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ILLINOIS POLLUTION CONTROL BOARD

SWIF-T-FOOD MART,)	
)	
Petitioner,)	
)	No. PCB 03-185
vs)	
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

FEBRUARY 11, 2004 - WEDNESDAY
10:00 A.M.

TRANSCRIPT OF PROCEEDINGS held in the
above-entitled cause before Hearing Officer Bradley P.
Halloran, called by the Illinois Pollution Control
Board, pursuant to notice taken before BONNIE LINDSEY,
CSR, RPR, a notary public within and for the County of
Cook and State of Illinois, at 118 West Cook Road,
Village Hall, Libertyville, Illinois, on the 11th day
of February, A.D., 2004, scheduled to commence at
10:00 o'clock a.m., commencing at 10:02 a.m.

1 A P P E A R A N C E S:

2

3 HEDINGER LAW OFFICES,
4 2601 South Fifth Street
5 Springfield, Illinois 62703
6 (217) 523-2753

7 BY: MR. STEPHEN HEDINGER,
8 Appeared on behalf of the Petitioner,

9

10 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
11 1021 North Grand Avenue East
12 P.O. Box 19276
13 Springfield, Illinois 62794
14 (217) 782-5544

15 BY: MR. JOHN J. KIM,
16 Appeared on behalf of the Respondent.

17

18 ALSO PRESENT: MS. NIKI WELLER

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ADMITTED ID

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1 HEARING OFFICER HALLORAN: We're on the record.

2 Good morning. My name is Bradley Halloran.
3 I'm the Hearing Officer with the Illinois Pollution
4 Hearing Board. I'm also assigned to this matter
5 entitled PCB 03-185 Swift-T-Food Mart versus the IEPA.
6 It's an underground storage tank reimbursement appeal.

7 It's approximately 10:00 o'clock on February
8 11th, the year 2004. I also want to note for the
9 record that there are no public here. We're going to
10 run this hearing pursuant to the Section 105.412 and
11 Section 101 subpart (f) of the Board's general
12 provisions.

13 And I might add that this has been noticed up
14 pursuant to 101.602. I also want to note that this
15 hearing is intended to develop a record for review by
16 the Illinois Pollution Control Board.

17 And, of course, I will not be making the
18 ultimate decision in the case. That decision is left
19 up to the five members of the Pollution Control Board.
20 They will review the record, the transcript and also
21 the post-hearing briefs and render the decision in this
22 matter.

23 My job is to ensure an orderly hearing, a
24 clear record and to rule on any evidentiary matters

1 that may arise. After the hearing, the parties will be
2 given an opportunity to file post-hearing briefs.

3 At this time, I would ask the parties to
4 introduce themselves. Mr. Hedinger?

5 MR. HEDINGER: Stephen Hedinger, counsel for the
6 petitioner Swift-T-Food Mart, the Hedinger Law Office
7 in Springfield. And with me at the counsel table is
8 Jake Saeger, S-a-e-g-e-r.

9 HEARING OFFICER HALLORAN: Thank you.

10 MR. KIM: John Kim for the Illinois EPA,
11 respondent.

12 HEARING OFFICER HALLORAN: Mr. Hedinger, opening?

13 O P E N I N G S T A T E M E N T

14 by Mr. Hedinger

15 Very briefly, this is, in fact, a leaking
16 underground storage tank fund reimbursement appeal. It
17 concerns a site in Waukegan at which there were a total
18 of eight underground storage tanks. The site resulted
19 in two incident numbers being called in to the Illinois
20 Emergency Management Agency, Incident Nos. 95-1716 and
21 96-0723.

22 This incident case concerns a request for
23 reimbursement submitted on behalf of Swift-T-Food Mart
24 by it's consultants, AES Consultants, Inc. --

1 Limited -- AES Consultants Limited. And that final
2 decision from the IEPA reduced the requested
3 reimbursement by \$10,000 for a deductible for the '95
4 incident number and \$13,808.86 for subcontractor
5 handling charges.

6 And it is our contention that both of those
7 deductions were done in error as a matter of law, and
8 we're here today to look to develop the record in order
9 to argue those points to the Board.

10 HEARING OFFICER HALLORAN: Thank you, sir.

11 Mr. Kim.

12 MR. KIM: I waive opening arguments or
13 statements.

14 HEARING OFFICER HALLORAN: Thank you. Are there
15 any preliminary issues to be taken care of before
16 Mr. Hedinger calls his first witness?

17 MR. KIM: Yes. The EPA and Swift-T-Food Mart have
18 reviewed the contents of the record and are in
19 agreement that there are some additional documents
20 that, although not found in the record, arguably should
21 be placed before the Board as part of their
22 consideration in this case.

23 And I believe that we have decided to agree
24 to basically provide these to the Board in the form of

1 an agreed upon joint exhibit, and I have those
2 documents. I can present those to the Hearing Officer
3 now.

4 Well, maybe what I'll do is, before I hand
5 them to you, I'll describe them. There are a total of
6 19 exhibits. We would ask that they jointly be
7 considered as one group exhibit, but for ease of
8 reference we've gone through it and identified each
9 separately.

10 Do you want me to just walk through them?

11 HEARING OFFICER HALLORAN: Sure. That would be
12 great.

13 MR. KIM: Exhibit No. 1 is an Illinois Emergency
14 Management Agency field report for incident number
15 95-1716. Number 2 is an application for eligibility
16 and deductibility that was submitted to the Office of
17 the State Fire Marshal on or about October of 1995.

18 Number 3 is an application for a removal
19 permit submitted to the Office of the State Fire
20 Marshal, which was received on or about March of 1996.
21 Number 4 is a log of underground storage tank removal
22 prepared by an Office of the State Fire Marshal
23 inspector, and this reference is a removal that took
24 place on March 28 of 1996.

1 Number 5 is another Illinois Emergency
2 Management Agency field report. This one is for
3 incident number 96-0723. Number 6 is another
4 eligibility and deductibility application that was
5 submitted to the Office of the State Fire Marshal that
6 was received by them on or about February 25, 1999.

7 I tried to put these in chronological order.
8 I think they are. Number 7 is a letter from AES
9 Consultants Limited to Douglas Clay of the Illinois
10 EPA. That letter is dated December 2nd, 1999.
11 Number 8 is a letter from AES Consultants Limited
12 addressed to Douglas Oakley of Illinois EPA -- that's
13 O-a-k-l-e-y -- dated January 5 of 2000.

14 Number 9 is a memorandum sent from J.
15 Gaydosh, G-a-y-d-o-s-h, of Illinois EPA sent to Bob
16 Spanbauer, S-p-a-n-b-a-u-e-r, of AES Consultants; and
17 that it is dated January 20, 2000.

18 Number 10 is a letter sent by the Illinois
19 EPA to Swift-T-Food Mart; that's dated April 9, 2001.
20 Number 11 is a proposed corrective action plan and
21 budget submitted by Swift-T-Food Marts to the Illinois
22 EPA. And I believe that that was received in November
23 of 2001.

24 Number 12 is a billing package submitted by

1 the Swift-T-Food Marts to the Illinois EPA, and that
2 document was received by the Illinois EPA on or about
3 June 20, 2001. Number 13 are some Illinois EPA
4 database printouts and notes, reviewer notes. The
5 first page of that exhibit in the upper right-hand
6 corner shows a review date of July 20, 2001.

7 Number 14 is a letter from the Illinois EPA
8 to Swift-T-Food Mart dated July 25th, 2001. Number 15
9 is a page entitled Lust, L-u-s-t, Technical Review
10 Notes; that has a review date of March 19, 2002.

11 Number 16 is a letter from AES Consultants
12 Limited to the Illinois EPA addressed to Mr. Kuhlman,
13 K-u-h-l-m-a-n; that letter is dated April 2nd, 2002.
14 Number 17 is a letter from AES Consultants Limited to
15 the Illinois EPA again addressed to Mr. Kuhlman; that's
16 dated May 21, 2002.

17 Number 18 is a letter from the Illinois EPA
18 to Swift-T-Food Mart dated August 7, 2002. And
19 finally, number 19 is a cover letter and some documents
20 from AES Consultants Limited to Illinois EPA addressed
21 to Mr. Kuhlman, and that package is dated November 13,
22 2002.

23 HEARING OFFICER HALLORAN: Mr. Kim, how do you
24 have those marked again?

1 MR. KIM: That's it for the respondent, yes.

2 HEARING OFFICER HALLORAN: Mr. Hedinger?

3 MR. HEDINGER: One matter. I will be questioning
4 the witnesses about both those documents and the record
5 that was previously produced. It would be my
6 preference to use the Board's copy of those if that's
7 okay.

8 HEARING OFFICER HALLORAN: That will be terrific.
9 Thanks.

10 MR. HEDINGER: And I'll just put those down at the
11 table there where the witness is sitting.

12 The respondent would call as their first
13 witness Eric Kuhlman.

14 THE WITNESS: Just take my seat?

15 HEARING OFFICER HALLORAN: Sure.

16 MR. HEDINGER: Would you swear the witness?

17 HEARING OFFICER HALLORAN: I'm sorry. Will you
18 please raise your right hand and the court reporter
19 will swear you in.

20 (Witness sworn.)

21 WHEREUPON:

22 E R I C K U H L M A N,
23 called as a witness herein, having been first duly
24 sworn, was examined and testified as follows:

1 D I R E C T E X A M I N A T I O N

2 by Mr. Hedinger

3 Q. Can you please state and spell your name for
4 the record.

5 A. My name is Eric Kuhlman. It's E-r-i-c,
6 K-u-h-l-m-a-n

7 Q. And, Mr. Kuhlman, where are you currently
8 employed?

9 A. I'm employed with the Illinois Environmental
10 Protection Agency in Springfield Illinois.

11 Q. In what capacity?

12 A. I'm a leaking underground storage tank
13 project manager.

14 Q. And how long have you been in that position?

15 A. I will be working at the agency for six years
16 come April 1st this year.

17 Q. And have you been a project manager that
18 entire time?

19 A. Yes, I have.

20 Q. Can you describe for the Board your duties as
21 a project manager in that capacity?

22 A. Okay. My main duty as a project manager is
23 to review technical records for the leaking underground
24 storage tank section.

1 Q. And those technical reports consist of what?

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

3 Q. What types of technical reports?

4 A. All kinds. We have several classes: site
5 classification, corrective action; not to mention, you
6 know, every class has a breakdown of plans, budgets
7 reports. And there are several different programs:
8 731, 732, 734 ...

9 Q. And by those, you're referring to the various
10 sections of the Pollution Control Board regulations
11 that govern different types of leaking underground
12 storage tank remediations; is that correct?

13 A. Correct.

14 Q. You mentioned budgets. Is it part of your
15 job duty then to review and approve or deny budgets
16 submitted by people in the LUST program?

17 A. Yes.

18 Q. And again, you said those budgets could take
19 many forms; is that correct?

20 A. Yes.

21 Q. You have budgets basically each step of the
22 way that need review?

23 A. Correct.

24 Q. You're familiar with the Swift-T-Food Mart

1 package or the facility and its file, correct?

2 A. Yes, I am.

3 Q. You've never been to the facility itself,
4 correct?

5 A. I'm afraid not.

6 Q. But you get all the paperwork on the facility
7 in your office in Springfield, right?

8 A. Yes.

9 Q. You've been assigned as a project manager for
10 that facility?

11 A. That's correct.

12 Q. And have you been the project manager for
13 that facility the entire six years you've been in this
14 position?

15 A. No. I can only recall -- well, I have
16 technical documents and review notes since 2000.

17 Q. Okay. So at least since 2000, you had been
18 on this, working on this?

19 A. Yes.

20 Q. And you were then involved with the budget
21 amendment and the reimbursement application that we're
22 here on in this case today, correct? And I'll be a
23 little more specific as we get further down the road.

24 But you are familiar with the record and the

1 file in this case today, right?

2 A. Yes, I am.

3 Q. Can you tell me just generally what it is --
4 what role your technical office plays in making
5 reimbursement decisions at the agency?

6 A. Well, if a question comes up about the
7 reimbursement packet, it would be sent to me in the
8 form either a question or -- I mean, a specific
9 question.

10 Q. And let me stop you there. What sort of
11 question might come up that they would request the
12 project managers input on?

13 A. Well, for example, if it was an old law case,
14 731, and it was an alternative technology or it had
15 been an accessively old file, it would come to me for
16 review with questions like "Is this part of the
17 corrective action plan, the claims and invoices; are
18 they connected with the approved corrective action
19 plan?" something like that.

20 Q. And I guess my questioning might have jumped
21 ahead of myself here. It assumes two different
22 departments. But there is actually a reimbursement
23 unit, correct?

24 A. Correct.

1 Q. And it's their primary task to make
2 reimbursement decisions; is that correct?

3 A. Yes.

4 Q. And they then just will refer specific
5 matters with respect to reimbursement packages to you
6 in your office, right?

7 A. That's correct.

8 Q. I'm going to show you what has been marked in
9 the record as pages 1 through 3 of the record that has
10 been previously submitted and ask if you have seen that
11 before.

12 A. I don't recall. Could I have a minute to...

13 Q. Definitely. Take a long as you need.

14 MR. KIM: While the witness is reviewing the
15 document, I've just renumbered my own set of exhibits
16 that I handed to you. For some reason I come up with
17 18 instead of 19. So I don't know if I misnumbered
18 some of the stickers.

19 HEARING OFFICER HALLORAN: Okay. We'll go off the
20 record for a minute.

21 (Discussion off the record.)

22 HEARING OFFICER HALLORAN: Okay. We're back on
23 the record. We figured out the quandary.

24 BY THE WITNESS:

1 A. No, I didn't get a copy of this.

2 Q. So you have not seen that before?

3 A. No.

4 Q. Let me ask you, though, about the second
5 paragraph of that.

6 A. All right.

7 Q. It says the deductible amount should be
8 assessed on this claim as \$10,000 which will be
9 deducted from this payment. And this letter is dated
10 March 3rd, 2003, correct?

11 A. Yes.

12 Q. And the incident number referred to on this
13 letter is 95-1716, correct?

14 A. Yes, it is.

15 Q. Now, you did have some role in making the
16 determination to apply that \$10,000 deductible,
17 correct?

18 A. As far as -- I'm not sure I understand.
19 Could you rephrase the question? Put it that way.

20 Q. Yeah. The decision by the Illinois
21 Environmental Protection Agency to apply a \$10,000
22 deductible with respect to that reimbursement request
23 that you just looked at, you had some role in making
24 that decision, correct?

1 A. A small role, yes.

2 Q. Because there were two incident numbers for
3 this site, correct?

4 A. Correct.

5 Q. And previously there had been a deductible
6 applied to the 1996 incident number, correct?

7 A. Yes.

8 Q. And then this new submittal was made and the
9 decision was made that a second deductible should be
10 applied, correct?

11 A. Correct.

12 Q. And you had discussions on that issue with
13 other people in your agency, right?

14 A. Yes.

15 Q. And who else did you discuss that with?

16 A. At which times? It has been brought up
17 several times.

18 Q. Okay. Well, let's start from the beginning.
19 When was it first brought up?

20 A. That, I have to review my notes on.

21 Q. Did you bring those notes with you?

22 A. Yes, I did.

23 Q. Would you do that then, please, review those
24 notes.

1 MR. HEDINGER: While he's looking at those notes,
2 I had sent in a request to appear and produce and, by
3 our agreement, we whittled the witness list down to the
4 two people who are here today. I had also asked for
5 documents. And just for the record, the documents
6 consist basically of the exhibits that we've just
7 introduced.

8 MR. KIM: Yes. And the exhibits that the
9 respondent produced include copies you requested with
10 some additional documents as well.

11 MR. HEDINGER: And are there other documents that
12 you brought with you that are responsive to that?

13 MR. KIM: No. I believe that that's all there is.

14 BY MR. HEDINGER:

15 Q. Okay. Is there a particular document you're
16 looking for, Mr. Kuhlman?

17 A. I'm just looking for a note. I keep review
18 notes, and some were separate. Some were technical
19 review notes and some were physical review notes. And
20 I'm looking for the physical review notes for the first
21 time, the first time it was --

22 Q. The first time it came up?

23 A. -- it was reviewed, yes.

24 I can tell you the last time, but

1 unfortunately that's not your question.

2 Q. Well, it will be. But let's try and pin this
3 one down first.

4 A. Okay. I'm afraid I don't have that
5 information with me.

6 Q. Well, can you just describe for me and for
7 the record, approximately when did this first come up?

8 A. I believe when a technical review -- excuse
9 me -- a reimbursement claim was sent to my --

10 HEARING OFFICER HALLORAN: Excuse me, Mr. Kuhlman.

11 THE WITNESS: Sure.

12 (Interruption in proceedings.)

13 HEARING OFFICER HALLORAN: You may proceed,
14 Mr. Kuhlman.

15 BY THE WITNESS:

16 A. Okay. I believe it's the first time a
17 reimbursement claim came to my desk with the question,
18 "Is there one deductible or two deductibles for this
19 site, the Swift-T-Food Mart?"

20 Q. Yes.

21 A. But unfortunately, I don't remember the date.

22 Q. What was the circumstance? Do you remember
23 that?

24 A. That there were two incident numbers.

1 Q. What was pending before the agency that the
2 question came up? Was there a reimbursement package
3 pending?

4 A. Yes.

5 Q. So this came up at some prior reimbursement
6 request than the one that we're here to consider today?

7 A. Correct.

8 Q. And at that time, was a final decision made?

9 A. A decision was made, yes.

10 Q. Now, who all was -- Who came to you with that
11 question? Who brought the question to you? Was it
12 Niki Weller? Was it the reimbursement? Was it Doug
13 Oakley? Was it Harry Chappel? Who raised the issue
14 with you?

15 A. I'm not sure. It would have been the LUST
16 claims project manager for that particular incident.

17 Q. Whoever was on that incident; and you don't
18 remember, sitting here, who that was?

19 A. Unfortunately, no.

20 Q. Do you recall whether you discussed that with
21 anyone other than that reimbursement claims person?

22 A. No, I don't. I don't believe I did.

23 Q. So you think it's your recollection that it
24 was just you and that claims person at that time?

1 A. Yes.

2 Q. And what was the decision at that time?

3 A. At that time I believe it was -- Well,
4 initially, we started out with one deductible -- well,
5 two incidents and one deductible, which was a
6 response -- or talking with -- I'm sorry -- talking
7 with Eric Ports, who was -- at that time, he was in
8 charge of distributing the LUST claims packages to the
9 project managers.

10 And at that time, if my memory serves, he
11 wrote on the top of the sheet: One deductible, two
12 incidents. And I went with that for a long time until
13 the question came back to me that a new -- another
14 billing packet had come in with the same question.

15 And then when I finally reviewed it that way,
16 you know, gone back and reviewed it, I had a different
17 opinion than my predecessor.

18 Q. So Eric Ports is not the predecessor you're
19 talking about; is that correct? You just said the word
20 "predecessor."

21 A. I'm sorry. I meant supervisor.

22 Q. Was Eric Ports your supervisor?

23 A. Yes.

24 Q. But he was no longer your supervisor at the

1 time this question came up the second time?

2 A. That's right.

3 Q. I'm going to show you what has been
4 introduced here as Respondent's Exhibit No. 9, and
5 that's a memo from J. Gaydosh, correct?

6 A. That's what it says.

7 Q. Who is J. Gaydosh?

8 A. J. Gaydosh is a project manager in the LUST
9 section.

10 Q. So he's basically in the same position you're
11 in?

12 A. Yes.

13 Q. And have you ever seen this memo before?

14 A. I'm afraid not.

15 Q. Were you aware that memo existed?

16 A. Not until today.

17 Q. Was J. Gaydosh assigned to this Swif-T-Food
18 Mart file before you got it?

19 A. Not to my knowledge, no.

20 Q. And this is dated January 20, 2000, right?

21 A. Uh-huh.

22 Q. Was that before or after you started in your
23 current job?

24 A. That's pretty close to the present -- of my

1 current job, or being assigned to site?

2 Q. Well, being assigned to the site.

3 A. Being assigned to the site, yes. It's close.
4 I'd have to check real quick.

5 Q. Go ahead and do so.

6 A. Okay. It would seem that this memo is before
7 my earliest technical notes on the subject, on
8 Swift-T-Food Mart. So, yes. It could be that he was.

9 Q. That he was assigned to the case at that
10 time?

11 A. It could be.

12 Q. And you don't have any reason to doubt the
13 authenticity of that memorandum, do you?

14 A. Could you repeat that question?

15 Q. Do you have any reason to doubt that that's a
16 true and accurate memo from J. Gaydosh?

17 A. No.

18 Q. So I think we've established that J. Gaydosh
19 said there should be one deductible and Eric Ports said
20 there would be one deductible, correct?

21 A. That's right.

22 Q. So I'll show you what's been marked as
23 Respondent's Exhibits 7 and 8 and ask if you've ever
24 seen those two documents before.

1 A. It's possible, but I don't recall.

2 Q. You don't recall whether you've seen them
3 before?

4 A. That's right.

5 Q. This Exhibit No. 8, there is some handwritten
6 notes at the bottom of that. Do you recognize that
7 handwriting or whose initials are at the bottom of
8 that?

9 A. From the initials, I can surmise it's Doug
10 Oakley.

11 Q. Basically, Doug Oakley's note says that that
12 decision concerning deductibles is made not by the LUST
13 reimbursement unit but by your unit, correct?

14 A. Yes.

15 Q. And that is an accurate statement, right?

16 A. That's correct.

17 Q. Can you tell me why that is? Why is it that
18 the technical staff makes the decision on deductibles
19 rather than the reimbursement staff?

20 A. Sure. Well, the Office of State Fire Marshal
21 is there at any site when there is a tag pole, or a
22 release, and they tell us when a release has occurred.

23 And the reason why the LUST section -- I
24 mean, that's no matter what; the OSFM will issue a IEMA

1 report, which must be then interpreted as whether it's
2 an original release or a re-reporting.

3 You know, in some cases, it is a re-reporting
4 due to sometimes the underground storage tanks will not
5 be removed until corrective action -- as part of a
6 corrective action plan, which in case there is another
7 incident -- excuse me -- IEMA report issued because the
8 tanks would be removed, and an OSFM representative
9 would be there to document that.

10 Q. And it's your unit that is trained to
11 interpret those documents?

12 A. That's correct.

13 Q. Not the reimbursement unit?

14 A. That's correct.

15 Q. Can you tell me what training you've had to
16 make that determination?

17 A. Training, sir?

18 Q. Yes.

19 A. Just through experience.

20 Q. So basically, just the experience of doing it
21 over and over again for the -- and I'm sorry. When did
22 you start as a project manager?

23 A. April 1st, 1998.

24 Q. '98.

1 So it's just the experience that you've had
2 since April 1st, '98 that you're called upon in making
3 that determination?

4 A. That and asking other project managers, sir.

5 Q. How long has Eric Ports been at the agency?

6 A. I'm unaware.

7 Q. Has he been there longer than you?

8 A. Yes, definitely.

9 Q. Definitely? Quite a bit longer than you?

10 A. Depends on your definition of quite a bit.

11 Q. But he was your supervisor?

12 A. That's correct.

13 Q. And how long has J. Gaydosh been there?

14 A. I'm unaware. He's also been there a
15 relatively long time.

16 Q. Longer than you?

17 A. Definitely.

18 Q. Aside from experience, are there any
19 regulations that you look to to guide you in
20 determining whether to call something two incidents or
21 just one?

22 A. None that I'm aware of.

23 Q. You don't know of any regulations at all
24 bearing on that issue?

1 A. No, sir.

2 Q. How about any agency policy, any written --

3 A. There are agency policies, but they're
4 internal.

5 Q. But is there an agency policy concerning when
6 to call something two incidents and when not, when to
7 call it one?

8 A. Yes, sir.

9 Q. Okay. Can you describe for the record,
10 please, what that policy is?

11 A. Part of it is what I've already described,
12 when it's a tag pole that's happening according to a
13 corrective action plan; that would be reporting. It
14 goes into further detail, but I can't recall it
15 precisely for the record.

16 Q. Did you review that policy prior to reaching
17 your conclusion as to the Swif-T site?

18 A. Yes.

19 Q. You did?

20 A. Yes.

21 Q. And that's a written policy?

22 A. Yes.

23 Q. And aside from discussing it with whoever the
24 reimbursement project manager was at that early -- at

1 that second incident, I think you testified that you
2 did not at that time discuss it with anyone else,
3 correct?

4 A. Not to my knowledge. I might have, but I
5 cannot recall.

6 Q. Now, for that -- and we don't recall what
7 reimbursement package it was, but apparently they were
8 seeking money from the fund, correct?

9 A. Correct.

10 Q. Did they apply the deductible for that time?
11 Did they apply a \$10,000 deductible for that
12 reimbursement request?

13 A. You mean the first --

14 Q. The first time it came up with you. We're
15 talking about this time that you testified to that
16 you're not sure when it was but a reimbursement
17 reviewer came to you and said should we apply two
18 deductibles here; and you thought there should be two
19 deductibles, right?

20 A. Not initially, I was defending -- I was going
21 along with my supervisor's opinion.

22 Q. Was Mr. Port still your supervisor?

23 A. Later on, no.

24 Q. I mean at that time.

1 A. At that time, yes.

2 Q. So at that time, you said even though you
3 thought that there should be two deductibles, you
4 defended Mr. Port's determination and told this
5 reviewer to stick with one?

6 A. I went with Eric Ports' opinion and didn't
7 question it. Later on I did go back and do a further
8 technical review and had different opinions.

9 Q. Let's talk about that later on then. When
10 did that happen?

11 A. For that I'd have to have the LUST physical
12 notes for mine, and I don't have those here.

13 Q. Well, tell me what these LUST physical notes
14 are.

15 A. Well, they're just notes that I jot down on
16 the actual review, the reimbursement claims, in the
17 comments section.

18 Q. So these are the notes that the
19 reimbursement -- it just stays with the reimbursement
20 package?

21 A. Yes. There's an actual question, a technical
22 question, that would happen from a LUST claims project
23 manager. They would send over the review claim and
24 then attach a cover letter with that claim and then

1 with the questions on it. And at the bottom, it would
2 have my response, whether it would be approved, denied,
3 modified, and a comment box.

4 Q. And that's in the handwriting from you?

5 A. Yes.

6 Q. I'm just going to give you my copy of the
7 record here. And on the top is a table of contents.
8 But then you can see at the bottom of each page, it's
9 got a number. Okay?

10 A. Okay.

11 Q. And I'd like you to look through this. And
12 my guess is maybe you might be looking between pages 4
13 and 13. But I guess I would like you to look through
14 there and see if the physical notes you are talking
15 about are in there.

16 A. Do you know if these are in chronological
17 order, or correct order?

18 Q. Those are the order that they were given to
19 me and put in the record by your counsel.

20 MR. KIM: I think I need to clarify that prior to
21 the hearing when opposing counsel and I had discussions
22 about the contents of Respondent's Exhibit No. 1, the
23 19 documents, I noted to Mr. Hedinger that for these
24 two incidents for this one site, there have been a

1 number of different reimbursement applications that
2 have been submitted. However, there have only been --
3 as of the date of the final decision here, there have
4 only been two applications that resulted in money
5 actually being approved for payment.

6 And the question that I raised to him was
7 whether or not he thought it was necessary to include
8 the applications and all the related documents from all
9 those other applications that did not lead to money
10 being approved for payment.

11 And I don't want to put words in
12 Mr. Hedinger's mouth, but I think we both agreed that
13 that would not necessarily be relevant because we were
14 only going to focus on the applications that actually
15 have been approved.

16 There have been a number of applications, I
17 believe, since the time Mr. Kuhlman has been associated
18 with the site, that were submitted that were not
19 approved. Those documents and those notes that I
20 included, based on my discussion with Mr. Hedinger -- I
21 don't know if the question that Mr. Hedinger is asking
22 is seeking information that might be included in those
23 notes.

24 MR. HEDINGER: And I don't either.

1 MR. KIM: But I just want to note that the notes
2 that I think Mr. Kuhlman is referring to are not
3 necessarily associated with just this one application.
4 There are a number of other applications that were
5 never approved.

6 And so it may be one of those others. So
7 it's not that they maybe don't exist, but it may be of
8 the documents that we discussed prior to this that do
9 not necessarily need to be provided.

10 BY MR. HEDINGER:

11 Q. Okay. Well, with that understanding,
12 Mr. Kuhlman, do you find in there the document that you
13 were referring to?

14 A. No. Because there wouldn't be any notes here
15 on this particular reimbursement claim. It would be on
16 a previous one.

17 Q. It was a previous one, one that Mr. Kim was
18 just describing, that perhaps had never been approved,
19 correct, and was resubmitted at a later time or
20 something like that?

21 A. Could have been.

22 Q. So this issue of applying this second
23 deductible apparently came up with respect to a prior
24 reimbursement request for the Swift-T-Food Mart site

1 then; is that my understanding?

2 A. Yes.

3 Q. Do you recall when that occurred?

4 A. Exactly, no.

5 Q. Was it two years earlier than this, a year?

6 Was it a long time, a short time?

7 A. I think it was two.

8 Q. Two years before this request was made?

9 A. This particular claim, yes.

10 Q. And at that time, you determined upon a
11 review of the whole file at that time that a second
12 \$10,000 deductible was appropriate; is that correct?

13 A. That's correct.

14 Q. And once again you made that determination
15 because somebody from the reimbursement department or
16 unit came to you with that question?

17 A. They brought it to my attention, yes.

18 Q. Would you have looked at that if they hadn't
19 brought it to your attention?

20 A. Look at reimbursement claims, sir?

21 Q. Well, look at the specific issue with respect
22 to whether to apply a second deductible?

23 A. No.

24 Q. Is it usual or is it common for this question

1 to keep recurring like it seems to have here?

2 A. Is it common? No, it's not.

3 Q. Why did it keep coming up for this site? Do
4 you know?

5 A. I could guess.

6 Q. But you don't know?

7 A. No.

8 Q. Who was the LUST reimbursement person who
9 brought this to your attention? Do you know?

10 A. To this particular packet?

11 Q. No, the one that you're describing.

12 A. No, I'm afraid not. If I'm not mistaken,
13 they alternate so it's never the same project manager
14 twice. So I really don't know.

15 Q. So it depends on which package it was and who
16 was in the line to get that package?

17 A. Exactly.

18 Q. Did you discuss it at that time with
19 Mr. Ports?

20 A. I don't believe so because he was not my
21 supervisor at the time.

22 Q. Who was your supervisor?

23 A. I believe it was Kendra Brokamp.

24 Q. Did you discuss it with her?

1 A. Yes.

2 Q. And did she review the entire file?

3 A. No. At least not to my knowledge.

4 Q. Did she join in your determination that there
5 should be two deductibles applied?

6 A. I believe so, yes.

7 Q. And if I understood your earlier testimony,
8 there is an internal agency policy that helps guide
9 your decisions in this, correct?

10 A. Yes, there is a guideline.

11 Q. And you did review that?

12 A. Yes.

13 Q. And can you tell me why for this particular
14 site -- earlier we talked generally when you would
15 think the two deductibles should apply -- why
16 specifically for the Swif-T site did you determine that
17 there should be two deductibles?

18 A. Yes, I can.

19 Basically, the Office of State Fire Marshal
20 issued two deductible statements, one dated January of
21 '96 and the second one -- I have to look up the date.
22 But the reason behind that, my determination, was they
23 issued -- after the IEMA reports were issued, the first
24 one, the first Office of State Fire Marshal

1 reimbursement eligibility and deductible application
2 only listed three tanks out of the eight at that time.

3 And it was their determination that the other
4 five were ineligible for reimbursement. After the
5 second incident number and the IEMA report in '96,
6 another Office of State Fire Marshal form was issued
7 which listed all eight.

8 Now, according to my -- that's two
9 deductibles because of two determinations. Two
10 eligibility -- or reimbursement eligibility of being
11 deductible determinations.

12 Q. But isn't that always the case when you have
13 two incident numbers? Don't you always end up having
14 two Fire Marshal deductible determinations?

15 A. Not always.

16 Q. Well, let me ask this: What would have
17 happened if Swift-T had never sent in that second
18 request for the Fire Marshal deductible determination?

19 A. If that was the case then without the second
20 Office of State Fire Marshal form, I would conclude
21 only one deductible would be necessary.

22 Q. Do you know why they sent in that second OSFM
23 application?

24 A. I know why. They were pulling all eight

1 tanks out of the Swift-T-Food Mart site.

2 Q. In fact, that had happened several years
3 before they sent that application in, right?

4 A. I'm sorry. I got the IEMA report confused
5 with the Office of State Fire Marshal. But, yes,
6 you're correct.

7 Q. What do you mean by that? You just said you
8 got those two reports confused, and I want to make sure
9 I understand.

10 A. Okay.

11 Q. You mean you got them confused with respect
12 to the answer you gave me about why you thought two
13 deductibles should apply here? When did you get
14 confused?

15 A. Just a second ago. No. Definitely
16 because -- Here. Let me reiterate. My decision in
17 making -- for there to be two incident numbers -- Shit.
18 One second please.

19 Q. Okay. Take your time.

20 A. Thank you.

21 My discussion is based on that there are two
22 Office of State Fire Marshal deductible applications.
23 I submitted different dates. I didn't make a mistake.
24 I referenced IEMA date just now instead of the Office

1 of State Fire Marshal.

2 Q. Okay. These documents that we have
3 introduced, Respondent's Exhibits, No. 1 is the '95
4 IEMA report, right?

5 A. Correct.

6 Q. And No. 5 is the '96 IEMA report, right?

7 A. Uh-huh.

8 Q. Let me walk through what I think is the
9 history, and you can tell me if you think it's
10 accurate. Let me make sure I get the dates right.

11 In August of 1995, borings were done at the
12 site, correct?

13 A. Correct.

14 Q. And that resulted in the 95-1716 IEMA number,
15 right?

16 A. That's correct.

17 Q. Then the underground storage tanks were
18 actually pulled from the ground in March of '96, right,
19 March 26, 1996 -- I'm sorry -- March 28, 1996?

20 A. Yes.

21 Q. In fact, we got a Fire Marshal report from
22 that tank pull, right?

23 A. Right. Which one is that?

24 MR. KIM: Four.

1 BY MR. HEDINGER:

2 Q. The one with the tanks removed, is that dated
3 March 28, 1996?

4 A. That is correct.

5 Q. And that pulled all eight tanks, right?

6 A. Yes.

7 Q. So as of March, there are no tanks in the
8 ground at Swift-T-Food Mart.

9 A. Right.

10 Q. As least as far as the documentation shows,
11 right? They were going to install new tanks, though,
12 right?

13 A. Yes.

14 Q. And that was done in May of '96, right?

15 A. According to the documentation submitted,
16 yes.

17 Q. And in May of '96 is when that second
18 incident number was called in, right?

19 A. Yes, according to the IEMA.

20 Q. So the second incident number was not called
21 in when the eight tanks were pulled out in March. It
22 was called in two months later when the new tanks were
23 installed, right?

24 A. Right.

1 Q. And then the Fire Marshal application for
2 that second incident number --

3 MR. KIM: Number 6.

4 BY MR. HEDINGER:

5 Q. -- was submit IN 1999, right? And I'm
6 showing you Exhibit 6, Respondent's Exhibit 6.

7 A. Could you repeat that date again?

8 Q. Well, it's 1999, isn't it?

9 A. Yes, I was just trying to confirm. It was
10 February 1999.

11 Q. February 1999, which was three years after
12 the tanks were removed and a little less than three
13 years after the incident number was called in, right?

14 A. Right.

15 Q. Have you required Swift-T-Food Mart to submit
16 a separate CAP, or corrective action plan, to respond
17 to that second incident number?

18 A. No, I don't believe so.

19 Q. Have you required them to submit a separate
20 budget with respect to that second incident number?

21 A. No.

22 Q. No budget at all on any item of the
23 various --

24 A. Not separate, no.

1 Q. Not a separate one.

2 Has the remediation of the '95 incident
3 number been completed yet?

4 A. I'm sorry. Could repeat the question?

5 Q. Has have you issued a no further remediation
6 letter with respect to the '95 incident?

7 A. No.

8 Q. Do you anticipate that when you issue an NFR
9 for the site that it will apply to both incident
10 numbers?

11 A. Yes, I do. It will apply to both numbers.

12 Q. It could not possibly apply to only the '95
13 number, but not to the '96?

14 A. No.

15 Q. I want you pull out what has been marked as
16 Respondent's Exhibit No. 14. And that's a letter from
17 the EPA dated July 2001, correct?

18 A. Yes.

19 Q. Did have you anything to do with that letter?

20 A. Here, let me review it real quick, and I can
21 tell you.

22 Q. Yeah, please do. And as you're reviewing it,
23 my specific question is going to be with respect to the
24 second page of that exhibit where there is some

1 handwritten things on the top.

2 MR. KIM: I'm sorry. Which exhibit are you
3 referring to?

4 MR. HEDINGER: The 14 July 2001 letter.

5 BY THE WITNESS:

6 A. It's possible. But without looking at the
7 LUST physical file, I couldn't confirm it.

8 BY MR. HEDINGER:

9 Q. It's possible that you've seen that?

10 A. Yes.

11 Q. But without looking at the physical file,
12 you're not sure?

13 A. Correct.

14 Q. Now, with respect to the handwritten note at
15 the second page, do you recognize that handwriting? Do
16 you have any idea who wrote that?

17 A. No, I don't.

18 Q. That does refer to -- Harry Chappel
19 apparently had determined as of that time that two
20 deductibles should apply; is that accurate?

21 A. I'm not sure at that time because I don't
22 think he was with the agency at that time.

23 Q. In 2001?

24 A. That's correct.

1 Q. Now he's your supervisor, right?

2 A. Correct. I believe he's only been with the
3 agency now for the last 18 months, at least in his
4 current position.

5 Q. And in 2001 you're thinking he was in private
6 practice or something?

7 A. He's either in private practice or in another
8 part of the agency.

9 Q. So that note does not necessarily reflect the
10 time you were talking about earlier, from a couple of
11 years ago, that you first decided or determined that
12 two deductibles should apply?

13 A. That's right. It doesn't apply.

14 Q. It doesn't apply.

15 Let's look at Exhibit No. 13. Have you seen
16 that before?

17 A. Once again, it's possible. But unless there
18 was a specific question with a reimbursement claim, I
19 can't be sure.

20 Q. Your name is on there as a project manager;
21 is that right?

22 A. That's correct.

23 Q. So you were the project manager at this time?

24 A. The LUST project manager, yes.

1 Q. And this does refer to a deductible being
2 applied, correct?

3 A. Yes, sir.

4 Q. The deductible applied to this billing
5 package is \$10,000?

6 A. That is correct.

7 Q. Leaving reimbursable 1,971.08; is that
8 correct?

9 A. Could you repeat that number again?

10 Q. 1,971.08.

11 A. That's correct.

12 Q. Wouldn't they have brought that to you and
13 asked you what deductible should be applied?

14 A. It's possible. Unless there was a question,
15 yes.

16 Q. So sometimes they make that determination if
17 it seems obvious?

18 A. No. Sometimes they go with the decision
19 already made, unless there is -- unless some time
20 passes by or...

21 Q. Well, this was apparently the first time any
22 deductible had been taken from any billing package for
23 this site, correct?

24 A. If you say so.

1 Q. Well --

2 A. No, I'm not aware. I don't have any notes,
3 so I can't tell. If it is, then...

4 MR. KIM: We would stipulate that that's correct
5 would speed things along.

6 BY MR. HEDINGER:

7 Q. Okay, so the document speaks for itself.

8 But I guess my question for you would be: If
9 you were at that time of the view that two deductibles
10 should apply, why didn't you apply the deductible to
11 that \$1,971.08?

12 A. The only answer I can give is: At that time,
13 I was still going on the advice of my predecessor -- or
14 my supervisor -- my previous supervisor. Excuse me.

15 Q. But you don't have any independent
16 recollection of this specific issue --

17 A. I'm afraid not.

18 Q. -- correct?

19 A. I'm afraid not.

20 Q. I'm going to show you what's been marked as
21 Respondent's Exhibit No. 15.

22 A. Yes, sir.

23 Q. What is that document?

24 A. This document is my LUST technical review

1 note.

2 Q. Dated...

3 A. March 19, 2002 for Swift-T-Food.

4 Q. And is there a reference on here to the
5 deductible issue?

6 A. No.

7 Q. This exhibit, the one I have, is one page.
8 Is yours one page too?

9 A. Yes, it is.

10 Q. Is that correct? Is it only a one-page
11 review note document?

12 A. This was just the review note for the high
13 priority CAP and budget received by the agency on
14 November 19, 2001.

15 Q. And so it is just a single-page document?

16 A. That's correct.

17 Q. So this document wouldn't help with this
18 issue regarding the deductible decision, when you first
19 made that determination, would it?

20 A. No, I'm afraid not.

21 Q. Well, let's talk about these budgets. Again,
22 part of your job is to review and either approve or
23 deny budgets, correct?

24 A. Correct.

1 Q. And those are made along with or as part of
2 technical submittals? They're not made as part of a
3 reimbursement package, right?

4 A. No. You're correct. The budget comes first,
5 along with the corrective action plan or any plan, for
6 that matter.

7 Q. And in this case, the corrective action plan
8 was presented, and you reviewed it, correct?

9 A. Which corrective action plan are you talking
10 about?

11 Q. Well, the original one. And I'll show you
12 what's been marked as Exhibit 11. Is that the original
13 corrective action plan for this site?

14 A. Yes.

15 Q. And that has a budget with it?

16 A. Yes, it does.

17 Q. And that was dated -- it was received by the
18 agency in November of 2001, submitted in October 2001,
19 correct?

20 A. Correct.

21 Q. And can you tell me, in terms of your review
22 of budgets again, what kind of training you have had?

23 A. We have specific rates for budgets.

24 Q. Well, let me -- before asking about what you

1 look at when making a decision, do you have any
2 training or schooling or education of any sort? Did
3 the agency send you to some seminar on how to review
4 budgets?

5 A. No.

6 Q. Is there any internal training for project
7 managers?

8 A. There is internal training, but it's in the
9 form of -- In the beginning when I first got the LUST
10 section, we had section meetings, which we discussed
11 ideas. And, in fact, we broke up into groups and tried
12 to, you know, get ideas, common ideas and training from
13 older project managers.

14 Now it's in the form of budget rates which
15 are handed to us in memos, and we review those, such as
16 a professional engineer gets 130 -- Wait a minute. I'm
17 sorry. I can't give that out.

18 Q. Why is that?

19 A. That is a question that's best answered by
20 Doug Clay --

21 Q. Well, it's not relevant to this case.

22 A. -- my section leader.

23 Q. That's an interesting question, but we'll
24 talk about that some another time.

1 A. Just granted that we have specific rates for
2 specific jobs, tasks, personnel; and those are made by
3 a work group.

4 Q. I mean, so at this point, it's kind of a rote
5 thing for you to do. You just had a chart; and if the
6 budget you're looking at falls within the range that's
7 approved in your chart, you approve it?

8 A. That's correct.

9 Q. It doesn't really require any analysis on
10 your part, with respect to those amounts anyway?

11 A. With respect to the amounts, no.

12 Q. You know, you hesitated there. What do you
13 analyze? What does your analysis require with respect
14 to your budget reviews?

15 A. Well, in a budget review, we look at -- if
16 they propose in their plan to install monitoring wells
17 or sole borings, that sort of thing, we look in the
18 budget for the same amounts, make sure that if they
19 propose five monitoring wells in their plan there are
20 five monitoring wells in the budget -- Let's see. What
21 are some other examples -- specific number of soil the
22 ground water samples take in each boring, that sort of
23 thing.

24 Q. Now, again, with respect to the Swift-T-Food

1 Mart and particularly with respect to why we're here
2 today, there was \$13,808.86 reduced from a particular
3 line item of reimbursement on the basis that it had not
4 been approved in a budget, correct?

5 A. That sounds familiar, yes.

6 Q. Let me show you these first three pages of
7 the record again. And specifically, I want you to look
8 at page 3, the very last paragraph of that page. Let
9 me know when you're not done taking a look at that.

10 A. Is that number 2 of page 3?

11 Q. Yes. It's the very last paragraph of the
12 whole page.

13 A. And your question again, sir?

14 Q. Well, first I just wanted you -- I don't have
15 a question yet. But you've reviewed it now, right?

16 A. I have looked at it, yes.

17 Q. Now, did you take any part in making the
18 decision to cut that \$13,808?

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

20 Q. So this is the first time that you're aware
21 of that language in the --

22 A. I believe so, yes.

23 Q. Well, let me ask you about that, though.

24 Does LUST reimbursement unit discuss with the technical

1 staff issues concerning budget and what's been approved
2 and hasn't been approved, or is that something that
3 they ordinarily do on their own?

4 A. No. They -- Actually, I think that's outside
5 my field of experience. I can't really comment on how
6 they do their claims.

7 Q. Well, do they come to you? Do they typically
8 come to you and say "Tell us what in this reimbursement
9 application has been approved in a budget"? Is that
10 part of your review?

11 A. No.

12 Q. So that the LUST reimbursement folks have all
13 these budgets in front of them when they're going
14 through when deciding what's reimbursable and what
15 isn't?

16 A. I don't think I can answer on what they have
17 in front of them.

18 Q. They apparently do. Nobody sends it back to
19 you --

20 A. I know that when I have a mistake in my
21 budgets as far as the amounts, they correct my totals.
22 They look at our approved letters, our modified
23 letters, and if something doesn't add up, they send me
24 a little e-mail telling me Eric, your numbers don't add

1 up. Better check your math.

2 Q. When does that happen? Does that happen
3 while they're looking at a reimbursement claim?

4 A. Yes. It happens when they are looking at a
5 reimbursement claim because they would have -- I
6 believe they would have need to look at all the amended
7 budgets and amended -- I mean modified budgets.

8 Q. Well, when you approve a budget, do you
9 typically -- Well, let me stop there.

10 Were you aware in this case that
11 subcontractors were adding handling charges -- or a
12 subcontractor was adding handling charges for a
13 sub-subcontractor's work?

14 A. Not until this hearing.

15 Q. Okay. I'm going to show you what's been
16 marked as Respondent's Exhibits 17 and 18. Look first
17 at 17 and then 18, if you would.

18 A. Yes, sir.

19 Q. Have you reviewed those two exhibits?

20 A. Yes, I have.

21 Q. Now, the first of those two, number 16, is a
22 letter from AES Consultants Limited to you, correct?

23 A. I believe it's number 17. But, yes.

24 Q. You're right. Number 17, not 16. But 17.

1 What was the purpose of that -- Do you recall the
2 context of that letter, why they were sending that to
3 you?

4 A. No, I don't. I'd have to review the previous
5 letters to this.

6 Q. Do you recall --

7 A. If I could have a minute.

8 Q. Go ahead.

9 A. Yes.

10 Q. What are you looking at now?

11 A. I'm looking at an Illinois EPA letter that I
12 issued on March 19, 2002 in response to the corrective
13 action budget received by us November 19, 2001.

14 Q. Can I see that?

15 A. Sure.

16 MR. KIM: That's also found on page 77 of the
17 administrative record.

18 BY MR. HEDINGER:

19 Q. Okay. So from 77 through 81 of the
20 administrative record is a letter from you dated
21 March 19, 2002?

22 A. Yes.

23 Q. What about this -- So let me understand where
24 you were going here. Exhibit 17 was in response to --

1 or partial response to issues raised in this March 19
2 letter of yours?

3 A. I believe so, yes.

4 Q. And among the issues raised in your March 19
5 letter was Item No. 11 which disapproved a request --
6 or disapproved a budget request for \$229,800 because of
7 lack of supporting documentation, correct?

8 A. That's correct.

9 Q. Is that specific paragraph the one that this
10 Exhibit 17 is in response to?

11 A. Yes, it is.

12 Q. Okay. Then I'd like you to look at Exhibit
13 No. 18 and tell me what that is.

14 A. That is an agency letter issued August 7,
15 2002.

16 Q. And you drafted that letter, right?

17 A. Yes.

18 Q. What did do you in that letter?

19 A. I denied the amount in question.

20 Q. You did?

21 A. Excuse me --

22 Q. It's easy. Denial. Approval. The Board
23 dose that to me all the time. They meant to approve.

24 Anyway, so this letter you approved --

1 A. I'm sorry. You're correct. I approved it.

2 Q. So you now had enough supporting
3 documentation to approve that 229,000, correct?

4 A. Yes.

5 Q. Yes?

6 A. Yes.

7 Q. Now, turning again to this Exhibit No. 17,
8 the second page of that letter specifically refers to
9 handling charges from a sub-subcontractor being billed
10 by a subcontractor, correct -- I'm sorry -- a
11 subcontractor billing for having paid a
12 sub-subcontractor's invoice.

13 MR. KIM: Can you identify where you're
14 referencing?

15 MR. HEDINGER: On page 2 of Exhibit 17.

16 MR. KIM: The first paragraph?

17 MR. HEDINGER: Yes.

18 BY THE WITNESS:

19 A. It would seem so, yes.

20 MR. KIM: Well, just for clarification, in that
21 paragraph, I see there is reference to Lindahl Brothers
22 and Peter J. Hartmann and, obviously, AES. And your
23 question was just referring to subs and sub-subs. Can
24 you identify who you are referring to when you say

1 that?

2 BY MR. HEDINGER:

3 Q. Well, let me ask you that, Mr. Kuhlman. Is
4 it your understanding AES would be the prime contractor
5 for this remediation, correct?

6 A. Correct.

7 Q. And Hartmann was a subcontractor to AES?

8 A. I believe so.

9 Q. And Lyndahl Brothers were working for
10 Hartmann, correct?

11 A. I believe so.

12 Q. Now, turning to the very last page of that
13 exhibit, that's a Hartmann invoice, correct?

14 A. Yes, it is.

15 Q. Now, that was one of the documents that you
16 had in front of you when you approved that \$229,800,
17 correct?

18 A. I believe so, yes.

19 MR. HEDINGER: I don't think I have anymore
20 questions.

21 HEARING OFFICER HALLORAN: Let's go off the record
22 for a second.

23 (Discussion off the record.)

24 HEARING OFFICER HALLORAN: So we'll take a

1 ten-minute break.

2 (A break was taken.)

3 HEARING OFFICER HALLORAN: We're back on the
4 record after about a ten-minute break. Mr. Kuhlman is
5 still on the stand. And Mr. Kim, I believe, is up for
6 cross.

7 C R O S S - E X A M I N A T I O N

8 by Mr. Kim

9 Q. Mr. Kuhlman, I'm going to try and present my
10 questions to you in the order they were sort of asked
11 by -- as far as subject matter, in the order they are
12 asked by Mr. Hedinger. So if I bounce around a little
13 bit and it's unclear what I'm getting at, just let me
14 know and I'll try to give you a little background.

15 A. All right.

16 Q. Just so we're clear, you made reference in
17 your testimony to your review of some OSFM and IEMA --
18 which is IEMA -- documents. Do you recall that?

19 A. Yes, I do.

20 Q. And if you could look to -- Do you have a
21 copy of the administrative record, by any chance, up
22 there?

23 A. Which one is that?

24 Q. Would you first look through the exhibits

1 that you do have there and find Exhibit No. 1 and
2 Exhibit No. 5, and could you just briefly describe what
3 those are?

4 A. Well, Exhibit No. 1 is the Illinois Emergency
5 Management Agency incident number report. And in it a
6 LUST incident number is issued, No. 95-1716, to
7 Swift-T-Food Mart in Waukegan.

8 Q. And what does Exhibit No. 5 represent?

9 A. Exhibit No. 5 is an Illinois Emergency
10 Management Agency field report for LUST Incident
11 No. 96-0723 for the same site.

12 Q. So when we're making reference to incident
13 numbers, these are the actual documents that establish
14 what those number are; is that correct?

15 A. Yes.

16 Q. So in other words, who is it that assigns
17 incident numbers for incidents?

18 A. I'm not really sure.

19 Q. And then if you could look to Exhibit No. 2.

20 A. Yes, sir.

21 Q. Can you tell me what that is?

22 A. That is an eligibility and deductible
23 application from the Office of State Fire Marshal.

24 Q. And does that reference an incident number?

1 Specifically, I'm looking on page 2, Item No. 5.

2 A. Yes, it does.

3 Q. And what number does it reference?

4 A. Number 95-1716.

5 Q. And now if you can look at Exhibit No. 6 and
6 tell me what that is?

7 A. That is also an eligibility and deductible
8 application from the Office of State Fire Marshal.

9 Q. And again, looking on the second page, Item
10 No. 5, what incident number does this reference?

11 A. Incident number 96-0723.

12 Q. Next, would you look at Exhibit No. 4? I'm
13 sorry to keep bouncing you around.

14 A. Quite all right.

15 Q. Tell me what that document is.

16 A. Exhibit No. 4 is a log of underground storage
17 tank removal from the Office of State Fire Marshal.

18 Q. And in the upper right-hand corner of that
19 that document -- How many pages is this document?

20 A. Two pages.

21 Q. And in the upper right-hand corner of that
22 document, does it say page 1 of 2, and the second page
23 says page 2 of 2?

24 A. Yes, it does.

1 Q. And above that, there is a line that says
2 IEMA number. Do you see that?

3 A. Yes, I do.

4 Q. And what are the numbers that are listed
5 there?

6 A. The first number is 95 dash 1716, and there
7 is another entry of 96 dash, but there is nothing
8 behind it.

9 Q. And then -- You might have answered this:
10 But just briefly, to your understanding, who is it that
11 fills this out and when is this document filled out?

12 A. That, I'm unaware when it's filled out, other
13 than the date.

14 Q. Well, what I mean is, not so much the
15 specific date, but -- Well, let me rephrase it. To the
16 best of your knowledge, who is it that fills out this
17 form?

18 A. That would be the a representative from the
19 Office of State Fire Marshal.

20 Q. And is it fair to say that this form was
21 filled out as part of their -- and to the best of your
22 knowledge -- part of their observance of the tank
23 removal on March 28, 1996?

24 A. That's correct.

1 Q. I'm going to show you a couple of pages of
2 documents out of the administrative record, and these
3 may be found at different places. But specifically,
4 I'm looking at page 71 of the administrative record and
5 page 74 of the administrative record.

6 Looking first at 71, and I believe it goes
7 pages 71, 72, and 73. Can you take a look at that
8 quickly and tell me when you've had a chance to look at
9 it?

10 A. All right.

11 Q. And what is that document?

12 A. This document is a response by the Office of
13 State Fire Marshal to the reimbursement eligibility and
14 deductible application received on November 4, 1999.

15 Q. And then same thing for the document that's
16 on pages 74, 75, and 76; can you look at that and tell
17 me what that is?

18 A. This is also a response from the Office of
19 State Fire Marshal concerning the reimbursement
20 eligibility and deductible application this time
21 received on December 12, 1995.

22 Q. And for the letter that's dated November 18,
23 1999, which is found at page 71, what incident number
24 does that reference?

1 A. The '96 incident number, specifically
2 No. 96-0723.

3 Q. And then for the letter that's dated
4 January 8, 1996 as found on page 74, what incident
5 number does that identify or reference?

6 A. Incident number 95-1716.

7 Q. Was it your testimony that these are the OSFM
8 and IEMA documents that were part of your review that
9 led to your decision that two deductibles should apply
10 instead of just one?

11 A. Yes. Yes, they were.

12 MR. HEDINGER: Can I ask for clarification? Are
13 you talking just these last two, or were you talking
14 all of those exhibits.

15 MR. KIM: I'm sorry. Let me clarify that.

16 BY MR. KIM:

17 Q. The two IEMA field reports, the two
18 applications for eligibility/deductibility that were
19 sent to OSFM, and the two OSFM final decisions, each
20 one for the respective incident numbers, were those
21 documents the documents that you referred to when you
22 said that you reviewed OSFM and IEMA documents that led
23 to your decision that two deductibles should apply?

24 A. That's correct.

1 Q. And I believe you were asking questions
2 concerning the tenure of Eric Ports and J. Gaydosh at
3 the agency in comparison of how long you might have
4 been employed there.

5 Who is your supervisor now?

6 A. My supervisor now is Harry Chappel.

7 Q. And to the best of your understanding or
8 recollection, how long has Harry been your supervisor?

9 A. He's been my supervisor for roughly
10 18 months.

11 Q. And what's your understanding of Harry
12 Chappel's interpretation or position on the question of
13 how many deductibles should apply in comparison with
14 your position?

15 A. My interpretation of Harry's position is that
16 he believes there should be two deductibles since there
17 are two incidents.

18 Q. So you and your supervisor are in agreement
19 on that issue; is that correct?

20 A. That is correct.

21 Q. You also were testifying that your prior
22 supervisor and possibly another project manager that
23 had been assigned to the site, J. Gaydosh, had a
24 different interpretation. Do you recall that?

1 A. I do recall Eric Ports, but I don't recall
2 until today the memo concerning J. Gaydosh.

3 Q. As a matter of fact, other than the memo
4 today, have you seen any other documents prepared by J.
5 Gaydosh on the question of how many deductibles --

6 A. No.

7 Q. Do you believe that your interpretation and
8 your position, and that which is also shared by Harry
9 Chappel -- do you believe that that's the correct
10 position?

11 A. I do.

12 Q. So you disagree with the previous decision
13 that was rendered?

14 A. That's correct.

15 Q. I don't know if that happens often. I'm sure
16 it doesn't. But in the instances where, possibly, you
17 come to a situation where you find that after you've
18 reviewed documents you have a different interpretation
19 or position than that which was previously rendered on
20 an issue, what do you think is the proper course of
21 action for that?

22 A. Well, a proper course of action if you
23 believe your decision is -- or your opinion is
24 different than a previous project manager's or

1 supervisor's, ask around, consult with other project
2 managers, make sure you're right, get what their views
3 are, then go to your supervisor and try to explain it
4 and see if they would look into it.

5 Q. And did you do that in this situation?

6 A. I didn't need to.

7 Q. And why didn't you need to?

8 A. Harry Chappel reviewed the case
9 independently.

10 Q. And to the best of your knowledge, was Harry
11 aware that a different interpretation had been taken
12 earlier?

13 A. I'm not aware of that, no.

14 Q. So after you do that, if the conclusion is
15 that your position and your supervisor's position is
16 correct and possibly the earlier decision is incorrect,
17 what do you think should be done then?

18 A. That the correct position should be stated.

19 Q. To the best of your knowledge, has there been
20 any final decision -- Well, before I say that -- Do you
21 know what a --

22 After you have reviewed a technical plan or a
23 budget, how does the agency formally respond to that
24 type of review?

1 A. Within 120 days we have to issue a letter to
2 respond to go that plan or budget either approving,
3 modifying it, or denying it.

4 Q. And to the best of your knowledge, the
5 recipient of that letter, do they have the option of
6 appealing that letter if they so choose?

7 A. Yes.

8 Q. I'm going to refer to that as a final
9 decision.

10 A. Okay.

11 Q. That's the term of art I'm going to use. Are
12 you aware of any final decisions that have been issued
13 for the Swift-T-Food Mart site by either under the
14 95-1716 number or 96-0723 number on a budget for
15 corrective action plan submittal where it was stated
16 that only one deductible should be applied for the
17 site?

18 A. Not from any notes.

19 Q. Are you aware of any other letters in the
20 file?

21 A. No, I'm not aware of any other letters.

22 Q. In the time that you've been responsible for
23 the Swift-T-Food Mart site -- and just so we're clear,
24 from whatever date that you became first associated

1 with that to March 3rd, 2003, which is the date of the
2 final decision that's under appeal -- was your
3 responsibility over that site continuous?

4 A. Yes.

5 Q. During that time period, do you know if there
6 were different reviewers in the LUST claims unit that
7 also reviewed reimbursement packages for that site?

8 A. I'm sure there were.

9 Q. Well, the decision that's under appeal, which
10 is found at pages 1 through 3 of the administrative
11 record and that's a copy of the final decision, do you
12 recall who the reviewer was in the LUST claims unit
13 that you worked with or that you communicated with?

14 A. Well, it says here Niki Weller.

15 Q. Is that correct as far as you know?

16 A. Yes.

17 Q. And I believe also earlier Mr. Hedinger asked
18 you about the fact that there were two OSFM eligibility
19 and deductible determinations that had been issued.

20 A. Yes.

21 Q. And he asked you what would happen if only
22 the first decision had been issued. Do you recall
23 that?

24 A. Yes, I do.

1 Q. In other words, if you know the second
2 application had been submitted.

3 A. That's correct.

4 Q. And I believe you said that if that had
5 happened, only one deductible would have applied. Do
6 you recall that answer?

7 A. Yes, I do.

8 Q. If that had happened, just to follow-up on
9 that, how many tanks would be eligible for
10 reimbursement if the second letter had not been issued?

11 A. If there was only the first -- If there was
12 only the first response to the eligibility and
13 deductible application, only three tanks would be
14 reimbursable.

15 Q. You also testified that when an NFR letter
16 eventually issues for this site --

17 A. Yes.

18 Q. And NFR stands for no further remediation; is
19 that correct?

20 A. That's correct.

21 Q. When an NFR letter is issued for this site,
22 then it would reference both incident times; is that
23 right?

24 A. Correct.

1 Q. And I think you said it would be -- I don't
2 want to say difficult or impossible. But it wouldn't
3 be just for one number; is that right?

4 A. That's correct.

5 Q. And why is it that both numbers would be
6 addressed on that NFR letter?

7 A. It would be -- Once the NFR letter was
8 issued, it would be for both incidents because right
9 now we cannot distinguish between the two releases; the
10 claims had intermingled. And right now from the
11 supporting documentation submitted to me, I can't
12 figure out which one is which.

13 Q. So to take that one step further, when we're
14 talking about corrective action plans and budgets, how
15 many would need to be -- would there need to be
16 separate corrective action plans and budgets for each
17 incident number submitted or just one?

18 Let me rephrase that. I think that you
19 testified that there was not a separate corrective
20 action plan and budget submitted for the 96-0723
21 number. Do you recall that?

22 A. That's correct.

23 Q. Do you think that's necessary?

24 A. No.

1 Q. And again, is that because of the commingling
2 you just referenced?

3 A. That's correct. It would be duplication of
4 corrective actions plans and budgets already submitted.

5 Q. You also answered some questions about budget
6 decisions. Do you recall that?

7 A. Yes.

8 Q. Do you have Exhibit No. 18?

9 A. Yes.

10 Q. I'm going to first give you a portion of the
11 administrative record, specifically pages 77 through
12 81. Could you look at pages 77 through 81 and tell me
13 what that document is?

14 A. It's an agency response letter to a high
15 priority corrective action plan submitted -- I'm sorry.
16 The plan was received by the agency November 19, 2001.
17 The letter itself is dated March 19, 2002.

18 Q. When you say "the letter," you mean the final
19 decision?

20 A. Yes, final decision.

21 Q. And does that letter of the final decision
22 also address a budget that was proposed?

23 A. That's correct.

24 Q. And does that letter contain -- How does that

1 letter relate to the budget that was proposed?

2 A. The budget proposed was modified.

3 Q. And the specific figures are found in the
4 attachment to that letter; is that right?

5 A. That's correct, Attachment A.

6 Q. If you could next look to pages 82 through 84
7 of the administrative record and when you've done that
8 tell me what that document is again.

9 A. It's an agency response letter to a
10 miscellaneous correspondence received by the agency on
11 April 4th, 2002. The final decision is dated June 12,
12 2002.

13 Q. And does that final decision address the
14 budget, a budget approval?

15 A. Yes, it does.

16 Q. And where is that found in that document? Is
17 that found in an attachment as part of that letter?

18 A. That's correct, Attachment A.

19 Q. And in looking at Attachment A, there is a
20 section entitled Section 1. Do you see that?

21 A. Yes, I do.

22 Q. There are three sets of numbers. Could you
23 explain, not necessarily line item by line item, but
24 could you explain what those three different categories

1 of numbers are?

2 A. Yes, I can.

3 The first set is the numbers, or the amounts,
4 in the budget that had been previously approved. The
5 second set is the amounts that had been approved now as
6 related to this letter. And the final group is the
7 total cumulative budget that is approved.

8 Q. So the first section that says the budget was
9 previously approved for, are those the figures that are
10 found in the March 19, 2002 final decision?

11 A. Which section were you referring?

12 Q. The figures in Section 1 that say the budget
13 was previously approved for, are those the figures
14 taken out of the March 19, 2002 final decision?

15 A. Yes, they are.

16 Q. So then the June 12, 2002 decision sort of
17 superseded the earlier decision; is that right?

18 A. That's right.

19 Q. Then the final letter I'd like you to look at
20 is Exhibit No. 18. Could you take a look at that and
21 tell me what that is?

22 A. Okay. This is an agency letter dated
23 August 7, 2002. It is in response to a correspondence
24 submitted to the agency on May 23rd, 2002.

1 Q. Is that also a final decision?

2 A. Yes, it is.

3 Q. And does that address budget approvals?

4 A. Yes, it does.

5 Q. If you compare the -- And the budget
6 approvals in that August 2002 letter, are they found in
7 Attachment A to the letter, Section 1?

8 A. Could you repeat the question?

9 Q. The budget approvals that are found in the
10 letter that's dated August 7, 2002, are those budget
11 approvals referenced in Section 1 of Attachment A?

12 A. Of this letter?

13 Q. Yes.

14 A. Yes.

15 Q. And if you compare the figures in that
16 letter, the August 2002 letter, to the figures found in
17 the June 2002 letter in terms of the final, or the
18 total cumulative budget, in other words the very last
19 grouping, are those numbers the same or different?

20 A. They are different. The total cumulative
21 budget in the letter dated June 12, 2002 is different
22 than the previously approved budget in Section No. 1,
23 Attachment A of the August 7, 2002 letter.

24 Q. Look then to the very last set of numbers on

1 each letter that talk about the total cumulative
2 budget. Are those numbers the same or different?

3 A. They are the same.

4 Q. To the best of your knowledge, these letters,
5 one dated March 19, 2002; one dated June 12, 2002; and
6 one dated August 7, 2002, were those the budget
7 approvals that were in effect as of March 3rd, 2003?

8 Let me put that a different way.

9 A. Thank you.

10 Q. Other than the August 7, 2002 letter, do you
11 know of any other budget approvals that were issued
12 between that date and March of 2003?

13 A. No.

14 Q. One more question about those budgets.

15 A. Sure.

16 Q. Looking at Exhibit 18 again in front of you,
17 those three letters, one dated March 19, 2002;
18 June 12, 2002; and August 7, 2002, what type of budget
19 was approved in each one of those letters?

20 A. A corrective action budget.

21 Q. For high priority, low priority?

22 A. High priority.

23 Q. And that's the same for each one of those
24 letters?

1 A. That's correct.

2 Q. The last question that I have for you is --
3 can you find Exhibit 17, please. Do you recall
4 Mr. Hedinger asking you questions about this exhibit
5 specifically related to the first paragraph on the
6 second page of the exhibit?

7 A. Yes, I do.

8 Q. And I think he also then made reference to
9 the very last page of that exhibit as well. Do you
10 recall that?

11 A. Yes, I do.

12 Q. These costs on that very last page, what is
13 the description of work that was provided for those
14 costs?

15 A. From the invoice, it looks to be additional
16 charges for the removal of contaminated soils, also
17 sewer repair, and back filling.

18 Q. Is that changes or charges?

19 A. I'm sorry. Changes.

20 Q. Could you get Exhibit 18 in front of you?

21 A. Yes.

22 Q. Exhibit 18 was issued in response to
23 Exhibit 17; is that right?

24 A. That's correct.

1 Q. The costs that are found on that very last
2 page of Exhibit 17 under the description additional
3 changes for removal, if I look to the line items in
4 Exhibit 18 in Attachment A, it's either items for
5 investigation cost, analysis personnel, equipment,
6 field purchases, and handling charges.

7 A. Yes.

8 Q. What type of line item would the costs on the
9 last page of Exhibit 17 -- where would those costs
10 fall?

11 A. I believe they should go in handling charges.

12 Q. Well, let's put it this way: I see zero
13 approved for the handling charges; is that correct?

14 A. That's correct.

15 Q. So if these costs were in some fashion
16 approved, you're saying they should have gone in
17 handling charges, or would they have gone in any of the
18 other line items there?

19 I guess what I'm asking is: For this type of
20 work, would that be considered an investigation cost,
21 analysis cost, personnel cost, equipment cost, or a
22 field purchase and other costs?

23 A. Well, the cost, according to the safety
24 barrier, I imagine would be field purchase and other

1 costs. I'd have to check the budget to make sure. And
2 then the additional handling charges would go on the
3 section marked handling charges for the subcontractor
4 costs.

5 Q. And let's put it this way: Would these be
6 considered personnel costs?

7 A. No.

8 Q. So if I'm looking on Attachment A of
9 Exhibit 18, other than personnel costs, which is a line
10 item for \$37,192, all of the other charges there except
11 for field purchases are under \$7,000; is that right?
12 In other words, for field purchases, you have \$229,800;
13 is that right?

14 A. In that total accumulative?

15 Q. Yes.

16 A. Yes.

17 Q. And then you've got personnel, \$37,192 for
18 total accumulative?

19 A. That's right.

20 Q. And then the rest are either zero or less
21 than \$7,000; is that right?

22 A. That's correct.

23 Q. So if these costs on the last page of
24 Exhibit 17 were approved, wouldn't they have to go

1 under field purchases and other costs just because the
2 cumulative there of 43,000 is bigger than all of the
3 other line items?

4 A. I would think so. I'd have to check the
5 budget to make sure.

6 Q. And then one last question. When you approve
7 items in a budget on a line item basis --

8 A. Yes.

9 Q. -- do those figures represent the amount
10 that -- What do those figures represent in terms of the
11 ability of the owner or operator to actually receive
12 that money, that amount? Is that the maximum amount?
13 Is that the minimum amount? Is that the guaranteed
14 amount? How would you characterize that?

15 A. The proposed budget is the maximum amount
16 that they can receive for any action or task.

17 Q. So does that mean -- Let's say you have an
18 approved budget with a line item of X amount of
19 dollars, based on that budget, can they be reimbursed
20 for that line item of over X amount of dollars?

21 A. No.

22 Q. Can they be reimbursed for X amount of
23 dollars itself?

24 A. Yes.

1 Q. Could they be reimbursed for less than X
2 amount of dollars?

3 A. The only way they could get more money than
4 originally budgeted, they would have to submit an
5 amended budget itself, and then we would review that
6 and make amounts.

7 MR. KIM: I have nothing further.

8 HEARING OFFICER HALLORAN: Thank you, Mr. Kim.

9 Mr. Hedinger, do you have any redirect?

10 MR. HEDINGER: I do have some redirect.

11 R E D I R E C T E X A M I N A T I O N

12 by Mr. Hedinger

13 Q. Now, Mr. Kuhlman, this site is governed by
14 350 Regulation, Part 732, right?

15 A. Correct.

16 Q. In answer to those last questions, you
17 responded to Mr. Kim by saying several times you have
18 to review the budget, so I'm going to bring to you some
19 pages from the record.

20 A. Is that the original budget?

21 Q. Well, it's in the record so -- Okay. These
22 are pages 14 through 21 of the budget -- I'm sorry --
23 of the record. And can you tell me what that document
24 is?

1 A. It looks to be a corrective action budget for
2 Swift-T-Food Mart dated October 15, 2001.

3 Q. Is this the document that you were referring
4 to in answering Mr. Kim that you would have to refer to
5 the budget?

6 A. I'm sorry. It says billing packet. My
7 mistake.

8 Q. So this is actually the reimbursement
9 package?

10 A. Yes.

11 Q. Is it the same form sometimes used as a
12 billing package, sometimes used as a budget?

13 A. The cover sheet is -- Let me see. Yes,
14 basically the same forms.

15 Q. When a budget is submitted to you, though,
16 typically at least in the first instance, the budget is
17 submitted without actual invoices or other --

18 A. Yes.

19 Q. Because the purpose of the budget is to have
20 a forecast of how much it's going to cost, right?

21 A. Correct.

22 Q. But equally typical, isn't it, for after work
23 has been done, a budget amendment to come in and
24 supporting that budget amendment would be the actual

1 invoices for work performed?

2 A. That's correct.

3 Q. And you never have a budget amendment that
4 reduces the budget, correct?

5 A. That's correct.

6 Q. There would be no reason for that, right?

7 A. It's a waste of time.

8 Q. So budget amendments by definition are only
9 with respect to increases of budgets; is that accurate?

10 A. That and discrepancies with initial review.

11 Q. And explain that. What do you mean by --

12 A. It's not uncommon for the IEPA project
13 manager and a consultant to have different viewpoints
14 as far as what's reimbursable and what is not. Certain
15 rates, you know, we argue over how much a professional
16 engineer or a staff gets paid per hour or, you know --

17 Q. Well, when does that come up? I mean, at
18 what point of the process would that discussion or
19 disagreement take place?

20 A. It's usually after the final decision has
21 been made. Well, a modified -- an approved budget
22 never gets debated over.

23 Q. An approved budget never gets debated?

24 A. Right. A modified one does.

1 Q. Take a look at Exhibit 11. Is that a budget
2 form?

3 A. Yes.

4 Q. Is that the budget form for this site?

5 A. Yes, it is.

6 Q. Where would that \$229,800 number be in this
7 budget? Do you know?

8 A. Yes. Here (indicating).

9 Q. Now, these are not numbered pages. But at
10 the bottom, it does have a number, I-2.

11 A. Yes, I-2 of the high priority corrective
12 action budget.

13 Q. And that includes a listing of all the items
14 that are added together to come up with that 229,800;
15 is that right?

16 A. That's correct.

17 Q. And if I remember correctly your -- and I
18 don't have the numbers in front of me. But I think it
19 was an April letter.

20 MR. KIM: Are you looking for the final decision
21 that followed this?

22 MR. HEDINGER: Yeah.

23 MR. KIM: That's in the record on page --

24 MR. HEDINGER: The record is also 18, right?

1 MR. KIM: Yes, it's also Exhibit 17 of the record.

2 BY MR. HEDINGER:

3 Q. Okay. Yeah. So your letter of March 19,
4 2002, from pages 77 to 81 in the record, is your
5 initial decision with respect to the budget pages -- or
6 the budget that you're looking at right now, right?

7 A. Yes. The original budget, yes.

8 Q. Okay. And then to switch gears on you here,
9 there was testimony in response to Mr. Kim's questions
10 which were following up to my questions about if we
11 only had the '95 incident here, if they had never sent
12 in an OSFM application with respect to the '96
13 incident, right?

14 A. Correct.

15 Q. Now, there was already an IEMA number, right?
16 So even if they hadn't sent in that OSFM eligibility
17 form, there still was a '96 number that applied since
18 1996, correct?

19 A. Right.

20 Q. And they didn't send in the application until
21 '99, correct?

22 A. Correct.

23 Q. And they didn't seek any reimbursement from
24 the agency until 2000, right?

1 A. Okay.

2 Q. Well, the report will reflect when the first
3 one is. But in answer to one of Mr. Kim's questions,
4 you said, well, if they never sent in that second Fire
5 Marshal form, they would have only been eligible for
6 reimbursement for three underground storage tanks.

7 A. Yes.

8 Q. Why is that?

9 A. Because that's what is stated in the Office
10 of State Fire Marshal's first eligibility
11 determination.

12 Q. What is the statute for reimbursement
13 requirement do you know?

14 A. No.

15 Q. Does it say per occurrence or per tank?

16 A. I believe it's per occurrence, but I have to
17 look it up in Regulation 72.

18 Q. Well, let me ask this: You also answered one
19 of Mr. Kim's questions by saying that the first
20 release, the '95 release, was commingled with the '96
21 release, right?

22 A. Yes.

23 Q. And you can't separate the two, right?

24 A. That's right. There is no way to distinguish

1 when one begins and when one ends.

2 MR. HEDINGER: Okay. I have no further questions.

3 HEARING OFFICER HALLORAN: Thank you,
4 Mr. Hedinger.

5 Mr. Kim, recross?

6 R E C R O S S - E X A M I N A T I O N

7 by Mr. Kim

8 Q. Just one question. Who makes decisions on
9 deductibles for underground storage tank sites that are
10 subject to regulation pursuant to Part 732?

11 A. Would you rephrase that?

12 Q. What agency makes deductible determinations?

13 A. That would be the Office of State Fire
14 Marshal.

15 Q. For 732 sites?

16 A. Yes.

17 MR. KIM: That's all.

18 HEARING OFFICER HALLORAN: Thank you.

19 F U R T H E R R E D I R E C T

20 by Mr. Hedinger

21 Q. Well, let me follow that up. Earlier you
22 testified that you do analyze those documents to
23 determine how many deductibles to apply, correct?

24 A. That's right.

1 Q. So your answer to Mr. Kim's question is only
2 who determines how much the deductible is, right? The
3 Fire Marshal doesn't tell you how many you apply per
4 site, right?

5 A. Would you rephrase the question, please?

6 Q. Does the Fire Marshal decide for you how many
7 deductibles will apply per reimbursement package?

8 A. No. I think the Office of State Fire Marshal
9 tells the Illinois EPA how many releases, or
10 occurrences, happened at a particular site, but the EPA
11 determines how many to apply.

12 Q. Right. And specifically, at the EPA, it's
13 your unit that reviews --

14 A. That's right.

15 Q. In making your decision, you don't call the
16 Fire Marshal, do you?

17 A. No.

18 Q. You don't have meetings with them?

19 A. No.

20 Q. All you have is the documents that you've
21 testified to earlier?

22 A. That's correct because most of the time
23 they're out in the field.

24 Q. Most of the time what?

1 A. It's difficult for me, per se, to contact the
2 Office of State Fire Marshal because, of my memory,
3 they're out in the field a lot and they don't have --
4 we get voice mail or an answering machine, and they get
5 back to us.

6 Q. So you do try and contact them at times?

7 A. On occasion.

8 Q. For what reason?

9 A. If there is a discrepancy. For instance, on
10 phone duty, if someone gives us a call, a worried
11 citizen who says I'm smelling gas vapors in my sewers.
12 Could you check on this, we'll follow that up. Or if
13 someone calls about a property with USTs on site or
14 suspected USTs on site, then I would have to make an
15 inquiry to the Office of State Fire Marshal.

16 Q. But with specific reference to Swift-T-Food
17 Mart, you did not contact --

18 A. No, I didn't contact the State Fire Marshal
19 for this. I didn't feel I needed to. I had the
20 application -- well, the determination statement. I
21 had the statement from the Office of State Fire
22 Marshal.

23 MR. HEDINGER: No further questions.

24 HEARING OFFICER HALLORAN: Mr. Kim, any

1 re-recross?

2 MR. KIM: No.

3 HEARING OFFICER HALLORAN: Thank you. You may
4 step down, Mr. Kuhlman.

5 THE WITNESS: Thank you.

6 HEARING OFFICER HALLORAN: Do you want to call
7 your second witness or --

8 MR. HEDINGER: I'm prepared to. We can take a
9 break later.

10 I call Niki Weller.

11 HEARING OFFICER HALLORAN: Unless anybody else
12 needs a break.

13 (Interruption in proceedings.)

14 HEARING OFFICER HALLORAN: We're back on the
15 record.

16 Bonnie will swear you in. You may be seated.
17 Thank you.

18 (Witness sworn.)

19 WHEREUPON:

20 NIKI WELLER,
21 called as a witness herein, having been first duly
22 sworn, was examined and testified as follows:

23 D I R E C T E X A M I N A T I O N

24 by Mr. Hedinger

1 Q. Please state and spell your name for the
2 record.

3 A. Niki Weller. N-i-k-i, W-e-l-l-e-r.

4 Q. And, Ms. Weller, you are currently employed
5 at the Illinois Environmental Agency, right?

6 A. Correct.

7 Q. In what capacity?

8 A. I work in the LUST claims unit.

9 Q. And how long have you been there?

10 A. In that unit for approximately four years.

11 Q. And what are your job duties in the LUST
12 claims unit?

13 A. As we receive reimbursement claims, I review
14 the claim, checking for accuracy of the proper
15 documents, arithmetic and/or math errors and
16 reasonableness on -- well, if costs are reasonable.

17 Q. And so you basically are in charge of
18 gathering all information necessary to reach a final
19 decision on reimbursement applications?

20 A. Correct.

21 Q. And some of that entails passing on issues
22 back to the technical unit?

23 A. Correct.

24 Q. Are there other issues that get passed onto

1 other people?

2 A. At times.

3 Q. Who would those be?

4 A. If it's a matter that my supervisor or my --
5 I should say her -- boss could answer from their
6 experiences, or whatever, I do ask them.

7 Q. Who is your supervisor?

8 A. Laura Hackman.

9 Q. And her boss is Doug Oakley?

10 A. Doug.

11 Q. You've been here in the room during the
12 entirety of Mr. Kuhlman's testimony, correct?

13 A. Correct.

14 Q. And you've heard all that testimony?

15 A. Yes.

16 Q. Just trying to shortcut some of what we're
17 doing here. Concerning his determination on -- well,
18 first let me back up. We're here today on the
19 Swift-T-Food Mart reimbursement appeal, correct?

20 A. Correct.

21 Q. And you were the reimbursement reviewer that
22 was in charge of that particular decision, correct?

23 A. Yes, of the one decision, the final decision
24 letter. I don't know the date on the letter.

1 Q. Let me show you the record, page 133. Is
2 that what you're referring to --

3 A. Yes.

4 Q. -- dated March 3rd, 2003?

5 A. Yes.

6 Q. Did you draft that letter?

7 A. Yes.

8 Q. For the record, would you please describe the
9 process or means by which that landed in your hands,
10 this reimbursement application?

11 A. From when it walks in the door?

12 Q. Yeah. I mean, how is it that -- we've heard
13 testimony earlier of different claims or different
14 reimbursement staff.

15 A. Well, reimbursement claims are sent to our
16 unit for reimbursement. As they come to our unit, they
17 are put on a list, and they're taken off the list by
18 the reviewers according to how they are entered. I
19 happened to get that one.

20 Q. So just luck of the draw?

21 A. Yeah. Yes.

22 Q. And here you are today?

23 A. Yes.

24 Q. Lucky you.

1 A. Yes.

2 Q. And tell me when you reviewed this
3 particular -- and I'd be happy to give you any part of
4 the record or all of the record if that would help you.
5 But just from your recollection, what information, what
6 documentation did you have in front of you when you
7 made your analysis and your decision?

8 A. On the whole, on all of it?

9 Q. Yeah, on this particular reimbursement
10 application before your March 3rd, 2003 letter. You
11 got their application, correct?

12 You'll have to verbalize your response.

13 A. Yes.

14 Q. And what else? Did you go to the technical
15 file and get any part of that in order to make your
16 review?

17 A. No. We have our own files in our area, which
18 are copies of past claims that have been sent in and
19 reviewed. And when I pulled that one to start
20 reviewing it, I'd seen that there were two incident
21 numbers. And usually when I see that, I look a little
22 further to see, you know, what decisions have been
23 made.

24 Q. Well, let's go in that direction. So here

1 you saw there was a '95 and a '96 incident number?

2 A. Correct.

3 Q. Do you also see that a single decision, or
4 single deductible, had previously been applied?

5 A. In looking at the previous claims that had
6 been submitted, there had never been a deductible taken
7 out of the '95 number because at the time that I had
8 the claim, I was just dealing with the '95 number.

9 And in going back through the claims, I
10 always -- we always have to check to see if invoices
11 overlap, dates and stuff like that, to make sure
12 they're not submitting duplicate copies and other
13 things.

14 So in checking this, I'd seen that there were
15 questions on the deductible. So when it got to mine, I
16 wasn't clear. It wasn't clear to me on if there should
17 be one deductible or two so that's when I went and
18 asked.

19 Q. And who did you ask?

20 A. I went to the person over the LUST unit,
21 which was Doug Oakley.

22 Q. And what did he say?

23 A. And in a conversation with him, we decided
24 that I should go talk to Harry Chappel. And so I

1 walked over to Harry Chappel and talked about the
2 claim, and I showed it to him. And he made the
3 decision that it was apparent that there should be two
4 deductibles.

5 Q. At that time, were you aware that J. Gaydosh
6 and Eric Ports had previously had opinions on that
7 question?

8 A. I'd never seen J. Gaydosh's name on any
9 information that I had in front of me, but I did see
10 Eric Ports' name. And I seen what he had written --
11 handwritten. And then there was, I think, Eric's
12 decision in there.

13 And it seemed like there was something else
14 in there that just triggers that and they never did
15 come out and say yes, there should be -- yes, there
16 should be one deductible or yes, there should be two
17 deductibles. That's why I was unclear because we don't
18 make decisions like that in our unit at all.

19 Q. So whatever the decision was, that's fine;
20 but it was not up to you to make it? And whatever
21 Oakley said -- Fine, we'll apply one deductible -- that
22 would be fine with you?

23 A. Yes.

24 Q. So he sent you to Harry Chappel?

1 A. Yes.

2 Q. Did Harry give you a final answer or did he
3 tell you to go talk to Mr. Kuhlman?

4 A. He gave me an answer right then and there.
5 But I think when they sent -- after I had made my final
6 decision, they re-sent in information and they had
7 asked to look at that deductible again.

8 They asked, in other words, to re-review the
9 claim, the deductions. They had asked to look at that
10 again. So I went, again, to Doug and he called Harry.
11 And I think at that time Harry and Eric had talked, and
12 they had both come to the same decision.

13 Q. And when you say "Harry," you mean -- I'm
14 sorry. When you say "Eric," you mean Eric Kuhlman, not
15 Eric Ports?

16 A. Yes, because Eric Ports is no longer in it.

17 Q. No longer where?

18 A. No longer in the LUST section.

19 Q. Do you have any knowledge as to why this
20 claim was submitted under the '95 number?

21 A. No.

22 Q. And by "this claim," I mean this
23 reimbursement application.

24 A. No. I just go by the information that is

1 sent to me.

2 Q. So I think we can move on from the deductible
3 because you didn't have anything to do with that,
4 right?

5 A. Right. Correct.

6 Q. Then the next issue we're going to have is
7 the handling charge, and you've heard that?

8 A. Yes.

9 Q. That is your decision, correct?

10 A. Yes.

11 Q. Tell me what documents you had in front of
12 you to determine whether the handling charge was
13 included in the budget and was an appropriate item for
14 reimbursement.

15 A. I had the claim that they had submitted to me
16 to review for reimbursement.

17 Q. Is that in anything else? Where did you get
18 the budget? How did you know it was not included in
19 the budget?

20 A. Well, we have a copy of all the letters. We
21 get copies of the letters stating this has been
22 approved. We get the same copies that they sent out to
23 their clients saying what has been approved, what has
24 not been approved, and then we go by those letters,

1 what's been approved and what's not been approved.

2 Q. So before a reimbursement application even
3 gets sent in, your office already has a file on the
4 site; is that correct?

5 A. No, not totally.

6 Q. Well, explain it then.

7 A. We have a copy of the State Fire Marshal's
8 eligibility.

9 Q. You get that?

10 A. First.

11 Q. You get that before there is even -- that
12 just automatically comes to you?

13 A. Sometimes, yes.

14 Q. So you open a file for this eligibility
15 letter for this site, and now you got a file started;
16 is that right?

17 A. We get the eligibility -- it is filed in a
18 different place than the regular file. The file, it's
19 not really active, I guess I should say, until we
20 receive a claim from the owner-operator. And then
21 that's when we go to our file and pull the eligibility
22 to see if the tanks are eligible, you know, if theirs
23 agrees with ours. And that's where it kind of all
24 starts.

1 Q. So you end up with actually two files,
2 basically?

3 A. More or less.

4 Q. So you got the Fire Marshal file. But still,
5 I guess I'm wondering, how do you get ahold of the
6 budget?

7 A. When the State Fire Marshal's letter comes
8 in -- we could get that years before we even get a
9 claim -- it's filed in a place. And then when we get a
10 claim in, there is another girl that goes and pulls the
11 Fire Marshal's letter. And then it's created, a
12 separate file; then it has just one file there.

13 Q. Then it becomes an active file?

14 A. Yes, and that's when it's put on the list to
15 be reviewed.

16 Q. When, though -- going back to the budget
17 approvals and your carbon copy on those things, when do
18 those get put in, as they're sent out?

19 A. Yes.

20 Q. And when do the Marshal's things get an
21 actual file, not until you get a claim?

22 A. I'm not sure. But none of that exists until
23 we get a claim. A lot of the times the letters, they
24 include them in the claim.

1 Q. And the budget to show that it was approved

2 or --

3 A. Yes.

4 Q. And not always?

5 A. Not always.

6 Q. And that's not a requirement?

7 A. No.

8 Q. So now with specific reference to the

9 Swift-T-Food Mart, was the budget included with the
10 reimbursement application, or did you investigate to
11 get that from an internal source?

12 MR. KIM: I'm going to object to the extent that
13 if she sees the application itself, maybe she can
14 answer it better.

15 BY MR. HEDINGER:

16 Q. Certainly, I am not trying to keep anything
17 from you. I'm just trying to find out what all, to the
18 best of your recollection, was in front of you before I
19 give you the report, if we could, because I want to see
20 if you know.

21 A. From what I recall, I think the letters were
22 enclosed, the budget letters were enclosed in the
23 package that were approved up to that date.

24 Q. Now, did you -- and, you know, here is the

1 broader place I was going to go with that: Do you ever
2 look at, like, the CAP itself?

3 A. No.

4 Q. So what documents are relevant to your work
5 in reviewing a reimbursement package?

6 A. The line item, dollar figures, and --

7 Q. That is for the budget?

8 A. That is off the budget that has been approved
9 and the documentation that they sent in to back that
10 up.

11 Q. Okay. And just in terms of overall process,
12 if there is technical questions relevant to whether a
13 cost is reimbursable for some reason, you send that to
14 the technical people to review, correct?

15 A. On certain things.

16 Q. Like, for instance...

17 A. I can make calls on certain things myself.

18 Q. What things would you make the call on?

19 A. Example, handling charges.

20 Q. Is that across the board? Do you decide all
21 handling charges?

22 A. No.

23 Q. When do you not decide the handling charge
24 issue?

1 A. We always look at the handling charge to
2 check for math errors, lots of math errors in figuring
3 handling charges and reasonableness. And we can make
4 those decisions on our own and the LCU unit.

5 Q. And the reasonableness is just based on the
6 numbers that are in the statute, correct?

7 A. Sometimes, not always. There could be other
8 reasons that handling charges are looked at.

9 Q. Okay. Well, at this time I'm just going to
10 take and give you the entire record here, but that
11 means I'm going to have to go over there with you
12 because this is the only copy I have.

13 And you've already looked at pages 1 through
14 3 that was your final decision letter. So now pages 3
15 through the end of the record, can you tell me, first
16 off, what is this on top?

17 A. This is our payment summary sheet, and it
18 basically states how much they're requesting, the
19 deduction and the amount due.

20 Q. And you filled this document out for this
21 particular claim, right?

22 A. Yes. Pages 3 through 12 are documents that I
23 printed off that we use internally for just different
24 information for various reasons, dates.

1 Q. Just the place where you keep that and jot
2 down that information?

3 A. Yes.

4 Q. So this page 3 is dated 3/3/03. Is that the
5 day then --that's the date of your final decision,
6 right?

7 A. That's the date that I give it to our clerks
8 to be mailed out.

9 Q. Okay. But you had done your analysis before
10 that?

11 A. Yes. This was when it leaves my hands.

12 Q. The 3/3/03?

13 A. Yes.

14 Q. So let me quickly take a look at these pages,
15 4 through 12. Okay. On page 4, the summary that's
16 included there includes a deductible applied to this
17 particular package. And again, we're looking at
18 Incident number 95-1716, right?

19 A. Right.

20 Q. And you've determined as of the time you
21 wrote this that a \$10,000 deductible should be applied?

22 A. Just because it's here doesn't mean that it
23 can't be changed later, because we fill out all this
24 information out as soon as we receive the document.

1 And a lot of times if the deductible is different, we
2 find out as we're reviewing the claim. We go back and
3 change it. But according to this, yes, this was right.

4 Q. But as a starting point?

5 A. Yes.

6 Q. Then the next page, on page 5 there is a
7 discussion of that deductible, correct?

8 A. Correct.

9 Q. Is that your work?

10 A. Yes.

11 Q. So you type all that stuff in?

12 A. Yes.

13 Q. And maybe about a third of the way down,
14 there is a line that says per Harry Chappel. And
15 that's that conversation you described earlier,
16 correct?

17 A. Correct.

18 Q. Now, also at this point, just under that, it
19 says cut 13,808.86 handling charges, right?

20 A. Yes.

21 Q. And so as of the time that you wrote this,
22 you had already reviewed the file enough to determine
23 that those handling charges should be cut?

24 A. Right.

1 Q. So was this done pretty late in your analysis
2 of this file?

3 A. Yes.

4 Q. So you're just about to do the final decision
5 here?

6 A. Yes, right.

7 Q. The next page is No. 6. And it's got what's
8 called approved LUST budget slash billing tracking
9 summary, right?

10 A. Yes.

11 Q. Who fills in the blank on this document?

12 A. Whoever picks up the claim.

13 Q. So you did this particular one?

14 A. Yes. This, yes. These are the budgets.

15 Q. The top box is the budget?

16 A. Yes. And it has the dates that they were
17 sent in at the approved letter dates.

18 Q. And then the second item is the amount that
19 they are asking for?

20 A. Yes.

21 Q. And so the idea is you can easily compare?

22 A. This gives us the cumulative total so we get
23 a running total, and so this is what we go by if they
24 are over budget or whatever.

1 Q. And this is on your actual computer system?

2 A. Yes. This is our tracking.

3 Q. So the next person who gets a Swift-T-Food
4 Mart package will open this up and add their numbers to
5 your numbers, right?

6 A. Correct.

7 Q. And again, the information on that chart
8 about the approved budget, that comes to your office as
9 budgets are approved; is that correct?

10 A. Yes.

11 Q. Does it get inputted into this form as the
12 budget is approved?

13 A. No.

14 Q. So when you get a new file, it's up to you as
15 a reviewer to look and make sure that you've got all of
16 the budget amendments --

17 A. Yes.

18 Q. -- that have been reviewed since the last
19 time the file was fiscal --

20 A. Yes.

21 Q. -- and add that to the chart, and it's ready
22 for the next one?

23 A. Correct.

24 Q. Page 11, these are your handwritten notes in

1 your adding machine tape?

2 A. Yes.

3 Q. And again, it's my interpretation of this
4 that, among other things here, you are adding up the
5 handling charges that, you were of the view, should be
6 cut. Is that what this is?

7 A. Yes.

8 Q. Now, page 13, what is that?

9 A. This is a cover sheet that we get on a claim
10 as we receive them.

11 Q. So page 13 is your own --

12 A. Internal.

13 Q. -- internal page that should be attached
14 to --

15 A. A track sheet.

16 Q. So when a LUST claim comes into your office,
17 the clerk staples this page to the top of it, and you
18 start filling in the blanks?

19 A. No. This is all filled in. This is all
20 done. I do nothing of this.

21 Q. Is that filled in by the owner-operator?

22 A. No. I'm not sure who fills in the top part,
23 but I would assume one of the clerical people.

24 Q. In your office?

1 A. Yes.

2 Q. So by the time it ends up in your hands, the
3 top part of this form is all filled out with basic
4 information on the site and the claim and those sorts
5 of things?

6 A. Correct.

7 Q. Now, then, the second half of this page has
8 information about both of these incident numbers. Do
9 you know who wrote that on there?

10 A. Not really, but I'm assuming Victoria.

11 Q. Who is your input clerk?

12 A. Yes. And she takes the information. And
13 when she puts it in our system, a lot of times it will
14 pop up that there are two incident numbers to a
15 specific site. And then when it brings it to her
16 attention, she writes them down and asks Doug Oakley
17 which number we should go with.

18 Q. So let's start with first Victoria's
19 handwriting here. There are two categories. One for
20 the '95 incident and one for the '96. Then it says
21 three claims under both of those. What does that line
22 mean?

23 A. There has been three claims sent in.

24 Q. With respect to that incident number?

1 A. To be reviewed.

2 Q. And that applies to the incident number that
3 it's underneath?

4 A. Yes, it should.

5 Q. So according to this, there were three claims
6 previously made in the '95 incident number and three
7 claims in the '96 incident --

8 A. Correct.

9 Q. And number two, RIE. What does that mean?

10 A. Returned ineligible.

11 Q. So of the three, two of them were returned
12 ineligible; is that right?

13 A. Yes.

14 Q. So apparently, is this accurate, that by
15 looking at this document, would I assume that if you
16 combine those incident numbers there was a total of six
17 claims made for this site and four of those were
18 returned as ineligible?

19 A. Yes.

20 Q. And the one for the '95 incident, it says one
21 DED. What does that mean?

22 A. I've got it written down over there, but I
23 think it means --

24 Q. Well, if you need some notes --

1 A. I think it means deductible denied.
2 Can I bring this up here?
3 Q. Sure.
4 A. This is just the record.
5 Q. Your copy of the record?
6 A. Yes.
7 Q. Page 13?
8 A. DED means deductible has not been met.
9 Q. So this one says 1 dash DED, and you
10 determined that that means deductible not met?
11 A. Right.
12 Q. The '96 number says 1 dash, I think, VOP.
13 A. That means the voucher has been paid. One
14 claim has been paid.
15 Q. Now, behind the '96 number, it says 10,000
16 coma PD. So that means 10,000 deductible has been paid
17 for the '96. And for '95, it says 10,000 and --
18 A. Right.
19 Q. So is that why you're determining DED,
20 deductible not met?
21 A. Right.
22 Q. Because you had to look at your notes to know
23 that, so this apparently isn't standard procedure.
24 A. Yeah, it is. But we have so many of them,

1 the initials mean different things, and I have to look
2 them up to see what exactly the words were.

3 Q. Is there a chart or something that you're
4 given?

5 A. Yeah, you can get it on the internet.

6 Q. So this is just the same shorthand that you
7 use on the internet?

8 A. Uh-huh.

9 Q. Okay. So finally then, there is a little
10 handwritten note next to that with an arrow. It says
11 Vickie, let's use this number, DEO.

12 A. Yes.

13 Q. Vickie is Victoria?

14 A. Yes.

15 Q. And DEO is Doug Oakley?

16 A. Right.

17 Q. And he's got an arrow pointing to '95, right?

18 A. Yes.

19 Q. Now, the reimbursement application, when it
20 came in, actually had both incident numbers written on
21 it, correct?

22 A. Yes.

23 Q. What does it mean, "Vickie, let's use this
24 number"? Does it mean that you're going to consider

1 this reimbursement package for the '95 number, or does
2 it mean something else?

3 A. No. That means that we should use this
4 number in our area.

5 Q. So when you are reviewing this and analyzing
6 it, whether or not for deductibles or any other
7 relevant matters, you would use the '95 number?

8 A. Yes.

9 Q. And not for this site, but for other sites,
10 that might even make a difference in what law you apply
11 depending on what year the incident the numbers
12 occurred?

13 A. What law?

14 Q. Well, I mean, if this was an 88 number and a
15 '95 number, you would have a choice between two
16 different relevant laws, wouldn't you? If you apply an
17 88 number, wouldn't it be an old law site?

18 A. Yes.

19 Q. But that didn't apply here.

20 A. No.

21 Q. Here the only real relevance was with respect
22 with the deductible, right?

23 A. Yes.

24 Q. As far as you're aware of?

1 A. This basically tells me to use the '95 number
2 and then I go on. This just tells me what number to
3 use, that he made that decision for me.

4 Q. Doug Oakley, do you know why he made that
5 discussion?

6 A. I have no idea.

7 Q. Then after that in the record, page 14 is the
8 budget application for this site, right?

9 A. Yes.

10 Q. The one that's under consideration in this
11 case, right?

12 A. Yes.

13 Q. Now, can you flip through what you've got
14 there? And you've got a complete copy of the record in
15 front of you, right?

16 A. Yes.

17 Q. Can you tell me, was all of that that's left
18 there, at least all of that, back to page 77 -- so
19 pages 14 to 76, is that all of what was submitted to
20 you or what you had in your hand in reviewing this
21 particular reimbursement application?

22 A. Back to 77?

23 Q. Well, tell me what. I was guessing maybe it
24 ended at 76, but if the rest of it was in there, too,

1 let me know.

2 A. I'm not sure. I'm not sure. These could
3 have been in it. I'm not sure.

4 Q. When you say "these," you're pointing to
5 pages 77 to the end of the report?

6 A. Yes, sir.

7 Q. But you have in your hand up to 76 that
8 you're certain was part of what was submitted?

9 A. Yes.

10 Q. Was there anything else? Did you look at any
11 other part of the record?

12 A. Any other part of the record?

13 Q. Any other part of the file in this case, the
14 file having to do with technical issues.

15 A. If you're meaning did I go look at the
16 technical file, no, I did not.

17 Q. Find 17 and 18. Okay. I'm going to show you
18 what has been marked as Respondent's Exhibit 17.

19 Did you have that when you were doing your
20 review?

21 A. No.

22 Q. Have you ever seen that before?

23 A. No.

24 Q. So sitting here right now is the first time

1 you've seen that letter?

2 A. Yes.

3 Q. What about Respondent's Exhibit 18, did you
4 have that in front of you?

5 A. Yes.

6 Q. You did have 18?

7 A. Yes. If I remember right, it had a different
8 date.

9 Q. Well, try looking at page 82 of the record.
10 When you said you thought it had a different date, is
11 that the one you were thinking of?

12 A. Yes.

13 Q. So you remember seeing what's at page 82 in
14 the record?

15 A. Yes.

16 Q. Now, Exhibit 18, the cover letter, aside from
17 being dated differently, it has different information
18 in it, doesn't it?

19 A. Yes.

20 Q. Now, as you sit here today, do you know
21 whether you've seen this Exhibit 18 before?

22 A. No. I mean, no, I did not see this one.

23 Q. You know you did not see 18?

24 A. Yes. This is the one I seen.

1 Q. Now you're looking at page 82 of the record?

2 A. If you look at my notes on page 89 --

3 Q. Of the record?

4 A. Yes.

5 Q. And that page tells us everything that you
6 looked at?

7 A. Yes. Date, and this date is the same.

8 Q. This date, 8/7/02 and 6/12/02 are the same
9 budget?

10 A. Yes.

11 Q. Okay. Hold that page for a second. And
12 that's page 12, for the record.

13 A. Nine.

14 Q. So 6/12/02 review letter sent, in your
15 general events, under last item, do you see where I'm
16 at?

17 A. Yes.

18 Q. 6/12/02 review letter sent, and then you
19 wrote in handwriting this is in addition to proposed
20 budget.

21 A. Yes, to the one that was approved.

22 Q. And then down at the bottom, the bottom box,
23 the title 16 events box next to last entry, it says
24 high priority corrective action plan BU -- and I assume

1 that's budget?

2 A. Right.

3 Q. (Continuing.) -- received 5/23/02. Response
4 due 9/20/02. Decision approved and mailed 7/6/02. And
5 then you put a question mark there?

6 A. Yes.

7 Q. And then there is another line that says
8 budget 6/12/02 and another line to that box. What do
9 those markings mean?

10 A. This is what we go by to get our dates on the
11 budgets being approved and --

12 Q. Well, let me stop there. Who fills in the
13 information on this form?

14 A. It's done in the technical section.

15 Q. So page 9 is done in the technical section,
16 and that informs you of everything that's in there that
17 they've looked at?

18 A. Yes.

19 Q. So continue. What do these markings mean?

20 A. So this 8/7/02 had a question mark because I
21 could not find that letter anywhere. So the 6/12/02
22 budget, it was referring to this letter up here, and it
23 all connected. When I went and got this, it was the
24 same as --

1 Q. When you went and got what?

2 A. I went and looked -- Well, on page 82, the
3 June 12, 2002 date and this was a review letter. And
4 so this letter was the --

5 Q. June 12 letter was the same?

6 A. Yes, as...

7 Q. We sort of lost track of the question here.
8 Let me ask you. I think we're saying that the 6/12/02
9 letter is the same as the 8/7/02 letter.

10 A. I guess somewhere along the line, I don't
11 know if he ended up seeing it or what. I don't
12 remember at this point. I don't know.

13 Q. For some reason you became --

14 A. It became apparent to me that these were the
15 same budget but it was just different dates.

16 Q. Now, the copy of the record that you're
17 looking at, it has a sticky note there that says
18 6/12/02 and 8/7/02 are same. Do you know when you
19 wrote that sticky note?

20 A. Just a day or two ago.

21 Q. So it's not that that you're relying on to
22 decide this?

23 A. No, no. No.

24 Q. But, of course, reading the front page of the

1 August 7, 2002 letter in comparing that to the June 12
2 letter, they're not the same, are they? They are
3 referring to different things?

4 A. Well, I don't look at this.

5 Q. You don't look at the body of the letter?
6 You look at Attachment A?

7 A. Yes, Attachment A. And the bottom line is I
8 don't care, really, what they say here as long as the
9 budget --

10 Q. Whatever the budget says?

11 A. Whatever the budget says, that's what I'm
12 looking for at the time, what they've approved, what
13 the cumulative totals are; and then I go back and check
14 our records. And if they agree, then I go forward.

15 Q. I'm going to show you what's been marked as
16 Exhibit 19. Have you ever seen that before? And this
17 I don't believe has any direct relevance to the two
18 issues that we're here for today, but this does
19 pre-date the final decision. So I was wondering
20 whether you had seen that.

21 A. No.

22 Q. You've never seen that one before?

23 A. No. Just this letter, or all the documents
24 behind it?

1 Q. Well, either -- I mean, some of those
2 documents were included with the reimbursement request;
3 is that correct?

4 A. Yes. Yeah, this letter was included.

5 Q. And you had the Fire Marshal reports. Did
6 you look at the Fire Marshal reports?

7 A. Yes.

8 Q. But the cover letter you've never seen
9 before?

10 A. No.

11 Q. Turn to page 16 of the record, please.

12 Are you with me?

13 A. Yes.

14 Q. The copy I've got has some dark numbers that
15 were filled in, and then some of those numbers are
16 slashed through and in a lighter colored ink and other
17 numbers written in there.

18 A. Correct.

19 Q. Now, the dark colored numbers were what was
20 submitted by Swif-T-Food Mart, right?

21 A. Correct.

22 Q. And the slash and the other numbers were
23 handwritten by you, right?

24 A. Correct.

1 Q. Where it says no H slash GE approved, that
2 means no handling charge approved?

3 A. Correct.

4 Q. And that's why you're cutting -- I'm looking
5 at paragraph two of that page, Item No. 5, field
6 purchases and other costs. You had reduced that to
7 150,000.12.

8 A. Correct.

9 Q. Cutting 13,808.86?

10 A. Correct.

11 Q. And the reason is no handling charge
12 approved?

13 A. Correct.

14 Q. Go ahead.

15 A. That is what is written there. That is one
16 reason why it was cut, not the only reason.

17 Q. Well, that was the point I was going to get
18 to. So let's get to it now. Look through pages 1
19 through 3 of the record and particularly page 3. The
20 very last paragraph on that page states what the
21 reasons were, right?

22 A. Correct.

23 Q. And again, that's your work product. You
24 wrote that?

1 A. Yes.

2 Q. Yes?

3 A. Yes.

4 Q. So deduction of 13,808.86 costs from
5 Peter J. Hartmann Company invoices for the percentage
6 markups slash handling charge, period, there cannot be
7 a percentage markup and a handling charge both
8 requested, and there has not been any handling charges
9 approved in the budget period, right?

10 A. Right.

11 Q. Now, the second part of that we've been sort
12 of talking about, the budget, and whether it was
13 approved, right?

14 A. Uh-huh.

15 Q. Can you explain for me what the first part of
16 that means, there cannot be a percentage markup and a
17 handling charge both requested?

18 A. Yes. That's because it was deducted for
19 unreasonableness, and that is why -- I explained why.
20 It's because both the prime contractor and
21 subcontractors cannot both receive handling charges.

22 Q. And where is that rule from?

23 A. I don't know that it's a rule. It's just the
24 agency policy -- or I don't know if that's the word I

1 want to use. It's just not allowed. It's kind of like
2 double-dipping.

3 Q. Now, is it your belief that the prime
4 contractor here is AES Consulting?

5 A. Yes.

6 Q. And is it your belief then that they were
7 getting a handling charge for the same items that
8 Hartmann was charging a handling charge for?

9 A. They were, yes. If you would look at
10 Hartmann invoices --

11 Q. Please show me in the record where that can
12 be found.

13 A. Page 32, page 45, and page 53.

14 Q. 32, 45, and 53?

15 A. Yes. Then if you go back and look at
16 page 11, my notes on those invoices are written in
17 my -- it's handwritten there with the handling charges
18 out to the side, that they had charged on the first
19 invoice, which is 96-12024, dated 5/23/96 -- they
20 charged 15 percent markup on page 32.

21 And on 45, invoice number 96-12022, dated
22 5/2/96, they charged 15 percent markup. And on invoice
23 96-120223, dated 4/18/96, they charged a 12 percent
24 markup; and that is page 53. And these are all

1 Hartmann invoices.

2 And I have written those markups out to the
3 side on page 11 in my handwriting the total, the
4 \$13,808.86 and then on the agency form where they
5 figure handling charges, which is on page 62.

6 The total of all the Peter Hartmann invoices
7 total that \$158,208.85. That 13,808.86 is included in
8 that total. So they've included it in that total and
9 then charged another handling charge on top of it.

10 Q. What is your understanding of the purpose for
11 charging a handling charge? Why is it that we let
12 anybody charge a handling charge?

13 A. I don't really know what they're purpose -- I
14 mean, I'm assuming that it's --

15 Q. I'm asking: Why does the legislature?
16 Because handling charges are specifically allowed in
17 the statute, right?

18 A. Correct, but not 15 percent either.

19 Q. So it was too high?

20 A. Right.

21 Q. But what is the purpose of a handling charge?
22 Why would the legislature think the handling charge is
23 something that could be reimbursed?

24 MR. KIM: I'm going to object.

1 HEARING OFFICER HALLORAN: Sustained.

2 BY MR. HEDINGER:

3 Q. Your letter doesn't say anything -- I'm again
4 looking at page 3 of the record, the last paragraph.
5 It doesn't say anything about the handling charge being
6 too high, does it?

7 A. No, but that wasn't necessary to make that
8 statement at the time, because it shouldn't be allowed,
9 period.

10 Q. Because there cannot be a percentage markup
11 and a handling charge both; is that why?

12 A. We consider there is a prime contractor, he
13 should get the handling charge. And it should take
14 care of nobody -- I mean, we feel that there is only
15 one prime contractor. The rest are subcontractors.
16 And only one, the prime contractor, should get the
17 handling charge.

18 Q. And that's the reason why you said that in
19 the last paragraph on page 3 of the record?

20 A. That was an informational -- Yes, to tell
21 him -- to tell them that both cannot receive it, just
22 one.

23 Q. So, I guess I understand.

24 And again, when you say that there cannot be

1 a percentage markup and a handling charge both, that is
2 because of your unit's policy or the way you do
3 business?

4 A. Yes.

5 Q. And you said you were a little uncomfortable
6 calling it a policy; is that right?

7 A. Well, I don't know if it's written in the
8 policy. That's how I was trained.

9 Q. That's how you were trained, but there is
10 nothing in writing that you could think of that
11 requires it?

12 A. Well, there might be, but I don't recall it
13 offhand.

14 Q. Okay. Well, let's go back to the budget
15 aspect of that then. I guess the only other thing I
16 want to ask you on the record here is on page -- Turn
17 to page 32. You had it out a minute ago, I think.

18 And again, we have some typed-in numbers, and
19 then there are some handwritten numbers underneath
20 those. Do you see where I'm looking?

21 A. Yes.

22 Q. And the handwritten stuff is your work
23 product, right?

24 A. Yes.

1 Q. And it's no surprise there the 38,173.70 is
2 just adding up all the numbers in that column?

3 A. Yes.

4 Q. And the 5,726.06 is adding up all those
5 15 percent charges, right?

6 A. Yes.

7 Q. The very last page of the record, which I
8 guess is 84, this is the June 12th letter that you had?

9 A. Yes.

10 Q. And that does say that the budget had
11 approved \$229,800 for field purchases and other costs,
12 correct?

13 A. Right.

14 Q. And the budget or the reimbursement
15 application that you reviewed, they asked for less than
16 that amount for the line item of field purchases and
17 other costs, right?

18 A. Yes.

19 Q. Where is it in that record that you can look
20 through to see what it is that they asked for?

21 A. On page 16.

22 Q. Field purchases and other costs, yeah,
23 instead of whatever that was they asked for 163,808?

24 A. Correct.

1 Q. Now, when you say that you reviewed the
2 budgets that were approved, did you review the budget
3 approval letters like the one that's at page 83 and 84
4 of the record, or did you review the proposed budget
5 sheet that the owner-operator sent in or both or
6 something else?

7 A. I don't review any budgets. What do you mean
8 by "review," I mean.

9 Q. Look at, have in front of you when you make
10 your decision, consider.

11 A. Yes, I looked at the letter itself.

12 Q. June 12th letter?

13 A. I don't look at the actual documents that
14 make up what's in here.

15 Q. So you've never looked at, for instance,
16 what's in the record as Exhibit 11, right?

17 A. Correct.

18 Q. So you have no idea --

19 A. Eric makes his decision on those. I make my
20 decision on --

21 Q. Based on Eric's letter?

22 A. Yes.

23 Q. When you get a reimbursement application in,
24 do you check to see if there are any budget amendments

1 pending in the technical office?

2 A. Yes, I'd seen that. Plus they had been
3 handwritten in here at the bottom, whoever filled out
4 this.

5 Q. Where are you looking now?

6 A. On page 16, they had pending Eric Kuhlman's
7 review. Well that, to me, just means that Eric hasn't
8 reviewed it yet. So I can't sit and wait, so I make my
9 decision. Then they know that they're probably going
10 to get deductions on that because it's not been
11 approved yet. So I make my final decision.

12 Then, if and when it does get approved, all
13 they have to do is ask for re-review of those costs
14 that have been approved now in letter form or whatever,
15 and then I will re-look at those and they can possibly
16 get reimbursed.

17 Q. That's not an unusual thing to happen?

18 A. No. It happens all the time.

19 Q. So with respect to pages 32, 45, and 53 of
20 the record, those are the pages that you were looking
21 at that showed that Hartmann had paid the handling
22 charge, right?

23 A. Correct.

24 Q. And looking at those, is it your

1 understanding that Hartmann paid -- For instance,
2 looking at page 32, we've got several items here
3 describing additional changes for removal of
4 contaminated soils, sewer repairs, backfilling and
5 sewer plumbing.

6 There is an amount there, markup material
7 invoice amount, and markup vehicle invoice, Lindahl
8 invoice. All of those have amounts and markups.
9 Looking at that, is it your understanding that Hartmann
10 paid those subcontractors those amounts and so is now
11 seeking the total amount from the owner-operator or
12 from the prime contractor?

13 A. I would assume, but I don't know for sure.

14 Q. You have no reason to disbelieve that that
15 happened though, right?

16 A. No.

17 Q. And the same, I assume, would be true of the
18 items on pages 45 and 53 of the record?

19 A. Yes.

20 MR. HEDINGER: I think that's all the questions I
21 have. Thank you.

22 HEARING OFFICER HALLORAN: Ms. Weller, do you need
23 a two-minute break?

24 MR. KIM: I will need all of a minute and three --

1 HEARING OFFICER HALLORAN: Go.

2 CROSS - EXAMINATION

3 by Mr. Kim

4 Q. Could you look at page 6 of the
5 administrative record?

6 A. Okay.

7 Q. What is the line item amount shown on that
8 document as being approved for handling charges as of
9 the date of your decision?

10 A. Zero.

11 Q. So as of the date of your decision, based on
12 your review, were there any approvals for handling
13 charges for this site?

14 A. No.

15 MR. KIM: That's all I have.

16 HEARING OFFICER HALLORAN: Thank you.

17 Mr. Hedinger?

18 MR. HEDINGER: Nothing.

19 HEARING OFFICER HALLORAN: Thank you. You may
20 step down, Ms. Weller.

21 We'll go off the record for a second.

22 (Discussion off the record.)

23 HEARING OFFICER HALLORAN: We're back on the
24 record.

1 Mr. Hedinger, it's still your case in chief.

2 MR. HEDINGER: Yes. I have no further witnesses,
3 and we will rest.

4 HEARING OFFICER HALLORAN: Thank you.

5 Mr. Kim?

6 MR. KIM: Nothing further.

7 HEARING OFFICER HALLORAN: Thank you. Before I
8 forget, I'm supposed to, I believe, if not out of
9 habit, make a credibility determination regarding the
10 witnesses. And based on my legal experience and
11 judgment, I find that there are no credibility issues
12 with the witnesses that testified here today, both of
13 them.

14 With that said, Mr. Hedinger would you like
15 to give a closing argument?

16 MR. HEDINGER: I would reserve for briefs

17 HEARING OFFICER HALLORAN: Thank you.

18 Mr. Kim?

19 MR. KIM: I would also waive closing argument.

20 HEARING OFFICER HALLORAN: And off the record we
21 were talking about post-hearing briefing schedules.
22 And by agreement, the petitioner's opening post-hearing
23 brief is due on or before March -- excuse me --
24 March 16th. The respondent's opening brief response is

1 due April 6, 2004, and -- did I say 2003 for March 16
2 -- anyway March 16, 2004, and April 6, 2004, and April
3 20th for reply for petitioner, if any.

4 And it is agreed that no-mailbox rule will
5 apply to the reply brief; is that correct? So in other
6 words, it will have to be in my hands or in the Board
7 clerk's hands by April, by April 20th. So it will have
8 to be overnighted on April 19th if the petitioner sees
9 fit.

10 In any event, if there are no other questions
11 or issues --

12 MR. HEDINGER: Did you say public comment? Public
13 comment I've marked for March 11, public comment. Do
14 you on or about March 11, 2004.

15 MR. HEDINGER: About the transcript.

16 HEARING OFFICER HALLORAN: The transcript. Based
17 on our post-hearing briefing schedule, we assume the
18 transcript will be ready on our website by February
19 23rd.

20 And just housekeeping, Mr. Kim has just
21 provided me with Respondent's Exhibits 1 through 19,
22 which have already been admitted into evidence.

23 Anything else that I forgot?

24 MR. HEDINGER: That's all I have.

1 HEARING OFFICER HALLORAN: As usual thanks for
2 your civility and professionalism and have a safe trip
3 home back to Springfield or wherever. Thank you very
4 much.

5 (Whereupon, no further proceedings
6 were held in the above-entitled
7 cause.)

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF C O O K)

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4 I, Bonnie Lindsey, a notary public, within
5 and for the County of Cook and State of Illinois, do
6 hereby certify that heretofore, to-wit, on the 11th day
7 of February, A.D., 2004, personally appeared before me
8 at 118 West Cook Road, in the City of Libertyville,
9 County of Lake and State of Illinois, the transcript of
10 proceedings were called by the Illinois Pollution
11 Control Board in a certain cause now pending and
12 undetermined before the Illinois Environmental
13 Protection Agency, wherein Swif-T-Food Mart is the
14 petitioner and the Illinois Environmental Protection
15 Agency is the respondent.

16 I further certify that the said witnesses
17 were by me first duly sworn to testify the truth, the
18 whole truth and nothing but the truth in the cause
19 aforesaid; that the testimony then given by them was by
20 me reduced to writing by means of shorthand in the
21 presence of said witness and afterwards transcribed
22 upon a computer, and the foregoing is a true and
23 correct transcript of the testimony so given by them as
24 aforesaid.

1 I further certify that the reading and
2 signing of said proceedings will be presented to the
3 Illinois Pollution Control Board for review and
4 deliberations.

5 I further certify that the taking of the
6 proceedings were pursuant to notice to the public, and
7 that there were present at the taking of the
8 proceedings were the aforementioned parties.

9 I further certify that I am not counsel for
10 nor in any way related to any of the parties to this
11 suit, nor am I in any way interested in the outcome
12 thereof.

13 In testimony whereof I have hereunto set my
14 hand and affixed my notarial seal this 23rd day of
15 February, A.D., 2004.

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21

BONNIE LINDSEY, CSR, RPR.

22

Notary Public, Cook County, IL

23

Illinois License No. 084-003946

24

