

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)

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PROPOSED AMENDMENTS TO: R04-23  
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UNDERGROUND STORAGE TANKS  
(Consolidated)  
(35 ILL. ADM. CODE 734)

The Rulemaking Proceeding, before the Illinois Pollution Control Board, was held June 22nd, 2004, at 9 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. Welcome  
2 back. Everything I said yesterday morning applies this morning.  
3 If you start testifying, I'll stop you and swear you in. If you  
4 want to testify, there's a sign-up sheet over there. We'll try  
5 to save room for people who haven't pre-filed to testify when we  
6 get done with the pre-filed testimony. At this point no one has  
7 signed up. We'll see how it goes. And we're going to continue  
8 now with the United Science testimony. I believe -- I want to  
9 remind you you're all still sworn in. Ms. Manning.

10 MS. MANNING: Good morning, Members Girard and Johnson.  
11 We're pleased to be here again today. United Science Industries  
12 Inc. is here to testify this morning. You heard from Duane Doty  
13 yesterday. With me this morning is Duane Doty as well, in case  
14 there is any questions from his testimony yesterday, as well as  
15 Duane this morning, here is Joseph Kelly and Bob Pulfrey and  
16 Barry Sink, each one of them ready to testify and give summaries  
17 of their pre-filed testimony. Each of them have done pre-filed  
18 testimony.

19 We're going to begin this morning with Joseph Kelly. But  
20 before I do that, I just wanted to clarify for purposes of the  
21 record that PIPE is an association of various of the consulting  
22 membership. However, when -- when the company has testified  
23 here -- is testifying here this morning on behalf of United  
24 Science Industries. They're not testifying on behalf of PIPE.

1 I'm helping them as the attorney for PIPE as an association, but  
2 their testimony is for United Science Industries, and that's true  
3 of all of the company testimony this morning and yesterday.

4 So to clarify for purposes of record, because the Agency  
5 had asked various questions about, you know, about PIPE and its  
6 testimony and that kind of thing. When any of the individual  
7 members of PIPE were speaking of their experience in their  
8 positions, those were the positions of their companies. And when  
9 PIPE has a position ready to present, it will be presented to the  
10 Board and it will be clear that it's PIPE's position. So I just  
11 wanted to clarify that for purposes of the record before we  
12 proceeded.

13 HEARING OFFICER TIPSORD: Thank you.

14 MS. MANNING: Thank you. We're going to begin, I think,  
15 with Mr. Joseph Kelly. And, Joe, if you would start by  
16 explaining your experience in the environmental arena. Your  
17 resume is already in evidence, I believe, and go ahead and  
18 explain your experience before you begin.

19 MR. KELLY: My name is Joseph M. Kelly and I am a licensed  
20 professional engineer in Illinois and surrounding states. And I  
21 have been licensed as a civil engineer since 1984. Currently I'm  
22 the Vice President of Engineering for Eco Digital Development  
23 Group, basically an umbrella group that works -- we're over  
24 United Science and other companies. I've been in the engineering

1 profession for 24 years. I'm also a certified hazardous  
2 materials manager and been working strictly, although before  
3 1991, hence the involvement in environmental permitting and other  
4 issues in previous company. I work strictly in the environmental  
5 industries since 1991 and since that time began working in the  
6 LUST projects. Over the years I had other experience through  
7 LUST work or other environmental work through working with other  
8 parts of the Bureau, not only the Bureau of Land of the IEPA but  
9 also the Bureau of Air and Bureau of Water, as far as permitting.  
10 I also had involvement in the solid waste permitting, the SRP  
11 program.

12 In my pre-filed testimony, basically just kind of went  
13 through the synonymous of from where my perspectives kind of  
14 where the LUST program has been and our relationship with the  
15 Agency, which basically started out many years ago. In my  
16 opinion both organizations are pretty small, LUST section was  
17 beginning and the USI was involved in that process and working  
18 along with the Agency and just kind of the relationship of how  
19 things worked over the years. And it seemed like we always tried  
20 to have a working relationship with the Agency to follow policies  
21 and procedures on behalf our clients and try to work through, you  
22 know, any technical or other issues.

23 Obviously reimbursement is an important part of that  
24 process, and our clients rely on that reimbursement. The bulk of

1 the clients that we have, I don't know about other corporations,  
2 they rely on that Fund. Obviously there are sections that  
3 requires owner/operators that may have a capital available to  
4 continue the cleanups and still keep their businesses going.

5 So we've, you know, the testimony basically is to go  
6 through the initial part of that and explain the relationship  
7 between us and the Agency. We've found things have shifted, I  
8 think, over the past so many years. And obviously, you know,  
9 we're all concerned about the Fund and how that impacts the  
10 amount of works that being performed. But I think here in the  
11 recent years, at least the perception, sometimes perception is  
12 reality, that the protection of the Fund may be outweighing  
13 protection of human health and the environment. The Agency, I  
14 think, in a lot of instances, obviously they can't tell people  
15 what to do, but have more or less indicated they would like a lot  
16 of people to TACO out, save the Fund, which is okay on some  
17 sites, but I don't know that it always take into account what the  
18 land owner wants. The land owners have obviously given the  
19 opportunity in alot of incidents would prefer to have a clean  
20 site because of potential future liability, third party  
21 liability, that could occur down the road. And so for all sites,  
22 TACO is not meant to be a fix all. And I did make a statement in  
23 the testimony, wasn't meant to be derogatory but it was meant to  
24 make a point, if we want to turn all LUST sites into a parking

1 lot, this approach would work across the state. And I don't  
2 think the state wants that, otherwise it wouldn't be there to  
3 push programs to have land owners to perform the ground fields  
4 and TACO for cleanup and promote economic development, or at  
5 least, allow that land owner to have his say or her say to the  
6 final use of that property would be.

7           Because of things that have occurred in the last so many  
8 years, I'd say 2000 on -- 2001 on, we've seen -- different  
9 companies have seen different rate reductions and cost saving  
10 measures by the Agency, but a lot of that has been, at least, I  
11 know in 2001 when that began, a lot of that was retroactive and  
12 there was really no announcement that they were going through  
13 these cost savings measures. And therefore a lot of that work, a  
14 lot of those costs were incurred, and when it came time for  
15 reimbursement for the owner/operator, it was made retroactive and  
16 therefore costs that were deemed reasonable or were reimbursed  
17 previously, we were starting to see reductions in those rates and  
18 those budgets or in those reimbursement applications. So that  
19 begins the initial part of the testimony.

20           Also go on to -- the Agency has said that they began to  
21 decide costs are unreasonable often times, but sometimes we've  
22 seen explanation of the letters that there's really no  
23 explanation or detail that might explain the -- what the costs  
24 are for or why these cuts were made. And I think part of the



1 reason, and I'll get into this later in my testimony, and other  
2 reasons for the forms that we had prescribed or had worked along  
3 with PIPE members to put together for different consultants to  
4 fill out, or whomever they choose, or whoever the owner/operator  
5 choose to represent them, is so that there can be some  
6 consistency. The Agency forms that exist now, I'm sure -- I'm  
7 just guessing, but I'm sure they were put out to try to simplify  
8 the process over the years, but they have even admitted  
9 themselves that everybody fills these forms out differently.  
10 It's hard for them to extract data from those forms because you  
11 can fill them out in a number of ways in this particular segment  
12 of the phases of the work, but it's by breakdown such as  
13 analytical, personnel, or equipment or things of that nature but  
14 it's not necessarily by phase so you sometimes have to -- I know  
15 from our experience, and maybe we have obtained a project from  
16 another consultants or maybe a site's been dormant, and the  
17 owner/operator decided to proceed and we had to FOIA, that's  
18 Freedom of Information Act, their files perhaps and the Agency to  
19 find out where we're at when they left off. And you will see how  
20 they filled out their budget forms and, you know, how do they  
21 come up with this or how do they do this. So I can imagine the  
22 turmoil and the difficulty the Agency has had to go through  
23 trying to figure out, well, what's corrective action, what's site  
24 investigation and what are the other phases of work in trying to

1 figure out what are those costs.

2           And the fact remains, though, that in this process of  
3 reduction, that often times the consulting and engineering firms  
4 or the contractors are basically forced to decide if they're  
5 going to reduce their rates, or once reimbursement has been  
6 submitted, even though it goes against an approved budget, even  
7 though cuts remain after the fact, that they're going to accept  
8 that or going to be pass on -- is the owner/operator going to  
9 have to perhaps pay more out of their pocket than they were led  
10 to believe, because often times the firms, you know, were faced  
11 with a decision to essentially take it or pass on reduced  
12 reimbursement to allow the client to makeup the difference.

13           I think that's where some of the discussion has come in and  
14 the number of appeals that have increased over the last so many  
15 years is that people -- there may have even been more appeals. I  
16 think when yesterday they were alluding to the fact that there's  
17 not only a cost of making appeals, if you choose to do so, what  
18 the owner/operator has that right, but they also have to evaluate  
19 the cost for legal representation and time devoted to that field,  
20 so I would suspect there would probably be more appeals before  
21 the Board if people could afford to do so. So obviously there's  
22 -- there needs to be some commonality between the Agency and the  
23 industry and everybody working together to try to come up with a  
24 consensus in that area.

1           Also in the testimony talking about the fact that the USI  
2 works with the Agency typically to resolve technical issues, I  
3 think in previous testimony, I think, it was mentioned that the  
4 Agency spending a lot of time looking at budgets and looking at  
5 working with the money issues instead of technical issues. I  
6 think part of that is because there's some inconsistencies within  
7 the Agency, there's inconsistencies in actually how everybody, I  
8 think, fills out some of the forms and things of that nature and  
9 that's why we again get back to the standardization that we  
10 presented in yesterday's testimony. Because if the consultants,  
11 for instance, I'm just using them as an example, are basically --  
12 would be forced. I mean, you would have to fill out these forms  
13 in the same manner as everyone else, then the Agency can derive  
14 the information that they need to evaluate these costs but also I  
15 think, unless until the Agency and the industry is on -- is kind  
16 of in some type of standardization, it's going to be difficult,  
17 if not impossible, for the way the Subpart H is to work out,  
18 because there's interpretation in the Agency. There's different  
19 ways people are interpreting how the information needs to be  
20 presented to the Agency and so there's -- you end up, you know,  
21 rejections on the 119th day or you get a request for extension or  
22 more information, more budgets. It just seems to be a process  
23 that continues on so I think we need to have a consistency in --  
24 on both of sides in order for this to work. And I think the way

1 things are right now that, at least in the past so many years,  
2 that that makes it difficult for it to work out.

3 But I think, I can't speak for other firms, but I feel USI  
4 does work through technical issues with the Agency, and therefore  
5 once those issues are resolved, then you can get to the money  
6 issues or amended budgets or other things in order to cover those  
7 costs, and then, especially in terms of alternative technology,  
8 and therefore -- and that's when, you know, that's when you get  
9 down to the money, that's when you start seeing the appeals. I  
10 think that's part of the reason for why that occurs.

11 What I'd like to show, and I have some additional summary  
12 of testimony, but provide some information to the Board. We have  
13 taken the Agency's database, this was of April 2004, and plotted  
14 their -- all of the LUST sites. There is GIS information which  
15 is latitude and longitude provided in the database. And this  
16 just kind of gives you an overview. You want to pass that around  
17 to the audience so they can look at it. We didn't have copies  
18 for everyone.

19 MS. MANNING: Can we mark that as exhibit --

20 HEARING OFFICER TIPSORD: 57. Is there any objection?  
21 Seeing none, we'll mark this as Exhibit 57.

22 (Exhibit No. 57 was marked for identification and entered  
23 as an exhibit.)

24 MS. MANNING: Thank you.

1 HEARING OFFICER TIPSORD: Uh-huh.

2 MR. KELLY: Basically this map is to basically show that  
3 there are LUST sites all over the state of Illinois. Now to give  
4 you the number here, there's basically 10,000, at least of April  
5 of 2004, if you took out for the NFR, NFA sites and the -- what I  
6 would call the non-LUST sites in the database. There are about  
7 10,116, I guess you would say, active LUST sites. Now these  
8 sites are obviously in various stages. They may be at the  
9 beginning of corrective action or site investigation. They may  
10 be at the end. They may be in early action. But there's a lot  
11 of them. I want to show some statistics here in a moment.  
12 There's probably a lot of them that are sitting inactive. But  
13 this map here is designed to basically show, yes, there are a lot  
14 in the Chicago area but for one -- but for everyone in the  
15 Chicago area, there's another one down state. So it is work  
16 being performed throughout -- throughout the state of Illinois.

17 MS. MANNING: And then this one, I think, is 60?

18 HEARING OFFICER TIPSORD: Mark this as Exhibit 58, PIPE No.  
19 --

20 MS. MANNING: 58. We're submitting this as a result of  
21 questions that we had in terms of representation of PIPE member  
22 in both agencies and the -- and the numbers of LUST sites that  
23 they're dealing with throughout the state.

24 HEARING OFFICER TIPSORD: Is there any objection to this

1 exhibit?

2 MR. KING: Why is it blanked out? My copy there's a big  
3 cross-out on the paper, and there's like a whole bunch of  
4 information that --

5 MR. KELLY: Because some of the members that are in PIPE do  
6 not want their names --

7 MS. MANNING: Oh, I'm sorry. I see.

8 MR. KING: They should be excluded from this information,  
9 if they're not willing to present this as their information.

10 MR. KELLY: Well, the color represents the different firms,  
11 so if you count -- if you look at the dots, there are 11  
12 different firms and each are color coded throughout the state.  
13 It's not meant to represent who in particular, it's just to show  
14 that PIPE has this number of sites throughout the state.

15 There was a question yesterday, well, who's PIPE and how  
16 many sites do they have and where are they at. All this is meant  
17 to represent is that the members, at least of the consulting,  
18 this isn't the laboratories or the landfills or the contractors,  
19 but at least as far as the consultants the sites that they  
20 represent, according to how it's listed in the Agency database,  
21 this is the number of sites throughout the state.

22 MS. MANNING: How about that -- Can we just make that as a  
23 demonstrative exhibit then and I'll take it back and we'll not  
24 number it as an exhibit? I'll just withdraw it as an exhibit

1 then.

2 HEARING OFFICER TIPSORD: If he's going to testify to it,  
3 it's going to be admitted as an exhibit. Because there's no way  
4 to describe on the transcript, you know what I'm saying, for  
5 purposes of the transcript.

6 MS. MANNING: Well, if the Agency has an objection to it,  
7 we won't testify to it then.

8 MR. KING: Well, to me it doesn't seem appropriate to  
9 identify these various consultants and then not identify who the  
10 consultants are.

11 MS. MANNING: Then we'll withdraw it and won't testify  
12 about it.

13 HEARING OFFICER TIPSORD: Well, before you do that, Ms.  
14 Manning, I understand you want to withdraw it. But this  
15 information might be helpful. This is a rulemaking. And I think  
16 that as long as this is admitted for purposes of showing that  
17 this -- these consultants, unknown consultants, who are members  
18 of PIPE, have that many states, I think it's relevant.

19 MS. MANNING: That was the purpose for which it was  
20 entailed.

21 HEARING OFFICER TIPSORD: I think it's relevant to the  
22 rulemaking. I understand your concern, but as long as it's been  
23 for that purpose, I think it's fine.

24 MR. KELLY: The main reason for this map is just basically

1 to show, rather they're PIPE consultants or any consultants, just  
2 pick a color, a gray or a red or whatever, you'll see that a  
3 consultant or a contractor will work, can work throughout the  
4 state of Illinois. So that's really the intent of this map when  
5 it was put together. It just happened to show, look, I may be a  
6 Chicago firm but I can work in Cairo. I may be a metro east firm  
7 but I can work, so basically they're working throughout the  
8 state.

9 And I think that's why there's been some discussion about,  
10 you know, the half-day rate and travel time and things of that  
11 nature because obviously there's jobs being performed throughout  
12 the state. And there's been previous testimony given that, well,  
13 if you want to work outside -- if you're a consultant and you  
14 want to work outside of a certain area, that's a business  
15 decision. Perhaps. But the way it stands now, a lot of  
16 different consultants are working throughout the state. Some are  
17 in certain geographic areas. If you look at the yellow dots,  
18 some of them are around like the Kankakee area, I don't even know  
19 who that is, but they do have a few sites throughout the state,  
20 so it's basically an open market, you know.

21 HEARING OFFICER TIPSORD: We'll admit this as Exhibit 58  
22 and note the Agency's concern.

23 (Exhibit No. 58 was marked for identification and entered  
24 as an exhibit.)



1           BOARD MEMBER GIRARD: I'd like to make a comment. I would  
2 hope that maybe PIPE members would have a discussion among  
3 themselves as to whether or not they should keep their identity  
4 secret because you lose some credibility by not putting your  
5 names out there. I'm not speaking, you know, for the whole Board  
6 but as a member of the Board, I really don't see how having your  
7 names out there is going to lead to any potential retribution  
8 from the Agency. In fact, I got a feeling that putting this out,  
9 the Agency can probably figure out from this map, even though  
10 it's been distorted, they can probably figure out who these firms  
11 are. I think you all should talk about it. I think you should  
12 publish the members and be up front about it. I don't see any  
13 advantage in keeping the names secret.

14           MS. MANNING: You're speaking to me, Member Girard, and  
15 I'll take that to the membership. You should understand though  
16 their concerns are, at least perceived from their perspective,  
17 very real in terms of the question the Agency asks in terms of is  
18 a PIPE member and who gets reimbursed and who doesn't get  
19 reimbursed. And at least from that perspective of PIPE, they  
20 believe that, you know, it's kind of like employers and unions  
21 before the Taft-Hartley came in. As soon as you raise your hand  
22 and say, yeah, I'm unionized, then there's -- there's a fear of  
23 -- the fear of God. And there is that real fear among the people  
24 out there who are seeking reimbursement for owners and operators.

1 So I appreciate your concern, and I'll bring that to the PIPE  
2 board. But just so that you understand their concerns from my  
3 perspective are more perceived, they are real.

4 BOARD MEMBER GIRARD: Well, we do understand your concerns,  
5 but also thankfully Illinois has a system in Illinois where you  
6 can bring forward appeals and, you know, to credit the Agency, I  
7 don't think the kind of people that I've had experienced with  
8 that work in the Agency would do that sort of thing, so that's  
9 what I have to say.

10 MS. MANNING: I understand where you're coming from, Member  
11 Girard, and I would suggest the same thing. I'm not trying to  
12 discredit the Agency at all. I'm just suggesting that it's very  
13 costly to appeal, as we testified yesterday, and all of the  
14 people just want to be in a cooperative spirit with the Agency.  
15 So to that -- to that vein, I agree with you and we'll discuss  
16 that.

17 BOARD MEMBER GIRARD: Thank you.

18 MS. MANNING: You're welcome. Yeah, we've got a few more  
19 maps that have to deal with landfills.

20 HEARING OFFICER TIPSORD: This will be Exhibit 59. This is  
21 titled Special Waste Landfills. Is there any objections? We'll  
22 mark this as Exhibit 59.

23 (Exhibit No. 59 was marked for identification and entered  
24 as an exhibit.)

1           MR. KELLY: This map is similar to the map that the Agency  
2 has previously presented in the testimony about the landfills  
3 that accept LUST soil.

4           MS. MANNING: That would be Exhibit No. 19 of the Agency's  
5 map.

6           HEARING OFFICER TIPSORD: Thank you, Ms. Manning.

7           MR. KELLY: What we did is we brought this information  
8 previously for other -- for other work that we're doing, but we  
9 tried to go through and look at that -- the previously exhibited  
10 map. And I think there was some discussion in yesterday's  
11 testimony, I wasn't here, but was told there was some discussion  
12 about that -- the position of landfills throughout the state.  
13 What we did is I tried to attempt to position these landfills.  
14 Basically it matches pretty much with what the Agency's map had,  
15 although there are, I think one map -- one particular landfill,  
16 Perry Ridge was relocated from what was shown on the original  
17 exhibit. Salem Municipal Landfill does not accept waste.  
18 Prairie Hills does not accept waste. DeKalb County and Kankakee  
19 only accept waste in their particular county. So there's a few  
20 differences between this map and the map that's been previously  
21 submitted, but that's not the intent of this map. I am going  
22 somewhere with this. So this map just basically shows special  
23 waste landfills throughout the state. The next map I'd like to  
24 present as an exhibit is --

1 MS. MANNING: This will be exhibit number?

2 HEARING OFFICER TIPSORD: 60.

3 MS. MANNING: Thank you.

4 HEARING OFFICER TIPSORD: This is also titled Special Waste  
5 Landfills that Led to Active LUST Sites. And we'll mark that as  
6 Exhibit 60 if there's no objection. Seeing none, this is marked  
7 as Exhibit 60.

8 (Exhibit No. 60 was marked for identification and entered  
9 as an exhibit.)

10 MR. KELLY: This map basically shows the positions of the  
11 landfills, again though this is with the number of LUST sites  
12 that are throughout the state of Illinois. And the next map that  
13 I would like to present basically performs an analysis. I know  
14 the Agency had previously said that the landfills are within 50  
15 miles of all of the sites. I don't know what is magical about 50  
16 miles. I guess you can arbitrarily pick any number. I chose to  
17 pick 25 miles only because that's basically about an hour round  
18 trip depending on the roads, the sides roads, you know, where  
19 you're at.

20 You could be downtown Chicago and that's a lot different  
21 that rural southern Illinois. But the point is, is that using 25  
22 miles, you have an hour round trip. And we can have a discussion  
23 all day but to think the point is that once you get beyond a  
24 certain distance, the economies of the project begin to change

1 the farther away the landfill, then you have to -- you can use  
2 more trucks, you can even use larger trucks, but sometimes there  
3 are site restrictions that will allow a certain number of trucks  
4 or size of the trucks. That being said, the next map I'd like to  
5 present is basically an analysis showing sites that are within 25  
6 miles of the landfills that are -- that have been previously  
7 presented.

8 HEARING OFFICER TIPSORD: This will be Exhibit 61. This is  
9 Special Waste Landfills, Highlighted Sites Within 25 Miles of a  
10 Landfill. Is there any objections? Seeing none, we'll mark this  
11 as Exhibit 61.

12 (Exhibit No. 61 was marked for identification and entered  
13 as an exhibit.)

14 MR. KELLY: The geographic information system, you can do a  
15 select by location. Again, this doesn't take into the account  
16 the highways and many roads in Illinois. Trucks can obviously  
17 travel on certain class roads. But using that geographic  
18 information system, you can select by location and say, tell me  
19 all the LUST sites that are within 25 miles of the landfills.  
20 And that's why the ones that are highlighted are within the 25  
21 miles of a landfill. The other ones are in areas that are  
22 farther away from that distance.

23 And again, the reason I picked 25 is because that's about  
24 an hour round trip. Someone could pick 50, someone could pick

1 10. The 25 is just an hour round trip, and for purposes of this  
2 analysis, it shows that there are -- it doesn't mean they're not  
3 accessible as those other sites. It just means they're a greater  
4 distance if you were doing -- putting the budget together for  
5 certain purposes. And it seems like an hour round trip, and not  
6 all the sites fall within that category, there are a number of  
7 them obviously, but there are some that fall outside of that so  
8 the point being that some of them fall within a certain distance  
9 for budgeting purposes, some fall outside of that.

10 HEARING OFFICER TIPSORD: Excuse me, Mr. Kelly. So those  
11 with the blue dots, with the plain blue dots, that are on this  
12 Exhibit 61, are ones that are not within 25 miles of a landfill  
13 that accepts special waste?

14 MR. KELLY: Correct. There is a footnote on the map that  
15 says the highlighted sites are within 25 miles.

16 HEARING OFFICER TIPSORD: Okay.

17 BOARD MEMBER GIRARD: I have a question. Is it possible to  
18 dispose of special waste across the borders?

19 MR. KELLY: Yes. I believe we have at least one project  
20 where we have gone in Kentucky, I believe, and the only  
21 consideration there is that licensing of your vehicles and things  
22 of that nature. But, yeah, if you have -- like we're licensed to  
23 carry waste and our trucks are licensed in Illinois. If you want  
24 to go across state lines, there's a licensing but, yes, it is

1 possible.

2 BOARD MEMBER GIRARD: So there are not prohibitions, it's  
3 simply a permitting issue that might lead to extra costs, is that  
4 what you're saying?

5 MR. KELLY: Right. And then also, I mean, unless they're  
6 close to the border, depending on their distance, the permitting  
7 and some of the additional costs of the permitting and some other  
8 things and with licensing of the trucks, I mean, it's not  
9 prohibited. It's just that sometimes for economic reasons you  
10 prefer to stay within your state boundaries. I would assume that  
11 some people that own trucks want to keep their costs to a minimum  
12 so they only operate within the state of Illinois rather than be  
13 hauling special waste or grain or whatever it may be.

14 MS. MANNING: Mr. Kelly, if I could ask you a question too.  
15 Do the landfill prices vary from landfill to landfill and could  
16 you speak to that a little bit?

17 MR. KELLY: That was the other point. There's been a lot  
18 of talk to the distance of the landfills, which is one key  
19 component to preparing a budget, but also there is a cost  
20 variance between the landfills in preparing a budget so that that  
21 has to be taken into consideration when -- if you're going to set  
22 a lump sum amount or even if you're just preparing a time and  
23 material, that there's going to be some variations. So sometimes  
24 that may have an effect of how you evaluate your data, you know.

1 We might -- Two firms may be similar in the amount it costs them  
2 to excavate and transport that material, but it just so happens  
3 those sites are in different parts of the state. One may be  
4 looking at, you know, \$10, \$18 a ton and one may be close to 30.  
5 That's another important part of the original special waste  
6 landfill location. If some landfills are in a remote area, I can  
7 think of one in particular, but there's others, but if they're in  
8 a remote region of the state, they're not competing with others,  
9 you know, so that's part of it. But the point is that costs of  
10 disposal is as important as distance to the place where you  
11 dispose of. So that, I think, needs to be taken in  
12 consideration. Well, this project costs more than that project  
13 so they must be charging more. Well, that may not be the case  
14 with total ET & D numbers and maybe the disposal costs were  
15 higher.

16 BOARD MEMBER GIRARD: Well, do consultants always look for  
17 the least cost alternative or do sometimes they do business with  
18 firms that they're associated with or, you know, have some other  
19 relationship?

20 MR. KELLY: Well, in terms of the particular project, I  
21 mean, first of all, we try to figure out what does the  
22 owner/operator want, you know. Do they want to remediate the  
23 site conventionally, you know, do they want a clean site or would  
24 they accept an institutional control. We've had a lot of



1 projects where maybe we've done conventional technology so we  
2 close them out using TACO. To answer your question, in -- in  
3 stepping from that point forward, we would speak with the  
4 owner/operator, determine what their needs are and then depend  
5 where we're at geographically, you know, look for the closest  
6 landfill. If we're working with laboratories, we use a variety  
7 of laboratories only because some provide better services than  
8 others but, you know, they're in competition too, to compete for  
9 projects, and doing a cost analysis, we're trying to come up  
10 with, you know, the best cost analysis we can.

11 We've even talked to -- we've had a number of projects in  
12 the area, metro east area is a good example, maybe we approached,  
13 you know, talk to some different landfills how to set up a budget  
14 for a project instead of telling them, well, here's where one  
15 project is, you know, here's a volume of soil we would like to  
16 remove because the client wants to clean up his site or her site.  
17 We may be able to offer them a number of projects and say look at  
18 these other corrective action plans that are in process and  
19 better negotiate a lower rate to save -- basically to save the  
20 client money, save the Fund money. And so sometimes there's  
21 relationships only because you worked with them before in that  
22 particular area. But, you know, in the case of landfills if you  
23 move beyond, out of their geographic area, you're going to have  
24 to develop a relationship or work with someone else out of that

1 area.

2           Laboratories are obviously state wide. We can use one  
3 laboratory or we can choose to use a number of them. We choose  
4 to use a number of them because of liability issues and just the  
5 fact that some do better work than others and provide better  
6 data. And since they are competing with one another, they are  
7 price conscious as well as the consultant and owner/operator.

8           BOARD MEMBER GIRARD: So on every job do you go out and  
9 take bids from different laboratories or different landfills?

10           MR. KELLY: Well, that might be the case in an area where  
11 there's a number of landfills. If we're in a remote area of the  
12 state, maybe in the north, say we are toward Iowa, for instance,  
13 or in southern Illinois or maybe some other areas where there's  
14 only one landfill, we would -- probably would just get one price  
15 from them because of the locale and then evaluate that versus --  
16 that cost versus, well, you know, this is pretty high. Maybe we  
17 need to go an alternative route. So alternative technology may  
18 come up in result of the cost or may also come up -- a lot of  
19 times it comes up because of the site restrictions. Maybe you  
20 can't have access to all the soil or groundwater or maybe that  
21 person has an operating business so they're more amenable to  
22 alternative technology. So in some cases it lends itself to, I  
23 guess, you want to call it bidding.

24           Looking at all, you know, looking to cost to come up with a

1 budget, and some other areas, particularly we're talking about  
2 landfills, for instance, or backfills, I've got another map later  
3 on to present about backfill locations, you're kind of -- you  
4 maybe restricted because of geography.

5 MS. MANNING: Do you want to explain how the backfill issue  
6 falls into this too and we'll put this in as well?

7 BOARD MEMBER GIRARD: Before -- Let me interrupt. Well,  
8 you mentioned that if you got back, you know, bids or whatever  
9 you want to call them, processes that seem to too high, you then  
10 might look for alternatives. How do you decide those cost  
11 estimates are too high? Is that because you got in mind what the  
12 Agency has reimbursed in past cleanups in the area, or how do you  
13 decide other things are too high and go out and get other cost  
14 estimates?

15 MR. KELLY: Well, it would be actually a combination. Not  
16 only what -- Let's say we take -- we put a total budget together.  
17 And I'm looking at the landfill costs and backfill costs and  
18 maybe I'm looking at more at the distance to haul to that  
19 location, all these together, and the Agency, what would be  
20 deemed acceptable, yes, would enter into that, you know,  
21 consideration. Because obviously if I come out with something to  
22 do it conventionally, come out with, let's say, a \$150 a yard,  
23 I'm -- I would be, I think, remiss in telling my client that  
24 that, yeah, we can clean it up, but if you want to be reimbursed

1 for that cost, then you need to know that they're not going to  
2 reimburse that amount. They made that clear. And so then  
3 they're looking at potential alternatives so, yes, there is that  
4 consideration given now. Now still it's the owner/operator's  
5 choice if they want to, you know, remediate that site and absorb  
6 those costs, but based on previous experience and information  
7 from the Agency, they don't -- you know, they're not going to  
8 reimburse that rate as a minimum. So it's still the  
9 owner/operator's decision. But there is -- as the consultant,  
10 we're advising them, trying to advise them, you know, to make the  
11 decisions in giving all the information that they need to make  
12 that decision.

13 BOARD MEMBER GIRARD: Thank you.

14 BOARD MEMBER JOHNSON: Joe, before you leave that Exhibit  
15 61, is your program able to identify the non-highlighted, the  
16 number of these sites that are outside the 25 mile radius, you  
17 know, what number of them?

18 MR. KING: Percentage? You talking about percentage?

19 BOARD MEMBER JOHNSON: Well, it looks to me like the 10  
20 percent figure is the figure the Agency has suggested would be  
21 the figure that they would expect or hope that that 855 unusual  
22 or extraordinary expense provision wouldn't apply to more than 10  
23 percent. I just thought from looking at this, it's not much more  
24 of the 10 percent of the sites outside of that. Do you have a

1 number out of 10,000 sites?

2 MR. KELLY: No, I don't have a number, and I'd have to  
3 look. I'm not sure if the program does account, because it's  
4 basically with GIS. It's more of a visual analysis so that's why  
5 --

6 BOARD MEMBER JOHNSON: You can see they're on top of each  
7 other in the Chicago area. I was just curious of the number.

8 MR. KELLY: I can check into that and see.

9 BOARD MEMBER JOHNSON: If it's easy.

10 MR. KELLY: I can try to see if we made that determination.

11 BOARD MEMBER JOHNSON: Okay.

12 HEARING OFFICER TIPSORD: The Rock Backfill vendor is 2002,  
13 2003, we'll mark as Exhibit 62. Is there any objection? Seeing  
14 none, we'll mark that as Exhibit 62.

15 (Exhibit No. 62 was marked for identification and entered  
16 as an exhibit.)

17 MR. KELLY: This map is being presented just for  
18 informational purposes. One of the challenges of putting the  
19 budget together, like I said, before is the geography and not  
20 only where the location of the site is but where you're able to  
21 obtain backfill, in particular, it would be rock backfill or  
22 sand. Because a lot the cases you can backfill with natural  
23 material such as clay but if you look at this map, it shows the  
24 rock locations, at least some of the vendors we work with, this

1 is not descriptive of sites above I-80. This is just information  
2 that we had collected. It basically shows about half the sites  
3 we collected, you know, are near a river. So you're either in  
4 the perimeter of the state or if you're in the interior, you're  
5 probably somewhere near a river.

6           The point being is that I may be able to obtain backfill  
7 for the site that has clay, but in terms of rock, which is  
8 necessary in a lot of cases, if not all, to cap off a particular  
9 site so that they can continue to drive upon it or do whatever.  
10 So up until the point, you know, we've had previous discussions  
11 about coming in later on and the Agency allowing -- or I should  
12 say reimbursing the owner/operator about putting concrete or  
13 asphalt down, but to that point you have to have some type of  
14 solid base. So you may be close by for disposal but in your  
15 excavation and transportation, disposal number but maybe you're  
16 putting a backfill number together and maybe if you're in a  
17 particular area you may have problems trying to access the  
18 backfill source, so that's going to have an effect on whatever  
19 number you want to use for your backfill, \$20 a yard or whatever  
20 it happens to be, so a distance can have an effect on the -- on  
21 the number on computing a budget or the actual cost incurred  
22 using conventional technology and using this rock backfill.  
23 Basically for informational purposes.

24           MS. MANNING: How many sites does USI have of the active

1 UST sites? How many sites? Would it be over 300?

2 MR. KELLY: Yes, using the Agency's database, there is a  
3 column where the bulk of this is placed upon in that information  
4 and, of course, from our work history over the years, but there's  
5 probably over 300 sites that, I think, are currently listed in  
6 the database as of April 2004. And of course we've done more  
7 work than that, because that was excluding NFR sites or non-LUST  
8 sites, so actually there is a greater number of sites that have  
9 been performed work on in the state.

10 MS. MANNING: And is cost variability and/or flexibility  
11 something that USI considers and is able to consider with all of  
12 the sites that you're doing?

13 MR. KELLY: Well, yes. I mean, I guess basically goes back  
14 to what the owner/operator wants. Some of the cases they have  
15 needs or expectations based on this -- the use of their site.

16 I think it was mentioned yesterday in other testimony that  
17 other people will say, look, you're the consultant, or whomever,  
18 and we look to you to give us guidance, you know, as to what's  
19 the best alternative. And after discussing with them what their  
20 needs are, then you're looking at price variability. Because in  
21 some cases we've had clients say, look, I don't want to spend a  
22 lot of money. I want -- I want to get this site closed and so  
23 they may be willing to, the term was used TACO out, using the  
24 number of engineering barriers and institutional controls. So

1 obviously the cost of that project is going to be less than where  
2 someone wants to have a clean site.

3           And I think a lot of our instances we've had a number of  
4 sites where we've been able to, I guess, clean up the site as  
5 much as possible, at least on site, and then use institutional  
6 controls maybe for offsite contamination issues. But there's a  
7 lot of variability in pricing, in cost of the project. There's a  
8 lot of variability in the technology. So there's variability in  
9 costs so even -- so it's hard to say that in every instance, you  
10 know, conventional or some form of alternative, has this set  
11 price because there are so many different variables in the design  
12 of the project.

13           HEARING OFFICER TIPSORD: Mr. Kelly, I have a question on  
14 Exhibit 62. You've identified these as the backfill vendors, are  
15 these the companies that you can get the rock backfill from?

16           MR. KELLY: Correct, these are their locations. It's their  
17 location of their city that, you know, that they go by. I didn't  
18 have their actual geographic location. Like, for instance,  
19 you'll see one in Missouri there. It looks like where St. Louis  
20 is at. That's in Maryland Heights, for instance. Using the city  
21 of their address, that's where those are located. Those are  
22 particular people that provide that.

23           MR. KING: Just -- You use slight word difference. This is  
24 rock backfill, not all backfill?



1 HEARING OFFICER TIPSORD: Right.

2 MR. KELLY: That's right.

3 MS. MANNING: Right, right.

4 MR. CLAY: To use -- The other question is rock backfill is  
5 not required; right? You can use other materials to backfill; is  
6 that correct?

7 MR. KELLY: Right. And that's why I pointed out that we  
8 use soil or, you know, clay or whatever. Often -- I mean, almost  
9 all of our projects some landfills will allow you -- they have  
10 that backfill at that their site which makes it for better  
11 economics. You know, we ask that question. Do you have backfill  
12 at your location? If we can do that, that saves costs. But in  
13 some projects they don't have backfill and you got to find, you  
14 know, Joe's clay site somewhere and often in a completely  
15 opposite direction, you know. And so this was to point out, yes,  
16 this is rock backfill but you can use clay, you can use other  
17 things. And clay sometimes is near the landfill which helps the  
18 cost of the project. Sometimes they're in remote areas. But  
19 rock is by far, I mean, you can't just get rock anywhere where  
20 you can get clay, you know, perhaps in different parts of the  
21 state. I've had the rock backfill sites that's been near some  
22 type of a river and that -- and it's common to at least cap off  
23 the site, not necessarily completely backfill the site with rock,  
24 but at least cap it off so there's a firm cap there for the

1 people to drive over or whatever use they have for it.

2 MR. KING: But again, the regulation does not require rock  
3 as backfill?

4 MR. CLAY: And there would be a lot more sources of  
5 material than you have represented on this map?

6 MR. DOTY: It's a common place to cap because of traffic to  
7 cap with rock in preparation of replacement of concrete or  
8 whatever, but it's not required, but it's common practice. We  
9 typically will use a foot and-a-half, two foot cap, something  
10 like that, on top of the soil. It's just meant to demonstrate  
11 that even when you do use the rock as a cap, you may be going in  
12 a different direction from your -- than you did for your landfill  
13 or that you did for your soil backfill.

14 BOARD MEMBER GIRARD: Just to clarify, these are vendors  
15 that USI has used?

16 MR. KELLY: That's correct.

17 BOARD MEMBER GIRARD: And also this does not necessarily  
18 actually show the quarry sites, does it? It's the headquarters  
19 of the companies that supplies the rock?

20 MR. KELLY: Correct. There may be some locations where  
21 we're able to obtain the rock at the quarry and they may have,  
22 you know, some other ones that are larger may have a variety of  
23 quarries in different locations. This is the point where we're  
24 able to access and actually pick up the rock itself. That's --

1 the intent of the map is to show where that location is it.

2 MS. MANNING: We have some information too on the number of  
3 incidents that are out there still. I'm going to --

4 HEARING OFFICER TIPSORD: Okay. Do you have preference for  
5 which order these go in? Or which one is the first one, I guess?

6 MR. KELLY: This is the first one.

7 HEARING OFFICER TIPSORD: All incident number. We'll mark  
8 that as Exhibit 63 if there's no objection. Seeing none, all  
9 incidents section is 63.

10 (Exhibit No. 63 was marked for identification and entered  
11 as an exhibit.)

12 HEARING OFFICER TIPSORD: And which one would you like to  
13 go second?

14 MR. KELLY: The data.

15 HEARING OFFICER TIPSORD: Number of sites pure of incident,  
16 sites not assigned. We'll mark as Exhibit 64 if there's no  
17 objection. Seeing none, we'll mark that as Exhibit 64.

18 (Exhibit Nos. 64 & 65 were marked for identification and  
19 entered as exhibits.)

20 HEARING OFFICER TIPSORD: And that leaves the chart which  
21 is sites not assigned, number of sites pure of incident, as 65.

22 MS. MANNING: And 65 and 64 really represent the same data.  
23 It's just one for the visual observers and one for the numeric  
24 observers. They're exactly the same data.

1 HEARING OFFICER TIPSORD: If there's no objection we'll  
2 admit those as 64 and 65. Seeing none, those are admitted.

3 MR. KELLY: This is information that is also taken from the  
4 -- you've seen the map that shows the infamous numbers throughout  
5 the state. As of April 2004, using the Agency's database, we  
6 looked at the number of days. Basically what the distribution of  
7 the incident numbers rather they be 731 rule, 732 or public act.  
8 Of that number there are 4,545 that have no 45-day report. What  
9 that -- that could be for a number of reasons. If I was looking  
10 at that, I would think that perhaps that means there are a number  
11 of sites that have yet to have work performed on them. And  
12 sometimes there are sites that will -- the contractor went ahead  
13 and did the work but they neglected to submit a 45-day report.  
14 But I would think that a number of these, perhaps, it may be  
15 because there is -- there's still some work to be done. If you  
16 look at just the next part of that down the segment, down it says  
17 732 and PA which is public act sites only --

18 MS. MANNING: Now public act sites, just for purposes of  
19 the record, those are sites that would be under 734?

20 MR. KELLY: Right.

21 MS. MANNING: Public act sites are referred to those new  
22 sites that have not really had rules yet that the Agency has been  
23 acting under the public act that was passed several years ago, so  
24 whenever there is a reference to public act sites, we're actually

1 talking about the sites that would be covered under part 734 but  
2 that have been operating without a regulatory structure. Go  
3 ahead.

4 MR. KELLY: The 372 and public sites only, because there is  
5 not such a thing as site classification or even budgetary process  
6 as far as corrective action. I segmented those particular sites  
7 out. And there is -- Of those 5,7 -- 5,872 of them total, over  
8 4,000 of them have no site classification. Almost 1,500 have  
9 high priority or a little over 100 -- close to 200 have low  
10 priority and some of NFA. Which -- which I assume would have  
11 been -- When I extracted the NFA and NFR data from this database,  
12 I only looked at the column in the database where there is a  
13 date. There's a variety of columns in this database. All I do  
14 is I look that there's a date in the NFR column to show that a  
15 letter has been sent or accepted and the Agency recognizes the  
16 NFR site. So evidently there are some sites that have an NFA but  
17 it has -- I guess it hasn't been recognized yet.

18 But the reason for this information is, I think, to show --  
19 it's just for informational purposes to show that, and again this  
20 kind of maybe even helps some of the Agency's information, to  
21 show that there are a number of sites that are being remediated  
22 currently but there are also a number of sites that have yet to  
23 have work performed on them. Because of the fact that some of  
24 them haven't been classified yet.

1           And we have run into that time after time. There's a lot  
2 of people that we run into, clients or potential clients. Maybe  
3 you're trying to speak to them about performing work for them and  
4 they'll say, well, I thought I was done. And, you know, it's  
5 because a lot of the instances because years ago a tank removal  
6 contractor, in order for them to comply with the fire marshal,  
7 they got the tanks out of the ground. The fire -- a lot of -- a  
8 lot of the removal contractors aren't consultants so they didn't  
9 take closure samples. They didn't do a 45-day report. They  
10 didn't do anything as far as the Agency is concerned, so we run  
11 into that quite often. So a lot of them say, hey, I thought I  
12 was done. They don't even know that their incident number is on  
13 the Agency's database, which Mr. Clay testified before, and that  
14 you can access that on the website. And we have to do that  
15 sometimes. Well, here it is. It's on the Agency's website. You  
16 still have -- At some point in time if they decide to follow-up,  
17 you will have to perform some type of work to close this site.

18           So in terms, I guess, of the Fund, it's not only what the  
19 matter of the draw of the fund is now, but the longevity of it  
20 perhaps in the future. Because I guess if there's a sunset on  
21 it, and I guess those people are out of luck, if those people go  
22 past that sunset date. The point is, is that there's other work  
23 out there to be performed and I think that's why you're also  
24 seeing cost increase draw on the Fund itself now is because

1 there's so many sites out there that people haven't done any work  
2 on and now they're beginning to do work on, and that number, I  
3 think, is going to continue to increase until some point it  
4 reaches the peak and you again have more sites that have been  
5 remediated than have not.

6 MS. MANNING: Could you actually go to the next exhibit you  
7 have in terms of the number of sites and year of the incident?  
8 These are still active sites, whether they are assigned --  
9 they're not assigned, correct, to any particular reviewer yet but  
10 they are listed on the Agency's database; is that correct?

11 MR. KELLY: Correct.

12 MS. MANNING: So therefore they're still pending full  
13 remediation?

14 MR. KELLY: Yeah, that would be how I would interpret that.  
15 If you look at that same database and that's the exhibit --

16 HEARING OFFICER TIPSORD: 64.

17 MS. MANNING: 64 and 65. It again is the same data, it's  
18 just shown two different ways?

19 MR. KELLY: It's just showing the number of sites by year,  
20 where in the database it's either been -- it actually says not  
21 assigned or there's a blank. There may be a reverse but according  
22 to the database there is not. And it appears, especially if you  
23 look at the graph, which kind of gives a visual representation of  
24 the number of sites, the bulk of those appear, just based on date

1 of the incident number, to be what I would call 731 sites. And I  
2 would say the reason for the newer ones having not yet assigned  
3 is that like, for instance, 2003 and 2004 is probably because an  
4 incident number has been assigned but there has been no work  
5 performed or a 45-day report haven't been submitted yet so a  
6 reviewer hasn't been assigned yet. The point is to show there is  
7 a number of sites, particularly a number of oversights, that do  
8 not have a reviewer assigned. So the assumption would be there's  
9 little or no activity and therefore there's still a number of  
10 sites to be remediated.

11 HEARING OFFICER TIPSORD: Mr. Kelly, so this is information  
12 from the Agency's website indicating there's been a report of a  
13 leak at the site, in 1990 there was 740 reported leaking sites  
14 that don't yet have a reviewer assigned which you're interpreting  
15 to mean there's been no work necessarily?

16 MR. KELLY: Well, correct. There's no work currently being  
17 performed on it. There may have been some initial work but yet  
18 it's not having any work performed in it.

19 BOARD MEMBER JOHNSON: But that number is within the active  
20 LUST sites?

21 MR. KELLY: Correct. And I felt like it pretty well  
22 coincided. Because I think Mr. Clay indicated about 10,000  
23 active sites. Because there's over 20,000 sites in the whole  
24 database. But you got to go through there and try to extract if



1 there's no further action and non-LUST and things of that nature.

2 I may have 10,116 and someone else may look at it and see  
3 10,100. But the point being, I think we're pretty close. But  
4 I've heard that number tossed around by the Agency, but I think  
5 we're pretty much on the same wavelength there.

6 HEARING OFFICER TIPSORD: Could we go off the record for a  
7 second.

8 (A discussion was held off the record.)

9 MS. MANNING: We've got three more maps for you.

10 HEARING OFFICER TIPSORD: Illinois OSFM Licensed  
11 Contractors map we will mark as Exhibit 66. Same map does not  
12 account for out-of-state contractors with Illinois licenses and  
13 there's no other indication here why this is different.

14 MR. KELLY: Second one has LUST sites.

15 HEARING OFFICER TIPSORD: Okay, second one has LUST sites.  
16 And we'll mark that as Exhibit 67. And the third one has  
17 highlighted sites within 25 miles of contractors, same title on  
18 the top. We'll mark that as Exhibit 68. Give you all a chance  
19 to look at those.

20 MR. ROMINGER: What are the exhibit numbers again?

21 HEARING OFFICER TIPSORD: Exhibit 66 is just the Illinois  
22 OSFM license contractor. Exhibit 67 will be the one that adds  
23 the LUST sites. And Exhibit 68 will be the same title with the  
24 highlighted sites within 25 mile of context. Is there any

1 objections?

2 MR. ROMINGER: No.

3 HEARING OFFICER TIPSORD: Seeing none, we'll mark that as  
4 Exhibit 66, 67, 68.

5 (Exhibit Nos. 66, 67, and 68 were marked for  
6 identification and entered as exhibit)

7 MR. KELLY: These maps are a visual representation of the  
8 Illinois -- the license contractors, removal contractors in  
9 Illinois. If you go to the OSFM database, you can see who the  
10 state is licensed as a removal contractor, and these represent  
11 the cities where there are removal contractors.

12 In some instances there may be more than one contractor in  
13 the area, but in a particular city, but this kind of shows the  
14 distribution of those licensed contractors. There is no database  
15 that I could have gone to that, I'm aware of anyway, and find  
16 out, well, where's the drilling contractor, where's all the  
17 consultants. This is just an example for informational purposes.

18 The first exhibit there is to show the location of the  
19 licensed contractors. The second map again is to give a  
20 representation of where those contractors are in relation to the  
21 LUST sites in the state. And in the last map is a comparison  
22 where are the LUST sites that -- in relation to the contractors  
23 and, again, the highlighted sites that are in yellow, are within  
24 25 miles of a contractor.

1           Some contractors are consultants but for this analysis I'm  
2 looking purely at removal contractors. And this kind of goes  
3 along with the conversation in regard to travel and how far away  
4 services that you need to perform at your site. The 25 miles is  
5 chosen because of the -- the one-hour round trip would be  
6 referred to 40 minutes before so there is a number. So that's  
7 why the 25 miles is chosen.

8           HEARING OFFICER TIPSORD: Mr. Kelly, these are licensed  
9 contractors who can remove the tanks; correct?

10          MR. KELLY: Correct. The note says this does not account  
11 for out-of-state contractors. There are some contractors in  
12 Iowa, Illinois, and Missouri and some states, but particularly in  
13 the area of the state you're looking for Illinois contractors, an  
14 assumption there is most cases you would think they would use  
15 that particular contractor.

16          HEARING OFFICER TIPSORD: And these constitute the  
17 headquarters or --

18          MR. KELLY: That's the city in which they're located. So  
19 if they have a Springfield address, then I put that information  
20 in Springfield. Because I don't have the actual geographic  
21 ordinance of their office, but if they have a Springfield  
22 address, they are located in Springfield?

23          HEARING OFFICER TIPSORD: But might they also have a branch  
24 office? I know we've talked to some of the contractors who have

1 their main office in Springfield, but have a southern Illinois  
2 office to oversee contracts down there, some of the consultants  
3 have testified.

4 MR. KELLY: That may be possible. I just looked at the  
5 license --

6 HEARING OFFICER TIPSORD: Of the headquarters?

7 MS. MANNING: There is a distinction too between consultant  
8 and contractors. These are just the licensed contractors to pull  
9 the tanks.

10 HEARING OFFICER TIPSORD: Right.

11 MR. KELLY: I didn't mean to bombard the Board with maps,  
12 but I'm a visually-oriented person and sometimes it helps to kind  
13 of see the magnitude of the number of sites and the number of  
14 incidents across the state.

15 To continue to summarize the testimony, in the original  
16 testimony that I gave we were discussing the fact that the way  
17 the proposed rules are read, and we've had a lot of discussion, I  
18 think, about it in the testimony, if you do not plan for every  
19 contingency and you have to submit a revised plan in the budget,  
20 that it's not going to be reimbursed for the owner/operator. And  
21 I think some of the discussion turns into the fact that at this  
22 point, even the Agency has stated, that there is really no  
23 standard rates, methodology or submittal from different people,  
24 different firms that are submitting this information. And

1 therefore, you know, you may have one firm that's a turnkey firm  
2 that's performing all the work, or you may have a consultant  
3 that's together put a variety of subcontractors to complete the  
4 work. So basically there are many variables and cost  
5 considerations and just to look at the -- the -- the cost of the  
6 project and not determining the scope of work, in my opinion, is  
7 not complete.

8 In the testimony it sites some regulations that currently  
9 exist, 732.505 where it talks about what a technical review is,  
10 which my interpretation of that regulation is that the technical  
11 review is to look at the technical merits of the project.  
12 Whereas in 732.505(c) it talks about a financial review, and  
13 basically the financial review is to assure that the costs  
14 associated with the improved plan or the technical plan are  
15 reasonable. Basically looking at a distinction there.

16 In this -- And also in the testimony, which was mentioned  
17 about the conversion rate for excavating the soil and backfill,  
18 basically the discussion there is to show there's, I guess,  
19 variability in the interpretation of what is compacted versus  
20 loose soil, waste and tons per cubic yard. And I know in the  
21 previous testimony in Bloomington, I believe it was, that the  
22 Agency or the regulations that it should be 1.68 tons per cubic  
23 yard. Agency is using 1.5. I can go to this civil engineer's  
24 textbook and I can pick a different value based on whether it's

1 loose, whether it's compact. So in the supplemental testimony  
2 that I provided, I went further to basically expound upon the  
3 question that was in the previous Illinois Pollution Control  
4 Board hearing on May 25th, that perhaps all of this guesswork  
5 should be done -- I shouldn't say guesswork. I should say  
6 estimated, should be done on the front end of the project. We  
7 seem to be hung up on how much does this soil weigh and things of  
8 that nature.

9           If I'm putting together a budget and I have a volume in  
10 yards, I have the dimensions in my excavation, and I use a swell  
11 factor, which I discuss in the testimony as well, let's say 20  
12 percent or whatever it happens to be, plus a unit rate of tons  
13 per yard, the Agency would know how many yards. I think there's  
14 some confusion about how would I know up front as the Agent --  
15 how I would know how many yards of soil would you be removing if  
16 you're just using tons. But if I'm using, whatever you want to  
17 use, 1.5 or 1.68 as a front end when I'm doing my budget, the  
18 Agency would know how many yards I'm removing. I'm estimating a  
19 number of tons for a budget, which is just that, a budget. So  
20 that when I get to the back end of the project and I have actual  
21 weight tickets, for instance, from a landfill that are based on  
22 tonnage, which is an actual measurement, there is no actual,  
23 well, 1.5 tons or swell factor and these other formulas that  
24 enter in or factors. I have the precise number in tons that I

1 can compare to a budget, and the owner/operator can be reimbursed  
2 in that regard. I would suggest that all the formulas and the  
3 estimating be done in the budget process because the budget  
4 process is an estimate itself. And therefore at the end of the  
5 project when costs are being reimbursed or turned in or  
6 evaluated, then the Agency would know, you know, that this person  
7 disposed of a ton of contaminated soil at the landfill. And if  
8 it was 100 tons, it was 100 tons. Well, it wasn't 100 tons times  
9 1.5, or whatever, divided by 1.5 to come up with yards and that  
10 becomes the estimated number. It would be an exact number.

11 BOARD MEMBER GIRARD: So let me just clarify. So you're  
12 saying right now the way the process works, when you get that  
13 corrective plan and budget approved, it does not include the  
14 swell factor you're going to use and the other conversions you're  
15 going to use?

16 MR. KELLY: It would include a swell factor because I'm  
17 trying to come up, but I'm reporting that budget in yards. So I  
18 wouldn't want to use the swell factor. That's why there's other  
19 testimony that is provided that five percent is not adequate. 20  
20 percent is more accurate in determining the volume in yards. But  
21 what happened is, if that budget is in cubic yards, now when I  
22 dispose of that soil, it's just one truck load, let's say, of  
23 soil, I'm taking that to the landfill and they're telling me,  
24 okay, here's the soil we're accepting but it's in tone. So

1 currently if I'm the owner/operator, or whomever represents the  
2 owner/operator, I'm having to take that ton using a conversion  
3 factor to get it into yards, which is the way the budget was  
4 approved, and I would think it would be better to do, oh, let's  
5 do it all in tons in the budget process. That way when it comes  
6 time to reimburse or compare what the project actually cost, the  
7 budget was in tons, the actual cost were in tons and there is no  
8 conversion rates mixed in there.

9 BOARD MEMBER GIRARD: Well, as an alternative, couldn't you  
10 specify the conversion rates up front in the corrective action  
11 that you submit?

12 MR. KELLY: Correct. I think there was some concern from  
13 the Agency that if I converted to tons here, how am I going to  
14 know how many yards -- how many yards you're removing. And the  
15 rate is decided at 1.5 or say, no, you have to use what the Board  
16 has directed, which is 1.68, that would be in the plan to look  
17 and show them, here's the dimensions on the map. Here's the  
18 volume in cubic feet. Here's the volume in yards. Using the 1.5  
19 or 1.68 and describe that in the plan and show them how many tons  
20 we're going to dispose of. Yes, you could do that in the budget,  
21 what I call the front end of the project.

22 BOARD MEMBER GIRARD: And as a general principle, shouldn't  
23 we have as many of those conversions factors approved up front  
24 for the budget before we get to the actual cleanup? We've heard



1 testimony that a half a day is four hours or five hours, we've  
2 got conversion factors throughout this process that may not be  
3 totally agreed to under the current process?

4 MR. KELLY: Correct.

5 BOARD MEMBER GIRARD: Is that correct?

6 MR. KELLY: I think if it's in the budget process, then all  
7 the estimating is done up front and you're dealing with apples  
8 and apples at the end.

9 BOARD MEMBER GIRARD: Thank you.

10 MR. KELLY: For purposes of time, I guess I'll go to the  
11 supplemental testimony. We've have had some discussion about the  
12 tons per cubic yard. I would also like to state there's  
13 confusion in the previous testimony -- previous hearing on May  
14 25th about the swell factor. And my understanding swell factor  
15 would be that you would use -- and kind of goes back to your  
16 question before, that if I'm having a volume of soil in cubic  
17 yards, I would use the 20 percent at that moment in time to come  
18 up with an expanded volume. So there's so much volume for  
19 excavation, so much volume for transportation and so much volume  
20 for disposal. I would have a dimension of that whole in yards.  
21 I would convert it with my swell factor and get an expanded  
22 volume, then I would know up front again in the budget that how  
23 much I have instead of saying, well, no it's five percent or  
24 whatever. Because currently the budgets are being approved to

1 use the five percent and I feel that's not adequate based on the  
2 engineering principles and previous experience.

3         Also stated in the supplemental testimony, to finish this  
4 up, you know, I too wish, you know, for the LUST Fund to remain  
5 solvent and to understand -- and I understand the mode of the  
6 Agency to take action to limit cost to quote/unquote reasonable  
7 level. But I think it needs to be taken into consideration that  
8 also, you know, if given the option, most owner/operators would  
9 want to clean up their site due to potentially third party  
10 liability, property transfers, use of the site, so I think  
11 currently, and I think there's been some discussion presently  
12 between the Agency and some PIPE and other organizations, about  
13 this NFR and other things TACOing out.

14         But I think right now a lot of owner/operators see a, you  
15 know, Highway Authority Agreement or some type of over  
16 institutional control sort of like a Band-Aid to remind many  
17 owner/operators that at some point in time something is going to  
18 incur. They're just covering it up for now, you know, and  
19 putting a cap over it and engineered barriers or whatever, but  
20 what happens down the road and I'm no longer able to clean up the  
21 site. A lot of them given the fact, hey, I can get a clean site  
22 and take care of this now and possibly prevent potential future  
23 liability. So I think that needs to be taken into consideration.

24         I thank the Board for your patience and, like I said,

1 putting in the many displays. But I think, as I said before,  
2 that I think we have strived at, USI particularly, to have a good  
3 working relationship. I can't speak on behalf of other groups or  
4 other consultants that tried to have a working relationship with  
5 the Agency and hopefully continue to do so for the benefit of our  
6 clients and owner/operators and other interested parties. Thank  
7 you.

8 HEARING OFFICER TIPSORD: Thank you. Are there any  
9 questions for Mr. Kelly?

10 MR. KING: Yeah, Exhibit 58, go back to that. I want to  
11 make sure I'm understanding.

12 MS. MANNING: Which one is that, Gary?

13 MR. KING: This is the one with the undisclosed consultants  
14 on it. Just want to make sure the 11 undisclosed PIPE  
15 consultants are working on 893 active sites, out of an open  
16 inventory of about 10,000 sites, is that what you're saying?

17 MS. MANNING: Whether there's an open inventory or not,  
18 there's 4,000 active sites. You have half of that number or --

19 MR. KING: Are you testifying?

20 HEARING OFFICER TIPSORD: She has been sworn in.

21 MR. KELLY: But that's according to the information in the  
22 database. Now, you know, there may be a few more; there may be a  
23 few more that aren't in the database. According to the database  
24 that's what's represented. The reason I picked the PIPE members

1 was because, you know, some other consulting firms that I could  
2 extract from may not want their name on there, just like some of  
3 these people, but that was just to show that there is work being  
4 performed all over the state by a variety of different  
5 organizations.

6 MR. KING: Okay. Exhibit 61, that's the map highlighted  
7 sites within 25 miles of a landfill. I just wanted to -- Board  
8 Member Johnson asked a question about whether you could put this  
9 into geographic display into a percentage basis, and you're going  
10 to check to see if you can do that?

11 MR. KELLY: Yes.

12 MR. KING: And you would be providing that information to  
13 the Board?

14 MR. KELLY: Yes, I would have to check to see if the  
15 program allowed that. What it currently does it highlights those  
16 records, but I think by exporting that database out of GSI, just  
17 the highlighted items, I can take that number and take it out of  
18 total and come up with a number.

19 MR. KING: Would you be, and again, this is not directly  
20 part of your testimony, but the Agency talked about within 50  
21 miles. Would you be willing to do a similar map with 50 miles on  
22 it? Would that be something you could do and provide the Board?

23 MR. KELLY: I could. Something I have to ask though, what  
24 is the significance about 50 miles?

1           MR. KING: Because I'm just trying -- that's what we had  
2 testified to and I wanted to -- I think it would be -- I think it  
3 would be good for the Board to see that comparison. If you don't  
4 want to do it, just say you don't want to do it.

5           MR. KELLY: I don't mind doing it. I'm just saying what is  
6 the significance of 50 miles? See, that's a two-hour round trip.  
7 I could do 100 miles for each landfill. I'm not trying to be  
8 smart here, but I'm just trying to understand what is significant  
9 about why is there a 50 mile radius? Because probably all the  
10 sites would fall within a 50 mile radius but now you're looking  
11 at a two-hour round trip.

12          MR. KING: You think they would all probably fall within 50  
13 miles?

14          MR. KELLY: Probably. But the gap is in between. What is  
15 significant about 50 miles?

16          MR. KING: Well, I was just trying to figure out what was  
17 significant about 25 miles. Because if you look at this map, if  
18 you look at Exhibit 61, there's like a couple of -- looks like  
19 three or four sites in Lincoln, Illinois, and there's got to be,  
20 you know, one, two, three, four, five, six, seven landfills that  
21 are probably within 30 miles, you know, so --

22          MR. KELLY: I chose 25 because you're basically looking at  
23 a one-hour -- one-hour round trip when you're putting a budget  
24 together. I'm saying beyond that point we can draw a line 25

1 miles or 30 or 35 to the site. Each time as you got out to that  
2 site, in terms of miles, you're adding to the cost of the project  
3 and additional transportation. So just 25 was chosen because of  
4 the round trip issue. So that's why I asked what the  
5 significance of 50 miles is.

6 MR. KING: Okay. Has your site used landfills outside of  
7 Illinois as far as disposal of LUST soils?

8 MR. KELLY: I believe that we have at least one instance  
9 used one in Kentucky.

10 MR. KING: Just that would be the only one that you know  
11 of?

12 MR. KELLY: I would have to check and see. But just from  
13 off the top of my head, I would know one in Kentucky.

14 MR. KING: So you don't have any information about other  
15 landfills?

16 MR. KELLY: No.

17 MR. KING: On Exhibit 68, yeah, this is -- Board Member  
18 Johnson again asked this question on this one, but again would it  
19 be -- would you be willing to look to see if you can translate  
20 that geographic distribution to a percentage base?

21 MR. KELLY: Which exhibit is that?

22 MR. KING: Excuse me. It says OS -- It's says Illinois  
23 OSFM licensed contractors, highlighted sites.

24 MR. KELLY: Highlighted sites, yes, we can do that.

1           MR. KING: Okay. Mr. Kelly, do you work with clean-up  
2 projects in Illinois other than LUST projects?

3           MR. KELLY: Yes.

4           MR. KING: Could you describe some of your -- what type of  
5 sites those are in terms of the -- in terms of the Illinois  
6 programs involved? Are they record sites? Were they SRP sites?

7           MR. KELLY: There have been a few, you know, some of them I  
8 have worked on in the SRP program that have been. There's been  
9 other ones that worked with project managers on Brownfield sites.  
10 We've had sites where as far as, not necessarily LUST, some are  
11 related to LUST in terms of Bureau of Water, Bureau of Air, but  
12 as far as permitting is concerned. And then other projects have  
13 been involved in in the past weren't LUST projects but they were  
14 mediation projects in that they were doing site investigation  
15 work, for instance, the military site, looking at the site  
16 investigation with the Corps of Engineers and things of that  
17 nature.

18           MR. KING: Let's focus on these. You had some sites that  
19 have been in the Agency's SRP program?

20           MR. KELLY: Yes.

21           MR. KING: Did those sites use institutional controls?

22           MR. KELLY: I don't recall. One particular site I'm  
23 thinking of we had an old landfill on their site and they were  
24 basically in the investigative stage, and it was brought before

1 them to use institutional controls. The facility was so large  
2 that if there had been soil or groundwater contamination, they  
3 could have utilized that institutional control. But they didn't  
4 move forward with that at this time.

5 MR. KING: Do you have an opinion, you talked about TACOing  
6 out and about how some institutional controls are Band-Aids, do  
7 you have a view as to whether a Tier 1, Tier 2, or Tier 3  
8 cleanup, if done within accordance with the TACO regulations, is  
9 anymore protective with human health, the environment or any  
10 other?

11 MR. KELLY: Tier 1 is to be, you know, basically just for  
12 the look-up guide. And we've had a number of sites where we have  
13 collected site specific data to calculate Tier 2 objectives and  
14 have utilized that. And we had a few instances where Tier 3,  
15 which is your, you know, inaccessible soil and things of that  
16 nature.

17 MR. KING: In your view, is a Tier 2 cleanup less  
18 protective of human health and environment than a Tier 1 cleanup?

19 MR. KELLY: If I would define Tier 2 as using site specific  
20 information the way it's outlined in TACO, I would assume that it  
21 would be the same or equal. Tier 2, in a respect, because you  
22 are using the site specific data that allows you to elevate to  
23 cleanup objectives but --

24 MR. KING: Is a cleanup completed under -- under Tier 3



1 less protective of human health and the environment than a  
2 cleanup under Tier 2 or Tier 1 in your view?

3 MS. MANNING: Again, I want to just clarify for purposes of  
4 the record, that he's talking on behalf of United Science as he  
5 is the representative.

6 MR. KELLY: Well, technically I don't know whether I'm in a  
7 position to state that one objective is more protective than the  
8 other because I didn't design TACO. I didn't design Tier 1, Tier  
9 2, Tier 3. All I can do is follow the guidelines, well, here's  
10 TACO Tier 1, here's residential objective, here's industrial  
11 commercial or we can use site specific data to provide for this,  
12 you know, cleanup objective or here's Tier 3, so I don't know  
13 that I'm in a position to evaluate --

14 MR. KING: If that's true, then why did you describe the  
15 institutional controls as a Band-Aid?

16 MR. KELLY: I said the owner/operator's view of that  
17 sometimes is a Band-Aid because, for example, the IDOT, for  
18 instance, the Highway Authority Agreement, some of them look at  
19 that as a -- whatever term you want to use, a temporary fix, and  
20 they're afraid when IDOT comes through later on and wants to  
21 widen the highway out, part of that agreement states that that  
22 owner/operator has responsibility for -- potential responsibility  
23 for cleanup in the future. So let's say IDOT comes through and  
24 widens the highway out and finds contaminated soil in front of

1 that owner/operator site, and they could come in and say, Mr.  
2 Smith, I want \$10,000 because we want cleanup -- we had to  
3 dispose of this soil to widen this highway out, and they're going  
4 to say, whoa, wait a minute. I gave up that right five years ago  
5 when I accepted the Highway Authority Agreement and it's  
6 horrible. So I'm giving the interpretation of the  
7 owner/operator, not my interpretation.

8 MR. KING: So you're representing views of owners and  
9 operators as opposed to your own views?

10 MR. KELLY: Correct.

11 MR. KING: Do you work with LUST projects that do not seek  
12 reimbursement from the Fund?

13 MR. KELLY: Yes. Let me qualify that. There are some  
14 sites where the owner/operator does the work and they eventually  
15 seek reimbursement, you know, but they all are seeking  
16 reimbursement in some form or fashion.

17 MR. KING: So you have not -- have not or are not working  
18 with --

19 MR. KELLY: Yes, we have had some projects where we haven't  
20 sought reimbursement. I don't know how many, and I would have to  
21 look. We have had some sites that we have not decided to file  
22 reimbursement. The largest percentage of them do.

23 MR. KING: Okay. For the percentage of sites that do not  
24 seek reimbursement, do we have a view as to, in general, whether

1 those sites used institutional controls or did a Tier 2 or Tier 3  
2 cleanup as opposed to Tier 1?

3 MR. KELLY: I don't recall. I mean, some of them like, for  
4 instance, I'm thinking comes to mind like a coal mine, for  
5 instance. Some of them want to have all of the soil removed  
6 because of future liability. And in some instances they may say  
7 go ahead and we'll accept an institutional control. So right off  
8 the top I can't give you the correct answer.

9 MS. MANNING: We have another exhibit that we'll be putting  
10 into evidence that will answer Mr. King's question. And again,  
11 this exhibit will go to the USI for TACO on their project but not  
12 any of the other consultants. So if you want to go ahead and  
13 explain this document, it's called NFR issues versus TACO issues.

14 HEARING OFFICER TIPSORD: We'll mark this as Exhibit 69 if  
15 there's no objection.

16 MS. MANNING: That might expedite the process.

17 MR. DOTY: If I'm reading between the lines correctly, the  
18 question is does USI use or recommend TACO to clientele? Less  
19 are more often than any other in the state, the answer is yes.  
20 We do use it in one form or fashion it looks like. We -- Our  
21 clients have used TACO to -- in one form or another, I'm not  
22 throwing in combination with the -- maybe a conventional  
23 technology, one form or another TACO has been used on USI sites  
24 with much or more than the state wide average, according to the

1 data we got from the database.

2 MR. KING: This Exhibit 69, this is just LUST sites, I  
3 assume?

4 MR. DOTY: Yes.

5 MR. KING: I was not implying any criticism of USI. I was  
6 just trying to get a feel on Mr. Kelly's statement about the use  
7 of TACO, you know, in general and obviously he can't talk beyond  
8 USI's experience. I was not intending to single out anyone.

9 MR. KELLY: I was hoping that.

10 MS. MANNING: Actually if I could ask you, Duane, or any of  
11 you from USI to jump in on the question of whether you would, in  
12 fact, to go to villages and seek ordinances in terms of  
13 institutional controls. Why don't you speak to that for a  
14 moment.

15 MR. DOTY: Yes, we have. Often times we've helped the tank  
16 owner explain to the community, the city wide ordinance, if they  
17 did not have one, maybe have something similar. Maybe they do  
18 require supplied water, city supplied water, whatever the use is  
19 in the city limits, to explain the process of getting one that  
20 would be acceptable by the Agency to be used -- used as  
21 addressing groundwater cleanup. We've encouraged, not encourage,  
22 but help explain the city wide ordinances to quite a few  
23 communities, and successfully.

24 HEARING OFFICER TIPSORD: We haven't officially marked

1 Exhibit 69. No objection we'll mark Exhibit 69. Seeing none,  
2 Exhibit 69 is marked.

3 (Exhibit No. 69 was marked for identification and entered  
4 as an exhibit.)

5 MS. MANNING: Thank you.

6 MR. CLAY: Mr. Kelly, and this was to Board Member Girard's  
7 question, is it true that USI owns trucking or trucks, excavation  
8 equipment and drilling equipment?

9 MR. KELLY: Correct.

10 MR. CLAY: And how often do you bid those -- sub that out  
11 and not use your own equipment?

12 MR. KELLY: I would say in the last few years or so we have  
13 not at all. Early on we would, you know, we've done that before  
14 but...

15 MR. CLAY: Okay. Thank you.

16 MS. MANNING: Joe, why don't you explain why you have your  
17 own equipment.

18 MR. KELLY: Part of the reason for that is it gives us, as  
19 the consultants, to perform turnkey work. And the reason that is  
20 important, is in the past we had on a number of occasions,  
21 subcontracted trucking, subcontracted drilling and some other  
22 field services. What happens is that you are one of the number  
23 of their clients and you may or may be able to work out a  
24 schedule with them to perform the work, or you may or may not

1 have control of that work and how it's being performed. By us  
2 having our own excavation equipment, our own transportation  
3 equipment, our own drilling equipment is to allow us to have  
4 control of that information and flow process of the project so we  
5 can try to be as uniformed as possible in continuing to do the  
6 work, and we still have professional oversight, you know, with  
7 our technicians, collecting the data necessary to put the forms  
8 together. So it offers us the capability instances.

9 We have had instances where we have subcontracted the work  
10 in the last few years because of the magnitude of the project,  
11 maybe the volume is so large we didn't have a sufficient number  
12 of trucks to haul so we asked someone else to go along to help us  
13 out. But the logic behind that is to -- again is for us to offer  
14 the client here's someone that we have control of, you know, in  
15 their performance, their efficiency where that client, instead of  
16 hiring someone else out and not to say that anybody else can't do  
17 the work, but the point is we can control that, and I feel we  
18 have better efficiency to perform the capabilities.

19 MR. DOTY: Can I add a little bit?

20 MS. MANNING: Go ahead.

21 MR. DOTY: I think in USI structure, Joe Kelly does not  
22 certify every stinking project given off so they may not be aware  
23 of every project. But I am aware that in recent -- in the recent  
24 past we have subcontracted Geoprobe to investigate a northern

1 Illinois site. And we are looking at currently accepting bids  
2 from trucking firms on a northern project because geographically  
3 it's quite a strain for us to relocate that type of equipment  
4 that far north. Those are obviously projects that Joe's not  
5 certifying or he would have been aware of that.

6 MR. CLAY: Thank you.

7 MR. WALL: My name is Harry Wall, and I have one question.  
8 Today, as well as yesterday, there are several different business  
9 models advocated by the people offering testimony. I find of  
10 interest, wouldn't a bidding process sort of equate and put all  
11 the different aspects and different business models of equal  
12 footing, this would address the turnkey where they have every  
13 capping that's in the system to other business models where you  
14 have a general contractor and sub bid things out. Might you  
15 know, a yes or no, you don't know, I would like to hear your  
16 response.

17 MS. MANNING: Who's your question addressed to, Harry?

18 MR. WALL: Mr. Kelly. That he -- his opinion, would  
19 bidding address different business models to put things on an  
20 equal footing so that we all know there's many different business  
21 model that are utilized in the LUST remediation business.

22 MS. MANNING: I'm not sure I understand the question  
23 either. What you're asking Mr. Kelly --

24 MR. WALL: Would bidding --

1 MS. MANNING: Bidding of a LUST job, Harry, or bidding of a  
2 contractor's work in terms of drilling and the subcontractors of  
3 the contractors?

4 MR. WALL: I have a long record of mediation. There are  
5 many different business models. There are turnkey, there's  
6 general contractors and all approaches of work. When I review  
7 bids, which I do a lot, we --

8 HEARING OFFICER TIPSORD: Mr. Wall, I need to have you  
9 sworn in.

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

11 MR. WALL: What I'm saying is, would bidding provide  
12 sufficient information that will allow the reviewer to  
13 discriminate the best cost independent of a business model that  
14 is utilized by the consultant? And that's what we're talking  
15 about. There's many different business models. Mr. Kelly's firm  
16 uses a turnkey business model. He alluded to the fact that they  
17 can do the drilling, they do the hauling, they do the digging,  
18 they do turnkey. That's one approach. He can bid a site.  
19 Whereas another contractor, like Cindy Davis' firm, may have the  
20 engineering and maybe the drilling, but she bids out other things  
21 to put things on a level playing field where there may be  
22 advantages to taking a bid approach on to give a standardized  
23 understanding of what the costs are?

24 MS. MANNING: Right. And I understand, Harry, what your



1 question is, the policy question actually, one from my  
2 perspective not specifically appropriate for Joe Kelly to answer  
3 as -- in his capacity as USI. Fact of the matter is, if your  
4 question goes to whether the state of Illinois, through this  
5 rulemaking procedure, ought to have a competitive bidding policy,  
6 my suggestion would be at this point is that the law doesn't  
7 require the owners and operators to engage in bidding in terms of  
8 who, what contractors they hire. So from that perspective,  
9 that's not the situation that is currently invoked in the state  
10 of Illinois, as in other states, that require bidding on the part  
11 of the owners and operators, you know, before they actually  
12 engage in the work.

13 MR. WALL: Put it on the table, I guess.

14 MS. MANNING: That may be appropriate to put on the table,  
15 but I'm not sure it's appropriate for USI to respond in terms of  
16 what their opinions, I guess, one way or the other.

17 MR. WALL: I guess I offered testimony.

18 MS. MANNING: I guess you have. Thank you.

19 MR. KING: So is Mr. Kelly going to answer the question?

20 MS. MANNING: I'm not sure what the question is. Of what  
21 his opinion is?

22 MR. KING: I think he testified as to having experience in  
23 the LUST program. He's asked a question about what that  
24 experience is.

1 MS. MANNING: Will it be relevant for the Board -- I mean,  
2 does the Board find it relevant for Mr. Kelly to give his opinion  
3 as to whether an owner/operator should be able to bid? You see  
4 what I mean --

5 HEARING OFFICER TIPSORD: Excuse me. I think the question  
6 is -- what is more or less what is your opinion of the process  
7 that might include open bidding. And I think that's a legitimate  
8 question and we've been talking about that. So, Mr. Kelly, if  
9 you could say what your opinion would be of the process that  
10 might include opening bidding for --

11 MR. KELLY: Well, I can only speak to my experience and  
12 experience of our organization, but I guess in a roundabout way  
13 we sort of engaged in that because back, you know, there are  
14 instances where currently we have some projects and other  
15 projects where we have, in a roundabout way, I guess you've  
16 gotten bids because you asked people to perform a service for you  
17 and looked at what the pricing would be.

18 As I previously mentioned though, there are advantages -- I  
19 mean, there's advantages and disadvantages to those different  
20 approaches. Because as a turnkey organization, which we've  
21 become, we weren't that way originally, you know, and I worked  
22 with another organization that, I guess you could say, is  
23 contractor, they subbed out everything. But -- So I guess I've  
24 been in both sides. The reason I prefer, I guess, the turnkey,

1 and I can only speak to our experience, is that it allows you to  
2 control the information and the flow of the project as long as  
3 it's reasonable cost. Whereas sometimes bidding I've found in  
4 experience with doing CDB work, and other types of -- performing  
5 other types of work, the low bid is not always the best bid.  
6 There's quality and other things to factor in. So we can sit  
7 here and debate this all day, I think. But to answer the  
8 question, it's probably inherent in part of some of the projects  
9 but it may not be information made available to the Agency.

10 So if I submit a corrective action plan, you may not --  
11 you're not going to know that I went and talked to three backfill  
12 providers and got the best price, or I talked to three landfills  
13 happen to be together that I got the best price or we got, you  
14 know, maybe six laboratories that are wanting our business and  
15 this one gave us the best price and provides a good service and  
16 quality data and information. You don't know that when I submit  
17 that. So, I think, it's sort of in the process, as I explained  
18 previously, it's just maybe not available for the general public  
19 or the Agency, so I prefer to have some control.

20 Other people want to have their business where they bid out  
21 everything and do it that way. I think that's up to them. I  
22 think there's advantages or disadvantages to both approaches.

23 BOARD MEMBER GIRARD: Well, are there problems with making  
24 that more explicit in making the process? You said you may have

1 gone to three laboratories and gotten bids, but is there a  
2 problem with putting that information, you know, into the -- say  
3 into the plan or budget that goes back to the Agency?

4 MR. KELLY: I suppose not. But by the same token, as I  
5 mentioned earlier, that there may be some areas where I only have  
6 one provider of a service because of geography. And if you make  
7 some type of ruling that says you got to have three bids and can  
8 only get one bid. We've had that -- we've run into that, and  
9 we've had this discussion before, about asphalt and concrete. We  
10 have had projects in where one area we've got three asphalt bids,  
11 so we may have gone to another part of the state and there's only  
12 one guy in town and he knows it.

13 BOARD MEMBER GIRARD: Well, is the problem geography or is  
14 the problem economics? I mean, if you could find somebody  
15 further away who could provide the same service at a lower price,  
16 wouldn't it be better for the State to go with that lower price  
17 provider rather than go on who is geographically the closest?

18 MR. KELLY: Well, I'm just saying because of geography that  
19 may mean their cost is higher, is all I meant. Yeah, I guess you  
20 could get some guy who wanted to come down from Chicago to  
21 Champaign and do the work cheaper than the guy that's in Urbana,  
22 I guess you could do that, if you had that information. But I  
23 know from doing some projects myself that, you know, when you're  
24 doing a project in a particular region, you're looking in that

1 area and the surrounding area, you know, as much as possible to  
2 try to find people that can provide that service but --

3 BOARD MEMBER GIRARD: Well, isn't getting the cost of the  
4 information the key to the whole process --

5 MR. KELLY: Correct.

6 MR. GIRARD: -- when controlling costs? And the one way of  
7 doing that is through a bidding process; is that correct?

8 MR. KELLY: I guess my confusion is how would that work  
9 with turnkey organizations? Because as long as we're submitting  
10 cost or budgets that are compared to other firms are reasonable,  
11 then you're going to say I can't use my drilling, I can't use my  
12 drilling people because, you know, maybe they're one dollar a  
13 foot more than this guy but maybe they're better than this guy,  
14 you know, that's why I think there's advantages and -- I'm not  
15 disagreeing with you. I'm saying there would have to be a lot of  
16 explanation or qualification of how that process would work. I'm  
17 not disputing what you're asking. I just don't know how to  
18 answer because there's so many variables in there.

19 BOARD MEMBER GIRARD: Well, I mean, why should the State  
20 pay a dollar foot more for your convenience as opposed to getting  
21 more cleanup for the same amount of money?

22 MR. KELLY: Well, I might be a dollar a foot less. I just  
23 threw that out there. But to answer the question, if I get  
24 somebody that -- I guess looking at it from quality and

1 efficiency. I just threw that number out there. I don't know  
2 what we compare to other people. But we're trying to do it for  
3 the same price as other people, but yet provide quality data and  
4 information when we do a site investigation plan, as close as  
5 that site investigation is, we want to make sure we're getting  
6 good information and good productivity than the people doing it.  
7 We've invested in a Geoprobe, for instance, which is more  
8 effective and more efficient than a rotary rig. Although there  
9 are applications where a rotary rig or a posse track are  
10 applicable because of site conditions. So I'm not advocating  
11 that we get paid more than somebody else, just as long as we're  
12 within saying -- within what's considered, I guess, what is  
13 reasonable what the market considers. I'm not saying we're worth  
14 more than somebody else because we're turnkey, I didn't mean to  
15 imply that we're worth more.

16 MR. KING: If I could get a document marked. You guys had  
17 the chance to ask us a lot of questions about reimbursement from  
18 the Agency standpoint so I was going to ask you some questions  
19 about reimbursement from the private side. This is a --

20 HEARING OFFICER TIPSORD: Mr. King, just a second. Off the  
21 record.

22 (A discussion was held off the record.)

23 HEARING OFFICER TIPSORD: The Agency has offered United  
24 Science Industries, it looks like from their web page, as Exhibit

1 70. If there's no objection, we'll mark that as Exhibit 70.

2 Seeing none, it will be marked as Exhibit 70.

3 (Exhibit No. 70 was marked for identification and entered  
4 as an exhibit.)

5 MR. KING: Okay. The second page, there's a bold type  
6 page, LUST Cleanup Funding Program, and I was going to read  
7 through that. I wanted to get Mr. Kelly's opinion as to whether  
8 this statement represents current policy and practice for USI.  
9 And if he can't answer, he can't answer it. But it says, USI  
10 offers owners of underground storage tanks in Illinois the  
11 opportunity to have their sites remediated at no cost to them  
12 other than their state mandated deductible. To participate in  
13 this program you must be eligible for reimbursement from the  
14 Illinois Leaking Underground Storage Tank fund. Once you satisfy  
15 your deductible, typically \$10,000, the remainder of cleanup  
16 expenditure is borne by USI even if they run into the hundreds of  
17 thousands of dollars. Please E-mail or call us for more  
18 information. Does that represent current practice and policy for  
19 the company, if you know?

20 MS. MANNING: We'll reserve answering the question.

21 MR. KELLY: I didn't do the website. I would prefer  
22 someone higher up than me answering that.

23 MR. KING: So you don't feel you can answer the question,  
24 whether that represents the practice or policy?

1 MS. MANNING: It is on the website.

2 MR. KING: It's on the website. I just want to make  
3 sure --

4 MS. MANNING: Well, you've got it in the record. It's on  
5 the website as of June 22nd, 2004, so it does represent current  
6 practice and policy.

7 MR. KELLY: Well, I'm not sure what you mean by current  
8 practice and policy. Well, that statement is there so they're  
9 off -- the people that put the website together is offering that  
10 information to potential clients.

11 MR. KING: What, I mean, by the practice does USI enter  
12 into contracts with owners and operators with that type of  
13 financial arrangement in place?

14 MR. DOTY: You need to see the contract probably. The  
15 contracts -- all USI does is just extend the payment term.

16 MR. KING: Would you be willing to provide a copy of one of  
17 those contracts?

18 MR. DOTY: Sure.

19 MR. KING: And that would show how this operates and how  
20 this principle operates?

21 MR. DOTY: It's just a simple extension of payment terms  
22 after the deductible has been meant. It's not -- You know, you  
23 brought up some issues about subbing or whatnot. There's no --  
24 And I think we've even offered these contracts before. But we



1 don't carry -- we carrying ourselves basically in our contract.  
2 We're not -- we're not carrying the work that we don't provide  
3 ourselves. Typically that's -- that's contracted directly to the  
4 clients in most cases. I'm not taking a lab bill and paying the  
5 client's lab bill and marking it sky high and asking you to  
6 reimburse it. If that's your concern, that's not the case.

7 MR. KING: If we were in a situation then if the Agency has  
8 deducted a cost as being unreasonable under this arrangement as  
9 represented here, the owner/operator would not be paying for that  
10 cost; is that correct?

11 MR. DOTY: I'm sorry. Could you --

12 MR. KING: If the Agency -- Under this arrangement if the  
13 Agency --

14 MS. MANNING: The arrangement -- Wait. Let me just clarify  
15 the question. The arrangement is whatever it is in the contract.  
16 Not what is on the website, Gary. So it's hard for him to answer  
17 a question that is just what's on the website if he's already  
18 testified that it's pursuant to the contract.

19 MR. KING: He seemed to have some knowledge of what's in  
20 the contracts, so I just was going to follow-up on and what is in  
21 there.

22 MS. MANNING: I was just clarifying this arrangement  
23 language. I didn't know what you meant by this arrangement.

24 MR. KING: Under one of these contracts, if the Agency then

1 determines that a cost is unreasonable and deducts that from the  
2 amount reimbursed under this contractual arrangement, then the  
3 owner/operator would not have to pay that cost; is that correct?

4 MR. DOTY: In the budget, is that what you're asking, if  
5 the budget is trimmed? A modified budget what's --

6 MR. KING: No, not in a budget. After a cost has been  
7 incurred.

8 MR. DOTY: That's potential.

9 MR. KING: You said that is a potential?

10 MR. DOTY: That is a potential, yes.

11 MR. KING: And can you be willing to share a copy of the --

12 MR. DOTY: Unless Jay Koch has problem with it. I  
13 certainly don't.

14 MS. MANNING: Just to clarify this too, for purposes of the  
15 record, Cindy Davis testified on behalf of her company, that when  
16 she, you know, that it was her company that incurred the legal  
17 costs, you know, in terms of going forward to the Board as  
18 opposed to the owner/operator.

19 MR. KING: I understand. There's been statements that  
20 these -- that costs are absorbed by owners and operators, and I  
21 want to get that in proper terms.

22 MR. DOTY: You need to follow the course the way this works  
23 here. If an owner/operator, the way that the contractual  
24 agreement is, we can do work for the owner/operator that is not

1 going to be reimbursed. That's a requirement up front. In a  
2 situation where you want to cap the reimbursement at a certain  
3 dollar amount, for whatever task, and the client still prefers to  
4 pursue that particular approach, whether it's remedial approach,  
5 remote location, small volume, the cap meets the 57 or 77, that  
6 has been capped, all we're -- all we agree to do is to provide  
7 that to them up front. And if he wants to continue, in that  
8 there's the understanding that's been in jeopardy, I don't  
9 guarantee any type of work provided by a vendor or subcontractor.  
10 We don't use a whole lot of subcontracting in our scenarios, and  
11 I certainly don't guarantee any type of decision from the Agency.  
12 All we're doing is extending a payment term beyond that  
13 deductible to the point which they are reimbursed and  
14 guaranteeing that our work -- that we guarantee is -- are going  
15 to be deemed reasonable, cost-effective and reasonable. And that  
16 will be your determination. And if you disagree, then we have --  
17 we have a discussion to make. But, no, we don't back charge the  
18 clients, but it's only on the work that we perform our self.

19 MR. KING: Okay. Thank you. I appreciate that.

20 MR. DOTY: But typically there's a budget ahead of time.

21 HEARING OFFICER TIPSORD: Any additional questions for Mr.  
22 Kelly?

23 BOARD MEMBER JOHNSON: I'll make it brief. Boy, you're in  
24 the hot seat today, but I guess that's the nature of your

1     testifying.  You didn't verbally testify to this, but it is in  
2     your pre-filed testimony.  I thought it was significant when I  
3     read it.  You said that you think that the rate -- you think this  
4     is because the rate sheet that they have been using over the past  
5     several years consists of the same dollar amount contained in  
6     Subpart H.  And then go on to suggest that there have been three  
7     years of forcing data with that model, and I guess to me that  
8     means that you've been operating under the circumstances that the  
9     Agency is proposing in this rulemaking for the last several  
10    years, would that be a fair characterization as far as costs,  
11    reimbursement of costs?  Is that what you said in the pre-filed  
12    testimony, that you think for the last two or three years, page  
13    number five and six of your original filed testimony.  You  
14    essentially -- The last paragraph starting with the Agency also  
15    stated in going through the top of the next page.

16           MR. KELLY:  Basically if I gave the synopsis to show that  
17    -- that, you know, beginning of 2001 there were rate deductions.  
18    I don't know when the, you know, the rate sheet was produced or  
19    the spreadsheet that Brian had testified to.  I just felt that as  
20    though the rate reductions -- rate reductions were in process and  
21    it appears that perhaps based on the proposed regulations, those  
22    seem to be coinciding.  I'm not saying for every -- you know,  
23    there have been other projects where we've been able to work  
24    through those issues and come to an agreement and working through

1 that. But it just appears that based on the information that we  
2 had, just seeing the rates that were being allowed, and even some  
3 of the correspondence stating that, you know, this is based on --  
4 this deduction was made because of a rate or this deduction  
5 because of the number of hours, but most of the time the rate.  
6 And now those rates need to coincide with somewhat with Subpart H  
7 like -- yes, exactly would be the appearance. I'm not saying in  
8 all cases but in some cases.

9 BOARD MEMBER JOHNSON: Thanks.

10 HEARING OFFICER TIPSORD: Okay. Let's take a 10 minute  
11 break and we'll come back with Mr. Fleischli.

12 (A short break was taken.)

13 HEARING OFFICER TIPSORD: Back on the record.

14 MS. MANNING: Madam Hearing Officer, Claire Manning again,  
15 on behalf of PIPE. We've asked Bill Fleischli, which PIPE has  
16 worked closely with IPMA in terms in response to this rulemaking,  
17 and Bill Fleischli has gladly agreed to come before and give  
18 IPMA's concern to the Board.

19 HEARING OFFICER TIPSORD: We'll have you sworn in, Mr.  
20 Fleischli.

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

22 HEARING OFFICER TIPSORD: Mr. Fleischli, we'll admit your  
23 pre-filed testimony as Exhibit 71 if there's no objection.  
24 Seeing none, we will mark that as Exhibit 71.

1           (Exhibit No. 71 was marked for identification and entered  
2           as an exhibit.)

3           MR. FLEISCHLI: Thank you very much, Madam and Chairmen of  
4           the Board. My name is Bill Fleischli. I'm the executive vice  
5           present of the Illinois Petroleum Marketers Association. I  
6           represent probably two thirds to 70 percent of the distributors  
7           in Illinois. The distributors are the ones by law are caused  
8           with paying taxes and fees, the 72 million dollars of insurance,  
9           that we paid for, to remediate the soil around underground  
10          storage tanks if there should be a problem.

11          If this program fails, we are the ones that suffer. We are  
12          the ones that will be called upon that will have to get private  
13          insurance. We are the ones who will have additional costs. The  
14          way the program works now, we pay the 72 million dollars every  
15          month. We also pay for the remediation and we wait for the Fund  
16          to pay us and we pay our contractors. And if the rates -- we  
17          feel these rates aren't fairly established and that companies  
18          cannot do the work for the rates that have been established. We  
19          think competition will leave this work force. If this work force  
20          lacks competition, we think the rates will go up. And my members  
21          will suffer and they will have to pay the difference or we will  
22          have to go through the appeals process, which is very, very  
23          expensive for us.

24          There's some questions that I'd like to ask, and in

1 previous testimony, there's been 14 million dollars of said debt  
2 service in a year. I think that's an increase. That's an  
3 increase that the industry didn't know about in debt service.  
4 And if you look at that, that's about 20 percent of the fund.  
5 That seems to be a lot when you factor in that the administration  
6 now has, I believe, charging -- is charging an eight percent  
7 administrative fee on that, plus all the other administrative  
8 fees on it. I think the Fund is in the range of 30, 35 percent  
9 may not be going to cleanups, which we think should be looked at.  
10 I don't know if the Pollution Control Board came up with that or  
11 the administration came up with that.

12 Just to let the people know that we have had a steady  
13 growth in gas, in the production of gas, or the sale of gas to  
14 about two or three percent a year. But if and when a gas tax  
15 hits, a significant one, there looks like there's one on the  
16 horizon, but if we get to that point after 20 years, you'll  
17 probably have one. There's usually a five percent reduction in  
18 gallonage for the first three years after a gas tax. So that  
19 would be a 15 percent reduction in gallonage, that would be a  
20 travesty for the Fund, about a 10 or 15 percent of reduction in  
21 fees to this Fund.

22 I do believe the eight percent administrative fee that, I  
23 believe, is being charged in this Fund is outrageous. Because  
24 when we set the Fund up in the early to late '90s -- or early to

1 late '80s to '90s, we pay all the collection fees. We pay for  
2 the four agencies to run this, and we being the industry. We  
3 paid for our fees and taxes from Illinois are the fees and taxes  
4 we pay Federal Government. All those fees come back and those  
5 are supposed to run. So having administrative fees of eight  
6 percent we think is wrong.

7 Over the last three administrations, that's the last three  
8 governor's administration, there's probably been between 30 and  
9 40 million dollars, going back to the Edgar administration, then  
10 the Ryan administration and the present administration. When the  
11 Fund was expanded in '94, we did meet -- we met with the Agency  
12 and we thought we came up with a number, a number that we thought  
13 was sufficient. I believe we probably generate more money in  
14 this Fund than most every other state in the union. I know we're  
15 probably the top two or three to 72 million dollars a year. We  
16 think it's an adequate fund if we can get our cost together.

17 I do not know from the Board's, and there may be a  
18 recommendation of this, but I ask that they look at this. The  
19 funds that were generated should be going to the Fund. And when  
20 and if the state of Illinois gets their funds, their financial  
21 house in order, I do believe there should be some mechanism to  
22 pay this Fund back. It used to be the old nexus was a 300  
23 million dollar balance at the end of year. I think there ought  
24 to be something put in place that this Fund is paid back at 2



1 million dollars a month with interest.

2 I do think there should be accountability as exactly how  
3 much money has gone out. And I'm not saying the Agency doesn't  
4 know this. It just seems to me there's a lot of ins and outs  
5 that we don't know, and some of the ins and outs have been in the  
6 \$100,000 levels. I don't know what that is for. Usually when  
7 there's outs, it's a big one.

8 I do emphasize that the speed of paying the claims is very,  
9 very important to this, to us as an industry because we can't  
10 afford to wait for this stuff. And should there be an appeals  
11 process, that just seems to be outlandish to do it. I think  
12 there should be something in place, as with other agencies that  
13 we deal with in many parts of the state government, that we have  
14 some sort of localized appeals process, outside people helping us  
15 make a decision where we don't have to go through a process where  
16 we have to -- have to hire outside counsel that causes concern  
17 and money.

18 With that I will conclude my testimony and answer any  
19 questions that you might have of the industry and try to  
20 emphasize to you that if I don't know the answer, I will  
21 certainly get back to you.

22 HEARING OFFICER TIPSORD: Any questions?

23 MR. ROMINGER: We have no questions.

24 MS. MANNING: Bill, could you speak a little bit to how

1 owners and operators select contractors to perform the  
2 remediation work?

3 MR. FLEISCHLI: There is -- Someone earlier talked about a  
4 bidding process. Believe me, if you know the gasoline people, we  
5 live and die in pennies. We raise the penny, lower the penny.  
6 We actively pursue and recruit and bid our own process to get  
7 these -- to get a contractor in that can do the services that  
8 turn and remediate the soil. In some instances we'll have an  
9 owner that will have four, maybe three our four, incidents going  
10 around the state of Illinois, and he will have three or four  
11 contractors doing different work for them on these. Simply by  
12 the fact that the process that they use is something different  
13 than they're interested in or the cost are better, but they do  
14 actively look at, evaluate and recommend to each other, that  
15 contractors do the work.

16 MS. MANNING: Also you talked about time frames. I just  
17 want to show you a letter that's been put into evidence, I think  
18 as --

19 HEARING OFFICER TIPSORD: Which letter?

20 MS. MANNING: This is a letter from Mr. Bill Fleischli to  
21 Mr. King dated August 24th, 2001.

22 MR. FLEISCHLI: We have had --

23 HEARING OFFICER TIPSORD: That would be Exhibit 41.

24 MS. MANNING: Thank you.

1           MR. FLEISCHLI: Gary, we've had these discussions for all  
2 the years I've been here. We've tried to get the remediation  
3 process moved along -- or the payment process moved along at a  
4 faster rate simply for the fact that the money in that Fund is a  
5 false balance when you have 1,000 claims out there and 40 or 50  
6 million dollars, it was a consistent 40 or 50 million years ago.  
7 And I asked the Agency to come up with a process to get it moved  
8 along quicker so the General Assembly don't eye that when times  
9 got tough, that they wouldn't eye that and take the money.

10           It did happen, and we're sorry it did happen, but it was  
11 something that the industry was concerned about that has been  
12 concerned about for several years.

13           MR. PULFREY: Bill, I've got a question. My name is Bob  
14 Pulfrey. And I've got a question. What I'm hearing you say is  
15 that there was a tax years ago, that there was a tax put on  
16 gasoline and diesel and fuels that would go into a special fund  
17 that was marked -- earmarked by legislation; is that correct?

18           MR. FLEISCHLI: That's correct. Three tenths in gas act.  
19 That was in '89, I believe.

20           MR. PULFREY: In your opinion, taking funds from this  
21 particular one that was earmarked for specific purpose and  
22 putting it into, say the general treasury, is actually illegal,  
23 is what you're saying?

24           MR. FLEISCHLI: I'm not an attorney. I certainly don't --

1 say from industry, it's certainly unethical for us to think we  
2 pay into the Fund, both from the state level and federal level  
3 not -- and not to have those dollars come back and be used for  
4 their purpose by the General Assembly and the will of the  
5 Governor's signing it. And I think that's, in my opinion,  
6 unethical. We didn't take up in court and say it's illegal but  
7 it's certainly -- it's unethical, I believe, because its intended  
8 purpose is to cleanup the environment, and it's not doing that.

9 MS. MANNING: Maybe, Bill, for a second you could talk  
10 about the purpose of the Fund in terms of it also being a  
11 financial self-assurance mechanism for the owners and operator in  
12 terms of the deductibility and talk in terms, if you will, about  
13 the deductibility in what you think you've gotten from the Fund,  
14 and owner/operator?

15 MR. FLEISCHLI: And you, and correct me when I'm wrong, on  
16 100 tanks or less you have to have a million dollars worth of  
17 coverage by the Federal Government. Over the 100 tanks, it's two  
18 million dollars. And this Fund meets those requirements from the  
19 Federal Government. If and when that Fund would go -- would not  
20 meet those requirements, we as owner/operators would have to come  
21 up with private insurance. Private insurance is available. It's  
22 very, very expensive. And because you have to have -- before you  
23 get private insurance, an insurance company is going to ask you  
24 to do a site classification on your -- on your site. So when

1 that happens, if there is contamination on that site, they're not  
2 going to insure you. And the Fund doesn't insure you if you have  
3 an incident.

4 All those things play against the owner/operator. It's a  
5 72 million dollar insurance program that we fund, that  
6 distributors and the state of Illinois fund. I think it has  
7 worked. I think it's one of the best in the country. It's been  
8 working for four or five years, 10 years. It's now going on some  
9 difficult times. In the early '90 when we went through -- when  
10 did have enough funding, it was touch and go, Gary. I mean, you  
11 can remember that. The Federal Government wanted to come in and  
12 take over. They were going to make us get private insurance. It  
13 was -- it would have been catastrophic to the industry.

14 And those of you out there who buy gasoline are complaining  
15 about a \$1.72 a gallon, you probably could double that and have  
16 the station, if we didn't have this program.

17 MR. KING: Just to follow-up. It would -- it would appear  
18 from your statement that the long-term integrity of the UST fund  
19 is critical to the membership of IPMA?

20 MR. FLEISCHLI: That's correct.

21 MR. KING: Just another follow-up on the letter that you  
22 sent to me that was dated October 24th, 2001, which is exhibit --

23 HEARING OFFICER TIPSORD: Exhibit 41.

24 MR. KING: 41. As you recall we had meetings after that

1 where we, in these meetings, we talked putting things into our  
2 database and our efforts to streamline?

3 MR. FLEISCHLI: There's been no doubt. Communication  
4 between the Agency, I'm not here to say -- I'm not saying --  
5 We've worn the chairs out between your office and our office  
6 putting this Fund from 1991 on. We've worn the chairs out. I'm  
7 not saying there haven't been problems. Although sometimes it  
8 may not get to your level, that there is some backlog and  
9 sometimes they are not paid as quickly as some things people are  
10 telling you they're being paid. We've had that. You and I had  
11 that discussion too. I don't want to say this Agency is not  
12 cooperating.

13 MS. MANNING: I have --

14 BOARD MEMBER JOHNSON: Your pre-filed testimony suggests  
15 that you talked to the Agency and suggested that they consider an  
16 external review process short of filing in front of the Board, I  
17 assume?

18 MR. FLEISCHLI: Yes.

19 BOARD MEMBER JOHNSON: Can you elaborate what you mean by  
20 that?

21 MR. FLEISCHLI: I've got -- My background has had several  
22 hats. But I came from -- my last stop with state government was  
23 with the Department of Transportation. In the construction area  
24 of transportation and those areas, they always have an internal

1 review process in selecting engineers and also selecting of  
2 contractors and evaluating contractors. But if there is a -- if  
3 you stay below budget or at the budget, things are paid and paid  
4 quickly. And when you get outside of that area, there is a  
5 formal -- there is a review process with the Department of  
6 Transportation that will say, yea or nay. Then you go to a  
7 process where it needs counsel in a circuit court or something to  
8 that effect. We've advocated that for several years. And we get  
9 something through there. We get the dollars quickly back to my  
10 members so they can get out of debt with banks and pay their  
11 contractors.

12 MS. MANNING: I have a couple more questions, Bill. Number  
13 one, you were here during the testimony of United Science  
14 Industry. And I would just like to know if IPMA has a reaction  
15 one way or another whether there is anything -- it seems like  
16 some of the Agency's questions were directed at something being  
17 wrong perhaps with the idea of having a turnkey organization or  
18 operation working for an owner and an operator, could you expand  
19 on that?

20 MR. FLEISCHLI: There were two questions. One is a  
21 turnkey. Some of our members are in -- we have to be everywhere.  
22 We are where the gallon is. Some of our members, I think, some  
23 of our members use turnkey operation. It gets it -- it's an  
24 established way of getting things done, done quickly and done

1 right. And I think they rely on the Agency to -- if they have  
2 approved these people or they allow these people to work in the  
3 state of Illinois, that everything is okay.

4         The second one addressed was a -- the contractor floating,  
5 I guess you call him, or taking the responsibility or obligation.  
6 Some of my smaller members have to use that. We are now at the  
7 point in this process, I think, that some of the new incidents,  
8 the major oil companies and the bigger businesses have got a lot  
9 of -- of their problems behind them, and some of my smaller  
10 members have their problems and are still facing their problems  
11 because they don't have the cash and money to do it. So  
12 opportunities that come along where they don't have to borrow at  
13 the bank for the contractor to do this without having an  
14 obligation, that they're obligated to pay the interest or things  
15 like that. Certainly when something as a business perspective  
16 that you would use, and as long as it's legal and there are  
17 safeguards with the department, I see no reason my members  
18 shouldn't take advantage of something like that; and several of  
19 the small ones probably do.

20         MR. CLAY: Bill, we had discussions in the past. Would you  
21 have any opposition to some type of bidding process built into  
22 this program?

23         MR. FLEISCHLI: On the surface the bidding process looks  
24 very, very good. I think my members do a bidding process now,



1 and the only thing that bothers me is slowing down even more. If  
2 you slow down this process even more because we -- we have -- not  
3 only do we have an environmental problem in this state naturally,  
4 we're very concerned about the environment. It's something that  
5 we want see as quick as we can. We also have a business  
6 perception problem that we are -- we are, you know, hurting --  
7 hurting the environment, we're hurting our communities we live  
8 in. We are small businesses. We try to -- So we want to get  
9 these things behind us and as soon as possible. And if the  
10 bidding process would slow that down, or if we would be required  
11 to do it, I'm -- and then fill out paperwork, more paperwork to  
12 do it, I would think that our members would not be -- would not  
13 be in favor of that, although I've not polled them on that, but I  
14 certainly can ask them on it.

15 MS. MANNING: One more question, Bill. At our hearing, I  
16 believe on March 26th in Springfield, the Agency was asked the  
17 question, to which it responded, that some of the cost  
18 containment, that they indicated basically that they compared  
19 this Fund and this particular rulemaking to health maintenance,  
20 that an HMO, and, you know, they were basically, you know, I  
21 don't want to speak for them but the connection had been drawn  
22 between this rulemaking and cost containment in the medical  
23 industry. And in terms of the Fund itself and the sort of  
24 insurance aspect that dealers and operators that consider this

1 Fund to be an insurance mechanism with a deductible that you pay,  
2 does IPMA have a feeling one way or the other about painting this  
3 Fund, if you will, as an HMO.

4 MR. FLEISCHLI: Well, the insurance rates in the last two  
5 or three years, there's been about a 40 percent increase. I  
6 don't mean to be smart. I think the process, and again I'm not  
7 an engineer, but I think the process, and we talked about this,  
8 Gary, this is nothing new, I think the process should be  
9 established in the budget. I think the budget should be -- In  
10 your budget process it should be established what this cleanup --  
11 what the objectives are of this cleanup and what we're going to  
12 do and what it's going to cost. And I think it ought to go  
13 forward as fast as possible. And then if you meet that budget, I  
14 think it all -- things ought to be paid. I think the preliminary  
15 budget process, if you would, for areas worked out, and if you  
16 have, and you will, weather or you get in and find another tank,  
17 there's something out there that causes the budget to get out of  
18 whack. I still think that the main part of the budget is simple  
19 here, but you appeal that process or that part of it that wasn't  
20 in the budget. That's appealed. Something happens. It rains  
21 six inches and everything caved in or something like that, caused  
22 our prices to go up. That's the way I think. That's the way  
23 I've envisioned for a long time. We do this with a budget  
24 process. We improved. I mean, it seems to me now we got to the

1 point -- And again I'm not an engineer. This is not real rocket  
2 science. You have several months of pursuing this thing. It's  
3 not like with the early '90, you know, we didn't know how we were  
4 going to do this stuff, but we got processes that work.

5 If this site has this process and it works the best, let's  
6 do it this way. You're talking X amount of dollars. It's going  
7 to be 150 days and pay it off now. Something happens. And if  
8 the process goes up by 10 percent, whoa, we're not responsible  
9 for that. We're not going to pay them. It ought to be evaluated  
10 and looked at. And if those people think that was right, and it  
11 was a 10 percent increase, they ought to pay it. I know I'm  
12 being simplistic here but, I mean, I believe that's the way they  
13 build bridges, vertical buildings and stuff like that. After  
14 that, the watch dog should be in the process of budgeting.

15 MS. MANNING: So as long as the costs are in the approved  
16 budget, it should be an easy matter just to pay, is that your  
17 point?

18 MR. FLEISCHLI: Yeah. The overrun should be looked at.  
19 Those are the things we're worried about.

20 HEARING OFFICER TIPSORD: Anything else? Thank you very  
21 much, Mr. Fleischli.

22 MR. FLEISCHLI: Did you have a question? I'll write it  
23 down and get back to you.

24 BOARD MEMBER JOHNSON: No, I asked you -- You answered my

1 question about the external review process that you suggested.

2 MR. FLEISCHLI: Okay. Thank you very much.

3 HEARING OFFICER TIPSORD: Thank you. Next we have --  
4 Before we go back to USI, we're going to go with pre-filed  
5 testimony from BP Products North America. There's a pending  
6 motion to file instanter. Is there any objection to that motion?  
7 Then we'll grant the motion to file instanter. Mr. Reiser.

8 MR. REISER: My name is David Reiser. I'm with the law  
9 firm of McGuire Woods. I'm representing BP North -- BP Products  
10 North America, Inc. And we are here to present the testimony of  
11 Harold Primack. The testimony was pre-filed. It was filed late.  
12 We've been granted permission to file instanter. I have copies,  
13 and I guess I ask to have that admitted into evidence.

14 HEARING OFFICER TIPSORD: If there's no objection, we'll  
15 mark this as Exhibit 72. Seeing none, this will be marked as  
16 Exhibit 72.

17 (Exhibit No. 72 was marked for identification and entered  
18 as an exhibit.)

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

20 MR. REISER: Mr. Primack, go through your testimony,  
21 please.

22 MR. PRIMACK: Thank you very much. My name is Harold  
23 Primack and I'm testifying on behalf of PB Products North  
24 America, Inc. regarding the Illinois Environmental Protection

1 Agency's proposed revisions to 35 Ill. Admin Code 732, and the  
2 proposed new 35 Ill. Admin Code 734. My testimony will focus on  
3 the Agency's proposed list of maximum payments amounts for  
4 various tasks associated with the investigation and remediation  
5 of leaking underground storage tanks. While BP chose not to  
6 participate in all of the hearings, we believe that our  
7 experience in UST work makes us particularly well suited to  
8 comment on the concept of unit pricing as proposed by the Agency.

9         And I should apologize. If there's anything that I should  
10 have said, that has been said before, that we may have missed,  
11 you have my apology. As an environmental business manager, I'm  
12 responsible for managing environmental incidents at BP's retail  
13 sites in Illinois. I'm a professional engineer in Illinois. I  
14 have a BS in chemical engineering from 1970. And I've been with  
15 BP since 1980. I've been involved in reviewing Board legislation  
16 regard since 1996.

17         BP is an international energy company with a significant  
18 Illinois presence in gasoline marketing. BP is in the process of  
19 remediating more than 240 Illinois sites with leaking underground  
20 storage tank incidents and is very familiar with the costs of  
21 taking those actions. Because of the number of tanks and  
22 remediation projects, BP is in a position to contract with  
23 consultants to obtain favorable pricing and limit some measure  
24 upon uncertainty.

1           BP believes that unit pricing and maximum payment amounts  
2 concept proposed by the Agency has value to consumers of  
3 environmental services. We believe that the unit price and  
4 maximum payments structure will provide a measure of  
5 predictability and stability in the market place and will allow  
6 for more informed consumer decisions. We further believe that  
7 reasonable maximum payment amounts will preserve the UST Fund  
8 and, if implemented correctly, should improve the efficiency of  
9 the Agency's administration.

10           In taking this position, however, we believe these hearings  
11 can improve the Agency's proposal by working toward several  
12 additional goals. First, the process of arriving at the costs  
13 themselves must be transparent. We believe that transparency is  
14 essential both to allow consumers of consulting services to see  
15 the usual prices for various activities and to allow the  
16 marketplace to function more efficiently by allowing for better  
17 price evaluation. The transparency would also allow stakeholder  
18 acceptance since it would document the source of the Agency's  
19 numbers and allow the discussion to be focused on the values that  
20 represent the reasonable costs and not on the uncertainty as to  
21 the Agency's methodology that they're using.

22           Second, the hearing will help to ensure that maximum  
23 payment amounts are reasonable so as to accord the stakeholders  
24 value in performing the UST work. To set these maximum costs too

1 low would drive good consultants from the marketplace and  
2 inappropriately shift the costs of performing the remediation  
3 from the Fund. This might cause the Fund to fail as required by  
4 statutory purpose to serve as a financial assurance mechanism for  
5 the remediation of USTs. We believe that setting reasonable  
6 maximum costs will best achieve the goals of reducing unwarranted  
7 payments from the Fund.

8         Finally, it is essential that flexibility be built into the  
9 process. Despite testimony implying that this work is more art  
10 than science, the fact that much of UST work is commodity  
11 activity now which can generally be priced in advance. If the  
12 process of setting the maximum costs and rates must account not  
13 only for the regional differences but also for the complex site  
14 which presents unique challenges. While the proposed rules  
15 provide for some measure of flexibility, there are no criteria  
16 for exercising that flexibility. Given the increased number of  
17 appeals recently filed before the Board, the regulations should  
18 identify these criteria clearly so as to best inform the Agency  
19 and the regulated community in the implementation of the  
20 regulations and the Board review of the Agency's activities.

21         In evaluating options to achieving the transparency and  
22 flexibility required to make this process work, it's instructive  
23 to review the Board's TACO regulations. After some initial  
24 disputes, these regulations accomplish the potentially complex

1 and controversial work of setting cleanup values through  
2 substantial transparency. Both the underlying data and the  
3 process by which those values were derived were clear and subject  
4 to the stakeholder review and comment even before the Agency  
5 submitted its proposal to the Board. The resulting consensus was  
6 useful in focusing the discussion on the actual values and not so  
7 much on the process issues.

8 TACO is a model of flexibility, both from the user and the  
9 Agency's standpoint. The user has numerous approaches to choose  
10 among from the simple Tier 1 to the complex Tier 3. The Agency  
11 simplified its review process so that Tier 1 and Tier 2 proposals  
12 stayed with the project managers who work from templates while  
13 the Tier 3 decisions typically go to a higher level of  
14 decision-making. While the range of flexibility that's provided  
15 by the TACO rule is not remotely needed for UST pricing, the  
16 Board should consider having different levels of review based on  
17 whether or not the project adheres to the maximum payment  
18 schedule.

19 For all these reasons BP supports the Agency's concept of  
20 maximum payment schedules but we request that the Board consider  
21 our suggestions in order to better address the Agency's issues  
22 and the needs of the stakeholders. Thank you for allowing me to  
23 present this testimony today.

24 HEARING OFFICER TIPSORD: Thank you. Any questions of Mr.



1 Primack?

2 MR. KING: Mr. Primack, could you discuss a little bit how  
3 BP Amoco goes about selecting consultants and contractors? What  
4 your process is?

5 MR. PRIMACK: Yeah, we periodically tender on a state or  
6 regional basis for environmental services. We go to the market  
7 place. We've in the past based the request for proposals on more  
8 of a time and materials and a multiplier overhead cost. And then  
9 review the business that we get both based on costs and technical  
10 capabilities of the consultant.

11 MR. KING: So you're getting -- you're getting basically an  
12 RFP from multiple consultants which then evaluate the --

13 MR. PRIMACK: That's correct. We're getting proposals from  
14 anywhere from six to 10 consultants for a portfolio that's  
15 generally state or actually central states at a time.

16 BOARD MEMBER JOHNSON: But then you do a quality base  
17 selection rather than you don't go in and automatically take the  
18 lowest bid or do you take the lowest bid?

19 MR. PRIMACK: No, no. We first make sure that they meet a  
20 series of qualifications, both technical, their safety record is  
21 evaluated at that point and prices is also a factor.

22 BOARD MEMBER JOHNSON: Okay.

23 MS. MANNING: I have a question. And is there one  
24 particular consulting company that BP Amoco deals with in

1 Illinois more than any of the others?

2 MR. PRIMACK: In Illinois for our retail portfolio, yeah,  
3 there is one consulting firm.

4 MS. MANNING: And how -- Could you give us a percentage  
5 perhaps of the work that it does for BP Amoco in terms of your  
6 LUST remediation?

7 MR. PRIMACK: I can't --

8 MR. REISER: I'm sorry. Claire, a percentage of the total  
9 --

10 MS. MANNING: Percentage of the total remediation, how much  
11 would this one consulting company do?

12 MR. REISER: Total national remediation?

13 MS. MANNING: No, with Illinois. We'll keep it with  
14 Illinois.

15 MR. PRIMACK: Of the retail portfolio, the company does 100  
16 percent of the retail portfolio.

17 MS. MANNING: Okay. Although you go out for the bids with  
18 the RFPs, ultimately one consultant is pretty much selected for  
19 all of BM Amoco's LUST remediation work in Illinois?

20 MR. PRIMACK: Yes.

21 MS. MANNING: Okay. Thank you.

22 MR. PULFREY: I have a question. In regards to TACO, isn't  
23 TACO used really on very specific sites, specific conditions or  
24 site-by-site basis or even take into consideration of future land

1 use?

2 MR. PRIMACK: We'll use TACO on a site-by-site basis. And  
3 we do consider future land use in our decisions that TACO allows  
4 us to make.

5 MR. SCHOEMAKER: Brad Schoemaker with Marlin Environmental.  
6 Just a question since you do a lot of states, how -- what is your  
7 assessment of the Illinois LUST program on the EPA how they do  
8 the work and how the LUST Fund is used compared to other states?

9 MR. PRIMACK: My portfolio is entirely Illinois so I would  
10 not be qualified to compare Illinois with the other states.

11 HEARING OFFICER TIPSORD: Anything else? Thank you very  
12 much.

13 MR. PRIMACK: Thank you.

14 MR. REISER: Thank you for allowing us to speak at this  
15 time.

16 HEARING OFFICER TIPSORD: I think we're ready then to  
17 continue with United Science. Off the record.

18 (A discussion was held off the record.)

19 MS. MANNING: Our next witness from USI this morning, it's  
20 still this morning, will be Robert Pulfrey with USI. Robert,  
21 before you begin, would you explain your background and your  
22 degrees?

23 MR. PULFREY: Yes, I'm a geologist by profession. I have  
24 been educated with a bachelor's of science and master of science

1 in geology. I've also been employed as a geologist for some 30  
2 years, 15 years in the mining industry, with heavy emphasis in  
3 mineral resource potential both in the private sector and in the  
4 public sector. In my latter career, the last 15 years, I've been  
5 employed both in the public sector with the USEPA for three years  
6 and then the rest of the years as an environmental consultant,  
7 primary in the hazardous waste site investigation and  
8 remediation.

9           The first issue I'd like to address, being I have this and  
10 I'm proud to have had to serve in the public sector, is  
11 addressing an issue that I'm real concerned about. And that is  
12 the function and purpose of a public Agency. I'm really  
13 disturbed when I come to discover that a public Agency is using a  
14 rate sheet regulators, they're using a rate sheet, that the  
15 regulated community has not -- it hasn't even been disclosed to  
16 the regulated community. I'm also disturbed by the fact that is  
17 that we have regulations and rules that are in the process of  
18 being proposed that haven't even been promulgated, and yet their  
19 action of being enforced. I'm disturbed that I find that out  
20 also.

21           I'm just a little bit concerned also about what's happened  
22 with the primary statutory authority of a public agency. That is  
23 to protect, in the case of Illinois EPA, that's protection of  
24 human health and the environment. That has -- that has seemingly

1 taken a back seat to protection of the LUST Fund.

2 In the aspect of the proposed Subpart H, proposed Subpart H  
3 of drilling rates, in my experience of both as a mineral resource  
4 potential specialist and an environmental, I've had many years,  
5 many years of experience in drilling, subcontracting, the actual  
6 experience of that. When I saw the Subpart H proposed rates, I'm  
7 looking at the addendum or appendices of Subpart H, and I'm  
8 seeing they're comparing drilling rates with the states of Texas,  
9 Colorado, Oklahoma, and Arizona. Knowing what I do, having  
10 worked in all those states with the exception of Texas, we're  
11 using those is like comparing apples to oranges. When it comes  
12 to drilling, much of the difficulty or the ease of drilling and  
13 the rates that you charge has to do with the type of material  
14 you're drilling. Using Texas, Colorado, Oklahoma, and Arizona is  
15 not applicable to Illinois at all. Illinois is a special case  
16 with glacial till. It is very difficult at times to be drilling  
17 in glacial till. Highly variable.

18 Instead it would be comparable to look at drilling rates  
19 from the states of Indiana, Ohio, and Michigan. And to the issue  
20 of protection of human health and environment, whether you're a  
21 regulator or an environmental consultant, the protection of human  
22 health and environment is our purpose and our function by what we  
23 do. In my dealing with the projects that I have on hand, what  
24 I'm seeing is, because of delays, because of indecisions by the

1 Agency, I have some real doubt as to whether the primary  
2 statutory authority is actually being -- is still the purpose of  
3 the Agency. There's been a number of times when I have heavily  
4 contaminated sites that have been delayed by three or even four  
5 Agency decisions, when in my opinion, as an environmental  
6 consultant, that that heavily contaminated soil, instead of  
7 minoring on the major points, that we should be removing that  
8 soil before something worse happens.

9 And, in fact, I can attest to you to today that that has  
10 been the case, that because of the delays of the Agency, that  
11 it's made a bad situation even worse. And what I'm alluding to  
12 is the fact that during that period of time, a year and-a-half or  
13 so, free product has occurred which, in fact, actually makes a  
14 more prohibitive cost. It's adding to the cost of the project.  
15 And that's pretty much the basis for my testimony, and I thank  
16 you.

17 MS. MANNING: We're going to go next to Barry Sink. And if  
18 there's any questions, you can ask all the panel of USI.

19 HEARING OFFICER TIPSORD: Okay.

20 MR. SINK: My name is Barry Sink. I'm a professional  
21 engineer for United Science Industries. I've worked for United  
22 Science since April of 2002. Prior experience includes 20 years  
23 in the coal mining industry for Old Ben Coal Company in Franklin  
24 County, Illinois, and five years in the cement industry with

1 Lafarge Corporation at Joppa Plant in Grand Chain. I received a  
2 bachelor of science degree in mining engineering in 1977 from the  
3 University of Missouri in Rolla, and I have been a licensed  
4 professional engineer in the state of Illinois since 1980.

5 Section 734.135(d) of Subpart A of part 734 requires that  
6 all plans, budgets, and reports submitted to contain a  
7 certification of a licensed professional engineer or a licensed  
8 professional geologist.

9 I think everyone is aware of what that certification says.  
10 And as a professional engineer, I take it very seriously. It  
11 says I'm aware that there are significant penalties for admitting  
12 false statements and representations, and that the work, the plan  
13 is submitted according to accepted engineering practices, the  
14 principles of geology and so, you know, whenever I put my name  
15 and put my stamp on that, it's something I take very seriously.  
16 And I think that's why that is in the regulation. I think that's  
17 a good thing.

18 You know, as a licensed professional engineer, we have the  
19 duty to embrace the engineer's creed and to work diligently to  
20 uphold the code of ethics for engineers. The professionals are  
21 expected to exhibit the highest standards of honesty and  
22 integrity. And I think that's why that the regulations are  
23 written that way. And it's our responsibility as professionals  
24 to uphold that to -- to hold paramount the safety, the health and

1 the welfare of the public, to avoid deceptive acts and to conduct  
2 ourselves honorably and reasonably and ethically and lawfully.  
3 And at the same time to act for each of our employers or with our  
4 clients as a faithful agent or trustee and abide by the laws and  
5 the standard of the state of Illinois.

6 It is my testimony that Subpart H, the maximum payments  
7 amounts under Section 734.845 for professional consulting  
8 services, will make the good professional engineers hesitant to  
9 perform professional services associated with LUST projects.  
10 That Subpart H maximum payments force the professional engineer  
11 or the professional geologist to carefully evaluate the financial  
12 ability of the owner/operator to pay professional fees which  
13 might exceed a one-time lump sum reimbursement. Only after  
14 evaluating that can the professionals provide the services that  
15 you're designed to protect the safety, health and welfare of the  
16 public and abide by the laws of the state of Illinois.

17 The problem is that the one-time lump sum payment approach  
18 for reimbursement of professional services is just an  
19 oversimplification of the professional process associated with  
20 the remediation of LUST sites. I think Mike Rapps testified to  
21 that yesterday in -- in his evaluation of the problem. The  
22 engineer, the professional engineer, must look at the problem and  
23 evaluate that.

24 It's not just a "cook book" process. And all LUST sites



1 are site specific and they're not all easily matched to one  
2 particular remediation process.

3         At the same time we're dealing with our client who has a  
4 personality of his own. BP Amoco was here and just testified  
5 they're a large company, you know. There are other of our  
6 clients who own a single service station for a school district.  
7 And the professional must take into account the personality of  
8 their client in trying to -- to determine a -- a remediation  
9 process, and all clients are not detached from the process.  
10 Since this involves their potential future liabilities, they're  
11 interested in what that final remediation process is going to be  
12 and they're involved in that, and that involvement of the client  
13 affects the amount of time that the professional spends in  
14 developing a remediation plan.

15         The extent and the magnitude of the contamination of the  
16 site do affect the amount of work that's required to develop a  
17 remediation strategy. The size of the plume affects the amount  
18 of work required to develop a plan. The environmental  
19 remediation design or the plan itself is a process that's based  
20 upon the investigation that has been performed, the history of  
21 the property, and it's not a perfect process. The investigation  
22 information is intermittent in that it's dependent upon the  
23 spacing of where the bore holes are at or the monitoring wells  
24 are provided, and all of those things have be taken into account

1 to develop a plan which is consistent with that site.

2 I feel that the one time lump sum approach to reimbursing  
3 consultants for professional service assumes that the data  
4 collected provides a 100 percent clear picture of what that site  
5 looks like. The professional can only evaluate the site based  
6 upon the information that he has. And new data is always coming  
7 in. As remediation process continues, if it's a dig and haul, as  
8 you dig, you -- you're discovering new data that alters -- that  
9 may alter the course of the remediation process. Things such as  
10 unknown tanks, geological conditions that may not have been  
11 discovered during investigation, all of these things affect what  
12 the ultimate remediation of that site is going to end up being.

13 Offsite property owners, municipalities, and a number of  
14 authority agreement -- highway authorities that we must deal with  
15 really affect the amount of time that we spend on this. If  
16 offsite owners are large industries, if it's a larger company,  
17 sometimes it takes -- you may go to three or four different  
18 cities before you find somebody that's able to grant you offsite  
19 access. So all of these things are variables that are site  
20 specific that have to do with the amount of time required to  
21 prepare a plan and plus helping services.

22 The language with the potential financial liabilities and  
23 the IDOT Highway Authority Agreements really is a factor in -- in  
24 the use of TACO. As an -- as an agent of the tank owner and as a

1 trustee, you know, I try to put myself into that tank owner's  
2 shoes and consider the problems that could come down the road and  
3 present him with those. And the potential for future costs when  
4 entering into an IDOT Highway Authority Agreement, really present  
5 a problem to many -- to many of our clients, especially the  
6 smaller clients, you know. They want -- When they're done, they  
7 want to be done. And they're in the Fund at this time so all  
8 those things, time spent, we've talked about this time spent  
9 speaking to municipalities about groundwater ordinances.

10 Now there are a lot of questions, you know, that come up  
11 about -- about what that model document means to their community.  
12 And they're good questions. And all of these things go into the  
13 amount of time and so each is site specific and the -- and the  
14 one size fits all lump sum approach of professional services  
15 proposed in Subpart H just presents a great dilemma to the  
16 professional engineer. We have to balance protecting the health  
17 environment with the owner's interest with getting -- with  
18 upholding the laws of the state and at the same time getting  
19 paid.

20 The professional is -- is once again has to look at -- at  
21 accepting that contract based on whether he can be paid for the  
22 professional services he provides. One of the options I suppose  
23 that if you exceed the -- the maximum payment amounts is, you  
24 know, to -- that you donate that excess time to the client as a

1 gift and you don't get reimbursed for that. Or we could limit  
2 the number of hours and say I'm going to give Bill Rapps -- Mike  
3 Rapps mentioned 15 hours and I put 15 hours in it and after that  
4 I stop and I re-evaluate where we are. And some professionals  
5 may decide to get out of the LUST business altogether. And these  
6 are really options that I think the Subpart H with the  
7 professional services puts the professionals in and I think in  
8 the long run actually would cost the Fund more money. The more  
9 planning that you put into a job, I think the better end result  
10 that you can have in managing that.

11 Now there is a point where you -- you can over plan  
12 something, and I admit that's a problem in any industry, you  
13 know, how planning and how much time do you put into that. But  
14 my point here is that I think the Agency is wanting to put some  
15 limits upon over planning and -- and I think that's good that  
16 those limits should be there. But at the same time the amount of  
17 planning needs to -- needs to be reasonable. I -- When we first  
18 got a look at Subpart H, we at USI, tried to evaluate what  
19 effects that was going to have upon our business and how would  
20 those regulations affect some past projects.

21 One of the things I looked at was corrective action plans.  
22 And we pulled out some recent corrective action activities that  
23 we had done and we evaluated those to see where did we come out.  
24 And the thing that I discovered, or my opinion after evaluating

1 the plans, was that there are not very many typical sites. Each  
2 site has its own character that I would consider unusual or an  
3 extraordinary expense. And that is provided for in the proposed  
4 regulations 734.855 as unusual or extraordinary. And I just want  
5 to present some of the things that I ran into.

6 One of them is a site which has gone through site  
7 classification but the plume has not been properly ID'd. The  
8 degree or the extent, therefore, a pre-cap had to be written and  
9 a budget presented to do the investigation. And then after you  
10 gathered that data, then there must be a remediation cap written.  
11 So here's an instance where I don't think the Subpart H provides  
12 for that particular instance.

13 Multiple offsite properties, multiple highway authorities.  
14 We have sites that may have two highway authorities and four  
15 offsite properties and no -- and in that investigation plan where  
16 the plume has not been ID'd, there might be multiple rounds of  
17 drilling because the site is small and the stage one drilling is  
18 all onsite, and you kind of skip to stage two as defined in these  
19 proposed regulations, and you go to stage three so, you know,  
20 you're stepping out each time. So these are things that I don't  
21 think have been included.

22 Many of these plans I looked at had Agency modifications of  
23 the cap. In other words, we proposed a -- a conventional  
24 excavation and disposal method of remediation for the soil and

1 for the groundwater, we proposed an alternative technology. And  
2 in many cases the Agency has approved the conventional technology  
3 of -- for the soil but decided that the groundwater should wait  
4 and they would like for us to design the groundwater remediation,  
5 based on the post remediation values of the groundwater. And I  
6 think that's a good idea, you know. I propose that but there's  
7 -- there's two plans now that have to be written. There's  
8 groundwater -- there's a soil plan and a re-evaluation of the  
9 data and a groundwater plan that is written. And in instances  
10 like that, it's not been provided for in the Subpart H plan.  
11 Basically that it's an amended cap based upon new data that's  
12 gathered.

13 Often closure samples that are collected during the  
14 remediation process for the excavation provides new data that  
15 just changes things. We didn't think there was contamination  
16 under the building, and there is. Or we didn't think there was  
17 contamination along the highway authority, and there is. So  
18 those -- the information that you gather, that requires an  
19 amended cap. And how does the professional get paid for  
20 evaluating that new data that is collected during the corrective  
21 action and then writing an amended cap?

22 I found that floor samples often exceeded the C-SAT limit,  
23 and that particular instance was not picked up during  
24 investigative drilling. Therefore that evaluation must be done

1 of the exceedence of the C-SAT based upon the corrective action,  
2 again, requiring a re-evaluation and an amended cap.

3 Caps are often rejected for lack of supporting  
4 documentation. And that often comes about, I think, especially  
5 in alternative technologies, for something that is fairly new.  
6 But a 45-day completeness review would certainly help to expedite  
7 those particular circumstances where we're looking at alternative  
8 technology, where if there is -- a plan proposes an alternative  
9 technology for groundwater, and the Agency could, you know, in  
10 that particular provision for the 45-day completeness review has  
11 been dropped from these proposed regulations, but it could be a  
12 very important tool, I think, in the Agency and in the consultant  
13 working together to more quickly come to an acceptable plan  
14 together.

15 I've already mentioned the personalities of the site owner,  
16 the personalities of the tank owner and even the personalities of  
17 a municipality with which you're dealing affecting the amount of  
18 time that you spend preparing a plan. Unknown underground  
19 storage tanks. It happens quite a bit. I mean, it's not  
20 something that you expect when you go out there, but it is a  
21 situation that changes the plan completely. When you discover  
22 that tank, you know, everything has -- has to change and it -- it  
23 requires additional professional and consulting services to deal  
24 with that particular situation.

1           The point is, that each side is specific and the lump sum  
2 rates for professional services may apply in certain instances, I  
3 don't know, maybe a 20-day report. I don't know. But in  
4 developing a corrective action plan, there's -- the better that  
5 you can plan it, I think the more efficient the remediation  
6 process is going to be. And the Subpart H doesn't take into  
7 account the amendments that are sometimes required as additional  
8 information comes in even as the corrective action is progressing  
9 itself in an approved plan.

10           I also wanted to present testimony concerning engineering  
11 barriers, as it relates to Subpart H, because there is a  
12 provision in the proposed regulations to put a maximum payment on  
13 engineered barriers which is equivalent to four inches of  
14 asphalt. My testimony is that this particular provision is  
15 really going to limit the use of engineered barriers by our  
16 clients. Engineered barriers vary by definition, which means a  
17 barrier design, or a verified, using engineering practices that  
18 limits the exposure to or to control migration of the  
19 contaminants of concern. And the engineered barrier must be  
20 designed to -- so they can be effectively maintained over -- over  
21 the life of that barrier. To limit the design of an engineered  
22 barrier, to say the equivalent of four inches of asphalt, as far  
23 as a reimbursement line item is going to -- to scare many of our  
24 clients away from using that.



1           There are engineering means for looking at -- at -- at what  
2 that engineered barrier has to do for that specific site. If  
3 it's a truck stop, you know, it's -- it's different than if it's  
4 in use as maybe a sidewalk, in other words. So the barrier must  
5 be engineered, and sometimes, not all the time, but sometimes  
6 that barrier design comes to be more than four inches of asphalt.  
7 It may be concrete, you know, whenever you're looking at a site  
8 that maybe is a truck stop that has 18-wheelers that's rolling  
9 over it, you know. The four inches may not be adequate dependent  
10 upon the soil conditions that are there. So I feel like that  
11 particular provision for the maximum payment for an engineered  
12 barrier really needs to be re-reviewed and looked at in order to  
13 encourage the use of an engineered barrier.

14           If I were a tank owner and I needed six inches of concrete  
15 and I knew that it was going to cost me \$10,000, but I could go  
16 to an alternative technology of some sort, and I would be 100  
17 percent reimbursed for that, even though I might prefer to have  
18 this engineered barrier, you know, as a quicker means of  
19 remediation, I would -- I would look at the alternative  
20 technology which could cost hundreds of thousands more. So I  
21 think from a practical viewpoint, that that particular line item  
22 needs to be looked at to encourage the use of even concrete, if  
23 necessary, as far as reimbursement means from the Fund. That's  
24 my testimony. Thank you.

1 HEARING OFFICER TIPSORD: Thank you. Are there any or  
2 questions for USI?

3 MS. MANNING: I just had one follow-up for Mr. Pulfrey.  
4 You mentioned that you worked for the USEPA, could explain any  
5 more specifically what you did at the USEPA and what region you  
6 worked for?

7 MR. PULFREY: Yes. I worked for region four in Atlanta,  
8 Georgia. I was in the RCRA position. I was RCRA corrective  
9 action enforcement officer working on hazardous waste sites.

10 MS. MANNING: Okay. Thank you.

11 BOARD MEMBER JOHNSON: Barry, going back to your earlier  
12 testimony with respect to the factors that you said would  
13 ultimately require amended cap and site specific nature of your  
14 work, could you estimate what percentage of the time the  
15 existence of one or more of those factors would affect your  
16 ultimate cost in such a manner that it would cause it to fall  
17 outside the perimeters of what's been suggested in Subpart H?

18 MR. SINK: Based upon --

19 BOARD MEMBER JOHNSON: So how many times -- what percentage  
20 of the time are you going to need to go to that 855 unusual --

21 MR. SINK: I think 80 percent of the time.

22 BOARD MEMBER GIRARD: Let me follow-up on that. You know,  
23 you've given a lot of examples of experience you've had that you  
24 know may lead to a situation where Subpart H may not work. I

1 mean, would it help in Subsection 855 if we spelled out some of  
2 those potential problems, I mean, for instance, unregistered  
3 tanks that were not known until you were actually digging up the  
4 site?

5 MR. SINK: Yes, I think so. There was a, you know, or some  
6 sort of mechanism, I suppose, to handle those situations as they  
7 arise with the Agency, you know.

8 BOARD MEMBER GIRARD: Well, right now we have some proposed  
9 language to handle those situations that talks about incurring  
10 unusual or extraordinary expenses that can cost -- cost eligible  
11 for payment to substantially exceed the amount set forth in  
12 Subpart H. And it seems to me like, you know, if you came up  
13 with a list of different kinds of occurrences you would consider  
14 unusual or extraordinary, that would help. We still haven't  
15 defined substantially, and at some point we need to do that. I  
16 mean, what would you consider substantially exceeding Subpart H?

17 MR. SINK: Yeah, I mean, I was really looking at it from  
18 the professional's viewpoint, the time, you know, 15 hours which  
19 -- tell you the truth, I don't think there is really an hours  
20 placed in there in Subpart H. It doesn't go to that detail. But  
21 the evaluation that we did was that there's really not enough  
22 hours in there to cover the circumstances that come about, and  
23 that's the concern, I think, from a professional viewpoint there.

24 BOARD MEMBER GIRARD: But let's say you go out and bid a

1 job and you're going to put some flex in there, and if your cost  
2 for getting something done exceeds, you know, one percent, 10  
3 percent, 25 percent, 100 percent of your bid, at what point do  
4 you consider that a substantial cost overrun?

5 MR. SINK: It's more -- It's probably more of a question of  
6 when Jay Koch things it's a substantial overrun. So from -- I  
7 think you're asking my professional opinion, not my boss's, I  
8 guess. I would think probably --

9 MS. MANNING: If you can't answer it, don't answer it  
10 because to the extent which you have business questions, you  
11 know, I guess if you're not comfortable answering it --

12 MR. SINK: I would defer that to Jay Koch.

13 MR. DOTY: I think in situations like this if they were  
14 just allowed to submit the report. Right now the Subpart H has  
15 basically outlawed the amended plan. That doesn't give the PE or  
16 the tank owner an opportunity to explain to the Agency the  
17 unforeseen condition, if there's going to be any additional  
18 costs. Maybe the tank found was, I don't know, maybe they  
19 suspect a different contaminant, maybe the analytical costs are  
20 going to be different. It takes some time to explain that.  
21 They're going to be offered -- The budget would be offered for  
22 them to be concerned about the additional cost to the cleanup.  
23 There's no -- there's no opportunity for the tank owner to be  
24 reimbursed for the initial explanation for the unforeseen

1 condition because the amended plans are -- would no longer be  
2 reimbursable. I think you're onto something with listing. The  
3 scenario like this, I mean, it doesn't happen on every site but  
4 it's not uncommon. Like the unknown tank. If it was almost an  
5 automatic condition to allow an amended plan, I think that's a  
6 solution that -- that's got some merit to it.

7 MS. MANNING: And I would also point the Board to the ad  
8 hoc committee recommendation. There was some work with  
9 discussions which the CECI led ad hoc committee has defined,  
10 there's two pages, a page and-a-half, of defined a typical  
11 situation, which are included in that ad hoc committee report,  
12 which has been presented to the Board, both as a PIPE exhibit in  
13 Dan Goodwin's testimony and I think CW3M as well put that in as  
14 an exhibit. And that was at least one attempt in dealing with  
15 the Agency to try and define, at least on a generalized kind of  
16 basis, what a typical situation one can encounter.

17 BOARD MEMBER GIRARD: Just to continue on, do you -- you  
18 almost -- in some of your testimony seem to be proposing the UST  
19 Fund assume all risks, even for potential mistakes by the  
20 contractor or consultant up front in terms of assessing  
21 conditions of the site. Even if we had a list of, you know,  
22 these unusual or extraordinary occurrences that may lead, you  
23 know, to finding something, you know, beyond Subpart H, you know,  
24 how do we contain the cost by making sure that the consultants,

1 you know, are doing everything they should do up front? I mean,  
2 for instance, there could be an unknown tank and yet there's a  
3 pipe sticking up out of that ground that anybody that walks on  
4 that property has an idea that there may have been a crude oil  
5 tank at one point in time that was not registered. Should the  
6 Fund pick up the cost for that if it's not put in the plan in the  
7 beginning?

8 MR. DOTY: I don't mean to imply mistakes or comparison to  
9 the unforeseen. I meant strictly the unknown, the unforeseen.  
10 That you suspect a tank is there. That's a mistake. It's not  
11 the same. I'm not trying to do that. I'm not trying to imply  
12 that no matter what happens, or I think the Agency also has a  
13 concern with just a change of mind. There's a corrective action  
14 plan approved and just for whatever reason the owner/operator  
15 would prefer to take a different tact, a potential different use  
16 of the property or whatever. There's a concern through that  
17 corrective action plan the second time and that's a  
18 reimbursement, just because someone changed their mind about  
19 their approach or for whatever reason. And I think that's a  
20 valid concern.

21 So I'm not -- I don't mean to imply that the Fund should  
22 pay for mistakes or pay for a change of mind, but in a truly,  
23 unforeseen condition, unforeseen to the owner, unforeseen to the  
24 consult, unforeseen to the Agency, they all have seen the same

1 investigation, the same data that the owner and the PE has  
2 certified to. They approved that proposed scope of work. They  
3 didn't see that condition coming either. And that's -- that's my  
4 concern there, is that the truly unforeseen, not a mistake or not  
5 just a simple change of mind, but I think there are occasions out  
6 there that probably happen, like I said, not on every site but,  
7 you know, probably more often than not. It would trim probably a  
8 lot of the discussion that is extraordinary or not. They're  
9 common enough that I think you could address them now without  
10 having to make an extraordinary condition demonstration.

11 BOARD MEMBER GIRARD: Thank you.

12 MS. MANNING: And to clarify as well, I'm not sure, Barry,  
13 your testimony was that it was unforeseen conditions that would  
14 get you in 80 percent of the time under that extraordinary  
15 circumstance, but that there are things not included in Subpart H  
16 that the contractor or that the consultant have to do in terms of  
17 dealing with the owner and operator and dealing with perhaps with  
18 the legal government in getting a groundwater ordinance, you  
19 know, to make a TACO cleanup cheaper than the conventional. You  
20 know, those types of things are also not included in the Subpart  
21 H and not included in the 80 percent; is that correct?

22 MR. SINK: Right. It seems just too simplistic, I suppose.  
23 It's more complicated than as presented in the current maximum  
24 payment schedule. One thing that we pick up more, and I'm sure

1 the other consultants find this too, and we talked about the  
2 10,000 or some sites that are still out there that are not active  
3 at the current time and, you know, we will pick up a site, maybe  
4 a new contract that the tanks have been removed, some corrective  
5 action has been done there, and for whatever reason that  
6 particular site got dropped. I mean, I don't know. I don't know  
7 why but there's not been any progress. This was done maybe in  
8 1995. And it was taken to a certain point and stopped. And some  
9 -- A lot of, you know, a significant percentage of our jobs now  
10 that we have coming in or some of those -- some of those  
11 situations, you know, and there's been corrective action plans  
12 written. There's been corrective action work that's been done,  
13 and we pick up the new contractor and as a new consultant we're  
14 re-evaluating that and a lot of times re-investigating.

15 But Subpart H doesn't really address that particular  
16 instance so, you know, and -- and in a lot of these situations  
17 the site can be closed with TACO. After you look at it and you  
18 think, well, we have dug here. We got these closure samples.  
19 If, you know, there's a Highway Authority Agreement, there's a  
20 highway authority on this side and he's got a building here and  
21 he doesn't want to tear the building down. And in that  
22 particular situation, after you get done evaluating that, TACO is  
23 the solution to getting that NFR letter for the client. And in  
24 that particular instance, as far as USI goes, the -- our -- I



1 want to say our profit, our business share, on that is strictly  
2 professional services. I mean, that's really what that is.

3           Because -- and when you place -- I mean, I would be very  
4 hesitant of picking up a job like that, you know, if I were Jay  
5 Koch. I would be hesitant of picking that job up because there's  
6 a maximum amount up there and there's quite bit of evaluation  
7 that's going to have to go into that site and I wouldn't -- I  
8 don't even know if I would touch it or take it on, because I  
9 don't know if I'm going to get reimbursed for it. So I think  
10 some of these 10,000 sites that are out there are, I think, a  
11 pretty good portion of them are in that circumstance, you know,  
12 where the big cost has been incurred but it's all that is left is  
13 finishing up, you know, and it takes time.

14           MR. KING: I was going to ask, excuse me, a couple  
15 questions about engineered barriers. Mr. Sink, now I want you --  
16 I was a little bit confused about what you were saying. If you  
17 think about it, an engineered barrier, okay, that's not being  
18 used for load bearing purposes, okay, is it -- is it your opinion  
19 that four inches of asphalt is an adequate barrier to protect  
20 relative to the injection or inhalation risks?

21           MR. SINK: No. No, it's -- Again, it's a site specific.  
22 And what the function of that engineered barrier is under --  
23 under non-load bearing conditions, no, you know. But we have  
24 several sites that a truck -- a truck stop, you know, the fact

1 that if that has -- they already have concrete aprons around  
2 their pump islands but the contaminants have migrated beyond  
3 that, and basically it's a -- it's an aggregate surface, a gravel  
4 surface. In that particular instance where I'm thinking of, it's  
5 a, you know, four inches of asphalt would not be adequate to  
6 handle that truck traffic and the -- the cost --

7 MR. KING: Let me just stop you there.

8 MR. SINK: Okay.

9 MR. KING: Do you not see that there's a difference between  
10 the State paying -- under this Fund paying for an engineered  
11 barrier that's protecting against inhalation and injection risks  
12 versus the State paying a reimbursement form for additional load  
13 bearing capacity for the operation of that facility?

14 MR. SINK: Additional load bearing capacity? I'm not sure  
15 that I understood exactly your question.

16 MR. KING: Okay. If the barrier needs to be beefed up to  
17 handle -- handle truck traffic --

18 MR. SINK: Yes.

19 MR. KING: -- then that beefing up of the barrier is not  
20 for purposes for protecting the human health risk?

21 MR. SINK: Well, certainly it is. Because you know at that  
22 particular site that you're going to be running these heavy  
23 trucks over it. To put in a barrier that cannot be maintained or  
24 that's going to break up, you know, in a matter of six months or

1 a year, you know, as a professional I wouldn't want to do that or  
2 recommend that. No, let's not do that. Because when that thing  
3 busts up, then we're not protected any more and he's out of the  
4 Fund. So there is a difference. I mean, it's a site. I think  
5 the answer is you have to look at the use of the site and what  
6 are -- in a real sense what are the load bearing conditions there  
7 and then design that barrier so that it is -- I mean, the regs  
8 say it has to be maintainable. And I'm saying there are some  
9 instances where the four inches is not a maintainable barrier.

10 MR. KING: Now do -- Are you recognizing that when you're  
11 doing replacement of existing concrete asphalt or paving that  
12 that's -- that that is a reimbursable, do you understand that?

13 MR. SINK: Yes.

14 MR. KING: But you're saying in a situation where it's not  
15 being replaced --

16 MR. SINK: Correct.

17 MR. KING: -- that you're covering new area up with asphalt  
18 or concrete, that the State should be, because the owner wants to  
19 use that additional area, to run traffic down that --

20 MR. SINK: Because he is using it.

21 MR. DOTY: He is using it.

22 MR. SINK: In this particular instance he is using that  
23 area. It's say gravel or whatever. It is an all-weather surface  
24 but it's not adequate as an engineered barrier.

1 HEARING OFFICER TIPSORD: It's a question? Okay.

2 MR. TRUESDALE: My name is Joe Truesdale. Barry, your  
3 opinion as a professional engineer, if you recognized or had  
4 knowledge that the future use of the property, even if it wasn't  
5 currently being used for industrial, commercial purposes, would,  
6 as a professional engineer, would you feel comfortable to certify  
7 to the adequacy to a four inch asphalt barrier in conditions that  
8 you recognized in advance to be -- to exceed the load bearing  
9 capacity of that barrier of itself? Does it continue to function  
10 as an engineered barrier at that point?

11 MR. SINK: Of course. If -- if you see that the future  
12 use, maybe it's -- you're saying maybe it's not seeing heavy  
13 traffic, that maybe the traffic conditions are not heavy now but  
14 you know that in the future that those traffic conditions are  
15 going to be there, would I certify that engineered barrier, no.  
16 No, because it would not be protective of the environment.

17 HEARING OFFICER TIPSORD: Anything else? All right. Let's  
18 take a lunch break then.

19 (A lunch break was taken.)

20 HEARING OFFICER TIPSORD: Go ahead.

21 MR. GOODIEL: First of all my name is Russ Goodiel. I'm  
22 the owner of Applied Environmental Solutions in Centralia,  
23 Illinois. I have a BS, however, it's not in the environmental  
24 related field. I have, however, worked in the environmental

1 arena since 1989.

2 HEARING OFFICER TIPSORD: Mr. Goodiel, can you slow down a  
3 little?

4 MR. GOODIEL: And specifically in the LUST program since  
5 about that time, as well as various hazardous waste cleanups and  
6 different things. I've worked for several environmental firms  
7 during my career. As I stated before, I'm the owner of Applied  
8 Environmental. I appreciate the opportunity to testify before  
9 the Board despite not filing pre-filed testimony.

10 I have approximately 40 to 50 different sites, again a  
11 small environmental firm. I employ six full-time people, two to  
12 three part-time. And clients that own upwards of 70 to 80 sites  
13 throughout Illinois. I think everyone here agrees on one thing,  
14 that we need to protect the Fund. Without the existence of the  
15 Fund people lose jobs, sites don't get cleaned up and ultimately  
16 the environment is compromised.

17 And one of the main concerns, I addressed it briefly  
18 before, is the site investigation reimbursement process.  
19 Basically the length of time it can take for an owner/operator to  
20 be reimbursed during a site investigation process can take  
21 sometimes upwards of one to three years and, you know, that can  
22 sometimes amount to 20 to \$60,000 over the life of that depending  
23 on site conditions. I guess I fail to understand why the Agency  
24 cannot reimburse an owner/operator for a phase of the

1 investigation that has already been budgeted and approved by the  
2 Agency, implemented and a site investigation report submitted  
3 documenting the findings and submitting that billing application.

4 I know Mr. Clay stated in the previous hearing that the  
5 Agency determined that the site investigation process would be  
6 viewed the same way as the site classification process. And I  
7 understand that. I just wish the Agency, as an agent from my  
8 clientele, I wish the Agency could view the site investigation in  
9 a staged site classification process. Basically each phase of  
10 the site classification is classifying the site. Each phase of  
11 the site investigation is budgeted separately, implemented  
12 separately and could be billed and paid separately.

13 The way the Agency reimburses site investigation at this  
14 time is unfair to the owner/operators and places an undue  
15 financial burden on the owner/operators. As stated before, it  
16 can take in the range from one to four years, one to three years.  
17 I believe this issue, if -- could be addressed prior to the  
18 passage of 734 rules, would be greatly appreciated by all the  
19 owners and operators. Especially since we -- we do not know how  
20 long it's going to take to get 734 rules passed and go into stage  
21 one, stage two and stage three. And I realize that option is  
22 available in that stage, but if there was a way that it could be  
23 done prior to that and looking at that, that just basically if  
24 that option is available, I'd like to urge the Agency to see if

1 that is available.

2           The next issue I'd like to urge the Agency to seriously  
3 look at is the method of informal appeals we talked about before.  
4 As a small business owner, and I've related before it's very  
5 expensive to go in front of the Pollution Control Board to appeal  
6 a decision letter. If there was a more informal way of doing  
7 this, the small owner/operator, small business could go to the  
8 Agency and work out differences and not waste the Board's time  
9 and not spend needed resources to do so.

10           Then one other issue as far as the professionals on site in  
11 the 734 rules and Subpart H, specifically as far as paying for  
12 one professional on site. A consultant during the site  
13 investigation process must have a geologist on site to log soils  
14 and identify boring locations and well location. An additional  
15 professional is needed on site to assist in the preservation of  
16 samples so that they are collected in compliance with method  
17 5035. Basically one professional on site is not enough to do  
18 this.

19           And essentially the other issue is on the travel to sites  
20 for consultants. The idea of making a business decision when  
21 evaluating the ability to complete the project, I believe is off  
22 kilter, I think. It's unfortunate that this whole process has  
23 become so adversarial between consultants and the Agency and  
24 everyone to say that a consultant has to make a business decision

1 to take the site that is more than 30 miles away otherwise  
2 someone is going to eat the cost, whether it's the consultant or  
3 the owner/operator. I would just urge the Agency to reconsider  
4 paying travel time to sites and separate of whatever is  
5 determined to be feasible, whether it's the half day time frame,  
6 four or five hours per day or whatever it is.

7 I know personally I have sites that are up to two hours  
8 away. As I say, I'm in Centralia and Centralia is not close to  
9 anything. And that would definitely hurt my ability to complete  
10 projects. And essentially I appreciate the time.

11 HEARING OFFICER TIPSORD: Any questions? I just have one  
12 quick question. We talked a little bit to USI and others today  
13 about the idea of doing competitive bidding on certain aspects.  
14 Is that something that -- that in your opinion, is that something  
15 that would also help to control costs? Is that something that  
16 you already do as a matter of business?

17 MR. GOODIEL: I do that to an extent. I think you can also  
18 open another whole can of worms by doing that. I think you get  
19 into basically who's going to write the specs. Is there a scope  
20 of work, is there a defined scope of work, for that specific  
21 project? And then the qualifications of an individual  
22 subcontractor and how are you going to obtain, you know, those  
23 bids? Are you going to advertise in the local paper? Are you  
24 going to call separate people? And then you get into the thing



1 if it's calling individual suppliers or subcontractors, then you  
2 get into the issue of, well, are you calling the same ones every  
3 time and then, you know, myself I -- we do have trucks. We do  
4 have equipment, but we do sub a lot of that out as well at times.  
5 And, you know, I agree with USI in that, you know, when it's my  
6 trucks and my equipment on site and my personnel on site, I have  
7 cost controls over that, where there are times when I have  
8 subcontractors on site and there's down time and they hit you  
9 with the merge charges. And that's a little tougher to write  
10 into the budget because it's not eligible. There's pros and  
11 cons. I think that, you know, we're headed in the right  
12 direction with maybe some cost controls. I'm just not sure that  
13 the controls that are in place or being proposed at this time are  
14 the answer.

15 HEARING OFFICER TIPSORD: Thank you. Thank you very much.

16 MR. GOODIEL: Thank you.

17 HEARING OFFICER TIPSORD: I guess we're off the record  
18 then.

19 (A discussion was held off the record.)

20 HEARING OFFICER TIPSORD: Mr. Truesdale, we need to have  
21 you sworn.

22 (At this time the witness was sworn.)

23 HEARING OFFICER TIPSORD: And we're going to mark Joe  
24 Truesdale's testimony as Exhibit 73. If there's no objection,

1 it's marked as Exhibit 73.

2 (Exhibit No. 73 was marked for identification and entered  
3 as an exhibit.)

4 HEARING OFFICER TIPSORD: Go ahead.

5 MR. TRUESDALE: My name is Joe Truesdale. I'm senior  
6 project manager and managing agent for CSD Environmental  
7 Services, Inc. I'm licensed as a professional engineer --

8 HEARING OFFICER TIPSORD: You need to slow down.

9 MR. TRUESDALE: Thank you very much. And keep me on a  
10 leash if I get out of line. I'm licensed as a professional  
11 engineer and a professional geologist in the state of Illinois,  
12 and I hold degrees in environmental engineering as well as  
13 applied geology and hydrogeology as well as an associate's degree  
14 in surveying and construction management.

15 My first comment regarding this proposal, we're making  
16 focus primarily on site assessment, site investigation process.  
17 I'm a proponent of the additional site investigation criteria  
18 that the Agency is proposing. I think that the expedited site  
19 assessment tools for underground storage tank sites published by  
20 USEPA is an excellent document that outlines some of the  
21 reasoning and technical justification for site assessment,  
22 adequate site assessment.

23 One of the key points they highlight in that document is  
24 that adequate site assessments facilitates cost effective and

1 efficient remediation when it's complete. And if it's  
2 incomplete, it provides inaccurate or misleading information  
3 which can delay remediation, increase overall corrective action  
4 costs and result in increased risk to human health and the  
5 environment.

6         Some of the issues that we've been dealing with in the last  
7 several years focus on a change in perception from site  
8 classification strategies to the site investigation strategies.  
9 Initially the method one and method two site investigations that  
10 were proposed or were promulgated under 732, allowed for a very,  
11 very limited scope of site investigation work. As a result,  
12 multiple amendments were typically required to that site  
13 investigation plan and budget in order to complete a site  
14 assessment which would provide the level of information necessary  
15 to design -- to evaluate and design a corrective action strategy.

16         Over the past several years that methodology, at least for  
17 CSD and as I understand several other consultants, has moved more  
18 towards the method three site investigation which is pathway  
19 conclusion under TACO. Those types of investigations typically  
20 are much more detailed in nature and attempt to evaluate many  
21 different items that are critical in making an informed decision.  
22 Locations of contaminant mass, types of migration pathways  
23 present, the magnitude of the contaminant mass, migratory  
24 potential, etc., etc., etc.

1           In the context of site investigation, we were typically  
2 still held to a budgetary constraint when submitting plans of  
3 that nature to the Agency, and our scope of work would be limited  
4 as well. The result of this would be, once again, multiple  
5 amendments to a site investigation work plan, additional  
6 administrative burden, additional consulting services to  
7 reproduce work items that were submitted to the Agency and scope  
8 of work and/or budget criteria were substantially reduced to fit  
9 within a mold that was not necessarily adequate to define all of  
10 the issues necessary in order to make these informed decisions  
11 that the USEPA document describes.

12           That goes back to some of the comments that USI made also.  
13 In my experience in the past several years, most of the recent  
14 middle of the plan and budget aren't associated with oversights.  
15 They're more related to a reduction in scope of work by the  
16 Agency's project management staff or submittal of a plan that  
17 included projected costs for groundwater remediation as well as  
18 soil remediation, and the agent subsequently requested just a  
19 plan that addressed the ground -- or the soil initially and then  
20 required an additional plan at a later date based on the data  
21 accumulated during the soil remediation phase to address the  
22 groundwater. So it's that repetitious work or repetitive  
23 submittals based on reductions in scope or changes in criteria  
24 requested by the Agency that have increased our administrative

1 burden as consultants for the most part.

2 Tied to that also is once again, whenever making a  
3 decision, we don't have typically a complete picture of what the  
4 site conditions are. We -- We're basing our professional  
5 judgment on a very, very limited amount of analytical data, soil  
6 boring, etc., etc., etc., which have been deemed allowable by the  
7 Agency, so we've essentially been narrowing down our scopes of  
8 work over the past several years to fit into this limited model  
9 that the Agency believes to not exceed the minimum requirements  
10 of the Act. And in the end, based on my experience, we  
11 essentially end up on the back side proposing essentially the  
12 same scope of work that we would have to begin with, just in  
13 multiple submittals time and time again, additional meetings with  
14 the Agency staff to discuss issues that should have been easily  
15 resolved or were addressed in a previous submittal.

16 One of the items that was mentioned in the testimony was  
17 presence of -- of an unexpected or previously unknown UST. We've  
18 actually submitted a cap, at one instance that I'm aware of, that  
19 had some flexibility because we accepted could there be a tank.  
20 We didn't know for sure but we had -- we had some criteria in  
21 there that would allow us to address that within the scope of  
22 work of the initial submittal. Those were, of course, denied in  
23 the cap and budget because we didn't know for sure. We expected  
24 there could be a condition. And as a result, a tank was found

1 and additional submittals had to be prepared again and  
2 resubmitted to the Agency to address that.

3           It was a 50/50 shot. We didn't know there was an  
4 indication that it could happen or could not happen so we did  
5 have some criteria in the plan to address that. Those criteria  
6 we're eliminated in the initial plan when the submittal was  
7 required to address those conditions when they were found to be  
8 present at that particular site.

9           So in and of itself I support the additional site  
10 investigation criteria, sampling, more routinely through the soil  
11 column including below the water table. I referenced multiple  
12 technical documents that support that position. And I don't  
13 think that anything less than any additional dollars spent in  
14 site investigation, we're talking about 20, 30, \$40,000 worth of  
15 site investigation, absolutely has the potential to reduce  
16 corrective action costs by hundreds of thousands of dollars on  
17 the back side. If you think about just a simple dig and haul  
18 plan and a soil boring placed 40 feet apart, one more boring 20  
19 feet closer in could potentially eliminate a vast quantity of  
20 soil that's proposed in a budget. And in my experience with the  
21 Agency, we're -- when we propose a plan to budget for an  
22 explanation, although I don't do a large quantity of them, but I  
23 certify to specific ones that are prepared by some of the other  
24 engineers, we're typically required to show the extent of

1 contamination extending to the clean borings even though, you  
2 know, the plume may actually attenuate within that 40-foot  
3 distance. If we have any indication that it does, it would be  
4 useful to do that additional investigation on the front side and  
5 determine if, in fact, that we can limit that quantity of  
6 excavation that's proposed.

7 Vertical, that's another one. If we could limit the depth  
8 in the excavation by a foot at \$57 a cubic yard, we're talking  
9 about hundreds of thousands of dollars in excavation,  
10 transportation and disposal costs that could be potentially  
11 eliminated by \$650 worth of B text samples at various depths of a  
12 hole.

13 Just common sense economics suggest that the additional  
14 investigation on the front side is a much more appropriate means  
15 of spending LUST Fund dollars than excessive corrective action  
16 that could otherwise be excluded by a more detailed investigation  
17 phase.

18 The other item, Subpart 2, in my testimony deals with the  
19 percent swell and the estimating for excavation volumes, etc.,  
20 etc. Once again my position is that these design variables are  
21 best left to the determination of the certifying professional  
22 engineer or professional geologist in order to estimate what they  
23 believe to be the most appropriate quantity for the corrective  
24 action plan.

1           A little bit of history that I didn't go into here on swell  
2 factors. Originally swell factor was developed so as to  
3 determine productivity for trucking on large scale cut-and-fill  
4 activities. It's slightly different than what we do which is  
5 over-the-road trucking. We're trucking governed by weight  
6 allowances on State highways and not necessarily the volume of  
7 soil we can fit in a truck. So in some instances the swell value  
8 may be irrelevant in these proceedings because we very rarely  
9 load a truck to maximum capacities before we leave the weight  
10 restriction for over-the-road trucking requirements.

11           The other item with swell is type of backfill that's put in  
12 the hole. If it is clay material, then it may have a swell  
13 factor that's similar to what came out of the hole. If it's sand  
14 and gravel, they have a distinctly different swell factor. In  
15 the end we're talking about a mass of soil that makes relatively  
16 common sense. The unit weights change as the soil volume  
17 changes, but in and of itself, it may be more constructive to  
18 look at independent units for excavation, transportation,  
19 disposal rather than trying to equate all of these inconsistent  
20 units to a single lump sum unit cost. It's kind of like trying  
21 to take two apples, two oranges and two bananas and getting six  
22 apples from it. It doesn't work mathematically that way. Any  
23 number -- you can do any number of conversions or manipulations  
24 to try to derive a consistent unit but ultimately those estimates



1 are just that, estimates. And the validity is governed by the  
2 conversion values used. And at 1.68 or 1.5 conversion factor for  
3 swell to calculate the volume to sand back into the excavation is  
4 obviously erroneous.

5           Subpart 3 of my testimony discusses the maximum payment  
6 amounts in Subpart H and essentially identifies the phrase that's  
7 consistent throughout those regulations, shall include but not be  
8 limited to, and I think this goes back to a lot of the  
9 discussions that we had previously about how do we establish  
10 fixed costs. And essentially in order to establish a fixed cost,  
11 you have to have an associated fixed scope of work. The same is  
12 true for competitive bidding. When we receive requests for  
13 proposals for projects outside of the LUST program, we usually  
14 get an inch thick bid document that details in absolute intricacy  
15 the entire scope of work, and even to some extent, some  
16 verifications that could occur in that scope. This simply hasn't  
17 been done throughout this rulemaking. The scopes of work  
18 associated with these tasks the Agency is presenting as lump sums  
19 have not been determined, have not been presented and have not  
20 been evaluated.

21           When there's variability and no fixed scope in order to use  
22 the initial guide in estimating the amount of time required and  
23 the unit cost required, there's no reasonable way to establish  
24 one unit cost to go with that scope of work, or that absence

1 scope of work, I should say.

2 Throughout the rulemaking the competitive bid process has  
3 been discussed and it goes back to the exact same issue. I mean,  
4 in any event, to determine market rates or competitive bids  
5 requires a clear scope of work that has to be accomplished still.

6 Subpart 4 is a personal observation I've made that just is  
7 in response to some of the positions rated in the previous  
8 hearing. And it goes to the number of NFR letters issued versus  
9 the number of incidents reported, and the amount of reimbursement  
10 being reported from the LUST Fund that USI has prepared. So this  
11 alluded to this exact same fact, that in my observation we see  
12 much less dig and haul now. What the type of sites we typically  
13 get now are sites that have been inactive because it was  
14 uneconomical to excavate it and finally report it, or they  
15 reached the limits of physical excavation and remaining  
16 contaminants are either inaccessible or previously unidentified  
17 offsite properties that weren't accessible at the time.

18 So we deal with more challenging sites that have much less  
19 easily acceptable containment mass or extensive groundwater  
20 contamination or soil contamination that affects numerous offsite  
21 property owners or other governmental entities that require --  
22 that subsequently requires a tremendous amount of administrative  
23 costs and consulting costs to work with these entities. As USI  
24 presented previously, that dealt with municipalities, trying to

1 explain groundwater ordinances, you have the Highway Authority  
2 Agreements, and as a consultant my job is to outline to my  
3 clients within the context of what I can determine reasonably  
4 from the amount of information available, what their potential  
5 risks or potential benefits from specific remedial strategies  
6 would be. And the Highway Authority Agreements pose an  
7 undisclosed financial risk potentially to the owner/operator that  
8 some are not receptive too.

9 Unidentified offsite contaminant mass poses additional  
10 third party litigation expenses associated with that contaminant  
11 mass that owner/operators have no financial mechanism to deal  
12 with after a further action letter is obtained.

13 I know I have -- I've addressed a couple of scenarios that  
14 site conditions may change and/or contaminant mass may be  
15 undisclosed and may pose a threat at a future date. Once again,  
16 historically and today, we've been making our determinations  
17 based on a very small quantity of data. So as a result our  
18 certainty is proportional to the amount of information that's  
19 before us. And I have to make that position clear to my client  
20 when I make a recommendation to them. If -- When we have 70  
21 percent certainty based on the information in front of me, I  
22 can't tell -- portray to my client that 100 percent certain that  
23 there aren't any future liabilities that are associated with this  
24 type of remedial strategy.

1           That kind of gets into Subpart 5 slightly with the NFR  
2 letters and retaining eligibility into the LUST Fund. My  
3 position also that many of the cases we've dealt with, especially  
4 with NFA sites, under method one site investigation, I know at  
5 least three sites that CSD has been involved with that have had  
6 phase two environmental site tests conducted for property  
7 transaction years after an NFA letter was issued. And pending  
8 concentration going into part perilling level which they still  
9 found on site in the source area but the site was able to receive  
10 an NFA letter.

11           As a result there's usually some soil contamination that  
12 has to be addressed but the site is no longer eligible for  
13 payment under the LUST Fund because that NRA letter is in place.  
14 That contaminant mass was not known through the context of a  
15 method one site investigation, but still exists as a result of  
16 the previous release.

17           Most of our clients, we don't recommend method one site  
18 investigations. I don't think we've done one for four years now  
19 because of that expressed uncertainty. I can't portray to my  
20 clients that an NFA letter based on method one site investigation  
21 means anything to them to offset their liability from either a  
22 regulatory standpoint or a third party claim standpoint.

23           Another item that comes up frequently is the offsite access  
24 for properties that are expected to have contamination based on

1 the existing data. In many cases that uncertainty is, once  
2 again, something that I have to make clear to the owner/operators  
3 when I present the corrective action plan. There's nothing in  
4 the context of receiving an NFR letter that precludes that owner  
5 of an offsite property who denies access of that particular date  
6 to come back five years later and pursue legal actions against  
7 the potentially responsible property to recuperate costs for  
8 addressing that contaminant mass that was in place. However,  
9 that framework exists to allow the NFR letter to keep obtained  
10 without evaluating what that contaminant risk or threat may be on  
11 the front side.

12 MR. KING: But the rules don't mandate that?

13 MR. TRUESDALE: Excuse me?

14 MR. KING: The rules don't mandate that you have to take  
15 that? That's really an option?

16 MR. TRUESDALE: Exactly. That was in the testimony that I  
17 presented previously that I think it a was question that I asked.  
18 Why would the owner/operator have to obtain an NFR letter despite  
19 that potential unabsolved liability. And that was a question  
20 that I posed to Doug, but I think I mentioned in here is his  
21 response was that the owner/operator is making a business  
22 decision, and that's absolutely true, and that's probably the  
23 reason we have 10,000 incidents and 4,000 are left unaddressed.  
24 Essentially we get to the point where an owner/operator doesn't

1 feel comfortable in the level of risk that he would be  
2 undertaking or his financing gets to the point where he can no  
3 longer afford to finance the project and they stagnate.

4 BOARD MEMBER GIRARD: While we're on the issue of NFR  
5 letter, this -- the testimony you've given, and the testimony  
6 from USI, talks about all these potential problems with  
7 convincing owners to go for an NFR letter. And yet then USI put  
8 in Exhibit 69, which showed, for instance, we got LUST site  
9 closures in 2003-2004 statewide, 75 percent in the 2003 used  
10 TACO. 2004 is 82 percent of the 344 sites the closures used  
11 TACO. USI's percentages were even a little bit higher. And I  
12 just wondered in your experience, I mean, the closures you've had  
13 over the last couple of years, what percentage used TACO?

14 MR. TRUESDALE: Usually the ones that employ TACO are large  
15 in aerial extent and don't affect offsite property. Once you  
16 have multiple entities involved, then the likelihood of obtaining  
17 a TACO closure decreases proportionally. We have a 10-acre site  
18 that has a UST in the middle of it, and the expressed risks are  
19 usually substantially less. There aren't any other entities  
20 involved that would have potential third party claims. And it  
21 all goes back to what the owner/operator feels comfortable with.

22 My position, as a consultant, is to just outline to that  
23 owner/operator what, within the certainty of the information  
24 before me, I expect or I perceive to be a benefit or a risk

1 associated with the specific type of remediation or specific  
2 means of addressing the site.

3 BOARD MEMBER GIRARD: Well, are your numbers that different  
4 than the statewide numbers, you know, where in 2003, you had 644  
5 statewide closures in Exhibit 69, 75 percent of those used in  
6 TACO and in 2004 --

7 MR. TRUESDALE: I wouldn't think that they were  
8 substantially different. On my permits it's substantially  
9 smaller than USI. I think we may do a tenth of the workload that  
10 they do. So from a relative standpoint, 50 to 75 percent of the  
11 sites that are closed in the year, with the workload that we do,  
12 if we get one or two NFR letters per year, we're doing well.  
13 That's the difference in the quantity of work that my firm does  
14 versus what USI does or what happens statewide or a small person  
15 firm.

16 Like I said, if we actually obtain two or three NFR letters  
17 in the year, that's probably good for us. And I would say that  
18 of those -- of those two or three, one or two are probably under  
19 TACO.

20 BOARD MEMBER GIRARD: Basically what I'm saying, it does  
21 appear like a significant portion of the sites in Illinois, at  
22 least the present time, the ones that were in the process of  
23 being cleaned up and getting closed to NFR are using TACO.

24 MR. TRUESDALE: I would say they are all. I would say

1 almost probably all of them would use TACO if it weren't for this  
2 outstanding expression of potential liability that exists by  
3 using TACO.

4 BOARD MEMBER JOHNSON: Which is the inability to access the  
5 Fund, as you testified?

6 MR. TRUESDALE: Right, or the uncertainty, or the  
7 undisclosed issues. Another item that I have experienced with  
8 recently was a site that was closed -- actually there's two of  
9 them I can think of offhand. One of them was closed and years  
10 later -- Actually it was not closed. It was an active site that  
11 was stagnant for years, and I think 10 years, seven or 10 years  
12 after the incident was reported, a vapor accumulation problem  
13 became evident in the sewer line. That site could have easily  
14 been TACO'd and that potential pathway would never have been  
15 disclosed but would have posed a huge expense 10 years after the  
16 site was closed under the TACO criteria that was an expressed  
17 risk that was previously unidentified but was certainly  
18 associated with a release from the eligible UST system.

19 Another site that I'm aware of has had a concrete pavement  
20 across the entire property that would have been significant or  
21 accepted by the Agency as an engineered barrier. However,  
22 accumulation of product in the tank pit allowed volatilization to  
23 occur and migration along the aggregate backfill, which  
24 discharged at the edge of the concrete barrier and was taken up



1 by a heating ventilation system for an adjoining facility. So  
2 obviously that engineered barrier that would typically be  
3 approved by the Agency with a three-inch concrete barrier, or  
4 whatever, was not engineered as such and could have been  
5 designated as an engineered barrier by the consultant at the time  
6 without doing the type of engineering evaluation that Mr. Sink  
7 alluded to. And obviously that was not a barrier that was  
8 engineered to adequately be protective of human health of the  
9 environment.

10 MR. KING: The site you're just talking about, are you  
11 saying that the -- the previous consultant investigated the  
12 migratory pathways?

13 MR. TRUESDALE: Yes.

14 MR. KING: And investigated the migratory pathways and did  
15 not find there was contamination in those pathways?

16 MR. TRUESDALE: The initial -- The problem associated with  
17 that site stemmed from an old sanitary sewer service that  
18 extended into a residence that was demolished. There were no  
19 records of it, public records of that service line. Over the  
20 years it was probably plugged with clay originally when the  
21 basement was excavated and probably did not present until years  
22 passed and multiple disturbances, utilities went in or whatever,  
23 loading from -- site typical loading on the roadways adjacent to  
24 it that somehow disrupted that line enough that vapors were able

1 to migrate through it 10 years after the original incident was  
2 reported.

3           And site condition changes from a multi-series if a utility  
4 contractor will come in and do a horizontal boring to put in  
5 fiberoptics and bored through that sanitary sewer service that  
6 was capped at this end, you would have an opening here or now  
7 drilling --- that horizontal drilling contractor penetrated that  
8 service line which now presents a pathway that didn't exist  
9 previously. So there are -- I can go through any number of  
10 scenarios.

11           MR. KING: So the conclusion that -- I guess I'm kind of  
12 gathering, and you're saying, the solution in that situation  
13 would have been to bust up all the concrete and dig out the  
14 entire site, is that what you're suggesting?

15           MR. TRUESDALE: No, not necessarily. I think the more  
16 logical solution would be to take those small portions of sites,  
17 theses sites that I'm coming up with are two or three of the 80  
18 that we have had currently over the last 30 -- or the last five  
19 years that we've evaluated. So if you look at it from that  
20 context, the owner/operators don't have -- the owner/operators  
21 are still using TACO. It's just the majority of them, that when  
22 our certainty is limited to expressed risks, we have to present  
23 that to the owner/operator. They're making a business decision  
24 whether or not they feel comfortable. Most of them don't want to

1 be that one in 10 site that gets stuck on the back side of the  
2 TACO closure with another \$100,000 of remediation?

3 MR. CLAY: Joe, while you're on a mission, that's the  
4 exception --

5 MR. TRUESDALE: Absolutely.

6 MR. CLAY: -- in the --

7 MR. TRUESDALE: And I think that I would state that if, in  
8 fact, that is to enter into the Fund, we would probably get 10  
9 times that number closed under TACO just because our  
10 owner/operators would be more receptive to that strategy, if they  
11 knew there was a mechanism to address that limited uncertainty.

12 MR. CLAY: Earlier you said that you fully supported  
13 additional -- gathering additional information of site  
14 information so wouldn't that tend to --

15 MR. TRUESDALE: Absolutely.

16 MR. CLAY: -- in a sense alter for potential use type of  
17 situations from occurring these exceptions to --

18 MR. TRUESDALE: I think most of them that would come up  
19 that would come back into TACO or come back into the Fund, would  
20 be ones that there's no reasonable that a consultant can  
21 identify. There would have been no way for anybody to identify  
22 that sewer service. They're not mapped on anything. Sewer  
23 services are put in by a plumbing contractor typically. They're  
24 not on public record. It was abandoned when the house was

1 demolished in the 1920s. There's inherent uncertainty associated  
2 with this. Even the number of borings we're talking about, you  
3 know, we could put a boring 10 feet apart and could miss a  
4 natural pathway in between those two borings. It's just  
5 inherent, unless you're putting borings every two feet, there's  
6 always inherent uncertainty basing any of our decisions on a  
7 limited number of borings or samples, etc.

8 But once again, the increased degree of investigation  
9 serves to limit that uncertainty. But there's always uncertainty  
10 inherently, and it's the ones that have that basically  
11 unresolvable uncertainty that poses the problem most of the time.

12 It goes to Highway Authority Agreements too. There's  
13 nothing to guarantee that the highway authority will come in and  
14 do a road expansion within the next 10 years, but there's nothing  
15 that precludes them from doing it either. Like I said, all I can  
16 do, as a consultant, is present potential benefits and potential  
17 risks associated with any proposed risk management or remediation  
18 strategy I present to the owner/operators I work for.

19 I think that pretty much covers my testimony. There's a  
20 Subpart 7 that just goes to a definition of reasonable costs and  
21 I think that --

22 MS. MANNING: Joe, just a couple of follow-up questions.  
23 CSD Environmental has it's own drilling company called Heartland  
24 Drilling?

1 MR. TRUESDALE: Correct.

2 MS. MANNING: And I believe there's been testimony on the  
3 record about it already, and about the idea of competitively  
4 bidding out certain subcontracting functions, could you speak a  
5 little bit on the record, if you would, toward the idea of the  
6 costs associated with CSD using it's own environmental drilling  
7 company?

8 MR. TRUESDALE: Absolutely. Routinely we do subcontracting  
9 services for drilling on a regular basis because our drilling  
10 capabilities are limited. We routinely evaluate market rates  
11 from other drilling companies to make sure that we provide  
12 service, not only to ourselves, but to other consultants both in  
13 the LUST program and in other programs, SRP, RCRA, etc., etc.  
14 We continually evaluate costs and ensure that we are within the  
15 market rate so that we are competitive on projects. We don't use  
16 different rates for projects that we bid on that are outside of  
17 LUST. This is what we do internally for CSD inside of the LUST  
18 program. The reason we elect to use our own drilling is so that  
19 we have, as USI alluded to before, some type of control over both  
20 the productivity and the -- the validity and accuracy of the  
21 investigation performed. We felt that the drilling portion was  
22 very, very critical, as I alluded to before, the investigation  
23 phase is probably the most critical phase. And it was a  
24 reasonable decision for us to make that. We would like to have

1 as much control over that phase as possible so that we can ensure  
2 that we're providing the best service to our clients that we can.

3 MS. MANNING: So in your opinion when you have competitive  
4 bidding of your drilling services, would it result in any savings  
5 to the Fund?

6 MR. TRUESDALE: Absolutely not.

7 MS. MANNING: I had another question as well. You were  
8 part of the ad hoc -- PIPE's ad hoc legislature committee --

9 MR. TRUESDALE: Yes.

10 MS. MANNING: -- and I think we came up with a document  
11 that we presented to the Board as Exhibit 48. Could you just  
12 speak just very briefly about Exhibit 48 and the intention -- I  
13 think we were kind of vague on the record about when Duane Doty  
14 testified about the intention of plugging those numbers into  
15 those particular -- that framework that -- we just presented to  
16 the Board, the framework but not any given number, could you  
17 speak to what the work group is talking about in terms of that  
18 particular document?

19 MR. TRUESDALE: Sure. That document goes to the heart of  
20 defining the scope of work that we talked about time and time  
21 again throughout the process of this rulemaking. And essentially  
22 what the ad hoc group proposed, and what USI has submitted or  
23 PIPE has submitted, that USI prepared to do a framework for a  
24 fixed scope of work that unit rates could be established based

1 on. The framework is obviously much more detailed and it  
2 eliminates the problem of lumping things that are consistent  
3 together with things that are inconsistent. Apparently if you  
4 take 10 costs that are consistent and throw in one highly  
5 variable cost, in some of those the end product is a variable  
6 cost. So the goal of that framework was to establish fixed  
7 pricing for everything that could be established so they can have  
8 an established fixed scope of work associated with it.

9 I think that in and of itself that method of establishing a  
10 market rate precludes the necessity for the administrative burden  
11 of competitive bidding. The market costs for fixed scope of work  
12 dictate what the price is just as easy to establish a fixed  
13 number versus get three bids for something in the framework that  
14 we can stick a single number in.

15 And, I mean, we've have discussions about -- Mike Rapps'  
16 discussion about excavation, transportation and disposal was  
17 particularly enlightening, and it goes to the heart of trying to  
18 take one number and fit it to a large majority of sites where it  
19 may have been more appropriate to look at -- \$57 may be  
20 appropriate for zero to 10,000 cubic yards, but \$42 may have be  
21 been more appropriate for 10,000 cubic yards. I think that in  
22 and of itself, CSD and PIPE members as a whole, would like to see  
23 reimbursement for the level of effort that's exerted and not  
24 overpayment for items that don't need be overpaid or underpayment

1 for items that may be underpaid. We just want to see the level  
2 of reimbursement that should be given for the amount of effort  
3 that we put forth.

4 MS. MANNING: Would you agree now that a lot of costs of  
5 the Fund is just dealing in terms of -- I know the Agency has  
6 testified that, or at least they said in discussions with us, I'm  
7 not sure that they testified; and I think we also said in  
8 discussions that a large part of the cost is the cost of us doing  
9 business with one another, if you will, the Agency and the  
10 consultants in terms of proposing a plan, getting a budget denied  
11 or, you know, and then resubmitting, could you speak to that?

12 MR. TRUESDALE: Yeah, I would say that goes back to the  
13 discussion previously about the number of submittals required,  
14 that's certainly gone up substantially over the last several  
15 years. Resubmittals of corrective action plans and budgets were  
16 relatively uncommon previously, and I think have become very,  
17 very commonplace over the last three years. Those issues deal  
18 with both budgetary reductions and scope of work reductions  
19 associated with technical plans.

20 I think that my level of effort for meeting with the Agency  
21 personnel has gone up drastically and my personal opinion after  
22 those meetings, I feel that the positions I put forth fall on  
23 deaf ears essentially. I feel that we're going through a lot of  
24 additional effort to provide the Agency with the additional



1 information that they request to support our position, but I  
2 don't feel that I have an unbiased audience when I go in to  
3 present those opinions.

4 MS. MANNING: The scope of work discussions when there's  
5 reductions and the review on issues of technical judgment, are  
6 those decisions made by engineers at the Agency or are they made  
7 by the reviews of the Agency?

8 MR. TRUESDALE: They're typically -- well, they would be  
9 made, and the Agency may or may not agree. The letter, the final  
10 decisions are signed by the unit managers, some of which are  
11 professional engineers, professional geologists. But the project  
12 managers typically are not professionals. I don't believe there  
13 are any project manager professionals.

14 MS. MANNING: Usually engineers?

15 MR. TRUESDALE: Professional engineers, professional  
16 geologists, engineers, geologists. For the most part I would  
17 assume, I don't know that for certainty, but the ones I routinely  
18 work with do not have engineering or geology degrees typically.

19 MS. MANNING: And while that wouldn't have any bearing on  
20 questions of rate or questions of costs, do you see it having a  
21 bearing on questions of judgement in terms of how this particular  
22 site needs to be remediated in the interest of the environment  
23 and the interest of the owner/operator?

24 MR. TRUESDALE: I would say so.

1 HEARING OFFICER TIPSORD: Are you through, Ms. Manning?

2 MS. MANNING: I'm through.

3 HEARING OFFICER TIPSORD: Mr. Truesdale, I have a couple of  
4 housekeeping issues. On page 2 of your pre-filed testimony you  
5 cite about EPA publications?

6 MR. TRUESDALE: Sure.

7 HEARING OFFICER TIPSORD: You also cite the Handbook of  
8 Illinois Stratigraphy, if you could provide us with copies of  
9 that material.

10 MR. TRUESDALE: These are all copied -- Anything that I  
11 reference is a copyrighted publication so they're all available  
12 publicly.

13 MS. MANNING: We'll get them. Do you want excerpts even if  
14 it's a book?

15 HEARING OFFICER TIPSORD: Yeah, at least excerpts which you  
16 relied upon for this testimony. Thank you.

17 MR. TRUESDALE: Can do.

18 HEARING OFFICER TIPSORD: Anybody else?

19 MR. KING: I have a question. Can I do a little summing up  
20 before --

21 HEARING OFFICER TIPSORD: Right, but any other questions?  
22 Okay, summing up on this testimony or summing on the end of the  
23 proceeding?

24 MR. KING: Summing up where we're at.

1 HEARING OFFICER TIPSORD: Okay.

2 MS. MANNING: Do you want to go off the record?

3 HEARING OFFICER TIPSORD: No. Okay, I think -- Does  
4 anybody have any questions?

5 MR. PULFREY: Joe, I've got a couple of questions. I just  
6 want your professional opinion on it. When it comes to the  
7 Agency decisions, do you see a consistency as far as the Agency  
8 decisions or inconsistency?

9 MR. TRUESDALE: I think overall over the last three years  
10 it's been relatively inconsistent. I've seen somewhat of a  
11 variation, up and down. Some cases we've had project managers  
12 request three more soil borings in site investigation, and two  
13 months later we may propose 10 borings and they may decide we  
14 need five instead of 10. So it seems to be relatively  
15 inconsistent over the duration of three years or four years, but  
16 in that time frame I think there have been time frames where it's  
17 relatively consistently low, and relatively consistently high and  
18 relatively consistently low, and I think it somewhat correlates  
19 to the changes in the proposed regulations, unit costs, etc.

20 We would normally see a specific unit rate approved, for  
21 instance, for a specific project and then if the internal rate  
22 sheet were to change, then the following week then we would see  
23 an inconsistency from the previous rate.

24 MR. PULFREY: Are you speaking of -- I want to make sure I

1 get this clarified. Are you speaking of any particular project  
2 that you have proposed a number of borings and they want that  
3 particular reviewer and unit manager from the Agency wants  
4 additional borings or do you see an inconsistency in between unit  
5 managers and reviewers?

6 MR. TRUESDALE: I would say overall it has relatively been  
7 an inconsistency.

8 MR. PULFREY: I'd also like to ask in regards to a typical  
9 site. I'm going to give you a framework of what a typical site  
10 is, okay. A typical site, at least in my professional opinion,  
11 would be one tank hole, one or two tanks in that tank hole, soil  
12 contamination that is restricted to the property, so it's not  
13 encroaching upon any highway authority or any offsite owner.  
14 There is some groundwater contamination but it's very on the  
15 moderate side. Soil contamination is very moderate. There is no  
16 contamination under the building -- under a building. All the  
17 soil is accessible, readily accessible. What in your opinion of  
18 the sites that you have developed, either scope of work or either  
19 a site classification or corrective action, how many sites on --  
20 at percentage -- approximate percentage level actually fall into  
21 that typical situation?

22 MR. TRUESDALE: I would say probably very few granted that  
23 that's a limited number of criteria. There are usually many,  
24 many more criteria that describes a site other than the half a

1 dozen that you just proposed. Meanwhile, you're looking at  
2 dozens and dozens of criteria, than just five or six criteria,  
3 but that's inherently what makes it variable. The depth of the  
4 contaminant plume would be another site criteria, whether or not  
5 a sand lens is present at that particular site. Whether or not  
6 the overlying material is tilt and fine grained or a coarse  
7 unconsolidated material, shallowed bed rock could be a criteria,  
8 presence of utilities that transect sites that are underground,  
9 man made potential pathways, that I can come up with dozens and  
10 dozens of criteria that try to fit those six criteria. I  
11 probably have a few that meet those six criteria, but don't meet  
12 a half dozen other criteria.

13 HEARING OFFICER TIPSORD: Any other questions of Mr.  
14 Truesdale? Thank you very much. Mr. King you wanted to --

15 MR. KING: Yeah, just a couple of -- kind of a summary  
16 comment as to where we're at.

17 HEARING OFFICER TIPSORD: In that case, can I have you  
18 sworn in.

19 MR. KING: Yes, absolutely.

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

21 MR. KING: As I said, I just wanted to give some summary  
22 comments as to where we're at at this point in the proceeding.  
23 This to date has been a very difficult regulatory proceeding, and  
24 I've been in regulatory proceedings since the '80s and this comes

1 back to my experience in the '80s as opposed to '90s. When -- In  
2 the '80s we really -- the proposal really didn't have much  
3 opportunity to have interaction with corrective parties. In the  
4 '90s we really adopted a model where we have a lot of that kind  
5 of interaction.

6 I think Harold Primack's testimony with regard to the TACO  
7 proceeding was a very clear example of that. Where we had  
8 literally thousands of issues that we were able to come to  
9 agreement on before we even proposed it. This proceeding has  
10 been unusual because really a key, a very large part of our  
11 proposal we're not able to discuss with interested parties before  
12 we file the proposal. And that was because of the nature that  
13 we're sharing information relative to dollar amounts. So we  
14 couldn't do that for limited reasons without being unfair.

15 So it has definitely been a struggle and the Board has seen  
16 that struggle in the last couple of days. I think we've seen a  
17 lot of very good information come forward. And we certainly are  
18 going to be, you know, doing some -- doing another errata. I  
19 think there is -- was a number of questions raised about the  
20 competitive bidding process and how that may fit into a structure  
21 like we have, and take a look and see how that may fit, and not  
22 as a substitute, but maybe as a supplement as to some of the  
23 things we have. We have very definitely, was very appreciative  
24 of the work that PIPE has done in bringing together a good range

1 of testimony on items. And we certainly are looking forward to  
2 seeing a more concrete proposal as far as regulatory language and  
3 hopefully would see that sooner than later because that would  
4 move things along more smoothly. I just wanted to sum up with  
5 those comments, and I appreciate the opportunity to do so.

6 HEARING OFFICER TIPSORD: Thank you, Mr. King.

7 MS. MANNING: I would like to offer summary and thank the  
8 Board for their patience and the Agency as well. Not only for  
9 your patience but for your cooperation of this process. I know  
10 there's between harsh language between both sides. And I know  
11 that on the record, both from your side, the USI people and from  
12 PIPE people to the Agency people, you know, there's an element of  
13 politeness and that kind of thing. And I hope that, you know, I  
14 shared Gary's concerns that in the '90s and the 2000s we  
15 developed a model of regulatory cooperation that has both  
16 behooved the rulemaking process and the Agency's as well.

17 So we appreciate the fact that you're continuing to meet  
18 with us and that kind of thing and certainly the extent to which  
19 we have suggestions and we'll see them and certainly to the point  
20 that you have suggestions, we would hope that we would see them  
21 too. So that the next Board hearing on July 6th, and then  
22 thereafter in August, whenever the Hearing Officer sets that up,  
23 we hope that we may be all much more together in terms of being  
24 on the same page on a regulation.

1 HEARING OFFICER TIPSORD: All right. At this time then we  
2 have another hearing scheduled for July 6th. We will be here in  
3 the same room. We will start at 10 a.m. We have two persons  
4 scheduled to testify at that time, Mr. Dan Goodwin and Jarrett  
5 Thomas, I believe.

6 We will also set another hearing, and it's just a matter of  
7 getting the place. We will be holding another hearing on August  
8 9th. The Agency will pre-file materials on August 1st for that  
9 August 2nd hearing. The first is a Sunday. And we will proceed  
10 then with the hearing.

11 BOARD MEMBER JOHNSON: After that are we done with  
12 testimony?

13 HEARING OFFICER TIPSORD: We have two more people to  
14 testify on July 6th.

15 BOARD MEMBER JOHNSON: Right. What about on the 9th?

16 HEARING OFFICER TIPSORD: On the 9th it will be the Agency.  
17 I too want to sort of echo Mr. King's, Ms. Manning's comments. I  
18 think we've gotten a great deal of information in these last few  
19 days, and prior to that from the Agency. There's been some tough  
20 questions, some long days. You have all remained very  
21 professional. And I want to compliment you all on maintaining  
22 that professional demeanor in helping to speed the process along  
23 while providing the Board with a great deal of information. Dr.  
24 Girard, you want to add anything to that?



1           BOARD MEMBER GIRARD: I don't think I need to add to the  
2 comments. I appreciate everyone's time and effort. We made a  
3 lot of progress, there's a lot of good information in the  
4 transcript, and we should be able to do a much better job of  
5 fashioning a rule. Thank you. See you in July.

6           BOARD MEMBER JOHNSON: What about the president of your  
7 company, Mr. Koch, from USI?

8           MS. MANNING: Can we have that option open after I look at  
9 the record?

10          HEARING OFFICER TIPSORD: Yes.

11          MS. MANNING: Thank you. All right. Could I also ask the  
12 Agency -- on the record may I ask the Agency to address a couple  
13 of questions that have come up today that I think would be  
14 helpful for the whole process both from our perspective, your  
15 perspective and hopefully from the Board's perspective as well.

16          The first is we've had a lot of discussions in terms of how  
17 this rule will work on projects that are in the PIPE Fund, and  
18 I'm sure the Agency thought to that, but I'm not sure it's on the  
19 record yet in terms of when this rule ultimately becomes a rule,  
20 what happens to all the sites that are in the process of being  
21 evaluated in terms of when there's activity of the rule, when  
22 this rule actually starts day one. So I would hope that the  
23 Agency might address on the record, when they speak again, how  
24 they see that rule working. And it may be something that we can

1 work out in our discussions. But I think it's an important  
2 element before, you know, there's a rule in place, we need to  
3 know what the applicability is in terms of backwards, forwards,  
4 you know, that kind of thing.

5           The second issue that we've talked about, and we were  
6 hoping that the Agency would address, is the idea of the rule is  
7 proposed -- if the rule is going to change a lot in terms of what  
8 the Agency proposes, which perhaps this will become unnecessary.  
9 But the extent to which the Agency considers that there is going  
10 to be a cost savings, a protection of the Fund which, of course,  
11 is everyone's goal in this proceeding. If you could sort of  
12 give, on the record, your sort of determination on those issues  
13 in terms of what economic savings your proposal is expected to  
14 have based on your projects. So to the extent to which you can  
15 speak to the dollars you're hoping to save and why and how, that  
16 would be helpful as well. Thank you.

17           HEARING OFFICER TIPSORD: Thank you. Anything further? In  
18 that case we're adjourned.

19           (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 162 pages comprise a true, complete and correct transcript of the proceedings held on the 22nd of June A.D., 2003, 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

CSR License No. 084-004316