

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD  
September 7, 2005

MIDWEST PETROLEUM COMPANY, )  
 )  
 Petitioner, )  
 )  
 vs. ) No. PCB 06-28  
 ) (UST Appex)  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
 )  
 Respondent. )

Proceedings held on October 7, 2005,  
at 10 a.m. at the St. Clair County Courthouse,  
Belleville, Illinois, before Carol Webb, Chief Hearing  
Officer.

## A P P E A R A N C E S

MR. CURTIS MARTIN  
Shaw & Martin  
Attorney (s) at Law  
123 South Tenth Street  
Mt. Vernon, IL 62864

In behalf of the Petitioner;

MR. JOHN J. KIM  
Illinois Environmental  
Protection Agency  
Attorney (s) at Law  
1021 North Grand Avenue  
Springfield, IL 62794

In behalf of the Respondent.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

I N D E X

|   |     |
|---|-----|
| WITNESSES                                 | PG. |
| HARRY A. CHAPPEL                          |     |
| Direct Examination by Mr. Martin:         | 5   |
| Cross Examination by Mr. Kim:             | 47  |
| Re-Direct Examination by Mr. Martin:      | 53  |
| JEFF SCHWARTZ                             |     |
| Direct Examination by Mr. Martin:         | 55  |
| Cross Examination by Mr. Kim:             | 67  |
| Re-Direct Examination by Mr. Martin:      | 87  |
| ROBERT PULFREY                            |     |
| Direct Examination by Mr. Martin:         | 91  |
| Cross Examination by Mr. Kim:             | 119 |
| Re-Direct Examination by Mr. Martin:      | 139 |
| Re-Cross Examination by Mr. Kim:          | 141 |
| Further Direct Examination by Mr. Martin: | 143 |
| BARRY SINK                                |     |
| Direct Examination by Mr. Martin:         | 144 |
| Cross Examination by Mr. Kim:             | 155 |
| Re-Direct Examination by Mr. Martin:      | 161 |

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

E X H I B I T S

| NUMBER         | MARKED | ADMITTED |
|----------------|--------|----------|
| Petitioner's 2 | 87     | 166      |

1 MS. HEARING OFFICER: Good morning. My name  
2 is Carol Webb, and I'm a hearing officer with The  
3 Pollution Control Board. This is PCB 06-28, Midwest  
4 Petroleum Company versus IEPA. It is Friday, October 7,  
5 2005, and we are beginning at 10 a.m.

6 I want to note for the record that  
7 there are no members of the public present. Members of  
8 the public are allowed to provide public comment, if  
9 they so chose. At issue in this case is the EPA's  
10 rejection of the Petitioner's amended budget regarding  
11 Petitioner's property at 529 Maple Street in Shiloh,  
12 St. Clair County.

13 The decision deadline in this case is  
14 December 15, 2005. You should know that it is The  
15 Pollution Control Board and not me that will make the  
16 final decision in this case. My purpose is to conduct  
17 the hearing in a neutral and orderly manner, so that we  
18 have a clear record of the proceedings. I will also  
19 assess the credibility of any witnesses on the record at  
20 the end of the hearing.

21 This hearing was noticed pursuant to  
22 the Act and the Board's rules, and will be conducted  
23 pursuant to Sections 101.600 through 101.632 of the  
24 Board's procedural rules. At this time, I would like

1 the parties to please make their appearances on the  
2 record.

3 MR. MARTIN: Curtis Martin, Shaw & Martin, Mt.  
4 Vernon, Illinois, Petitioner, Midwest Petroleum Company.

5 MR. KIM: John Kim, attorney for Illinois EPA.

6 MS. HEARING OFFICER: Thank you. Are there any  
7 preliminary matters you wish to discuss on the record?

8 MR. MARTIN: I don't believe so.

9 MR. KIM: I don't believe so.

10 MS. HEARING OFFICER: Mr. Martin, would you like  
11 to make an opening statement?

12 MR. MARTIN: No. I would waive the opening  
13 statement.

14 MS. HEARING OFFICER: Mr. Kim?

15 MR. KIM: I will waive opening statements, as  
16 well.

17 MS. HEARING OFFICER: Mr. Martin, you may  
18 present your case.

19 MR. MARTIN: I would like to, first, call Harry  
20 Chappel as an adverse witness, please.

21 HARRY CHAPPEL, having been duly sworn,  
22 testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MARTIN:

1 Q. Would you state your name, please?

2 A. Harry Chappel.

3 Q. Mr. Chappel, where do you live?

4 A. Springfield, Illinois.

5 Q. How old are you, sir?

6 A. Fifty-two.

7 Q. Where are you employed?

8 A. Illinois EPA.

9 Q. How long have you been employed with the

10 Illinois EPA?

11 A. Twenty-three years.

12 Q. What is your current position with the

13 EPA?

14 A. I'm a manager in a leaking underground

15 storage tank section, Bureau of Land.

16 Q. As a manager, generally speaking, what are

17 your duties?

18 A. Oversee one of the units responsible for

19 the review of underground storage tank remediations and

20 reimbursement in Illinois.

21 Q. That includes the review of budgets that

22 are proposed with regard to remediation on particular

23 sites in Illinois?

24 A. For underground storage tanks, yes.

1 MR. KIM: Could I take one minute and ask  
2 Mr. Chappel a question? It's procedural question.

3 MS. HEARING OFFICER: Okay.

4 MR. KIM: Is it my understanding that the three  
5 gentlemen seated with Mr. Martin are all going to be  
6 testifying this morning?

7 MS. HEARING OFFICER: Yes.

8 MR. KIM: That's all.

9 MR. MARTIN CONTINUES:

10 Q. Are you familiar with a remediation site  
11 known as being operated by Midwest Petroleum Company  
12 located in Shiloh, Illinois?

13 A. Yes.

14 Q. And that's just, for identification  
15 purposes, has an incident number 982804. Does that  
16 sound right?

17 A. 982804, correct.

18 Q. And you are aware that United Science  
19 Industries, Inc., who I will refer to as USI throughout  
20 these proceedings, is an environmental consultant  
21 engineer on behalf of Midwest with regard to the  
22 remediation of that site?

23 A. Yes.

24 Q. Is it your understanding that USI has been

1 an environmental consultant for quite some time?

2 A. I'm not familiar with how long.

3 Q. Did you have an opportunity, on behalf of  
4 the Illinois EPA, to review an amended cap and budget  
5 submitted by USI on behalf of Midwest Petroleum on or  
6 about August 13, 2004?

7 MR. KIM: Objection. Could you clarify -- is  
8 that date in reference to his review or is that date in  
9 reference to the documents?

10 MR. MARTIN: The document. The amended cap and  
11 budget dated August 13, 2004.

12 MR. MARTIN CONTINUES:

13 Q. Did you have an opportunity to review  
14 that? For clarification, it's contained in the record  
15 on page 101.

16 A. No. I did not review that.

17 Q. Who did?

18 A. I believe Mindy Weller.

19 Q. Now, however, the amended cap and budget  
20 was approved by the Agency letter dated September 1,  
21 2004, on page 61 of the record. Is that correct?

22 A. The plan was conditionally approved.

23 Q. Correct, by letter dated September 1,  
24 2004?



1           A.     I believe that's September 1.

2           Q.     And that letter found on page 61 of the  
3 record is under your signature. Is that correct?

4           A.     That is correct.

5           Q.     Although your signature appears, is it  
6 your testimony that you did not review that amended cap  
7 and budget?

8           A.     That is correct.

9           Q.     Let me ask you this, then, how is it that  
10 you came to conditionally approve the plan under this  
11 letter of September 1, 2004?

12          A.     I'm Mindy Weller's supervisor.

13          Q.     And did Mindy Weller consult with you with  
14 regard to the content of the letter of September 1,  
15 2004?

16          A.     I believe we may have discussed the use of  
17 the swell factor within that cap.

18          Q.     Did you also discuss with her any of the  
19 other contents of the amended cap as proposed under the  
20 date August 13, 2004?

21          A.     It's possible, but I don't recall at this  
22 time.

23          Q.     Now, are you aware that USI had also  
24 submitted, under letter dated March 29, 2005, an

1 additional proposed amendment to the budget of the  
2 amended cap that had originally been approved September  
3 1, 2004?

4 A. March 29?

5 Q. Yes. What I'm referring to is page 19 of  
6 the record.

7 A. Yes. I'm familiar with that amendment.

8 Q. And did you have an opportunity to review  
9 it?

10 A. I looked at what was submitted and  
11 discussed it with Mindy Weller, who was the reviewer.

12 Q. Did you and/or Mindy perform a full  
13 financial review of that proposed amended budget?

14 MR. KIM: Objection. The term "full financial  
15 review" -- I don't understand what that refers to.

16 MR. MARTIN CONTINUES:

17 Q. Full financial review as it is defined in  
18 Section 732.505-C of the record.

19 A. I don't have a copy of 505-C here, so I  
20 don't know, off the top of my head.

21 Q. Well, did you review the financials that  
22 were presented in the amended budget?

23 A. I reviewed the amendment that was dated  
24 March 29, 2005.

1           Q.     And in your review, did you compare that  
2           then with the amended cap that had already been  
3           conditionally approved by letter dated September 1,  
4           2004?

5           A.     No, I did not.

6           Q.     Did Mindy?

7           A.     I would assume so, but I do not know for  
8           sure.

9           Q.     As it appears in page one of the record,  
10          there's a letter dated July 18, 2005, under your  
11          signature. Do you see that?

12          A.     Yes.

13          Q.     By that letter, you had rejected the  
14          proposed amended budget that was dated March 29, 2005.  
15          Is that correct?

16          A.     That is correct.

17          Q.     Now, would you agree with me that the  
18          corrective action plan activities that were provided for  
19          under the amended cap and budget under the date of  
20          August 13, 2004, were the same as the corrective action  
21          plan activities proposed in the amended budget under the  
22          date of March 29, 2005? That's a long question.

23          A.     You are going to have to read those back  
24          to me again.

1           Q.     My question is this, was there any change  
2     in the corrective action activities between the  
3     corrective action plan under the date of August 13,  
4     2004, and the amended budget proposed under the date  
5     March 29, 2005?

6           A.     Well, I think I would have to ask what you  
7     mean by "change in activities."

8           Q.     That's what I'm asking you. Did you see  
9     any difference in activities, corrective action  
10    activities, to be performed between the prior cap that  
11    had been conditionally approved and then what was  
12    proposed under the amendment of March 29, 2005?

13          MR. KIM: Object to the form of the question.  
14    The witness is being asked to compare a plan with a  
15    budget, and I think the two documents I think are  
16    opposite in origin, so unless there's something specific  
17    within the budget you're referring to that you would  
18    like to draw out attention to --

19          MR. MARTIN CONTINUES:

20          Q.     What I'm getting at is did you see any  
21    difference in the activities proposed under one cap and  
22    budget, as opposed to another budget?

23          A.     We only had the one approved plan which  
24    was the earlier date you mentioned. That is the only

1 plan I'm aware of.

2 Q. So the point is there weren't any  
3 activities to be changed, correct?

4 MR. KIM: I'm going to object. I can't tell if  
5 this is -- counsel's question is asking, basically, if  
6 there are any changes that were proposed in the budget,  
7 and if that's the case, I think counsel should point out  
8 whatever parts of the document he's referring to  
9 because, otherwise, we're being asked to comment on  
10 documents they prepared, not something we prepared.

11 MR. MARTIN: That's a mischaracterization of my  
12 question. My question is was there any difference that  
13 you can perceive between the cap that had already been  
14 conditionally approved, and what was proposed to be done  
15 under the amendment of March 29, 2005?

16 MR. KIM: I'm going to object because the  
17 question is what was proposed to be done. Where are we  
18 talking about? What part of the document is he  
19 referring to when he says "what was proposed"?

20 MS. HEARING OFFICE: Well, I'm going to allow  
21 the question.

22 THE WITNESS: Yes. There were significant  
23 changes.

24 MR. MARTIN CONTINUES:

1 Q. What were they?

2 A. The original cap proposed I believe 25 or  
3 27 days of activities. The proposed budget proposed an  
4 additional 13 or 16 days of activities.

5 Q. But those activities, themselves, weren't  
6 different, just more time?

7 A. Well, I don't know. The budget didn't  
8 provide what those activities were. All it did was  
9 propose additional time for the original proposal.

10 Q. Now, your -- in referencing page one of  
11 the record, your letter July 18, 2005, you indicate  
12 under paragraph one, about the middle of the page --  
13 well, second paragraph, under paragraph numbered one,  
14 that the budget indicates that the amount of time to  
15 excavate contaminated soil from this site will be over a  
16 span of five months. Do you see that sentence?

17 A. Yes.

18 Q. I want to ask you what budget are you  
19 referring to in that line that says the budget indicates  
20 that, and so forth?

21 A. This letter was prepared by Mindy, but I  
22 would assume that refers to the original plan and budget  
23 that was approved.

24 Q. All right?

1           A.     Or maybe it refers to this amendment that  
2 was proposed. I'm not sure.

3           Q.     You don't know?

4           A.     I'm not positive, but looking at it, it  
5 probably refers to the information regarding the budget  
6 amendment.

7           Q.     The budget amendment under the date of  
8 March 29, 2005?

9           A.     Yes, I believe so.

10          Q.     Now, there's also reference then to the  
11 excavation, transportation, disposal and backfill of  
12 contaminated soils, correct?

13          A.     Yes.

14          Q.     And we also call that "dig and haul" for  
15 short?

16          A.     Yes.

17          Q.     That does not reference any dealing with  
18 what's called overburden, correct?

19          A.     No. It doesn't say anything about  
20 overburden.

21          Q.     Now, do you understand the difference  
22 between contaminated soil and overburden?

23          A.     Are you referring to clean overburden?

24          Q.     That's what I'm asking you. Do you

1 distinguish the two being one is clean dirt; the other  
2 is dirty dirt?

3 A. Well, defining clean as less than some  
4 clean-up standard?

5 Q. Yes.

6 A. The clean would be the material that is  
7 not required to be removed for remediation whereas the  
8 contaminated is required to be removed.

9 Q. And the dirt is not required to be removed  
10 could also be used for backfill, correct?

11 A. As long as it's clean material, yes.

12 Q. Assuming it's clean, it could be used for  
13 backfill, correct?

14 A. Yes.

15 Q. Could you elaborate on what is meant by,  
16 "The removal of the contaminated soil containing over a  
17 span of, approximately, five months"?

18 A. Well, I believe the budget amendment that  
19 was submitted indicated that the reasons that additional  
20 personnel and other costs were needed was because of  
21 activities that occurred over a period of five months.

22 Q. And for that reason, it was then denied or  
23 rejected?

24 A. Because it took five months?



1 Q. Yes.

2 A. I believe that's correct.

3 Q. And would it be fair to say that the five  
4 months is garnered from -- I will refer you to page 25  
5 of the record, which is the M-1 justification for the  
6 budget amendment proposal.

7 A. I believe that's where it came from, yes.

8 Q. That refers to the dig and haul and the  
9 handling of overburden being from October, 2004, through  
10 March of 2005?

11 A. Well, it's the budget amendment that was  
12 proposed, and is the subject of this hearing. There's  
13 all kinds of material there.

14 Q. But, well, the budget amendment, itself,  
15 doesn't reference five months, does it?

16 A. Well, it refers to the months of October,  
17 '04; November, '04; January, '05; February, '05; March,  
18 '05.

19 Q. And you, again, are looking at page 25 of  
20 the record?

21 A. Yes.

22 Q. And is it your understanding that that's  
23 where the five months was derived from?

24 A. I would assume that's where Mindy got it

1 from because it is five months, approximately, so I  
2 would assume that's what she's referring to.

3 Q. Again, I will ask you, then, is that five  
4 months the basis for the rejection of the amendment that  
5 was proposed, to your knowledge?

6 A. No. The basis for the rejection was the  
7 additional personnel costs are unreasonable.

8 Q. Over that five-month period of time?

9 A. Correct.

10 Q. So are you saying that it's not the five  
11 months that is the concern, but rather, the costs  
12 incurred over that five months?

13 A. Well, the budget was rejected because the  
14 personnel costs requested in the budget amendment were  
15 not reasonable. Now, if that budget amendment proposed  
16 personnel costs over five months, then that would be  
17 correct.

18 Q. Well, now, let me take you to the next  
19 line of the second paragraph on page 1, under No. 1,  
20 which indicated the approved plan -- and we assume we're  
21 talking about the approved plan under letter dated --  
22 Agency letter dated September 1, 2004, correct?

23 MR. KIM: Just so we're clear, are you referring  
24 under paragraph one, on page one, the second

1        subparagraph there and the second --

2                MR. MARTIN:    Correct.

3                MR. KIM:    The second sentence in that second  
4        paragraph?

5                MR. MARTIN:    That is correct.

6                THE WITNESS:    Could you ask the question again?

7                MR. MARTIN CONTINUES:

8                Q.        It's correct that this references the  
9        approved plan, right, and just so we're on the same page  
10       here, the approved plan would be the amended cap and  
11       budget that was approved under Agency letter dated  
12       September 1, 2004, correct?

13               A.        Correct.

14               Q.        So it indicates that the approved plan  
15       does not include the approval for soil remediation to  
16       include a span of, approximately, five months, correct?

17               A.        That is correct.

18               Q.        Then the next sentence says, "Therefore,  
19       the request for additional personnel costs to remediate  
20       is not reasonable."

21               A.        That is correct.

22               Q.        Let me take you back, then, to the amended  
23       cap and budget that was approved under Agency letter  
24       dated September 1, 2005.    Specifically, what I want to

1 refer you to is pages 122 and 123 of the record.

2 MS. HEARING OFFICER: What pages were there?

3 MR. MARTIN: 122 and 123.

4 MS. HEARING OFFICER: I got it.

5 MR. MARTIN CONTINUES:

6 Q. Now, on page 122, under paragraph seven,  
7 it indicates that, "Upon Agency approval" -- talking  
8 about the first and second sentence -- "Upon Agency  
9 approval of the amended cap and budget, it's anticipated  
10 that the soil removal is to take place in the second  
11 quarter of 2005." Do you see that?

12 A. Yes.

13 Q. Now, would you agree with me that the  
14 second quarter of 2005 would be April, May and June of  
15 2005?

16 A. Calendar quarter, yes.

17 Q. Do you understand that second quarter of  
18 2005 to mean calendar quarter?

19 A. I would assume that's what they meant.

20 Q. And moving, then, to the top of page 123,  
21 the first full sentence there indicates that the cap or  
22 the complete corrective action completion report, is  
23 that what the cap is referring to there?

24 A. Yes.

1           Q.     It is said to be submitted prior to  
2 completion of the first quarter of 2006. Is that  
3 correct?

4           A.     That's what it says.

5           Q.     And the first quarter of 2006 would end  
6 March, 2006, correct?

7           A.     Calendar quarter, yes.

8           Q.     We'll assume that, yes. Now, would you  
9 agree with me that, from the date of the approval of  
10 this amended cap, being September 1, 2004, through the  
11 time of the soil removal, as is reflected in the M-1  
12 justification found on page 24 -- I think it's 24.  
13 Twenty-five. I'm sorry -- would cover September 1,  
14 2004, through March of 2005?

15          A.     The original approval of the plan was I  
16 believe you said September of '04?

17          Q.     Yes.

18          A.     And the proposed modification of the  
19 budget was dated March of '05. Is that your question?

20          Q.     No. My question is would you agree with  
21 me that we're talking about a span of time from  
22 September 1, 2004, the date of the approval of the cap,  
23 through March of 2005, when the soil removal was  
24 completed as is depicted in the M-1 justification

1 presented on page 25 of the record?

2 A. The corrective action plan was approved in  
3 September. When the actual removal activity occurred  
4 are referred to in the budget amendment dated September  
5 -- or I'm sorry -- March of '05. That is correct.

6 Q. So then, between March -- I'm sorry,  
7 September 1, 2004, and March of 2005, we're talking  
8 about, roughly, nine, 10 months?

9 A. Yes.

10 Q. And the amended cap that was approved  
11 indicates that it's anticipated the soil removal would  
12 take place in the second quarter of 2005, and we've  
13 already agreed that we're talking about a calendar year  
14 that's April, May, June, 2005?

15 A. Right.

16 Q. So would you agree with me that the actual  
17 soil removal, as is reflected in the M-1 justification,  
18 was ahead of schedule, according to the amended cap?

19 A. If the soil removal actually occurred in  
20 October, November and January, February and March of  
21 '05, then part of it was prior to the expected first  
22 quarter of '05 referred to in the plan.

23 Q. Not part of it, all of it, is it not?

24 A. Well, February and January of '05 would

1 still be first quarter of '05. I'm sorry. It does say  
2 second quarter, so it would have all been prior, yes.

3 Q. So now we have the actual removal of the  
4 soil prior to the time that is otherwise approved under  
5 the plan, correct? You agree with me?

6 A. It appears that way.

7 Q. So then I want to take you back to page  
8 one of the record and ask you again. What is the  
9 significance of the approved plan providing for a span  
10 of five months for soil removal?

11 A. Well, the original plan had an approved  
12 budget that was based on a certain amount of time to do  
13 the removal. If the proposed plan and budget was based  
14 on one month of removal, and the actual activities  
15 occurred over six months, that's a significant  
16 difference, in terms of personnel and equipment and  
17 everything else. Now, whether that five months or one  
18 month occurred within the first quarter, second quarter  
19 or third quarter, I mean, I don't think the Agency is  
20 really concerned what quarter it actually occurred in.  
21 The question is the amount of time spent as proposed in  
22 the plan, versus what is being proposed in the modified  
23 budget.

24 Q. Well, but that's not what the letter says,

1 does it?

2 MR. KIM: Objection. That's argumentative.

3 MR. MARTIN CONTINUES:

4 Q. No. It's a question. Is that what the  
5 letter says?

6 A. It says a request for additional personnel  
7 costs to remediate the soil is not reasonable in the  
8 third sentence of the rejection. As background, the  
9 first two say that the original budget and the plan were  
10 based on a certain amount of months, and this  
11 modification raises that number of months to five.  
12 Based on that, the personnel costs, those additional  
13 costs are not considered reasonable.

14 Q. Here's my question, and I would like for  
15 you to find for me where in the amended cap and budget  
16 of September 1, 2004, where it indicates that five  
17 months would be the span of time for which soil would be  
18 removed.

19 A. I believe the budget that was proposed.

20 Q. You say it's the budget that was proposed.  
21 What I'm looking at is the letter that says, "The  
22 approved plan does not include approval for soil,  
23 includes a span of, approximately, five months."  
24 (Phonetic)



1           A.     Correct.

2           Q.     You are saying that the proposed plan  
3 deals with five months for the removal of soil, correct?

4           A.     No.   The proposed budget has five months.

5           Q.     I'm sorry.   I said "plan," but I meant  
6 budget.

7           A.     The original plan -- we went over this --  
8 says that the removal will occur during the second  
9 quarter of 2005.   The budget attached thereto I believe  
10 allowed for 25 or 27 days to do the removal of the soil.

11          Q.     I guess where I'm still trying to find the  
12 answer within this letter is what is the significance of  
13 the five months?

14          MR. KIM:   Objection.   This has been asked and  
15 answered three or four times now already.   He's not  
16 asking anything different than he hasn't already asked.

17          MR. MARTIN: I don't think the significance of  
18 five months has been answered.

19          MS. HEARING OFFICER:   Could you clarify  
20 "significance"?

21          MR. MARTIN:   Well, it's significant because it  
22 appears in page 1 of the record, so the Agency made it  
23 significant.   Whatever the Agency wants to call it,  
24 important, whatever, what is the importance?   Why is

1       there a reference to five months in the letter and five  
2       months being the basis for the rejection of the amended  
3       budget?

4               THE WITNESS: The significance is that the  
5       originally approved plan and budget included a certain  
6       amount of time to do the removal, in terms of the  
7       personnel costs, equipment costs, all the other costs  
8       that are included in the budget. The proposed  
9       modification that we rejected on July 18, 2005 requests  
10      a significant increase in the amount of time to complete  
11      those activities. Now, the reference to the months I  
12      would assume what Mindy is referring to is the fact that  
13      it was, supposedly, supposed to be done sometime within  
14      that second quarter of 2005, which is three months, even  
15      though 27 days is not three months. And in writing up  
16      her denial, the basis for the rejection was that, for  
17      some reason, it has now taken five months and has  
18      resulted in a significant increase in personnel costs.

19              MR. MARTIN CONTINUES:

20              Q. All right. Let me then direct you to page  
21      118 of the record, and that is part of the amended cap  
22      that was approved by the agency letter dated September  
23      1, 2004, correct?

24              A. I believe so, yes.

1           Q.     The third paragraph down, the second  
2 sentence, references an estimated tonnage of  
3 contaminated soil and truck time for round trips and  
4 references 25 days to complete that. Do you see that?

5           A.     Yes.

6           Q.     You mentioned 25 days, already.

7           A.     Correct.

8           Q.     That then takes on some significance for  
9 the purpose of the rejection of July 18, '05. Is that  
10 correct?

11          A.     In terms of the amount of time to complete  
12 the activity, yes.

13          Q.     Now, there is nothing stated within this  
14 sentence that I referenced you to on page 118 to the  
15 movement of clean overburden, correct?

16          A.     It does not say anything about clean  
17 overburden, correct.

18          Q.     Now I want to direct your attention to  
19 page 320 of the record. Do you have that?

20          A.     Yes.

21          Q.     Under the reference "environmental  
22 technician" there is 270 hours, \$52 per hour for a total  
23 of \$14,310. Do you see that?

24          A.     Yes.

1           Q.     The description of the task to be  
2           performed has "excavation of overburden, screening,  
3           manifesting, sampling, surveying, sample shipment." Do  
4           you see that?

5           A.     Yes.

6           Q.     Again, this is part of the budget that was  
7           approved by the Agency on September 1, 2004, correct?

8           A.     I believe so, yes.

9           Q.     Now, having received the M-1 justification  
10          that's referred to in the record, page 25, do you  
11          understand these 270 hours to be 27 days of 10 hours a  
12          day?

13          A.     If you assume 10 hours a day, that's 27  
14          days.

15          Q.     That makes sense, though, as we sit here  
16          today, correct?

17          A.     270 divided by 10 is 27.

18          Q.     What I'm saying is you would go with the  
19          assumption that it's 27 days, at 10 hours a day,  
20          correct?

21          A.     That's what I would assume, yes.

22          Q.     Now, in taking page 320 of the record in  
23          connection with page 118 you have already referred to,  
24          is it fair to make an assumption that there would be two

1 days left over for dealing with overburden? Is that a  
2 fair assumption?

3 A. There's two days' difference. That's all  
4 I can say. I don't know what it's assumed it's used  
5 for.

6 Q. Have you ever visited this site?

7 A. No.

8 Q. You don't have any dispute with the cubic  
9 yards that are referenced in the M-1 justification found  
10 at page 25, do you, in terms of the contaminated soil  
11 having been excavated and removed, and in particular,  
12 the second paragraph --

13 A. What page?

14 Q. Page 25, second paragraph of page 25.

15 A. Which volume are you referring to?

16 Q. I'm referring to the volume of  
17 contaminated soil 12,460 cubic yards over a period of  
18 October, 2004, November, 2004, and January of 2005.

19 A. And the question was do I have any reason  
20 to doubt that?

21 Q. Yeah. Do you have any reason to doubt  
22 that?

23 A. No.

24 Q. Do you have any reason to doubt that an

1 additional 1,540 cubic yards of contaminated soil was  
2 removed over a 15-day period in February, 2005, and  
3 March of 2005?

4 A. No.

5 Q. And do you have any reason to doubt that  
6 5,327 cubic yards of clean overburden was excavated  
7 during that 15-day period in February, '05, through  
8 March, 2005?

9 A. No.

10 Q. You realize that, within the M-1  
11 justification found at page 25, that there is an  
12 additional, or request for additional 16 days of  
13 environmental tech services at 10 hours a day?

14 A. In addition to other personnel, yes.

15 Q. But I'm just focusing on the environmental  
16 technician at this point.

17 A. Yes.

18 Q. Totaling 160 hours, right?

19 A. Yes.

20 Q. And you can gather that, not only from the  
21 M-1, but you can turn back one page and see that 160  
22 hours requested at \$52 per hour. Fair?

23 A. Yes.

24 Q. The reference for the task is screening

1       overburden with PID, sampling overburden stockpiles,  
2       surveying and four samples and shipment, correct?

3             A.     Correct.

4             Q.     Again, you don't have any reason to doubt  
5       that there was excavation and disposal of contaminated  
6       soil during a 28-day period?

7             A.     I have no reason to doubt it.

8             Q.     You have no reason to doubt that there was  
9       some additional excavation, removal of contaminated  
10      soil, along with the excavation of clean overburden  
11      during a 15-day period at a later time?

12            A.     I have no reason to doubt that.

13            Q.     Now, can you tell me the significance of  
14      the screening of the overburden with the PID and  
15      subsequent sampling of the clean overburden?

16            A.     I would assume they were activities that  
17      were proposed in the approved plan.

18            Q.     Well, what's the importance of screening  
19      and sampling the overburden?

20            A.     I would assume it was to ensure that no  
21      contaminated soil was placed back into the excavation.

22            Q.     Basically, to determine clean from  
23      contaminated dirt, correct?

24            A.     I would assume so, yes.

1           Q.     And would you agree with me that, if there  
2     is overburden that's got to be removed, assuming it's  
3     clean, it's got to be removed to get down to a certain  
4     level at which contaminated soil is found, right?

5           A.     I believe that's what the plan called for,  
6     yes.

7           Q.     Do you also realize from the M-1, again,  
8     found at page 25, that Midwest asserts that it was,  
9     basically, an underestimation of the time required for  
10    the environmental technician, focusing on the  
11    environmental technician for a moment, to perform the  
12    tasks of excavation, screening, sampling of the  
13    overburden?

14          A.     The reason for the budget amendment?

15          Q.     Yes. Do you understand that to be that  
16    there was an underestimation of time devoted for the  
17    environmental technician to --

18          A.     That's what appears to be, yes.

19          Q.     Now, there would not appear to be a  
20    problem, from the Agency's perspective, in terms of the  
21    charges per hour, that being \$52 per hour, for the  
22    environmental technician?

23          A.     Not that I'm aware of.

24          Q.     Because that's the same hourly rate



1 requested in this amendment, as was included within the  
2 cap that was approved, the cap and budget that was  
3 approved, correct?

4 A. I will take your word for it.

5 Q. So then, getting back to the basis for the  
6 rejection of that budget, was because it was deemed by  
7 the Agency that the additional time for the  
8 environmental tech and other personnel was unreasonable?

9 A. Correct.

10 Q. Is it the Agency's position that it cannot  
11 or will not consider or approve an amendment when  
12 there's an underestimation in an original budget?

13 A. No.

14 Q. So, again, can you tell me what it was  
15 that the Agency deemed to be unreasonable about these  
16 additional hours that were requested?

17 A. The additional personnel hours were not  
18 justified and were deemed unreasonable.

19 Q. On what basis?

20 A. Based on the submission of USI  
21 justification.

22 Q. The justification wasn't sufficient?

23 A. The justification did not justify the  
24 additional 16 days of personnel time.

1           Q.     In your consideration of the amended  
2 budget, as was proposed March 29, 2005, did you take  
3 into consideration, or to your knowledge, did Mindy  
4 Weller take into consideration the daily production rate  
5 of the excavation?

6           A.     No.

7           Q.     You wouldn't disagree with me that the  
8 excavation of 12,460 cubic yards over 28 days would be  
9 an average daily excavation rate of 444,445 cubic yards  
10 per day, would you?

11          A.     Whatever that calculates out to be.

12          Q.     Whatever the math is, is. In your  
13 consideration of the amended budget proposed March 29,  
14 2005, did you consider and evaluate the production rate  
15 of the excavation of the overburden and additional  
16 contaminated soil over that 15-day period, extra 15-day  
17 period that we referred to already?

18          A.     No.

19          Q.     And again, the math on that being 458  
20 cubic yards per day. You wouldn't argue with that?

21          A.     I wouldn't argue with it.

22          Q.     You are also aware that there is an  
23 assertion in the M-1 justification for the budget on  
24 page 25 that some excess rain over the period of October

1           24, through January 25 had occurred?

2           A.     That's what it claims, yes.

3           Q.     You do not deem that circumstance to be  
4           any justification for additional hours requested?

5           A.     No.

6           Q.     You don't have any reason to argue with  
7           the excess rain that is alleged to have occurred during  
8           that period of time in the M-1 justification?

9           A.     Not in St. Louis.

10          Q.     Well, you said in St. Louis. Do you have  
11          any reason to believe it was any different in Shiloh,  
12          Illinois?

13          A.     No, I don't.

14          Q.     Does the Agency have any sort of standard  
15          with regard to production rates of excavation, be it  
16          clean overburden or contaminated soil?

17          A.     No.

18          Q.     Can you tell me on what does the Agency  
19          base reasonableness of hours in connection with  
20          production rates with regard to excavation of clean  
21          overburden or contaminated soil?

22          A.     It's based on the information provided in  
23          the record, as the plan provided to us.

24          Q.     Then let me take you back to the first 28

1 days that we've been talking about before. --

2 A. Twenty-seven.

3 Q. Twenty-seven, but there was actual, as is  
4 set forth in the M-1, page 25, 28 days of excavation  
5 during October, November, 2004 and January, 2005.

6 A. The original plan and budget I think had  
7 27 days.

8 Q. Correct, but what I'm asking you is you  
9 recognize that 28 days is asserted to have occurred of  
10 excavation in the M-1, correct? Look at the second  
11 paragraph of the first bullet point. It says "During  
12 the total of 28 days" --

13 MR. KIM: For purposes of clarification, you're  
14 referring to page 25 of the record?

15 MR. MARTIN: Yes.

16 THE WITNESS: It does say, "During a total of 28  
17 days."

18 MR. MARTIN CONTINUES:

19 Q. But we've talked about two different time  
20 frames here being 28 days of excavation and another 15  
21 days of excavation, correct?

22 A. That's the two time frames referred to,  
23 yes.

24 Q. Now, the 28 days of excavation we've

1 already talked about yielded 12,406 cubic yards of  
2 contaminated soil, correct?

3 A. That's what this write-up says, yes.

4 Q. We applied the math to that being 445  
5 cubic yards per day that would average out, correct?

6 A. Correct.

7 Q. And then the additional 15 days of  
8 excavation in February of 2005, March of 2005 rendered  
9 another 5,327 cubic yards of clean overburden, and also  
10 another 1,540 cubic yards of contaminated soil, as  
11 reflected on page 25 of the record, correct?

12 A. That's what it says, yes.

13 Q. If you add those two figures together,  
14 5,327 and 1,540 that gives us 6,867 cubic yards. You  
15 wouldn't argue with that, correct?

16 A. Correct.

17 Q. Dividing that 6,867 yards by 15 days,  
18 would render a per-day average excavation of 458 cubic  
19 yards?

20 A. If that's what it averages out, that's  
21 fine.

22 Q. I want to mark as an exhibit as  
23 Petitioner's Exhibit 1 an opinion Order of the Board,  
24 Pollution Control Board, dated February 17, 2005. Do

1       you have that before you?

2               A.       Yes.

3               MR. KIM:  I'm going to object to the reference  
4       to this document.  I don't know if the hearing officer  
5       has a copy of it.

6               MS. HEARING OFFICER:  I don't think I do.

7               MR. KIM:  This document is part of one of a  
8       series of orders issued by the Board concerning the two  
9       in-ground -- rulemakings that are referenced in the --  
10      this is a document from a pending rulemaking that is not  
11      a final rulemaking.  This document has -- there's no  
12      basis for reference to this document in the context of  
13      this case.

14              MR. MARTIN:  Well, the relevance I would note to  
15      the hearing officer is in paragraph two of the first  
16      page of the exhibit, about midway through, there is a  
17      sentence that states, "The Board is proposing the  
18      maximum payment amounts proposed by the Agency in most  
19      cases," and I will tie that together if the hearing  
20      officer will allow me to make --

21              MR. KIM:  Again, it says just that.  This is a  
22      proposal.  This is not a final rulemaking.  This  
23      rulemaking hasn't even gone to second notice, yet, so  
24      there's no idea what the Board even believes its

1 preliminary rules are going to be before they submit it  
2 to the joint committee. What we have here is a very  
3 preliminary rulemaking making reference to a proposal  
4 that has been I think attacked on any number of fronts  
5 by United Science Industries concerning the content of  
6 the Agency's proposals. It's irrelevant. It's  
7 immaterial to the case here and it's improper to make  
8 reference to a pending rulemaking. There's no basis.  
9 There's no authority. It's not a final rule.

10 MR. MARTIN: I recognize it's a not a final  
11 rule, but again, the significance of this is that most  
12 of these rules have been proposed by the Agency, itself,  
13 and I have already asked the witness with regard to what  
14 deems use for a reasonable basis and haven't been told  
15 that. I would like to be able to ask the witness with  
16 regard to a reasonable standard, as it relates to the  
17 time associated with average production rates with  
18 regard to excavation of contaminated soil and clean  
19 overburden.

20 MR. KIM: That's not correct. The witness  
21 answered that the reasonableness is determined based  
22 upon the content of the submitted corrective action plan  
23 and budget, and he was very clear about that. He said  
24 whatever is submitted to the Agency is what is used to

1       determine reasonableness. This notion of production  
2       rates and so forth, and the math that opposing counsel  
3       has offered up again to the extent that that relates to  
4       the proposed rulemaking that is not final, it's  
5       irrelevant and has no authority and shouldn't be cited  
6       to.

7               MS. HEARING OFFICER: Mr. Martin, I'm going to  
8       agree with Mr. Kim on this. If there was a final  
9       opinion and order, definitely, I would take it, but the  
10      Board is, of course, aware of the content of this  
11      opinion and order, and if you would like to raise some  
12      argument in your posthearing brief that incorporates  
13      that, that would be fine, but I agree that a first  
14      notice opinion and order, especially in a rulemaking  
15      that has been as controversial as this one really just  
16      isn't appropriate as evidence at this time in this  
17      proceeding.

18             MR. MARTIN: All right. That's fine. I will  
19      raise it in the closing argument. Thank you.

20             MR. MARTIN CONTINUES:

21             Q. Mr. Chappel, after the review of the  
22      proposed amended budget under date of March 29, 2005,  
23      did you deem that the activities of the environmental  
24      technician were not reasonable?



1           A.     In the original plan and budget?

2           Q.     No, the amendment that was proposed in  
3     March of 2005. Did you deem any of those activities of  
4     the environmental technician to be unreasonable?

5           A.     Well, yes, I believe so.

6           Q.     In what way?

7           A.     They were unreasonable. It was not  
8     necessary.

9           Q.     Not necessary. Did you deem those  
10    services of the environmental technician proposed, being  
11    the amended budget, to be inconsistent with the  
12    associated corrective action plan?

13          A.     Those activities weren't included in the  
14    associated corrective action plan.

15          Q.     Did you deem them to be inconsistent with  
16    that plan?

17          A.     Yes.

18          Q.     Did you deem those environmental  
19    technician services to be incurred in the -- not  
20    incurred. I should say in the performance of corrective  
21    action activities?

22          A.     I don't believe so, no.

23          Q.     Did you deem those environmental  
24    technician services proposed in the amendment to be in

1 excess of the minimum requirements of the Act and  
2 regulations promulgated thereunder?

3 A. Yes.

4 Q. Did you deem the proposed environmental  
5 technician's services that were proposed in the amended  
6 budget to be in excess of the minimum requirements of  
7 the Environmental Protection Act and the regulations  
8 promulgated thereunder?

9 A. I would have to look at how these sections  
10 of the acts are worded or how they were worded. I mean,  
11 if the Act says activities which you described are in  
12 excess or considered unreasonable, then, yes, it is --  
13 in our denial letter of July 18, 2005, we determined  
14 that the costs and the documentation hadn't been  
15 provided to demonstrate that the costs are reasonable. I  
16 don't know the exact wording in the Act or rules as to  
17 what our finding is under these sections, but if those  
18 sections indicate that activities in excess of what is  
19 required to meet the minimum requirements are deemed  
20 unreasonable, then, yes, we found those to exceed the  
21 minimum.

22 Q. But as you sit here today, you're not sure  
23 of your answer?

24 A. Not off the top of my head, no.

1           Q.     I will ask you why do you deem the  
2 presentation of the amended budget and the justification  
3 therein to not have demonstrated reasonableness?

4           A.     The budget amendment primarily indicated  
5 that it took an additional 16 days because it rained. I  
6 would ask, during that period of five months, why didn't  
7 they just work on the days it didn't rain.

8           Q.     Are you suggesting that the rain is the  
9 reason that it was deemed not to be reasonable, the  
10 assertion of the rain is not reasonable?

11          A.     The justification provided indicated that,  
12 because of rain, it took additional time.

13          Q.     Well, the justification also indicates  
14 that, during the first 28 days of excavation that we  
15 have already talked about, yielded an average cubic yard  
16 production rate of 458 per day, correct?

17          A.     Whatever that math is.

18          Q.     And then next -- I'm sorry. I stated that  
19 wrong. The first 28 days, according to the math we went  
20 through, is 445 days -- strike that. The first 28 days  
21 of excavation we've talked about yielded an average  
22 cubic yard rate of production per day of 445, correct?

23          A.     That's what the proposed modification  
24 says, yes.

1           Q.     And you already testified you didn't have  
2     any quarrel with that?

3           A.     Correct.

4           Q.     Then the second series of excavation 15  
5     days we've talked about yielded an average cubic yardage  
6     production rate of 458 per day, correct?

7           A.     I will take your word for it.

8           Q.     But you don't have any quarrel with that?

9           A.     No.

10          Q.     Based on those two rates of production  
11     with regard to excavation, it is still your stance, on  
12     behalf of the Agency, that the additional 16 days and  
13     the additional 160 hours of the environmental technician  
14     to screen and sample and so forth was not reasonable?

15          A.     No. Our decision was not based on the  
16     production rate. That is one of the arguments they made  
17     in the proposed modification, but our determination of  
18     unreasonableness was the fact that the additional 16  
19     days, based on rainfall, was not a justifiable argument.  
20     We made no determination as to the production rates.

21          Q.     So then, if you made no determination as  
22     to production rates, how could you make a determination  
23     as to what was reasonable?

24          MR. KIM: Objection. This has been asked over

1 and over again. He's answered however many times why we  
2 believe this was not reasonable. He just did it two or  
3 three times right now. We're asking the same question  
4 over and over.

5 MS. HEARING OFFICER: Mr. Martin, I agree. Are  
6 you getting to something new here?

7 MR. MARTIN: No. I don't think so.

8 MR. KIM: I'm going to object. It it's been  
9 asked and answered.

10 MR. MARTIN CONTINUES:

11 Q. I will move on. I asked you about the  
12 hourly rate for the environmental technician, \$53, and  
13 you didn't have any quarrel with that, in terms of the  
14 reasonableness, correct?

15 A. It was found to be reasonable in the  
16 original plan and budget.

17 Q. It was found to be reasonable also under  
18 the original plan with the environmental specialist of  
19 \$65 per hour, correct?

20 A. Do you know what page that is?

21 Q. Yeah. I think it was page 318 of the  
22 record.

23 A. I'm assuming this was the approved budget  
24 without modification for which personnel?

1 Q. The environmental specialist.

2 A. The environmental specialist was at \$65

3 per hour?

4 Q. Yes. That was deemed to be reasonable?

5 A. To the best of my recollection, yes.

6 Q. And with reference to the senior project

7 manager of \$100 per hour, also found on page 318 --

8 A. Yes.

9 Q. That was deemed reasonable?

10 A. Yes.

11 Q. And professional engineer, \$115 per hour,

12 that was found to be reasonable?

13 A. Yes.

14 Q. And then, finally, the clerical of \$40 per

15 hour? I believe that was on page 319.

16 A. Yeah.

17 Q. That was found to be reasonable, correct?

18 A. Correct.

19 Q. And then, within the amended budget that

20 was proposed under a letter dated March 29, 2005, page

21 24, all of those rates that are requested with regard to

22 the various personnel are the same, correct?

23 A. It appears so, yes.

24 Q. And like the environmental technician's

1 time, it is deemed by the Agency that the senior project  
2 manager's time reflected on page 24, the clerical time  
3 and the professional engineer's time all were to be  
4 deemed unreasonable?

5 A. No. The modification was rejected as  
6 unreasonable.

7 Q. I meant unreasonable, deemed to be  
8 unreasonable.

9 A. Correct.

10 Q. All total, we are talking about a  
11 rejection of a request of additional \$13,555, correct?

12 A. Correct.

13 Q. Shown on page 23?

14 A. That is correct.

15 Q. I don't have any other questions. Thank  
16 you.

17 MS. HEARING OFFICER: Mr. Kim?

18 CROSS EXAMINATION

19 BY MR. KIM:

20 Q. Thank you. I'm going to try not to be  
21 repetitive, so I'm trying to collect my thoughts here.  
22 Mr. Chappel, could you turn to page one of the  
23 administrative record and in subparagraph one of that  
24 page, there was reference made during your direct

1 testimony to the second sentence in the second  
2 subparagraph of subparagraph one that starts, "The  
3 approved plan does not" -- do you see that?

4 A. Yes, I do.

5 Q. And just to be clear, could you read that  
6 statement, that sentence, out loud, please?

7 A. "The approved plan does not include  
8 approval for soil remediation to include a span of,  
9 approximately, five months."

10 Q. Thank you. To the best of your knowledge,  
11 does the approved plan, which was submitted back in  
12 September of -- I'm sorry -- the approved plan, which  
13 was approved at the Agency's September 1, 2004, final  
14 decision, did it include a work of over five months'  
15 span, as stated there?

16 A. The plan on page 118, or I'm sorry --  
17 maybe 119. I think the plan indicated that the work  
18 would be done by the second quarter of 2005, which is  
19 three months.

20 Q. So again, did the plan seek approval for  
21 work within the span of five months?

22 A. Not that I'm aware of.

23 Q. What -- did the plan include any kind of  
24 reference to the amount of time that would be taken to



1 perform the work that was described in the plan?

2 A. Only the amount of personnel time required  
3 to do the activities in the budget, which you can infer  
4 amount of time from.

5 Q. What would those time periods be?

6 A. That was the 27 -- or on page 320 of the  
7 record, environmental technician, 27 days, 10 hours a  
8 day is 270 days (sic).

9 Q. 270 hours you mean?

10 A. I'm sorry, 270 hours.

11 Q. As you stated in your testimony, on  
12 direct, when you take that period of time, along with  
13 the reference found on page 118 of the administrative  
14 record, what was the Agency's conclusion as to how much  
15 time would be set aside for corrective action, and how  
16 much time would be set aside for work on the overburden?

17 A. I believe our understanding was it was all  
18 going to be done within that 27 days.

19 MR. KIM: And this I think is probably within  
20 the scope, but to the extent that it may be outside the  
21 scope of what you asked, I would like to ask what his  
22 understanding of the term "overburden" is, just so we're  
23 all on the same page.

24 MR. KIM CONTINUES:

1           Q.     What is your understanding of "overburden"  
2 as that term is applied to the site?

3           A.     I believe it's the clean material above  
4 the contaminated soil, the soil that was contaminated  
5 from the underground sewer tank. The soil that did not  
6 require any type of remediation.

7           Q.     Now, is this a term of art that different  
8 people sometimes have different meanings to or is it a  
9 universally-understood expression?

10          A.     I wouldn't say anything is universal in  
11 the program, but for the most part, I think people  
12 understand over -- when they are talking about clean  
13 overburden, they are talking about material that does  
14 not require any remediation, either by taking it to a  
15 landfill or remediating it in any place.

16          Q.     Whether or not you -- would you look at  
17 page 123 of the administrative record, paragraph eight,  
18 which is labelled as "The Engineering Design  
19 Specifications" comma "Calculations" comma, etc., and in  
20 that first paragraph of Section 8, there is a sentence  
21 that begins with the word "However." Do you see that?

22          A.     Yes, I do.

23          Q.     Could you read that sentence out loud,  
24 please.

1           A.     "However, a review of the soil bore hole  
2 data indicates 10 bore holes with clean soil overlying  
3 contaminated soil averaging nine feet in thickness over  
4 an estimated area of 16,697 square feet."

5           Q.     I meant to say could you actually then  
6 read the last sentence of that paragraph?

7           A.     "The estimated amount of clean soil  
8 overburden is 5,565 cubic yards, subtracting 5,565 cubic  
9 yards of clean overburden from the total estimated  
10 amount of 20,713 cubic yards, approximately, 15,148  
11 cubic yards of in-place contaminated soil will be  
12 excavated for disposal."

13          Q.     Is that information consistent with your  
14 understanding of how the term "overburden" was applied  
15 and used in the context of this site?

16          A.     Yes.

17          Q.     There were a number of questions  
18 concerning why the Agency believed that the time, the  
19 additional time that was proposed in the most recent  
20 budget amendment, proposed budget amendment, that there  
21 was testimony as to why the Agency believes that  
22 additional time was not reasonable. Do you recall those  
23 questions?

24          A.     Yes.

1           Q.     Going back to what you testified to before  
2           that it was the Agency's understanding that 27 days,  
3           total, would be set aside for excavation, 25 of which  
4           would be for soil, contaminated soil removal, two for  
5           overburden, do you believe that time period was  
6           reasonable for the work that was proposed?

7           A.     Yes.

8           Q.     What do you base that statement that it  
9           was reasonable on?

10          A.     Based on the information provided in the  
11          plan and the amount of time proposed in the budget in  
12          the original plan and budget.

13          Q.     And you testified that you had a number of  
14          years of experience with the Illinois EPA in the -- I  
15          don't think you specified how many years you were  
16          employed. How many years -- do you know how many years  
17          you have been in the leaking underground storage tank  
18          section at the Illinois EPA?

19          A.     I would estimate six to seven years.

20          Q.     Taking that time into account, would you  
21          also believe -- does that add anything to your  
22          determination for the time that was proposed and  
23          approved was reasonable?

24          A.     Well, the reasonableness determination was

1 based on information provided in the plan and budget of  
2 USI and looking at all the information that that's  
3 proposing, it was deemed that 27 days was a reasonable  
4 amount of time to complete this degree of work.

5 Q. I have nothing else.

6 MS. HEARING OFFICE: Mr. Martin, anything  
7 further?

8 MR. MARTIN: Yes, just a briefly.

9 RE-DIRECT EXAMINATION

10 BY MR. MARTIN:

11 Q. You were asked with regard to reference to  
12 page 320 of the record about the 27 days, total, for the  
13 excavation. Did you take that 27 days to mean 27  
14 consecutive days?

15 A. I assume that. I mean, once you start  
16 excavation, you don't stop.

17 Q. No stopping on Saturdays; no stopping on  
18 Sundays?

19 A. Well, I assume you can, but --

20 Q. No stopping on weather days when the  
21 weather simply doesn't cooperate?

22 A. I would assume you do, yes, but the  
23 estimate was for a total of 27 days. It didn't -- they  
24 did not necessarily have to be consecutive 27 days.

1           Q.     Mr. Chappel, you indicated that you didn't  
2     consider production rates with regard to excavation in  
3     regards -- correct?

4           A.     Correct.

5           Q.     So then, if we look at page 123 of the  
6     record, where it discusses 20,713 cubic yards of soil to  
7     be excavated over a 27-day period, if I told you that  
8     that equated to 767 -- 767 cubic yards per day  
9     production, that means nothing to you then?

10          A.     It's a number calculated from the math.

11          Q.     But it means nothing, in terms of a  
12     project involving excavation?

13          A.     Not in and of itself, no.

14          Q.     Do you recognize that the M-1 indicates  
15     that there was an underestimation of time for various  
16     personnel to deal with the excavation sampling,  
17     screening, shipping of the soil? M-1 is page 25.

18          A.     The additional time proposed in the  
19     amendment was for additional -- I believe -- excavation  
20     activities.

21          Q.     My question is this, do you recognize that  
22     as being the basis for that as having been an  
23     underestimation in the original cap that was approved,  
24     versus what was actually incurred and also proposed in

1 the amended budget of March 29?

2 A. I believe that's underlying your argument,  
3 yes.

4 MR. MARTIN: I don't have any other questions.

5 MR. KIM: Nothing more.

6 MS. HEARING OFFICER: Thank you, Mr. Chappel.

7 (A small break was taken.)

8 MS. HEARING OFFICER: We are back on the record.

9 Mr. Martin, you may call your next witness.

10 MR. MARTIN: I would like to call Jeff Schwartz.

11 JEFFREY SCHWARTZ, having been duly  
12 sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. MARTIN:

15 Q. Could you state your name?

16 A. Jeffrey P. Schwartz.

17 Q. Jeff, how old are you?

18 A. Thirty-eight.

19 Q. Where do you live?

20 A. Centralia, Illinois.

21 Q. And where are you employed?

22 A. United Science Industries.

23 Q. What is your position with United Science  
24 Industries?

1           A.     Manager of field operations.

2           Q.     How long have you been employed with USI?

3           A.     Nine years.

4           Q.     Have you been manager of field operations

5     all that time?

6           A.     Four as manager and five as supervisor.

7           Q.     And what is your educational background?

8           A.     I have a two-year degree in science.

9           Q.     Is that an associates degree?

10          A.     Yeah.

11          Q.     Are you familiar with the project in

12     Shiloh, Illinois, known as -- owned and operated by

13     Midwest Petroleum Company?

14          A.     Yes.

15          Q.     Have you worked at that site?

16          A.     Yes.

17          Q.     How long have you worked at that site?

18          A.     I spent a period of 16 days there with

19     that overburden project, and off and on during the first

20     28 days as manager.

21          Q.     What was your position, at that time, with

22     USI?

23          A.     Manager of field operations.

24          Q.     As manager of field operations, what did



1       you do, in particular?

2               A.     I scheduled directing -- scheduled  
3       employees, scheduled the daily activities.

4               Q.     And this was focused on the excavation?

5               A.     Yes.

6               Q.     You say you scheduled these things. Did  
7       you actually direct the excavation, transportation,  
8       disposal and backfilling?

9               A.     Yes.

10              Q.     Did you also directed the excavation of  
11       the clean overburden?

12              A.     Yes.

13              Q.     And for purposes of our hearing, we're  
14       clear on what contaminated soil is, versus clean  
15       overburden, correct?

16              A.     Yes.

17              Q.     And you've been present during Mr.  
18       Chappel's testimony with regard to his definition of the  
19       overburden and contaminated soil?

20              A.     Yes.

21              Q.     You would agree with his definition?

22              A.     Yes.

23              Q.     Essentially, is it correct that you would  
24       have to dig out the clean overburden before you get to

1 contaminated soil?

2 A. Correct.

3 Q. And how is it that, on site, a

4 determination is made, when excavation of soil is made,

5 that the soil is either contaminated or clean

6 overburden?

7 A. We usually field PID.

8 Q. What is that, "PID"?

9 A. Photo Itemization Detector (phonetic).

10 Basically, a sample of soil is placed in a bag. A

11 machine is calibrated, and there's a screen inside the

12 bag that determines if it's a laboratory -- send it to

13 the laboratory for a sample and try to find a clean

14 sample under certain parts per million.

15 Q. And is that PID an exact measurement or

16 determination?

17 A. No.

18 Q. Does sampling actually give you that?

19 A. Yes, laboratory analysis.

20 Q. Was it your job to do the screening with

21 the PID and sampling?

22 A. No.

23 Q. Who actually did that?

24 A. Environmental technician.

1                   Q.     Was an environmental technician on site  
2     each day that excavation took place?

3                   A.     Yes.

4                   Q.     I think you said you were not on site  
5     every day during the initial 28 days of excavation?

6                   A.     Correct.

7                   Q.     But you were present during all 16 days  
8     with regard to the overburden?

9                   A.     Yes.

10                  Q.     Who was the environmental technician on  
11     site?

12                  A.     During the second period you mean?

13                  Q.     During the first period.

14                  A.     Scott Hertel.

15                  Q.     Was there someone different in that second  
16     period?

17                  A.     Ron.

18                  Q.     Were their jobs the same?

19                  A.     Yes.

20                  Q.     Once the PID is used by the environmental  
21     technician, what happens next, to your knowledge?

22                  A.     For determining if we needed to go deeper  
23     -- there was a certain amount of soil on top above the  
24     contamination. We didn't know for sure at what depth,

1       so once we got close to the depth we thought it was, we  
2       started screening it at six-inch intervals.

3               Q.     Does that -- is that a slow process,  
4       generally speaking?

5               A.     Yes, in large quantities, especially.

6               Q.     Was this a large dig, as digs go?

7               A.     Yes, for overburden purposes, yes.

8               Q.     So if the PID indicates that the soil is  
9       possibly clean overburden, is there still a sample  
10      taken?

11              A.     Yes, laboratory sample.

12              Q.     What is the turnaround for the time for  
13      the lab to analyze the sample?

14              A.     Twenty-four hours.

15              Q.     And then, once that information of the  
16      sample is returned to USI personnel, who does it  
17      actually go to?

18              A.     The project manager.

19              Q.     The project manager on this project was  
20      who?

21              A.     Bob Pulfrey.

22              Q.     And then, once Bob Pulfrey receives the  
23      analytical information for these samples, what does he  
24      do with that information?

1           A.     He relays it back to the environmental  
2 technician, so that the operation guys know to put the  
3 soil back where it's contaminated.

4           Q.     Who are the operations guys?

5           A.     Field operations, the operators.

6           Q.     Are these the guys that move the  
7 equipment?

8           A.     Yes.

9           Q.     Who actually do the digging?

10          A.     Yes.

11          Q.     And you, based on the information provided  
12 to you from Mr. Pulfrey and the environmental  
13 technician, you direct then the digging?

14          A.     Yes.

15          Q.     When you say direct, talking about how  
16 deep, how far, that sort of thing?

17          A.     The depth and how far is determined by  
18 mapping. The drilling had already been done. We were  
19 going off of a map, basically.

20          Q.     Is that map modified from time to time?

21          A.     Yes.

22          Q.     This map shows what?

23          A.     It shows estimated area of the  
24 contamination, estimated areas of overburden.

1 Q. How often is that map modified?

2 A. Site specific.

3 Q. Well, in this case, often was it? Do you

4 recall?

5 A. I believe this map was pretty close.

6 Q. Close to final?

7 A. Yeah.

8 Q. It wasn't modified very much?

9 A. Not at the overburden time, no.

10 Q. Do you know if it was modified very much

11 during the first stage of the digging in the first 28

12 days?

13 A. No.

14 Q. The excavation on the Midwest project

15 actually began in October 1, 2004. Is that correct?

16 A. Correct.

17 Q. Now, once -- and I believe you said you

18 were present during the 16 days of the excavation of the

19 clean overburden and also some of the contaminated soil?

20 A. Correct.

21 Q. During that time, were you coordinating

22 trucks to come and dispose of any contaminated soil?

23 A. Yes.

24 Q. Were you trying to do more than one thing

1 at a time?

2 A. Yes.

3 Q. In what way?

4 A. We were removing overburden and trying --  
5 overburden was removed. You have to do a certain  
6 section at a time due to the depth of the excavation,  
7 safety wise, probably like -- we average a 15-by-30  
8 area, and then that overburden would be removed and the  
9 trucks could get down to the contaminated soil and take  
10 the contaminated soil out and repeat that process. It's  
11 very slow. That's why so few trucks were used.

12 Q. So the excavation that would be performed,  
13 it would be based on a prior day's information of what  
14 might be clean overburden and what might be  
15 contaminated.

16 MR. KIM: Objection; leading.

17 MR. MARTIN CONTINUES:

18 Q. How would the excavation be directed, in  
19 terms of a time frame? In other words, was it on a  
20 daily basis? Hourly basis?

21 A. Daily.

22 Q. Was that based upon what information might  
23 be obtained from a prior day?

24 A. Yes.

1 Q. All of that information started with the  
2 environmental technician?

3 A. Yes.

4 Q. PID, and his sampling?

5 A. Yes.

6 Q. Now, you indicated that you weren't  
7 present every day of the first 28 days of excavation,  
8 correct?

9 A. Correct.

10 Q. However, on the days that you were  
11 present, was there any excavation of clean overburden?

12 A. On the first 28?

13 Q. First 28.

14 A. No.

15 Q. Do you know why?

16 A. We were trying to remove the full extent  
17 of it first.

18 Q. Full extent of what?

19 A. Contaminated soils from the top layer, to  
20 the bottom layer, take the source out, basically.

21 Q. Did you have anything to do with the  
22 budgeting of costs associated with the excavation?

23 A. Yes.

24 Q. What role did you play in that?



1           A.     Estimated time.

2           Q.     Estimated time of whom?

3           A.     Excavation transportation, disposal.

4           Q.     Did you have anything to do with the

5           estimation of the time devoted by the environmental

6           technician?

7           A.     No.

8           Q.     So you were primarily associated with the

9           time with dig and haul?

10          A.     Yes.

11          Q.     Was this a -- the removal and possible use

12          of overburden, was this a bit of a new project in that

13          form for USI?

14          A.     Yes.

15          Q.     This was a large amount of overburden?

16          A.     Yes.

17          Q.     Did that slow the process down?

18          A.     Yes.

19          Q.     What, in particular, slowed the process

20          down?

21          A.     It's more of a precise remediation.  It's

22          not dig and haul.  It was more precise to find the area

23          of contamination first so you're not removing clean

24          soil, taking it to the landfill for disposal.  Saving

1 costs.

2 Q. What personnel would be used in order to

3 be more precise for this kind of a project?

4 A. Environmental technician.

5 Q. Because of his PID and sampling?

6 A. Yes.

7 Q. Now, the overburden that was removed, if

8 it was determined to be clean, it was intended to be and

9 was used for backfill. Is that correct?

10 A. Yes.

11 Q. Was that a savings to the overall cost of

12 the project?

13 A. Yes.

14 Q. In what way?

15 A. More backfill didn't have to be bought for

16 transport.

17 Q. Was it more costly to buy and transport

18 backfill?

19 A. Yes.

20 Q. Once the excavation was completed at the

21 site there in Shiloh on behalf of Midwest, did your job,

22 essentially, end?

23 A. Yes.

24 Q. Your duties?

1 A. Yes.

2 Q. I don't have any other questions.

3 MS. HEARING OFFICER: Mr. Kim?

4 CROSS EXAMINATION

5 BY MR. KIM:

6 Q. Thank you. Mr. Schwartz, I'm going to try  
7 and ask you my questions in the order that you were  
8 asked, so if you think I'm jumping around, just let me  
9 know and I will try to back up. I believe you testified  
10 during direct that you have to clean throughout the  
11 overburden before you can get to the contaminated soil.  
12 Do you recall testifying that?

13 A. Yes.

14 Q. That's because the overburden, as you said  
15 your understanding of that coincides with Mr. Chappel's.  
16 The overburden, basically, overlies the contaminated  
17 soil?

18 A. Yes.

19 Q. If you think of a cross section,  
20 obviously, you can't get down to the contaminated soil,  
21 until you take the clean soil off the top. Is that  
22 right?

23 A. Yes.

24 Q. You went through your history with USI,

1 but the terminology -- the titles might -- I might have  
2 missed those. You are currently the manager of field  
3 operations. Is that right?

4 A. Yes.

5 Q. Now, is that -- are you the only manager  
6 of field operations for USI?

7 A. Yes.

8 Q. You said you have been in that position  
9 for four years?

10 A. Yes.

11 Q. You said prior to that, for five years,  
12 you were a supervisor?

13 A. Yes, hillside supervisor.

14 Q. So in your current position, you oversee  
15 supervisors?

16 A. Yes.

17 Q. So basically, you moved up one step from  
18 the supervisor level?

19 A. Yes.

20 Q. Who do you report to or how does the chain  
21 of command go within USI, in terms of you being the  
22 manager of field operations?

23 A. I report to the general manager.

24 Q. And when you have a site, such as the

1 Midwest Petroleum site, how does your activity coincide  
2 with the other people that are working on the site, and  
3 not necessarily your subordinates, the people you are  
4 directing, but the other people that have different  
5 responsibilities, the project manager, things like that?  
6 How do you work with them?

7 A. We work with the project manager and the  
8 environmental technician works with the project manager  
9 for the outline of the project, and they relay the  
10 operations to complete it, so it's kind of in  
11 conjunction together.

12 Q. So is the project manager person sort of  
13 considered to have overall responsibility for the site?

14 A. Yes, for the project.

15 Q. And just to sort of further clarify that,  
16 I don't know if you have got a copy of the record, but  
17 if you could look on page 24 of the record, just so we  
18 can fill in some names with the titles, professional  
19 engineer -- just by way of background, page 24 this is  
20 the personnel breakdown that details the additional work  
21 that was sought by the most recent budget. Is that your  
22 understanding?

23 A. Yes.

24 Q. Professional engineer, do you know who

1           that was?

2                   A.     Barry Sink.

3                   Q.     Who is the senior project manager?

4                   A.     Bob Pulfrey.

5                   Q.     Who is the environmental technician? You

6           said there were two.

7                   A.     Ron Minks would be the second.

8                   Q.     Who was the environmental specialist?

9                   A.     I don't know that.

10                  Q.     Then who is the senior project manager

11           below that?

12                  A.     Bob Pulfrey, different tasks.

13                  Q.     So your name is not on this list?

14                  A.     No.

15                  Q.     Let me ask you this, then. Let's go back,

16           if you can find 318, 319, 320. Those are the personnel

17           breakdowns for the originally-approved budget. Is that

18           your understanding?

19                  A.     Yes.

20                  Q.     Without going through all the different

21           names here, is your title or are you listed on one of

22           these lineups?

23                  A.     I would be under the remediation manager,

24           if I worked with the project.

1           Q.     So on page 318, second title down, the one  
2 below professional engineer, remediation manager, that  
3 would be you. Is that correct?

4           A.     Yes.

5           Q.     Do you know who is responsible for  
6 preparing -- and these questions might be better asked  
7 to someone else, but do you know who is responsible for  
8 preparing corrective action plans and budgets for a  
9 site? Is it the project manager's responsibility?

10          A.     Yes.

11          Q.     Do you have input in that?

12          A.     Just in some of the operation, nothing  
13 technical.

14          Q.     Well, when you say, in terms of  
15 operations, can you explain what that means?

16          A.     Amount of time for transportation,  
17 excavation.

18          Q.     Were you the working on the site back when  
19 the original budget was submitted in August of 2004?

20          A.     I don't remember.

21          Q.     Well, but your name is included on page  
22 318 of the personnel breakdown. You said that would  
23 have been your name?

24          A.     Yes.

1 Q. So --

2 A. I may not understand the question.

3 Q. Let me try again. Let's try it this way.

4 How long have you been assigned or been overseeing work

5 at the Midwest Petroleum site?

6 A. During this period that we're talking

7 about, actual activities that went on site after the

8 work started.

9 Q. The work started in October of 2004?

10 A. Yes.

11 Q. Did you have any involvement in the site

12 before October of 2004?

13 A. Yeah. We had some brief removal before

14 that a couple times.

15 Q. This original budget was submitted in

16 August of 2004. Were you working on site in August of

17 2004?

18 A. No.

19 Q. You were not?

20 A. No.

21 Q. So sometime after August of 2004, up to

22 October, 2004, is when you became associated with the

23 site. Is that correct?

24 A. Yes.



1           Q.     Let me ask you this, if you had been  
2     associated with the site at the time the budget had been  
3     prepared, as you just testified, one of the things you  
4     might have involved in might be from an operations  
5     standpoint, right?

6           A.     Correct.

7           Q.     That would include, among other things,  
8     assisting in how much time would be needed per site?

9           A.     Yes.

10          Q.     The time that was included in the  
11     corrective action plan and budget that was submitted in  
12     August of 2004 stated that, for this site, there would  
13     be 27 -- I'm sorry -- 25 days of corrective action, 25  
14     days of soil excavation and removal, and two days  
15     associated with overburden. Is that your understanding?

16          A.     Yes.

17          Q.     If you had been associated with the site  
18     at that time, would you have said that was an  
19     underestimation of the time?

20          A.     After the fact?

21          Q.     Yeah.

22          A.     Yes. Now not, then.

23          Q.     Then you wouldn't have said it would have  
24     been okay?

1           A.     Yes, in better conditions.

2           Q.     Well --

3           A.     It's an estimate.

4           Q.     Right. Let's put it this way, when you

5           are asked to contribute to the preparation of a

6           corrective action plan in a budget, and you are asked to

7           take into consideration how much time might be needed to

8           perform certain phases of the corrective action, you

9           might be asked to give what you think is a reasonable

10          estimation of time. Is that correct?

11          A.     Yes.

12          Q.     When you do that, you are not going to

13          assume every day is going to be a day you are going to

14          lose of rain, and you are not going to assume every day

15          is draught conditions. You are going to assume it is

16          something in the middle. Is that a fair assumption to

17          make?

18          A.     Yes.

19          Q.     Would you err on being overly optimistic

20          or overly pessimistic?

21          A.     Somewhere in the middle.

22          Q.     So the time that you spent at the site was

23          all addressed and all taken care of in the originally

24          approved budget. Is that right?

1 A. Yes.

2 Q. So the additional time that we are talking  
3 about, none of this relates to your work at the site.  
4 Is that correct?

5 A. No.

6 Q. But you did 16 hours of work or 16 days of  
7 work each day for overburden. Is that right?

8 A. Yes.

9 Q. But the original budget set aside two days  
10 for overburden. Is that correct?

11 A. Yes.

12 Q. So how do you fit your 16 days within the  
13 two days that was set aside for overburden?

14 A. Underestimate.

15 Q. But you're not included in the request  
16 here that was intended to address that underestimation.  
17 Is that right?

18 A. Me, personally?

19 Q. Yes.

20 A. No.

21 Q. Well, let's say your job title,  
22 remediation manager. The originally approved budget was  
23 included with what was projected to be two days of  
24 overburden work, correct?

1                   A.     Yes.

2                   Q.     And the remediation manager is not the  
3                   subject to any additional request for time. Is that  
4                   correct?

5                   A.     Correct.

6                   Q.     You were the remediation manager at the  
7                   site. Is that right?

8                   A.     Yes.

9                   Q.     You spent 16 days at the site for  
10                  overburden. Is that correct?

11                  A.     Yes.

12                  Q.     So how do you reconcile the 16 days you  
13                  spent at the site, versus the two days that were  
14                  budgeted and approved? Generosity on meeting the 14  
15                  days?

16                  A.     The remediation manager title is not -- is  
17                  more -- not the actual onsite activity. I was the  
18                  manager of field operations.

19                  Q.     What I was asking you was --

20                  A.     Non-billable position.

21                  Q.     When I asked you questions about the  
22                  original budget and personnel breakdown, you said you  
23                  would have been the remediation manager, right?

24                  A.     Yes.

1 Q. And you don't want to change that?

2 There's no other job title you should have been  
3 associated with?

4 A. For writing the corrective action plan?

5 Q. No. On page 318, through 320, did -- you  
6 can take a look at it. I don't want to stick you with  
7 something you're not comfortable with. Is there any  
8 other job title you should have been --

9 A. No.

10 Q. This is your chance to move up or down?

11 A. Multitask person.

12 MR. KIM: So again, I'm going to object to the  
13 witness being provided answers by another person who is  
14 going to be testifying.

15 MS. HEARING OFFICER: Sustained.

16 MR. KIM: So I'm not sure what the opposing  
17 counsel is doing, if he's just looking at this or if the  
18 witness is looking at something. I can't see by the  
19 page, but again, my question is how do you reconcile the  
20 fact that you spent 16 days of work on site,  
21 specifically, for overburden, but there was only two  
22 days of work budgeted for overburden that was ever  
23 approved?

24 THE WITNESS: Underestimate.

1 MR. KIM CONTINUES:

2 Q. You did have involvement in the site after  
3 October of 2004. Is that correct?

4 A. Yes.

5 Q. The most recent budget amendment that came  
6 in was dated March of 2005. Is that correct to your  
7 understanding?

8 A. Yes.

9 Q. Did you have any involvement in the  
10 preparation of that?

11 A. No.

12 Q. You did not? I would like to clarify some  
13 other things you were testifying to. You said that  
14 there was, as part of determining what was going to be  
15 considered overburden, that there was screening that  
16 would need to be done. Is that right?

17 A. Yes.

18 Q. I'm not going to try to gloss over this,  
19 so correct me or stop me if I mischaracterize it. You  
20 said it was done in six-inch intervals?

21 A. Yes.

22 Q. Is it fair to say -- and if it's not, stop  
23 me -- is it fair to say that, to determine overburden,  
24 what you need to do is, basically, need to do some

1       sampling -- I guess you guys were doing screening at  
2       six-inch intervals -- to, basically, find out how far  
3       you go from what you would consider to be,  
4       quote-unquote, clean soil, which could be used as  
5       overburden, to what you would consider to be the  
6       contaminated soil, which would be exceeding the  
7       appropriate standards?

8               A.     Yes.

9               Q.     That type of work that's done -- that was  
10       done for this site before the corrective action plan  
11       that was submitted in August of 2004, that was done  
12       before that date. Isn't that correct?

13              A.     The activity?

14              Q.     Yes, or do you know when was the screening  
15       that you were referring to?

16              A.     That was done during the activity of the  
17       overburden removal.

18              Q.     So at the time that the corrective action  
19       plan was submitted in August of 2004, was there any --  
20       had there been any previous work done?

21              A.     Yes, sampling bore swells investigation.

22              Q.     With the same intended purpose to find out  
23       what the extent of where the overburden was versus --

24              A.     Yes.

1           Q.     So going into the corrective action plan,  
2     there was an understanding of how much overburden you  
3     had and how much contaminated soil you had.  Is that  
4     correct?

5           A.     Yes.

6           Q.     When you use a PID, the one that was used  
7     at this site, do you know what level is used to  
8     determine what is considered to be clean soil or the  
9     overburden, versus contaminated?

10          A.     No, I don't.

11          Q.     You also referred to a map that was -- you  
12     said you go off a map?

13          A.     Yes.

14          Q.     You said this was a situation where the  
15     map was pretty close.  Is that right?

16          A.     Yes.

17          Q.     What exactly -- what map was that?  Can  
18     you clarify that?

19          A.     It was a corrective action plan map the  
20     EPA receives, estimated area of plume or overburden or  
21     both.

22          Q.     Area of plume or --

23          A.     Entire site map, basically, multiple maps.

24          Q.     Sure.  I'm going to direct your attention



1 to the maps that were in the August of 2004 corrective  
2 action plan. I think they begin on page 136. I  
3 apologize because of copying requirements, these are  
4 smaller compared to full-size maps. Again, I know this  
5 is very small, but do you know what that map on page 136  
6 depicts?

7 A. Midwest Petroleum in Shiloh, Illinois.

8 Q. It's hard to read the letter as to what  
9 the different patching and shading and so forth is  
10 intended to convey, but is this the map -- and if not,  
11 do you know what the map is that you were referring to?

12 A. Yes.

13 Q. This is the map?

14 A. Yes.

15 Q. So the map, the date on this map is July,  
16 2004. Do you see that?

17 A. Yeah.

18 Q. To the best of your knowledge, and again,  
19 you were in charge of the day-to-day excavation  
20 activities. You were over seeing day-to-day excavation?

21 A. Yes.

22 Q. This July, 2004, map wasn't modified very  
23 much in terms of showing where the contaminated soil  
24 was, versus the overburden. Is that right?

1                   A.     Yes.

2                   Q.     Now, here's where I get a little confused.  
3     You also testified that it was kind of slow-going  
4     because, once the overburden was removed, which you did  
5     a section at a time, then you took the contaminated soil  
6     out. Is that right?

7                   A.     Yes.

8                   Q.     And you said that this was a large volume  
9     of overburden compared to maybe other sizes. Is that  
10    right?

11                  A.     Yes.

12                  Q.     But that volume -- refer you to page 123  
13    of the record, 123. Middle of the page, under Section 8  
14    where it talks about the estimated amount of clean soil  
15    overburden is 5,565 cubic yards. Do you see that?

16                  A.     Yeah.

17                  Q.     Was that consistent with what was  
18    ultimately taken out as far as clean overburden?

19                  A.     I believe.

20                  Q.     I think the M-1 page that came with the  
21    budget proposal, also, that's, as far as you know,  
22    consistent with what was ultimately taken out. Is that  
23    right?

24                  A.     Yes.

1           Q.     Now, explain, then, how, during the first  
2     28 days of excavation, there was no overburden -- there  
3     was no clean overburden taken out because I guess I'm  
4     having a hard time understanding how you can't get the  
5     contaminated soil out, until you take the clean  
6     overburden out, but for the first 28 days, no clean  
7     overburden was taken out.

8           A.     It was probably delayed because of  
9     weather, just slowed the process down.

10          Q.     Well, but there were 28 days of  
11     excavation.

12          A.     Yes.

13          Q.     No matter how far apart those days were  
14     spread -- and your testimony was that, during those  
15     first 28 days of excavation, there was no clean  
16     overburden taken out?

17          A.     Yes.

18          Q.     So what was taken out during those 28  
19     days?

20          A.     Just contaminated soil.

21          Q.     This is where I'm confused. You also  
22     testified that you can't take out contaminated soil  
23     until, you take out the clean overburden first?

24          A.     Yes.

1 Q. So how can you take out 28 days' worth of  
2 contaminated soil and no overburden?

3 A. We were not in the overburden areas. We  
4 were just working on the areas that had no overburden.

5 Q. Can you show -- and actually, I don't mean  
6 to jump ahead, but one of your -- you gave me two  
7 documents?

8 MR. MARTIN: Right.

9 MR. KIM CONTINUES:

10 Q. If you look at page 143 of the  
11 administrative record, and you can look at the map  
12 again, is this something -- this map is dated July,  
13 2004. Do you see that?

14 A. Yes.

15 Q. And what does this map talk about? What  
16 does this map depict?

17 A. This is a four-way enterprise, Shiloh,  
18 Midwest Petroleum.

19 Q. Does this map depict the area of  
20 overburden?

21 A. The dotted lines depict the area of no  
22 overburden.

23 Q. So it does depict the area of overburden.  
24 Is that correct?

1           A.     Yes.  That would be red, I believe.

2           Q.     I think there is, yes.  So your testimony  
3     is that, during the first 28 days of excavation,  
4     contaminated soil outside of the area of overburden was  
5     removed.  Is that correct?

6           A.     Yes.

7           Q.     And using this map, what areas would that  
8     be?

9           A.     The 28 days?

10          Q.     Yes.  Does this map depict -- if you see  
11     there's a solid line that says, "Proposed Excavation."  
12     Do you see that?

13          A.     Yes.

14          Q.     Is that the boundary of what was taken out  
15     during the 28 gays, up to where the "Proposed Limit of  
16     Overburden" is depicted?

17          A.     I believe so.

18          Q.     The reason I'm asking this is I'm just  
19     trying to get a sequence that I can understand, so the  
20     Board can understand exactly what happened during the  
21     first 28 days, and so it's your testimony that, looking  
22     at page 143 of the administrative record, that the solid  
23     bounded area of the site that's identified as the  
24     "Proposed Excavation" that's what was addressed, up to

1       where the "Proposed Limit of Overburden" is shown.  
2       That's what was addressed in the first 28 days of  
3       excavation. Is that correct?

4             A.     Can you say that again?

5             Q.     Let's put it this way, the proposed  
6       excavation is a dark line. Is that correct?

7             A.     Yes.

8             Q.     Within that, there's a smaller area that  
9       is set off by dashed lines that is indicated to be the  
10      proposed limit of overburden. Do you see that?

11            A.     Yes.

12            Q.     So, during the first 28 days of  
13      excavation, was soil removed within the solid boundary,  
14      but not including the dashed boundary?

15            A.     The dashed boundary is the no overburden,  
16      the inside.

17            Q.     I see what you are saying, so I have it  
18      backwards, don't I?

19            A.     The outside is the overburden.

20            Q.     I understand. Was there contaminated soil  
21      underneath the overburden?

22            A.     Yes.

23            Q.     There was no clean overburden within the  
24      dashed line, then. Is that correct?

1           A.     That is correct.

2           Q.     I understand. That's all I have.

3           MS. HEARING OFFICER: Mr. Martin?

4           MR. MARTIN: I don't know. Would you have any  
5 objection to just marking that map he was looking at and  
6 we'll make that Petitioner's Exhibit 2, just to clarify  
7 for the record.

8                     (Petitioner's Exhibit No. 2 was marked  
9 for evidence.)

10                    RE-DIRECT EXAMINATION

11           BY MR. MARTIN:

12           Q.     You were asked about the time that was  
13 reflected on page 318 of the record under the name  
14 "Remediation Manager."

15           A.     Yes.

16           Q.     Do you see that entry there, page 318, 30  
17 hours at \$95 an hour?

18           A.     Yes.

19           Q.     I want to direct your attention to two  
20 pages after that, to page 320. Do you see the reference  
21 to remediation manager again?

22           A.     Yes.

23           Q.     Is that your job title? Would that have  
24 been you?

1                   A.     Yes.

2                   Q.     There's another 48 hours?

3                   A.     Yes.

4                   Q.     At \$95 per hour, correct?

5                   A.     Yes.

6                   Q.     That references the task of scheduling the

7                   labor and equipment and professional oversight of

8                   excavation?

9                   A.     Yes.

10                  Q.     So combined, then, there was 78 hours of

11                  your time that was included within the originally

12                  approved cap of September 1, 2004, correct?

13                  A.     Yes.

14                  Q.     Did you also perform other tasks other

15                  than what is reflected in the entry of 30 hours and 48

16                  hours on pages 320 and 318?

17                  A.     Manager of field operations on site and

18                  also of the operators.

19                  Q.     Operators of the equipment?

20                  A.     Yes.

21                  Q.     Was that any billable time?

22                  A.     No.

23                  Q.     You were asked by Mr. Kim about the 25 day

24                  and the two days, originally included within that cap



1       that was approved, and I think you answered the question  
2       that you thought that would have been reasonable at the  
3       time?

4               A.     Yes.

5               Q.     But not now?

6               A.     Not now.

7               Q.     To what do you attribute the difference or  
8       the need for more time?

9               A.     Knowledge.

10              Q.     Knowledge of --

11              A.     Extra work required for this much  
12       overburden removal.

13              Q.     Is it your understanding there was an  
14       underestimation of the overburden to be dealt with?

15              A.     Yes.

16              Q.     Again, that overburden had to be sampled  
17       every six inches did you say?

18              A.     Yes.

19              Q.     In other words, every time six inches of  
20       overburden would --

21              A.     Once you got close to the area of concern.

22              Q.     Then you're inching along, so to speak.

23              A.     Yes.

24              Q.     Is it your understanding that that was not

1 anticipated when the original cap and budget was  
2 presented to the agency?

3 A. Say that again.

4 Q. Is it your understanding that what we  
5 described, the inching the project along, in your  
6 understanding, that that was not anticipated at the time  
7 in August of 2004 when the original cap and budget was  
8 presented to the Agency?

9 A. Yes.

10 Q. I don't have any other questions.

11 MS. HEARING OFFICER: Mr. Kim, do you have  
12 anything further for this witness?

13 MR. KIM: No.

14 MS. HEARING OFFICER: Thank you, Mr. Schwartz  
15 wards.

16 MR. MARTIN: I would just, ask at the conclusion  
17 of his testimony, that Petitioner's No. 2, which is the  
18 map he's testified to, be admitted.

19 MS. HEARING OFFICER: Is that a bigger version  
20 of this?

21 MR. MARTIN: It is.

22 MS. HEARING OFFICER: I would gladly take that  
23 on behalf of the Board.

24 MR. KIM: No objection.

1                   MR. MARTIN: Actually, I may use it for further  
2 testimony.

3                   MS. HEARING OFFICER: Okay. You want to hang  
4 onto it. That will be admitted. That's marked as  
5 Petitioner Exhibit 1?

6                   MR. MARTIN: Well, I had the previously one and  
7 it was denied, so I made it two.

8                   MS. HEARING OFFICER: Mr. Martin, you may call  
9 your next witness.

10                  MR. MARTIN: Now I will call Bob Pulfrey.

11                               BOB PULFREY, having been duly sworn,  
12 testified as follows:

13                               DIRECT EXAMINATION

14 BY MR. MARTIN:

15                   Q.     Would you state your name, please.

16                   A.     Robert J. Pulfrey.

17                   Q.     You go by Bob?

18                   A.     Yes, I do.

19                   Q.     Bob, how old are you?

20                   A.     Fifty-eight years old.

21                   Q.     Where are you employed?

22                   A.     United Science Industries in Wood Lawn,  
23 Illinois.

24                   Q.     How long have you been employed there?

1           A.     Approximately, three and a half years,  
2     since March of 2002.

3           Q.     What is your current position with United  
4     Science Industries?

5           A.     Project manager.

6           Q.     How long have you been employed as a  
7     project manager with United Science Industries?

8           A.     Three-and-a-half years.

9           Q.     Could you describe your educational  
10    background?

11          A.     Yes. I have a Bachelors of Science in  
12    geology; a Masters of Science in geology; two more years  
13    of postgraduate work at University of Idaho.

14          Q.     I didn't ask you this. As a project  
15    manager -- by the way, you're also referred to in the  
16    cap and budget as senior project manager?

17          A.     That's correct.

18          Q.     As project manager, what are your duties,  
19    generally speaking?

20          A.     Generally speaking, I'm in overall charge  
21    of a project, from the very initial project of  
22    developing work plans, developing reports, making sure  
23    that -- also, the overall scheme of a project runs very  
24    efficiently.

1                   Q.     Is there anyone to whom you report or  
2 answer?

3                   A.     Yes.

4                   Q.     Who is that?

5                   A.     That would be Duane Doty, general manager,  
6 and also, my work is supervised by a professional  
7 engineer.

8                   Q.     In this case, with regard to Midwest  
9 Petroleum, the professional engineer is --

10                  A.     Barry Sink.

11                  Q.     Do you have any prior experience in other  
12 fields of work related to what you do as a project  
13 manager for the USI now?

14                  A.     Yes. As a professional geologist, I was  
15 employed by the mine industry for about 12 years, and  
16 then, in the last 16 years as an environmental  
17 geologist.

18                  Q.     For whom were you employed?

19                  A.     I was with -- the beginning of my career  
20 for environmental consulting was with US EPA Region 4 as  
21 a corrective action project manager. I was with various  
22 consulting firms as an environmental consultant  
23 specializing in corrective actions.

24                  Q.     Is it safe to say you are familiar with

1 the Midwest Petroleum project in Shiloh, Illinois?

2 A. Correct.

3 Q. Have you been the project manager for that  
4 project since its inception?

5 A. No. There was one project manager before  
6 me.

7 Q. Who was that?

8 A. That would have been Marvin Johnson. He  
9 asked me to take it over in around August or September  
10 of 2002.

11 Q. You have been the project manager on this  
12 project since August or September of 2002?

13 A. That time frame is, approximately, yes.

14 Q. But there's been no other project manager  
15 in the interim between now and August or September?

16 A. No, sir.

17 Q. Now, you had occasion to prepare an  
18 amended cap and budget dated August 13, 2004, which is  
19 found on page 101 in the record. Is that correct?

20 A. Yes.

21 Q. You submitted that to the Agency on or  
22 about August 13, 2004?

23 A. Yes.

24 Q. You are aware that the Agency had, at

1       least, conditionally approved that amended cap and  
2       budget subject to some swell factor issues by letter  
3       dated September 1, 2004, correct?

4             A.     Yes.

5             Q.     That is also found at page 61 of the  
6       record?

7             A.     Correct.

8             Q.     Now I want to direct your attention to  
9       page 118 of the record. You had indicated in the third  
10      paragraph that, based on the estimated tonnage of the  
11      contaminated soil and the time for the trucks making  
12      round trips to the Roxana landfill, that it was assumed  
13      that simultaneous soil removal and backfilling would  
14      require 25 days to complete, correct?

15            A.     Correct.

16            Q.     Now, what did you mean by the  
17      "simultaneous soil removal and backfilling"?

18            A.     Notice that it says "Contaminated soil."  
19      It says nothing about overburden, so we're just simply  
20      talking about contaminated soil removal, and once you  
21      remove a section of soil, you have to back over it with  
22      some kind of material.

23            Q.     If it is contaminated, if it's all  
24      contaminated soil, you have got to borrow or take from

1       some other source the backfilling material, correct?

2               A.       We have to replace it with clean, yes.

3               MS. HEARING OFFICER:   Mr. Pulfrey, if you could  
4       look in this direction when you speak, we could hear you  
5       a lot better.

6               MR. MARTIN CONTINUES:

7               Q.       Let me refer you now to page 320 of the  
8       record in which you indicate under "Environmental  
9       Technician" 270 hours at \$53 per hour?

10              A.       Yes.

11              Q.       And you reference "excavation and  
12       overburden, screening, manifesting, sampling, surveying  
13       sample shipment (phonetic)." Do you see that?

14              A.       Yes.

15              Q.       Now, you do mention here on page 320 a  
16       reference to overburden, correct?

17              A.       That's what's written. That is correct.

18              Q.       Now, the 270 hours, how did you break that  
19       down, in terms of days and hours per day?

20              A.       Twenty-seven days, 10 hours a day,  
21       approximately, but given the situation that we have, the  
22       25 days of contaminated soil, so it's 25 times 10, plus  
23       there's hours in there for shipping, sample shipment, so  
24       there would be -- over the course of that time, would be



1 extra hours for the environmental technician to take  
2 care of the sample shipment.

3 Q. Is it fair to say that there is a possible  
4 implication derived from reference to page 118 of the  
5 record and reference to page 320 in the record that  
6 you're dealing with the excavation of contaminated soil  
7 for a period of 25 days and dealing with overburden for  
8 a period of two days?

9 A. That is correct.

10 Q. Was that an error on your part?

11 A. Yes. It was on oversight.

12 Q. Now, can you tell us how that oversight  
13 came to be? Now that hindsight is 20/20, how did that  
14 come to be?

15 A. How that came to be was the fact that I  
16 received the information from my field operations  
17 remediation manager, Jeff Schwartz, that it would take,  
18 for the removal of contaminated soil, it would take this  
19 much time, 25 days. Then I went to -- if you notice  
20 here on the heading of page 320, excavation of disposal,  
21 I simply plug the 25 hours, plus some additional time  
22 for sample shipment, and I simply plugged the 25 days,  
23 which is 2,250 hours, plus a little bit of time to  
24 sample shipment, forgetting about the handling of

1       overburden. I completely forgot that.

2               Q.     Is it fair to say that the overburden  
3       referenced should not have been included in that  
4       reference on page 320?

5               A.     Yes. It's unreasonable to think that  
6       given only two days, perhaps, for overburden -- no.  
7       That's unreasonable.

8               Q.     You were aware of the amount of or had, at  
9       least, an estimate of the amount of overburden that was  
10      going to have to be dealt with at the time you submitted  
11      this?

12              A.     As a matter of fact, I calculated the  
13      amount of overburden that needed to be added. It's in  
14      the approved plan.

15              Q.     The reference to \$5,500 cubic yards?

16              A.     Yes.

17              Q.     Now, could you describe the tasks that are  
18      performed by an environmental technician?

19              A.     The environmental technician does PID  
20      screening to see what was clean, versus what was dirty.  
21      He does mapping of the site during the term of  
22      excavation, so we determine the volumes that are also  
23      handled at the time. He does sampling of the materials,  
24      whether it be walls or floors or even overburden. If

1       there's a prerequisite in the approved plan, which was  
2       approved by the Agency, that there would be technicians  
3       available during overburden sampling for screening and  
4       sampling and surveying.

5               Q.     So to put it in a nutshell, the  
6       environmental technician will, for lack of a better  
7       word, take a sample, plus the PID?

8               A.     Correct.

9               Q.     Make a viewing, but that's not an exact  
10      indication of whether soil is contaminated or not, is  
11      it?

12              A.     It's simply known has a screening method  
13      and it gives you an -- "indication" is the best word --  
14      indication if it's clean or dirty.

15              Q.     Actually, sampling and analytical analysis  
16      is required to make that determination?

17              A.     That's correct, and the Agency also  
18      recognizes that.

19              Q.     So the environmental technician will apply  
20      the PID techniques. He will also take a sample in the  
21      same area he's done the PID?

22              A.     That is correct.

23              Q.     Sends off the sample to the lab?

24              A.     Correct.

1 Q. And what kind of turnaround, in terms of  
2 time, is there for the lab to come back with the  
3 analysis?

4 A. It depends upon what the samples are  
5 taken. If it's a wall sample or floor sample, we have a  
6 number of days, but when it comes to overburden  
7 sampling, I requested a very quick 24-hour turnaround?

8 Q. Do you receive a 24-hour turnaround,  
9 generally?

10 A. From the laboratory, yes, we do.

11 Q. From the information that was derived on  
12 a, basically, daily basis, where did that information  
13 go? Did that come to you?

14 A. The laboratory analyzed and got the  
15 results to me, either by fax or by E-mail, and  
16 therefore, I reviewed the analysis.

17 Q. Then, with that information from the  
18 analysis, what did you do with that?

19 A. I compared it to the clean-up objectives,  
20 as recognized by the State, and make a determination  
21 whether it's clean or dirty?

22 Q. Was there a map that was developed as a  
23 result of this analysis performed?

24 A. Yes, there is. In particular, the walls

1 and floor samples are being mapped in by the  
2 environmental technician while on site. When it comes  
3 to the overburden sampling, there was a map of  
4 approximate areas of each stockpile because the approved  
5 plan called for stockpiling, approximately, 200 cubic  
6 yards of overburden after screening and sampling five  
7 composite samples, so as to send it to the laboratory to  
8 confirm whether it's clean or not.

9 Q. So did the map that was developed, did it  
10 change in any significant way from day to day as you  
11 worked on this project?

12 A. As the excavation progressed, yes, it did.

13 Q. So the change in the map was based on the  
14 prior days' information?

15 A. Correct.

16 Q. And then, with that information and the  
17 map, did you pass that information then on to Jeff  
18 Schwartz?

19 A. It depends upon the circumstance, whether  
20 Jeff answered his phone or not because he was in a  
21 machine doing overburden and taking care of trucks,  
22 either Jeff Schwartz or the environmental technician.

23 Q. By the way who -- there were two  
24 environmental technicians?

1           A.     In this project, there were two  
2     environmental technicians. One was Scott Hertel. The  
3     other one was Ron Minks.

4           Q.     So you would communicate with, either Jeff  
5     or one of the environmental technicians, about where the  
6     next segment of digging would take place?

7           A.     That was determined in the field. Whether  
8     or not the stockpile was clean or not is the information  
9     that I received from the laboratory, and whether the  
10    stockpile was clean or not, I relayed that to, either  
11    Jeff Schwartz or to the environmental technician.

12          Q.     Let me ask you this, was it possible to  
13    determine clean overburden, versus contaminated soil,  
14    without the environmental technician and his duties?

15          A.     Without someone who is trained in doing  
16    PID screening, it is not possible.

17          Q.     And the environmental technician is the  
18    one that's trained?

19          A.     It's a prerequisite recognized by the  
20    State that an environmental technician be there on site  
21    to segregate soils.

22          Q.     Was the environmental technician on site  
23    every day that a dig occurred at this site?

24          A.     I believe that's correct.

1           Q.     To your knowledge, was he sampling the  
2     soil every day that a dig took place at this site?

3           A.     He was either screening or sampling,  
4     correct, and surveying.

5           Q.     Were you on site during the screening or  
6     the sampling or the digging, for that matter?

7           A.     At various times, I was.

8           Q.     But your duties are primarily performed in  
9     the office. Is that correct?

10          A.     Primarily, the office, but in order to  
11     make the operation as efficient as possible, the Agency  
12     allows for professional oversight during remediation.

13          Q.     Let me ask you about a couple of other  
14     terms here. We talked about the excavation and  
15     overburden screening. I'm referring to page 320 of the  
16     record. What is "manifesting"?

17          A.     "Manifesting" -- it's a requirement that a  
18     document go with each truck of contaminated soil to the  
19     landfill, and they record the amount of weight that's  
20     driven across the scale before it gets to the landfill,  
21     so we have a specific number of weight, and the manifest  
22     is the document documenting where the soil came from,  
23     who was the generator, what's the amount of soil and  
24     where is the final disposition of the soil.

1 Q. Preparation paperwork?

2 A. Yes.

3 Q. Now, we talked about sampling. Surveying,  
4 what do you mean by "surveying"?

5 A. Surveying is, as the excavation  
6 progresses, as to map out the dimensions of the  
7 excavation, and in particular, also determining, in the  
8 case of overburden, determining depth.

9 Q. So is that then referencing the changing  
10 of the map where necessary based on the information from  
11 the prior day?

12 A. Correct.

13 Q. Sample shipment. We talked about that, as  
14 well. Now, once the amended cap was approved by the  
15 Agency by a letter dated September 1, 2004, the  
16 excavation began pretty much right after that, a month  
17 or so?

18 A. It actually was implemented October 1. I  
19 remember it well because that's the first day of rain.

20 Q. Now, you had proposed in the amended cap  
21 that was approved by the Agency at page 122 of the  
22 record, that, once the Agency approved the amended cap  
23 and budget that it was anticipated the soil removal  
24 would take place in the second quarter of 2005?



1 A. Correct.

2 Q. Is that correct? We are talking about a  
3 calendar quarter?

4 A. Yes.

5 Q. And the second quarter would be then  
6 April, May, June, 2005?

7 A. Right. It would end June 30, 2005.

8 Q. And you also indicated, at the bottom of  
9 page 122 and on the top of 123 of the record, that with  
10 the results of ground work modeling and the completion  
11 of the -- corrective action completion report, that  
12 would actually be submitted in the first quarter of  
13 2006?

14 A. That is correct. That was the plan.

15 Q. So this digging was intended to begin in  
16 March -- or April I should say -- of 2005 and would  
17 likely end sometime in -- could be as late as March of  
18 2006, correct?

19 A. The soil removal that takes place, what is  
20 implied here is that the soil removal is to take place  
21 between the period of the second quarter of 2005, so  
22 it's March 1, until June 3.

23 Q. And then, actually, the removal of the  
24 soil began and concluded prior to the time that's called

1           for in the cap?

2           A.     Yes.

3           Q.     In other words, ahead of schedule?

4           A.     Yes, it was.

5           Q.     Now, there is, of course, reference to the

6           25 days of the excavation.

7           A.     Correct.

8           Q.     Did you intend that to be 25 consecutive

9           days?

10          A.     No, sir.

11          Q.     Did you intend the entire excavation

12          project to be, be it contaminated soil or clean

13          overburden, to be 27 -- concluded in 27 consecutive

14          days?

15          A.     No.

16          Q.     All of the excavation --

17          A.     Well, could I add to this? By my

18          statement in here, "It is anticipated soil removal will

19          take place in the second quarter," that's 90 days.

20          That's a 90-day period there.

21          Q.     Now, all of the excavation was completed

22          in early March of 2005. Is that correct?

23          A.     Yes. That's correct.

24          Q.     Now, the initial excavation,

1 transportation, disposal of the contaminated soil  
2 actually took 28 days. Is that correct?

3 A. That is correct, without the overburden.

4 Q. Not even including overburden. It took 28  
5 days, and that was between October 1 of 2004 and January  
6 17 of 2005?

7 A. I believe that's correct.

8 Q. Now, the M-1 justification found on page  
9 125 of the record, indicates that, during that 28-day  
10 period, there was 12,460 cubic yards of contaminated  
11 soil excavated and removed?

12 A. My best recollection is that's correct.

13 Q. And during that 28 days of excavation, no  
14 excavation of clean overburden took place.

15 MR. KIM: I have not on objected to almost all  
16 the leading questions because I would like to keep  
17 things moving along, but when they get to really be  
18 substantive, I'm going to start being a little more  
19 careful about it because I have no problem with you  
20 setting up the premise of the question, but I don't like  
21 the leading nature of most of these.

22 MS. HEARING OFFICER: You are not objecting,  
23 yet, but you observe the right to object.

24 MR. KIM: Fair warning.

1 MR. MARTIN CONTINUES:

2 Q. During that first 28 days of the  
3 excavation, did overburden -- was overburden excavated?

4 A. No, sir.

5 Q. Why not?

6 A. The attempt was to get the most  
7 contaminated soil which is in the heart of this site,  
8 and get the worst of contaminated soil. What I mean by  
9 "worst" is that it is contaminated from the more  
10 shallow, which is zero, five feet, all the way down to  
11 the excavation depth. That is, the intent was to take  
12 the heart and the worst out before we even touch  
13 overburden.

14 Q. That's what was done?

15 A. Correct, do the easy part first.

16 Q. And in reference to Petitioner's No. 2  
17 that would be the portion that is included within the  
18 dashed line, which is also identified as "Proposed  
19 Limits of Overburden"?

20 A. Correct, the center of this site.

21 Q. The outer portion is outlined in red.  
22 That would include the overburden portion?

23 A. Between the dashed lines and the outside  
24 red that is the proposed area of overburden?

1           Q.     Correct. Now, at the end of the 28 days  
2     of the excavation that ended January 17, 2005 -- well,  
3     let me ask you this, at what point did you discover that  
4     you had an error in your estimation of the time  
5     associated with the excavation?

6           A.     At the end of that 28 days, when I was  
7     reviewing the entire project. As part of the project  
8     manager, I review these, and it was obvious I had  
9     created an oversight.

10          Q.     What did you determine to do at that  
11     point?

12          A.     At that point, I didn't know how long it  
13     was going to take to conduct operations on an overburden  
14     section. Therefore, I decided to wait, until the  
15     project was done.

16          Q.     To go ahead --

17          A.     In its entirety.

18          Q.     So then you waited, until March 29 to  
19     submit the amended budget to the Agency?

20          A.     Having reviewed time sheets, and having  
21     reviewed all the aspects of the operations, which were  
22     completed on March 2, I believe -- it might have been  
23     March second or March 4 -- gathered up all the  
24     information, and I looked at my environmental technician

1 time and some of the other support time, myself the  
2 environmental specialist and I drafted up the amended  
3 budget.

4 Q. And then, again, that was dated March 29,  
5 2005?

6 A. Yes.

7 Q. Now, did you also submit this to Barry  
8 Sink, the professional engineer?

9 A. That is correct.

10 Q. Did he work with you to prepare the M-1  
11 justification?

12 A. That is correct. I drafted the M-1  
13 justification and he reviewed it.

14 Q. Once the excavation or clean overburden  
15 began, you had to have -- or did you have to have the  
16 environmental technician there present?

17 A. Absolutely.

18 Q. I think you already answered this  
19 question, but he was there every day of the excavation  
20 on the overburden, to your knowledge?

21 A. To the excavation of the overburden, yes,  
22 he was.

23 Q. Would there have been any other way to  
24 know whether the soil that was excavated was clean

1 overburden using a backhoe or whether it was  
2 contaminated?

3 A. No. It's recognized by the Agency that an  
4 environmental technician be on site to screen materials,  
5 survey the hole and do all the associated activities.

6 Q. Now, the M-1 found at page 25 indicates  
7 that, during the second set of excavation or 16 days,  
8 that there was clean overburden that was removed,  
9 correct?

10 A. That is correct.

11 Q. And it indicates there was 5,327 cubic  
12 yards of clean overburden removed?

13 A. That is correct.

14 Q. In fact, there was an additional 1,540  
15 cubic yards of contaminated soil removed?

16 A. That is correct.

17 Q. That was determined by virtue of sampling  
18 and so forth?

19 A. The contaminated is calculated by taking  
20 the weights of each truck as they run over a scale at  
21 the landfill and having the tons converted to cubic  
22 yards.

23 Q. But was this determination of the 1,540  
24 cubic yards of contaminated soil and the determination

1 of the 5,327 cubic yards of clean overburden determined  
2 by virtue of the environmental technician's tasks?

3 A. Yes. In other words, the contaminated  
4 soil we can get -- that is determined by weight tickets.  
5 When it comes to the rest of the excavation, the amount  
6 of overburden, you have to have somebody on site -- in  
7 this case, an environmental technician -- to survey the  
8 dimensions of the excavation, in order to determine the  
9 overburden in cubic yards, both, the depth and the  
10 width.

11 Q. And that's the environmental technician's  
12 job?

13 A. That is correct.

14 Q. The second set of days of excavation that  
15 took place -- I think you said at the end of March 2,  
16 2005, when did that begin in do you recall?

17 A. Approximately, in January of '05.

18 Q. From the M-1, there is reference to  
19 stripping ratio of overburden of contaminated soil --

20 A. Yes.

21 Q. What do you mean by that?

22 A. In other words, in mining terms, you have  
23 a certain volume of clean material, versus compared to  
24 the amount of materials that you need to remove, in this



1 case, contaminated soil, so you take the volume of the  
2 overburden, versus the volume of the contaminated soil.  
3 You divide that, the contaminated soil into the  
4 overburden and you come up with a ratio. In this  
5 particular case, it's 3.46. In other words, there's  
6 3.46 yards of overburden that has to be removed compared  
7 to contaminated soil.

8 Q. Is there some significance to that with  
9 regard to the justification proposed to the Agency?

10 A. Yes, there is, because that represents a  
11 significant amount of time. You are handling almost  
12 three-and-a-half times the amount of clean, versus the  
13 amount of contaminated.

14 Q. And that reflects, then, in terms of the  
15 budget?

16 A. The additional time, also reflects into  
17 the budget, correct.

18 Q. You indicate on page 26, "The original  
19 budget significantly underestimated the amount of time  
20 required to complete the simultaneous overburden  
21 handling and contaminated soil disposal."

22 A. Yes.

23 Q. That was your error?

24 A. Yes, it was.

1           Q.     Now, did rain in the area of the site,  
2           Midwest Petroleum site, significantly affect the  
3           excavation that was taking place during the time frame  
4           for October of 2004, through March of 2005?

5           A.     It did affect it somewhat.

6           Q.     In what way?

7           A.     The fact of trucks -- during rainfall  
8           periods, the trucks would be stuck in slower traffic on  
9           the interstate going to the landfill and also the trucks  
10          in trying to enter the landfill because there was a  
11          steep slope and the traction wasn't as good, so it  
12          slowed the trucks down somewhat.

13          Q.     Did that significantly affect the time  
14          that was devoted to the excavation?

15          A.     Yes and no, because there was a lot of  
16          other activities going on in the same time. There was  
17          still stripping of overburden. We were still  
18          backfilling and so there was other activities that -- it  
19          was multitask when it came to this situation, so it did  
20          affect it somewhat.

21          Q.     The overburden didn't have to be  
22          transported or disposed of, correct?

23          A.     Correct.

24          Q.     It was stockpiled?

1           A.     Correct, but when it came to transport,  
2     you are talking about contaminated soil and you are also  
3     talking about the clean backfill that had to be brought  
4     in to make up the difference between the overburden and  
5     contaminated soil.

6           Q.     Now, your G-1 page of the amended --  
7     proposed amended budget, page 24 of the record, you  
8     included a request for 160 hours of environmental  
9     technician time for screening overburden with PID,  
10    sampling of overburden, stockpile surveying, checking  
11    samples of walls and floors. That 160 hours is based on  
12    what?

13          A.     The sixteen days it took to do these  
14    tasks, these specific tasks.

15          Q.     At 10 hours a day?

16          A.     Yes.

17          Q.     That 10 hours was not, didn't vary in any  
18    way from your original cap, did it?

19          A.     I had -- I have also estimated that the  
20    tasks would be at 10 hours day for environmental  
21    technician, excavation, transportation, disposal of  
22    contamination of soil.

23          Q.     You also proposed some other tasks  
24    performed by others, such as the professional engineer,

1 an hour for certification of the amended budget. Is  
2 that correct?

3 A. That is correct.

4 Q. Support and review of certification.  
5 There's a little bit of clerical time with regard to the  
6 preparation of the amended budget?

7 A. Correct.

8 Q. Then there's environmental specialist  
9 time, 16 hours. What does the environmental specialist  
10 do? What tasks?

11 A. In this particular instance, there was  
12 additional time asked because of the ticketing of weight  
13 tickets for the contaminated soil disposal. It's not  
14 unreasonable to ask.

15 Q. Is the environmental specialist an onsite  
16 task?

17 A. No. It's simply -- the environmental  
18 specialist is really an assistant project manager. She  
19 is either doing data entry, or at my request data entry  
20 or making sure the weight tickets are proper and so on.

21 Q. Is it correct to say that it's one hour  
22 per day for the 16 additional days.

23 A. That's correct.

24 Q. Then the senior project manager, there are

1 two entries there. One is three hours referencing the  
2 preparation of the amended budget and the M-1  
3 justification, correct?

4 A. Correct.

5 Q. There are 36 hours with regard to  
6 additional professional oversight. Do you see that?

7 A. Yes.

8 Q. And there is, in parenthesis, 18 days  
9 multiplied by two hours bringing us to the 36 additional  
10 hours requested. Why the difference there, in terms of  
11 the 18 days, versus 16?

12 A. There were some additional hours that I  
13 was delegating working with Jeff Schwartz on site.  
14 There was coordination between myself and the  
15 laboratory, so I just added more hours of coordination  
16 time during the course of these 16 days, and it just  
17 happen to be turned out that, for the purposes of  
18 explanation for the Agency, I happened to pick 18 days  
19 times two hours.

20 Q. Now, the hourly rates that are requested  
21 to you on page 24, they are not any different than what  
22 was requested and approved in the original cap and  
23 budget, correct?

24 A. That was approved by the Agency? No.

1 Q. So there's no difference?

2 A. No difference.

3 Q. All total, then, what you were requesting  
4 in the amended budget is 13,555, correct?

5 A. That is correct.

6 Q. You believe that to be a reasonable  
7 request?

8 A. Yes.

9 Q. And on what do you base your assertion  
10 that that is reasonable?

11 A. It's reasonable to have an Agency-approved  
12 plan that requires an environmental technician to do the  
13 screening, mapping, surveying, sampling during  
14 overburden removal and also contaminated soil removal.

15 Q. Was this project a little bit different  
16 than projects that you normally handled, in terms of  
17 overburden removal?

18 A. This one had a substantial amount of  
19 overburden handling and so on, correct.

20 Q. Just a couple other questions, Bob. With  
21 regard to the rates of production, in terms of daily  
22 average cubic yards removed, the first 28 days there was  
23 reference in the M-1 to 445 cubic yards per day,  
24 correct?

1 A. Correct.

2 Q. Based on your experience, do you believe  
3 that to be a reasonable rate of production?

4 A. Yes.

5 Q. And then, with regard to the 15 days of  
6 additional excavation and the -- which included the  
7 overburden and then additional contaminated soil,  
8 there's reference on page 26 of the M-1 to 458 cubic  
9 yards of excavation per day, correct?

10 A. Correct.

11 Q. Again, you believe that to be a reasonable  
12 rate of production?

13 A. Concerning all the tasks that were  
14 involved in that, absolutely.

15 Q. No further questions.

16 MS. HEARING OFFICER: Mr. Kim?

17 CROSS EXAMINATION

18 BY MR. KIM:

19 Q. Mr. Pulfrey, I will make the same caveat.  
20 I'm going to try to recreate the testimony you gave, so  
21 if you think I'm jumping around, just let me know.

22 A. I will do that.

23 Q. So you were the project manager that was  
24 responsible for preparing the original plan and budget

1           that was submitted in August of 2004. Is that correct?

2           A.     That is correct.

3           Q.     And you were there for the individual who  
4           was responsible for calculating or for putting in the 25  
5           days that would be needed for removal of contaminated  
6           soil. Is that correct? I can refer you to page --

7           A.     Yes. I know where your reference is. As  
8           a project manager, when it comes to field operations, I  
9           pretty much depend upon Jeff Schwartz, my remediation  
10          manager, to determine the amount of days that are  
11          required, the amount of trucks, the amount of operators,  
12          so on and so forth, that are required, so in this  
13          particular instance, I simply took his days and plugged  
14          them into the text.

15          Q.     So you relied on information he gave you  
16          when you prepared this cap that was submitted in August  
17          of 2004. Is that correct?

18          A.     That is correct, as for the amount of  
19          contaminated soil.

20          Q.     Do you recall Mr. Schwartz's testimony  
21          that he was not involved in the preparation of this  
22          August, 2004, cap?

23          A.     No.

24          Q.     Do you have --



1           A.     I don't remember hearing that,  
2 specifically, no.

3           Q.     But when you received that information  
4 from whatever source, since you were preparing the  
5 document, you still hold yourself -- you don't accept  
6 that number in blind faith, do you? I mean, you look at  
7 the number to determine whether or not you believe it's  
8 reasonable, right?

9           A.     Right.

10          Q.     You did that in that situation, right?

11          A.     I did.

12          Q.     Looking at page 118 and that is of the  
13 administrative record, and I want to be clear on this.  
14 The second to last paragraph, the last sentence in that  
15 paragraph, it states, "Based on the estimated tonnage of  
16 contaminated soil, the time for a truck to make a round  
17 trip to the Roxana landfill, it is assumed that the  
18 simultaneous soil removal and backfilling will require a  
19 total of 25 days to complete." Is that correct?

20          A.     If that's what's written, yes, it is.

21          Q.     That statement means that the corrective  
22 action plan was proposing 25 days for removal of  
23 contaminated soil, correct?

24          A.     Correct.

1           Q.     Now you have before you -- could you get  
2     Petitioner's No. 2, please, and take a look at that.

3           A.     Yes.

4           Q.     My copy doesn't have color, but I believe  
5     that there is a solid line that is identified as  
6     "Proposed Excavation" and has a boundary around it. Do  
7     you see that?

8           A.     Yes, I do.

9           Q.     That area that's within the proposed  
10    excavation, that is the limit of contaminated soil  
11    removal. Is that correct?

12          A.     The margins on the west, south and east  
13    represent between the outside margin and the dashed line  
14    represents the proposed limit of overburden, whereas  
15    what's left is the contaminated soil that is removed in  
16    its entirety.

17          Q.     So my question is, if you were going to  
18    perform the proposed excavation, as shown in  
19    Petitioner's No. 2, you would be removing contaminated  
20    soil from -- you would be removing contaminated soil,  
21    even below the overburden. Is that correct?

22          A.     No.

23          Q.     Let me ask you this, based on this map,  
24    what was the limit of excavation of contaminated soil?

1           A.     The limit is the outside margin.

2           Q.     So that's my question. The outside margin  
3 is what's identified as "Proposed Excavation," correct?

4           A.     Correct?

5           Q.     So within that boundary, and up to that  
6 boundary, that's the extent of contaminated soil  
7 removal, correct?

8           A.     Correct.

9           Q.     So when you prepared your corrective  
10 action plan in August of 2004, and you had this map that  
11 was generated in July of 2004, you stated it would take  
12 25 days to remove the contaminated soil within this  
13 proposed excavation, correct?

14          A.     Yes. As pointed out on page 118, it took  
15 25 days for the simultaneous soil removal and  
16 backfilling.

17          Q.     So I'm going to repeat my question. You  
18 stated before it would take 25 days to remove  
19 contaminated soil from the site, correct?

20          A.     Correct.

21          Q.     And this map shows that contaminated soil  
22 is defined by the solid line, which is identified as  
23 "Proposed Excavation," correct?

24          A.     Correct.

1           Q.     So it would take 25 days, based upon your  
2     cap and this map, to remove all the contaminated soil  
3     within that proposed excavation limit, correct?

4           A.     Not counting the overburden.

5           Q.     That's fine, but so let's just stick with  
6     the 25 days for contamination, so to remove the soil  
7     from contamination, it would take 25 days, correct?

8           A.     Correct.

9           Q.     So to take care of the contaminated soil  
10    within the proposed excavation would take 25 days,  
11    right? I think you have already answered this as yes.

12          A.     Yes.

13          Q.     And you could not get to that contaminated  
14    soil in that margin area that you just described, unless  
15    you removed the overburden?

16          A.     Yes.

17          Q.     Is it your testimony, then, that your 25  
18    days here was not addressing how much time it would take  
19    to do the overburden. It was just, basically, to take  
20    out that center portion and then set aside the time for  
21    overburden and then to address --

22          A.     As I stated before, it was an oversight on  
23    my part, as project manager, that I had not taken into  
24    account the amount of time that it would take to remove

1 the overburden area.

2 Q. Well, this would not be your oversight,  
3 alone. It would be whoever supplied you with that  
4 information. You said the manager of field operations  
5 gave you that 25 days?

6 A. Correct.

7 Q. So there was a mistake there. Is that  
8 correct?

9 A. I asked him, specifically -- my task is to  
10 give me the amount of time, the X amount of tons or  
11 yards of material, and how much time it would take that  
12 he provide me. It was my mistake that I forgot entirely  
13 about the overburden area.

14 Q. And then your work was reviewed by  
15 somebody else, correct, the professional engineer?

16 A. That is correct.

17 Q. He had to review the content when he  
18 signs, and of course, he certifies that the work  
19 contained within the corrective action plan and the  
20 assertions are correct. Is that right?

21 A. As a budget estimate?

22 Q. That's correct.

23 A. Corrective action plan and budget?

24 Q. I'm just referring to the corrective

1       action plan at this point. To the best of your  
2       knowledge, he certifies that the information contained  
3       within the corrective action plan that you prepared in  
4       this case is correct. Is that your understanding?

5               A.     He does a review of the corrective action  
6       plan, but he also reviews and certifies the budget.

7               Q.     That's fine. I'm not talking about the  
8       budget. I'm solely talking about the plan. So as to  
9       the plan, he does review that?

10              A.     Yes.

11              Q.     I guess I'm a little confused about some  
12       of the semantics you have used so far. You said that  
13       you just overlooked the amount of time required for the  
14       overburden?

15              A.     Yes.

16              Q.     The M-1 form found on page 25 that you  
17       testified to, there was reference made that you  
18       underestimated the time for overburden?

19              A.     Yes.

20              Q.     I don't want to get too technical about  
21       this, but if you overlook it, you don't consider it  
22       entirely. If you underestimate it, you thought about  
23       it, but you didn't give it enough time. Which one is  
24       it?

1           A.     At the time I did the plan, I had  
2           forgotten about the handling of overburden, so by the  
3           time I am finished with the project, I had under  
4           estimated because that way I know exactly how much time  
5           it took. Therefore, I created an amended budget.

6           Q.     So in the original budget, you forgot to  
7           put in time for overburden?

8           A.     Correct.

9           Q.     But on page 320 of the administrative  
10          record, there are 270 hours associated with an  
11          environmental technician regarding overburden. Is that  
12          correct?

13          A.     There are 270 hours for excavation,  
14          overburden, screening, manifesting, sampling, survey and  
15          sample shipment, all those tasks.

16          Q.     Right, but there's specific mention made  
17          here that, among the 270 hours the environmental  
18          technician would be spending on the site, some of that  
19          would be related to activities concerning overburden,  
20          correct?

21          A.     That is correct, and given it was 25 days  
22          for contaminated soil --

23          Q.     You've answered the question. Thank you.  
24          You refer to a map that changed from day-to-day based on

1 the prior day's information. Do you recall that  
2 testimony?

3 A. Yes, I do.

4 Q. What map were you referring to?

5 A. It's a working map that is developed by  
6 the environmental technician on a day-to-day basis, and  
7 it's always given to me as a daily report, along with  
8 his notes.

9 Q. You said that that note changed quite a  
10 bit on a day-to-day basis. Is that correct?

11 A. As the excavation proceeded, he showed  
12 where the limits of that day's excavation had  
13 progressed.

14 Q. Is the map depicted in Petitioner's No. 2  
15 -- obviously, this map was prepared prior to the date of  
16 excavation beginning, correct?

17 A. Correct.

18 Q. Would this have sort of been the starting  
19 point for the map? I guess what I'm trying to find out  
20 is I'm trying to make sure we're on the same page when  
21 we're talking about a map. Is that the thing -- is this  
22 the map that, on a day-to-day basis, might have been  
23 adjusted based on the previous day's work?

24 A. This day map was adjusted after the 28



1 days. It was updated to show what the limits of the  
2 excavation were, so therefore, at the end of the 28  
3 days, it would be a map given to the environmental  
4 technician that he would use on a day-to-day basis  
5 showing the outlines of the excavation as it progressed.

6 Q. So is it safe to say, then, that what's  
7 shown in Petitioner No. 2 is sort of a starting point,  
8 and that then, at the end of the excavation, you had the  
9 map that would have been the result of however many  
10 revisions. Is that correct?

11 A. Yes. This map, this site map, with the  
12 sole borings, in particular, depicting areas of  
13 contamination and overburden would be used as the basis  
14 for the environmental technician's to guide the  
15 excavation.

16 Q. But there was a map that would have been  
17 in existence and updated, but at some point, there would  
18 have been a final version of the map that would have  
19 shown what was actually excavated. Is that correct?

20 A. Yes, there is.

21 Q. Has that map been provided -- what was the  
22 date? March, 2005, budget submission, was what map  
23 included?

24 A. I don't recollect right now.

1           Q.     Well, you can look through the  
2     administrative record, if you want to. I don't think  
3     it's there, but if you can find it, that would be great.  
4     I believe it begins -- the submission begins on page 19,  
5     and goes through to page 27.

6           A.     No. No map was in there.

7           Q.     You also testified that you never -- there  
8     was a significant amount of overburden that was removed  
9     at this site, correct?

10          A.     Yes.

11          Q.     I don't mean to mischaracterize your  
12     testimony, but I think -- well, let me ask you this, in  
13     your past experience overseeing sites, have you ever had  
14     this much overburden at a site?

15          A.     Not on --

16          Q.     What is the best next closest amount that  
17     you have had at a site?

18          A.     As a project manager, I haven't. USI had  
19     one particular project prior to this and I can't  
20     recollect, but it was nothing near the amounts here.

21          Q.     Well, when we say "nothing near" I guess  
22     I'm trying to put a little more specificity to that.  
23     Are we talking on an order of 10? This is like -- the  
24     overburden removed here was something like 5,400, 5,500

1 cubic yards. Is that correct?

2 A. About 53-some-hundred cubic yards, versus  
3 a total of 14,000-some yards of contaminated.

4 Q. So 5,300 cubic yards of overburden. Would  
5 the only other experience have been something like 1,000  
6 cubic yards? I'm trying to get a sense of when you say  
7 it's a lot more, what do you mean by "a lot more"?

8 A. Probably less than 1,000. Less than 1,000  
9 or 500 cubic yards?

10 Q. When you were preparing the cap, did you  
11 take -- you were drafting this, and I will -- again, on  
12 page 123, I believe, of the administrative record, under  
13 the "Design Specifications" (phonetic). Do you see  
14 that?

15 A. Yes.

16 Q. This information was prepared by you,  
17 correct?

18 A. That is correct.

19 Q. So at the time of preparing the cap, you  
20 had -- you already were aware that you were projecting,  
21 at that point, 5,565 cubic yards of overburden removal,  
22 correct?

23 A. Correct.

24 Q. Going back to the M-1 form on page 25, at

1 the bottom of 25, going on to page 26, you were  
2 describing what is referred to as a stripping ratio. Do  
3 you recall that?

4 A. Yes, I do.

5 Q. And again, a stripping ratio is the ratio  
6 of the volume of overburden removed, basically, divided  
7 by the volume of the contaminated soil, correct?

8 A. That is correct.

9 Q. I guess you will have to sort of educate  
10 me on that. Is that sort of a yardstick to determine --  
11 what does that tell you, I guess, if you have that  
12 information? Do you know what the ratio is, the  
13 stripping ratio? What does that tell you, if the number  
14 is high, low, what have you?

15 A. The numbers, in this particular case, if  
16 you are moving three-and-a-half times the amount of  
17 clean overburden in order to remove one of contaminated  
18 soil, that's a very high number for a project.

19 Q. Given that it's a very high number, what  
20 does that mean in practical terms?

21 A. Time and money.

22 Q. So the higher the number, the more time  
23 and the more money. Is that correct?

24 A. Yes.

1           Q.     Were you aware of this stripping ratio  
2 before you prepared the M-1 form?

3           A.     We had indications of a stripping ratio  
4 because of sole borings that were done previous in a  
5 previous investigation.

6           Q.     I'm not so much talking -- I'm talking  
7 about the concept of a stripping ratio. You were aware  
8 of that calculation that could be used as a factor of  
9 determining money and time associated with soil removal.  
10 Is that correct?

11          A.     Yes, in a general sense.

12          Q.     The two variables that you inputted to  
13 this calculation were, again, volume of overburden and  
14 volume of contaminated soil, correct?

15          A.     Yes.

16          Q.     And again, so we're clear, the volume of  
17 overburden that was anticipated to be removed and the  
18 volume of contaminated soil that was anticipated to be  
19 removed were both known at the time that the corrective  
20 action plan was submitted in August of 2004. Is that  
21 correct?

22          A.     The approximate ones.

23          Q.     How much were they out by the end?

24          A.     5,526, about 200 cubic yards maybe a

1       little bit less.

2               Q.     So in terms of this ratio, I think you  
3       said 3.4. we're talking about maybe a slight -- it's  
4       going to be over three, three point something?

5               A.     Right.

6               Q.     Again, I know that you said that,  
7       typically, you don't experience a lot of overburden at  
8       the site, but what would -- again, just to sort of put  
9       this into context -- what would -- I don't know if there  
10      is a normal number, but what would -- is there a range?  
11      Is there -- I guess I'm trying to get a handle on how to  
12      utilize this ratio and I know you're telling me 3.46 is  
13      high, and that means more time and more money. What  
14      number would you expect to see where you would say it's  
15      going to be pretty much around the mill excavation?  
16      1.0? 2.0? Or is it --

17              A.     Generally speaking, as general knowledge  
18      of most projects that I have experienced at USI, there's  
19      only one other instance, of about 25 projects of which  
20      probably 15 are dig and hauls, there's only been one  
21      other project that had any overburden at all and that  
22      was a minute amount.

23              Q.     Again, we have talked about the time, the  
24      days, 25 days, 27 days, what have you, and I think it's

1       understood that it could have been consecutive days, but  
2       you never, specifically, said those would be consecutive  
3       days?

4               A.     No, sir.

5               Q.     In your cap, you said it would take 25  
6       days to do this type of work?

7               A.     As a matter of fact, if you look back in  
8       the corrective action plan text, itself, we did say -- I  
9       did say it was 25 days, but you relate that, also, to  
10      the other statement that it would take place within the  
11      second quarter, so that's 90 days, so no, it's not  
12      assuming to be consecutive days.

13              Q.     But however spaced apart, or however close  
14      in time, those days were your corrective action plan  
15      proposed that, at the end of 25 work days, regardless of  
16      what the start and stop date was, at the end of 25 work  
17      days, all contaminated soil would be excavated at the  
18      site, correct? You can go back and look at the page, if  
19      you would like.

20              A.     Yes.

21              Q.     You also testified that it was the end of  
22      28 days that you realized that you had miscalculated  
23      time. Is that correct?

24              A.     Yes.

1           Q.     That's three days longer than what you  
2 anticipated all contaminated soil would be taken care of  
3 at the site, correct?

4           A.     That is correct, because of rain delays.

5           Q.     You didn't have any inkling sometime  
6 halfway through that time period that there hadn't been  
7 a mistake made?

8           A.     Yes.

9           Q.     So when you say at the end of 28 days, it  
10 was probably much sooner than that, wasn't it?

11          A.     It became obvious after 28 days. I had an  
12 inkling before that, yes.

13          Q.     Certainly, since you're corrective action  
14 plan proposed 25 days, at the end of 25 days, you knew  
15 that you missed your corrective action plan time period,  
16 correct? I'm not talking about overburden, just soil  
17 removal.

18          A.     As the corrective action proceeded, I had  
19 indication that I was going to exceed, yes.

20          Q.     Let me ask you this, then, your corrective  
21 action plan anticipated 25 days for removal of  
22 contaminated soil, correct?

23          A.     Yes.

24          Q.     How many days did it end up taking for



1 removal of contaminated soil? I'm not talking about  
2 overburden. I'm talking about just contaminated soil.  
3 In the end, how long did it take?

4 A. To removal 12,000 some yards in the first  
5 28 days, it took 28 days.

6 Q. So after 28 days, no more contaminated  
7 soil was taken out?

8 A. Yes, it was, but we had to remove  
9 overburden, also.

10 Q. My question is how many days did it take  
11 before all the contaminated soil was taken out? I  
12 understand 28 days, the first 28 days was nothing --

13 A. It's unreasonable for me to project  
14 without removing overburden --

15 Q. I'm not asking for projections. I'm  
16 saying now, after all the work is done, after all the  
17 overburden has been removed, after all the contaminated  
18 soil has been removed, I'm asking you how many days did  
19 it end up taking to remove all the contaminated soil at  
20 the site?

21 A. I can't answer that question.

22 Q. You don't know?

23 A. Without removing overburden?

24 Q. You did remove overburden at the site, did

1       you not?

2               A.     Correct.

3               Q.     You had -- all the work is done at the

4       site, correct?

5               A.     Yes.

6               Q.     You have done all the work, all the stuff

7       is out. You have got all the data you submitted to us.

8       You are telling me right now you don't know how many

9       days it took --

10              A.     Twenty-eight days, plus 16.

11              Q.     Thank you. You also testified that part

12       of the justification for the additional time that's

13       found at the March, 2005, budget proposal was that you

14       had to have an environmental technician on site to

15       oversee to do the sampling of the overburden. Is that

16       correct?

17              A.     Yes.

18              Q.     But in the original budget that was

19       approved back in September of 2004, you did have a

20       provision as we saw on page 320 that an environmental

21       technician would be on site performing work related to

22       his -- whatever his assigned tasks were for the

23       overburden, correct?

24              A.     Right.

1           Q.     So it's not that the environmental  
2 technician wasn't originally included in the estimate.  
3 It's just that it took more time for him to do his task.  
4 Is that correct?

5           A.     I underestimated the amount of time,  
6 correct.

7           MR. KIM: Can I have just one moment?

8           MS. HEARING OFFICER: Sure.

9           MR. KIM: That's all I have.

10          MS. HEARING OFFICER: Mr. Martin?

11                         RE-DIRECT EXAMINATION

12          BY MR. MARTIN:

13                 Q.     Bob, I think I asked you before and let me  
14 clarify this. On page 320 of the record, there is  
15 reference to the term "overburden" used with regard to  
16 the entry for the environmental technician of 270 hours,  
17 correct?

18                 A.     That is correct.

19                 Q.     Was that a mistake to include the  
20 reference to overburden there or was it an  
21 underestimation of the time associated with that?

22                 A.     If you look at the text of the plan, I had  
23 said that it would take 25 days. Of course, it was an  
24 oversight on my part to think that the overburden

1 sampling would only take two days.

2 Q. Therein lies the underestimation?

3 A. Correct.

4 Q. Now, on page 118 of the record, there is  
5 reference to estimated tonnage and assumed 25 days,  
6 correct?

7 A. That is correct.

8 Q. This was your best guess based on the  
9 information you had?

10 A. Correct, for simultaneous soil removal and  
11 backfilling.

12 Q. Were you aware -- you were asked questions  
13 about being aware of the stripping ratio in the amended  
14 cap that was prepared back in August of 2004. To what  
15 extent were you aware of the stripping ratio?

16 A. Essentially, during the time of the  
17 preparation of the amended cap, we had sole boring  
18 information, and that's how I developed this map of  
19 showing the limits of overburden.

20 Q. You are referencing Petitioner's Exhibit  
21 2?

22 A. Yes, and so, with the time I prepared this  
23 document and this map, I had an indication of where the  
24 contaminated soil -- at what depth the contaminated soil

1 was and the depth of the overburden, so I had indication  
2 of what the stripping ratio was.

3 Q. Is it fair to say that you didn't know  
4 what you would have encountered, until the dig was  
5 actually performed?

6 A. In other words, sole borings give you an  
7 indication, but until you do a screening, in particular,  
8 you don't know exactly, and we have had cases, in this  
9 particular site, where we had sole boring 35 that  
10 indicated to be clean down to 10 feet, and in fact, it  
11 was not.

12 Q. And that would then change the plan of the  
13 dig?

14 A. That is correct, which we previously had  
15 thought might be overburden, and it became contaminated.

16 MR. MARTIN: I don't have any other questions.

17 MS. HEARING OFFICER: Mr. Kim, anything further?

18 MR. KIM: Yes.

19 RE-CROSS EXAMINATION

20 BY MR. KIM:

21 Q. You just testified that it was an  
22 oversight on your part to think that overburden sampling  
23 would take only two days. Is that correct?

24 A. Yes.

1           Q.     But that wasn't the extent of the  
2           oversight, correct? It wasn't just a sampling that went  
3           from two days to 16 days, is it? It was the excavation  
4           time, wasn't it?

5           A.     Correct.

6           Q.     Did the environmental technician perform  
7           the excavation?

8           A.     No. He supports the excavation.

9           Q.     Who does the excavation?

10          A.     An operator.

11          Q.     Would you look on page 24 of the  
12          administrative record. Where would the operator be on  
13          that page? This is the page that shows the additional  
14          time that's being requested for the additional work  
15          concerning the overburden.

16          A.     In this particular case, as recognized by  
17          the Agency, the personnel time for the operator is not  
18          included, but is included in the other part of the  
19          budget as included as a cost per yard, which the Agency  
20          allowed, \$45 per yard, time of personnel for the  
21          operator is included in that cost-per-yard basis.

22          Q.     So when you are referring to that, you are  
23          referring to the originally-approved budget that was  
24          approved in September of 2004, correct?

1           A.     That is correct.

2           Q.     That's all I have.

3                   FURTHER DIRECT EXAMINATION

4     BY MR. MARTIN:

5           Q.     Just a follow-up briefly. Bob, you  
6     referenced these costs of the operator included in the  
7     cost per yard in the original budget approved in  
8     September of '04. Can you expand on that a bit, clarify  
9     that?

10          A.     The Agency, in the past, as a matter of  
11     precedence, has approved instead of a time and materials  
12     budget, which would include personnel time, they have  
13     approved, in these corrective action digs, a cost per  
14     yard, whereby personnel time is not -- is included in  
15     the yard for every yard removed.

16          Q.     What kind of personnel time is included?

17          A.     The operator, any kind of heavy equipment  
18     operators, whether it be the track hoe operators, the  
19     dozer, help with the backfill, when it comes to the  
20     truck driver's time, all those costs are included in the  
21     dollar-per-yard basis, as opposed to a time and  
22     materials basis.

23          Q.     That explains why that's not a separate  
24     entry?

1           A.     That is correct.

2           Q.     On page 24?

3           A.     Yes.

4           MS. HEARING OFFICER:  Nothing further for you,

5   Mr. Kim?

6           MR. KIM:  No.

7           MS. HEARING OFFICER:  All right.  Thank you,

8   Mr. Pulfrey.  Let's take a five-minute break.

9                   (A small break was taken.)

10          MS. HEARING OFFICER:  Mr. Martin, you may call

11   your next witness.

12                   BARRY SINK, having been duly

13   sworn, testified as follows:

14                   DIRECT EXAMINATION

15   BY MR. MARTIN:

16          Q.     Would you state your name?

17          A.     Barry Franklin Sink.

18          Q.     Barry, where do you live?

19          A.     Benton, Illinois.

20          Q.     How old are you?

21          A.     Fifty.

22          Q.     Where were you employed?

23          A.     United Science Industries.

24          Q.     How long have you been employed there?



1                   A.     Four years.

2                   Q.     What is your position with USI?

3                   A.     I am a professional engineer, manager of

4                   engineering services.

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

6                   A.     Manager of engineering services about a

7                   year; professional engineer, four years.

8                   Q.     That requires licensing?

9                   A.     Yes.

10                  Q.     How long have you held that license of

11                  professional engineer?

12                  A.     About 24 years.

13                  Q.     And what are your duties as the manager of

14                  engineering services as a professional engineer?

15                  A.     I provide professional supervision for the

16                  remediation services provided by United Science

17                  Industries. More specifically, the leak and underground

18                  storage tank projects.

19                  Q.     As part of your duties, you certify

20                  reports, plans, budgets, so forth, that are submitted to

21                  the Agency?

22                  A.     Yes. I certify those that are required by

23                  regulation.

24                  Q.     Now, so what is it that you're certifying

1       when you certify these reports?

2               A.     For corrective action plans, I certify the  
3       budgets. I certify that the budget is -- that the  
4       activities in the budget are necessary and reasonable,  
5       that they are accurate, to the best of my knowledge and  
6       belief, that they are not in excess of the minimum  
7       requirements of the Act, that the activities, the costs,  
8       are eligible for reimbursement from the leaking  
9       underground storage tank fund.

10              Q.     I forgot to ask you, what's your  
11       educational background?

12              A.     I have Bachelors in Mining Engineering  
13       from University of Missouri.

14              Q.     What sort of prior experience do you have  
15       with regard to corrective action activities for  
16       remediation purposes?

17              A.     Well, four years of service for United  
18       Science Industries, which has all been associated  
19       primarily with the leak and underground storage tank  
20       remediation process. Prior to that, I worked for  
21       LaFarge North America, a cement processing manufacturer  
22       as a project engineer, and prior to that, I worked for  
23       18 years for Old Ben Coal Company in the mining  
24       industry.

1           Q.     Now, have you been a professional engineer  
2     for a project known as Midwest Petroleum throughout the  
3     time of the project?

4           A.     Not through the entire project.  Similar  
5     to what Bob's testimony was, I became project engineer.  
6     I have been project engineer for four years, or  
7     professional engineer for four years.  When I came to  
8     United Science Industries, I picked this up.

9           Q.     With regard to this project, you have been  
10    involved in it for how long? Since its inception?

11          A.     Well, no, for a four-year project was,  
12    like, for four years is the time I have been involved.

13          Q.     This project has been longer than four  
14    years would you say?

15          A.     Yes.

16          Q.     Now, did you have occasions to prepare,  
17    along with Bob Pulfrey, the project manager on this  
18    Midwest Petroleum project, an amended cap and budget in  
19    August of 2004?

20          A.     Yes.  I assisted -- Bob prepared the  
21    budget.  I reviewed it and assisted him.  It was kind of  
22    a cooperative effort.

23          Q.     And just for identification purposes,  
24    again, that amended cap and budget of August of 2004 was

1 found on page 101 of the record, correct?

2 A. Correct.

3 Q. You may have already answered this  
4 question, but how did the work progress on this project  
5 as between you and Bob Pulfrey? Did he prepare primary  
6 documentation and you review it or --

7 A. Bob would prepare the records, and I would  
8 review the records. Bob would prepare the budgets. I  
9 would review the budgets, and certify the budgets.

10 Q. You did certify the amended cap and budget  
11 submitted to the Agency in August of 2004, correct?

12 A. Yes, I did.

13 Q. You are aware that the budget that was  
14 approved by the Agency contains -- page 320 of the  
15 record -- a reference to 270 hours for an environmental  
16 technician for the excavation of overburden, screening,  
17 manifesting, sampling, surveying, sample shipment?

18 A. Yes.

19 Q. And in your review of this, was it your  
20 determination, like Mr. Pulfrey's, that it was for 27  
21 days, at 10 hours per day?

22 A. Yes.

23 Q. Are you also aware that the amended cap,  
24 itself, provides -- at page 3 -- I'm sorry, page 118 of

1 the record -- that there's a reference to the excavation  
2 and removal of contaminated soil taking 25 days.

3 A. Yes.

4 Q. And is it fair to say then that, from  
5 taking those two bits of information, that the  
6 excavation of contaminated soil would be 25 days and  
7 there would be two days left over to deal with  
8 overburden?

9 A. Yes. In reviewing the plan, the plan  
10 never addressed the removal of overburden, as far as the  
11 schedule goes. That was my assumption, that 27 days in  
12 the budget, 25 days in the report, so that there was two  
13 days allowed for overburden.

14 Q. In your estimation at the time that you  
15 certified the amended cap and budget as it was proposed  
16 to the Agency, did you deem -- did you understand that  
17 two days was allocated, and did you deem that to be a  
18 reasonable amount of time?

19 A. As far as the overburden, I certified as  
20 reasonable the 27 days, which was in the budget.

21 Q. Did you, like Mr. Pulfrey, overlook the  
22 time that would have to be --

23 A. Yeah. I mean, typically, whenever I review  
24 a plan, I will look at the number of yards that are

1       going to -- I, usually, will double check the  
2       engineering and calculations, the volumes, and I will  
3       double check the areas, try to recalculate the yards,  
4       and see do I agree with the yards that's going to  
5       disposal, according to the maps, and typically, that's  
6       the primary number that's utilized by the project  
7       manager, then, to calculate the length of time that a  
8       project may take.

9               Q.     Well, would it be your testimony that, as  
10      an oversight, in terms of dealing with the amount of  
11      time --

12             A.     Yes. Overburden was not, specifically,  
13      addressed in the report and I believe it was an  
14      oversight.

15             Q.     Well, was it an oversight on your part, in  
16      particular?

17             A.     Yes, it was.

18             Q.     Now, when was it, if at all, that  
19      Mr. Pulfrey had brought to your attention that there may  
20      have been an oversight, and thus, an underestimation of  
21      the time that would be necessary to deal with the  
22      overburden?

23             A.     It was, basically, after the 28 days when  
24      -- the 28 days of removing only contaminated soil that

1 Bob approached me and he said, "I believe we have a  
2 problem with my budget," and he told me that he thought  
3 that it was with the removal of overburden, so that's  
4 when Bob and I began to investigate the budget and  
5 investigate what was said in the plan and to try to  
6 validate what he had said was, indeed, true.

7 Q. Did you come to that conclusion that there  
8 was an underestimation of time associated with the  
9 overburden?

10 A. I came to the conclusion that that was  
11 true. I think the budget provided for something like  
12 5,700 cubic yards of overburden to be removed, and  
13 certainly, based on all the two days, was not going to  
14 be adequate to do that.

15 Q. Did you cooperate with Bob to prepare an  
16 amended budget that was dated March, 2005?

17 A. Yes.

18 Q. That's found on page 19 of the record?

19 A. Correct.

20 Q. You certified the amended budget?

21 A. Yes.

22 Q. Did you individually prepare the M-1  
23 justifications found on page 25 of the record or did you  
24 work --

1           A.     It was a cooperative effort.

2           Q.     To your knowledge, was this project one  
3           that USI had not normally encountered, in terms of the  
4           quantity of overburden to be removed?

5           A.     Yes. To my knowledge, the most overburden  
6           that I had encountered in a project was, like, maybe 250  
7           cubic yards.

8           Q.     Based on your experience in the review of  
9           the information that was presented to you by Bob with  
10          regard to the underestimation, do you believe the  
11          additional days requested on page -- well, referenced on  
12          page 24 of the record is reasonable and necessary?

13          A.     Yes. Previously, in budgets, the removal  
14          of overburden had been a very small amount and was  
15          relatively insignificant, and I think that led to maybe  
16          the overlooking on our part of the significance of  
17          removing that much overburden, and upon Bob bringing it  
18          to my attention, we began to look and see and  
19          investigate, and we, basically, found that that this was  
20          something that we had overlooked.

21          Q.     Now, you and Bob have indicated on page 25  
22          the M-1 justification for the budget amendment that  
23          there were a certain number of cubic yards contaminated  
24          soil excavated and removed, certain numbers of cubic



1 yards of clean overburden, also removed, during two  
2 separate days, time frames of days, correct?

3 A. Correct.

4 Q. With regard to those days and the amounts  
5 of cubic yards excavated, we go through the math here,  
6 it's also represented on pages 25 and 26 to being  
7 anywhere from 445 cubic yards per day to 458 cubic yards  
8 per day. Do you see that?

9 A. Yes.

10 Q. Do you believe that to be a reasonable  
11 rate of production, in terms of cubic yards, an average  
12 on a daily basis?

13 A. Yes. We usually try to average around 500  
14 and the experience at United Science Industries, of  
15 course, it depends on how close you are to the landfill.  
16 There are a lot of factors that go into that, but  
17 typically, we try to average around 500 cubic yards per  
18 day. I think part of this being around the 450, as we  
19 investigated, found out that the rainfall had a  
20 significant impact to reduce that rate slightly.

21 Q. You have indicated the reference to the  
22 rainfall in the M-1 justification, correct?

23 A. That is correct.

24 Q. Within the additional time as requested

1           there is one hour for your own certification, correct?

2           A.     That is correct. That's for the review of  
3           the amended budget and the certification of the budget,  
4           and that is consistent with the plans.

5           Q.     And then you are aware of the  
6           environmental technician time. You understand that to  
7           be 16 days, 10 hours a day?

8           A.     Yes.

9           Q.     And then there's also the two entries of  
10          the senior project manager. That's, actually, Bob  
11          Pulfrey doing two different tasks?

12          A.     Correct. The three hours was the time  
13          spent preparing this amendment and the justification and  
14          the 36 hours was additional time because the project  
15          took 43 days, instead of 27 days.

16          Q.     Then there's reference to 16 hours of the  
17          environmental specialist included in this one page 24?

18          A.     Yes.

19          Q.     That being 16 days, one hour a day.

20          A.     Yes. Bob delegates -- the project manager  
21          delegates certain tasks to the environmental specialist  
22          as an assistant.

23          Q.     And to your knowledge, the rates per hour  
24          are not any different reflected on page 24 of the record

1       than were in the cap that was submitted and approved by  
2       the --

3               A.       That is correct. The rates are the same.

4               Q.       And you believe these times that are  
5       requested, additional times requested, are reasonable  
6       and necessary?

7               A.       Yes.

8               MR. MARTIN: I don't have any other questions.

9               MS. HEARING OFFICER: Mr. Kim?

10              MR. KIM: I will try and be fast. My stamina is  
11       waning.

12                               CROSS EXAMINATION

13       BY MR. KIM:

14              Q.       Mr. Sink, you testified that you certified  
15       the original budget? By the "original budget" I mean  
16       the budget that was approved in September of 2004. You  
17       did certify that as reasonable. Is that correct?

18              A.       Correct.

19              Q.       It must have just been I guess consistent  
20       with Mr. Pulfrey's characterization an oversight or  
21       underestimation or something concerning the overburden  
22       of time?

23              A.       That is correct.

24              Q.       But at the time of the preparation of the

1 corrective action plan and budget, at the time they were  
2 submitted, you were aware of exactly how much overburden  
3 was being projected on the site, correct?

4 A. Yes.

5 Q. Were you aware of this concept of this  
6 stripping ratio, that yardstick to determine, I guess,  
7 the ease or difficulty of the soil removal at the site?

8 A. I did not consider that at the time of the  
9 original -- the September 1, 2004, budget. I did not  
10 consider that at that time, but we did consider it with  
11 the amendment, which was submitted that we're discussing  
12 and appealing today.

13 Q. Sure. The concept of a stripping ratio, I  
14 had never heard of it until I saw your form. You were  
15 familiar with that term and with the use of that tool at  
16 the time you prepared the original corrective action  
17 plan and budget package?

18 A. Yes.

19 Q. I think you said that you and Mr. Pulfrey  
20 sort of, through a cooperative effort, prepared the form  
21 M-1 pages 25 and 26 of the administrative record. Is  
22 that correct?

23 A. That is correct.

24 Q. Who was it between the two of you that

1       decided to use production rates as a factor or  
2       demonstration of reasonableness?

3               A.     It would have been me.

4               Q.     What caused you to use that?

5               A.     It's good engineering practice to use a  
6       production rate to determine the length of time it  
7       requires to perform work.

8               Q.     Is that something that you use when you  
9       review caps and budgets?

10              A.     Yes.

11              Q.     And so would you have used that in this  
12       particular instance back in August of 2004 when you  
13       submitted and signed off on the cap and budget?

14              A.     Actually, in August of 2004, I don't know  
15       if I did or not.

16              Q.     Let's say you had. The reason I'm  
17       bringing this up is production rate does not take into  
18       consideration -- production rate my understanding is,  
19       again, it's a ratio of the amount of contaminated soil  
20       removed to the number of days it takes to remove that  
21       contaminated soil?

22              A.     Correct.

23              Q.     For example, in the -- on page 25 of the  
24       administrative record, towards the bottom, the statement

1 is made, "The adverse conditions (phonetic) resulted in  
2 reduced production rates, 12,460 cubic yards of  
3 contaminated, soil divided by 28 days equals 445 cubic  
4 yards per day and required more time for the  
5 environmental technician to perform the necessary  
6 tasks." Is that correct?

7 A. That's correct.

8 Q. The amount of the contaminated soil, the  
9 12,460, was that volume pretty close or way off from  
10 what was projected at the original cap back in August of  
11 2004?

12 A. I think it was pretty close. It was a  
13 pretty good estimate.

14 Q. So if you were to have employed the  
15 production rate analysis there, you would have  
16 divided -- let's see if we can find the actual figure.  
17 I'm looking on page -- I'm looking on page 123, and I  
18 see there's a reference made to -- well, there's certain  
19 numbers. Is there anything in that paragraph that you  
20 would be able to use to determine what the production  
21 ratio was? The last under the first paragraph under  
22 Section 8.

23 A. Yes.

24 Q. The last line there says, "Approximately

1       15,148 cubic yards of contaminated soil will be  
2       excavated and disposed."

3               A.       That's a number that Bob would have  
4       provided to, or Jeff Schwartz, in order to obtain an  
5       estimate of the amount of time required.

6               Q.       So if you use that production rate, or if  
7       you use that to determine production rate, you would  
8       then divide 15,148 cubic yards by 25 days, which is  
9       what --

10              A.       Yes.

11              Q.       That comes out to 605.92 cubic yards per  
12       day?

13              A.       Yes.

14              Q.       So that would have been what you would  
15       have certified to as being reasonable in the August,  
16       2004, cap?

17              A.       That's above average, very good production  
18       rate.

19              Q.       Now, Mr. Pulfrey also testified that the  
20       total time for the site, now that everything is all said  
21       and done, the total time for removing contaminated soil  
22       was 28 days spent, specifically, on the contaminated  
23       soil with no overburden and taken into account the  
24       additional time where you had to get to the contaminated

1 soil below the overburden an additional 16 day, so 28,  
2 plus 16 is 44 (sic) days. That was Mr. Pulfrey's  
3 testimony. Do you recall that?

4 A. Yes. I thought it was 43 days, but  
5 that's --

6 Q. Say 43 days.

7 A. I'm in the right ballpark.

8 Q. We're only one day off, so if you look at  
9 the actual time that it took to remove the soil, and you  
10 look, again, at the volume, this 12,460 cubic yards, and  
11 you divide that by 43 days, that comes out to 289.767  
12 cubic yards per day?

13 A. Could you repeat that because --

14 Q. What I'm doing is I'm using the actual  
15 numbers. I'm using the actual volume that was removed,  
16 12,460 cubic yards, and I'm using the total days to  
17 remove the contaminated soil, and we'll go with your  
18 number, 43, and I'm dividing those two numbers.

19 A. You have an -- 12,460 cubic yards of  
20 contaminated soil was the amount of soil removed during  
21 the first 28 days. That's when we removed no  
22 overburden. In order to calculate the amount of  
23 contaminated soil moved during the entire 43 days, you  
24 also have to add the 1,540 cubic yards of contaminated



1 soil that was transported to the landfill during the 16  
2 days that was spent removing overburden, so you have to  
3 add that in there.

4 Q. If we do that, that comes up to a total of  
5 14,000 cubic yards, and if I divide that by 43 days,  
6 then I come up with 325.58 cubic yards per day.

7 A. Yes, that is correct.

8 Q. You would agree that represents the actual  
9 production rate of contaminated soil removed, versus how  
10 many days it took to remove that contaminated soil,  
11 correct?

12 A. Yes, not considering the --

13 Q. We're just talking about contaminated  
14 soil.

15 A. Just only contaminated soil for backfill,  
16 that is correct.

17 MR. KIM: I have nothing further.

18 MS. HEARING OFFICER: Mr. Martin?

19 RE-DIRECT EXAMINATION

20 BY MR. MARTIN:

21 Q. With regard to the scenario that Mr. Kim  
22 presented to you that was with open contaminated soil,  
23 correct?

24 A. Yes.

1           Q.     But to that, you must add another 5,327  
2     cubic yards, correct?

3           A.     Yes.   When I would look at the production  
4     rate, you have to account for the fact that the field  
5     crews are also removing overburden with the excavator,  
6     so that's 5,327, so I feel like -- if you took the  
7     14,000 cubic yards that went to the landfill, and you  
8     added to that the 5,327 cubic yards of clean overburden  
9     that they were also handling, that would give you a  
10    production of excavation let's put it that way.  That's  
11    the soil that was excavated and that doesn't include the  
12    clean backfill we were hauling.

13          Q.     So if we take the 19,327, divided by 43  
14    days, it's 449.46?

15          A.     Around 450 cubic yards per day.

16          Q.     Now, with that 450 cubic yards per day in  
17    mind, you were asked about when and how you thought of  
18    the production rate, and I believe you testified that at  
19    the time that the amended cap was approved by the Agency  
20    was presented, you didn't think about production rates  
21    at that point?

22          A.     The original cap.  I did not calculate the  
23    production rate.

24          Q.     But you did, of course, for purposes of

1       this amended budget?

2               A.     After we found out we were in trouble, we  
3       began to look to see why we were in trouble, and that's  
4       when we discovered the problem.

5               Q.     Now, 450 cubic yards per day of production  
6       is significant in another respect.  Is that correct?  
7       What I'm getting at is this, with regard to the proposed  
8       rules that Ms. Hearing Officer will not allow be  
9       admitted, I'm not offering it for admission, but there  
10      is reference --

11              MR. KIM:  I'm going to object if Mr. Martin is  
12      going to be testifying.

13              MR. MARTIN:  I'm just directing him to the --

14              MR. KIM:  Well, I'm going to object to any  
15      reference made to an exhibit that was not admitted.

16              MR. MARTIN:  I won't ask that this be admitted,  
17      but he was asked how he came up with the idea of the  
18      production rate, and I'm trying to clarify how he came  
19      up with that production rate.

20              MR. KIM:  Actually, what I asked was who came up  
21      with the idea, not how.  I just wanted to know whose  
22      idea it was.  I didn't ask what the idea --

23              MR. MARTIN:  I believe he's opened the door and  
24      I would like to walk through it.

1 MS. HEARING OFFICER: I will allow it.

2 MR. MARTIN CONTINUES:

3 Q. Barry, with regard to the Proposed Rules  
4 of the Board, there is a section -- well, let me back up  
5 just a moment, and take you to page 25 of the record.  
6 And the second to last sentence on page 25 you make  
7 reference to an R04 dash 22 (phonetic) proposed rule  
8 making?

9 A. Yes.

10 Q. And with regard to your calculation of the  
11 production rate per day, you made reference to that R04  
12 dash 22. Is that correct?

13 A. Yes.

14 Q. In particular, did you make reference  
15 to --

16 MR. KIM: I'm going to object to the leading of  
17 the witness.

18 MR. MARTIN: I'm asking him.

19 MR. KIM: You can ask without showing him that.

20 MR. MARTIN CONTINUES:

21 Q. Did you make reference in your calculation  
22 to any particular rule that was proposed?

23 MR. KIM: Standing objection to the relevancy of  
24 any reference to an exhibit that, again, has not been

1 admitted and --

2 MS. HEARING OFFICER: I guess I didn't realize  
3 you were talking about the proposed rules. I will let  
4 you make your point, but I agree that these proposed  
5 rules are not directly relevant to this proceeding  
6 because they are just proposed rules at this point and I  
7 don't want do get too far into it.

8 THE WITNESS: I can tell you that, aside from  
9 the proposed rules, that my experience with the Agency  
10 has been prior to the proposed rules that a production  
11 rate of 500 tons, 500 cubic yards per day is accepted.  
12 That was my experience. That is on previous jobs with  
13 the Agency, and this is strictly aside from the proposed  
14 rules, and actually, the proposed rules are less than  
15 that; therefore, that 500 is kind of the target that we  
16 have historically tried to beat in the original budget  
17 because we beat the 500. I think we -- John, your  
18 testimony was 600 some cubic yards per day? I thought  
19 this was reasonable. That's the basis.

20 MR. MARTIN: I don't have anything further.

21 MS. HEARING OFFICER: Thank you, Mr. Martin. Do  
22 you have anything further that you would like to --  
23 would you like to present your exhibits or admit your  
24 exhibit? As I recall, there was no objection to the

1 Exhibit 2.

2 MR. KIM: No objection.

3 MS. HEARING OFFICER: This is admitted.

4 Mr. Martin, do you have anything -- you don't have  
5 anything further for your case?

6 MR. MARTIN: No, ma'am.

7 MS. HEARING OFFICER: Mr. Kim, would you like to  
8 present anything? I know you said you have no  
9 witnesses. Do you have anything further to present?

10 MR. KIM: No, I do not.

11 MS. HEARING OFFICER: Great. Let's go off the  
12 record a moment.

13 (A discussion was held off the record.)

14 MS. HEARING OFFICER: We have just had an  
15 off-the-record discussion regarding posthearing briefs.  
16 The parties have agreed to a briefing schedule as  
17 follows: First, the transcript of these proceedings  
18 will be available from the court reporter by October 13,  
19 since we have requested an expedited transcript, and  
20 will be posted on the Board's website as soon as  
21 possible. The public comment deadline is October 21,  
22 2005. Any public comment must be filed in accordance  
23 with Section 101.628 of the Board's procedural rules.  
24 The Petitioner's brief will be due on October 31 and

1 Respondent's brief will be due November 14, 2005. The  
2 mailbox rule does not apply, although the parties are  
3 reminded that they may file electronically.

4 Mr. Martin, would you like to make a  
5 closing argument?

6 MR. MARTIN: No. I will waive that and resume  
7 that for the --

8 MR. KIM: I will also waive that.

9 MS. HEARING OFFICER: I will note again that  
10 there are no members of the public present, so I will  
11 proceed to make a statement as to the credibility of the  
12 witnesses testifying during this hearing.

13 Based on my legal judgment and  
14 experience, I find all of the witnesses testifying to be  
15 credible. Is there anything further anyone would like  
16 to add before we adjourn? If there's nothing further,  
17 we stand adjourned. I thank all of you for your  
18 participation.

19 (At which point in the proceedings,  
20 the hearing was adjourned at 2:05 p.m.)  
21  
22  
23  
24

