

BEFORE THE  
ILLINOIS POLLUTION CONTROL BOARD

CITY OF BENTON FIRE DEPARTMENT, )  
                     Petitioner, )  
                                     )         DOCKET PCB 17-1  
                     -vs- )  
                                     )  
 ILLINOIS ENVIRONMENTAL )  
 PROTECTION AGENCY, )  
                     Respondent. )

Hearing held, pursuant to notice, on Wednesday, October 18, 2017, at the hour of 10:00 a.m. at 1021 N. Grand Avenue East, Springfield, Illinois, before CAROL WEBB, duly appointed Hearing Officer.

L.A. REPORTING SERVICE  
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REPORTER: LAUREL A. PATKES, CSR #084-001340

1 APPEARANCES:

2

3 PATRICK SHAW  
4 Attorney at Law  
80 Bellerive  
Springfield, Illinois 62704

5 appearing on behalf of  
6 Petitioner;

7 MELANIE JARVIS  
8 IEPA Assistant Counsel  
1021 N. Grand Avenue East  
Springfield, Illinois 62794

9 appearing on behalf of  
10 Respondent.

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1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	MARVIN JOHNSON				
4	By Mr. Shaw	6		19/23	
5	By Ms. Jarvis		14		21/25
6	MICHAEL PIGGUSH				
7	By Ms. Jarvis	30			
8	By Mr. Shaw		38		
9					
10					
11					
12					
13					
14	EXHIBITS				
15			IDENTIFIED	ADMITTED	
16	Petitioner's Exhibit 1		29		29
17	Respondent's Exhibits 1 & 2		13		
18					
19					
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1 PROCEEDINGS

2 HEARING OFFICER WEBB: Good morning.

3 My name is Carol Webb. This is the hearing for PCB

4 17-1, City of Benton Fire Department versus IEPA.

5 It is October 18th, and we are beginning at 10 a.m.

6 For the record, although this  
7 facility is located in Franklin County, there was no  
8 known public interest in this case so I granted the  
9 parties' request to hold the hearing in Springfield.

10 At issue is the agency's denial of  
11 the consulting materials cost as part of the Stage I  
12 site investigation plan for petitioner's site  
13 located at 107 North Maple Street in Benton. The  
14 Pollution Control Board members will make the final  
15 decision in this case. My purpose is to conduct the  
16 hearing in a neutral and orderly manner so we have a  
17 clear record of the proceedings.

18 The decision deadline is June 21,  
19 2018.

20 There are people from the Agency  
21 present but no members of the public present to  
22 comment but written comment may be filed with the  
23 clerk by November 1st.

24 This hearing was noticed pursuant to

1 the act in the Board's rules and will be conducted  
2 pursuant to Sections 101.600 through 101.632 of the  
3 Board's procedural rules.

4 At this time, I will ask the parties  
5 to please make their appearances on the record.

6 MR. SHAW: Patrick Shaw on behalf of  
7 the City of Benton Fire Department.

8 MS. JARVIS: Melanie Jarvis on behalf  
9 of the Illinois Environmental Protection Agency.

10 HEARING OFFICER WEBB: Thank you.

11 Are there any preliminary matters to  
12 discuss on the record?

13 MS. JARVIS: No.

14 MR. SHAW: No.

15 HEARING OFFICER WEBB: Okay.

16 Mr. Shaw, would you like to give an opening  
17 statement?

18 MR. SHAW: I'll waive opening  
19 statement.

20 HEARING OFFICER WEBB: Ms. Jarvis?

21 MS. JARVIS: I will also waive  
22 opening statement.

23 HEARING OFFICER WEBB: Okay.

24 Mr. Shaw, you may call your first

1 witness.

2 MR. SHAW: I'd like to call Marvin  
3 Johnson.

4 HEARING OFFICER WEBB: Mr. Johnson,  
5 would you please come up here?

6 Would the court reporter please swear  
7 in the witness?

8 (Whereupon the witness was sworn  
9 by the reporter.)

10 MR. SHAW: I just need a minute to  
11 get my notes.

12 HEARING OFFICER WEBB: Okay.

13

14 MARVIN JOHNSON

15 called as a witness herein, on behalf of Petitioner,  
16 having been first duly sworn on his oath, was  
17 examined and testified as follows:

18

19 DIRECT EXAMINATION

20 BY MR. SHAW:

21 Q. May the witness state his name?

22 A. Marvin Johnson.

23 Q. Mr. Johnson are you familiar with the  
24 City of Benton Fire Department underground storage

1 tank remediation project?

2 A. Yes.

3 Q. How are you familiar with it?

4 A. I serve as the manager of  
5 undergraduate storage tank services for Chase  
6 Environmental and review all correspondence that  
7 goes to the Agency.

8 Q. Okay. And do you do that on multiple  
9 sites?

10 A. Yes.

11 Q. Approximately how many sites are you  
12 involved in right now?

13 A. Probably 80.

14 Q. And are these all sites involving the  
15 LUST program?

16 A. Yes.

17 Q. What is you're highest educational  
18 attainment?

19 A. I have a Bachelor of Science from  
20 Eastern Illinois University with a major in  
21 environmental biology.

22 Q. Okay. And when did you first start  
23 working in underground storage tank remediation?

24 A. January of 2000.

1 Q. Okay. And who did you work for at  
2 that time?

3 A. United Science Industries in  
4 Woodlawn, Illinois.

5 Q. Did United Science Industries do a  
6 lot of underground storage tank program, leaking  
7 underground storage tank program related work?

8 A. Yes.

9 Q. What was the nature of your work for  
10 USI?

11 A. I started as an assistant project  
12 manager; then moved to project manager; then senior  
13 project manager; and then supervisory role looking  
14 over other project managers.

15 Q. After working for USI, who did you  
16 work for?

17 A. Then I came on with Chase  
18 Environmental.

19 Q. Do you have any idea how many  
20 undergraduate storage tank projects you've been  
21 involved in in your career?

22 A. I would guess in the neighborhood of  
23 500.

24 Q. And these would each involve usually



1 multiple submittals, planning documents, budget  
2 documents to the Illinois Environmental Protection  
3 Agency?

4 A. Yes, everything from the initial  
5 report to the corrective action plan and all  
6 associated reimbursement requests.

7 Q. With respect to consulting material  
8 costs, are you familiar with consulting material  
9 costs as they are charged in this industry?

10 A. Yes.

11 Q. How are you familiar with them?

12 A. I have been on the side of developing  
13 rates initially with United Science, and then I do  
14 review of other consultants rates on materials and  
15 also review on the reimbursement requests as well.

16 Q. Do you have opportunities to review  
17 rates from other consultants?

18 A. Yes.

19 Q. When does that happen?

20 A. That happens at least once a year,  
21 and then Chase also has at least three individuals  
22 that have worked with other consultants and were  
23 familiar with the other consultants rates.

24 Q. Does Chase employ people that used to

1 work for competing consultants also?

2 A. Yes.

3 Q. Does it employ at times people that  
4 used to work for the Illinois Environmental  
5 Protection Agency?

6 A. Yes.

7 Q. Does Chase ever take over projects  
8 that another consultant started?

9 A. Yes.

10 Q. This case as I'm sure you're aware  
11 sort of involves a site investigation submittal.  
12 Can you describe the nature of the site  
13 investigation work at the property?

14 A. The site investigation work as I  
15 remember at this property involved installation of  
16 monitoring wells to determine if groundwater quality  
17 had been impacted and if no additional soil sampling  
18 was necessary and that the site investigation  
19 completion report and Stage I actual cost work was  
20 submitted.

21 Q. Did the site investigation completion  
22 report indicate what's to happen next?

23 A. I believe the corrective action plan  
24 and corrective action completion report were the

1 next to be submitted.

2 Q. Do you recall whether or not there  
3 were any difficulties with reimbursement during the  
4 early action stage?

5 A. There were none.

6 Q. You received an e-mail from  
7 Mr. Piggush on June 9, 2016.

8 Do you recall that?

9 A. Yes.

10 Q. And why did he e-mail you?

11 A. He had a few questions about some of  
12 the technical aspects of the SICR, the site  
13 investigation completion report, and he had some  
14 questions regarding the consulting materials.

15 Q. What did he do in response to that  
16 inquiry?

17 A. I replied to his e-mail with an  
18 e-mail response.

19 Q. And that e-mail response is in the  
20 record so I'm not really asking you to memorize it  
21 or repeat it but approximately how much time did he  
22 spend preparing that response?

23 A. I would guess about three hours.

24 Q. And what is your billable rate

1       pursuant to the subpart (h) regulations?

2               A.       I believe around \$125 an hour as a  
3       senior project manager.

4               Q.       Your one part e-mail response  
5       indicates that you talked to a rental company.

6                       Can you explain how that came about?

7               A.       I believe I was asked to contact the  
8       rental company to determine how they came up with  
9       their rates, and the rental company that we used, I  
10      called, requested the information stating that we  
11      were trying to put something together for the EPA  
12      and that we wanted to know how they determined their  
13      rates. I believe it was Reis Environmental. And  
14      they didn't provide any information other than  
15      stating they were in business to make money.

16              Q.       It sounds like they did not want to  
17      help. Is that...

18              A.       No. That's correct.

19              Q.       Prior to this date, had you ever  
20      received a request for a mathematical financial  
21      derivation?

22              A.       No.

23              Q.       Since that date, have you ever  
24      received a requests for mathematical financial

1       derivation?

2               A.       No.

3               Q.       Based upon your experience in the  
4       underground storage tank program or working with the  
5       underground storage tank program, are the rates for  
6       consulting materials in your submittal consistent  
7       with those that have historically been approved by  
8       the Agency?

9               A.       Yes.

10              Q.       Based upon your experience working  
11       with the leaking underground storage tank program,  
12       were the rates submitted reasonable?

13              A.       Yes.

14                      MR. SHAW: I have no further  
15       questions.

16                      HEARING OFFICER WEBB: Ms. Jarvis?

17                      MS. JARVIS: I'm going to need  
18       stickers for exhibits.

19                      How do you like these marked -- A and  
20       B or 1 and 2?

21                      HEARING OFFICER WEBB: Probably 1 and  
22       2.

23                               (Respondent's Exhibits 1 and 2  
24                               were marked for identification.)

1 CROSS-EXAMINATION

2 BY MS. JARVIS:

3 Q. I'm going to start with the e-mails,  
4 okay?

5 A. Okay.

6 Q. When Mr. Piggush sent you the e-mail,  
7 how much of that e-mail was technical and how much  
8 was concerning the rates?

9 A. I just --

10 Q. Do you want to see the e-mail?

11 A. Yeah. It would probably help.

12 Q. This is on page 10 and 11 of the  
13 record?

14 A. So.

15 Q. Two questions were regarding the  
16 rates and the rest of the questions were technical.

17 A. Yes.

18 Q. So out of your three hours of working  
19 on this document, did you spend more time with the  
20 technical or more time on the rates?

21 A. More time on the rates.

22 Q. Okay. And why was that?

23 A. I think that I was more aware of my  
24 response with the technical aspects than with the

1 rate aspect.

2 Q. Okay. And you testified that your  
3 rates were reasonable and they were what was  
4 normally charged, correct?

5 A. Yes.

6 Q. Okay. I have to two e-mails. One is  
7 Kathy Elston from Hernando Albarricin, and in that,  
8 the amount for the PIB that you charged in this case  
9 was \$135, and here your firm agreed to a \$75 rate,  
10 is that correct?

11 A. That appears to be the case.

12 Q. And here's an e-mail where Kathy  
13 mentions this e-mail and your agreement to a \$75  
14 rate, and this is a response from you which says  
15 that that is acceptable, is that correct?

16 A. That is correct.

17 HEARING OFFICER WEBB: That was  
18 Respondent's Exhibit 1.

19 MS. JARVIS: Correct.

20 Q. You work for United Service  
21 Industries?

22 A. United Science, yes.

23 Q. Science Industries.

24 And what is the status of that firm?

1           A.           They went bankrupt.

2           Q.           And did you work for them up until  
3           the dissolution of the firm?

4           A.           No.

5           Q.           You left prior?

6           A.           Yes.

7           Q.           In your responses to the e-mails,  
8           there is one where you say that you contacted Reis  
9           Equipment, but you also state that nothing in your  
10          list was rented.

11          A.           That's correct.

12          Q.           And the question was actually if the  
13          item is rented, please provide a written cost  
14          estimate from the rental company.

15                      Is that correct?

16          A.           I am not sure without seeing it.

17          Q.           Okay. I'll show you page 11 of the  
18          record. Here's the question. Why don't you read  
19          that question outloud.

20          A.           If the item is rented, then please  
21          provide the written cost estimate from the rental  
22          company for how the rental rate for the item was  
23          determined.

24          Q.           However, you then write no item was



1       rented?

2               A.       That's correct.

3               Q.       Yet you still took the time to call a  
4       rental company when no item was rented even though  
5       the EPA's question was clear that you're only to do  
6       so if the item was rented?

7               A.       I'm not sure that I read that  
8       question as being that clear at the time.

9               Q.       Okay. The next one, please read the  
10      next question.

11              A.       Please discuss if it is appropriate  
12      for the item to be charged as a direct...

13              Q.       Oh, wrong question. Sorry. We'll  
14      get to direct and indirect.

15                      It's this question down here, No. 2,  
16      or No. 1, I'm sorry, on page 10 of the record, 4A1.

17              A.       If the item is owned, then please  
18      provide a mathematical financial derivation for how  
19      the unit rate for the item was determined. Include  
20      such variables as purchase cost including receipts,  
21      operation and maintenance cost, estimated project  
22      usage and estimated product life.

23              Q.       Okay. And then your response was  
24      that you included all the information, and you're

1 not going to include anything else.

2 A. My response was Chase has included  
3 all information required and in accordance with the  
4 Illinois EPA forms and instructions existing at the  
5 time of submittal.

6 The rates proposed within the  
7 consulting materials forms are rates that have been  
8 consistently approved in our client's budgets and  
9 reimbursement request.

10 Q. So even though you were asked for  
11 supporting documentation, you refused to give any,  
12 isn't that correct?

13 A. I provided documentation. I  
14 responded via e-mail.

15 Q. You responded to the e-mail but you  
16 didn't provide any supporting documentation for your  
17 cost, any receipts, any invoices or anything like  
18 that, isn't that correct?

19 A. I responded as I thought accordingly.

20 Q. Right. You responded to an e-mail,  
21 but you did not supply any invoices, is that  
22 correct?

23 A. I don't have any invoices.

24 Q. Okay. You didn't supply any sort of

1        thing to tell us about the cost of the item.

2            A.        Correct.

3            Q.        Do you own the PID?

4            A.        Yes.

5            Q.        Do you use it at multiple sites?

6            A.        Yes.

7            Q.        What's the normal cost of a PID?

8            A.        I'm not sure that I could answer  
9        that.    There are many, many types of PIDs.

10           Q.        And do you know the cost of your PID?

11           A.        No.

12                    MS. JARVIS:    I have no further  
13        questions.

14

15                    REDIRECT EXAMINATION

16        BY MR. SHAW:

17            Q.        Mr. Johnson, I think you were asked  
18        to review some e-mails regarding agreed rates.

19                    What was the context in which rates  
20        have been agreed to in the last year or two that  
21        were lower than what were requested in the various  
22        submittals?

23            A.        I believe those e-mails indicated \$75  
24        which is what we were told that the EPA would

1       approve without documentation or we would receive  
2       zero reimbursement, so we had no choice but to...

3               Q.       Does the EPA show you what rule that  
4       said that?

5               A.       No.

6               Q.       Were you given the \$75 option by  
7       Mr. Piggush in this case?

8               A.       No.

9               Q.       I believe the record indicates that  
10       you received an e-mail from Mr. Piggush on a Monday  
11       evening or it was sent on a Monday evening at 4:30  
12       for the decision deadline of Friday.

13               Assuming you could have followed up  
14       and tried to find e-mails, would you have been able  
15       to get those e-mails by Friday?

16              A.       I believe...

17              Q.       Let me strike that.

18               Assuming that you could find these  
19       invoices, do you think you could have the invoices  
20       for all ten of these items or so by Friday?

21              A.       I believe that week I was in the  
22       field most of the week so I would not have been able  
23       to get that information at that time.

24              Q.       How about the other information

1       besides invoices that are referenced such as how  
2       much these things are used or maintenance  
3       obligations?

4               A.           No.

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

7                       MS. JARVIS: I have follow-up.

8                       HEARING OFFICER WEBB: Okay.

9

10                      RE CROSS-EXAMINATION

11       BY MS. JARVIS:

12               Q.           Okay. When Mr. Shaw just asked you a  
13       question about the \$75, you said you had no choice  
14       but to accept that fee.

15                      Did the Illinois EPA extort you in  
16       some way or force you to approve it?

17               A.           They would have been holding up -- I  
18       believe the Mattoon School reimbursement request was  
19       a hundred and some thousand dollars, so it would  
20       have been holding up a hundred thousand dollar  
21       reimbursement request to try to get an additional  
22       \$60.

23               Q.           Well, that's not exactly true, is it?  
24       I mean, it would have been a partial approval where

1       you would have gotten most of the money except for  
2       \$135?

3               A.       Well, we would have had to appeal the  
4       entire package.

5               Q.       No. You would have still gotten a  
6       half approval and would have gotten into the  
7       payment, and all that would have been under appeal  
8       is the \$135.

9               A.       That's possible, but that does not  
10      sound correct.

11              Q.       And plus, you have appealed several  
12      cases that have been denied, isn't that correct?

13                      So you had other options. You  
14      weren't force to accept a \$75 rate.

15              A.       Without filing an additional appeal,  
16      that would have meant we had to take the cut.

17              Q.       Then I'm going to show you page 13 of  
18      the record, an e-mail from Mr. Piggush to you, and  
19      would you please read the question or the answer  
20      right there, the question that he asked?

21              A.       "Okay. That is fine. Just for now,  
22      all I need is a time extension. You can submit the  
23      rest of the information whenever it is ready."

24              Q.       So you had the option to get a time

1 extension in order to submit any additional  
2 information that you wanted, but you refused to give  
3 a time extension, isn't that correct?

4 A. We chose not to give a time  
5 extension.

6 MS. JARVIS: I have no further  
7 questions.

8 MR. SHAW: I just want to give the  
9 witness an opportunity to answer one of the  
10 questions here.

11

12 REDIRECT EXAMINATION

13 BY MR. SHAW:

14 Q. You were indicating before you were  
15 cut off that you were concerned that disputing the  
16 small items would result in not getting paid a  
17 hundred thousand dollars from the whole package.  
18 Could you explain why?

19 A. Well, my fear was if we had to  
20 possibly file an extension or provide additional  
21 documentation, which I have done many times and it's  
22 never been successful to this point, I didn't want  
23 to go through that because as a matter of cost to  
24 the company, it did not make sense to think about

1 filing an appeal for \$75 on a package that is well  
2 over a hundred thousand dollars.

3 Q. And how much has the City of Benton  
4 been paid for the site investigation work to date?

5 A. Nothing.

6 Q. Just the site investigation.

7 A. Nothing.

8 Q. And when you say you've submitted  
9 documents several times without anything useful  
10 coming of it, what type of documents have you  
11 submitted?

12 A. In discussion with the Agency, we  
13 have tried to provide as much documentation as we  
14 can on justifying our rates. The rate of \$75 seems  
15 to come from somewhere, somebody found a rental  
16 rate, and that's what was agreed to, but Chase never  
17 agreed to that rental rate.

18 Q. Are there issues with the rental rate  
19 that aren't reflected in ownership?

20 A. Yes. By owning our own PID, I  
21 believe that we save our clients money and save the  
22 fund money because, for example, if we rented the  
23 PID, if we're going to drill on Tuesday, you have to  
24 have it delivered on Monday because you cannot wait



1 till it shows up to then leave and go do the work.

2 Then there's also cost for shipping  
3 equipment back, our cost for renting it. Somebody  
4 has to package it and send it back, and so in our  
5 estimation, our cost is about 50 percent less than  
6 what it would cost to rent it to do the same job.

7 MR. SHAW: No further questions.

8 MS. JARVIS: I have further  
9 questions.

10

11 RECROSS-EXAMINATION

12 BY MS. JARVIS:

13 Q. In the Benton case, were your  
14 personnel costs denied?

15 A. No.

16 Q. So only the material costs were  
17 denied?

18 A. Correct.

19 Q. So if you were not paid for the  
20 personnel cost, that's probably due to the State of  
21 Illinois' budget concerns because those were not  
22 denied?

23 A. We have not submitted a package  
24 because we were hoping that this appeal would have

1       been resolved already but it has not.

2               Q.       So even though your personnel costs  
3       have been approved, you haven't submitted a package  
4       for them, and that is why you have not been paid for  
5       them.

6               A.       That is correct.

7               Q.       Okay. In the case of the Mattoon,  
8       did you submit information for the concrete tickets  
9       for the paving?

10              A.       I do not remember.

11              Q.       Did you submit information for your  
12       Chase vehicle?

13              A.       No.

14              Q.       Was that denied?

15              A.       I don't remember.

16              Q.       Did you submit information for the  
17       digital camera?

18              A.       No.

19              Q.       Was that denied?

20              A.       I don't know.

21              Q.       Well, you let some things go ahead  
22       and be denied even though in this case you accepted  
23       a \$75 PID in order for it not to be denied.

24              A.       I believe the vehicle was already

1       approved in the budget so it was not denied, and  
2       possibly the same with the digital camera, but  
3       without seeing the letter on the reimbursement, I  
4       don't remember what was denied and what was not. I  
5       review too many.

6               Q.       Okay. But it's possible that items  
7       were denied in that case because you did not submit  
8       supporting documentation?

9               A.       Possible.

10              MS. JARVIS: No further questions.

11              HEARING OFFICER WEBB: Mr. Shaw?

12              MR. SHAW: I don't have any.

13              I'm going to ask if Melanie would  
14       agree to allow that to be admitted into evidence  
15       just as it is. I've handed her the instructions for  
16       the budget and billing forms.

17              MS. JARVIS: I'm going to object  
18       because that's been updated. This is April 2009.

19              MR. SHAW: What date was it updated?

20              MS. JARVIS: October 2016.

21              MR. SHAW: Well, after the decision  
22       was made then.

23              MS. JARVIS: When was the decision  
24       made?

1 MR. SHAW: The decision was made  
2 June 2016.

3 MS. JARVIS: And what date did you  
4 say it was?

5 MR. LOWDER: I believe it was  
6 October. That's just my recollection.

7 MS. JARVIS: Okay. We will allow it  
8 in subject to objection.

9 MR. SHAW: How about -- well, I mean,  
10 I'll agree to admit it for what it is subject to  
11 argument about it.

12 MS. JARVIS: Well, that's what I  
13 mean. I'm going to object in argument.

14 MR. SHAW: Relevance.

15 MS. JARVIS: Yes.

16 MR. SHAW: Okay.

17 I had started marking this  
18 Petitioner's Exhibit something. Would that be  
19 confusing or should I just go ahead and mark it  
20 Petitioner's Exhibit 1?

21 HEARING OFFICER WEBB: Petitioner's  
22 Exhibit 1 is fine.

23

24

1 (Whereupon Petitioner's Exhibit 1  
2 was marked for identification as  
3 of this date.)

4 HEARING OFFICER WEBB: Did you reach  
5 an agreement on how you would want to handle it or  
6 did you want me to make a ruling?

7 MS. JARVIS: It's admitted subject to  
8 argument in the brief.

9 HEARING OFFICER WEBB: Okay.

10 MR. SHAW: So I give this to you?

11 HEARING OFFICER WEBB: You can give  
12 it to me.

13 All right. Petitioner's Exhibit 1 is  
14 admitted subject to post hearing arguments.

15 (Whereupon Petitioner's Exhibit 1  
16 was admitted into evidence at  
17 this time.)

18 MR. SHAW: We rest.

19 HEARING OFFICER WEBB: Okay. Thank  
20 you, Mr. Johnson.

21 (Witness excused.)

22 MR. SHAW: If we could have a brief  
23 recess just so I could confer with my clients.

24 HEARING OFFICER WEBB: Sure.

1 Let's take five minutes.

2 (Recess taken)

3 MS. JARVIS: Okay. We're ready to go  
4 back on the record and we're going to call Michael  
5 Piggush.

6 HEARING OFFICER WEBB: All right. We  
7 are ready to go back on the record, and we are  
8 picking up with Ms. Jarvis.

9 Would you call your first witness,  
10 please.

11 MS. JARVIS: I call Michael Piggush.

12 HEARING OFFICER WEBB: Please have a  
13 seat, sir.

14 Would the court reporter please swear  
15 in the witness.

16 (Whereupon the witness was sworn  
17 by the reporter.)

18 MICHAEL PIGGUSH  
19 called as a witness herein, on behalf of Respondent,  
20 having been first duly sworn on his oath, was  
21 examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MS. JARVIS:

24 Q. Please state your name.

1 A. Michael Piggush.

2 Q. And where are you employed?

3 A. At the Illinois EPA.

4 Q. And what is your position?

5 A. Project manager for the leaking  
6 underground storage tank section.

7 Q. And how long have you been employed  
8 at the in that position?

9 A. 25 years.

10 Q. How long have you been employed at  
11 the EPA?

12 A. 25 years.

13 Q. So your entire time at the EPA has  
14 been in the LUST Section?

15 A. Correct.

16 Q. And how many LUST sites have you  
17 reviewed over that timeframe if you can take a  
18 guesstimate?

19 A. I would guesstimate maybe three or  
20 four hundred.

21 Q. And are you the project manager on  
22 the Benton Fire Department case?

23 A. Yes, I am.

24 Q. And what was your involvement in that

1 case? What was your job in respect to the case?

2 A. I reviewed the information submitted  
3 by Chase Environmental.

4 Q. And then did you make a determination  
5 on that?

6 A. Right.

7 Q. Okay. I am going to show you pages 1  
8 through 9 of the record.

9 Does that look familiar?

10 A. It does.

11 Q. And what is that document?

12 A. This is the agency's decision letter  
13 dated June 10, 2016.

14 Q. Okay. And did you write that?

15 A. Yes, I did.

16 Q. And then what happens after you write  
17 a decision letter? Does it then go up management's  
18 chain?

19 A. Right. I give it to my boss, and he  
20 reviews it and approves it.

21 Q. And who is your supervisor?

22 A. My boss is Mike Lowder.

23 Q. Okay. In reviewing this case, and  
24 I'm going to show you page 10 which is on the back,



1 starting at page 10, is that a series of e-mail  
2 conversations or correspondence you had with Chase  
3 Environmental?

4 A. It is.

5 Q. And who at Chase Environmental were  
6 you corresponding with?

7 A. Marvin Johnson.

8 Q. Had you asked him questions about the  
9 site?

10 A. I did.

11 Q. And what did those questions entail?

12 A. Some of those were technical and some  
13 of those were about the costs involved.

14 Q. Okay. Did all the technical aspects  
15 get resolved?

16 A. Not yet, no.

17 Q. Okay. Going to what's under appeal  
18 in this case, which is the costs involved, what  
19 questions did you have concerning the costs?

20 A. I had questions about how did  
21 they...first, if the items were owned or rented and  
22 the materials cost, and if they were owned, then I  
23 wanted to know how they came up with those costs,  
24 and if they were rented, I wanted to know how they

1       came up with those costs, and I had questions about  
2       whether the costs were appropriate to be charged as  
3       direct costs.

4               Q.       Okay. Let's go through your first  
5       question.

6                       You asked whether or not they were  
7       rented or owned.

8               A.       Correct.

9               Q.       Why did you ask that question?

10              A.       Because it depends upon the  
11       information that I would ask for subsequent to that.

12              Q.       So what type of information would you  
13       ask for if it was an owned item?

14              A.       If it was for an owned item, I'd ask  
15       them how did they actually derive their own cost for  
16       that item.

17                       Can I give an example to illustrate?

18              Q.       Sure.

19              A.       For example, if an item costs a  
20       thousand dollars and it has a useful life of a  
21       hundred days, then, for example, it would make sense  
22       that it costs ten dollars a day to use it; or if  
23       it's a rented item, then I would like to see an  
24       estimate from the rental company as to how much do

1       they actually charge for it.

2               Q.       So you were looking for some sort of  
3       invoice from the rental company?

4               A.       Right.

5               Q.       Okay.

6               A.       Can I explain further?

7               Q.       Go ahead.

8               A.       The purpose of that is to determine  
9       reasonableness which is a matter of judgment, but  
10      that's why I asked for that.

11              Q.       And you used the phrase about a  
12      derivation.

13              A.       Right.

14              Q.       What exactly were you looking for  
15      using that phrase and what was actually the reason  
16      you put that in there?

17              A.       What I was looking for is the same as  
18      the example I just gave. If an item cost a certain  
19      amount and has a certain usage, then it makes sense  
20      that it costs a certain unit rate for that item.

21              Q.       So that's the mathematical derivation  
22      you were talking about?

23              A.       Right.

24              Q.       Was that a type of analysis?

1                   A.           Right.

2                   Q.           Okay. And then I think the last  
3           thing that you put, and correct me if I'm wrong if  
4           there was something in between, was a question about  
5           direct and indirect costs.

6                   A.           Right.

7                   Q.           Can you describe why you asked that  
8           question?

9                   A.           A lot of the costs for equipment for  
10          example for a PID meter or a measuring wheel or a  
11          digital camera, in my judgment, those would be  
12          considered to be indirect costs or what you would  
13          call a tool of the trade.

14                               If I can again illustrate by example.  
15          If a plumber comes to your house and he fixes your  
16          sink, he charges you for time and materials  
17          typically. He doesn't charge you a rate for using  
18          the pipe wrench, and in my judgment, I don't see how  
19          the use of a tool such as a PID meter is any  
20          different than the use of a pipe wrench.

21                   Q.           Okay.

22                   A.           And in that case then, I wouldn't  
23          feel that the use of the tool would be reimbursable  
24          as a direct cost.

1                   Q.           I'm going to back up because I forgot  
2           to ask you a question at the beginning.

3                               What is your educational background?

4                   A.           I have a bachelor's degree in general  
5           engineering.

6                   Q.           Okay. And are you a professional  
7           engineer?

8                   A.           No.

9                   Q.           Okay. And where did you get that  
10          degree?

11                  A.           From the University of Illinois at  
12          Urbana-Champaign.

13                  Q.           Do you have any post undergraduate  
14          work?

15                  A.           No, I do not.

16                  Q.           Okay. So it's your professional  
17          judgment after spending 25 years that which types of  
18          items would be indirect costs?

19                  A.           For example, the PID meter or a  
20          measuring wheel or a digital camera, those are costs  
21          that we typically see in budgets. I would question  
22          if they should be charged as direct costs.

23                  Q.           Okay. And can you just kind of  
24          explain the difference again between an indirect and

1 a direct cost?

2 A. A direct cost would be, for example,  
3 if you have to buy something that's expendable, for  
4 example, a disposable bailer, you buy it, you use  
5 it, and you throw it away. That's a cost that they  
6 incurred directly, whereas the cost of, for example,  
7 a PID meter, it's a tool of the trade that you have  
8 to have to operate a business.

9 MS. JARVIS: Okay. I have no further  
10 questions.

11 HEARING OFFICER WEBB: Mr. Shaw?

12

13 CROSS-EXAMINATION

14 BY MR. SHAW:

15 Q. Mr. Piggush, have you ever worked in  
16 the private sector?

17 A. No, I have not.

18 Q. Were you involved in the City of  
19 Benton project at the early action stage?

20 A. I was, yes.

21 Q. In what capacity were you involved?

22 A. I reviewed the 45 day report.

23 Q. Did you review the early action  
24 submittal or early action billing package submittal?

1           A.       No, I did not review bill packages.

2           Q.       So it's possible that there were  
3       reimbursements made at that stage that you may not  
4       agree with because they were made by somebody else?

5           A.       It's possible, or that I wouldn't  
6       even be aware of.

7           Q.       Did the EPA budget forms used to ask  
8       whether or not the equipment was owned or rented?

9           A.       I don't believe so.

10          Q.       Given your example of rental costs --  
11       and you were here during all the testimony this  
12       morning, correct?

13          A.       Right.

14          Q.       With respect to your hypothetical  
15       about rental cost, would you consider a two to three  
16       day rental for a PID meter to be reasonable if it's  
17       only used for one day?

18          A.       It could be.

19          Q.       It could be?

20          A.       Yeah.

21          Q.       Given the explanation that was given  
22       that there may be transportation issues involved?

23          A.       Right, yeah.

24          Q.       Generally, if I understand correctly,

1       you weren't involved in the early action billing  
2       part of that?

3               A.       No, I was not.

4               Q.       But generally you've been involved in  
5       budget reviews?

6               A.       I have, yes.

7               Q.       And this here is a budget review for  
8       a site investigation actual budget document?

9               A.       Correct.

10              Q.       What's the difference between a site  
11       investigation actual budget document and a  
12       non-actual budget?

13              A.       The actual budget is submitted after  
14       the costs were incurred as opposed to a  
15       budget-budget is submitted for pre-approval  
16       beforehand.

17              Q.       And for site investigation Stage I,  
18       does the Agency accept budgets at that point that  
19       are not actual budgets?

20              A.       Do you mean do we accept --

21              Q.       Proposed budgets.

22              A.       We don't typically see them.

23              Q.       Isn't it true that the EPA documents  
24       indicate that the consultant is supposed to submit



1 an actual cost budget, not a proposed budget?

2 A. That's probably true.

3 Q. For how long have you been involved  
4 in reviewing budgets?

5 A. Ever since there's been budgets which  
6 I don't recall offhand how long that's been.

7 Q. Since at least probably the mid '90s?

8 A. Probably.

9 Q. Have you ever approved a budget for a  
10 PID meter?

11 A. Yeah, sure.

12 Q. When did you first approve a budget  
13 item for a PID meter?

14 A. Probably since there's been budgets.

15 Q. Now, you've indicated that you  
16 believe this is something that is now a tool of the  
17 trade.

18 What had changed?

19 A. What had changed is our management  
20 has changed, and the agency's directive is now to do  
21 things differently.

22 Q. So prior to the management change,  
23 did you ask for invoices for PID meters?

24 A. No.

1                   Q.       How would a photocopy be a tool of  
2       the trade?

3                   A.       A photocopy would not be a tool of  
4       the trade.

5                   Q.       There was some discussion earlier  
6       about agreed rates being entered into.

7                               Why did you not propose agreed rates?

8                   A.       I was not aware of what the agreed  
9       rates were.

10                  Q.       Have you subsequently been involved  
11       in doing that?

12                  A.       No, I have not.

13                               MR. SHAW: I don't have any further  
14       questions.

15                               HEARING OFFICER WEBB: Ms. Jarvis?

16                               MS. JARVIS: I have no questions.

17                               HEARING OFFICER WEBB: Okay. Thank  
18       you, Mr. Piggush.

19                                       (Witness excused.)

20                               HEARING OFFICER WEBB: Ms. Jarvis,  
21       would you like to call another witness?

22                               MS. JARVIS: No. That's all. The  
23       Illinois EPA rests.

24                               HEARING OFFICER WEBB: All right.

1 Would you like to introduce your exhibits?

2 MS. JARVIS: Yes.

3 I would like to ask that Exhibits 1  
4 and 2 of the respondent be entered into evidence.

5 HEARING OFFICER WEBB: These are in  
6 the record, right?

7 MS. JARVIS: No.

8 HEARING OFFICER WEBB: Oh, these are  
9 not in the record?

10 MS. JARVIS: Those are not in the  
11 record.

12 MR. SHAW: We object. They are post  
13 decision letters involving an entirely different  
14 case. There's no relevance to them here.

15 HEARING OFFICER WEBB: Post decision  
16 involving what?

17 MR. SHAW: They're post decision  
18 letters. They postdate the decision under appeal  
19 here, and they have no relevance to the case.

20 MS. JARVIS: However, the petitioner  
21 himself brought up other cases and other agreements  
22 with other rates and the consistency of the Agency  
23 in accepting things, so this is just an example to  
24 show that other rates have been accepted either in

1 the future or in the past.

2 HEARING OFFICER WEBB: I will take,  
3 because they're post decision, I'm going to take  
4 them as an offer of proof.

5 MS. JARVIS: Okay.

6 HEARING OFFICER WEBB: Both of them,  
7 Respondent's Exhibits 1 and 2, are taken as offers  
8 of proof.

9 Okay. Let's go off the record for a  
10 moment to discuss a briefing schedule.

11 (Discussion held off the record.)

12 HEARING OFFICER WEBB: Okay. We're  
13 back on the record.

14 The transcript is due by  
15 October 25th. I think I said November 1st. It's  
16 October 25th. That's five business days.

17 The public comment deadline is  
18 November 1st. Public comment must be filed in  
19 accordance with Section 101.628 of the Board's  
20 procedural rules.

21 The petitioner's brief is due by  
22 November 13th, respondent's brief is due by  
23 November 28th, and petitioner's reply is due by  
24 December 5th.

1 Do either of you wish to make a  
2 closing argument?

3 Mr. Shaw.

4 MR. SHAW: I'll reserve that for the  
5 briefs.

6 HEARING OFFICER WEBB: Ms. Jarvis?

7 MS. JARVIS: I will likewise reserve  
8 it for the briefs.

9 HEARING OFFICER WEBB: Okay. At this  
10 time I will conclude the proceedings. We stand  
11 adjourned, and I thank everyone for their  
12 participation.

13 (Which were all of the  
14 proceedings held at this time.)  
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# CERTIFICATE

I, Laurel A. Patkes, Certified Shorthand Reporter in and for said County and State, do hereby certify that I reported in shorthand the foregoing proceedings and that the foregoing is a true and correct transcript of my shorthand notes so taken as aforesaid.

I further certify that I am in no way associated with or related to any of the parties or attorneys involved herein, nor am I financially interested in this action.

Dated October 21, 2017.

Certified Shorthand Reporter

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