Room, 1214 West, North Entrance, Springfield, Illinois, before Marie E. Tipsord, Chief Hearing Officer.

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E X H I B I T S

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1 HEARING OFFICER TIPSORD: Good morning, everyone. My name
2 is Marie Tipsord, and I've been appointed by the Board to serve
3 as hearing officer in these combined proceedings in the matter of
4 Proposed Amendments to Regulation of Petroleum Leaking
5 Underground Storage Tanks 35 Ill. Admin Code 732 and 734, Docket
6 No. R04-22 and 23.

7 And to my immediate right is Dr. Tanner Girard, the board
8 member assigned to this matter. And to his right is Board Member
9 Thomas Johnson. Also here today is Alisa Liu from our technical
10 unit and Erin Conley.

11 This is the third series of hearings to be held in this
12 proceeding. The purpose of today's hearing is to allow those
13 persons who pre-filed testimony to testify and to allow
14 questioning of the witnesses. We will take the testimony as if
15 read. I will mark the testimony as an exhibit, and the testifier
16 will summarize the testimony. After that I will open the floor
17 for questions. We will begin to proceed with CW3M, and we will
18 decide at that point whether to proceed.

19 There are a couple single pre-filers who we may go with.
20 Anyone may ask a question. However, I do ask that you raise your
21 hand, wait for me to acknowledge you. After I have acknowledged
22 you, please state your name, who you represent and then you may
23 ask your question. Please be advised that I will again only
24 allow questions to be asked. If you begin to testify, we will

1 have you sworn in and then I will politely ask you to simply
2 state your question. If you want to testify, we will try to save
3 room at the end of the pre-file testimony for you to do so.
4 Please sign up at the end of the room if you want to testify that
5 haven't pre-filed testimony.

6 Please speak one at a time. If are you speaking over each
7 other, the court reporter will not be able to get your questions
8 on the record. Please note that any questions asked by a board
9 member of the staff are intended to help build a complete record
10 for the Board's decision and not to express any preconceived
11 notions or bias.

12 There are also sign-up sheets for the notice and service
13 list. As you wish to be on the service list, you will receive
14 all pleadings and pre-filed testimony in this proceeding. In
15 addition, you must serve all of your filings on the persons on
16 the service list. If you wish to be on the notice list, you will
17 receive all the Board and Hearing Officer orders in this
18 rulemaking. If you have any questions about which list you may
19 wish to be on, please see me at the break. You may also sign up
20 for this list on the web page. Dr. Girard.

21 BOARD MEMBER GIRARD: Good morning. On behalf of the Board
22 I welcome everyone to the third hearing on the proposal to amend
23 the UST Rule. We look forward to the testimony and questions
24 today. We appreciate the time and effort everyone is

1 contributing to narrow the outstanding issues in this rulemaking.
2 Thank you.

3 HEARING OFFICER TIPSORD: Thank you. Currently pending is
4 a motion to file instanter testimony that was received by the
5 Board on Friday. I also believe there will be additional
6 notices, but we will address those as the testimony comes up. At
7 this time then I will turn it over to Ms. Hesse.

8 MS. HESSE: Okay. Thank you. And before we get started,
9 on behalf of CW3M we would like to thank the Board for this
10 opportunity to present testimony and to present some information
11 that we think is going to be helpful for the Board.

12 What we're going to do is, we are going to move to have
13 entered as an exhibit CW3M's pre-filed testimony. Mr. Vince
14 Smith, who is to my immediate left, is going to summarize that
15 testimony. Ms. Carol Rowe, who is sitting to my right, is also
16 going to be presenting some testimony with respect to what often
17 happens when dealing with underground storage tanks and some
18 other information. And Jeff Wienhoff is also going to present
19 additional information with respect to some of the analyses that
20 he has done of information that the Agency has compiled. So what
21 I would like to do first is to have the pre-filed testimony
22 entered as an exhibit.

23 HEARING OFFICER TIPSORD: If there is no objection, we will
24 admit this as Exhibit No. 29. Seeing none, we will mark this as

1 Exhibit 29.

2 (Exhibit No. 29 was marked for identification and entered
3 as an exhibit.)

4 (Whereupon the witness was sworn in.)

5 MS. HESSE: Okay. And Mr. Smith is going to be presenting
6 an overview of CW3M's testimony and a summary of the pre-filed
7 testimony.

8 MR. SMITH: Good morning. My name is Vince Smith. I'm
9 employed with CWM Company as the senior environmental engineer,
10 and I've been in my current position since June of 2000. Prior
11 to assuming my current position, I was employed by the city of
12 Springfield, Illinois, with the Department of Public Works.
13 Prior to that, the Illinois Department of Nuclear Safety, and
14 prior to that Alpha Testing, Inc.

15 I received a bachelor's degree in mathematics from
16 Culver-Stockton College in 1984 and a bachelor of science in
17 civil engineering from the University of Missouri-Rolla in 1985.
18 I'm a Registered Professional Engineer in the state of Illinois,
19 and my resume is included in the attachment.

20 The testimony prepared was prepared with the assistance of
21 Cindy Rowe and Jeff Wienhoff of CWM Company who are available to
22 assist with providing information during today's proceedings.
23 Ms. Rowe is a licensed professional geologist, and Mr. Wienhoff
24 is enrolled as an Illinois Professional Engineering intern.

1 CWM Company, Incorporated, is an environmental consultant
2 which has been doing LUST work since the company was created in
3 1991. CWM has the equipment and abilities to perform tank
4 removals, excavations, groundwater treatment, soil vapor plant
5 construction and operation, bioremediation, land farming and
6 demolition work in-house. Typically CWM contracts laboratory
7 services, drilling, a portion of the trucking, and landfill
8 disposal. Many of our clients own a single facility and are
9 located in remote parts of the state, not close to landfills,
10 consultants, or other services.

11 The pre-filed testimony offers comments on the proposed
12 technical modification of 732 and creation of 734 and extensive
13 testimony regarding Subpart H: Maximum Payment Amounts. The
14 basis for our testimony against the proposed rates stems from
15 serious concerns regarding the collection and evaluation of data
16 utilized to support the rates as well as concerns regarding the
17 collection and evaluation of data utilized to support the rates
18 as a concern that the streamlined approach misses payment for
19 vital components of LUST work. The spreadsheets that have been
20 made available for inspection have revealed serious flaws in the
21 selection criteria, the age of the data, the input of data and
22 statistical formulas. When developing rates in the proposed
23 rules, in some cases the Agency uses an average, while other
24 times, the median value is selected, or the average plus one

1 standard deviation is used as the basis for rate setting.

2 From the Agency's pre-filed testimony and discussion during
3 the March 15th, 2004, hearing, it appears that the Agency's
4 intent was to use rates consistent with historically approved
5 rates, and the Agency believes that 90 percent of the costs would
6 fall into the approvable range. However, our evaluation of the
7 rates and supporting data indicates the opposite is in fact true.

8 CWM acknowledges that data, in the form of budgets and
9 reimbursement requests, are presented to the Agency in various
10 formats and that they have had difficulty in correctly
11 extrapolating the information. Errors have been carried forward
12 in the rate calculations. The collection of meaningful data and
13 proper evaluation of the data is an essential element to
14 establishing a means of determining reasonableness. Even when
15 they reviewed rates obtained from other states, factors were left
16 out which skewed the results to make their proposed rates appear
17 closer to reality. In the Agency's attempt to streamline the
18 review process, they have created a system that is discriminatory
19 to owners/operators across the state who are not located in close
20 proximity to consulting or clean-up contractors, landfills, etc.

21 The effort to simplify the process resulted in the Agency's
22 creation of lump sum maximum values for activities conducted to
23 meet the technical requirements of 732 and 734. The lump sum
24 values are arbitrary, lack understanding and consideration of

1 site variations, and actual clean-up costs are based upon
2 severely flawed methods with no supporting evidence. The lump
3 sum values evaluation exacerbated the already flawed underlying
4 maximum rates, which incorrectly represents true costs and were
5 improperly calculated. Even when the Agency relied on published
6 estimator guides, they misused the guides. The processes have
7 become so streamlined that now groundwater remediation is
8 considered an alternative technology.

9 With the proposed conversion of permit fees from
10 reimbursable to non-reimbursable corrective action costs,
11 groundwater treatment units have been all but eliminated from
12 further consideration as a viable treatment option. Groundwater
13 treatment plants were long considered a conventional technology.
14 When the Agency attempted to create a unit rate for groundwater
15 treatment plants, they obtained the rate by surveying
16 manufacturers of treatment plants, then taking the lowest unit
17 rate available. Of course, the lowest unit rate is for the
18 smallest plant available. One size does not fit all.

19 As an example of why groundwater treatment units are in
20 disfavor, the Agency cited a case where a treatment plant ran for
21 10 years and failed to remediate the groundwater. The Agency
22 should not have allowed the plant to run that long. Maybe the
23 plant was undersized, maybe one size does not fit all and in an
24 attempt to save money, more was actually spent. In the proper

1 place, with a proper installation, and allowed to operate a
2 proper plant, groundwater treatment units can be very effective.
3 While we agree that efforts to streamline the program are
4 beneficial to the Fund, the Agency's oversight efforts, and
5 consultant's compliance work, the means of streamlining has not
6 been well thought out and we believe will have a long-term
7 negative effects on the entire program. The rate structure as
8 proposed, will ultimately lead to failure of the program.
9 Smaller owners and operators who must rely on the Fund to afford
10 corrective action will no longer be able to clean up their sites
11 if the proposed rates are adopted because too many of their costs
12 will not be reimbursable.

13 Illinois has come a long way and has achieved technical
14 superiority in compliance with LUST regulations. Cost cutting
15 will result in less field oversight to assure compliance and
16 technical reports which are less comprehensive than those the
17 Agency reviews today. The old adage, "you get what you pay for"
18 is applicable to this program. OSHA requirements dictate that
19 all excavations be conducted under the supervision of an
20 excavation competent person.

21 CWM's field practices have combined the requirements to
22 incorporate the excavation-trained person's responsibilities with
23 those technical oversight. Such person cannot be performing
24 equipment operations or other activities, which require their

1 undivided attention and would not allow them to be observing all
2 on-site activities.

3 UST removal operations require considerably more observance
4 of all activities being conducted, including excavation and
5 confined space activities. If consultants, UST removal
6 contractors, and excavation contractors are required to limit
7 required personnel from the job sites to meet the Agency's
8 budgetary numbers, serious violations of OSHA and other
9 regulations will occur and could result in serious injuries,
10 death and other penalties.

11 During the March 15th, 2004, presentation of the Agency
12 testimony and the subsequent question period, Mr. Jay Koch of
13 United Science Industries, Inc. suggested that the Agency, in
14 conjunction with consulting industry, develop a means of
15 gathering cost data in a format that can be accurately and
16 statistically analyzed. The Agency responded that there was not
17 time for such an exercise because, due to Fund solvency concerns,
18 actions were needed immediately. This statement is in conflict
19 with other various statements and facts regarding the proposed
20 rates and Fund solvency. The Agency's emergency need for rate
21 setting is self-inflicted. By and large, the consultants who
22 perform LUST work have been good stewards of the Fund. Large
23 drops in the balance of the Fund have not been caused by
24 consultants, but by State reallocation of money. We understand

1 the State's budgetary crisis, but please don't blame Fund
2 declines on abuse caused by consultants.

3 The Illinois State Legislator increased the maximum amount
4 payable from the Fund for occurrence from \$1 million to \$1.5
5 million. Increased costs associated with remediation of LUST
6 sites were the driving force for increasing the maximum amount.
7 However, the Agency's proposal further reduces the amounts
8 payable in direct conflict with the intention of the State
9 Legislature.

10 CWM has serious concerns regarding the Agency's proposed a
11 auditing procedures. The language in the Act allows the IEPA to
12 audit information that was submitted to IEPA, as necessary, to
13 determine that the document under review is complete and
14 accurate. The language in the proposed rule indicates that
15 IEPA's interpretation of the Act is that they can do whatever, to
16 whomever, whenever. CWM concurs that some records should be
17 retained, but contend that regulated integrity, which is, the
18 owner/operator should be the keeper of the records. If the
19 Agency wishes to periodically verify hours or other costs,
20 particularly if they have reason to suspect illegal activities,
21 the Agency already has the ability to obtain that information.
22 There are currently mechanisms available for the Agency to
23 collect necessary documentation, for example, deny payment or
24 approval until the proper documentation is submitted, or to

1 investigate possible fraud. If fraud or criminal acts are
2 suspected, they should be investigated through the Illinois
3 Attorney General's office and Illinois State Police, who are
4 authorized, qualified and trained to conduct such investigations.

5 CWM has no objection and welcomes the inclusion of cost
6 containment as part of the regulations. We recognize the need
7 and urgency to reduce the expenditures from the LUST fund.
8 However, the purpose of the LUST program is not to protect itself
9 but to protect the environment. Proposed regulations were
10 designed to protect the Fund, not to protect human health. Mr.
11 Oakley referred to the "good old days" during the Agency's
12 testimony, and we would like to see a return to the "good old
13 days" when rate sheets were just guidance documents, before
14 project managers began practicing engineering and geology without
15 a license, when an owner/operator could get something approved
16 without the need for repeated submittals, when, if cuts were
17 made, specific reasons were provided, not "it exceeds the minimum
18 requirements of the Act", and when a request for additional
19 information meant that if additional information was submitted, a
20 different decision was possible.

21 Subpart H was designed to reduce expenditures, which it
22 will do, but not as it was intended. The major reduction in
23 expenditures were caused by the reduction in the number of
24 projects being actively remediated. Since the majority of the

1 rates were basically outdated, miscalculated averages, fewer than
2 50 percent of all sites could be remediated without additional
3 out-of-pocket expenses for the owner/operator. Only those sites
4 who either have an owner/operator with deep pockets, or are
5 conveniently close to consultants, contractors and reasonably
6 priced landfills will be actively remediated. So much for
7 environmental justice.

8 Why is CWM here, and why are we devoting so much time and
9 effort into these proceedings? Why does CWM appeal so many
10 Agency decisions? The Agency believes that greed is the answer.
11 In their view, we, along with our competitors, are out to plunder
12 the Fund. From our perspective, the answer is quite different.
13 On the surface it all appears to be related to money, but
14 underneath, the real answer comes apparent, it is all about
15 ethics.

16 In the briefcase I carry to the office each day, to a job
17 site, to a meeting, where ever I'm going, are a few trusty
18 documents. One of them is a copy of a code of ethics prepared by
19 the National Society of Professional Engineers. Do I review it
20 often? No. So why do I carry it every day? I carry it as a
21 reminder that if I understand and follow what is in it, I am not
22 only protecting my career, but also promoting the profession.
23 Three items listed in the code of ethics immediately come to
24 mind. The first two are two of the five fundamental canons,

1 "Engineers, in the fulfillment of their professional duties
2 shall: Hold paramount the safety, health and professional
3 matters for each employer or client as faithful agents or
4 trustees." The third item, listed in the professional
5 obligations section states: "Engineers shall uphold the
6 principle of appropriate and adequate compensation for those
7 engaged in engineering work". The proposed rates structure does
8 not hold paramount the health and safety of the public, but
9 instead the health and safety of the Fund. The proposed rate
10 structure also would not provide appropriate and adequate
11 compensation for those engaged in engineering work. The role of
12 the faithful agent to our clients is the predominant reason CWM
13 is here, and why we appeal so many Agency decisions.

14 Many of our clients have little in the way of assets, other
15 than their homes, and their former business, which is now a
16 contaminated, closed gas station in a small town with other
17 available vacant commercial properties nearby. The contaminated
18 property has no real value; it cannot be sold or borrowed
19 against, since banks usually will not lend money on contaminated
20 properties. The required deductible takes away a good portion of
21 the value of the remediated property. If they are fortunate, the
22 building can be rented, generating some income. Many sites are
23 not remediated due to the owner/operator not being able to afford
24 even the deductible. Now they are being asked to pay for the

1 deductible, all governmental fees, and an unknown but potentially
2 substantial portion of the remediation costs. CWM is hired by
3 these people to be their agent, to get them through the red tape
4 associated with LUST cleanups. They have little knowledge of the
5 regulations; they rely on us for that. We then work with them to
6 determine the most appropriate course of action for the site, and
7 present to the Agency for their approval. If the Agency approves
8 it, the project proceeds. If the Agency denies or modifies the
9 plan to the point where it cannot be done, we fight for our
10 client. If the Agency begins to implement unwritten regulations,
11 we fight for our clients, if they propose rules which would harm
12 our clients, we fight for our clients. Lately we feel more like
13 mercenaries than consultants. Do we like fighting with the
14 Agency, no. Do we like filing appeals, no. Do we really want to
15 be here today, no. CWM does not have to do LUST work. In the
16 environmental arena, LUST is near the bottom of the profitability
17 list. So why do we do it? We enjoy helping our clients, the
18 little guy, the underdog. The reward of talking with or visiting
19 a client following the issuance of a NFR makes it all worthwhile.
20 Many did not believe it would ever happen. We will continue LUST
21 work as long as we can afford to do it. If the conditions are
22 that only some of the work is profitable, we will scale back, if
23 all the work becomes non-profitable, we will stop doing LUST
24 work. With or without LUST work, I'm confident that CWM will

1 survive. It is our current and future clients that where are
2 here for. Without our efforts, many of them would not get their
3 incidents remediated. Currently, we screen potential clients
4 solely on their ability to afford the deductible. With the
5 proposed rate scheme, we would need a full financial disclosure,
6 determine distances and travel times from our offices and those
7 of potential subcontractors, landfills and so forth, then do cost
8 calculations to determine which technologies could be affordably
9 implemented at the site, to determine how much potential
10 contamination could be remediated before the client is bankrupt.
11 If we guess correctly, we can attempt to do the work.

12 Considering that some of the costs are derived from
13 averages of 1998 costs, a reasonable profit can be expected less
14 than 50 percent of the time. Unless the client has deep pockets,
15 or the site is really close to the office, a reasonably priced
16 landfill, a drilling contractor, a vacuum truck, or any other
17 required subcontractors, it is not worth taking the business
18 risk. The other option is to take all the client's money and
19 leave them with a partially remediated site. In our opinion, it
20 is not worth the risk, in terms of loss of money or loss of
21 reputation. The immediate financial problem of the UST Fund has
22 been caused primarily by transfers out of the Fund to help
23 balance the State's budget, not by actions of the
24 owner/operators. As a LUST consultant it is upsetting that the

1 money was used for a purpose other than the one for which it was
2 intended, cleaning up LUST sites.

3 As an Illinois taxpayer, I have a different viewpoint; the
4 money has been sitting there for years, and therefore did not
5 appear to be really needed. Hopefully, where ever the money
6 went, jobs were created, the environment was improved, or both.
7 Now, as it turns out, too much was taken, and the Fund faces
8 insolvency. The proposed solution is to cut costs to raise the
9 balance. Having the balance is what got the Fund in trouble.
10 Assuming the rates are enacted, a balance begins to reappear,
11 only to be raided again. Then what, average minus one standard
12 deviation for rates in the next regulations? To use an analogy
13 that unfortunately owner/operators can relate to, if the
14 convenience store has been robbed more than once, does it make
15 good business sense to leave more money in the register.

16 We understand that the rationale for allowing a large
17 balance to accumulate in the Fund was to cover clean-up
18 expenditures which were expected to be significantly higher than
19 revenues from 2000 to 2007, as the 1998 to 2000 incidents enter
20 the corrective action phase of the project. This is
21 contradictory of the notion that higher clean-up costs are now
22 occurring with fewer reported incidents and few NFRs. The large
23 expenditures were anticipated, the transfer of UST Funds for
24 other purposes was not. Yes, there has also been a market

1 increase for cleanups during the past couple of years, to which
2 the Agency is attempting to place blame on consultants'
3 exuberance.

4 Our research has indicated that while the costs of
5 remediation have increased slightly, the majority of the increase
6 in expenditures are related to two factors, the "second wave"
7 incidents, the 1998 and 1999 incidents, are entering corrective
8 action, and the recent regulatory requirement switching from site
9 classification to site investigation. The switch from site
10 classification to site investigation now requires that all plumes
11 be fully defined, which is more costly. Due to storage tank
12 regulations, 1998 and 1999 had large numbers of tanks removed,
13 which led to a large number of incidents. Now many of the
14 incidents are actively undergoing corrective action, the most
15 expensive portion of the process. In a few years, the "second
16 wave" costs will subside, as more and more of those incidents are
17 closed. Each year, fewer new incidents are reported than the
18 previous one, and more incidents are closed than reported. As
19 long as owners/operators can afford to do the cleanups, this
20 trend should continue. If owners/operators cannot afford to do
21 cleanups, then few incidents would be closed. Either way,
22 expenditures would not continue their present rate of increase.
23 Regardless of how we got to this point, where do we go from here?
24 How do we clean up LUST sites without bankrupting the Fund.

1 The Agency saw that the Fund was going to fail and so they
2 prepared the proposed regulations to correct the situation. But
3 proposed regulations are an overcorrection; they would save the
4 Fund but the majority of the savings would be derived by a
5 dramatic reduction in the number of cleanups and by driving
6 clean-up contractors out of business or at least out of doing
7 LUST work. I'm not aware of any real opposition to cost
8 containment from within our firm or from our competitors, but
9 have heard little support outside the Agency for the proposed
10 system. Removing the potential profit from 50 percent of the
11 work is not cost containment, it is work elimination.

12 Mr. Bauer's "business decision" in regards to whether or
13 not distance from a consultant's office to a site was too far to
14 be profitable. Considering the overall rate structure, there is
15 no business decision to make. Given the choice of losing money
16 or doing something else, something else wins every time. The
17 Agency has admitted that even though averages were used to
18 develop the rates, they hope 90 percent of the submittals will be
19 at or below the rates. If you eliminate the upper 50 percent of
20 the work from even being attempted, then about 90 percent of the
21 submittals should be at or below the proposed rates, fulfilling
22 the Agency's hope. The other 10 percent will be cut to maximum
23 rate, as the Agency has never said during any of their testimony
24 that they would approve anything over a rate, only consider it.

1 This is consistent with the procedure they have used for
2 the past several years, the canned language that they have used
3 for years, the plan exceeds the minimum requirements, but if you
4 provide additional information, it will be considered. Providing
5 additional information does not lead to a change in decisions,
6 but the rejection includes the same canned language providing for
7 the submission of additional, additional information. We can
8 read the writing on the wall, without additional revenues into
9 the Fund, the quantity of work completed in the near future will
10 have to be reduced.

11 With the number of reported incidents declining year after
12 year, and the average size of each incident being smaller due to
13 regulatory requirements and technological advances in leak
14 detection, we are in a declining industry. If you research the
15 number of consultants doing this work a few years ago versus
16 today, the number is in decline. A reduction in the quantity of
17 work completed will occur in a few years, if the sites currently
18 being remediated are funded so the remediations can be completed.

19 Our testimony, as well as that prepared by the others,
20 clearly demonstrates that the proposed rate structure is
21 inadequate. If the intent is to balance the Fund by the
22 elimination of cleanups at some sites, then adopt the rates as
23 submitted. If the intent is to balance the Fund without
24 jeopardizing the cleanups and all sites, then let's work together

1 to develop a strategy to both contain costs and prioritize
2 cleanups.

3 We have reviewed the public act upon which the proposed
4 regulations were based and find no references to cost
5 containment, development of unit rates, or the need for Agency
6 raids on consultant's offices. The proper solution to the
7 problem is to first determine what is a reasonable rate, then
8 implement a rate structure which allows for payment of reasonable
9 rates. Determination of a reasonable rate will involve something
10 more scientific than opening a randomly selected filing cabinet
11 drawer or reducing rates obtained by a six-year-old spreadsheet.
12 Once proper rates are determined, if there is money available in
13 the Fund, then work will be conducted, and the owner/operator
14 along with their consultant can make a "business decision" to
15 delay the work until money is available, or do the work and wait
16 in line for the money. Remove the proposed four-year limit for
17 obtaining an NFR, and instead install criteria to prioritize
18 cleanups so that expenditures do not exceed revenues. Let's not
19 forget the purpose of the LUST program is to act as insurance to
20 the owners/operators. What good is an insurance policy that does
21 not pay fairly when you have a claim? The purpose of the LUST
22 regulations is not to protect the Fund balance, but to protect
23 the environment. All LUST sites should be able to be remediated
24 under the program, not just those near services or owned by the

1 wealthy. If the money runs out, economic forces will reduce the
2 remediation efforts being done. Owners/operators and their
3 consultants will make a "business decision" to proceed and wait
4 for reimbursement, or wait until the financial situation
5 improves. Removing the possibility of cleanup altogether,
6 through the proposed regulations which impose impractical
7 financial limitations, does not help the environment, the overall
8 success of the program, or the owner/operator, only the Fund
9 balance.

10 Our goal is to step aside from the adversarial nature of
11 these hearings and step into active negotiations with the Agency
12 to develop an alternative proposal that at least substantially
13 addresses the concerns of both sides. PIPE and the Agency
14 amicably and professionally hammered out the proposed emergency
15 rules. While the rules were not adopted, the spirit of
16 negotiation was established and should be the foundation for
17 successfully producing meaningful regulations for those
18 proceedings.

19 Detailed discussions regarding the technical and fiscal
20 components of the proposed 734 regulations and modifications 732
21 have been presented in CW3M's pre-filed testimony for this
22 hearing. And with that I'll let somebody else talk for a little
23 while.

24 MS. HESSE: At this point I'm going to ask Carol Rowe to

1 give us some background information that we thought might be
2 useful for the Board to have as to what typically happens, what
3 are all the activities at the leaking underground storage site
4 from initial identification, through tank removal to remediation.
5 What are some various steps it takes.

6 HEARING OFFICER TIPSORD: Are you having trouble hearing in
7 the back? If you are, raise your hand and I'll have them speak
8 up. But there are plenty of seats up front if you want to move
9 up. Okay, go ahead.

10 MS. ROWE: I've got a couple of items here, and some of
11 this is addressed in our pre-filed testimony, and we've added
12 some discussion based on the last few hearings. So the first one
13 I offer is -- we call it the life of a LUST site, the life cycle.
14 During the last hearing the Agency discussed the status of the
15 Fund and the number of new incidents, NFRs and costs in an
16 attempt to understand the Agency's presentation of the data. CWM
17 research fund expenditures. What become apparent, and was
18 believed by us to be the case, is that the higher expenditures
19 of 2002, 2003 are not results of higher costs associated with new
20 releases but rather that the '98, '99, 2000 --

21 HEARING OFFICER TIPSORD: You need to slow down just a
22 little bit.

23 MS. ROWE: Okay. Are reaching the corrective action phase
24 of the site. While there are naturally occurring cost increases

1 associated with inflation, the spike we believe was just a
2 workload spike. CWM's workload dramatically increased as a
3 result of the '98 UST requirements. Given the pattern of early
4 action site classification, site investigation and CAP
5 development, we anticipated an increased workload in 2002 through
6 2007.

7 For a little background, following reporting of an
8 incident, the owner/operator conduct early action activities.
9 Generally this involves UST removals, backfill excavation and
10 disposal, sampling, possible groundwater or product disposal, in
11 addition to completion of 20-day and 45-day reports. Sites with
12 minimal contamination may be able to be closed as a result of the
13 early action activities. For sites that cannot be closed, the
14 next phase is completion of site classification or site
15 investigation to determine the extent of the release. The amount
16 of work necessary to complete this phase is highly variable,
17 dependent upon the extent of the release, and potential off-site
18 impact. Following the prescribed methods for requesting and
19 securing access, the process could easily take up to six months
20 or longer. Once the extent of contamination has been defined, a
21 corrective action plan is submitted. Dependent on the site, the
22 Agency project manager, the complexity of the plan, approval can
23 take anywhere from six months to two years. Therefore,
24 implementation of the plan may be three or four years or longer

1 from the date of the incident.

2 Apparently higher funding demand was predicted to occur
3 during the present time as a result of the large number of
4 incidents reported in 1998 and 1999. We also believe that higher
5 costs were incurred as a result of the Agency's use of the
6 previous rate sheet as consultants were forced into a pattern of
7 preparing and submitting numerous plan and budget amendments in
8 order to adequately complete the technical requirements of the
9 Act.

10 With regards to the number of NFRs declining, and based on
11 our experience, it is our opinion that the easier sites have been
12 closed. The more complicated or extensive remediation are
13 ongoing and required more time to complete, therefore, as the
14 easier ones are first closed, the number of NFR's per year is
15 likely to decline. Another reason for higher expenditures in the
16 past few years is the elimination of site classification.
17 Previously, approximately 20 percent of all sites were classified
18 as NFA sites or low priority sites. Today all sites are
19 essentially are high priority, in that investigation and some
20 type of corrective action is required.

21 The next issue that I wanted to extract from our pre-filed
22 testimony is in regards to the reimbursement submittal clock of
23 one year, and I believe that's in 732.312, 732.601 and 734.605.
24 It may be in some other place, I'm not for sure. This is

1 application for payment. The Agency has proposed to limit
2 submittals for payment to within one year of the NFR. While we
3 appreciate the Agency's desire to clear out the closed sites and
4 files, and in general we don't oppose the proposal, but we have
5 objected to it in our testimony for a few very specific reasons
6 that are not commonplace but have occurred and could have serious
7 impact for owners and operators. We're asking that if the Agency
8 could look at that with us and perhaps make some exceptions to
9 that rule when there are very specific circumstances, that may
10 warrant an extended time frame.

11 I'd like to add that some of our concerns are regarding
12 with 731 sites, and for the Agency to maybe give us some
13 clarification on what pieces of these regulations they might
14 utilize for 731 and which ones they would not. With regards to
15 field oversight of drilling activities --

16 MS. HESSE: We have another document and we have some extra
17 copies we would like to enter an exhibit in regards to
18 expenditures during various time periods.

19 HEARING OFFICER TIPSORD: If there's no objection, we will
20 admit this Exhibit 30. Seeing none, we will mark this as Exhibit
21 30.

22 (Exhibit No. 30 was marked for identification and entered
23 as an exhibit.)

24 MS. HESSE: Okay. Mr. Wienhoff will explain what

1 information is contained in Exhibit No. 30.

2 MR. WIENHOFF: This has just been prepared to touch on what
3 Carol was discussing earlier about the LUST site, especially the
4 graph. It just tracks number of incidents reported per year and
5 the number of dollars that have been spent in 2002 and 2003. And
6 it just -- You can see the peaks on the dollars spent in 2002 and
7 2003 directly correlate to the number of incidents that were
8 reported from that time. It just demonstrates that the money is
9 increasing expenditures is based on that corrective action cases
10 of those years and not on new work. So the fact that there's
11 less incidents being reported is not what is causing, you know,
12 the new incidents aren't what's causing the increased incidents
13 to be finally entering the corrective action phase which is
14 causing the higher expenditures.

15 MS. ROWE: As a follow-up to our pre-filed testimony, on
16 page 70, and discussions during the last hearing, CWM recommends
17 that during drilling activities, particularly when more than 1-3
18 borings or wells are planned for the day, that the Agency
19 reconsiders limiting personnel to only one. It has been our
20 experience that when numerous soil samples are to be collected,
21 along with logging borings, well installation, well development,
22 mapping and field screening, one person cannot effectively keep
23 up. With the increased sampling requirements proposed in these
24 procedures, we feel that adequate personnel should be on site to

1 ensure proper collection of the samples which maintains the
2 integrity of the data.

3 MS. HESSE: Could you expand a little bit on what the
4 problems are if samples are not collected properly?

5 MS. ROWE: With the new -- with Method 5035, your goal is
6 to immediately to contain -- containerize your samples. If one
7 person is out there trying to log the samples and bring some up
8 into core and trying to field screen them and trying to do --
9 containerize them, you can get behind and samples could be left
10 laying there. That's our primary concern, or that you don't
11 collect all the other data that's available to you while you're
12 drilling. So it's a means of preserving the data. That's your
13 one shot in the field, to collect as much data as you possibly
14 can.

15 MS. HESSE: Is there a problem with the samples that
16 accurately reflect the samples sitting out for any period of
17 time?

18 MS. ROWE: Absolutely. For example, if the sample is left
19 on the bed of a truck, it's going to volatilize and you're going
20 to lose the integrity of it. Your laboratory results will not be
21 the same.

22 MS. HESSE: So they might show it is not as contaminated as
23 it truly is?

24 MS. ROWE: Right. I have some general comments on field

1 oversights and this is predominantly on Subpart H. And it places
2 to the various field activities. The majority of oversight costs
3 that have been proposed is half day rates. Our pre-filed
4 testimony offers specific comments on each type of activity. In
5 general, our primary concern regarding the rates is the technical
6 and safety standards for any field activity are placed in serious
7 jeopardy by drastically limiting the professional's oversight on
8 the job.

9 During the last hearing the Agency indicated that it made
10 an allowance for travel time within the half-day rate structure.
11 However, after much discussion, it was revealed that only a
12 minimal amount of the time was allotted and it would have to be a
13 business decision for consultants to accept jobs that are more
14 than a half an hour away from their offices, and we would have to
15 eat those costs. We feel strongly that this is discriminatory
16 against consultants and owner/operators.

17 We utilize sites in Cairo for many of our examples in the
18 pre-filed testimony. Cairo is not a community abundant with
19 environmental consultants or contractors, matter of fact, there
20 are none. What options do us owners have there but to secure the
21 services of someone located farther away. CWM maintains an
22 office in southern Illinois to more efficiently manage our
23 southern sites. However, it is still located more than a half
24 hour from many sites. We also reference the city of Roodhouse

1 Board case in our pre-filed testimony indicating that the Board
2 has already ruled on the issue of travel costs.

3 The Agency has proposed to limit field oversight for UST
4 removals and excavation to one half day rates for only one
5 person. There are many instances that we have encountered where
6 this rate is not adequate to properly manage a job and the site
7 specific conditions are necessarily unusual or extraordinary.
8 Location of the site with respect to the consultants, landfill,
9 backfill supplier, etc., or size of the excavation are merely
10 sites specific factors that have nothing to do with complexity or
11 construction-related field conditions which can complicate a job,
12 however, they greatly affect the cost to conduct the work.
13 Establishing an oversight rate based upon the removal of 250
14 yards of material is a gross oversimplification of excavation
15 activities and costs. For many sites, again based on location
16 and other factors, they may not be able to achieve those kinds of
17 numbers. During an excavation many other activities are underway
18 and consume personnel time, such as sampling, coordinating
19 manifests, weight tickets, drivers, equipment, excavation
20 shoring, traffic control, concrete/overburden removal, truck
21 lining, site safety, etc., and managing the site for adherence to
22 an approved plan. Backfill operations can occur simultaneously
23 or separately from the excavation/removal activities, dependent
24 on the backfill's location. There are no provisions for

1 oversight for backfill activities. If trenches are also being
2 installed, they're significantly more activities occurring on the
3 site. Removal for disposal is only an ancillary activity and not
4 the primary. Limitation of oversight based on 250 yards will be
5 inadequate to ensure proper and safe field activities. The
6 professional is also relying on adequate job supervision by
7 themselves or other professionals in order to certify that the
8 work met all regulatory and fiscal requirements.

9 With regards to 732.606(ddd) and 734.630(aaa), the Agency
10 is now proposed to deem permit fees as an eligible cost. During
11 the previous hearing the Agency indicated that they did not feel
12 the permit fees were reasonable nor the intent of the fees was to
13 transfer money from the UST fund into other Agency programs.
14 However, CWM believes that the permit fees are necessary
15 corrective action costs and have long been reimbursable by the
16 Agency. Elimination of the eligibility of the permit fees will
17 in effect be the end of groundwater remediation systems. While
18 the Agency is not a big fan of groundwater pump and treat
19 systems, they have their place and usefulness at certain sites.
20 While we agree that the higher fees are not reasonable, they are
21 necessary and required in order to conduct approved corrective
22 action measures. The Agency may have additional information
23 regarding this matter, however, we have found no evidence that
24 intent was not to transfer money from one fund to another.

1 CWM offers testimony regarding 732.855 and 734.855. I
2 believe it's on page 86 of our pre-filed testimony. During the
3 last hearing the Agency was asked numerous questions and numerous
4 examples of situations were presented to the Agency where
5 unforeseen circumstances or situations occur which effect costs
6 to the point that actual costs will or could exceed the proposed
7 limits in Subpart H. In most cases the Agency indicated it does
8 or would consider the higher costs as unusual or extraordinary
9 circumstances. Over the past two to three years, it has been our
10 experience that when costs exceed the previously used rate sheet,
11 even when the Agency indicated that additional information or
12 supporting documentation could be presented to justify higher
13 costs, the higher costs were never approved. CWM's pre-filed
14 testimony included depositions of Agency personnel that confirms
15 higher costs are almost never approved. Given the Agency's
16 history on approving higher costs associated with site specific
17 of unusual circumstances, it is doubtful the Agency would approve
18 costs submitted under 855. With the proposed level of
19 reimbursement at only an average cost and if the likelihood of
20 demonstration or approval of higher costs under 855 are unlikely,
21 CWM predicts a large number of appeals to the Board will result
22 and the Board will be left to decide, and in often cases, what is
23 ordinary versus what is extraordinary.

24 If the intent is to streamline the program and reduce the

1 number of appeals, this issue needs to be carefully evaluated and
2 modified so it can work as intended. The only way to
3 appropriately utilize the unusual or extraordinary circumstances
4 provisions is if the rates are tied to more specific scope of
5 work or set of circumstances so there will not be so much of a
6 judgment call.

7 With regards to 732.614 and 734.665, the Agency is
8 proposing to institute auditing requirements for consultants of
9 LUST sites. During the past two hearings discussion of the
10 auditing requirements have revealed that the Agency's largest
11 concern and the basis for the proposed auditing is that
12 consultants are practicing double billing. The Agency wants the
13 ability to investigate the possible illegitimate billing
14 practices. CWM recognizes the Agency's concern, however, we
15 believe that the auditing requirements over step legal bounds and
16 there are other avenues to investigate and prosecute fraud. The
17 Agency already has the ability to request additional information
18 or withhold portions of payments if they suspect improper
19 billing. CWM recommends that a new language be developed which
20 provides the Agency with the ability to request the information
21 they need shy of creating a means of an abuse of power and
22 jeopardizing the confidential client held by the consultants.

23 First, we believe that the auditing requirements should be
24 imposed upon the regulated entity, in this case UST owners and

1 operators. Secondly, we believe that the information requested
2 and provided to the Agency should be well defined by need and
3 limited to answering specific questions of the Agency. For
4 example, if the Agency is questioning a particular invoice or
5 activity, they should specify the invoice date, etc., and request
6 time sheets or other supporting documentation specifically
7 related to the charges in question. Owners/operators or
8 consultants should then have the opportunity to provide the
9 requested information. The disruption to a business activity
10 could be substantial if the Agency would abuse this power.

11 With regards to handling charges, and I believe these are
12 referenced in 732.601, 732.606, 734.605 and 734.630. The Agency
13 is proposing to deny handling charges for subcontractors until
14 proof of payment has been provided. Our two primary concerns are
15 that there are more than finance charges associated with handling
16 subcontractor invoices and that tracking, copying and providing
17 cancelled checks for every subcontractor is a very tedious
18 proposition which increases the consultant's cost for handling
19 subcontractor invoices. The definition of "handling charge"
20 means administrative insurance and interest costs and a
21 reasonable profit for procurement, oversight and payment of
22 subcontractor -- subcontracts and field purchases.

23 As is evident from the definition, consultants of
24 contractors incur expenses for more than just the interest

1 charges associated with paying subcontractors. For example, our
2 professional and general liability insurance premiums are based
3 on total sales and revenues. If half of the company's gross
4 sales are the cost of subcontractors, the insurance company will
5 assess premium rates on the company's gross. Subsequently, we
6 pay insurance for subcontractor invoices. There are also
7 administrative costs incurred for handling subcontractor invoices
8 such as reviewing invoices, supporting documentation, and
9 securing revised invoices if errors are found. One of -- one of
10 the things that this rulemaking is to do is streamline the
11 process. By requiring management of cancelled checks, the Agency
12 will further increase our cost of managing subcontractor invoices
13 and not allow for recovery of those additional costs.

14 Another related issue regarding handling charges is that
15 consultants or owner/operators are not compensated for
16 preparation of reimbursement claims for 731 sites. While this
17 rulemaking is not specifically designed for 731 sites, it should
18 be noted that the Agency typically realize on the 732 regulations
19 for eligible and ineligible costs, except for payment of 731
20 reimbursement claims. When compensation for this work is already
21 excluded, the consultant's costs are further increased by adding
22 another level of administrative cost for handling of
23 subcontractor invoices.

24 And I have one final issue and then I'm going to turn it

1 over to Jeff. A general issue for discussion of plan and
2 reimbursement claims and review is the need for reducing the
3 number of appeals which must be filed to protect owners and
4 operators. During recent PIPE meetings and negotiations for the
5 emergency rulemaking proposal suggestions were evaluated for
6 means of bettering communication between the consultant and the
7 Agency. PIPE's proposal is for the Agency to provide more
8 details when it rejects or modifies a plan or a claim. Often a
9 rejection or modification is accompanied by a blanket statement
10 that the proposal exceeds the minimum requirements of the Act.
11 In many cases the actual reason for denial are unknown or unclear
12 and significant efforts are required to assess the reason for the
13 denial or modification prior to ever trying to address the issue.
14 PIPE's proposal was to request the Agency to provide a draft
15 denial or modification to the owner or operator so that
16 differences can be worked out before the review clock has expired
17 and reduce the number of submittals required to obtain an
18 approval. We feel that change and practice will better the
19 Agency's relationship with the regulated community and decrease
20 technical or reporting costs and ultimately reduce the number of
21 appeals to the Board.

22 MR. WIENHOFF: Okay.

23 MS. HESSE: And now Mr. Wienhoff is going to be presenting
24 some discussions.

1 MR. WIENHOFF: The first thing I'd like to talk about is
2 the landfills that accept LUST soil maps that was provided by the
3 Agency at the last hearing. Just from our perspective and the
4 landfills on there, Salem Municipal Landfill #2, through our
5 trades and through other consultants we've talked to they never
6 accepted LUST soil. They are permitted to, but they are
7 municipally owned and very small and they only -- only accept
8 garbage from the City and do not accept any other waste.

9 HEARING OFFICER TIPSORD: Excuse me, Mr. Wienhoff, that's
10 Exhibit No. 19 that you're talking about now?

11 MR. WIENHOFF: Yes, thank you. Saline County Landfill,
12 which is marked on there, has been closed since January 2003 and
13 has not accepted LUST soil since that time. They keep saying
14 they're planning on reopening, but we have no idea when they may
15 or may not reopen, so I don't have the specifics of that. Perry
16 Ridge Landfill which is located on there is -- it's improperly
17 located. It's actually -- It shows on the border of Franklin and
18 Hamilton County, is actually is located in Perry County north of
19 the landfill in Desoto, so that takes one away from the eastern
20 side of the state. RCS Landfill, which is located in
21 Jerseyville, is also very small. And they will take small
22 amounts of LUST soil but they will not accept larger amounts of
23 LUST soil.

24 I'm also going to provide some additional testimony on the

1 -- in general the excavation, transportation, disposal and
2 backfill rates. I was going to start with a little history from
3 -- as we've been able to gauge from these hearings, the \$55 a
4 cubic yard and \$20 a cubic yard were originally used by the LUST
5 physical section in 1995 as a guideline above which time and
6 material breakdowns would be required for the payment, and they
7 were calculated as an average plus one --

8 HEARING OFFICER TIPSORD: Mr. Wienhoff, you're getting very
9 fast again.

10 MR. WIENHOFF: When setting rates, the LUST technical
11 section in 2001 used these amounts for the maximum allowable cost
12 to be approved in budgets for ETD and backfill. In late 2003,
13 the numbers for ETD were adjusted upwards approximately \$2 per
14 cubic yard were overturned as increased leads for the landfill.
15 For the first time since the rate was established in 1995, in
16 preparation for Subpart H, the IEPA created one of the most
17 recently submitted as an attachment A to the errata sheet.

18 This charge -- this chart was prepared from submitted
19 budgets was created in order to double check if their proposed
20 number was in the ballpark. They stated that the reports which
21 were used in the spreadsheet were ones completed from the time
22 period thought to be the previous one to two years from when the
23 data was collected. In their original testimony, the numbers
24 they found were very similar to the proposed rates at 56 cubic

1 yards and 20 and a quarter cubic yards. After the clinical
2 errors were pointed out in the spreadsheet, the document was
3 corrected and now showed \$64 per cubic yard ETD, and \$21 for
4 backfill. Additionally, incident numbers were added to the
5 document. Additionally, at the request of the Board, the
6 location of the incidents used on the spreadsheet were provided.
7 CW3M prepares to use the document in order to determine if the
8 applicability to the proposed rate are found in the following
9 items. 20 --

10 HEARING OFFICER TIPSORD: Okay. Excuse me, Mr. Wienhoff,
11 can we identify that document for the record?

12 MR. WIENHOFF: It was Attachment A.

13 HEARING OFFICER TIPSORD: And then there was the amendment,
14 so we're at Exhibit 27 at the last hearing.

15 MR. WIENHOFF: Okay. I'd like to -- Exhibit 27, I believe,
16 is indicated that 20 out of 25 or 80 percent of the sites were
17 reviews were located in four counties in the Chicago metro area.
18 A review of the LUST database indicated that only 40 percent of
19 the LUST sites currently opened are in that same metro area.
20 This indicates that the data which was created was too high a
21 reliance on metro Chicago areas sites for the ETD and backfill
22 rates. Additionally, three sites were voyant (phonetic) and
23 three of the sites that were referenced or incidentally reported,
24 and I'd like to provide copies of a portion of those reported

1 requests in order to use them.

2 MS. HESSE: Madam Hearing Officer, we would like these
3 entered as an exhibit as well.

4 HEARING OFFICER TIPSORD: Okay. Mr. Wienhoff, I need four
5 copies of those also. Three exhibits that have been handed to
6 us, we'll start with one -- the one titled Goodwin & Brown, Inc.
7 If there's no objection, we will admit that as Exhibit 31.
8 Seeing none, that will be Exhibit No. 31. The second one has an
9 IEMA No. 932539 in the upper right-hand corner, Excavation of
10 Offsite of Land Farm Treatment, we'll admit that Exhibit No. 2 if
11 there's no -- 32 as an exhibit if there's no objection. Seeing
12 none, that will be Exhibit 32. LUST Technical Review Notes
13 reviewed by Jason Donnelley read LPC No. 0110505004 attached
14 Burrow County (phonetic) as Exhibit 33 if there's no objection.
15 Seeing none, that's Exhibit 33.

16 (Exhibit No. 31, 32 and 33 were marked for identification
17 and entered as exhibits.)

18 HEARING OFFICER TIPSORD: Okay, Mr. Wienhoff, when you're
19 ready to begin.

20 MR. WIENHOFF: Okay. Exhibit 31, Incident No. 950691, site
21 number 12.

22 HEARING OFFICER TIPSORD: Okay. Wait a minute. Exhibit
23 31?

24 MR. WIENHOFF: Incident No. 950691, identified as site

1 number 12 on Attachment A on the section.

2 MS. ROWE: That's the one referred to as Goodwin Brown.

3 MR. WIENHOFF: We see it has the correct numbers from the
4 Agency spreadsheet and stamped received February 28th, 1997. It
5 just indicates that the data was not as recent as the Agency had
6 testified to. Exhibit No. 32, Incident No. 932539, site number
7 14, on the second errata, date received 2000, which is roughly on
8 the edge of the time frame. Additionally, the numbers were
9 pulled for an alternative technology, not the conventional
10 excavation, transportation, disposal technology. The alternative
11 technology with excavation and offsite land farm treatment, and
12 if you review the numbers in here for the comparison of
13 conventional technology which is required in order to approve the
14 alternative technology, they're approximately 50 percent lower
15 than the conventional technology would have been.

16 Additionally, the backfill number, the IEPA pulled from the
17 report was a number that did not include hauling of the backfill
18 while the IEPA proposed number does include hauling. When the
19 backfill hauling number is added, the number the IEPA pulled from
20 this incident was 40 percent to that.

21 MS. HESSE: Could you explain what you mean by the number
22 was 40 percent too low?

23 MR. WIENHOFF: Well, the number that IEPA pulled from this
24 report was for material only. When you add in the hauling cost,

1 which is in the Subpart H number, the number of the IEPA -- the
2 Agency pulled was 40 percent lower than the actual cost to do the
3 work. Exhibit No. 33, which is Incident No. 992361, which was
4 site 25 on IEPA spreadsheet, the numbers for excavation,
5 transportation, disposal were correctly pulled from the submitted
6 budget. However, in the Agency's review it determined that the
7 conversion factor was improperly applied and therefore it
8 readjusted the numbers for its reviewed and inducted the new
9 numbers once -- once it had made the correction to the budget and
10 therefore they adjusted upwards of 20 percent, and so the IEPA
11 number for this site were 20 percent too low.

12 Additionally based similarly on the hauling for the
13 backfill is not included in this number IEPA pulled for the
14 backfill. So the backfill number for this site was 63 percent
15 too low that they put on this spreadsheet --

16 MS. HESSE: So by saying it was 60 percent too low, the
17 number on the spreadsheet was 50 percent -- 56 percent of the
18 cost actually to do the work, is that what you're saying?

19 MR. WIENHOFF: Yes, it was -- No, it was -- If the actual
20 number -- The number they put on their spreadsheet was 56 percent
21 lower than the actual cost for that work, so -- Additionally, a
22 review of the LUST database for these 45 sites listed on the
23 spreadsheet, four of the sites listed never had a high priority
24 for inspection site budget submitted, which is the document that

1 the Agency indicated the information came from. In nine of the
2 sites, the most recent budget submittal was in the year 2000 and
3 prior. So at least half the sites on the spreadsheet, the
4 information was either too old or was not from the high priority
5 budget that the Agency had indicated it came from. So in
6 conclusion, CW3M research indicates that none of the three sites
7 fully researched demonstrated what the IEPA had reported it had
8 demonstrated. Additionally, the review of the database, at least
9 half of the data points were -- were 2000 or older or did not
10 have a CAP budget, so they don't represent current market
11 conditions and therefore we don't feel this attachment should be
12 relied upon as support for the Agency's proposal.

13 BOARD MEMBER GIRARD: Could I -- Before you move on, could
14 I just ask a sort of clarifying question then?

15 MR. WIENHOFF: Sure.

16 BOARD MEMBER GIRARD: Of these 25 sites that were
17 referenced on this, you just voided information from three of the
18 sites to take an in depth look.

19 MR. WIENHOFF: Yes, yes.

20 BOARD MEMBER GIRARD: And those three sites are extracted
21 out in the exhibits we have here.

22 MR. WIENHOFF: Yes.

23 BOARD MEMBER GIRARD: And you found omissions at all three
24 sites in terms of determining the site.

1 MR. WIENHOFF: Either omissions, or in one case, it was
2 just a lot older than they had indicated they had said the data
3 come from.

4 BOARD MEMBER GIRARD: So one site, it was older and there
5 were omissions involved.

6 MR. WIENHOFF: Yes.

7 BOARD MEMBER GIRARD: Thank you.

8 MR. WIENHOFF: CW3M -- CWM additionally reviewed other
9 state regulations which IEPA had provided following the most
10 recent hearings. Reviewing of the other state regulations, LUST
11 various inclusions as well, only three of the other states lump
12 their -- their excavation, transportation, disposal and backfill
13 rate as the large lump sum similar to that of Illinois. The
14 remaining states all separated their rates into separate
15 categories, one for excavation, one for transportation, one for
16 disposal, one for material purchase, one for transporting the
17 backfill back, one for backfilling the site, etc. So a majority
18 of places have found it easier -- it's more accurate to separate
19 out the cost than to lump them into one term.

20 CW3M also tried to duplicate the rates submitted, and I
21 don't know the exhibit number, I'm sorry, from the last hearing
22 which had excavation, transportation, disposal rates and
23 averages. I don't know the --

24 HEARING OFFICER TIPSORD: I have most of them here so let

1 me check to see if I can -- I think it was Exhibit 20.

2 MR. WIENHOFF: No, that's not the one I'm thinking of.

3 It's about four or five pages.

4 HEARING OFFICER TIPSORD: Exhibit 24. It's called --

5 MR. WIENHOFF: It's the one that describes the other states
6 in detail.

7 HEARING OFFICER TIPSORD: Oh, that would be Exhibit 22 or
8 23, I can't remember.

9 MR. WIENHOFF: I'm sorry. I don't have the number.

10 HEARING OFFICER TIPSORD: It's Exhibit 22 or 23 where that
11 details --

12 MR. WIENHOFF: It describes other states in detail. Yes,
13 that's it.

14 HEARING OFFICER TIPSORD: That's Exhibit 23, I believe.
15 This one?

16 MR. WIENHOFF: Yes.

17 HEARING OFFICER TIPSORD: Thank you.

18 MR. WIENHOFF: The exhibit provided all the copies of the
19 regulations to PIPE, and those copies were used in redoing,
20 verifying the calculations. CW3M was only able to duplicate the
21 Agency's rate in the other 14 states where the IEPA provided both
22 the rates and a copy of the rules. CW3M's supplied rates were
23 both higher and lower than the rates the Agency derived. CW3M's
24 calculation used a 100 mile one-way trip to the landfill for a

1 maximum transportation when applicable and 1.5 conversion from
2 cubic yards in order to match the Agency's methods that they
3 presented in the testimony at the last hearing. I'd like to
4 present as an exhibit a copy of that.

5 MS. HESSE: So this would be, I believe, Exhibit 34.

6 HEARING OFFICER TIPSORD: 34, yeah. This is marked as --
7 titled Comparison and other States Provided. We will mark this
8 as Exhibit 34 if there's no objection. Seeing none, we will mark
9 this as Exhibit 34.

10 (Exhibit No. 34 was marked for identification and entered
11 as an exhibit.)

12 MR. WIENHOFF: I guess just in summary, I won't go through
13 each state that's available to be reviewed, but in summary the
14 EPA's average for the states it reviewed was \$73.35 for cubic
15 yard for excavation and transportation, disposal of landfill.
16 While our calculations led to an average number of \$108.25 per
17 cubic yard. Additionally, I'd like to mention that 11 of the 14
18 states that were available for comparison had scopes of work
19 which couldn't -- where they could not be entirely comparable
20 because of different units. For example, a lot of the states
21 paid additionally for paid removal by the square foot, and that
22 number is not factored in because it applies for a per cubic
23 yard. You can't get a conversion so it couldn't be added into
24 the rate. So a lot of these states had costs which were payable,

1 in addition to what was derived, is based on they had other
2 things that were payable that didn't have consistent units in
3 order to translate them into a per cubic yard rate. So we just
4 wanted to provide that information.

5 The PE rate was also reviewed. And it was found to be very
6 similar, about \$2 per hour, but it was very similar. Only major
7 difference was the EPA used an unloaded rate from Florida instead
8 of using -- because they had set rates, I think they had a 3.0
9 multiplier for national charge of rates and that was not factored
10 in in the EPA's version. And three of the states also should be
11 noted that they just paid landfill rates for the invoices but not
12 set rates.

13 One other thing I wanted to mention was we also just
14 evaluated the number of rates the other states had as a
15 comparison. Not for personnel rates or lab rates because
16 personnel rates is all kind of lumped into one thing because no
17 matter what you have, you can have 10 personnel rates or 30, it
18 is just a per hour rate as far as lump sum for the maximum rate.
19 The average, excluding Virginia, which has an inordinate amount
20 of 1,600 rates, the average of the rates in the regulations was
21 95, while Illinois' proposal only includes 39. We just believe
22 this is an indication that Illinois has oversimplified the number
23 of tasks that things can broken into in order to accomplish the
24 work. Also in appendix N of CW3M's pre-filed testimony --

1 HEARING OFFICER TIPSORD: Did you say N?

2 MS. HESSE: N.

3 MR. WIENHOFF: N, yes. The second page is a spreadsheet
4 entitled Data Retrieved From LUST Database from 4/1/03 to 4/2/04.
5 I took the spreadsheet the EPA had provided in support of their
6 numbers and compared it to the amount of work that certain
7 consultants were doing in the state. And basically the main
8 conclusion from that spreadsheet is that the people who do 50
9 percent of LUST work in the state at this time are represented as
10 much as people who no longer do LUST work in the state, so they
11 have an equal number of representations in the rate calculation,
12 and just showing it's a bias sample set.

13 MS. HESSE: Jeff, could you expand on that chart a little
14 bit? There are a number of columns that are listed across the
15 top. Could you explain what those are?

16 MR. WIENHOFF: The total reimbursement amount is the amount
17 -- this is all according to the LUST database that's located on
18 the Agent's website, that that company was reimbursed for its
19 projects over that year's period of time. And I'm using that to
20 represent the amount of work they do in the state -- on amount of
21 LUST work they do in the state. And then the miscellaneous
22 columns total the -- mill helms (phonetic) total the number of
23 times they were represented on EPA's prepared spreadsheets, and
24 there's a percentage for that. So just summing the top 50

1 percent of the work had basically an 11 and-a-half percent
2 representation on the spreadsheet. And people who no longer did
3 work, had that same 11 and-a-half percent representation on the
4 spreadsheet.

5 The next document in appendix N was prepared based on old
6 rate sheets. And EPA last testified that the Subpart H amounts
7 are historically approved rates. This just evaluates data from
8 this old as of March 2001 rate sheet up through Subpart H. The
9 indication for the number of rates which were the same -- from
10 which they had the exact same description of the rates, 20
11 percent of the rates had gone up over that time. Approximately
12 40 percent of the rates had gone down over that time, and
13 approximately 40 percent had stayed the same. And it indicates
14 the rates in general are more than not are level or decreasing as
15 opposed to increasing over 2001 rates that were considered
16 approvable per the Agency.

17 The large spreadsheet, which is provided in Appendix N from
18 which the Agency used a lot of its averages, specifically like
19 the mobilization rate and some of the wells, monitoring wells,
20 equipment ranges and other various rates that they've proposed,
21 averages came from this spreadsheet. And to the best -- or the
22 highlighted note is that a majority -- well, all of the rates on
23 that spreadsheet came from documents submitted in '97, '98, '99
24 and with the majority of them being in '99, so the data is old

1 basically.

2 HEARING OFFICER TIPSORD: Let me clarify, when you talk
3 about the large spreadsheet one, are you --

4 MR. WIENHOFF: It's the fold out. The 14 pulled out spread
5 sheet.

6 MS. HESSE: The one titled at the top Added Consultant's in
7 the Reported LUST Database also Correct Standard Deviation
8 Calculation.

9 MR. WIENHOFF: I also like to address briefly attachment B
10 to the second errata sheet. And while it was -- we understand it
11 was not put together to demonstrate -- it was only put together
12 to demonstrate a per hour rate for personnel, average per hour
13 rate for personnel, only 59 percent of the reported costs on that
14 would be -- would fall under Subpart H, so just wanted to provide
15 from the Agency's own sample selection that 90 percent of the
16 costs do not fall under the proposed rate for that. For
17 different purposes it also demonstrates that for the \$4,800 early
18 action reporting, only 60 percent of the cost they selected would
19 fall under that rate.

20 Jumping around a little bit here. Appendix A of our
21 pre-filed testimony was a breakdown of -- we just pulled some of
22 our sites to demonstrate, you know, costs incurred in early
23 action. Basically just demonstrated to show for the same scope
24 of work, it's the same type of report, depending on site specific

1 conditions, costs can vary anywhere from \$1,500 basically to, I
2 think, the highest on there is almost \$8,000. So the costs of
3 doing something in the same -- same exact reporting, same exact
4 -- or basically the same level of detail, you're meeting the same
5 requirements. The cost can widely vary from site to site.

6 MS. HESSE: What is the reason for some of the cost
7 verifications?

8 MR. WIENHOFF: Some of it could be, you know, number of
9 early action is not a good number of trips you had to make. Some
10 of these required on site access, some did not. Just various
11 reasons, I guess, to where they're located. Various reasons.

12 MS. HESSE: Could they have also been some early action
13 activities at some sites and not other sites?

14 MR. WIENHOFF: Yes, some sites, you know, maybe didn't
15 require new rules, some sites did. Required early action
16 excavation, some sites did not. Just the varying -- just the
17 activities vary from the reporting, the costs vary.

18 MS. HESSE: So in other words, if there -- So in other
19 words, if there was more activity at a site, it could cost more
20 to prepare the report; is that correct?

21 MR. WIENHOFF: Yes, that's correct. I just wanted to
22 briefly touch on what we feel is the oversimplified nature of
23 Subpart H. It groups field visits and reaction to office tasks
24 and, for example, in site investigation the same amount of

1 reporting dollars per incident that required -- it provided the
2 same amount of reporting dollars per site investigation for a
3 site that requires seven wells and one off site -- one off-site
4 property investigation, and it does limit and requires 20 wells
5 and four off-site property investigations. It assumes all, you
6 know, institutional controls take about the same amount time.
7 You know, NHAA with IDOT -- NHAA with IDOT takes the same amount
8 of time in one of these municipalities as an inexperienced lawyer
9 in the environmental arena that, you know, maybe has more
10 questions and more concerns. Basically it doesn't allow for a
11 lot of variations from site to site which naturally occurs. So
12 we feel that, you know, you know, more variables need to be a
13 part of Subpart H.

14 And then the CS1 testified to benefits of having rates
15 outside of the regulations. We feel the regulations should
16 include methods for coming up with the rates and in detail about
17 which rates you should have and should not have. However, the
18 rates should be located maybe on a website or something so that
19 they can more easily be adjusted in the real world situations.
20 As we discussed in the last hearing, you know, talking about
21 lifting the -- or instituting a tax on off-road diesel which
22 would incur equipment costs and backfill costs and increase those
23 sorts of things. Just in general you never know, you know, what
24 may happen. So instead of having come back to the Board, then

1 the process -- you advise them of the rates, IEPA and the
2 regulating community could work together to revise the numbers as
3 needed, if the situation arose, or they could be reviewed on an
4 annual basis and maybe they go up and maybe they go down.

5 BOARD MEMBER JOHNSON: How do you get a -- reconcile a
6 spread that great if you say your spread was -- the example was
7 \$1,500 up to \$8,000 presumably under Subpart H, you would be
8 awarded or allowed a maximum allowable amount if the lump sum is
9 somewhere in the middle.

10 MR. WIENHOFF: We're working together with PIPE,
11 Professionals in Illinois for Protection of the Environment, on
12 developing our own version. And basically, you know, like a
13 water well survey will be assigned its rate as long as it has so
14 few water wells, you know, the field -- they have the trip to the
15 site involved and that would be separated out as a field trip, as
16 a separate rate field work. I mean, we just plan on separating
17 into smaller minute details. For example, 1,500, well, here I
18 know early action activities are basically included in the
19 geology and that was it, you know. It just met the basic
20 requirements and they fixed the line leak. When they got in
21 there, there's no tank removals, no early detection, no
22 excavation. Where, you know, some of the higher ones had all of
23 that, so we would have rates for logging analytical reports. So
24 if it's a big dig with 15 samples that you need to take and it's

1 five tanks in a large area, you know, you get paid for each of
2 those, for logging it and reporting it, as opposed to lumping it
3 all into one where it had zero samples.

4 So I guess my answer is we're still working on preparing an
5 alternate proposal. It's just not quite together yet. We were
6 hoping to have it together today but we're just not quite ready
7 for that.

8 BOARD MEMBER JOHNSON: Thank you.

9 MR. WIENHOFF: Uh-huh. I guess the one other item I was
10 going to talk about was we feel that the half day rate or a task
11 specific rate for field activities is appropriate. We just feel
12 that travel should be separated out, because whether the site is
13 an hour away or three hours away or whatever, it should be a
14 separate thing. But then once you're on site, the task of
15 sampling a well or overseeing excavation or overseeing drilling,
16 it can be more definable than lumping the travel in with it. So
17 maybe there would be per person per mile rate for traveling to a
18 site, or something along that line, opposed to just lumping and
19 saying travel is a business decision, you can decide whether you
20 can travel there or not. Having a separate rate for travel as
21 opposed to the field activities. And I believe that's all the
22 comments I have. Vince Smith has a few more specific items he
23 would like to touch on.

24 MR. SMITH: I got to rest my voice for a few minutes. I'll

1 start off with the appendix C to our pre-filed testimony.
2 Appendix C was included as a demonstration of what can happen if
3 you improperly apply statistics. What we -- what we intend to
4 show was if you take the exact same set of values and resubmit
5 them, but each time give them additional scrutiny, you can
6 actually lower the reasonable rate between the data sets, even
7 under the factor of inflation. And to demonstrate that, we
8 simply took a random set of data and added one to each value each
9 time and recalculated as we went. And it still shows that you
10 fall -- the rates go down, the rates don't go up. The -- We
11 think this is important because since rates -- maximum rates more
12 or less have been in effect, they have been applied. It's very
13 difficult to obtain a valid random set of data to look at once
14 those rates are in effect because you basically created the
15 ceiling. And once -- once consultants were aware of the ceiling,
16 many lowered their rates to -- so they would not cross that
17 ceiling so that you no longer have a truly random set of data to
18 choose from. And that's why we included appendix C.

19 Appendix D includes some information about the unit weights
20 and various physical properties of soils. We had thought the
21 typical -- the conversion factor in terms of cubic yards was
22 settled during the last revision of 732. The final result was
23 1.68. Now the Agency is attempting to change it back to 1.5. We
24 included the information in appendix D --

1 HEARING OFFICER TIPSORD: Excuse me, Mr. Smith, you need to
2 speak up. We're losing you.

3 MR. SMITH: We're including the information in appendix D
4 to basically, once again, support the fact that the predominant
5 soil in soil types in Illinois are glacial tills and currently --
6 the current rate of 1.68 is more accurate than 1.5 is proposed.

7 Let's go to appendix J. Appendix J is a summary of
8 information we obtained from the Illinois Department of
9 Transportation's website. It includes all environmental pay
10 items which IDOT had competitively bid contracts on for the
11 year 2003. These are the awarded contract prices. For purpose
12 of cost comparison, we selected two items which we thought were
13 directly applicable to the proposed rates. One was tank removal,
14 the other was excavation, transportation and disposal. In
15 calculating those we've got the information presented that shows
16 that the awarded IDOT rates last year were significantly higher
17 than the proposed rates in Subpart H.

18 Along with that, and the UST removal pricing listed in
19 Subpart H, really doesn't take into account a lot of factors
20 which have changed recently. I believe that the state fire
21 marshal regulations for underground storage tank removal and
22 contractors were significantly changed within the last couple of
23 years. For instance, the cost of being a contractor has gone
24 from a \$100 annual fee to a \$1,000 annual fee just to have your

1 contractor's license. They've also required the use of slight
2 air on all removals which means additional equipment for the
3 contractor. I know this because I am a licensed tank removal
4 decommissioner in Illinois. In fact, I was removing tanks
5 Friday.

6 The -- On a LUST site, removing the tanks under early
7 action or under corrective action is -- is not generally
8 something that fit -- would fit neatly into a lump sum task.
9 When the tanks are removed, also all the lines need to be
10 removed. This is done usually when there's breaks in the action,
11 so to speak. You have to uncover your tanks. You have to apply
12 air to the tanks to get them unearthed so they can be removed.
13 You try to do all of this before the state fire marshal
14 representative gets there because when they get there, they like
15 to see tanks come out. They don't like to stand around and wait
16 until the point where they can be removed. I really don't think
17 that proposed lump sum rate would really fit this level of
18 activity.

19 Appendix K is -- a few of the rates are obtained by the
20 Agency from a book entitled the National Construction Estimator.
21 We not only provided our interpretation what our rate should be
22 but we also gave you excerpts from the book so you can create
23 your own conclusion. We think the book would actually support
24 rates than the one proposed in the regulation. That's pretty

1 much what I had.

2 MS. HESSE: Okay. I think we're at the completion of our
3 prepared testimony at this point.

4 HEARING OFFICER TIPSORD: At this point before we start
5 with questions, why don't we take a 10 minute break. At this
6 point we will work for about an hour and then we'll work until
7 one o'clock before we start with questions and take a lunch
8 break.

9 (A short break was taken.)

10 HEARING OFFICER TIPSORD: Before I open the floor to
11 questions, I have a few just sort of minor detail questions. One
12 of them is we've heard of a lot of discussion about OSHA
13 regulations and what OSHA regulations require at the sites, and
14 you specifically mentioned OSHA regulations in the document. I
15 was wondering if you could provide us a complete citation to
16 those OSHA regulations and specific copies of those OSHA
17 regulations?

18 MS. HESSE: Yes, we can.

19 HEARING OFFICER TIPSORD: Also on page 3 of your pre-filed
20 testimony -- sorry, on page 4, you provide testimony for Mr.
21 Oakley in PCB 97-226, I notice that we have deposition testimony
22 from Mr. Chappel and Mr. Bauer but I didn't see Mr. Oakley's
23 testimony attached to this. If we could get copies of that.

24 MS. HESSE: We can get copies of that.

1 MS. ROWE: That's page 4?

2 HEARING OFFICER TIPSORD: Page 3. And similarly on page 8
3 you talk about two recent review letters, and I didn't see those
4 in the attachments. If you could get us copies of those, and the
5 Mathes Development Company and Anderson Brothers, Inc. review
6 letters. With that, we'll open it up to questions at this time.

7 MS. HESSE: We'll provide those to you.

8 MR. ROMINGER: I just have a couple of questions. On the
9 OSHA requirements, can you provide the specific citation when
10 you're going to provide those so we will know which provision to
11 look at?

12 MS. HESSE: We'll find them. There's specific regulations
13 that apply to excavation insuring and requiring competent persons
14 for their excavation regulations, we'll provide you copies of
15 that with citations.

16 MR. ROMINGER: Okay. And there was also, at least on page
17 4 and in some other areas, you have citations for those other
18 regulations. I believe that was on the -- in the first
19 paragraph.

20 MS. ROWE: On page 4, Kyle?

21 MR. ROMINGER: Yes.

22 HEARING OFFICER TIPSORD: Mr. Rominger, to specify, that
23 page 4 of general testimony or Mr. Smith's testimony
24 specifically?

1 MR. ROMINGER: Page 4.

2 HEARING OFFICER TIPSORD: Mr. Smith's testimony?

3 MR. ROMINGER: Mr. Smith's testimony.

4 HEARING OFFICER TIPSORD: And I should have specified mine
5 came from the general testimony.

6 MR. ROMINGER: Specifically it is the last sentence of the
7 first paragraph. Refers to serious violations of OSHA and other
8 regulations.

9 MR. WIENHOFF: All right.

10 MR. ROMINGER: Just for clarification, CW3M is a member of
11 PIPE; right?

12 MR. WIENHOFF: Yes.

13 MR. ROMINGER: Is the testimony today then on behalf of
14 CW3M individually, and not PIPE?

15 MR. WIENHOFF: Yes, I believe it would be because we filed
16 it prior to piping together our testimony.

17 MR. ROMINGER: Okay. Did you -- did you also have
18 involvement with other testimony of the filing? Were you
19 involved in that or just --

20 MR. WIENHOFF: Not anything directly involved with filing.
21 I believe we're working with -- as a member of PIPE on additional
22 proposed subpart, proposed maximum payment, non -- in relation to
23 that, but I don't think that's been filed yet so, no.

24 MR. ROMINGER: Okay. One other question I had on page 77

1 through 78 of the more detailed testimony that you have, there's
2 a site identified there that you discuss, what actually is not
3 identified. Could you identify which site that is you're
4 discussing and you can provide that with everything else? I
5 don't expect you to know anything else off the top of your head
6 right now.

7 MR. KING: I have a question. I think you guys did a
8 voluminous job as far as putting forth criticism of the Agency's
9 proposal but, I guess, I'm a little bit unsure as to what you're
10 suggesting that the Board do further in the context of this
11 proceeding, and maybe you sort of answered this already. I
12 wasn't quite sure whether you were saying there was a need for
13 cost containment provisions put into Board rules. I mean, are
14 you saying there's a need for cost containment in Board rules?

15 MR. SMITH: I don't believe we have any objection to cost
16 containment in board rules.

17 MR. KING: Mr. Smith, you used the term at one point
18 prioritization as far as making decisions on, I think, what
19 project is to go forward. I wasn't clear. You used that term
20 and I was not clear what you meant by that.

21 MR. SMITH: What I meant by that was if you -- if you -- if
22 the available fund exceeds the work to be done, then develop a
23 prioritization that the -- the regulated community can follow so
24 that the most critical work is getting done until such times the

1 funds become available to do all the work.

2 MR. KING: So who would be making that decision?

3 MR. SMITH: I would say in the regulations if you have a
4 set of criteria upon which there's an immediate action site,
5 there's an intermediate level and there's a lower level of
6 whether the work is -- if it's immediately dangerous to life and
7 health, obviously that work needs to get done immediately. If
8 it's a site where the levels aren't so critical, then maybe that
9 work can be delayed what was I was getting at.

10 MR. KING: I'm mean, is that something you're going to be
11 putting forth as far as the proposal?

12 MR. WIENHOFF: As part as the PIPE legislative group, we're
13 additionally working on some type of criteria for that, yes.

14 MR. KING: I thought I heard some testimony related to the
15 issue of site classification and TACO and can I -- as I was
16 understanding what you were saying is that you considered that
17 the system that was in place prior to having TACO was a superior
18 cost control system to having people go through the TACO
19 evaluation process.

20 MR. WIENHOFF: What -- what we're trying to say is we
21 looked at how many sites through the site classification system
22 closed or did not go to high priority. Basically it was 18, 19
23 percent of the sites. I looked at the last year that the site
24 classification was in existence, 18, 19, 20 percent of the sites

1 did not -- were low priority or NFA. And just to state that
2 we're not saying that they should have kept that system. All
3 we're saying is the elimination of that system caused an increase
4 in expenditures because there was more dollars involved in full
5 plume delineation for 20 percent -- for all 100 percent sites now
6 as opposed to 20 percent of the sites not needing to have plume
7 delineation completed.

8 MR. KING: But if you have full plume delineation under
9 TACO, doesn't that then allow you to use some of the flexible
10 options under TACO and thus ultimately save corrective action
11 costs?

12 MR. WIENHOFF: Not for those 20 percent of sites. Because
13 those 20 percent of sites didn't have corrective action costs.
14 They didn't have plume delineation or corrective action costs.
15 So there was no -- there would be no cost saving associated with
16 that.

17 MR. CLAY: So do you consider that the best option for a
18 client going into NFA a low priority?

19 MR. WIENHOFF: No, I don't consider that an option. I was
20 just using that to attribute to some of the -- the increase in
21 expenditures that the Agency testified to. I was just saying
22 that was one of the factors that led to an increase in
23 expenditures.

24 MR. CLAY: How many sites are you talking? You talk about

1 percentages, but how many sites are you talking?

2 MR. WIENHOFF: I think it was relatively low, 120 sites,
3 130 sites.

4 MR. KING: Again, you're pointing that by going to --
5 having the TACO system in place, but the cost for the LUST
6 program have gone up as opposed to having those --

7 MR. WIENHOFF: No, the TACO system was in place when site
8 classification was there for high priority. All we're saying is
9 that when this -- when the legislature eliminated the
10 classification system, it also -- that just the elimination of
11 that system increased the cost to the LUST fund.

12 MS. ROWE: At those sites you could drill a couple of holes
13 and close out completely, that process went away. So you
14 couldn't do an immediate NFA closure on it.

15 MR. WIENHOFF: Regardless of whether the NFA was good for
16 the client or not, it still has financially -- whether it was
17 good for the client or not, it still occurred 20 percent of the
18 time.

19 MR. CLAY: And I believe that legislation went into effect
20 a couple years ago; isn't that correct?

21 MR. WIENHOFF: Right.

22 MR. CLAY: Didn't you just testify that completing the work
23 in three to five years would complete the site investigation?

24 MR. WIENHOFF: We didn't say three to five years.

1 MS. ROWE: We just said get into the corrective action
2 phase.

3 MR. CLAY: So you're not actually completing site
4 investigation, you're just getting to corrective action?

5 MS. ROWE: You're implementing.

6 MR. CLAY: How long does it take to get from when a release
7 is reported to completing site investigation would you estimate?
8 I mean, you had these figures to --

9 MS. ROWE: Right. They were rough, Doug. What we were
10 looking at was, just from our perspective, a lot of the work that
11 we're doing right now is clean-up work. We're implementing
12 corrective action plans for the '98, '99 incidents. So when they
13 were reported, we went through site classes and that maybe took
14 six, nine months, and then we did the full site investigation,
15 plume delineation. If there was no off-site impact, that didn't
16 take quite as long. We did all the field work. We wrote the
17 report, submitted the report. EPA said, okay, your investigation
18 is complete. We agreed with your plume, now give us your
19 corrective action plan and you submit that. And you got some of
20 that back and forth. By the time you get that approved and
21 actually implement your corrective action, that was what we said
22 took the couple of years to get through.

23 MR. CLAY: Okay. I think I'd need to go back and review
24 that because I think you said more than a couple years. But it

1 seems to me like it was a couple years to do site investigation
2 and early action, that you wouldn't be seeing the -- those cost
3 impacts that you're referring to; is that correct?

4 MR. WIENHOFF: If it took a couple years, then we would not
5 see those yet, no.

6 MR. CLAY: Okay.

7 MR. KING: I was looking at, I think, this is Exhibit 30.

8 HEARING OFFICER TIPSORD: Yeah.

9 MR. KING: And I was just -- this is the chart that has the
10 -- relates incidents to payments in three years.

11 MR. WIENHOFF: Yes.

12 MR. KING: I was quickly adding up the numbers, and I was
13 looking at basically for the incidents from 1986 through 1994
14 representing, you know, incidents that are basically over 10
15 years old. That in 2003 the Agency paid out of 71 million
16 dollars, total paid about 22 million dollars, for incidents that
17 were 10 years -- 10 years -- basically 10 years or older. I was
18 wondering if your -- if you think that trend will continue as far
19 as amount of money being paid for old incidents or not, how does
20 that impact your views on what has occurred relative to the
21 incidents reported in the '98, '99 time frame?

22 MR. WIENHOFF: Could you restate that real quick for me?

23 MR. KING: Yeah, I was trying -- The kind of the assumption
24 of my question here that in 2003, 22 million out of 71 million

1 dollars was paid for incidents that are 10 years or older, about
2 30 percent of the fund is still going for very old incidents.
3 And I think you were putting this chart together with the point
4 that we're just seeing a -- a small -- we're seeing a limited
5 term bulge in the amount of payments being paid because the
6 '97 -- '97, '98, '99 time frame as far as reporting incidents.
7 But it looks, based upon this, that we're going to be paying for
8 those incidents for a long period of time.

9 MR. WIENHOFF: Right. However, the -- if you look -- I
10 mean, there's less in '98, '99 incidents than there are '89, '90
11 and 2000 incidents and, you know, there is -- there's still a
12 bulge being paid on those incidents. If you look from 2003 to
13 2002 -- 2002 to 2003, those numbers went down in that year and
14 these numbers should go down also for '98, '99 incidents and 2000
15 incidents over time. No, it's not going to go to zero in the
16 next five years but it's going to decrease.

17 MR. KING: For those -- for those sites that are in that 10
18 years or more older, do you have a view as to what type of
19 remediation is going on at those -- at those sites?

20 MR. WIENHOFF: No.

21 MS. HESSE: To clarify, were these numbers pulled from IEPA
22 websites?

23 MR. WIENHOFF: From the downloaded database. Not from the
24 actual date website. But we actually pulled numbers from that

1 database.

2 MR. CLAY: Mr. Smith, I think you testified that pump and
3 treat are cost effective in a lot of cases?

4 MR. SMITH: Can be.

5 MR. CLAY: And I believe that you said that of those number
6 of cases, and I would venture that a number of the ones that are
7 over 10 years old are the CW3M sites that you're the consultants
8 on, is that the case?

9 MS. ROWE: I don't think we've ever had one so --

10 MR. SMITH: When you say the incident may be 10 years old,
11 but the pump and treat don't generally run more than three years.

12 MR. CLAY: Right.

13 MS. ROWE: No, we've had a couple that were five but I
14 don't think any were older than that. The incident might be an
15 older incident but the length of time it was treated wouldn't be.

16 MR. CLAY: And at that time you met clean-up objectives.

17 MS. ROWE: Some cases, some cases no. You know, if we
18 reduced it substantially to where we felt like we could close it,
19 then that's what we felt like that's what we would do.

20 MR. COVERT: My name is Chris Covert. I'm project manager
21 for the Environmental Protection Agency. I have just a question
22 regarding some of the general testimony that was made today from
23 Mr. Smith and Ms. Rowe. I have an example of a site and I was
24 wanting to know what the reason would be for this. The same

1 site, and with regard to the piece or scope of work and the type
2 of work performed, the initial scope of work that came in
3 involved dig and haul and a pump and treat system. And the
4 Agency made the determination that the technical determination is
5 the pump and treat to be cut out and the dig and haul filled in
6 and the ground would be reassessed later. On that proposal,
7 including the pump and treat, which was testified to do today,
8 which is very expensive, personnel costs were \$155,000
9 approximately. Now the company agreed with the Agency's
10 technical determination and came back with a proposal for the dig
11 and haul only and that personnel costs dropped to \$110,000.
12 After reviewing that the Agency dropped it to about \$90,000 per
13 approval. The company did not agree with that and came back with
14 the proposal for the same scope of work involving the same amount
15 of cubic yards, first by CECI, for \$605,000. I was wondering if
16 you could provide a citation on that?

17 MR. WIENHOFF: Well, can you provide a citation and we'll
18 look at it?

19 MR. COVERT: Well, it's your site. I'm sure you could find
20 it.

21 MR. WIENHOFF: You give us the citation and -- well, no, I
22 don't have any idea of what --

23 MR. COVERT: I'll give you a number. Incident No. 981937.

24 HEARING OFFICER TIPSORD: Okay. I have to say right here,

1 we need to be very, very, very, very careful about asking
2 specific questions about specific sites and asking for
3 justifications on the record. I understand what you're trying to
4 get at, but you also have to understand that if they appeal that
5 decision to the Board, you've just eliminated the ability of
6 these two gentlemen --

7 MR. COVERT: This is beyond the appeal time.

8 HEARING OFFICER TIPSORD: At any time though?

9 MR. COVERT: No.

10 HEARING OFFICER TIPSORD: Is this incident closed?

11 MR. COVERT: No, it's not closed but the appeal decision
12 for this final decision is way beyond.

13 HEARING OFFICER TIPSORD: I think we need to be very --

14 MR. COVERT: It's just a general statement as to what --
15 How is it possible that a site with the same scope of work would
16 triple the cost?

17 MR. WIENHOFF: I have to look. I don't know. I don't know
18 why.

19 MR. COVERT: Not concerning that specific site, but just
20 any site?

21 MR. WIENHOFF: I don't know without looking at the site.

22 MS. ROWE: One comment that I can make is that every time
23 we have to do a budget amendment or we have to revise a plan,
24 we're incurring costs and those costs always go back in the next

1 round.

2 MR. COVERT: I understand that.

3 MS. ROWE: When we have multiple, multiple submittals
4 trying to get to a place where we're doing the work, that adds
5 cost. And sometimes we end up in agreement, and sometimes we
6 don't. But we may end up with the same results and sometimes it
7 doesn't cost as much as other times.

8 MR. COVERT: So it's reasonable for reporting costs to
9 triple from amendment for the same scope of work?

10 MS. ROWE: Not for that specific amendment, no. And in
11 most cases we would break out the cost of that submittal, well,
12 here's a cost of preparing this budget number or the submittal.

13 MR. COVERT: Okay. But concerning the triple, is that
14 considered reasonable?

15 MS. ROWE: I have to look and see what the scope of the
16 work was, if it changed.

17 MR. COVERT: The scope of work didn't change.

18 MS. MANNING: Just a point of clarification, I'm Claire
19 Manning with PIPE. Is your question -- if your question is a
20 hypothetical question, I would suggest that you need to identify
21 it as a hypothetical question. But if your question is a real
22 question with a realistic number, then they'll respond to that
23 real incident number once they have a chance to look at it.

24 MR. COVERT: It's concerning an example, one example out of

1 many.

2 MR. ROMINGER: Okay. Go ahead.

3 MS. MANNING: So you're talking about one incident -- Your
4 questions were related to the one incident number that you gave
5 them? Because if you're talking about more, then you're going to
6 have to give them an incident number as well I would suggest.

7 MR. ROMINGER: I think we need to advise again that the
8 incident was a hypothetical question.

9 MR. COVERT: Yes.

10 MR. ROMINGER: Those are all the questions we have.

11 HEARING OFFICER TIPSORD: I don't think I have anything.
12 Anything additional?

13 BOARD MEMBER JOHNSON: No.

14 BOARD MEMBER GIRARD: No.

15 HEARING OFFICER TIPSORD: All right. Off the record.
16 (A discussion was held off the record.)
17 (A lunch break was taken.)

18 HEARING OFFICER TIPSORD: Good afternoon. Welcome back.
19 And I think we're ready now to proceed with the testimony --
20 pre-filed testimony from PIPE. Go ahead.

21 MS. MANNING: Good afternoon, Members of the Board, and
22 Madam Hearing Officer. We're here this morning and happy to be
23 here to present testimony from PIPE. Before we begin, I just
24 have small preliminary matters in terms of the motion to file

1 instanter. Would you like to do that now or preceding the
2 testimony of the various witnesses?

3 HEARING OFFICER TIPSORD: We have not received that
4 testimony in the Chicago office. I just checked. That's why I
5 was late coming back. So we don't have the testimony coming
6 back. If you have the testimony attached, I'm assuming you have
7 copies of the testimony with you?

8 MS. MANNING: I don't have copies of that testimony --
9 That's not testimony until tomorrow any way, so let's worry about
10 that tomorrow then. Is that okay with you?

11 HEARING OFFICER TIPSORD: Except we're going to need it
12 today. I mean, if it doesn't get in the Board's office --

13 MS. MANNING: Okay.

14 HEARING OFFICER TIPSORD: Because we're going to need to
15 review that before the hearing tomorrow.

16 MS. MANNING: That's fine. I'll make sure you have it this
17 afternoon if he plans on testifying tomorrow, okay.

18 HEARING OFFICER TIPSORD: Thank you.

19 MS. MANNING: Thank you. The other matters we have this
20 morning are various exhibits that I had already presented to the
21 Agency. I have various copies for the Board that we will be
22 going through today.

23 HEARING OFFICER TIPSORD: Ms. Manning, do you prefer to
24 have this as one exhibit or do you want to breakdown and mark

1 each of them tabbed separately?

2 MS. MANNING: Let's mark each of them separately. I can go
3 through it and explain them for you if you would. The first tab
4 are the resumes of the five people who have filed pre-filed
5 testimony for PIPE that plan on testifying in this session of the
6 board hearings. First is Cindy Davis, the second is the resume
7 of Joe Truesdale, both of them are with CSD Environmental
8 Services. The next resumes are from the gentlemen from United
9 Science Industries, Inc., Joseph Kelly, Duane Doty, Robert
10 Pulfrey and Barry Sick. We could probably --

11 BOARD MEMBER JOHNSON: So there's six?

12 MS. MANNING: There are six of them, yes. The three from
13 USI are all -- are all on one kind of page. So let's do Cindy
14 Davis -- Cindy Davis and Joe Truesdale --

15 HEARING OFFICER TIPSORD: It's probably just as easy to
16 mark each of the pages.

17 MS. MANNING: Each of the pages.

18 HEARING OFFICER TIPSORD: We'll do like Cindy Davis's
19 Exhibit 35.

20 MS. MANNING: Okay. That's fine. Joe Truesdale 36?

21 HEARING OFFICER TIPSORD: Yes.

22 MS. MANNING: Would you like to do the United Science all
23 as one?

24 HEARING OFFICER TIPSORD: One page, is that true?

1 MS. MANNING: Yeah, three pages.

2 HEARING OFFICER TIPSORD: Yeah, we'll do that as one.

3 Okay, if there's no objection, we will mark Cindy Davis's
4 testimony -- I'm sorry, Cindy Davis's resume as Exhibit 35, Joe
5 Truesdale's resume as Exhibit 36, and the combined United Science
6 Industry, Mr. Kelly, Mr. Doty and Mr. Pulfrey, as Exhibit 37.

7 MS. MANNING: Great. Thank you.

8 HEARING OFFICER TIPSORD: Any objection? Seeing none,
9 they're so marked.

10 (Exhibit Nos. 35, 36 and 37 were marked for
11 identification and entered as exhibits.)

12 MS. MANNING: Thank you. The next tab, tab two, I believe
13 the Board already has in evidence. The Consulting Engineer's
14 Counsel of Illinois and ad hoc work group information. This is
15 part of the Dan Goodwin's testimony that he will be giving on
16 July 6th which, I believe, this was presented in the testimony
17 presented by CW3M as well. But since it's part of our exhibit,
18 if you would like to mark it as another exhibit.

19 HEARING OFFICER TIPSORD: We'll mark it as Exhibit 38.

20 MS. MANNING: Thank you.

21 HEARING OFFICER TIPSORD: Any objection? Seeing none,
22 we'll mark it as Exhibit 38.

23 (Exhibit No. 38 was marked for identification and entered
24 as an exhibit.)

1 MS. MANNING: Thank you. At tab three you'll find
2 underground storage tank information that was taken off of the
3 comptroller's website last evening, as a matter of fact, on June
4 20th. The first set of information by fiscal year and by month
5 indicates the revenue received monthly by the comptroller's
6 office and the underground storage fund, which is Fund No. 0072.
7 You have for -- currently for fiscal year '04 revenues in the
8 amount of 73,000 -- \$73,821,388.63. And you can see the revenues
9 in that occur monthly that follow that that get put into the
10 Fund. And you can see they vary widely. In 0072 for fiscal year
11 three, the comptroller's office shows a revenue of
12 \$66,417,595.27. And again, the amount of money coming into the
13 Fund monthly varies widely from a high of 10 million, over 10
14 million in October of '03, fiscal year '03, to a low of it looks
15 like 3,857,000.00 in May. Actually July is a little lower,
16 3,714,000.00. Actually July is two million. A little over two
17 and-a-half million in November. Same thing in fiscal year '02,
18 revenues in almost 70 million dollars varying widely month to
19 month.

20 The next set of information begins -- this was taken off
21 the website on June 17th. You can see at the bottom in terms of
22 the date. And for fiscal year '04 it shows an appropriated
23 amount of money in the Underground Storage Tank fund of
24 \$81,482,400.00. Expended \$32,372 -- I'm sorry, \$32,372,951.00.

1 It shows unexpended \$49,109,448.53. And it shows monthly
2 expenditures as well. In '03 I provided the same breakdown.
3 Appropriated 80 million -- 81 million dollars, expended 75
4 million dollars. The comptroller shows and unexpended
5 \$6,219,492.72 for fiscal year '03. For fiscal year '02 it shows
6 an appropriated dollar amount of \$58,947,100.00 and extended
7 amount of \$58,420,872.97 with expenditures again distributed
8 monthly shown.

9 The next set of information is the expenditures by object,
10 again, taken from the website. This one last night, 6/20/2004.
11 Showing statutory transfers out of \$54,961,036.00. Non-taxable
12 grants, grants and awards NEC, \$18,089,262.25. Taxable grant
13 payments to recipient of \$10,681,914.14. Fiscal year '03 shows
14 non-taxable grants/awards NEC in the amount of \$71,537,563 and
15 odd cents. The statutory transfers out \$26,022,369.00. I should
16 add too that these particular expenditures by objects also show
17 the personnel line items that I assume, since this is the whole
18 fund, that would be the line items for the personnel services for
19 all three agencies. Of course that has been testified to and be
20 covered by the Underground Storage Tank fund, which would be the
21 EPA, the OSFM and Department of Revenue. That, of course,
22 wouldn't include the federal dollars that come in that Gary King
23 testified to in terms of those positions, but that would account
24 for all of the -- it would seem to be all of the personnel

1 services of the Underground Storage Tank fund. And for fiscal
2 year '02, the non-taxable grants/awards NEC is listed at
3 \$54,999,992.00, with statutory transfers out of \$14,493,200.00.

4 The purpose of these is just to show what the comptroller's
5 office shows on its website in terms of funds. We have not had
6 any information nor has any information been put on the record to
7 date that we know of that actually shows or describes by line or
8 by vendor the amount of money that actually went to
9 reimbursements of state -- of funds from the Underground Storage
10 Tank fund. It is my assumption that these line items that are
11 called non-taxable grants/awards, NEC and they're called
12 different things for different fiscal years, reflect, at least in
13 part, reimbursement payments, but it's hard to tell that from the
14 comptroller's website.

15 HEARING OFFICER TIPSORD: We'll mark that as Exhibit 39 if
16 there's no objection.

17 (Exhibit No. 39 was marked for identification and entered
18 as an exhibit.)

19 MS. MANNING: Thank you.

20 MR. ROMINGER: The whole thing?

21 HEARING OFFICER TIPSORD: Yes.

22 MS. MANNING: There was one final picture of the tab and
23 I'll get you that. Yes, the whole comptroller's fiscal funds
24 information then is tab 39?

1 HEARING OFFICER TIPSORD: Yes.

2 MS. MANNING: Thank you. 39, Exhibit 39, thank you. The
3 next item shows UST statutory transfers in this fund, and in
4 fiscal year four it shows an expenditure of 30 million dollars as
5 a statutory transfer. \$12,827,100.00 is the statutory transfer.
6 \$12,100,000.00 is a statutory transfer. \$33,936.00 as a
7 statutory transfer all in fiscal year '04. Again, that 30
8 million dollars may very well be the 30 million dollars that Gary
9 King testified to, and it may very well. It just doesn't show
10 that on the comptroller's report. For fiscal year three -- '03
11 it shows statutory transfers out in the amount of \$13,993,200.00.
12 And for fiscal year '03 another statutory transfer out of
13 \$26,169.00, and fiscal year '02 a statutory transfer out of
14 \$13,993,200.00.

15 MR. ROMINGER: Are we getting in testimony because we're
16 running into questions we have?

17 HEARING OFFICER TIPSORD: I was just assuming you were
18 describing what money was there. Let me ask this. Did you
19 prepare these or --

20 MS. MANNING: I just pulled them off the website. So I
21 assume if the Agency wants to testify to them --

22 HEARING OFFICER TIPSORD: Well, they have some questions
23 about them.

24 MR. CLAY: I have one question. You refer to the statutory

1 transfer to see the amount appears to me to be the bonds
2 retirement amount, do you know if that's the case? Is that the
3 amount to retire the bonds?

4 MS. MANNING: No, I don't know that.

5 MR. CLAY: But you're calling that a statutory transfer?

6 MS. MANNING: I'm just -- took it off the website -- what
7 the comptrollers' website. The 12 million may very well be the
8 bonds where they have the 12 million dollar figure.

9 MR. CLAY: 14 million, 14 million.

10 HEARING OFFICER TIPSORD: Just so we're clear, you're not
11 testifying as to the truth of any of this? This is just the
12 information you pulled off the comptroller's website?

13 MS. MANNING: That's correct.

14 HEARING OFFICER TIPSORD: It's not testimony. That means
15 the documents speak for themselves. Are we okay?

16 MR. CLAY: Yes.

17 MS. MANNING: And the frequency of pay outs, can we mark
18 that as a different exhibit because we're going to have testimony
19 on that as to who prepared that. It's the financial part of this
20 tab number three, graph like this.

21 HEARING OFFICER TIPSORD: The UST fund graphs?

22 MS. MANNING: Frequency of payoffs, yeah.

23 HEARING OFFICER TIPSORD: You want all the graphs marked as
24 an exhibit?

1 MS. MANNING: Yeah, we'll mark those as Exhibit 40.

2 HEARING OFFICER TIPSORD: We'll mark those Exhibit 40 if
3 there's no objection. Seeing none, Exhibit 40 is marked.

4 (Exhibit No. 40 was marked for identification and entered
5 as an exhibit.)

6 MS. MANNING: Thank you. Exhibit 41, there's two letters
7 here between the IPMA and the IEPA I'd like to mark if I could.
8 The first from Bill Fleischli to Gary King dated October 24th,
9 2001, as Exhibit 41.

10 HEARING OFFICER TIPSORD: Is there any objection? Seeing
11 none, we'll mark that as Exhibit 41.

12 (Exhibit No. 41 was marked for identification and entered
13 as an exhibit.)

14 MS. MANNING: The second letter --

15 HEARING OFFICER TIPSORD: Hold on. Let me catch up.

16 MS. MANNING: Okay.

17 HEARING OFFICER TIPSORD: Okay.

18 MS. MANNING: The next is a letter from -- a memo actually
19 from Doug Clay to Bill Fleischli dated April 4th, 1995. I'd like
20 to mark that as Exhibit 42.

21 MR. ROMINGER: On mine the next page after the letter there
22 Bill Fleischli is a chart review of time frames, is that part of
23 that letter or is mine out of order?

24 MS. MANNING: Yours might be out of order.

1 HEARING OFFICER TIPSORD: Mine are the same thing. Review
2 of the Timeframe For IEPA's Process LUST Payments.

3 MS. MANNING: The review of the time frames comes as an
4 attachment from the Bill Fleischli letter to Mr. Gary King.

5 HEARING OFFICER TIPSORD: So it is part of Exhibit 41?

6 MS. MANNING: That's correct.

7 HEARING OFFICER TIPSORD: So Exhibit 42 is the memo?

8 MS. MANNING: That's correct.

9 HEARING OFFICER TIPSORD: Any objection? We'll mark it as
10 Exhibit 42.

11 (Exhibit No. 42 was marked for identification and entered
12 as an exhibit.)

13 MS. MANNING: The memo was a two-page memo with an
14 attachment.

15 HEARING OFFICER TIPSORD: Okay.

16 MS. MANNING: The next is UST reimbursement project
17 information which we'll have testimony about.

18 HEARING OFFICER TIPSORD: Do you want to mark them
19 individually or as a group?

20 MS. MANNING: Let's do it as a group. The third piece of
21 that is, I think one of the Agency exhibits, but the first two
22 explain the consultant information we have on those exhibits.

23 HEARING OFFICER TIPSORD: All right. We'll mark them as
24 Exhibit 43 if there's no objection. Seeing none, that's Exhibit

1 43.

2 (Exhibit No. 43 was marked for identification and entered
3 as an exhibit.)

4 MS. MANNING: Thank you. The next item is the emergency
5 rule language that was presented as an amended motion by the
6 Agency in this proceeding some months ago and attached thereto
7 are agendas of PIPE meetings that we had with the EPA for
8 demonstrative purposes only.

9 HEARING OFFICER TIPSORD: If there's no objection, we'll
10 mark that as Exhibit 44. Seeing none, we'll mark that as Exhibit
11 44.

12 (Exhibit No. 44 was marked for identification and entered
13 as an exhibit.)

14 MS. MANNING: Behind tab seven are two documents, the first
15 is a Standard Agreement Profession for Consultants Services used
16 by the Illinois Department of Transportation. We'll have
17 testimony shortly of just that. I would like to mark that as 44.

18 HEARING OFFICER TIPSORD: Okay. Is that in pages -- That
19 would be Exhibit 45.

20 MS. MANNING: Oh, I'm sorry. Thank you.

21 HEARING OFFICER TIPSORD: The IDOT manual pages 29 --

22 MS. MANNING: Through 33.

23 HEARING OFFICER TIPSORD: -- 33.

24 MS. MANNING: 46 is a similar document used by the Capitol

1 Development Board For Centralized Fee Negotiation. I'd like to
2 mark that as 46 then.

3 HEARING OFFICER TIPSORD: Is there any objection to either
4 Exhibit 45 or 46? Seeing none, they're so marked.

5 (Exhibit Nos. 45 and 46 were marked for identification and
6 entered as an exhibit.)

7 MS. MANNING: The next are simple publications used by
8 businesses in Illinois that Cindy Davis will testify to.

9 HEARING OFFICER TIPSORD: Tab eight.

10 MS. MANNING: Tab eight. We can just mark that as Exhibit
11 47. There are two documents presented, one is called Dollars and
12 Cents, and it's pages 30, 31, and 33 from that document, and the
13 second one is Successful Financial Management.

14 HEARING OFFICER TIPSORD: Any objection to Exhibit 47?
15 Seeing none, we'll mark that.

16 (Exhibit No. 47 was marked for identification and entered
17 as an exhibit.)

18 MS. MANNING: Thank you. And tab nine, Exhibit 48.

19 HEARING OFFICER TIPSORD: The entire tab?

20 MS. MANNING: The entire tab is what PIPE refers to is a
21 work breakdown structure delineating various different items and
22 work projects and necessary items necessary to underground
23 storage tank remediation. We have been working on this and
24 presenting it to the Illinois EPA in terms of issues that the

1 PIPE has raised with the scope of work. And again, it's just for
2 demonstrative purposes only. And while there is a tab 10, there
3 is no further exhibits at this point in time. I had intended to
4 put in summary the state laws, and CW3M did that for me this
5 afternoon, and whether we do it or not remains to be seen.

6 HEARING OFFICER TIPSORD: Is there any objection to any
7 exhibits filed on behalf of PIPE? All right. Exhibits 35
8 through 48 are admitted.

9 (Exhibit No. 48 was marked for identification and entered
10 as an exhibit.)

11 MS. MANNING: Thank you. Are you ready to proceed? Would
12 you like to swear my witness?

13 HEARING OFFICER TIPSORD: Is Cindy Davis the only witness
14 you have right now?

15 MS. MANNING: At this point. Jeff is already sworn and he
16 may -- he may be sworn but he may testify as well but Mr.--

17 HEARING OFFICER TIPSORD: Mr. Truesdale, etc., are not here
18 at this time?

19 MS. MANNING: At this time they're not here, and they're
20 testifying together from United Science Industries.

21 HEARING OFFICER TIPSORD: All right. Go ahead.

22 (Whereupon the witness was sworn in.)

23 HEARING OFFICER TIPSORD: And before we start, you want to
24 admit your -- do you have your pre-filed testimony and we'll

1 admit it as well?

2 MS. MANNING: Okay. That's actually the pre-filed
3 testimony of all of them.

4 HEARING OFFICER TIPSORD: We'll mark them individually.
5 Okay. Great. If there's no objection we will mark the pre-filed
6 testimony of Cindy Davis as Exhibit 49.

7 (Exhibit No. 49 was marked for identification and entered
8 as an exhibit.)

9 MS. MANNING: Do you want to do the others now too?

10 HEARING OFFICER TIPSORD: No, we'll wait until they're
11 sworn in.

12 MS. MANNING: Thank you.

13 HEARING OFFICER TIPSORD: Seeing none, it's marked as
14 Exhibit 49. Ms. Davis, you may go ahead.

15 MS. DAVIS: My name is Cindy Davis. I'm a licensed
16 professional geologist in the state of Illinois. I am a sole
17 owner of CSD Environmental Services, Inc., which I will refer to
18 as CSD, and Heartland Drilling & Remediation, which I'll refer to
19 HDR. I am the acting chairperson for PIPE, which is
20 Professionals of Illinois for Protection of the Environment. I'm
21 also a member of the Consulting Engineers Counsel of Illinois,
22 and I worked on the ad hoc group with CECI and IPMA that I will
23 talk about in a minute here.

24 In terms of who is -- Well, I have a degree. I have a BS

1 in geology from Eastern Illinois University in 1984. I have been
2 working in the UST field since 1990 approximately. I started out
3 of college with the Illinois EPA in the record compliance
4 section. I spent a year there, then I went to the record permit
5 section and eventually then was promoted to the Underground Tank
6 Program as a subunit manager in -- I believe in 1990 and I stayed
7 until June of 1992 when I left to start my own business. I
8 covered that.

9 CSD is an environmental consulting firm that provides
10 services to owners and operators of gasoline stations. We also
11 provide environmental services to other types of clients, but
12 probably 95 percent of our work is in the Underground Storage
13 Tank field.

14 My professional associations, again, I'm a member of CECI.
15 I have read Dan Goodwin's testimony on behalf of what the CECI
16 worked with and presented to the Agency and to the ad hoc group,
17 and I'm in agreement with Dan's testimony that he has provided.

18 MS. MANNING: Could you talk a little bit about the ad hoc
19 group when you met and sort of the dynamics of the negotiations
20 between who was present in the ad hoc group.

21 MS. DAVIS: Okay. It started with the Illinois EPA, I
22 recall, putting a meeting together they called consulting
23 counsel. And I believe they called Petroleum Marketers
24 Engineers, asked them to come in and meet, inform us that they

1 had what they felt needed to make some changes in the LUST
2 reimbursement program. That they felt they had consultants and
3 contractors that were taking advantage and overcharging and asked
4 for our help in trying to do some cost controls. They had -- the
5 EPA had already put together a proposal which they gave to us to
6 look at at that meeting, and they had some comments. And we
7 decided we would put together a work group to look at the EPA's
8 proposal and maybe offer an additional proposal if we weren't in
9 agreement with the EPA's proposal. From that we had Mike Rapps'
10 office was involved, Dan Goodwin, CSD, Hanson Engineers, Secor.
11 I believe that was the majority of the members of the ad hoc
12 group. We spent a considerable amount of time going over what
13 the Agency proposed and coming up with an alternative proposal.
14 What we did basically was looked at what the Agency talked about.
15 They wanted some lump sum numbers to put on task. And I believe
16 the wording was they don't want to pay people to keep doing it
17 wrong. They want to create the incentive for somebody to do it
18 right the first time. The person who was doing it right the
19 first time would make money at it versus people who do it wrong
20 making money at it. We didn't see any problem with that. And
21 agreed that some phases of underground storage tank work probably
22 could be lump summed. But we talked about the fact that a lump
23 sum cannot be established without clearly defining what the scope
24 of work is. We know what all the tasks are required of us, and

1 then we put together how many hours it takes to do that task. We
2 gave that all to the Agency. We did not talk to the Agency about
3 any kind of prices. We could not because of anti-trust. We just
4 told them here's what tasks we believe it will take to do the job
5 and how many hours we estimated it takes to complete those tasks.
6 From that the Agency -- We did not task out all of the items. We
7 only tasked out a few things but didn't have time to task out
8 everything. But we kind of gave the concept to the Agency that
9 that's where we're going with the scope of work.

10 We pretty much left it with the Agency. We talked about
11 stage one, stage two, stage three site investigation, and the
12 fact that we liked it. We liked the Agency's proposal on stage
13 one, two and three in terms of there's been -- the Agency and us
14 both identified that there were problems with this particular
15 site classification method. Stage one, stage two, stage three we
16 felt allowed to delineate the extent of contamination and maybe
17 move the reimbursement process along a little bit faster during
18 that time frame.

19 Talk about PIPE a little bit. It's the Professionals for
20 Illinois for Protection of the Environment. It was established
21 as a not-for-profit organization in April 2004. It came about
22 originally, and IPMA had called me, I'm an associate member of
23 their firm, and they asked me would these new regulations that
24 the EPA was proposing, how would we perceive that their members

1 would be impacted if these regulations as proposed would be
2 adopted. So we called together all of the other associate
3 members of IPMA, which would be the equipment suppliers,
4 contractors, and consultants and had a meeting in the IPMA office
5 on how to discuss how does everybody feel about these regs, and
6 how did they think that they were going to effect the
7 owner/operators.

8 We put together an impact statement for IPMA telling us
9 basically that we felt the owners and operators were not going to
10 be reimbursed for 100 percent work done on their sites and then
11 it looks like additional money would have to come out of the
12 owner/operators' budget to pay us for our cost. At that point
13 many of us in the room decided we had a common goal, and we
14 talked about maybe going to an existing organization to see if
15 they would work with us and fight with or, I guess, represent us
16 to come before the Board here. And we decided that we were
17 probably better off coming together ourselves, and we agreed to
18 hire Claire. Claire came in and talked to us and we formed the
19 not-for-profit association.

20 PIPE members consist of environmental consultants,
21 contractors, service suppliers. I cannot give you the list of
22 all of the names of members of PIPE because many of our members
23 asked to remain silent and would not have remained public because
24 they're afraid of retribution from the Agency. So if anybody

1 asks me, I'm not going to tell you who members of PIPE are.

2 MS. MANNING: Let me ask you to stop, Cindy, for just a
3 minute. It is PIPE's goal -- what's PIPE's position on cost
4 containment in the underground storage tank arena?

5 MS. DAVIS: We're for cost containment. Most members of
6 PIPE are reputable firms, and we don't believe that if there is
7 -- if there is contractors out there who are ripping off the
8 Fund, we want it stopped too. We -- We're all very concerned
9 about what the balance of the Fund is. Our livelihood comes from
10 the Underground Tank fund. All we're looking for is fair and
11 reasonable prices to be established and -- and do our work.
12 That's why we're here today for. Hopefully we can find a common
13 ground with the Agency. We agree with them on cost containment.
14 I think we can probably meet in the middle and do a darn good job
15 of coming up with a proposal that's good for everyone.

16 PIPE has met with the Agency several times. We provided --
17 We've done an agenda. You want me to get those?

18 MS. MANNING: Yeah, go ahead.

19 MS. DAVIS: The first --

20 MS. MANNING: Referring, by the way, now to Exhibit No. 44
21 which is attached to the emergency rule that we negotiated during
22 the emergency rule.

23 MS. DAVIS: And the first meeting we had we sat down to
24 tell EPA who we are and what our concerns were, but also to agree

1 that we do have common goals, that our common goals are cleaning
2 up contaminated sites in a responsible and environmentally
3 protected manner. We also agreed our common goals were to
4 reimburse those who perform those cleanups from the UST fund for
5 reasonable cost for remediation and no more than the reasonable
6 cost. The costs incurred from the Fund should be for the purpose
7 of remediation and reasonable oversight and that all the Fund
8 participants, the Agency, the owner/operators and PIPE need to
9 work together towards these common goals.

10 And then we sat in our meeting and told them what our
11 concerns were with Subpart H, and we have ironed out some issues.
12 We're still ironing out issues. Our main problem is Subpart H.
13 The reimbursement procedures. I think all the other issues prior
14 -- in the regulations we're going to be able to work out an
15 agreement on. But Subpart H, as CW3M testified earlier today,
16 and by the way PIPE -- even though CW3M testified separately,
17 PIPE had read their testimony ahead of time and we are in full
18 support of what CW3M said. And we're just trying to just build
19 upon what their testimony was this morning instead of going back
20 all through it. And CW3M already testified to what all problems
21 we've seen with Subpart M. PIPE is working, our legislative
22 committee is working to put together an alternative proposal
23 along with CECI and ISPE to the Board to try to come up with an
24 alternative to the proposal the Agency has.

1 MS. MANNING: Yeah, let's talk a little bit about what
2 transpired at these meetings then. There were some litigation
3 going on as well as the Ayers case was pending before the Board
4 and was decided by the Board as well that a case CW3M had
5 regarding the rate sheet. And if you could explain a little bit
6 about sort of what the genesis is, the Board's meetings with the
7 Agency were regarding the emergency rule proposal and what led to
8 the document that finds itself as Exhibit 44, and then we'll go
9 through that a little bit in terms of what PIPE's concerns got
10 put into the emergency rule?

11 MS. DAVIS: Well, I'm sure everybody is aware the Illinois
12 Ayers case, which was a case -- the Illinois Ayers Beardstown
13 case is a -- was a CEC, is still is a CEC client.

14 MS. MANNING: In fact, you testified in that proceeding?

15 MS. DAVIS: I testified in that proceeding and so did Jeff
16 Wienhoff. Our main concern with Illinois Ayers was that the
17 Agency was using a rate sheet that we felt was unfair, that
18 hadn't gone through rulemaking. That we never felt we had a
19 chance to comment on. The Agency's standard in the last few
20 years, when they started using the rate sheet, was to -- when we
21 submitted a budget for either a corrective action plan or site
22 investigation, you would get a letter back saying we're cutting
23 maybe \$1,500 from personnel, just whack, whack, whack. No
24 explanation given to us as to other than it exceeds minimum

1 requirements of the Act. Then we tried to call up the project
2 manager to find out what specifically was wrong with our budget.
3 Sometimes they could help, sometimes they couldn't. We would
4 resubmit, and what we found is we were just wasting time. The
5 Agency wasn't interested in approving any other costs other than
6 what was on their rate sheet.

7 Hence, the reason we decided to appeal Ayers. I paid for
8 the appeal on Ayers, and not the owner/operator. The reason I
9 did is, I guess it was just something that stuck in me that I
10 didn't feel was right, and it was affecting my business, driving
11 the cost of cleanups up because all we were doing was spending
12 time trying to justify why we were needing more money than the
13 Agency was willing to give to us. The Agency has told us that
14 over and over again that all their project managers full-time on
15 budget, that they'd like to have their project managers spend
16 more time reviewing technical work. All my project managers do
17 is spend all their time trying to justify their costs.

18 Corrective action plan, very few corrective action plans have
19 been approved in the last few years because of the cost problems
20 submitting it back and forth, back and forth, submitting
21 justification and we're just not getting anywhere.

22 So Ayers kind of brought that to head. The Agency had made
23 some technical cuts, felt that the borings that we had proposed
24 were excessive and the money that we requested was excessive.

1 The Board agreed with Ayers against the Agency and ruled that the
2 rate sheet was invalid in response to that. That was on April
3 1st. On April 21st, CW3M went into court and the judge --

4 MR. KING: Just so you know, that is -- as I understand
5 that's not a closed site.

6 MS. DAVIS: Illinois Ayers?

7 MR. KING: Yes.

8 MS. DAVIS: No.

9 MR. KING: We are talking about the site that's still an
10 open site so, I mean --

11 MS. MANNING: She's just giving background in terms of --

12 MR. KING: Well, I mean, we were questioned about that
13 earlier today, about talking about and asking questions about a
14 site that was, in fact, still an open and not a closed manner. I
15 mean, we got a decision in this.

16 HEARING OFFICER TIPSORD: You beat me to the punch. I was
17 just going to remind her that that was -- Technically speaking
18 that case is still appealing -- still before the Board currently
19 on some motions.

20 MS. MANNING: Yes.

21 HEARING OFFICER TIPSORD: I don't think you have -- I mean,
22 I think she stayed within what the published has been, but thank
23 you, Mr. King.

24 MS. MANNING: Why don't you just stay away from --

1 HEARING OFFICER TIPSORD: Thank you for pointing that out
2 to her.

3 MS. MANNING: Get into the whole reason for this PIPE and
4 CECI joining in an emergency rule motion.

5 MS. DAVIS: Apparently after some decisions were made by
6 the Board, the Agency had trouble with deciding what was
7 reasonable. If they can't use the rate sheets, then the
8 determination of reasonable became a problem for them. So they
9 asked the Board for an emergency rule to go ahead and implement
10 Subpart H as proposed. PIPE met with the Agency and we were
11 opposed to emergency ruling feeling that the Agency created the
12 problem itself, created the emergency, by not going through
13 rulemaking years before on the rate sheet. However, though the
14 Agency told us they had a problem, they didn't know how to pay.
15 Didn't know how to make payments. So we decided we would work
16 with them and come up -- we have to have an emergency rule to
17 determine reasonableness so let's work together and hopefully we
18 can come up --

19 MS. MANNING: By the way, what did they do with the
20 payments during this period of time?

21 MS. DAVIS: They were held up for a while. And then they
22 agreed that they would process the payments based upon the
23 certification of the professional engineer or the professional
24 geologist.

1 MS. MANNING: Okay.

2 MS. DAVIS: The emergency rule that we worked together on,
3 we worked together on establishing price for reasonableness by
4 using RS Means.

5 MS. MANNING: Now to be fair, though, this was an interim
6 measure indicating CECI agreed that this an interim measure
7 pending the Board ruling on the rule?

8 MS. DAVIS: Right. So we just thought during an emergency
9 meeting, the time frame between rulemaking and now is to help the
10 Agency determine reasonableness and go ahead and proceed payments
11 that RS Means is an estimating book that's used in the
12 construction industry. It's published third party information.
13 And we can start with that. They have pretty much everything
14 included in there. The only problem was RS Means did not have
15 all the personnel data that the Agency needed. So we worked with
16 the Agency coming up with the personnel titles and rates. And
17 what we did was pulled data from RS Means where we could and the
18 Agency proposed -- we started with the Agency's proposed rate in
19 Subpart H and adjusted them.

20 MS. MANNING: By the way, if I could step in now, I don't
21 think the RS Means book that we're discussing is in the record
22 yet but we will -- we will make sure that before the end of the
23 hearing it will be.

24 HEARING OFFICER TIPSORD: You beat me to another punch.

1 MS. DAVIS: The other issue the Agency had was the
2 excavation, transportation disposal. They felt they had -- I
3 think maybe they had -- I think they thought maybe they had
4 better data than what RS Means was so we worked together to come
5 up with a unit price for those soil removals and disposals
6 because the Agency was insistent that they needed a unit price
7 for that to control cost. And I know there was some cost in here
8 about concrete, asphalt, but I don't remember.

9 BOARD MEMBER JOHNSON: You say you worked together, you
10 know, took the proposed rates, the Subpart H proposed rates, and
11 you adjusted them accordingly. And in this proposed emergency
12 rulemaking did you adjust -- did you adjust only up or did you
13 adjust any of them down?

14 MS. DAVIS: No, I think some went down. I think there was
15 adjustment both ways.

16 BOARD MEMBER JOHNSON: Okay.

17 MS. DAVIS: I think. I didn't work specifically on that,
18 but I believe there was. But I think the biggest thing that we
19 put in the emergency rule was that is if the Agency would rely
20 upon the professional engineer or the professional geologist
21 certification, and if they thought there was something that
22 wasn't reasonable, the Agency would give us detailed reasons of
23 denial other than exceeds minimum requirements of the Act.

24 And also we worked out an agreement where the Agency would

1 send us a draft denial letter prior to the 120 days per final
2 decision. And with that draft denial letter, then we would be
3 able to work out, we were hoping, many of our differences prior
4 to the final decision. We felt that that gave us the ability to
5 move the project along and get into remediation faster and also
6 would cut down the number of appeals going to the Board. The
7 Agency agreed to that, and it was in the emergency rule proposal.

8 MS. MANNING: Talk a little bit about the LPE and LPG
9 certification, if you will, what particular -- what particular
10 decisions that are made that are presented to the Agency have to
11 have that certification, corrective action plan?

12 MS. DAVIS: Well, every -- yes, all budgets, plans,
13 amendments basically have to be certified by the professional
14 engineer or professional geologist. The corrective action
15 submitting report can only be certified by a professional
16 engineer.

17 MS. MANNING: And what kind of difficulty, if any, have you
18 experienced in -- in getting modifications from the Agency or
19 getting denials from the Agency on a budget that includes a scope
20 of work that was signed off by LPE or the LPG determining that
21 that was the appropriate amount of work necessary for that
22 particular task?

23 MS. DAVIS: Well, many times the Agency goes through and
24 cuts our scope of work. We estimate that -- If our engineer

1 estimates it was going to take 10 hours of a particular person on
2 site to do the work, the Agency a lot of times would cut in half
3 or cut -- or the explanation was it exceeded minimum requirements
4 of the Act. As you could see exceeding requirements of the Act
5 was giving us a lot of problems, which is why we liked, in the
6 emergency rule, which is where the Agency actually gave us more
7 reasons than that.

8 Another problem that happens, if the Agency waits until the
9 120th day, gives you a denial letter or adjusts your budget, you
10 had no where to resubmit any information because you have --
11 Here's what happens. You submit -- I submit our plan. The
12 Agency takes 120 days to review it, gives me a final decision.
13 Sometimes it's 120 days, sometimes it's earlier. If I don't like
14 the amendments, I have my choice to either resubmit or I can
15 appeal to the Board. If I resubmit it, I have -- since that was
16 a final decision, I have to resubmit a whole new plan which means
17 it goes to another 120 day review. I can appeal, but it's costly
18 to appeal. And you have to look at is it \$1,500 problem, a
19 \$20,000 problem and what's the appropriate action. You can't
20 really afford to go and hire an attorney to represent you in
21 front of the Board for a \$1,500 problem. So you talk to the
22 owner/operator, and they say, well, they'll either eat that cost
23 and go ahead and pay us or they decide they want to appeal. A
24 lot of times they eat the cost, not because they agree with it,

1 but because they can't afford to appeal the decision.

2 BOARD MEMBER JOHNSON: That's what they've been doing then.
3 If you have a specific plan in which you say it's going to take
4 10 hours and the Agency says, no, it's only going take five, then
5 your owner/operator pays for the additional five hours or you
6 just didn't do the additional five hours worth of work?

7 MS. DAVIS: Most of the time the owner/operator either pays
8 the additional five hours so they can still do the work but --

9 BOARD MEMBER JOHNSON: Half price.

10 MS. DAVIS: Half the price.

11 MS. MANNING: And in effect, without risking another
12 objection from Mr. King about the Ayers case, and sticking with
13 just the decision the Board has already made in the Ayers case,
14 wasn't the issue in the Ayers case a question of judgment in
15 terms of the amount of work? Wasn't it an issue in the amount of
16 borings?

17 MS. DAVIS: Amount of borings and amount of time necessary
18 to do the work.

19 MS. MANNING: Thank you. Let's go into time frames for a
20 little bit. There's been a lot testimony in the -- there's been
21 quite a bit of testimony in the hearing about the various time
22 frame that it takes, and I believe, when the Agency testified on
23 March 25th, they put an exhibit into evidence that deals with the
24 quick time frames in terms of reimbursement once all the

1 approvals are on. Two things: One, has that always been the
2 case? We have an exhibit here that is a letter from Bill
3 Fleischli to the IEPA, if you could get that out. I believe
4 it's --

5 HEARING OFFICER TIPSORD: Exhibit 41.

6 MS. MANNING: Thank you.

7 MR. KING: Which attachment is that?

8 MS. MANNING: It's Exhibit 41.

9 HEARING OFFICER TIPSORD: Tab 4.

10 MS. MANNING: Tab 4. Now this letter deals with the time
11 frames for reimbursement once approvals have been made; is that
12 correct?

13 MS. DAVIS: Correct. Once the -- We can't submit a
14 reimbursement application on behalf of the owner/operator until
15 the budget has been approved and the work has been completed. So
16 this letter is regarding reimbursement applications that are
17 submitted to the State and how long it takes for them to process
18 them internally and send a voucher to the comptroller's office.

19 MS. MANNING: So this means basically, in the Agency's
20 vernacular from the hearing on March 25th, this is Doug Oakley's
21 group, the claim reimbursement group?

22 MR. KING: I have to interrupt. That's not what he
23 testified to. I mean, the whole process was just not Doug
24 Oakley's process. It was the entirety of the process.

1 MS. MANNING: Okay. Excuse me then. It was just the
2 Agency's reimbursement process then?

3 MR. KING: Right.

4 MS. MANNING: Go ahead. I'll let you talk.

5 MS. DAVIS: What this shows is Fleischli sent a data or a
6 spreadsheet to the Agency and asked them, I guess, to confirm the
7 average time frame to get payments through, and it looked like
8 the average time was 75 to 100 days, once an owner/operator made
9 a request for money that had already been spent to be reimbursed.

10 MS. MANNING: And what was his concern as expressed in that
11 letter about a delay in time frames?

12 MS. DAVIS: Well, what Bill was concerned about was that if
13 the process could be sped up, it would save the interest that his
14 members are paying, and that it would deplete -- lower the
15 balance of the Fund so the balance wouldn't be sitting there for
16 the General Assembly to take. I know he expressed to me several
17 times that he was concerned that the balance was too high in the
18 Underground Tank fund, and it would be transferred.

19 MS. MANNING: Now let's talk a little bit about the
20 reimbursement time frames -- not the reimbursement time frames,
21 excuse me, but the time frames for actually getting an Agency
22 approval. Could you -- could you give us some examples in terms
23 of your site in terms of the length of time for when you start
24 working for a client, an owner/operator, in terms of when you get

1 an Agency approval?

2 MS. DAVIS: Okay. From the -- When an incident is
3 reported, the first 45 days is very quick actually for
4 reimbursement process. We're allowed to do a 20-day report,
5 45-day report, remove the tank if necessary and line, and any
6 work done in the first 45 days does not have to have a plan or
7 budget approved. So we can submit on behalf of the
8 owner/operator a reimbursement request right after day 45 for
9 money that they have expended. That part goes very quickly. The
10 Agency reimburses money the owner/operator has faxed in the
11 budget pretty rapidly.

12 The next phase is when we go through -- I'm going to use
13 the 732 site as an example by classification. Method three,
14 because we don't -- we can't do method one and two any more. But
15 when we start through the site classification, we have to submit
16 a site investigation plan and a budget explaining how we're going
17 to classify this site and how much money it's going to take. It
18 takes us probably 30 to 45 days to prepare the plan. It goes
19 into the Agency which they have 120 days to review. Sometimes,
20 depending on the project manager load, they can get it done
21 earlier, sometimes it's day 120. Then they either approve it,
22 deny it or approve with budget modifications. Then the
23 consultant goes out -- If they don't have any appeals regarding
24 the amount of money that was approved and agree with everything,

1 they go out and do the work. Work is going to take anywhere from
2 30 to 60 days to get accomplished. You then have to write a site
3 classification report which tells what we found during our
4 investigation. So we submit a site class completion report to
5 the Agency after we have done our field work. And the Agency
6 then reviews the site class completion report, and they again
7 have another 120 day review process. After they have approved
8 the site classification report, we can then submit on, behalf of
9 the owner/operator, a reimbursement for money that they have
10 spent all the way back to preparing the site investigation work
11 plan. The time frames in there, we have two Agency review times
12 of 120 days each. That's 240 days plus the time it takes the
13 consultants to prepare the reports. Usually comes out greater
14 than two years before the owner/operator can be reimbursed. And
15 they have to carry that length of money that length of time.

16 The other problem is that when we get through site -- our
17 site classification completion report, the Agency wants the
18 extent of contamination fully defined in that -- in that phase.
19 So it might come back that we did the drilling but now we find
20 that we need to do additional drilling to find the extent, so we
21 have to submit another plan and go through the drilling and
22 they're still not -- the Agency will not approve the site as
23 classified until you have fully defined it. It only adds to the
24 time frame that it takes for the owner/operator to get

1 reimbursed. It could take another 120 days. You could be up to
2 four years before the owner/operator sees a dime for his site
3 investigation. That's why we like about PIPE is a stage one,
4 stage two, stage three. It makes things a little bit better
5 through that time frame and allowed reimbursement to proceed
6 along a little bit faster.

7 After site classification, then if it's a high priority
8 site or a low priority, we prepare a corrective action plan. We
9 prepare a corrective action plan and budget that is submitted to
10 the Agency. Once again 120 day review plan. Once that plan is
11 approved, and if the owner/operator doesn't have any problems
12 with the cuts or anything, we can submit a reimbursement request
13 at that time frame for the cost -- for the cost it took to
14 prepare the plan. So the main -- the longest time frame is the
15 site classification time frame for reimbursement. After a
16 corrective action plan is approved, the owner/operator can submit
17 on a 90-day basis.

18 I guess I'm giving you all these examples to show how the
19 Underground Tank fund built up its money. It wasn't that the
20 money wasn't needed but it's more of an escrow account. During
21 that time frame when we're doing site classification, we can't
22 build the Fund for that work. So the money is sitting in the
23 Fund building up. During the time frame that we're preparing
24 corrective action plans, we can't bill the Agency for that time

1 until it's been approved. And I think that's where a lot of the
2 issues are, and that the money builds up, but yet there really
3 are expenditures that are going to be coming in for that -- for
4 that balance.

5 MS. MANNING: Carol Rowe testified on Exhibit 30, Cindy,
6 that of her experience, and in CW3M's experience, regarding the
7 number of sites out there from their company's perspective that
8 are outstanding in terms of doing corrective action at this point
9 in time, even though the incident may have been earlier, could
10 you give me your perspective on that in terms of your own sites?
11 Are you doing a lot of corrective action now and have a lot of
12 work pending out there that has yet to be seen any reimbursement
13 for?

14 MS. DAVIS: Yes. Most of our sites, I'm going to guess
15 that 60 percent of our sites, are in the corrective action phase
16 where we're preparing corrective action plans to submit to the
17 Agency that have not been approved yet. There's been some
18 problems getting our corrective action plans approved, and I
19 think other members of PIPE have talked about that too. The
20 Agency has -- is going through, trying to improve their process,
21 put together internal guidance documents on reviews of
22 bioremediation and things like that, so we're having to put in a
23 lot more detail than we used to so it's just taking longer. But
24 in terms of corrective action incidents, 60 percent of ours are

1 probably in the corrective action, the other 40 percent are not
2 in corrective action.

3 As far as corrective action work to be done, we have a back
4 log of about 5 million dollars just in our office of our clients
5 work that need to go through corrective action. The Agency has
6 no idea of what that backlog is in each one of our offices are.
7 Because we have never been -- We haven't submitted a plan yet
8 showing them which sites, you know, we have tons of sites we're
9 trying to get through corrective action so the Agency does -- so
10 they have no idea, if you went to each consultant and asked how
11 much they're backlogged.

12 And as far as -- one thing -- one of the Agency's questions
13 was that incidents that are over 10 years old, they're still
14 paying claims out, yes, because we have a lot of owners/operators
15 that let their sites sit, and they don't do anything until they
16 get property transfer or they decide how they're going to do
17 this. So the same year that an incident is reported, it doesn't
18 necessarily mean that the environmental work begins that year.
19 They might wait five years after reporting before doing anything.

20 BOARD MEMBER JOHNSON: The backlog you're referring to is
21 work that needs to be done, it's not work that's been done
22 and just hasn't been reimbursed?

23 MS. DAVIS: No, it's work that needs done. We're still
24 writing corrective action plans. We're writing the plans now and

1 putting the budget together.

2 I want to talk one more thing about the reimbursement
3 center. We talked about the site classification and how the new
4 rules, we have stage one, stage two, and stage three site
5 investigation. And while the Agency and PIPE agrees it's going
6 to speed up payments --

7 MS. MANNING: Excuse me. Are you talking about 734 now?

8 MS. DAVIS: 734.

9 MS. MANNING: She's talking about site 374.

10 MS. DAVIS: And have something in the Fund. We're
11 preparing a plan and a budget for stage one site investigation so
12 that would go into the Agency 120 days, we're looking at time
13 frames again. We have time to prepare it, 30 days; Agency
14 review, 120 days. Now we're up to 150 days. Time to do the
15 work, let's say 60, now we're at 210. And then we have to submit
16 a stage two site investigation plan and it has to be approved
17 before the owner/operator will get paid for stage one. So we
18 still have long time frames in there that this new rulemaking
19 doesn't address. It's still going to take a long time to get
20 owner's and operator's money back.

21 It's probably a good time for me to talk about what the ad
22 hoc committee did recommend to the Agency that wasn't
23 implemented, that we think should be implemented. And one of
24 them regard stage one, two, and three investigation. As

1 consultants, we always approach the sites when we're doing an
2 investigation pretty much the same way every time. We got a
3 brand new site. We got to go out and find out what kind of
4 problems do we have. Do we have a little problem? Do we have a
5 big problem? Where are we going to drill? We felt stage one,
6 through the ad-hoc committee, could be a blanket, you know, you
7 could do -- you could do X amount of borings and put in so many
8 wells for X amount of dollars and you would not need to submit a
9 preapproved, a plan to the Agency for a budget to do that work.
10 We like that because it let us get right out in the field, and we
11 could address how big a problem there was at each site whether or
12 not we have a little problem, or big problem. Under the current
13 site classification it takes us a long time to find out if we
14 have a high priority site which we may be contamination in a
15 sandbox that is reaching the public water supply, well, it's
16 going to take us a while. We thought with stage one, if we could
17 get right out in the field within 45 days of an incident report,
18 we could get data we need to know if we need to act quickly,
19 submit a plan to the Agency maybe for stage two and let them know
20 we have arrived at this site. We'd like to move it along faster.
21 Can you give us a quicker turn around than 120 days. We would be
22 able to fly things for the Agency.

23 However, the Agency didn't take our proposal of coming up
24 with a lump sum, and what we were hoping is we could find one --

1 if it took care of 60 percent of the sites, and if we had a site
2 that didn't fit within the scope of work that it was set out in
3 stage one, that we could submit an atypical site form to the
4 Agency, you know, this site has two tank beds. Not just one with
5 three tanks. We've got two different tank beds on a 20-acre
6 site. We have site conditions that allow this not to fit the
7 typical scope of work that was identified for stage one.

8 Those we would submit plans to the Agency on and they would
9 be reviewed, but we thought that maybe if we could come up with
10 something that would address 50 percent of the sites, that's 50
11 percent more of the work going faster and communicating the goals
12 and letting us know what sites are problems for us.

13 I need to pull out my ad-hoc stuff right now.

14 MS. MANNING: It's right here.

15 MS. DAVIS: Ad hoc went through and discussed which payment
16 methods we thought would work. Early action activities, we
17 agreed. 20 and 45 day you could probably lump sum. Early action
18 units and removal of excavation preparation of the plan can be
19 lump summed, but the field work and the consultant oversight out
20 in the field, we did not feel you could put a lump sum on that.
21 We proposed maybe a maximum daily charge. And one of the reasons
22 we went with this, is what if your -- if it's a UST removal of
23 one tank, a thousand gallons, which might be a half a day or
24 you're going to pull a 25,000 gallon tank that's going take a

1 crane and it's a lot larger so it might take two days, we just
2 felt there's too much variability to lump sum it. We also felt
3 that anything with groundwater removal or free product that in
4 itself we felt was an atypical situation. It should be a --
5 Basically anything with free product should be time and material.
6 Site investigation, we agreed stage one could be lumped sum.
7 Just like I talked about, a preapproved, your, you know, blanket
8 approval up to so many dollars. Stage two and stage three we
9 thought, I'm assuming variability, you know, for corrective
10 action, so four borings at a site and 16 borings. Just depends
11 upon the characteristics of the site and how contaminated it is.

12 We did feel for low priority corrective action plan,
13 they're fairly simple. They're pretty much the same for all
14 sites. You could lump sum those. Same thing with report
15 preparation, low priority and low priority groundwater completion
16 report. High priority corrective action plans we thought
17 possibly you could lump sum the preparation of a conventional dig
18 and haul, if you had the right scope of work and all the details.
19 However, at the time you ad hoc and put it together, other PIPE
20 members have said, you know, we don't think that could be lump
21 summed at this particular point, so I don't know if that could be
22 or not. And also the LUST Fund Reimbursement Report Preparation,
23 there could be a lump sum for every time they needed to make a
24 reimbursement request. It could be X amount dollars for that

1 request.

2 We went through and tasked out early action task list.
3 Everything we have to do to do a 20- and 45-day report, these are
4 all the items that we have to do in order to meet the regulatory
5 requirements of that report. We summarized those and put in
6 estimates of how many hours it would take for each office to do
7 that. And we did that for several lists, gave them the scope of
8 work more or less. Scope of work was very important to us. We
9 need to know exactly what the Agency expects from us so that we
10 can prepare the report. What we didn't want was project managers
11 calling us up and saying, well, you know, we want two more
12 borings. We want this, we want that, adding to the scope, but we
13 would not be getting paid for it and that's referred to as scope
14 creep.

15 MS. MANNING: By the way, let me ask you this. Does the
16 Agency ever go out in The Underground Storage Tank, in the field,
17 and observe what you're doing or that their review is mainly
18 largely and almost solely on paper?

19 MS. DAVIS: The review is almost always just on paper.
20 Sometimes they come out in the field. But mainly it's just a
21 paper reviewer. Again, the ad hoc came through with daily
22 charges for activities that anytime you're in the field that
23 there's just too many sites, specific conditions, that don't
24 allow lump sum to be put on field activities. We identified what

1 the Agency said they wanted was a lump sum that worked for 75
2 percent of the sites. So if you -- under that situation, a lump
3 sum can't fit 100 percent of the sites, so let's identify when we
4 might have an atypical situation or a change per se of a site
5 that can't be completed in a lump sum.

6 We gave them several examples what we thought might be
7 atypical situations. Those are included in the testimony. Like
8 some of them would be the extent of the contamination, the site
9 size, number of tank beds, things like that, site geology.

10 Stage one site investigation, we had not quite as detailed
11 as what the Agency had in their proposal. The Agency in 734 in
12 their proposal on stage one site investigation basically kind of
13 oversimplifies things. They try to tell you exactly how many
14 feet to go out from the samples that were collected when the tank
15 was removed or if you had a hit, go out 15 feet. Very explicit.
16 The only thing is that many of our sites we don't have any sample
17 from when the tanks were removed. It wasn't part of the law when
18 the tank was removed to take samples for a while in Illinois.
19 And many times we inherit a site after the tanks have been
20 removed. The owner/operator hired a contractor to come in and
21 pull the tank and found they had a problem and then hired a
22 consultant. Maybe right away, maybe a year or two later. So we
23 don't have any data to start from our tank beds to even get us a
24 good starting place. You have to assume that there's

1 contamination, then you basically start at the tank bed. I think
2 that pretty much covers that.

3 MS. MANNING: You're talking about the extent of
4 contamination and I'd like you to cover, if you would, Cindy, for
5 purposes of the record and the Board, what discussions PIPE might
6 have had with the Agency about TACOing out of some of these sites
7 and whether TACO is a method that can and should be used in some
8 underground storage sites and whether you're using it and that
9 kind of thing. If you could just sort of express your opinion on
10 the use of TACO and underground storage and tank remediation and
11 whether that would save dollars and what -- what are the pros and
12 cons of that approach.

13 MS. DAVIS: Okay. The Agency, in one of our PIPE meetings,
14 came to us and basically informed us that we needed to find away
15 to cut 125 million dollars a year from the Fund and talked to us
16 about the use of TACO. And the way it is right now, is if an
17 owner/operator decides that he's going to clean up, other than
18 something other than a residential, their liability does not go
19 away, but they are out of the Fund. But once the EPA issues a no
20 further action letter, the owner cannot come back in the Fund.
21 Let's say, later on he finds free product is entered into the
22 sewer that he knew nothing about or he's had vapors. He's not
23 protected. He doesn't have any money to do a cleanup, and I
24 think that's probably what prohibited most of my clients from

1 wanting cleaning up under TACO. So, yes, they spend more money
2 cleaning up to Tier 1 residential. I think it can be addressed
3 by if we -- and I think our owners and operators would take
4 advantage of TACO and save the Tank fund money if they're allowed
5 later on, if there's a problem found, back into Fund. And I
6 think that's -- pretty much sums it up. TACO could save quite a
7 bit of money.

8 MS. MANNING: I'm going to mark these as an exhibit. These
9 are letters, reimbursement letters, that Cindy has received from
10 the Agency that she -- I think we're up to that. She wants to
11 discuss in her testimony today. I didn't mark these because I've
12 got lots of copies though.

13 BOARD MEMBER GIRARD: But before we get that, to sort of a
14 general question on the discussions you've had in your ad hoc
15 committee. Have you ever discussed introducing competitive
16 bidding into any aspects of the LUST cleanup process as a way to
17 contain costs?

18 MS. DAVIS: No, we did not.

19 BOARD MEMBER GIRARD: Is there any reason you haven't done
20 that?

21 MS. DAVIS: Not that I'm aware of. Not -- It just never
22 came up in any of our discussions.

23 BOARD MEMBER GIRARD: Thank you.

24 MS. MANNING: I'm not sure we can require a statutory

1 change as well.

2 MR. KING: Why would that require a statutory change? I
3 mean, could the reasonable cost, the statute, it doesn't
4 declare --

5 MS. MANNING: Maybe I misunderstand the question. To allow
6 the Agency to bid, is that the question? Who would bid the
7 project?

8 BOARD MEMBER GIRARD: For example, looking at Exhibit 34
9 where we got a LUST program, some aspects of the costs have to be
10 competitively bid, whether it is the dig and haul part or other
11 parts. I'm not talking about for the other process but certain
12 costs have to be bid and they have to get competitive bids before
13 they move forward with that part of the remediation. And that
14 seems to be a reasonable way to contain costs, which is one of
15 the goals the Agency is doing, is to contain costs in this
16 program. And so I was just wondering why your group is coming up
17 with an alternative proposal for the Agency? I was just
18 wondering if you were considering competitive bidding for the
19 process as a cost containment strategy?

20 MS. DAVIS: We have not. We can discuss it. I'm not sure
21 it really would be a cost savings, but we can discuss it in our
22 legislative group to look at.

23 MS. MANNING: Just so I understand the question though,
24 Member Girard, the bidding, the owner and operator would do the

1 bidding?

2 BOARD MEMBER GIRARD: Would --

3 MS. MANNING: Maybe you -- if you gave a description
4 between the owner/operator and --

5 MS. DAVIS: The owner/operator --

6 MS. MANNING: Go ahead.

7 MS. DAVIS: The owner/operator hires the consultant. They
8 don't know anything about underground tank rules and regulation.
9 They don't want to have anything to do with it. They hand it to
10 us and we take it care of it. So what would be asked is to have
11 the owner/operator to go out and get bids. I don't think the
12 owner/operators are interested in doing that.

13 BOARD MEMBER GIRARD: Well, it would depend on the kind of
14 rules that are written up by the Agency for implementing the
15 Fund. For instance --

16 BOARD MEMBER JOHNSON: Here are the five states that do
17 that.

18 BOARD MEMBER GIRARD: I don't know that there's anything in
19 the statute that would restrict the Agency for writing rules, say
20 for instance, you know, once an owner/operator hires a contractor
21 and that contractor doesn't have to go out and get bids on
22 certain subcontracted activities, whether it's hauling, digging,
23 you know, for instance. So I'm not saying it would be the
24 owner/operator gathering the bids. It may be the contractor,

1 but, you know, that's the kind of question. I was just asking if
2 you even brought that up in your discussion in coming up with an
3 alternative proposal in considering?

4 MS. DAVIS: No, we have not.

5 BOARD MEMBER GIRARD: Certainly cost containment is the key
6 goal of the Agency, and the rate sheets they came up with one way
7 to contain costs. You said set a limit and say this is the
8 maximum. But competitive bidding is another cost containment.

9 MS. DAVIS: Yes, but we have not talked about it in our
10 group.

11 MS. MANNING: Then again, so I understand, the concern is
12 that competitive bidding that a consultant is going to engage in
13 with controlling the subcontractors or that the owner and
14 owner/operator would engage in to determine which consultants to
15 hire? Because the latter really needs to, you know, asked to
16 Bill Fleischli when he testifies tomorrow.

17 BOARD MEMBER GIRARD: Well, there are some models out there
18 that some other states are using competitive bidding in
19 processes. I wondered how broadly you're looking in terms of
20 crafting an alternative.

21 HEARING OFFICER TIPSORD: And if I may, for example,
22 further I noticed, Ms. Davis, you, in addition to CSD, also have
23 Heartland Drilling & Remediation?

24 MS. DAVIS: Yes.

1 HEARING OFFICER TIPSORD: And I assume that CSD hires
2 Heartland to do most, that would be an example where CSD would be
3 required to do competitive bidding for drilling which, you know,
4 I'm not saying yours aren't completely competitive. That would
5 be an example of you would have a general contractor who would be
6 CSD who, of course, would be drilling, perhaps you do competitive
7 bidding for drilling. Competitive bidding for hauling,
8 competitive bidding for those kinds of things.

9 MS. MANNING: We'll look into it. Can I mark exhibit --
10 There are several letters here, a package of letters. Did they
11 all get handed out?

12 HEARING OFFICER TIPSORD: Okay. I've been handed what is a
13 series of letters beginning with a letter dated June 15th, 2004,
14 to Mr. McNutt from Kyle Blumhurst with the EPA; is that correct?

15 MS. DAVIS: No, no.

16 HEARING OFFICER TIPSORD: Okay.

17 MS. DAVIS: It looks like the second page didn't get copied
18 with that letter there.

19 HEARING OFFICER TIPSORD: Yeah, there is no signature
20 there. Package starting with a June 15th, 2004, letter to Mr.
21 McNutt regarding of Site No. LPC number 11-50-10-50-07 in Macon
22 County. If there's no objection, we'll admit these as Exhibit
23 50. Seeing none, they'll be marked as Exhibit 50. And actually
24 --

1 (Exhibit No. 50 was marked for identification and entered
2 as an exhibit.)

3 MR. ROMINGER: Is there an Exhibit 49.

4 HEARING OFFICER TIPSORD: Yes, Exhibit 49 was Ms. Davis's
5 testimony. Go ahead.

6 MS. DAVIS: What these letters are, these are letters from
7 the Agency, either probably approving with modifications most of
8 them or denying certain -- certain costs. And if you start with
9 the ones to Mr. McNutt on June 14th, actually that's a response
10 to the letter of Kyle Blumhurst wrote May 25th, which is in
11 response to the Agency decision of May 20th. This was a site in
12 -- what Kyle was -- the Agency decided that -- One of the
13 monitoring wells had been damaged on this site by the neighboring
14 property owner. He had stockpiled soil on the site and then
15 removed the soil and took the monitoring well out. And we put a
16 plan into the Agency saying that this well needed to be resampled
17 and we needed to reinstall the well. And the Agency agreed but
18 then cut the cost and said that it was negligent so they're not
19 going to pay for reinstalling the well. Kyle made a final
20 decision. Kyle sent a letter on May 25th, which is there, just
21 trying to provide additional justification, that it wasn't the
22 owner/operator's fault the well was destroyed. Please
23 reconsider. And then the Agency, June 15th, said, no, we already
24 issued a final decision on this. Appeal it to the Board. The

1 reason I included this one was, we're talking about \$1,500 to
2 \$1,800 for this well. This is an example that the owner/operator
3 is --

4 HEARING OFFICER TIPSORD: Ms. Davis, I have to interrupt
5 you. This is not a final decision. You have 35 days from this
6 date to appeal this decision. So this, at least this first
7 letter, is one that could yet be appealed to the Board.

8 MS. DAVIS: Okay.

9 MS. MANNING: These came rather quickly.

10 MS. DAVIS: Will you look at these so we don't get in
11 trouble.

12 MS. MANNING: I think we're all okay but --

13 MS. DAVIS: No, no, because --

14 HEARING OFFICER TIPSORD: Why don't we take a 10 minute
15 break.

16 MS. MANNING: We will withdraw.

17 MS. DAVIS: We'll just with draw it.

18 HEARING OFFICER TIPSORD: All right. We'll withdraw, and
19 we'll take a 10 minute break.

20 (A short break was taken.)

21 (Gary King exits the hearing.)

22 HEARING OFFICER TIPSORD: Okay. Do you want to go ahead
23 and do the Motion to File Instanter now? Seeing none, we'll
24 grant the Motion to File Instanter the profiled testimony of Bill

1 Fleischli who will be testifying tomorrow. Pre-filed testimony
2 of Jarrett Thomas who will be testifying on July 6th and
3 supplemental testimony of Joseph M. Kelly and various exhibits
4 granted.

5 MS. MANNING: Thank you. The exhibits are the exhibits I'm
6 putting in today.

7 HEARING OFFICER TIPSORD: Okay.

8 MS. MANNING: Are you ready to proceed?

9 HEARING OFFICER TIPSORD: Uh-huh.

10 MS. MANNING: Before we proceed with Ms. Davis's -- the
11 rest of Ms. Davis's testimony, I just wanted to clarify for
12 purposes of the record that PIPE hasn't considered the
13 competitive bidding issue mostly because we have engaged in
14 discussions that are really responsive to the Agency's proposal.
15 So our discussions --

16 HEARING OFFICER TIPSORD: I'm going to need to have you
17 sworn in since you're answering the question.

18 (At this time the witness sworn in.)

19 MS. MANNING: So basically to answer your question, Member
20 Girard, the discussions we've been having, and PIPE has been
21 having with the Agency, really are geared toward responses kind
22 of alternative to Subpart H, and we haven't sort of got out of
23 that box yet, but certainly we appreciate the suggestion and
24 we'll engage in those discussions.

1 BOARD MEMBER GIRARD: Thank you.

2 MS. MANNING: You're welcome. Cindy, in speaking with
3 these issues and working with PIPE, have you become aware in
4 working with IPMA as well, have you become aware of other
5 agencies in the state of Illinois that deal with the issue of
6 prices for consultants, and can you point in our exhibits to --
7 to -- to the two documents that might be used by those agencies?

8 MS. DAVIS: Yes, Exhibit 45. This would be IDOT standards
9 dated January 1, 2001. Page 29 of their document talks about
10 payment methods. And the first one is lump sum. And it talks
11 about the sums that's fixed and does not change unless the scope
12 or schedule changes. IDOT recognizes that a scope of work has to
13 be developed in order to do a lump sum, and that if a -- if the
14 scope changes, apparently from this document, then the lump sum
15 price would also change. CDB, basically their payments -- and
16 I've done work for CDB, and I've got their professional services
17 and fees handbook for centralized payment negotiations dated
18 April of 2000. CDB pays labor based upon what you pay your
19 employee, your direct wage, plus and overhead rate, plus a profit
20 markup. And the overhead rate calculates in your FICA, your
21 unemployment taxes and that -- those fringe benefits your pay
22 your employees. They allow a standard overhead and profit
23 multiplier of 2.6. So basically you take your wages, you add
24 your overhead rate in and your profit multiplier comes out to be

1 2.6 and that determines your hourly wage for your employees that
2 they'll reimburse. I believe IDOT use as 3.0 multiple and that's
3 basically the two Agencies that I was able to find information
4 on.

5 MS. MANNING: In addition to that, we have some documents
6 in exhibits and the question I want to put to you, having worked
7 in the Agency in the LUST unit for as many years as you did and
8 then going out into private business yourself and starting a
9 business that does LUST work, can you explain to us what kind of
10 considerations there are out there in the private sector, if you
11 will, that are important in terms of making a success of your
12 business so that you're there to be able to continue the service
13 of your plans?

14 MS. DAVIS: Well, obviously to remain successful you have
15 to turn a profit. Without a profit, your banks won't give you a
16 line of credit, everybody understands that. How do you determine
17 -- how do you -- I guess the biggest thing is going to determine
18 your profit is how you estimate your jobs. And the first thing
19 you have to know is, if you're going to put an estimate for a job
20 together, you need to know what's required to do the work. You
21 break that out. You start out with your scope of work. We need
22 to do a 45-day report. What task that entails. What people of
23 your staff are going to do that work. What your billing rate is
24 of that work, and how many hours you think it will take. And

1 that's how you prepare your estimate for the job. The more
2 detail you get, the better your estimate.

3 Some of the exhibits we have, one came from Exhibit 47 came
4 from a PSMJ resources. I attend some of their seminars, and I
5 buy some of their books and I don't remember if this was a
6 seminar or book. It talks about seven step strategies to
7 determine price. The number one step is defining what the
8 project is. And it says over and over again, you got to know
9 exactly what you're doing in order to be able to price it. And
10 my comment on that is towards the lump sum, they have to define
11 the scope of work in order to -- put a price for a lump sum on
12 there. Lump sums can be profitable to a consulting firm. On
13 page 33 you can take 25 to 40 percent priority on a lump sum
14 project if the scope is clear. And that, again, that way you
15 don't have scope creep. You don't have change orders. It
16 clearly says this is what you will do for X amount of money. So
17 PIPE is not opposed to lump sum. Obviously we stand to make 40
18 percent profit if we do it right. But we are willing to do lump
19 sum if the scope of work is defined exactly what is expected of
20 us for a certain amount.

21 Other things -- the -- I think there's been some discussion
22 of cost of doing business in Illinois. The next document I have
23 just basically shows that -- this is a PSMJ resources, and this
24 was is a successful financial management class that I took. That

1 overhead costs for consulting engineers have increased since 1985
2 and it shows a chart of overhead costs, computers, group
3 insurance, payroll taxes has gone up. The cost of doing business
4 in Illinois is costing more than our surrounding states, and we
5 have higher Workmen's Comp. in the state of Illinois. We have
6 higher health insurance because of Madison County. Everybody
7 probably knows if you want a malpractice suit, go to Madison
8 County to file it. It's jacked all of our insurance rates up.
9 Small businesses, like mine, I have 10 employees. I don't have
10 1,000 employees to go to a health insurance provider to give me a
11 group rate. I have 10 employees. If my work force is not
12 healthy, my premiums are high. Our insurance premiums in the
13 last three years have increased about 30 percent a year on health
14 insurance. Our liability insurance, and also there is in our
15 exhibit here, it shows also that PSMJ found group insurance rates
16 were rising rapidly. Professional liability insurance, the more
17 work you do in the state, the cheaper your professional liability
18 insurance is to some degree. I guess they have benchmarks if you
19 sell a million, if you sell five million, if you sell 10 million
20 dollars worth. The smaller you are, the higher the risks they
21 view you at and the higher your insurance premium. Not every --
22 You don't have to take -- There is no law that says I have to
23 take out professional liability insurance. However, I don't work
24 without it. I think it's too big of a risk. But many of my

1 competitors do not have professional liability insurance and
2 their overhead rate is lower and they are making a bigger profit
3 than others who are carrying the insurance.

4 Talking about multipliers, we talked about CDB has 2.6,
5 IDOT is 3.0. This survey shows that the top 10 percent of
6 profitable firms in the U.S. have a target multiplier of 3.5 and
7 they actually achieved a 3.52 multiplier and as a median at 3.00
8 and 2.89. PSMJ also went through each contract by lump sum,
9 percent of construction, cost plus fixed fee. It gave advantages
10 and disadvantages. Lump sum, I'm going to go through the
11 advantages. You can make a large profit if you manage
12 efficiently. And that's where the burden would be on the
13 consultant. If we can manage that project efficiently, we can
14 make good money. Disadvantage, you risk losing money if the
15 scope is not carefully defined or if you haven't negotiated pay
16 for out-of-scope services, which is what we're talking about
17 today. We want our scope defined, and we want to know if there
18 is any atypical or change in our situation, how do we get paid
19 for those.

20 The last issue I want to bring up is the ad hoc -- not the
21 ad hoc but PIPE has talked about the unfairness that we see
22 happening after a 120-day decision where we have the right to
23 either appeal something to the Board or we accept the cut. And
24 we would like to see something put in there, maybe mediation or

1 arbitration, before going to the Board where we can work out
2 small details without having to hire an attorney and create
3 expense and come before the Board. We're talking about, you
4 know, maybe a cost of \$1,500 where we can be in agreement with
5 the Agency. We'd like to find some type of mechanism in there
6 where maybe we have some of our peers on a review panel or
7 something that can understand our point of view, what our, you
8 know, what the problem is and that the Agency will be there too.
9 Some type of step in there that we feel would be fair to the
10 owner/operator and to us consultants that can't afford to hire an
11 attorney to go before the Board. It's unfair the Agency
12 attorneys is paid by the pollution -- or paid by the LUST fund so
13 they have attorneys on staff. It's not costing them anything to
14 go before the Board, but it's costing us. And that's pretty much
15 what I have to say.

16 MS. MANNING: I did want to ask you a little about RS Means
17 before we leave that topic as well. Could you explain a little
18 bit, and we're going to put the handbook of RS Means in, at least
19 if not tomorrow, but by July 6th. But explain the book that
20 you've looked at in terms of RS Means and what it does for rates,
21 particularly an environmental remediation type of rate, and you
22 were talking about multipliers earlier and the CDB and IDOT, you
23 know, what RS Means -- what exactly is RS Means?

24 MS. DAVIS: Well, RS Means is a company that apparently

1 worked with Department of Defense and the Department of Energy
2 and some private consultants to establish books that are used to
3 determine, I guess, reasonableness and fairness for the U.S.
4 Government and for other companies. From what I've talked to, RS
5 Means, and from what I understand in their book, which is the
6 Environmental Costs Data Book, they had their costs in there that
7 did not include profit and markup. So there would have to be
8 some type of profit and multiplier, markup multiplier, added to
9 the cost. And the same with their wages and their -- for
10 engineers, architects, their bare costs without profit and
11 overhead markup on.

12 MS. MANNING: Okay. Is there anything else you want to
13 add?

14 MS. DAVIS: No.

15 MS. MANNING: I just have a couple of more exhibits that I
16 wanted, if I could, Jeff to testify to. He's sort of our
17 information man for PIPE and has done a lot of -- I would like to
18 take it to him before we open it up questions for Cindy and Jeff.
19 Jeff, if you go to Exhibit No. 43.

20 MR. WIENHOFF: Which one is that?

21 MS. MANNING: I'll give it to you. Describe just, if you
22 will, the third page of that, I believe, is the site that the
23 Agency presented in their testimony earlier, I think, on March
24 25th; is that correct?

1 MR. WIENHOFF: Yes.

2 MS. MANNING: And then will you explain the other two pages
3 too.

4 MR. WIENHOFF: I didn't realize necessarily these exhibits
5 were going in today. I didn't have any part in preparing PIPE's
6 testimony. I didn't have anything to do with the pre-file. And
7 I did prepare a couple of documents in these exhibits. Just to
8 clarify for the -- for the record, I didn't realize they were
9 going in today. But the first one in that exhibit is simply a
10 listing for the number of times, and certainly are all the major
11 environmental consultants are listed on the right, what that
12 number is, sites that have been remediated, it just demonstrates,
13 I guess, the firms that do more work, just a volume of work done
14 by different consultants in the state. And the second page
15 simply identifies what I discussed earlier, the location of the
16 sites that were in appendix -- or attachment A of the errata
17 where 80 percent of the sites are located in metro Chicago area
18 versus 20 percent which are not located there.

19 BOARD MEMBER JOHNSON: I meant to ask you then, is that
20 significant in your mind because you're going to necessarily be
21 closer, the transportation costs are going to be less going back
22 and forth? It seems to me the number would be higher in Cook
23 County for that.

24 MR. WIENHOFF: And I don't know. I've never had a site in

1 Cook County. As least any time I've been here, I've never had a
2 site in Cook County or worked in metro Chicago area. So I'm not
3 familiar with the cost in the metro Chicago area, so I'm not
4 making any comparison as to whether they should be higher or
5 lower. I'm simply stating that's how many there are versus how
6 many are not.

7 MS. MANNING: If you turn to the final pages of the LUST
8 Fund budget document which is Exhibit 39, actually we marked it
9 separately as Exhibit No. 40, I'm sorry. Jeff, if you would
10 explain your preparation of that.

11 MR. WIENHOFF: All I did, and I'm not exactly sure at the
12 time why I was putting these together. Just tracks how often
13 these vouchers for payment are sent to the Comptroller. I
14 believe -- or, yeah, I think it's vouchers, payment are sent to
15 the Comptroller for payments. Just to show frequency when
16 payments are issued.

17 MS. MANNING: And the second page shows the LUST fund
18 balance from today's date from 3/5/2004 to 4/20/2004.

19 MR. WIENHOFF: And, yes, and the following page is a graph
20 demonstrating that.

21 MS. MANNING: Thank you.

22 HEARING OFFICER TIPSORD: Are there any questions?

23 MR. ROMINGER: The chart frequency of payments, were those
24 numbers based on -- those are from the Comptroller?

1 MR. WIENHOFF: Yes, I believe.

2 MR. ROMINGER: Are those monthly; do you know?

3 MR. WIENHOFF: It was 15 days. You know, there was payment
4 on 6/1 and 6/15 and so there was 15 days between payments. 30
5 days and 20 days. How many days between payments being issued.

6 HEARING OFFICER TIPSORD: Any questions?

7 MR. GOODIEL: Russ Goodiel.

8 HEARING OFFICER TIPSORD: You need to speak up.

9 MR. GOODIEL: Russ Goodiel with Applied Environmental.

10 HEARING OFFICER TIPSORD: You need to spell your last name.

11 MR. GOODIEL: G-o-o-d-i-e-l. Could you give us an idea in
12 your appeal process with the Ayers decision, not only lawyer fees
13 but as far as time and money, approximately how much and if you
14 care to share, I don't know if you do or not, approximately how
15 much it cost your firm to appeal that case in the -- give them an
16 idea?

17 MS. DAVIS: Can I answer or not?

18 MS. MANNING: I don't know. It's a matter of public
19 record. I can tell him afterwards.

20 HEARING OFFICER TIPSORD: I would specifically note that
21 that issue is currently before the Board about whether or not
22 legal cost and fees should be reimbursed.

23 MR. GOODIEL: I guess my point is the point that -- Never
24 mind.

1 HEARING OFFICER TIPSORD: Thank you very much. Okay.

2 Kyle, do you have some questions then?

3 MR. ROMINGER: Yes. One of them is -- is for Jeff and
4 follow-up from this morning, the other states rates that you
5 estimated in the summary for, could you provide the calculations
6 of how you came up with those rates?

7 MR. WIENHOFF: Yes, I can go back and get it.

8 MS. MANNING: We may have in a day or two a more
9 comprehensive summary not only these states but on other states.

10 MR. ROMINGER: Okay.

11 MR. WIENHOFF: I'll be happy to go through and provide the
12 calculations.

13 MR. ROMINGER: Okay. And the calculations you're coming up
14 with, Claire, are going to be in addition?

15 MS. MANNING: We'll do it together.

16 MR. ROMINGER: Okay. Cindy, on page three of your
17 testimony you said that PIPE's member firms conduct nearly all
18 the underground storage cleanup in Illinois, could you provide a
19 list of the members of PIPE?

20 MS. DAVIS: No, I cannot. Because many of our members have
21 asked to remain -- they don't want their names published for a
22 fear of retribution from the Agency.

23 MR. ROMINGER: Could you just provide the numbers as far as
24 category of how many consultants, how many landfills, or how many

1 labs?

2 MS. DAVIS: No, I don't have those numbers. I have never
3 looked at it in that way.

4 MR. ROMINGER: Do you have a rough estimate of how many it
5 would be?

6 MS. DAVIS: Right now I think we have somewhere around 20
7 member firms that do a large amount of work in Illinois either
8 through a service or consultant, either laboratories, landfill,
9 consultant, contractors, that pretty much summarizes the members.

10 MR. ROMINGER: 20 firms but they may fall into any of those
11 categories?

12 MS. DAVIS: Yes.

13 MR. ROMINGER: When do they start meeting the add hoc, do
14 you have a rough time on that?

15 MS. MANNING: A point of clarification, you're talking
16 about the ECI work group?

17 MR. ROMINGER: Yeah, uh-huh.

18 MS. DAVIS: Years get away from me. No, I don't. I know
19 it was after we met with the Agency when the Agency first called
20 us together, but I don't remember the year, I'm sorry.

21 MR. ROMINGER: Okay. You also provided agenda for the PIPE
22 meetings between the PIPE and the Agency. Did anybody keep any
23 minutes of those meetings to reflect what was discussed?

24 MS. DAVIS: We might have some. Well, I guess no. We got

1 so busy in the discussion everybody forgot to write it down.

2 MR. ROMINGER: And just for clarification for the Board, I
3 think -- so you discussed some of the emergency rules and the
4 provisions as to what PIPE, the Agency agreed to for the
5 emergency rule. But wasn't it the understanding of both the
6 Agency and PIPE that was for the purpose of the emergency rule
7 only?

8 MS. MANNING: Yeah, I thought we said that before we
9 testified. It was really for an interim -- I thought I indicated
10 that the only reason we were preparing it is to show the
11 complexity of the issues but not that, in fact, it was an interim
12 measure only and neither of us were totally happy where we were.

13 MR. ROMINGER: You stated that was for purpose for
14 emergency ruling only?

15 MS. MANNING: Correct.

16 MR. ROMINGER: On the PIPE testimony, I believe you got six
17 different people testifying. How was that developed? Did you
18 just split it, divide up the issues or was that --

19 MR. WIENHOFF: Is that a question for me? I didn't do it.

20 MS. DAVIS: I can tell you we sent out E-mail to all of our
21 PIPE members and asked who wanted to testify, and then those were
22 the people that responded. And it's their own testimony that
23 they put together.

24 MR. ROMINGER: Okay. Those are all the questions I have.

1 HEARING OFFICER TIPSORD: Anyone else a question for Ms.
2 Davis at this time?

3 MS. MANNING: Thank you.

4 HEARING OFFICER TIPSORD: All right. Thank you. At this
5 time we're going to take the testimony of Mr. Michael Rapps. Mr.
6 Rapps, do you happen to have a clean copy of your testimony?

7 MR. RAPPS: I do. I hope you have one too.

8 HEARING OFFICER TIPSORD: I have one that I've written on.

9 MR. RAPPS: Okay.

10 HEARING OFFICER TIPSORD: If there's no objection, we'll
11 enter Mr. Rapps' testimony as Exhibit No. 50. Seeing none, that
12 will be Mr. Rapps' testimony and we'll have you sworn in and go
13 ahead.

14 (At this time the witness was sworn in.)

15 MR. RAPPS: I haven't been in the hearings until just now
16 actually, and I don't know if you want this read in or not if you
17 would just like me to paraphrase.

18 HEARING OFFICER TIPSORD: You can just paraphrase.

19 MR. RAPPS: Again I'm representing the Illinois Society of
20 Professional Engineers, a group of more than 2,000 PE's and EIT's
21 and engineering students. But I wear a number of hats because
22 I'm also a member of IPMA. I, as an individual, not my company,
23 is a member of PIPE. And, in fact, I've been involved in
24 underground tanks going back to the late '80s and have done a lot

1 in that arena for IPMA with respect to rulemaking, helping with
2 statutes and write ups and so forth, so I've been around that
3 arena for quite a while. My company, Consulting Engineer, we
4 work statewide. We do a number of different things. One of the
5 things we do is underground tank work but that's a rather small
6 part of our business these days. Probably less than 10 percent.
7 So this is not a major thing for my company but is something that
8 I have an interest in.

9 I was -- You've heard of the ad hoc group. I was also part
10 of that. And I would help Cindy out. I think it was about a
11 year and-a-half ago. It was before the rules were delivered --
12 that the proposal was delivered to the Board. And I think our
13 first meeting after the ad hoc group met with the Agency was
14 probably within a week or two of that meeting. And I thought it
15 was done, and a way just to be very cooperative, and I will tell
16 you that part of my testimony is based on -- I started writing
17 this, I think, back in March, was based on perceptions that I had
18 and then I got, I think, from the meeting with the Agency and
19 that was that the Agency had some concerns that maybe the Fund
20 was being depleted too rapidly by some activities that they would
21 just assume have done away with. And I took that to heart. But
22 one of the things I didn't know was just what is going on with
23 the program. Has there been -- have there been any dramatic
24 changes, so I went about putting together some statistics. This

1 appears as a series of figures. Number one is the number of
2 claims paid per year which has a trend which is upward. I
3 thought that's actually pretty good. That means the Agency is
4 doing pretty good job of getting its claims paid. Then figure
5 number two is the number of dollars per reimbursed claim and
6 that's at a downward trend. I don't know why. But I want to
7 guess that maybe TACO had a little bit to do with that, but
8 anyway, I think that's on the positive. Then I did know there
9 had been a lot of appeals before the Pollution Control Board. I
10 think my company has one appeal, on a website, and it's kind of a
11 friendly appeal, a contentious matter. But apparently at the
12 hearing there had been a lot of other appeals. I took a look at
13 what the Pollution Control Board's case load has had at the basis
14 of comparison and it appears from 1990 through 2003, with one
15 exception being '94, '95, that's been pretty steady and it's
16 around 300 cases per year. Then I looked at what do the UST
17 cases have to do with that. As it turns out, of all the cases
18 filed before the Pollution Control Board, more than 35 percent in
19 the year 2003, were LUST cases. I thought that's maybe telling
20 too that there's an issue there. Then I looked at the number of
21 appeals that are filed before the Pollution Control Board, and it
22 turns out that more than 80 percent of the LUST -- appeals filed
23 before the Board in the year 2003 were LUST related which, I
24 think, again says there is a problem here because an awful lot of

1 appeals are being filed with the Board. Then you look at table
2 number six, or Figure No. 6, and it shows that the number of LUST
3 appeals has been steadily increasing, so the point is that
4 clearly there was an issue and to the extent that getting this
5 issue resolved through these hearings will be successful, the
6 ISPE supports this process.

7 Now it is not clear in the Agency's filings and testimonies
8 just exactly what their issues are. And I've kind of had to fair
9 that out, and I've expressed that with statement number three,
10 the reasons of fact. And I believe these to be true that the
11 Agency believe that the LUST Fund is in danger. I'm not going to
12 fault them on that because I agree. There is a suspicion out
13 there, whether it's right or wrong, I don't know, that some
14 contractors may be removing excess volumes of soil when they do
15 dig and haul cleanups. There's a suspicion among the Agency that
16 some people are doing pump and treat with no avail, without
17 success. There's a suspicion that some consultants may be
18 padding their hours. There's a suspicion that there's
19 insufficient methods are being used to cleanup sites. Maybe
20 people are using inadequate equipment, small trucks and so forth
21 to make -- to draw out cleanups and actually get more money out
22 of the Fund. There is a suspicion that too many field staff are
23 being used on LUST cleanups. There's a suspicion that some high
24 priced staff are being used to do tasks that maybe should be

1 assigned to lower priced staff. And there's suspicion that
2 consultants are avoiding TACO rather than do -- they would rather
3 do dig and haul. I don't know if any of these are truths, but I
4 think they are perceptions. There may be some truth in that.
5 There's no evidence to that end. But I think if you can fix
6 those concerns, however if it is to be done, I think you can
7 solve the Agency's problem.

8 The next thing I talk about is audits. Back in '92 I sat
9 in with a group, the Environmental Regulatory Group, the
10 Petroleum Council, the IPMA and others. I think the Agency was
11 involved as well, drafting legislation that pertained to audits
12 of budgets. Actually the author of that was Sid Barter who
13 represented ERG at the time. It was the understanding at the
14 time that if people had budgets approved, that they would be paid
15 through the Underground Tank fund subject only to occasional
16 audits. Now we were led to believe at the time those audits
17 would be similar to an IRS audit, which the IRS is maybe one in
18 10,000, but we're thinking one in 100 are getting audited because
19 if the budget is already approved, what is the point. That
20 apparently hasn't happened. I got that from Doug's testimony
21 that he said he thought most of the requests were being reviewed.
22 I don't -- I don't know the truth of that, but I think it would
23 be helpful if the Board would define what is meant by an audit in
24 numerical terms, being one in 100 or whatever it is you decide.

1 My next item is published costs versus the free market. I
2 guess that actually there have been a number of proposals or
3 suggestions given for how the Agency might control costs. One is
4 cost caps and I took the liberty of looking at Harry Chappel's
5 numbers on E+T+D in excavation, transportation, disposal and did
6 some what ifs. I got those numbers and I made plenty of copies
7 but I don't know if I have enough that go around.

8 HEARING OFFICER TIPSORD: If there is no objection, we'll
9 mark it as Exhibit 51. Seeing none, we'll mark this as Exhibit
10 51.

11 (Exhibit 51 was marked for identification and entered
12 as an exhibit.)

13 MR. RAPPS: The numbers in column A are the numbers that
14 Harry Chappel put together, and incidentally I'm not singling out
15 Harry, it just happens he gave us more information to work with
16 than as did any other witnesses. Those are the actual numbers
17 that were presented by Harry. And the Agency is suggesting maybe
18 we should cap E+T+D at \$57. So one of two things will happen.
19 The free market will continue to operate but if the Agency that
20 sees anything that goes over \$57, they will flag that. In this
21 case, I think there were three instances where the actual data
22 was more than \$57, so I changed that back. And that resulted in
23 a net savings of about less than one percent. It was .33
24 percent. I said what's really going to happen though, if you

1 publish a cap, and say here's the maximum we will pay, people are
2 going to charge the maximum. And when you do that, it's just
3 using that data, the result was an increase of 19.78 percent.
4 Now if you make the case that a large portion of the money paid
5 out from the LUST fund is for excavation, transportation and
6 disposal, that could turn into real money. I looked at the
7 numbers that apparently were paid out in 2000, I think it was
8 2003, it was 73 million dollars. And so this could result in an
9 added cost to the fund of maybe 10 million dollars a year
10 thereabouts. So maybe that's not a good way to go. We call it
11 the law of unattended consequences, we've all heard of. That's
12 basically it. I think if you took the same example, this is the
13 only one I used, if you took the same example and looked at all
14 the other data, you would find that there probably are going to
15 be some unattended consequences. Engineers ask the question, the
16 Agency mention that, I think, close to half a billion dollars
17 over the past 14 years, or whatever time frame, on the LUST fund.
18 The engineers ask the question, how did you spend it? Was it
19 spent on disposal? Was it spent on excavation, transportation,
20 laboratories, consultants? And the Agency's response was they
21 didn't know. Well, you know, it's hard to save money if you
22 don't know how you're spending it. That's the gist of my
23 testimony as I conclude is that I think you need more information
24 as a Board to make an informed decision.

1 Now it occurred to me too that Harry Chappel suggested
2 something of a process when he said, well, we want to charge \$57
3 because that's the mean plus one standard deviation of the data
4 that he had. And their mind the data may not have been random
5 and there may have not been a large enough sample of it. But
6 there is a process mathematically in which you could do something
7 like that. I would like to show you something. This has got to
8 be another exhibit.

9 HEARING OFFICER TIPSORD: Okay.

10 MR. RAPPS: This is the normal curve or normal
11 distribution.

12 HEARING OFFICER TIPSORD: If there's no objection, we'll
13 mark this as Exhibit 52. Seeing none, we'll mark it as Exhibit
14 52.

15 (Exhibit 52 was marked for identification and entered
16 as an exhibit.)

17 BOARD MEMBER JOHNSON: Harry might object.

18 MR. RAPPS: Well, following up on Harry's testimony, that
19 you would use the mean plus one standard deviation, on a
20 standard, normal curve, that amounts to -- to including roughly
21 86 percent. But if -- if the Board said, as an example, that
22 they thought it was reasonable to include 90 percent within their
23 distribution or 95 percent or 80 percent, there is a way to
24 mathematically determine from a good database what that cutoff

1 is. The question in my mind is, is it a good idea to publish
2 that number or leave the burden with the Agency, when they see
3 something that's unreasonable, to have a way to prove it's
4 unreasonable. It switches the burden a little bit, often as a
5 suggestion.

6 Beyond that, I guess it comes down to the third option.
7 The first was cost cap, the Agency's suggestion. The second is
8 to go with the free market and use something like a statistical
9 process to determine what is unreasonable and what is reasonable.
10 And the third one was suggested by Board Member Girard was to go
11 to bids. I'll pair it with Claire Manning and say we didn't
12 really discuss in the ad hoc bids because we were reacting to the
13 Agency's proposal, but I personally don't have a problem with
14 bids. I'm not in the excavation, transportation or disposal
15 business you see. But I do have problems when the engineers are
16 troubled when you try to tell them that we're only going to allow
17 you 15 man hours, or some other number of man hours, to solve a
18 problem when you don't know what the problem is. I think that
19 may be -- not save money in the long run, it may cost money.

20 I've always found if you do a little more investigation,
21 you do a little more thought to a problem, you actually can fix
22 it a lot more efficiently. And that would be my testimony.

23 HEARING OFFICER TIPSORD: Thank you. Are there any
24 questions?

1 MR. ROMINGER: We don't have anything.

2 HEARING OFFICER TIPSORD: Thank you very much. CW3M has a
3 response to a question that the Agency has. So we'll bring CW3M
4 back. We'll have to have you sworn in.

5 (At this time the witness was sworn in.)

6 MS. HESSE: Earlier today Illinois EPA had raised questions
7 about a couple of sites that CW3 described in their testimony.
8 So one, on pages 77 to 78, that was the Kane Garage site. The
9 site number is 981846, and that was described in their testimony
10 for a limited purpose. That is still an open matter. And at
11 this point we don't know whether or not there may be an appeal
12 before the Board. But if something opens though, we just
13 described it though for a limited purpose than that was
14 described. And I'm not going say anything more about it.

15 The other one relates to incident number 981937. And we
16 went back and checked CW3M's records to see which site this was.
17 And it's a site where on three separate occasions CW3M had
18 submitted corrective action plans and budgets, had modified or
19 had them improved with modifications by the Illinois EPA. After
20 the first time when it was approved with modifications, CW3M
21 attempted to guess at what additional information they needed to
22 provide and submit additional calculations so they submitted an
23 amended corrective action plan and budget, which was again
24 approved with modifications. So CW3M once again went back,

1 revised the numbers. In the meantime certain thoughts changed,
2 sources back from material changed which includes costs which is
3 why it looks like some costs may go up. There could be labor
4 issues that could arise, for example, trucks not being available,
5 the maximum material is not being located to do a landfill, and
6 when it's located close to a landfill, because when they're
7 located near a landfill they use the same truck to drop off soil
8 from the site and pick up gravel and bring it back to an
9 underground storage site, so there could be issues like that.
10 But we're not presenting further testimony on that because CW3M
11 has submitted a revised budget.

12 The last time the Illinois EPA amended it with
13 modification, CW3M realized that they could not perform the work
14 for the amount in the modified budget by IEPA. So essentially it
15 sat there for approximately three years until CW3M was able to go
16 out and get other cost estimates.

17 There is currently an immediate corrective action plan with
18 IEPA that's for approval and removal, so we're not saying
19 anything more about that site.

20 HEARING OFFICER TIPSORD: Thank you. Okay, I think we're
21 ready to go back to PIPE. Ms. Manning.

22 MR. ROMINGER: Madam Hearing Officer. I may be incorrect,
23 but did we put in Mr. Rapps' testimony?

24 HEARING OFFICER TIPSORD: Yes, we did.

1 MS. MANNING: Do you want us to get started with -- There
2 are four witnesses that are going to go as a panel.

3 HEARING OFFICER TIPSORD: Okay. Let's start.

4 MS. MANNING: You want to get started?

5 HEARING OFFICER TIPSORD: Okay.

6 MS. MANNING: This is Mr. Doty, Mr. Kelly, and Mr. Sink,
7 Ms. Rowe. Mr. Truesdale is not with us yet. No, Mr. Truesdale
8 will be here tomorrow.

9 HEARING OFFICER TIPSORD: If you're ready, we will have all
10 four of you sworn in and admit your testimony.

11 (At this time the four witnesses were sworn in.)

12 HEARING OFFICER TIPSORD: Any particular order you want to
13 admit them in the testimony?

14 MS. MANNING: Pardon?

15 HEARING OFFICER TIPSORD: Any particular order you want to
16 admit them in? Alphabetical?

17 MS. MANNING: No, alphabetical is fine. Thank you.

18 HEARING OFFICER TIPSORD: Okay. We will admit Mr. Duane
19 Doty's testimony as Exhibit 63. Seeing none, we will mark as
20 Exhibit 63. Mr. Joseph M. Kelly's testimony as Exhibit 64, if
21 there's no objection. Seeing none, and that will include the
22 supplement -- we'll do the supplement and your testimony as
23 Exhibit 64. Mr. Pulfrey, is that correct? Am I pronouncing that
24 correctly?

1 MR. PULFREY: Pulfrey.

2 HEARING OFFICER TIPSORD: We will admit as Exhibit No. 65.
3 And Mr. Sink as Exhibit No. 64. Is there any objection? Seeing
4 none, those are admitted. Go ahead.

5 (Exhibit Nos. 63, 64 and 65 were marked for identification
6 and entered as exhibits?

7 MS. MANNING: Before Mr. Doty testifies, there is an
8 exhibit that we put in earlier today that I would like to testify
9 -- him to testify on. It's the work breakdown structure found
10 after tab nine. I'm sorry. I don't have the exhibit number
11 of --

12 HEARING OFFICER TIPSORD: Exhibit 48.

13 MS. MANNING: Thank you. Mr. Doty, before you begin your
14 summary of your pre-filed testimony, would you please explain to
15 the Board Exhibit 48 and your involvement in -- United Science
16 Industry's involvement in the preparation of this sequela and
17 resolved under the legislative committee, the ad hoc committee of
18 PIPE?

19 MR. DOTY: We recognize when we saw the Agency's submittal
20 to the Subpart H, their proposal to group several tasks into one
21 pay item. We recognize that there's probably a lot of variables
22 in that, in some of those pay items. And I think there's been a
23 lot of discussion back and forth as to the data that was used to
24 support the cost items that the Agency has proposed. So

1 basically what we've done is without -- without objection to
2 grouping task into one pay item but more the concern being, you
3 know, trying to base that -- the dollar amount to be paid on some
4 more reliable, I guess, information basically in years past. And
5 I think the Agency has struggled with this too, and I think
6 they've said so. That a lot of consultants and contractors we --
7 we invoice differently.

8 So to -- to address that and to still provide a scope of
9 work, like Cindy Davis expressed some concerns about earlier, we
10 have proposed to put a standardized format where you identify
11 every task that you can identify that's typically -- that's
12 typically done in complying with the release. Identify each of
13 those tasks and then offer that to the -- the consulting
14 community and the Agency such that the costs are accounted for in
15 a similar matter, a standardized manner. Everybody bills for
16 task A but everybody knows what task A is. And then subtract
17 that data so that then you can -- you can be a little more
18 comfortable or everybody can be a little more comfortable to
19 ensure that the cost has been priced, in a particular group of
20 tasks, as a pay item is there. I don't think the Agency has
21 really had the opportunity to do that because people --
22 consultants and contractors, they all bill differently and it's
23 been a struggle to try and compare apples to oranges where this
24 ideally in concept, this approach, is supposed to help correct

1 that.

2 And the idea is to collect some cost data but also some
3 scope, the effort, the number of hours, number of days for a
4 given period of time until you're comfortable that you can group
5 those together and that details -- it's more of a tier process.
6 Here's every particular detail on its own. And when you get to a
7 group that you want to pay out items -- pay items as a lump sum
8 group of tasks, that's the next task and you can kind of work
9 your way through this type of drill down or tiered process, if
10 you will, for the cost analysis so everybody is comfortable that
11 costs have been compared in more of a standardized format.

12 So, you know, with what we're working on, this is just a
13 frame work. It's got draft stamped all over it but taking this
14 in combination with what the ad hoc group had offered and kind of
15 merging those together in a way where we can offer what is a
16 typical site or a typical scope of work, define the scope of
17 work, define the reasonable amount of effort put to it and be
18 able to define a reasonable cost to it. And that's kind of where
19 this approach is going.

20 If you want to group a lot of tasks together, let's
21 identify those tasks, evaluate them independently and put them in
22 a group because nobody has the advantage to compare apples to
23 apples right now. So that's kind of where this approach is
24 going. It's kind of -- Kind of what we're -- we presented it to

1 the Agency, and I think they've shown a little interest, at least
2 to continue some conversations, but ideally that's where we're
3 wanting to go with this.

4 And it's recognizing that the Agency is wanting the ease of
5 a review, to be able to quickly look at the group task, a lump
6 sum amount, to be able to make a reasonableness determination and
7 be comfortable doing so and then maybe need to take a harder look
8 at the data before we do that, and that's where this approach is
9 going.

10 MS. MANNING: And, Duane, before we leave that. Let me
11 just ask you a couple of questions. First, in the -- in the
12 development of this particular document, you were here and
13 listened to the testimony throughout today. Board Member Johnson
14 asked a question where the range -- there was a large range
15 between two specific items, I think, maybe \$1,500 and \$8,800. I
16 don't remember the specific amount, but there was a large range
17 between a single item. And he had asked, I don't know whether it
18 was Jeff or who the witness was, you were here during that
19 conversation as well, and I guess my question to you, using this
20 work base, tax base kind of approach, would there be an
21 explanation then for -- an expected explanation, if you will, for
22 the differences between the \$8,000 charge and the \$1,500 charge?

23 MR. DOTY: Right. Ideally it's supposed to be able to
24 answer that type of question, you know. The reports they have --

1 the Agency uses a standardized report. You're looking at
2 addressing the same topics in a site classification work plan
3 over and over again of a 45-day report over and over again.
4 They're standardized forms, but there are some areas -- a lot of
5 sites that are not that cookie cutter. And this will help you
6 look into that. You can look at the typical site, the typical
7 effort it takes to get through a typical site, if there is one,
8 but if there is a variable there, you'll be able to determine
9 that in this format.

10 Ideally we would like to be able to look at some of those
11 variables like seeking offsite access, one property or four
12 properties. This should be able to -- in this approach we would
13 like to think that this would identify the typical effort to one
14 offsite owner and that's the cost. If he went three, then it's
15 three times that and be able to offer that to the Agency. Almost
16 it has standard cost. But an additional cost, but if the
17 additional cost is identified also, but only if that cost was
18 necessary does it become part of the pay item, or that task was
19 necessary.

20 MS. MANNING: Could you go through these sort of on an
21 appendix basis and kind of describe each of them separately?

22 MR. DOTY: D, is the lab work. And that's just -- I mean,
23 that's just per sample. And I don't think the Agency has -- they
24 don't want to look at so I don't have -- I'm not a lab. I don't

1 have much to do with these costs, but it does offer a
2 standardized, at least, put the labs on the same page, maybe with
3 methodologies so that they can price similar to the Agency.
4 Track this way, labs across the state accordingly the same way,
5 or at least the cost being reported the same way.

6 Instrumentation and, again, it's just appendix E now. This
7 -- this -- this is work in progress so there's some typical
8 instrumentations that are used in the field offering -- You'll
9 see some of them by the day, by the week just so it's
10 standardized. The standardized billing for each of these, it
11 speaks of instrumentation. Stock items, I'm sure consultants or
12 contractors don't stock exactly the same stock items, but you can
13 build on a list like this and still be able to track that item
14 throughout the state, regardless of consultants or contractors.

15 The appendix G, the labor classification description that's
16 non-professional, that's -- that's some of the bill personnel,
17 the sites supervisors, operators, drill foreman, not what's
18 typically your licensed type professionals and geologists and
19 engineers and whatnot. And that's -- that's -- We left that in
20 there not for the dig and haul but mostly the alternative
21 technologies. I think the costs were still being approached and
22 evaluated on still a time and material basis, so that's the
23 reason for leaving this in here for the open technology.

24 BOARD MEMBER JOHNSON: The proposal here is to standardize

1 the forms, the submission forms, rather than standardizing the
2 unit of measure or -- but you're going to require justification
3 for amounts that are -- I mean, how do you know what justifies?
4 Where do you set the baseline level? Are you going to use the
5 figure that a half day is reasonable for performing this
6 particular task, and if you're -- submit this form with anything
7 other than a half day listed, you have to specify why it exceeded
8 that?

9 MR. DOTY: Hopefully. I mean, hopefully that's what this
10 will do. I don't think this is -- this is intended to go up
11 there and say half a day is going to be four hours or five hours
12 or four borings or one well to be performed in the field. I
13 think the idea is for this to support those conclusions that half
14 a day a five hours and a half day's progress is 250 cubic yards
15 or just to basically support that, and then also to offer a
16 mechanism to adjust it when necessary. Basically put the
17 consulting environment or the consulting community on the
18 standardized cost reporting basis to the Agency to evaluate all
19 costs in a standardized format.

20 BOARD MEMBER JOHNSON: A standardized form but not amount
21 per line item; is that right?

22 MR. DOTY: Right. This is not picking the -- or trying to
23 pick or identify or select the dollar amount. It's to offer the
24 data so that that conclusion can be made.

1 MS. MANNING: If I might interject here too, since I've
2 been sworn to testify in these parts of these discussions, I
3 think there's a bit of -- to further answer your question, Member
4 Johnson, there was a bit of frustration. There was no data like
5 this upon which the particular rates could be established. So
6 the idea is to start with this and develop a database, if you
7 will, of a range of appropriate costs that could be flagged when
8 they're outside that range or that amount once the data is said
9 and it's developed based upon the use of these words with
10 everyone plugging them in. And the idea, I think, also is part
11 of the recommendation to the Agency was to do this
12 electronically, to make it easier in terms of processing and that
13 sort of thing, so that the claim review and reimbursement process
14 could be done much more expeditiously and easily.

15 MR. DOTY: It's a two-stepped approach or a two-faced
16 approach. Collect the data on the minute detail, if you will, by
17 the hour, by the day, by the task and that way you can lump
18 several tasks into one pay item.

19 BOARD MEMBER JOHNSON: And the theory is then that the
20 Agency can look at a stack of 40 of them and they will be able to
21 glean the ones that are unreasonable by virtue of the fact that
22 they're much higher than the other ones?

23 MR. DOTY: And to take some of the question that are in
24 doubt out of, you know, pulling 20 projects and evaluating this

1 particular cost item and 20 percent of them -- some of the things
2 we've been discussing that have caused some concern, it should
3 take -- take that question away and resolve that matter.

4 I think we've spent a lot of time bouncing back and forth,
5 is the data is real enough to make this conclusion and hopefully
6 this type of a purchase will eliminate that concern.

7 BOARD MEMBER JOHNSON: So apparently your negotiation with
8 respect to the proposed emergency rule is fair game? The stuff
9 is in here. Did you guys discuss this and did you throw this
10 particular idea around during the course of your negotiations,
11 the standardized form idea?

12 MS. MANNING: Yes, we did. I don't know if you were part
13 of those discussions. I think the Agency had the document when
14 we were discussing the emergency rule cutoff. But to be fair to
15 the Agency, they've not been in favor of developing a data bank.

16 MR. CLAY: Correct.

17 MR. DOTY: Yet it seems a bit monumental. We understand
18 that the whole idea is to make things simple for both the Agency
19 and the tank owner. And that is the intent of this. It does
20 sound like a lot of work to get done, but if it didn't seem
21 doable, we wouldn't be proposing it. It's probably not as, I
22 think, more timely than a lot of people realize that could be
23 done. So that's kind of the gist of it.

24 So anyway, this particular personnel, you'll recognize some

1 drivers and some drilling and the question is -- is ultimately
2 you're reimbursing by the foot or by the yard, you know, what are
3 this -- what are these people in this particular appendix G
4 doing, and that's for the alternative technologies, that time and
5 material and basis, we elected to leave those in there.

6 And then the stock items and whatnot. It's the same for --
7 and again, this list can probably be added to or shrunk, but
8 there's a lot of well materials listed here so you can evaluate
9 the one inch versus the two inch diameter versus the three inch
10 diameter. It's all in here so you can identify the specific
11 material you're using and the charge. And like I said, we can
12 add -- It's a work in a progress. And we can add or subtract
13 from the list.

14 The same for the equipment that you see in the field down
15 at the bottom here, the excavators, trackhoes, air compressors by
16 the day, by the hour and that basically identifies a unit of
17 measure and then hopefully identify what is that range. And then
18 ultimately, I think, the Agency's intent is to set these cost
19 containment measures so that if they encompass 95 percent or 90
20 percent, 90 percent of the sites, so we get away from this, what
21 is extraordinary and what isn't. Well, if you have all this
22 data, you can determine your averages and you can determine what
23 is the 90 or 95 percent mark and set your cost containment that
24 way and be comfortable doing so. So that's kind of the intent

1 here also is this listing everything that's going to be
2 encountered and anything that can be charged for, tracking that
3 for a period of time so that those -- those conclusions can be
4 drawn and then group them into -- and a lot of things that are
5 variables can also be identified.

6 One of the concerns might be is you can group a lot of
7 tasks together that are very standardized tasks that may not have
8 much of a range as far as cost to complete them. But if you
9 insert one item that can be very variable in its costs but now
10 you've made that whole group a variable pay item because of that
11 one specific task and will help identify those tasks.

12 MS. MANNING: Okay. Thank you.

13 MR. DOTY: Sure.

14 MS. MANNING: You're ready, I think, for your pre-filed
15 testimony. You're going to summarize your testimony that you've
16 already submitted before and is admitted as Exhibit No. 53.

17 HEARING OFFICER TIPSORD: 54.

18 MS. MANNING: Thank you.

19 MR. DOTY: 54.

20 MS. MANNING: Why don't you for the record, just to make
21 sure -- no, make sure that you identify your resume. His resume
22 is included as well in the package as well as United Science
23 Industries Inc. resumes. So I ask the Board to look at them and
24 why don't you tell them a little bit about your experience before

1 you begin.

2 MR. DOTY: Sure. Just general manager for United Science
3 Industries, and I've been working with underground storage tank
4 owners, environmental compliance issues since 1988. I don't know
5 how many sites that we've -- I've worked on 100s of incidents.

6 MS. MANNING: Where geographically?

7 MR. DOTY: Statewide.

8 MS. MANNING: And where are you based?

9 MR. DOTY: We're based in Woodlawn near Mt. Vernon. A lot
10 of work is checking underground storage tank work. But we do
11 work from Cairo to Chicago and from the east to the west borders.

12 One of the -- one of the things I wanted to start with is
13 the half day increments, but it's my understanding there may be
14 an errata sheet coming so I don't know if there is or not. I
15 don't want to -- Am I wasting my time here sort to speak?

16 MR. CLAY: No, I think we're looking a comments at the
17 previous hearing as far as half day and what constitutes half day
18 as limiting two half days per day.

19 MR. DOTY: That was my primary concern, the four hours
20 versus five hours, and then a lot of times in the field you can
21 find yourself pushing, pushing the project if you've got the
22 daylight or you got the resources to do it. You try to beat
23 weather, which we just gone through a rainy season so that's a
24 very typical thing we have to do. Three day weekend coming up or

1 any just any weekend coming up to do the work as opposed to
2 excavations. We often work beyond an eight or 10-hour day
3 depending on what the half day increment gets set at. My concern
4 was maybe more of a shift or half shift or if you want to do it
5 in that type of an increment, not to limit it to just -- just the
6 two because we have found ourselves in the field pushing beyond
7 an eight or 10 hour day. It's not every day, but it's not
8 uncommon either so that was a concern that I had. And that's why
9 I offer that maybe in this testimony you'll see maybe we go to a
10 shift. A lot of the factory type works -- factories work three
11 shifts, three eight hour shifts. Maybe that language helps make
12 better sense out what you're trying to accomplish here. Maybe
13 you call it half a shift or whatever. But not to limit it.

14 BOARD MEMBER GIRARD: Well, I have question along those
15 lines.

16 MR. DOTY: Sure.

17 BOARD MEMBER GIRARD: Would it just be better to have units
18 in hours if you're going to limit the -- limit something to a
19 half a day, five hours in the regulation rather than half a day.
20 I mean, are there problems with just saying four hours for this,
21 five hours for that, eight hours, 10 hours, whatever they want
22 the limit to be.

23 MR. DOTY: Yeah, as long as it doesn't limit the day
24 somehow. I mean, are you just going to just two to five hours,

1 is it going to be a -- are you just talking strictly by the hour?

2 BOARD MEMBER GIRARD: Yes.

3 MR. DOTY: I personally don't have a problem with it and
4 that's what they're trying to change. No, there's another --
5 there's very real concern about the professionals on site
6 supervising the work. They're not doing the work. Your -- It's
7 -- The progress is -- is -- And I don't know that it's not
8 entirely out of their control but is -- is if you run into a site
9 condition that if four borings happen to take five or six hours
10 and we're there to supervise that scope of work period in regard
11 to the time frame of efficiency, of course. I see your point.
12 No, I wouldn't have a problem with it at all if it were done that
13 way.

14 BOARD MEMBER GIRARD: Thank you.

15 MR. DOTY: But the -- back to this intent, if you go back
16 to here, if you're looking at how long does it take to do one
17 boring and how many hours of supervision that is, I think you
18 might want to consider that too just so that you're not doing a
19 three hour scope of work and someone's -- well, that's a five
20 hour minimum, do you know what I mean? Because I don't think we
21 want to get to that point either.

22 But anyway, that was my concern about the half day and I
23 think the Agency's sound like they recognized that. So the
24 travel time, I would actually as far as the half day goes, I'm

1 not comfortable with a lot of travel time being inconclusive of
2 that four hour day or half day or whatever you end up calling it.
3 I think it's pretty obvious that it's not uncommon for
4 consultants to work between the 30 minute drive from the office.
5 I think once you see these sites, plot it out that you see it's
6 very, very common for a lot of consultants to work unrestrictive
7 geographically. But I think I would be a little bit concerned
8 with including the travel times as part of that. I would
9 recommend that that be on its on -- on its own, stand alone, a
10 consideration for the time that it took to do that travel and the
11 cost that was incurred for that travel. I would recommend that
12 be pulled out of that pay item, whether it's a half day, half
13 shift, five hours, four hours or independent from -- from the
14 performance.

15 Once you get on site doing four borings, I agree. You can
16 standardize that. You can standardize one, two, three or four
17 borings once your on site. The work does get standardized but
18 the travel time is not always standard. And that's why if you're
19 going to use the standard pay out item, I think the scope of work
20 needs be standard. The travel times will eschew that. It's
21 going to be one of those variables that's going to eschew that
22 whole group of tasks that are incurred or performed once you get
23 on site. And I think it kind of eschews the numbers if you want
24 to try to split the cost as to the performance of those four

1 borings because that's what you're there to supervise. So I do
2 have a concern there.

3 Also I think, it's my understanding, that the half day has
4 proposed and included the instrumentation. And I don't know if
5 it still will or not but if it does, I think the example I saw
6 that the Agency offered was a half a day for PID, I think, is was
7 used in the calculation. It's not the only instrument that's
8 used in the field. And I think that can eschew some numbers.
9 There are peristaltic pumps. There are insists to hydraulic, how
10 much activity instrumentation that's used in the field, and I
11 don't -- I don't think that including the instrumentation may be
12 such a good idea. This type of approach that I explained earlier
13 might prove me wrong and it might not. But I think everybody
14 would be guessing to think that all the instrumentation
15 regardless of what instrument was being used would fit in that
16 type of a pay out item.

17 BOARD MEMBER GIRARD: So let me just summarize in terms of
18 travel or instrumentation, those costs should be broken out
19 separately and any cost containment should be a separate issue?

20 MR. DOTY: No, I think you can contain the costs of the
21 instrumentation by looking at it by the day, PID as X amount of
22 dollars a day, whether you're drilling with it or hauling with it
23 or, you know, whatever task is at hand. The travel, I think, you
24 can contain it but you may want to take -- you may want to take a

1 ranged approach, not just a one side, one size fits all approach.
2 You may want to look at radius zero -- zero to 50 miles or
3 something to that. This type of approach would also tell us what
4 is the average travel time, and maybe we could draw a conclusion
5 as to what -- If you want to lump sum it as the same pay item
6 every time, you can find out by looking at the data over a short
7 period of time what is the average travel time or what is the 90
8 percent. If you want to set your cost containment so that it
9 captures 90 percent, we could do that but I think right now
10 everybody would be -- most people would be guessing or making
11 some assumption to do it with a one size fits all approach.

12 BOARD MEMBER GIRARD: So with the travel costs, it could
13 contain costs by putting a limit, you know, on cost per mile or
14 something of that sort.

15 MR. DOTY: Sure. You could put it on per person, you could
16 put it on per hour, you could put in on the radius, you know.
17 You may not keep it in that half day but you can still contain
18 the costs by looking at just pay rate. That would be
19 reimbursable. It may be by the mile. It may not have anything
20 to do with a half day, it may not have anything to do with four
21 borings. Just simply trying to get to the site and back. You
22 could look at the actual miles traveled and come up with a
23 reasonable cost to contain that in that manner. But it's still
24 one of those variables. And I'm afraid -- I'm concerned that

1 you'll eschew some numbers and put something that variable into a
2 lump sum pay item. And I think -- I think it's going to be one
3 of those items that you need to look at and how many miles you
4 travel and determine what is the reasonable charge. It may have
5 to be an independent pay out to make it reasonable.

6 BOARD MEMBER GIRARD: Thank you.

7 MR. DOTY: Sure. I also think that maybe looking at this
8 on a more detailed basis, at least at the start. You can
9 identify what personnel are -- typically are going out and doing
10 a scope of work.

11 Mr. Rapps was testifying that maybe one of the Agency's
12 concerns is that higher price professionals or personnel are
13 doing the jobs that maybe a lower priced professional could
14 perform. And I think by linking the personnel to the task
15 performed to that rate, you'll be able to draw some of those
16 conclusions and make some of those adjustments and determine are
17 they right.

18 You know, are, you know, PEs doing the task of engineer
19 ones or vice versa. I think you'll be able to get to that
20 conclusion by looking at this. And it's another concern about
21 the half day. You may be able to then support your half day with
22 your travel time and instrumentation separately.

23 And we intend to do that. This is supposed to easily be
24 able to link -- ultimately we want to be able to easily link the

1 job titles that are typically performing this typical task at
2 this typical level of effort, and these costs are typically
3 incurred and is that standard or is that a variable. And ideally
4 we want to be able to identify those areas. And then you can
5 support half days and 250 yards in a half day and those type of
6 performance requirements and feel comfortable that you're being
7 reasonable about it.

8 Also in here on the previous and some of the earlier
9 hearings, there was some question as if the consultants were on
10 site during the tank removal, and I think that was there was some
11 concern about a half day for the supervision of the removal of
12 one tank or four tanks regardless of size, number. And I think
13 there was some -- I guess the impression was that the removal
14 contractors explained to the Agency that consultants are not
15 always there. And in this pre-filed testimony, I've addressed
16 the scenario as to maybe where that came from. We -- There are a
17 -- A lot of times it's not uncommon for the consultant to be
18 contacted shortly after or the day of the pull. There's not been
19 an incident reported before, yet that a consultant wouldn't be
20 there. But there are -- there are a lot of removals that take
21 place after the incident is reported. And it's our experience
22 that we are -- we are there at the -- for the duration of the
23 tank pull and some type of oversight capacity for the owner for
24 the activities that are going on. We don't -- we don't set this

1 up. It's not been our experience to set this up as just call me
2 as you need me basis. That's why I offered this as maybe where
3 some of the tank owners or the tank removal contractors were
4 coming from. They're not always there. Well, we're not going to
5 be there unless an incident has been reported. Maybe that's some
6 of where that came from. I don't know. I'm just offering it up
7 as a possible rationale as to those types of comments that they
8 made to the Agency.

9 We're there -- we're there to supervise the activities. We
10 always have been. It's always been determined reasonable in the
11 past and the cost has been reimbursed. Of all the tanks pulled
12 that USI has done, it's not call me when you need me. There's
13 activity going on and the tanks -- with those tanks and they're
14 being removed, were there to supervise them, oversee it.

15 Talk a little bit about the report preparation. And I
16 think and again some of this -- this standardized work breakdown
17 should help us with this. But in response to what's been
18 proposed as far as the one size fits all costs for corrective
19 action plans, for example, I think maybe we ought to take a hard
20 look at that to more along the lines of what is the scope of
21 work. It's not always -- it's not going to take the same level
22 of effort to draft a corrective action plan that addresses off
23 site contamination on four adjoining properties as it would to
24 prepare a corrective action plan that proposes addressing a few

1 100 yards on site. It's just not going to be the same. And what
2 I've compared that to in this testimony is almost the same
3 rationale that was used in the Agency's proposal for tank
4 removal. I think maybe Mr. Bauer, I think it was Mr. Bauer, in
5 his pre-filed testimony said that -- said that smaller tanks cost
6 less to remove and larger tanks cost more to remove than the
7 medium size tanks, or something to that effect. Same thing would
8 stand true to the corrective action plans. The smaller concerns.
9 The smaller plumes to deal with. The soil only plumes. We're
10 proposing something inside like institutional control. That's
11 not going to take the same level of effort that it's going to
12 take to prepare corrective action plan that addresses soil and
13 water problems on the site itself, off site is going to make even
14 more complicated and it's just one size fits all doesn't --
15 doesn't definitely seem to work in my opinion as the corrective
16 action plans but addressing, taking the time to evaluate how are
17 -- how are the monies being spent in relation to drafting
18 corrective action plans we'll get supported one way or another.
19 One of us will. Some of us will. We'll know exactly what it
20 takes to put it together, and we can build in some -- some
21 criteria there that identifies what are -- what is your cap.
22 What is it addressing soil only on site? Is it off site? Is the
23 groundwater off site? And maybe we can make an approach. And
24 maybe your cap may not be the same price as other caps. There

1 may be two or three depending on the complexity of your cap. It
2 might be a more reasonable approach. But the question I would
3 raise in this testimony is that it's not -- I've drafted a lot of
4 corrective action plans. USI has addressed a lot of corrective
5 action plans. These gentlemen have reviewed a lot of corrective
6 action plans. And it's not the same amount of hours with the
7 same personnel every single time. But the effort you put into a
8 corrective action plan is very much -- much linked to the
9 complexity of the problem in the field that you're trying to
10 correct.

11 BOARD MEMBER JOHNSON: If that's the case, how will -- just
12 the input of data, if you're going to have a range then you're
13 still going to have an arrangement.

14 MR. DOTY: Well, we can identify what is -- what causes
15 that. What variables cause the level of effort to increase an
16 drafting a cap. Is it because you sought off site access on so
17 many different properties or because you approached the community
18 to consider and support maybe their groundwater ordinance. You
19 don't do that with every site. And I will be able to identify --
20 we should be able to identify the cost associated with that if
21 that was part of their plan.

22 BOARD MEMBER JOHNSON: And have a subcategory.

23 MR. DOTY: Right. It's almost a standard price for a
24 vehicle. And if you want -- if you want a particular option you

1 know it's going to offset that cost, you know you want to put it
2 on your car. It's almost similar to that but needs to be
3 defined, I know, but you draft a corrective action plan. If I
4 want, if I use a city wide ordinance or approach that supports an
5 ordinance, we might be able to put a typical cost in that but
6 you're not going to if we don't track the data. We don't
7 understand how these monies are getting spent, we're not going to
8 -- I don't think be able to set a cost containment as we could
9 be.

10 MS. MANNING: Let me just step in there between, for
11 example. You could approach the city about a groundwater
12 ordinance for purposes of a TACO cleanup, would that be correct?

13 MR. DOTY: Right.

14 MS. MANNING: Which the Agency has alleged is a bit cheaper
15 in terms of deciding consults that would go to a city for
16 groundwater ordinance would be for that purpose, would be to have
17 a TACO deal?

18 MR. DOTY: Yeah, but I'm not an expert on this stuff. But
19 if you want add the question to track the history, you should be
20 able to do this. You want to know -- how much -- how did I save
21 or how many sites did take advantage of city wide ordinance. But
22 that database could tell you that. If you knew what the average
23 cost for groundwater containment in that city, you might be able
24 to make some -- some conclusions, some rational conclusions as to

1 what's working and what's not as far as cost containment.

2 BOARD MEMBER JOHNSON: I guess my concern would be, as it
3 is in any of these cases, where they set a lump sum is that their
4 statutory duty is to reimburse reasonable costs. And when you
5 set a lump sum, it seems to me like -- unless they do -- people
6 do actually submit bills, billing statements, and you pay only up
7 to the maximum amount, that if the lump sum means -- and it's
8 \$100, that you're going to get reimbursed \$100 really when \$70 is
9 reasonable. You guys are not filling your statutory duty and
10 you're reimbursing an amount greater than what the reasonable
11 amount is. And that to me is the whole problem with the lump sum
12 from beginning to end whether -- regardless of how much data you
13 have to get to it. It seems like you're picking an average and
14 picking something in the middle rather than what a specific or
15 particular task that you do. Maybe there's a way to get around
16 that. I can't yet figure out how.

17 MR. DOTY: Yeah, that's a good point. I think a lot of
18 people have had that very same concern. Hopefully we'll be able
19 to identify what are we saving, I guess, in lumping a group of
20 tasks that can be paid as a lump. That has one pay item for a
21 group of tasks and leave those variables out of that task and pay
22 specifically for that level of effort and double -- and you can
23 monitor it periodically. It does -- it's a method. It's not
24 asking a price be put into regulation. It's asking that a method

1 can be put in there and asking that it can be monitored and
2 adjusted up or down quickly without having to go through
3 rulemaking again. In the meantime those costs are still getting
4 reimbursed when a different cost could be or should and this
5 would allow a quicker adjustment I think.

6 BOARD MEMBER GIRARD: Do you think that all of your
7 competitors are going to want to submit information in detail,
8 that you have in Exhibit 48, in terms of the breakdown of their
9 cost of doing business?

10 MR. DOTY: Are all of them going to want to? I don't -- I
11 don't know. I would think that would be probably idealistic to
12 think they would want to. But do they want to be strapped with
13 Subpart H? I don't know. You know, it's -- The consultants that
14 I've had the opportunity to talk with and discuss this with, all
15 seem to be very supportive of it.

16 MS. MANNING: Could I ask you, Duane, was this -- was this
17 document drafted just by you outside or was it drafted by United
18 Science Industries, Inc. in conjunction with various consultants?

19 MR. DOTY: This was actually -- USI actually proposed this
20 a few years back or a couple years back about the same time the
21 Agency got a report from ad hoc. I don't know if it was a little
22 bit before or a little bit after. I'm not sure. But about that
23 same time. But this has -- We have shown and discussed that to
24 -- PIPE wasn't around then. But we have shown our concept to

1 PIPE and the consultants there. And the membership there seems
2 to be in support of it. And this may have been altered slightly
3 from what the Agency saw initially but not -- not much. The
4 concept remains the same.

5 MS. MANNING: Well, as a matter of fact, you discussed it
6 with the PIPE ad hoc legislative group --

7 MR. DOTY: Right, right.

8 MS. MANNING: -- and everyone was in support of presenting
9 it in the context of this hearing; am I correct?

10 MR. DOTY: That's correct. Everybody recognizes it as a
11 frame work. I don't think -- they're not -- everybody is not to
12 the point where everybody is so supportive, here, take this
13 exactly. But there was -- overall it was viewed as something
14 with good merit and the very good frame work as a starting point
15 to them including the add hoc -- some of the ad hoc
16 recommendations kind of merged them together and offer that for
17 consideration. But the general -- but still the general -- the
18 general idea remains the same. Collect the data for a period of
19 time before you group a lot of tasks into one pay item so you're
20 sure you're accurate in your average cost in the 90 percentile
21 range if that's where you want to be.

22 BOARD MEMBER JOHNSON: Would you propose putting the
23 rulemaking on hold or write into the rulemaking, it seems like it
24 would be awfully difficult to collect data for six months or

1 eight months or a year, or however long you propose to collect
2 it, and you have already written into the rule what you have done
3 with that data, you have to come up with some mathematical
4 formula that clearly the Agency can read.

5 MS. MANNING: And that's -- And, you know, as point of
6 clarification, Member Johnson, that's actually what the PIPE
7 members had had suggested that there be a data bank of costs that
8 are actually -- based on what the Agency currently has. The
9 Agency currently has the number of corrective action plans that
10 right now, as Duane testified, and someone earlier testified,
11 there's no real distinction between where the costs are and that
12 kind of thing. And this would provide some sort of definition,
13 if you will, to the various items of the cost, then get to a
14 specific task so the scope of work isn't so vague afraid and that
15 people understand what what's necessary in each project.

16 MR. DOTY: We're really -- you know, we're really not too
17 sure yet. The data might be collected quicker than you think or
18 quicker than I thought when we discussed it. I believe in the
19 last -- last set of hearings or group of hearings in, what, the
20 end of May. The Agency testified to a couple of 300 decisions, 2
21 or 300 decisions per month, I think, and then the claims unit
22 makes similar determinations or a couple 100 a month. I forget
23 the numbers. But there were a lot of decisions being made every
24 a month. That's a lot of data in a short period of time to start

1 building this database. And it may not have to run as long as we
2 think before we got some numbers that we're comfortable with at
3 least to make some group, some grouped tasks as pay items.

4 MS. MANNING: And, Duane, correct me if I'm wrong, part of
5 the reason and rationale for this well was that the consultants
6 would assume a lot of the burden themselves in terms of
7 explaining to the Agency what a specific project actually entails
8 as to having the Agency have do that in review of the various
9 sites?

10 MR. DOTY: Right. We're not proposing or asking the Agency
11 to build all of the -- he rem you need a database. Do it. We've
12 offered to do a huge part of this. And instead of just dumping
13 it on them and asking the Agency to, here, in your spare time why
14 don't you grab a few people and build a database. We've offered
15 to be very active in collecting this data.

16 I think I also had a concern about the -- there's no pay
17 item being proposed for amended plans, amended the corrective
18 action plans. You know, I talked to the Agency about it and, you
19 know, they've had concerns about we're not going to pay you more
20 than once to do a corrective action plan. I understand that. Of
21 course, they're not paying me but they're reimbursing the tank
22 owner. But I know where they're coming from about the plans.
23 But there's a lot of reasons for the amended plan that neither
24 the consultant, the tank owner or the Agency could foresee. And

1 I think to just expect -- I don't have a crystal ball in -- to
2 just expect it's unreasonable to think an amended plan will ever
3 be necessary and therefore should never be reimbursed, I don't
4 think is a fair approach to the owner/operator. There's too many
5 unforeseens in executing these plans. And where everybody's
6 scope of work is being proposed by a licensed professional based
7 on the information at hand, that scope of work that is reviewed
8 by the Agency that has been doing this for years also, and
9 everybody is in agreement and if the plan becomes necessary, it's
10 just an unforeseen condition. Nobody saw it coming. There's no
11 reason to disadvantage the owner/operator for that in my opinion.

12 I want to look at the stage one real quick. The stage one
13 revisions to what was proposed, but I'll go ahead and address it
14 anyway. Stage one has laid out in the Agency's proposal, and in
15 my opinion, could easily result in almost some locations being
16 drilled on top of themselves. And I know there's, you know,
17 we've got at least a little bit of common sense, you know, better
18 than to do that. But to put it in -- put it in regulation that
19 you drill at a specific point, 15 feet perpendicular to your
20 product lines and your product lines make a 90 degree angle, it
21 can result in almost drilling on top of one another to more than
22 one boring too close together.

23 I think multiple pump islands could also present a problem
24 similar to that. Pump islands, two or three pump islands and

1 you're to drill 15 -- 15 feet perpendicular to them, you're going
2 to end up with a couple of borings either in the same spot or at
3 least close to it. And also, we've -- I've laid this out, and
4 again, just on a few sites that USI had done tank removals, and
5 it looks like sampling with the floor of the excavation from the
6 tank bed to drill through every contaminated floor sample, it
7 wasn't uncommon at some of the sites that I looked at to come up
8 with quite a few borings right through the tank bed only because
9 the floor -- every floor sample came back above and the claim was
10 rejected. So, you know, maybe look at the scope of work that was
11 identified at. I have no objection to identifying the scope of
12 work or what's to be proposed or will be reimbursed without the
13 prior plan, I think that is great. I support that wholly. I
14 support the staged approach. Submit the second plan. Submit for
15 reimbursement upon the approval of the second plan, I believe, is
16 how it's proposed, speeds up the process. I am very much in
17 support of the stage one, two and three proposals. It just looks
18 like stage one may require a little more drilling than might be
19 necessary without the Agency. I don't think it was intended for
20 them to review that plan before it happened. And it looked like
21 some drillers or consultants or whatever, if you want to have
22 that concern, could end up drilling, you know, on two foot
23 centers just because the regs are read the way they did. I had
24 recommended maybe use common sense language in there so that the

1 borings will always remain at a minimum interval. I'm not sure
2 if that's a correction that the Agency wants to make, but I
3 understand there may be one coming so this may be a moot issue
4 hopefully. Well, that's the gist of my testimony it looks like.

5 HEARING OFFICER TIPSORD: All right. Since it is now 10
6 minutes till five, I think we're going to call it a day and we
7 will come back at 9 a.m. tomorrow morning and proceed with the
8 rest of your presentation at that time. Thank you.

9 (At this time the hearing was adjourned.)

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STATE OF ILLINOIS

COUNTY OF FAYETTE

C E R T I F I C A T E

I, BEVERLY S. HOPKINS, a Notary Public in and for the County of Fayette, State of Illinois, DO HEREBY CERTIFY that the foregoing 181 pages comprise a true, complete and correct transcript of the proceedings held on the 21st of June A.D., 2004, at the offices of the Illinois Pollution Control Board, 1021 N. Grand Avenue East, Training Room, 1214 West, North Entrance, Springfield, Illinois, in the rulemaking proceedings held before Hearing Officer Marie E. Tipsord, and recorded in machine shorthand by me.

IN WITNESS WHEREOF I have hereunto set my hand and affixed by Notarial Seal this 30th day of June A.D., 2004.

Beverly S. Hopkins
Notary Public and
Certified Shorthand Reporter and
Registered Professional Reporter

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