

ILLINOIS POLLUTION CONTROL BOARD  
APRIL 10, 2014

ESTATE OF GERALD D.	)	
SLIGHTOM,	)	
	)	
Petitioner,	)	
	)	No. PCB 11-25
vs	)	(UST Appeal)
	)	
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

REPORT OF THE PROCEEDINGS had at the hearing on a motion of the above-entitled cause before the Honorable CAROL WEBB, Hearing Officer, Illinois Pollution Control Board, 1021 North Grand Avenue East, Springfield, Illinois, on the 10th day of April, 2014, at the hour of 9:31 a.m.

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

2 MOHAN, ALEWELT, PRILLAMAN & ADAMI  
3 BY: MR. PATRICK D. SHAW  
4 1 North Old Capitol Plaza  
5 Suite 325  
6 Springfield, Illinois 62701  
7 (217) 528-2517

8 Appeared on behalf of the Petitioner;

9 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
10 BY: MS. MELANIE JARVIS  
11 1021 North Grand Avenue East  
12 PO Box 19276  
13 Springfield, Illinois 62794  
14 (217) 782-2893

15 Appeared on behalf of the Respondent;

16 REPORTED BY:

17 Steven J. Brickey, CSR  
18 CSR License No. 084-004675  
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1 HEARING OFFICER WEBB: We'll go  
2 ahead and begin. Good morning. My name is Carol  
3 Webb. This is the hearing for PCB 11-25: Estate  
4 of Gerald Slightom versus IEPA. It is April 10th  
5 and we are beginning at 9:30 a.m. Although the  
6 petitioner is located in Macoupin County, there  
7 was no known public interest in this case so I  
8 granted the party's request to hold the hearing in  
9 Springfield. I will note for the record that  
10 there are no members of the public present.  
11 Members of the public are allowed to provide  
12 public comment.

13 This case stems from a  
14 reimbursement claim relating to petitioner's  
15 property at 103 North Third Street in Gerard,  
16 Illinois. The decision deadline is August 21st.  
17 The Pollution Control Board members will make the  
18 final decision in this case. My purpose is to  
19 conduct the hearing in a neutral and orderly  
20 manner so that we have a clear record of the  
21 proceedings.

22 This hearing was noticed  
23 pursuant to the act and the Board's rules and will  
24 be conducted pursuant to Section's 101.600 through

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1 101.632 of the Board's procedural rules. At this  
2 time I will ask the parties to please make their  
3 appearances on the record.

4 MR. SHAW: Patrick Shaw for  
5 petitioner, estate of Gerald Slightom.

6 MS. JARVIS: Melanie Jarvis for the  
7 Illinois Environmental Protection Agency.

8 HEARING OFFICER WEBB: Thank you.  
9 Would the petitioner like to make an opening  
10 statement?

11 MR. SHAW: The petitioner will waive  
12 opening statement.

13 HEARING OFFICER WEBB: Okay.  
14 Ms. Jarvis, would you like to make an opening  
15 statement?

16 MS. JARVIS: Yes, we would. First  
17 of all, we do object to this entire proceeding as  
18 being unnecessary because the case could have been  
19 decided pursuant to the cross motions of summary  
20 judgment that were previously filed in this case.  
21 Further, of course, we object because we've  
22 already resolved the case and gave the petitioner  
23 the money that was sought for.

24 Basically, this is a very simple

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1 case. There is going to be no new information  
2 that I'm aware of that is going to be brought to  
3 light today and, therefore, there really was no  
4 need for this hearing. It is clear per the law  
5 that there is one deductible per site and it is  
6 also clear from the Board's regulations that when  
7 there are two deductibles issued for the same  
8 site, that only one deductible applies.

9                   Now, it is very important to  
10 note that the deductibles go per site, not per  
11 person or per owner. The estate should not stand  
12 in a better position than the decedent. The  
13 estate is a legal fiction that stands in the place  
14 of a decedent and there is no way that the estate  
15 should have a lower deductible than the decedent  
16 did in his lifetime. This case will also show  
17 that there was a mistake made by the Office of the  
18 State Fire Marshall, that when presented with the  
19 information about the tanks at this site the law  
20 clearly states that a \$100,000 deductible should  
21 have applied and the Office of the State Fire  
22 Marshall made a mistake and issued a deductible  
23 for \$10,000.

24                   Once again, we believe that it

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1 is one deductible per site. We have a higher  
2 deductible and the lower deductible -- a higher  
3 deductible and a lower deductible and the higher  
4 deductible applies. Thanks.

5 HEARING OFFICER WEBB: Okay.

6 Petitioner may call its first witness.

7 MR. SHAW: Petitioner would like to  
8 call Shane Thorpe to the stand.

9 HEARING OFFICER WEBB: Okay. Sit  
10 right up here. Would you please swear in the  
11 witness.

12 WHEREUPON:

13 SHANE THORPE  
14 called as a witness herein, having been first duly  
15 sworn, deposeth and saith as follows:

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

17 BY MR. SHAW

18 **Q. Could the witness please state your**  
19 **name for the record?**

20 A. Shane Thorpe.

21 **Q. Mr. Thorpe, what is your current**  
22 **occupation?**

23 A. I'm a senior project manager with  
24 CSD Environmental Services in Springfield.



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1           **Q.           And how long have you held that**  
2 **title or job?**

3           A.           I've spent nine years total with CSD  
4 and approximately 18 years in the field.

5           **Q.           And during this time how much of**  
6 **your work was involving underground storage tanks?**

7           A.           Probably at least 75 percent.

8           **Q.           What is your highest education level**  
9 **you've obtained?**

10          A.           Bachelor of Science in Environmental  
11 Health from Illinois State University.

12          **Q.           When did you first become familiar**  
13 **with the LUST site that I will call the Robinson**  
14 **service station?**

15          A.           We were contacted by the attorney  
16 for the estate in November of 2007.

17          **Q.           What is the attorney's name?**

18          A.           Bill Nicholson.

19          **Q.           What was the nature of his contact?**

20          A.           Well, he had -- the owner of the  
21 property had deceased and so his estate was trying  
22 to clean things up and I guess they knew there  
23 must have been -- they must have known there was  
24 an incident number on the property and they were

1 interested in obtaining a no further remediation  
2 letter provided that they could receive  
3 reimbursement from the fund and that the  
4 deductible was going to be no more than \$15,000.

5 **Q. What were your first**  
6 **responsibilities you took for this client?**

7 A. I looked at the information  
8 available on the EPA's database and the OSFM  
9 database and then did a FOIA request to the Fire  
10 Marshall's Office for their records.

11 MR. SHAW: Could you mark this as  
12 Petitioner's Exhibit 1 for me.

13 HEARING OFFICER WEBB: I can mark  
14 it.

15 (Document marked as Petitioner's  
16 Exhibit No. 1 for  
17 identification.)

18 BY MR. SHAW:

19 **Q. Could you please look at**  
20 **Petitioner's Exhibit 1 for me, please.**

21 A. This is the information I printed  
22 off initially on November 16th of 2007.

23 **Q. Is this information that you looked**  
24 **at for the new client?**

1           A.       Well, they weren't a client yet, but  
2       yes.

3           **Q.       Okay.  What -- in terms of what**  
4       **steps did you take in relationship to the service**  
5       **station before the estate became a client?  What**  
6       **were you doing at that point?**

7           A.       Well, the main issue was to see if  
8       they could get into the fund with a \$15,000  
9       deductible or less.

10          **Q.       And so this Petitioner's Exhibit 1**  
11       **was part of that investigation process?  Am I**  
12       **understanding that correctly?**

13          A.       Yes, I reviewed the agency's  
14       database and then the fire marshall's database as  
15       well.

16          **Q.       What did your review of the EPA's**  
17       **database tell you?**

18          A.       That not a whole lot had been done  
19       there.  There had never been a 45-day report  
20       submitted.  Apparently, I didn't print the claims  
21       page, but there was no evidence that a claim had  
22       been submitted.  So basically it looked like  
23       nothing had been done in accordance with the  
24       regulations.

1           **Q.       And this is a database that is**  
2 **available online to the general public that you**  
3 **were looking at?**

4           A.       Correct.

5                   MR. SHAW: I'd like to have this  
6 marked as Petitioner's Exhibit 2.

7                               (Document marked as Petitioner's  
8                               Exhibit No. 2 for  
9                               identification.)

10 BY MR. SHAW:

11           **Q.       Can you please review Petitioner's**  
12 **Exhibit 2 for me?**

13           A.       This is a FOIA request to the fire  
14 marshall that I submitted on November 19th of  
15 2007.

16                   MR. SHAW: If I can have this marked  
17 as Petitioner's Exhibit 3.

18                               (Document marked as Petitioner's  
19                               Exhibit No. 3 for  
20                               identification.)

21 BY MR. SHAW:

22           **Q.       Can you please review Petitioner's**  
23 **Exhibit 3 for me?**

24           A.       This is the cover letter that came

1 back with the information from the Fire Marshall's  
2 Office from the FOIA request.

3 **Q. And this came with documents**  
4 **enclosed?**

5 A. Correct.

6 **Q. This is just -- I'm just providing**  
7 **you the cover sheet. When you looked at the**  
8 **information you received from the State Fire**  
9 **Marshall, what did that tell you about the**  
10 **deductible and the cost with regards to the LUST**  
11 **program?**

12 A. It appeared to me that there was --  
13 the site would be eligible for the LUST fund with  
14 a \$15,000 deductible.

15 **Q. And that was just from looking at**  
16 **the registration information that was in there?**

17 A. Yes.

18 **Q. Was there any evidence that a**  
19 **deductibility determination had been made**  
20 **previously in that file?**

21 A. No, there was not.

22 **Q. A deductibility determination made**  
23 **previously by the agency?**

24 A. No, there was not.

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1 MR. SHAW: Hearing Officer, will it  
2 be easier if I just mark these myself?

3 HEARING OFFICER WEBB: Sure. That's  
4 fine.

5 BY MR. SHAW:

6 Q. I'm approaching you with something  
7 I've marked as Petitioner's Exhibit 4. Can you  
8 review that for me, please?

9 (Document marked as Petitioner's  
10 Exhibit No. 4 for  
11 identification.)

12 BY THE WITNESS:

13 A. This is a letter from the fire  
14 marshall to the former property owner telling him  
15 that the underground tanks on the property needed  
16 to be registered.

17 BY MR. SHAW:

18 Q. Is this a document that was obtained  
19 through the FOIA from the State Fire Marshall?

20 A. Yes, it was.

21 Q. I'm going to approach you with what  
22 I've marked as Petitioner's Exhibit 5.

23

24

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1 (Document marked as Petitioner's  
2 Exhibit No. 5 for  
3 identification.)

4 BY MR. SHAW:

5 **Q. Do you recognize Petitioner's**  
6 **Exhibit 5?**

7 A. Yes, this is an amended notification  
8 form to the fire marshall stating that the tanks  
9 have been removed.

10 **Q. And where did you obtain this form?**

11 A. This was in the FOIA request as  
12 well.

13 **Q. And I'm going to approach you with**  
14 **what I've marked as Petitioner's Exhibit 6.**

15 (Document marked as Petitioner's  
16 Exhibit No. 6 for  
17 identification.)

18 BY THE WITNESS:

19 A. I believe there was an earlier  
20 version of this form.

21 BY MR. SHAW:

22 **Q. An earlier version of Petitioner's**  
23 **Exhibit 5?**

24 A. Yes.

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1           **Q.       Okay. I think there are -- there**  
2 **may be other forms already in the record as well,**  
3 **but that's one of them, I guess.**

4           A.       Yes, this was not the initial  
5 notification I don't believe.

6           **Q.       Can you identify Petitioner's**  
7 **Exhibit 6 for me, please?**

8           A.       It's a letter from the fire marshall  
9 to the former owner. It says that he has complied  
10 with their administrative order from April 11th of  
11 1990, which required that he register the tanks.

12          **Q.       And where did you obtain that**  
13 **document?**

14          A.       This was also in the FOIA request.

15          **Q.       After you had reviewed the FOIA**  
16 **request materials from the State Fire Marshall and**  
17 **reviewed the database from the agency, what**  
18 **actions did CSD Environmental then take?**

19          A.       We prepared an eligibility  
20 application to OSFM and submitted it.

21          **Q.       And at this point you are now**  
22 **considering the estate of Slightom your client at**  
23 **that point?**

24          A.       We had an agreement that they were a



1 client contingent upon receiving a deductible of  
2 \$15,000 or less. We were retained specifically to  
3 submit the eligibility application initially.

4 MR. SHAW: I'm sorry. A little mess  
5 up on my documents here. I have one last  
6 document.

7 BY MR. SHAW:

8 Q. I'm approaching you with what I have  
9 marked as Petitioner's Exhibit 7.

10 (Document marked as Petitioner's  
11 Exhibit No. 7 for  
12 identification.)

13 BY THE WITNESS:

14 A. This is our application to the fire  
15 marshall for eligibility and deductibility  
16 determination along with an amended notification  
17 form registering the tanks in the estate of  
18 Slightom's name.

19 BY MR. SHAW:

20 Q. And what response did you receive  
21 from the State Fire Marshall for the request for  
22 the eligibility deductibility determination?

23 A. I believe initially they requested  
24 some initial or some additional information and

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1 then we gave them that and then we got a \$10,000  
2 deductible determination.

3 Q. So that was better than you  
4 anticipated, I imagine?

5 A. Correct.

6 Q. The client was happy?

7 A. Correct.

8 Q. And you were going forward with the  
9 cleanup at that point in time, I assume?

10 A. The next step was to prepare an  
11 election to proceed under Title 16 as the owner  
12 for the estate, yes.

13 Q. So basically for the State Fire  
14 Marshall to go forward the estate needed to  
15 register the tanks for themselves and now to go  
16 forward with the Illinois Environmental Protection  
17 Agency the estate needed to elect to proceed as  
18 the owner with them?

19 A. Correct.

20 Q. Is it two different processes for  
21 two different programs, I assume?

22 A. Correct.

23 Q. Excited to get to the cleanup part,  
24 but I guess you always have to get the paperwork

1 first. And was the election to proceed approved  
2 and accepted?

3 A. It was.

4 Q. Now, I think -- I skipped through  
5 some of these documents because the documents  
6 speak for themselves and we have already a lot of  
7 documents in the record. So, you know, if I'm  
8 asking a question and the answer is a document,  
9 just feel comfortable saying -- identifying the  
10 document for me. I don't want to be sitting here  
11 making you read documents that are essentially we  
12 all know what they are from reading them.

13 But now that the election to  
14 proceed has been -- the election to proceed as the  
15 owner has been approved and I assume most of the  
16 initial paperwork stuff is done, what kind of  
17 remediation work was initiated?

18 A. Well, we submitted the 45-day report  
19 form that had a stage one certification that went  
20 in with the election to proceed as owner. Once  
21 the agency approved that then we went out and did  
22 a stage one site investigation, which consisted of  
23 drilling and sampling soil and groundwater on the  
24 site.

1           **Q.       Okay. So the remediation in this**  
2 **situation I guess frequently now is a lot of**  
3 **investigation at the front end, right?**

4           A.       Correct.

5           **Q.       When you did the stage one work, did**  
6 **you get paid for that?**

7           A.       We did.

8           **Q.       What was the deductible for that**  
9 **work?**

10          A.       \$10,000.

11          **Q.       And the result of the stage one**  
12 **was -- what investigative conclusions could be**  
13 **drawn at that point?**

14          A.       That there was contamination at one  
15 or more of the property boundaries so we were  
16 required to move offsite to investigate offsite  
17 properties.

18          **Q.       Could you give me a little better**  
19 **description of this property? I assume -- at one**  
20 **time it was a service station because of its name?**

21          A.       Correct.

22          **Q.       Was there anything remotely like a**  
23 **service station facility there by the time CSD**  
24 **Environmental was there?**

1           A.       Yeah, the building itself was still  
2 there. It had, like, two service bays I think and  
3 a little area where customers would go in and pay.

4           **Q.       And how big is the lot for this**  
5 **service station?**

6           A.       It is relatively small. I'm going  
7 to say like maybe 50 by 100.

8           **Q.       So this is the old style service**  
9 **station that didn't get most of its money from**  
10 **selling everything besides gas?**

11          A.       They couldn't fit one of the modern  
12 day convenience stores on the site probably.

13          **Q.       So do you recall how many directions**  
14 **it looked like the boundary was being exceeded by**  
15 **contamination?**

16          A.       I don't recall specifically. I know  
17 at least to the property to the north, which is a  
18 residential property, and we also had to go east,  
19 I believe.

20          **Q.       So what would -- so following that,**  
21 **following the completion of stage one, what was**  
22 **the next stuff of -- the materials you submitted**  
23 **to the agency?**

24          A.       We submitted a stage three site

1 investigation plan and budget that had our stage  
2 one actual costs and a proposal to proceed with  
3 stage three.

4 **Q. And my notes indicated that there**  
5 **were four stage three site investigation plans and**  
6 **budgets, is that correct?**

7 A. That sounds correct.

8 **Q. And did that relate to four**  
9 **different tasks that were to be performed at the**  
10 **site?**

11 A. Correct. Each time was going out  
12 and investigating further from the source.

13 **Q. So initially there was contamination**  
14 **identified on the neighboring property, but you**  
15 **still didn't have enough information I assume to**  
16 **know the extent?**

17 A. Right. It still exceeded  
18 remediation objectives. So we're required to move  
19 out further until we get clean samples.

20 **Q. After you did each stage three site**  
21 **investigation, were you paid by the fund?**

22 A. No.

23 **Q. Are you allowed to be paid by the**  
24 **fund at that point?**

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1 A. No.

2 **Q. So you had to do four different**  
3 **stage three site investigations and when did that**  
4 **stop?**

5 A. In 2010, when we submitted the Site  
6 Investigation Completion Report.

7 **Q. And at that point what could you**  
8 **conclude at that point?**

9 A. We had defined the extent of  
10 contamination.

11 **Q. And each of these site investigation**  
12 **plans that got submitted also included a budget?**

13 A. Correct.

14 **Q. And for -- what was the nature of**  
15 **the budget submitted for the stage three site**  
16 **investigation plans?**

17 A. I can't speak to what the purpose of  
18 submitting those budgets really is.

19 **Q. I'm not asking for the purpose.**

20 A. We're required to submit the budget  
21 and then the agency reviews it. They don't  
22 actually approve the budget, per se, because we  
23 don't get dollar amounts that we can submit for  
24 reimbursement, but it's a chance for them to

1 review the activities and make sure that  
2 everything is proposed in accordance with the  
3 regulations and with the Subpart H rates.

4 **Q. Am I understanding correctly that**  
5 **the budget essentially is a commitment to work**  
6 **within the Subpart H rates? Is that kind of what**  
7 **that does?**

8 A. I think that's safe to say, yeah.  
9 Correct.

10 **Q. And then what kind of budget**  
11 **information was provided with the stage three Site**  
12 **Investigation Completion Report?**

13 A. The stage -- the actual costs that  
14 were incurred during stage three.

15 **Q. And was the stage three site**  
16 **investigation report approved?**

17 A. Yes.

18 **Q. Were there any reductions to the**  
19 **dollars that were asked for?**

20 A. No.

21 **Q. Was there any imposition that there**  
22 **was an additional deductible at that time?**

23 A. No.

24 **Q. Is it fair to say that before the**



1 **stage three site investigation work was performed**  
2 **that work was approved by the agency in each**  
3 **instance?**

4 A. Correct.

5 Q. **And before the site investigation --**  
6 **stage three site investigation work was performed,**  
7 **the costs were approved in accordance with**  
8 **complying with Subpart H regulations, is that a**  
9 **fair statement of that? I probably mangled it.**  
10 **If you would like to describe that better, please**  
11 **do.**

12 A. Yeah. I mean, I think the agency  
13 still has the -- they can still deny things when  
14 you submit your actual costs, but, yes, there were  
15 no -- I don't recall getting any specific denials  
16 to anything that we proposed there.

17 Q. **So you've had your site completion**  
18 **report approved and I assume at this point you're**  
19 **allowed to go get paid for the work that you've**  
20 **done, correct?**

21 A. In almost every instance, yes.

22 Q. **How do you go about doing that?**

23 A. We submitted a reimbursement  
24 request.

1           **Q.       And this is a similar reimbursement**  
2 **request that you had submitted after the stage one**  
3 **work was performed, is that correct?**

4           A.       Similar, yes.

5           **Q.       And what response did you receive**  
6 **for the payment request?**

7           A.       That the estate essentially owed the  
8 agency money. That a \$100,000 deductible should  
9 be applied and we had been overpaid.

10          **Q.       This is the letter that is the**  
11 **subject of this lawsuit, correct?**

12          A.       Correct.

13          **Q.       Before receiving that letter, did**  
14 **you have -- had you ever heard of a \$100,000**  
15 **deductible determination being made by the agency?**

16          A.       Not on this particular site, no.

17          **Q.       I mean, on this site.**

18          A.       Yes.

19          **Q.       I know that those such things exist.**

20          A.       Yeah.

21          **Q.       They didn't just create that out of**  
22 **thin air.**

23                               **Did you receive any call from**  
24 **the agency giving you a warning that this was an**

1 **issue?**

2 A. No, I did not.

3 **Q. Now, given your contract with the**  
4 **client, would this work had been performed if the**  
5 **deductible had been \$100,000?**

6 A. No, it would not.

7 MR. SHAW: I don't have any further  
8 questions.

9 HEARING OFFICER WEBB: Okay.

10 MS. JARVIS: Okay.

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

12 BY MS. JARVIS

13 **Q. So how long again have you worked**  
14 **with leaking underground storage tanks?**

15 A. Approximately, 18 years.

16 **Q. Eighteen years. And are you**  
17 **responsible for submitting the applications for**  
18 **eligibility and deductibility?**

19 A. I do.

20 **Q. Did you submit the application for**  
21 **this site?**

22 A. I did.

23 **Q. I believe this is part of Exhibit 7,**  
24 **but it is also page 34 of the record. Okay. So**

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1 the page that I want you to look at is the UST  
2 information sheet, which is page four of that  
3 record.

4 Now, you had stated that  
5 after -- you looked online and looked at the IEPA  
6 and OSFM databases and then you also FOIA'd OSFM,  
7 correct?

8 A. Yes.

9 Q. And you thought you were going to  
10 get a \$15,000 deductible?

11 A. Correct.

12 Q. Could you read to me -- I believe  
13 this is Section 57.9 of the Act. If you can read  
14 this subsection three to me. If you can read it  
15 out loud.

16 A. "A deductible of \$15,000 shall apply  
17 when one or more, but not all of the underground  
18 storage tanks were registered prior to July 28th,  
19 1989, and the state received notice of the  
20 confirmed release on or after July 28th, 1989."

21 Q. Okay. I want to direct you to that  
22 information sheet there. What was the date of the  
23 registration of the tanks?

24 A. April 18th of 1990.

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1 Q. Okay. So if it was April 18th of  
2 1990 and the law says that they have to be  
3 registered prior to July 28th, 1989, can you  
4 explain why you thought you got a \$15,000  
5 deductible?

6 A. Because one of them was a heating  
7 oil tank for consumptive use on the premises.

8 Q. Just one of them was. Now, when we  
9 look at what you've put there and we look at  
10 number one here it says "A deductible of \$10,000  
11 shall apply when none of the underground storage  
12 tanks were registered prior to July 28th, 1989,  
13 except in the case of underground storage tanks  
14 used exclusively for heating oil."

15 So we have one heating oil tank  
16 and we have four underground tanks, correct?

17 A. The heating oil is an underground  
18 tank as well.

19 Q. Right. But we have underground  
20 gasoline tanks I guess I should state?

21 A. Three gasoline, one used oil and one  
22 heating oil.

23 Q. Okay. So when you looked at that,  
24 you were sure you were going to get a \$15,000

1       **deductible, but not the \$100,000 deductible**  
2       **because one of the underground tanks was heating**  
3       **oil?**

4           A.       I wouldn't say I was sure.

5           **Q.       Okay.**

6           A.       I would say that that was my  
7       inclination.

8           **Q.       But you also didn't know whether or**  
9       **not it was going to be a \$100,000 deductible**  
10       **because all the tanks were registered after the**  
11       **1989 date?**

12          A.       There is another provision in there  
13       for the heating oil.

14          **Q.       Yes, there is. For the one tank.**  
15       **And they have to be used exclusively to store**  
16       **heating oil and all the tanks are not used**  
17       **exclusively to store heating oil, are they?**

18          A.       No.

19          **Q.       Just one of the five tanks?**

20          A.       Yes.

21          **Q.       Okay. Now, after you did your due**  
22       **diligence and you FOIA'd the OSFM file, did you**  
23       **ever think to FOIA the IEPA file?**

24          A.       Not at that time.

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1           **Q.           However, you didn't FOIA it until**  
2 **after this appeal, is that correct?**

3           A.           I don't recall the date.

4                   MS. JARVIS: Okay. I have nothing  
5 further at this time.

6                   HEARING OFFICER WEBB: Mr. Shaw,  
7 anything further for you?

8           R E D I R E C T           E X A M I N A T I O N  
9                                   BY MR. SHAW

10           **Q.           Mr. Thorpe, you've indicated you've**  
11 **done underground storage tank work for 18 years.**

12                               **In that time, has it ever been**  
13 **your experience that the Illinois Environmental**  
14 **Protection Agency has overridden an Office of the**  
15 **State Fire Marshall deductibility determination?**

16           A.           Not until this case.

17                   MR. SHAW: No further questions.

18                   MS. JARVIS: I have a question based  
19 on that.

20           R E C R O S S           E X A M I N A T I O N  
21                                   BY MS. JARVIS

22           **Q.           We have two deductibles that have**  
23 **been issued here, correct, per this site?**

24           A.           Correct.

1           **Q.**       **And, to your knowledge, at the time**  
2       **that the Illinois Environmental Protection Agency**  
3       **issued its deductibility in I believe it was --**  
4       **let me just find the date and the page. In 1991,**  
5       **it had the authority to issue those deductibles?**

6           **A.**       **They did.**

7           **Q.**       **So, in this case, it is not really**  
8       **the Illinois EPA overriding a previous decision by**  
9       **the fire marshall, but asserting its own decision**  
10       **that it was legally capable of issuing?**

11          **A.**       **I don't believe that to be the case.**

12          **Q.**       **You don't believe that we were**  
13       **legally capable of issuing the deductible or you**  
14       **believe that OSFM previously issued one?**

15          **A.**       **I think that my client, the estate,**  
16       **elected to proceed under Title 16.**

17          **Q.**       **Right. But --**

18          **A.**       **Which says that --**

19          **Q.**       **-- we've already established that it**  
20       **says one deductible per site.**

21          **A.**       **That deductible wasn't made. The**  
22       **agency's deductible determination was made in**  
23       **accordance with the repealed law. So I would --**

24          **Q.**       **However, that repealed law didn't**



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1 **make it invalid that all prior decisions -- it**  
2 **just now asserted that the fire marshall gets to**  
3 **make those decisions? It didn't invalidate any**  
4 **decisions made prior to that date?**

5 A. (Nod.)

6 THE COURT REPORTER: I'm sorry. Was  
7 that a yes or a no?

8 THE WITNESS: I don't know if there  
9 was a question there.

10 BY MS. JARVIS:

11 Q. **Basically what you're saying is that**  
12 **any decision the Illinois EPA made prior to the**  
13 **fire marshall taking over this, in your opinion,**  
14 **is invalid?**

15 A. No. If we were proceeding under  
16 731, then that decision would be valid.

17 Q. **But the deductible sections are**  
18 **under all three. Deductibles aren't made under a**  
19 **certain period of the law.**

20 A. Right. But we're proceeding under  
21 Title 16. I think that Title 16 laws should  
22 apply.

23 Q. **But even if it does apply, it says**  
24 **here that you get a \$100,000 deductible because**

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1 **your tanks weren't registered prior to the 1989**  
2 **date.**

3 MR. SHAW: Objection. You're  
4 assuming facts.

5 MS. JARVIS: I'm assuming facts you  
6 put in evidence and that are in the record.

7 MR. SHAW: He just told you what his  
8 position on the deductible was. You can't just  
9 say assuming something I believe is true is  
10 correct.

11 MS. JARVIS: It's the law. It is  
12 correct.

13 MR. SHAW: Then don't ask a  
14 non-lawyer a legal question, how about that?

15 MS. JARVIS: Okay. I won't ask a  
16 non-lawyer a legal question. However, he can't  
17 also determine that a decision made by the  
18 Illinois EPA is invalid because it was done  
19 prior -- under prior law. The deductible is one  
20 per site. I have no further questions.

21 MR. SHAW: I don't have any  
22 questions.

23 HEARING OFFICER WEBB: Okay. You  
24 may step down, Mr. Thorpe.

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1 THE WITNESS: Do I leave this stuff  
2 here?

3 HEARING OFFICER WEBB: Yes, please.  
4 Would you like to take five before your next  
5 witness or do you just want to push through?

6 MR. SHAW: I'm ready to go.

7 HEARING OFFICER WEBB: Okay.

8 MS. JARVIS: I'm fine. I think  
9 she's ready. She'd like to testify and get out of  
10 here.

11 HEARING OFFICER WEBB: Call your  
12 next witness.

13 WHEREUPON:

14 CATHERINE ELSTON  
15 called as a witness herein, having been first duly  
16 sworn, deposeth and saith as follows:

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

18 BY MR. SHAW

19 Q. Could the witness please state your  
20 name for the record?

21 A. Catherine Elston.

22 Q. Good morning, Ms. Elston. Could you  
23 please give me your job title?

24 A. I'm an Account Tech II.

1           **Q.           And how long have you had that**  
2 **title?**

3           A.           Fifteen years.

4           **Q.           And you say Account Tech II with the**  
5 **Illinois Protection Agency for 15 years?**

6           A.           Yes. I've been employed by the  
7 state for 37.

8           **Q.           What is your -- what is your job --**  
9 **how would you describe what you do as an account**  
10 **tech technician these days currently?**

11          A.           I check on the claims, the math on  
12 them, ensuring that they're within the Subpart H  
13 rates. I prepare the documentation for the  
14 payments.

15          **Q.           And how long has that been your job**  
16 **description?**

17          A.           For the 15 years.

18          **Q.           Fifteen years. So the program has**  
19 **changed over time, but you're still on the what I**  
20 **would call it the payment end of things?**

21          A.           Yes.

22          **Q.           My understanding in the division of**  
23 **the LUST division is that there are some people**  
24 **that are looking at the technical documents**

1 particularly upfront and then there are people who  
2 are looking more at the accounting materials  
3 towards the end, is that correct?

4 A. Yes.

5 Q. Do you have a better description of  
6 that than I just offered? A term?

7 A. I prepare the reimbursement. I  
8 check the reimbursement claims. That's all I see  
9 and prepare the payments.

10 Q. I think an insurance business they  
11 would call that claims management or the claims  
12 manager, but -- which isn't a question. It's an  
13 aside. I apologize.

14 What training did you receive  
15 for this job?

16 A. As far as -- you know, I mean, the  
17 math and then reading the regulations.

18 Q. Does the agency have a special  
19 training program for this?

20 A. No.

21 Q. Let me -- just so that I don't  
22 mis-describe your job, let me just -- and what I'm  
23 really kind of talking about is the time period in  
24 which we're in dispute. I kind of don't want to

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1 know 20 years ago and maybe things have changed  
2 recently.

3 At the time period you were  
4 reviewing reimbursement claims, how did you  
5 receive -- how did you first get into the file?  
6 How did you first get a case or a new claim?

7 A. It is -- the claim is received. It  
8 is date stamped. We do everything in date order.  
9 We pull the file, prepare the documentation.

10 Q. Okay. When you say you pull the  
11 file, what file do you pull?

12 A. If there is any previous claims, we  
13 have a folder that has the budgets and our summary  
14 that lists every budget that has been approved and  
15 how much has been paid on each of the claims for  
16 that particular classification.

17 Q. Just to give me -- just for me to  
18 give some examples. Would this file have in it,  
19 say, a corrective action plan?

20 A. No.

21 Q. So that is stuff that is kept with  
22 the earlier review?

23 A. That's the technical.

24 Q. The technical. So if you have a new

1     **underground storage tank site, the first time a**  
2     **reimbursement claim comes to someone like you**  
3     **you've got the information that was submitted by**  
4     **the claimant?**

5           A.     Right.

6           **Q.     What other information do you have**  
7     **at that point?**

8           A.     At that point, I would print off a  
9     copy of the OSFM letter. Depending what type of  
10    claim it is, I would check on the budgets, print  
11    off the budgets.

12          **Q.     When you say print off the OSFM**  
13    **letter, what are you printing that out of? What**  
14    **is that --**

15          A.     Well, we receive a copy of it and  
16    then it goes to -- sometimes there is a paper copy  
17    that we just take out of the file that they've  
18    submitted to us. On some of the older ones, it's  
19    already gone to DocuWare.

20          **Q.     So OSFM when it makes its**  
21    **deductibility determination copies the agency?**

22           A.     Right.

23          **Q.     So when you got the first claim for**  
24    **reimbursement, there was already information about**

1       **this at least in terms of there being a**  
2       **deductibility determination and that's in your**  
3       **file or that's in the general agency file?**

4           A.       We have a -- when they submit it to  
5       us, we have a file cabinet that we put it in.

6           Q.       Okay. And part of your practice in  
7       looking for or reviewing reimbursement claims do  
8       you look for multiple deductibility  
9       determinations?

10          A.       If it is in the file, it would come  
11       to light and on our database we have what the  
12       deductible is.

13          Q.       Now, would that file include an  
14       agency determination made back in the early '90s?

15          A.       Sometimes they do. Most of the  
16       times.

17          Q.       When did you first become -- when  
18       were you first assigned to the reimbursement claim  
19       for the estate of Slightom?

20          A.       I did the one in I think it was  
21       2010.

22          Q.       I guess the reason --

23          A.       I did not do the first one.

24          Q.       That's kind of what I was asking.



1     **It looks like there was a prior one. Was there**  
2     **anything unusual about someone else looking at an**  
3     **earlier reimbursement claim?**

4             A.       We do them in date order. So we  
5     signed them out. Whoever needed work, you know,  
6     signed the next one out.

7             **Q.       So there was no necessary**  
8     **inconsistency?**

9             A.       No. There was no consistency.

10            **Q.       When did you first identify or learn**  
11     **about the agency's \$100,000 deductible for the**  
12     **estate of Slightom?**

13            A.       At the time I was not the one that  
14     was looking at them first at that point. Brian  
15     Bauer had already looked through the claim and we  
16     identified that there was a \$100,000.

17            **Q.       What is Brian Bauer's role in**  
18     **reviewing the reimbursement request?**

19            A.       Well, he looks them over before  
20     they're handed out to be reviewed for the math.

21            **Q.       So when you first got assigned this**  
22     **reimbursement request for the estate of Slightom,**  
23     **was there already some notification that there was**  
24     **a \$100,000 deductible issue or did that come**

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1 **later?**

2 A. I'm -- to tell you the truth, I'm  
3 not really sure. I don't really remember. That  
4 was several years ago.

5 **Q. Completely understandable. I'm**  
6 **going to -- where am I at?**

7 MS. JARVIS: I believe we're on 8.

8 MR. SHAW: I'm still checking.

9 (Document marked as Petitioner's  
10 Exhibit No. 8 for  
11 identification.)

12 BY MR. SHAW:

13 **Q. I'm going to hand you something that**  
14 **has been marked as Petitioner's Exhibit 8 and I'm**  
15 **going to represent just for the record that this**  
16 **is -- I took this from what the agency filed**  
17 **before the Board. I'm not sure at what point in**  
18 **time, but it's page 109 through page 119 of the --**  
19 **one part of the agency record and I just pulled it**  
20 **out because it looks like this is a part that has**  
21 **some bearing on the financial stuff and I know it**  
22 **is kind of a lot of papers that are jotted**  
23 **together, but could you just review that closely**  
24 **real quickly and I'll ask you a specific question**

1 about one of these pages.

2 I'd like you to look at  
3 Petitioner's Exhibit 8. I'd like you to look at  
4 page 118.

5 A. Yes.

6 Q. Does that look familiar to you?

7 A. Yes.

8 Q. Could you describe what that form  
9 is?

10 A. That is a copy of our LUST tracking  
11 system that I printed off with each claim that I  
12 do.

13 Q. And this looks like it has a date of  
14 August 4, 2010, is that correct?

15 A. Yes.

16 Q. And it looks like on August 4th,  
17 2010, what has been printed out shows a \$10,000  
18 deductible, is that correct?

19 A. Yes.

20 Q. Would it be fair to believe that as  
21 of August 4th, 2010, that was the assumption that  
22 that a \$10,000 deductible applied and the \$100,000  
23 deductible issue had not yet been identified?

24 A. That was what was in the database at

1 that time.

2 Q. Okay. Did you, yourself, actually  
3 obtain this agency deductibility determination?

4 A. I don't really remember at that  
5 point.

6 Q. Do you know if Brian Bauer gave it  
7 to you?

8 A. He could possibly. I do numerous  
9 claims in a day. It's hard to remember one from  
10 another.

11 Q. When you were given -- when you were  
12 given that letter or when -- I guess let me back  
13 up. You identified Brian Bauer as having a role  
14 in that.

15 Could you maybe explain his role  
16 because I'm not -- I assume he gave that to you  
17 was his role, but what was his role in bringing  
18 out this \$100,000 deductible issue?

19 A. He looks at the claims at that time.  
20 You know, he makes the notation on it if there was  
21 something that he noticed as he was looking  
22 through the claims.

23 Q. On that Petitioner's Exhibit 8,  
24 could you please look at what is page 115.

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1                   **Does that look familiar to you**  
2 **or the type of form look familiar to you?**

3           A.       Yes.

4           **Q.       What is that?**

5           A.       That is a form that I print off from  
6 our database that I use to make my notations as  
7 far as the claim.

8           **Q.       And whose handwriting is this on**  
9 **this page or maybe there's more than one person's**  
10 **handwriting?**

11          A.       It's all mine.

12          **Q.       It's all yours.   Okay.   So there's a**  
13 **\$100,000 deductible determination or a deductible**  
14 **written at the bottom of it with a October 28th,**  
15 **2010, printout?**

16          A.       Correct.

17          **Q.       So somewhere in between August and**  
18 **October this issue has been identified, is that**  
19 **fair?**

20          A.       Correct.

21          **Q.       Is this database that you're writing**  
22 **on, is this pretty much the same database that is**  
23 **available to the public on the Internet?**

24          A.       I'm not really sure.

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1           **Q.       It does not look like it's the same**  
2 **form, but it looks like it is pretty much the same**  
3 **information that is -- that we looked at earlier,**  
4 **but if you're not sure I won't ask you to compare**  
5 **something.**

6                           **How important is this LUST**  
7 **incident tracking database for your work?**

8           A.       I print one off for every claim that  
9 I do. That's where I make my notes and it has the  
10 dates that I need to complete the paperwork.

11           **Q.       And you indicated you did not review**  
12 **these for technical issues, but what are the type**  
13 **of issues that you identify for reimbursement of**  
14 **claims that will result in reductions?**

15           A.       I check that we have backup  
16 documentation, that the backup documentation is  
17 what is in the claim as far as the calculations.  
18 I do the math on each of the forms and enter the  
19 budget information into the database.

20           **Q.       So what you're going to reimburse**  
21 **has to match what has been approved in the budget?**

22           A.       Right.

23           **Q.       And you were not involved in**  
24 **approving the initial budget, is that correct?**

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1 A. No, I am not.

2 Q. Is one of the forms or backups that  
3 is required for reimbursement of claims a copy of  
4 the eligibility deductibility determination?

5 A. That should be in each claim.

6 Q. But you go ahead anyway and make  
7 sure it checks with the deductibility  
8 determination that you received from the fire  
9 marshall, is that correct?

10 A. In most cases they do match, yes.

11 Q. So you are checking to make sure  
12 what OSFM sent you is the same thing the  
13 consultant supplied you?

14 A. What is the most current.

15 Q. Have you ever had multiple  
16 deductibility determinations on a reimbursement  
17 claim before this?

18 A. Yes.

19 Q. How frequently has that happened?

20 A. I mean, at least several times.

21 Q. And what has happened in those  
22 cases?

23 A. We always go with the higher one.

24 Q. Do you know why the previous

1 **reimbursement claim was approved with a \$10,000**  
2 **deductible?**

3 MS. JARVIS: I'm going to object.  
4 She has already stated she only worked on the  
5 2010. She would have no knowledge of the prior  
6 one because she didn't work on it.

7 MR. SHAW: I asked her if she knew  
8 why. She may not.

9 MS. JARVIS: It is still outside the  
10 scope of her knowledge that she's already  
11 testified to.

12 HEARING OFFICER WEBB: Overruled.  
13 If you don't know, just say you don't know.

14 BY THE WITNESS:

15 A. I have no idea.

16 BY MR. SHAW:

17 **Q. Okay. So there are no specific**  
18 **procedures in place to make sure that there are**  
19 **not older agency deductibles on each file?**

20 A. I mean, I have no -- I mean, what is  
21 in the folder, you know, and we look on the  
22 database.

23 **Q. And, again, you don't remember where**  
24 **you first found this agency deductible?**



1 A. No.

2 Q. You don't know if you found it or if  
3 Brian Bauer found it?

4 A. I have no idea.

5 Q. You don't know whether it was in the  
6 file or whether it was in a different file?

7 A. I don't -- like I said, I don't  
8 remember. That was, what --

9 Q. I'm just making sure I understand.

10 A. I mean, that was over three years  
11 ago. I've done, you know, quite a few claims over  
12 the 15 years and to remember each one what I did  
13 or who found what I don't really know.

14 Q. Did you talk to anybody about the  
15 \$100,000 deductible determination from outside the  
16 agency prior to making the final decision?

17 A. No.

18 Q. You didn't talk to legal division?

19 A. I personally didn't, no.

20 Q. I'm sorry. That's not really --  
21 I -- did you talk to anybody besides Brian Bauer  
22 about that determination?

23 A. No.

24 MR. SHAW: No further questions.

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1 MS. JARVIS: I have no questions.

2 HEARING OFFICER WEBB: Okay. Thank  
3 you.

4 MS. JARVIS: Can we excuse this  
5 witness?

6 HEARING OFFICER WEBB: Yes, we sure  
7 can. Would you like to call your next witness?

8 MR. SHAW: I'd like to call Brian  
9 Bauer.

10 WHEREUPON:

11 BRIAN BAUER  
12 called as a witness herein, having been first duly  
13 sworn, deposeth and saith as follows:

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

15 BY MR. SHAW

16 Q. Could the witness please state your  
17 name for the record?

18 A. Brian Bauer.

19 Q. Good morning, Mr. Bauer. Could you  
20 give your current job title?

21 A. Environmental Protection Specialist  
22 III.

23 Q. How long have you had that  
24 responsibility or that job title?

1 A. A long time.

2 Q. Bigger than a bread box or smaller?  
3 Fifteen years, 20 years?

4 A. Maybe like 18 years.

5 Q. And has this always been in the LUST  
6 division?

7 A. I've been in the LUST section almost  
8 22 years, yes.

9 Q. I'm really focusing on the time  
10 period of around October of 2010, which is the  
11 matter in dispute.

12 A. Okay.

13 Q. At that time, can you give a  
14 description of what your job entailed?

15 A. I screened the claims that came in,  
16 assigned it to different reviewers to review the  
17 claims, handled problem sites, handled W-9  
18 problems, handled all kinds of issues. Anything  
19 that came up with the reimbursement program.

20 Q. Are you on the technical side of  
21 this or on the reimbursement side or both? If  
22 you'd rather me not characterize what I'm getting  
23 at, please feel free. I'm just trying to identify  
24 what period these separate roles are in this

1 process.

2 A. I'm confused now.

3 Q. I confused you by explaining. You  
4 were here in the room when Ms. Elston testified,  
5 is that correct?

6 A. Yes.

7 Q. And she is a -- she involves -- as I  
8 understand her testimony, she checks claim  
9 reimbursements and that's kind of the last part of  
10 the process and does not do anything to my  
11 understanding on the technical review of the  
12 corrective action plans and such. Is that  
13 similarly true with you? Are you on the claims  
14 side or do you also do work on things like  
15 corrective action plans?

16 A. Since probably 2009 I've migrated  
17 more towards the reimbursement portion of it, but  
18 have still maintained some technical end of it,  
19 but that is dwindling over the years.

20 Q. And are you Ms. Elston's supervisor?

21 A. No.

22 Q. When did you first become involved  
23 in the estate of Slightom file to your  
24 recollection?

1           A.       That I can recall, it was with the  
2 claim. It would have been in 2010.

3           **Q.       The one that is in controversy here**  
4 **today, correct?**

5           A.       Yes.

6           **Q.       So you don't recall any involvement**  
7 **in the earlier reimbursement claim for the stage**  
8 **one work?**

9           A.       I probably would have given it to  
10 Mark Books to review.

11          **Q.       And why would that be?**

12          A.       Because I was kind of the liaison  
13 between the claims and the technical people for  
14 that period of time while we were trying to clear  
15 a backlog.

16          **Q.       Was there any particular reason you**  
17 **assigned it to Mark Books?**

18          A.       Mark Books was with the site  
19 remediation program and he didn't have any work to  
20 do.

21          **Q.       So that's as Ms. Elston, I think,**  
22 **was describing. This stuff is going out to -- as**  
23 **it comes in to whomever was ready for more work?**

24          A.       He wanted work. We needed claims

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1 reviewed.

2 Q. Okay. So you would have assigned it  
3 to him, but you're not indicating there was any  
4 other special attention you took with that file at  
5 that time, is that correct?

6 A. That's correct.

7 Q. At what point did you become aware  
8 of an EPA determination letter of \$100,000?

9 A. At the time that I was doing the  
10 screening for the -- I'll call it the July 14th,  
11 2010, claim.

12 Q. Did you identify that before  
13 assigning this to Ms. Elston?

14 A. I did.

15 Q. And you drew her attention to that  
16 issue when you assigned it?

17 A. I believe so.

18 Q. Did you direct her to apply the  
19 higher deductible?

20 A. I did.

21 Q. Where did you locate that  
22 deductibility determination?

23 A. In the LUST claims file.

24 Q. Now, is this LUST claims file the

1 same file that Ms. Elston would have had normally?

2 A. Yes.

3 Q. So that file would have gone to her  
4 and it would have been in there, but, you know --  
5 you drew her attention to it also?

6 A. That's correct.

7 Q. Do you have any reason to know why  
8 Mark Books did not see that document in the file?

9 A. I don't believe Mark Books was  
10 trained to look at that.

11 Q. And what kind of training are you  
12 referring to?

13 A. On-the-job training.

14 Q. So you're not really talking about a  
15 formal training process that everybody needs to  
16 have obtained. I think sometimes my understanding  
17 new job entrants do have a more formalized  
18 training process with the agency, at least these  
19 days, is that correct?

20 A. I don't know.

21 Q. I'll pass on that question. My  
22 understanding you're just basically saying he was  
23 not cognizant of the significance of that EPA  
24 determination letter?

1           A.       That's correct.

2           **Q.       Do you know whether or not**  
3 **Ms. Elston would have had the on-the-job training**  
4 **to recognize the significance of that letter?**

5           A.       I believe she does.

6           **Q.       You wouldn't necessarily be sure**  
7 **whether or not she would find it, though, is that**  
8 **correct, since you drew her attention to it?**

9           A.       It's not the reason I drew her  
10 attention to it, I guess.

11          **Q.       What was the reason you drew her**  
12 **attention to it?**

13          A.       Because I saw it.

14          **Q.       You were also aware at that time**  
15 **that previously the agency had approved this work**  
16 **for the \$10,000 deductible?**

17          A.       Yes.

18          **Q.       Are you familiar with the EPA's LUST**  
19 **database website that is available to the public?**

20          A.       Somewhat, yes.

21          **Q.       Is it pretty similar to the type of**  
22 **information that the claims -- reimbursement**  
23 **claims managers look at?**

24          A.       Yeah, I believe it's the same



1 information.

2 Q. Is that relied upon extensively in  
3 the agency, that database?

4 A. I mean, it's used. We utilize it  
5 all the time to track things.

6 Q. Well, is it common for people with  
7 experience at the job to look to that database  
8 initially to -- as a matter of course in any kind  
9 of work they're doing on a LUST site?

10 A. I can't speak for everybody else,  
11 but I do utilize it in my reviews.

12 Q. Do you know why the LUST database  
13 does not identify -- and I'm saying the EPA's LUST  
14 database does not identify a deductible  
15 determination? And if it would help you, I guess  
16 what I'm generally referring to is Exhibit 1.  
17 Something like that. Although I think there are  
18 similar forms of that printout in the record for  
19 the time periods.

20 A. This is only a partial of the  
21 database. I mean, there is multiple different  
22 pages here. You only have a couple of pages.

23 Q. Do you think it would be on the --  
24 okay. I don't have copies of this. Let me show

1 **you what I've brought.**

2 MS. JARVIS: If it is from our  
3 website, I don't have an objection.

4 MR. SHAW: The only difference is  
5 the date is a little bit later and I think it's  
6 got all the pages.

7 MS. JARVIS: Okay.

8 MR. SHAW: We're on Exhibit 9.

9 (Document marked as Petitioner's  
10 Exhibit No. 9 for  
11 identification.)

12 BY MR. SHAW:

13 **Q. I'm handing you something that is**  
14 **marked as Petitioner's Exhibit 9.**

15 A. Okay.

16 **Q. I mean, what I'm getting at is when**  
17 **I look at this database I see a couple entries**  
18 **from the early '90s that are referenced maybe**  
19 **under sort of the correspondence or something?**

20 A. Yes.

21 **Q. But none of those identify that an**  
22 **eligibility determination has been made by the**  
23 **agency, is that --**

24 A. On that page, that would not happen

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1 because that is from the technical database.

2 Q. The technical database. But I don't  
3 think it's on any of your databases. If you look  
4 at Petitioner's Exhibit 8, at -- I guess at page  
5 116, there is no indication of the deductibility  
6 determination other than the one that Ms. Elston  
7 wrote down in some of her notes there.

8 A. This is the technical database.

9 Q. Okay.

10 A. And that data is not on the  
11 technical database.

12 Q. But there is claims information on  
13 the website as well, isn't there?

14 A. Yes.

15 Q. And there was a \$40,000 claim made  
16 by the prior owner to the agency, wasn't there?

17 A. A \$40,000 claim?

18 Q. Yes. Let me just ask you this  
19 question.

20 Are you aware if there was a  
21 \$40,000 claim made by the prior owner?

22 A. No.

23 Q. You wouldn't be able to know that by  
24 looking at that database, would you?

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1 A. No.

2 Q. Does the agency have any practices  
3 in place for sharing deductibility determinations  
4 with the State Fire Marshall?

5 A. Not that I'm aware of.

6 Q. And we just I think heard as a  
7 matter of course the State Fire Marshall sends the  
8 agency a copy of its deductibility determinations.  
9 Are you aware that the agency ever did that to the  
10 State Fire Marshall?

11 A. No, I'm not.

12 Q. With respect to the \$10,000  
13 eligibility deductibility determination made to  
14 the estate, did you ever contact the Office of the  
15 State Fire Marshall prior to the decision made  
16 regarding the deductible?

17 A. I did.

18 Q. Who did you contact?

19 A. Deanne Lock.

20 Q. What is Dan Lock's (sic)  
21 responsibility at the State Fire Marshall?

22 A. She -- I believe she reviews and  
23 approves the eligibility determinations for the  
24 fire marshall.

1           **Q.       Did you know that she had been**  
2 **involved in this one?**

3           A.       I'm not sure if she did.

4           **Q.       I guess I assume there are multiple**  
5 **people over there making these determinations. Is**  
6 **she the only one that is making them?**

7           A.       Presently she is the only one that's  
8 making them.

9           **Q.       My assumption was wrong. What was**  
10 **the purpose of contacting her?**

11          A.       I contacted Deanne to question why  
12 they issued the \$10,000 deductible.

13          **Q.       And what response did you receive?**

14          A.       That after some conversations, that  
15 they had made a mistake.

16          **Q.       When you say some conversations, did**  
17 **these occur over a period of days?**

18          A.       It could have been. It's been a  
19 while.

20          **Q.       Did you ask them to look through the**  
21 **file and get back to you, that kind of thing?**

22          A.       It's been a while.

23          **Q.       Did you ask them to change their**  
24 **decision?**

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1 A. I don't know if I asked for that.

2 Q. When you say I asked that, do you  
3 know if someone else asked for that?

4 A. I know Deanne discussed it with me  
5 about changing her decisions, that they made a  
6 mistake.

7 Q. Was she willing to change her  
8 decision?

9 A. She indicated to me that she wanted  
10 to.

11 Q. Did she ask for permission from  
12 someone above her to change it?

13 A. I think that's the case, yes.

14 Q. To your knowledge, the decision was  
15 never changed, is that correct?

16 A. That's correct.

17 Q. Did you ask for documents from the  
18 State Fire Marshall?

19 A. I don't recall.

20 Q. There appears to be some documents  
21 in the agency's record that are materials about  
22 the application that Mr. Thorpe prepared to get  
23 the eligibility determination and I don't  
24 believe -- it looks to me like they were

1 **requested. Is that something you may have**  
2 **requested?**

3 A. The application?

4 **Q. The application for an eligibility**  
5 **determination to the Office of the State Fire**  
6 **Marshall.**

7 A. The application comes -- when they  
8 make a decision, she includes a copy of the  
9 application and the permits. It's on all of them.

10 **Q. Okay. So my assumption would be**  
11 **incorrect on that one?**

12 A. It would be.

13 **Q. I'll admit to one time being**  
14 **incorrect in this case.**

15 **Are you familiar with the**  
16 **changes made to the deductibility determination**  
17 **several years ago to allow for a \$5,000**  
18 **deductible?**

19 A. Somewhat.

20 **Q. Isn't it true that the law now**  
21 **allows for a \$5,000 deductible in certain**  
22 **circumstances?**

23 MS. JARVIS: I'll object to that  
24 question because it was leading. I've given you a

1 lot of leeway on hearsay.

2 MR. SHAW: I can lead the hostile  
3 witness. He is an opposing witness.

4 MS. JARVIS: But you haven't  
5 declared him as a hostile witness and he has been  
6 very calm answering all your questions.

7 HEARING OFFICER WEBB: Would you  
8 like to just rephrase the question? It might be  
9 faster.

10 BY MR. SHAW:

11 Q. Are you familiar with the \$5,000  
12 deductible rules generally that were passed the  
13 last few years?

14 A. Yes.

15 Q. Under these new \$5,000 deductible  
16 issues, isn't it possible for a site to have more  
17 than one deductible determination?

18 A. Yes.

19 Q. And, in that case, which deductible  
20 determination has the agency been applying?

21 A. The higher deductible.

22 Q. Are you aware of any evidence that  
23 the EPA determination letter of \$100,000 was ever  
24 received by Gerald Slightom?



1           A.       Evidence that it was received by  
2 them?

3           **Q.       Yes.**

4           A.       I don't know.

5           **Q.       I know there is a letter, but other**  
6 **than the letter, is there any green card? Are**  
7 **there any practices to confirm receipt?**

8           A.       The deductibility letter was issued  
9 in 1991. I don't know the practices that were in  
10 place at that time.

11          **Q.       In 1991, it was under a prior law,**  
12 **correct? If I look at the law about how**  
13 **determinations are made today and how they are**  
14 **issued and how they are received, that is not**  
15 **going to tell me what the law was in 1991, is that**  
16 **correct?**

17          A.       I guess, yes, you're correct.

18          **Q.       In situations when an owner/operator**  
19 **dies and maybe they've initiated the process of**  
20 **cleanup, but not completed it, is the estate**  
21 **required to get its own election to proceed at**  
22 **that point? Is that a requirement of the law?**

23          A.       I don't know if it's a requirement  
24 of the law or not.

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1 Q. Yeah, that's probably a poor  
2 question. I want to know about agency practice.  
3 I should probably refrain from asking legal  
4 questions. Usually a lot of times it's just the  
5 meeting of all these different factors that leads  
6 to this is the only way to do this.

7 Is it agency practice to expect  
8 that when a decedent dies that the estate get its  
9 own paperwork in place in order to move forward in  
10 terms of having people sign things and for checks  
11 to be issued and have identification numbers that  
12 have some meaning?

13 A. I guess there are certain situations  
14 that people do do that and I've seen situations  
15 where they have not done that.

16 Q. To your knowledge, has the agency  
17 ever rejected a reimbursement claim or a budget  
18 and plan on the basis that the applicant needs to  
19 get an election to proceed because they're an  
20 estate?

21 A. Repeat that, please.

22 Q. It was a poorly worded question. I  
23 apologize.

24 In a situation in which -- to

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1 **your knowledge, has the agency ever rejected a**  
2 **submittal by an estate because it needs to get an**  
3 **election to proceed first?**

4 A. I'm sure we have.

5 **Q. Do you know what kind of**  
6 **circumstances that would come into play?**

7 A. Kind of. We have issues with the  
8 state -- with the comptroller getting claims paid.  
9 They have to produce a W-9. If the comptroller  
10 doesn't accept the W-9 for whatever reason,  
11 sometimes they do elections of estates and go  
12 under a FEIN number to get paid.

13 **Q. Is the problem the comptroller is**  
14 **unwilling or won't accept a Social Security Number**  
15 **of a dead person, is that the problem?**

16 A. I do not know.

17 **Q. That's where it sort of unfolds.**  
18 **The money has to come from the comptroller. The**  
19 **comptroller needs a form. The form has its own**  
20 **issues and the estate may need to get one --**

21 A. Yes.

22 **Q. -- separately from the decedent?**

23 A. Yeah, and I don't know the legal if  
24 you can -- how long you can use the Social

1 Security Number.

2 Q. Do you know whether or not the  
3 reimbursement claim would be denied if the name on  
4 the eligibility and deductibility determination  
5 did not match the W-9?

6 A. We pay the person that is deemed  
7 eligible.

8 Q. So you're saying the eligibility  
9 deductibility determination doesn't have to go to  
10 the same person the W-9 identifies?

11 A. I didn't say that. I didn't mean  
12 to.

13 Q. Let me ask the question. When you  
14 submit a reimbursement claim, you're required to  
15 submit the eligibility deductibility  
16 determination, is that correct?

17 A. Yes.

18 Q. You're required to submit the W-9  
19 with that request as well, is that correct?

20 A. That's correct.

21 Q. Do the names on those two documents  
22 need to match?

23 A. To some extent, yes.

24 Q. And to what extent is that?

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1           A.       Sometimes we get -- they issued the  
2 eligibility determination a long time ago. They  
3 issued it to the gas station. Sometimes they also  
4 issue an eligibility determination to a  
5 disregarded entity and the comptroller doesn't --  
6 won't accept a FEIN number on a disregarded  
7 entities company's name. So it goes back to a  
8 Social Security Number and a person's name.

9           **Q.       Okay. The name may be different,**  
10 **but the entity is usually the same, correct?**

11          A.       It should be.

12          **Q.       Well, in this specific instance**  
13 **here, we have a decedent who has a Social Security**  
14 **Number and we have an estate that once it's open**  
15 **it gets its own taxpayer ID number. Are those --**  
16 **not talking the law, but just as agency practice,**  
17 **do -- is that an issue? Is that a problem?**

18                   **Does the estate have to at some**  
19 **point get back in the process itself and not**  
20 **bootstrap on to the decedent?**

21          A.       I'd say yes.

22          **Q.       We'll leave it there.**

23                   MR. SHAW: I don't have any further  
24 questions.

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1 MS. JARVIS: Can we go off the  
2 record for just a minute?

3 HEARING OFFICER WEBB: Sure.

4 (Whereupon, a discussion was had  
5 off the record.)

6 HEARING OFFICER WEBB: We'll go back  
7 on the record now. Ms. Jarvis, would you like to  
8 sum up what was just discussed off the record?

9 MS. JARVIS: Sure. We discussed off  
10 the record the \$40,000 claim by Mr. Slightom prior  
11 to his death and we just want to clarify and see  
12 if there was any documentation as to that fact,  
13 which I'll now ask Mr. Bauer about the papers.

14 C R O S S E X A M I N A T I O N

15 BY MS. JARVIS

16 **Q. I'm going to show you page one of**  
17 **the record and what is that document entitled?**

18 A. Application for Reimbursement.

19 **Q. And in the 1990's, what was that**  
20 **form used for?**

21 A. Determining eligibility.

22 **Q. Okay. And if you can turn to I**  
23 **believe it is -- I thought it was page eight. It**  
24 **should be on this page. There it is on page 12**

1 **and look at item 10(c). What was that amount of**  
2 **money used for?**

3 A. That was just an estimate of  
4 corrective action costs that were incurred after  
5 July 28th, 1989.

6 **Q. So would any money be paid to the**  
7 **applicant on such an application?**

8 A. No.

9 **Q. So that was just an estimate, it**  
10 **wasn't a request for actual monies?**

11 A. That's correct.

12 **Q. Okay.**

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

15 HEARING OFFICER WEBB: Is this an  
16 exhibit or just part of the record?

17 MS. JARVIS: It's part of the  
18 record.

19 HEARING OFFICER WEBB: What page of  
20 the record?

21 MS. JARVIS: Page one to page 12 and  
22 it was page 12 of the record.

23 HEARING OFFICER WEBB: Okay.

24 MS. JARVIS: 10(c).

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1 HEARING OFFICER WEBB: All right.

2 Just making that clarification.

3 MS. JARVIS: I have no other  
4 questions.

5 HEARING OFFICER WEBB: Mr. Shaw, do  
6 you have anything further for this witness?

7 MR. SHAW: Nope.

8 HEARING OFFICER WEBB: Okay. Thank  
9 you. Would you like to offer these exhibits or --  
10 I know they're all part of the record, I take it?

11 MR. SHAW: No.

12 MS. JARVIS: No.

13 HEARING OFFICER WEBB: They're not?

14 MR. SHAW: Yeah, I'm going to offer  
15 the exhibits into evidence. Are you going to  
16 object?

17 MS. JARVIS: We're not going to  
18 object to them.

19 HEARING OFFICER WEBB: Okay. So no  
20 objection to the admission of any of these  
21 exhibits. Then they are all admitted, 1  
22 through 9.

23 MR. SHAW: Yes.

24 HEARING OFFICER WEBB: Okay.



1 Ms. Jarvis, do you have anything further to  
2 present on behalf of the agency?

3 MS. JARVIS: We will be presenting  
4 testimony. If we can just have a short break.

5 HEARING OFFICER WEBB: Absolutely.  
6 Let's take five.

7 (Whereupon, a break was taken  
8 after which the following  
9 proceedings were had.)

10 HEARING OFFICER WEBB: We can go  
11 ahead and go back on the record. Ms. Jarvis, we  
12 were picking up with the agency's case.

13 MS. JARVIS: Right. And we call  
14 Hernando Albarracin.

15 WHEREUPON:

16 HERNANDO ALBARRACIN  
17 called as a witness herein, having been first duly  
18 sworn, deposeth and saith as follows:

19 HEARING OFFICER WEBB: Okay.

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

21 BY MS. JARVIS

22 Q. Okay. Please state your name for  
23 the record.

24 A. Hernando Albarracin.

1           **Q.           And what is your title at the**  
2 **agency?**

3           A.           I'm a section manager.

4           **Q.           For which section?**

5           A.           The Leaking Underground Tank  
6 Section.

7           **Q.           And how long have you been a**  
8 **manager?**

9           A.           Since April 1st, 2008.

10          **Q.           And were you employed by the agency**  
11 **before that?**

12          A.           Yes.

13          **Q.           And for how many years?**

14          A.           Nineteen.

15          **Q.           Nineteen. Has all of your**  
16 **experience been with the Leaking Underground**  
17 **Storage Tank Program?**

18          A.           No.

19          **Q.           What did you do prior to coming over**  
20 **to the leaking underground storage tank?**

21          A.           I worked in the permit section in  
22 the Bureau of Land. I held that job from 1989 to  
23 1996 and then in 1996 I took a position as a unit  
24 manager in the leaking underground storage tank

1 section until 2008 when I took the position of  
2 section manager.

3 **Q. Okay. Back when the first claim for**  
4 **this site was reviewed, what were the procedures**  
5 **in place in LUST at that time?**

6 A. We're speaking of the claim where  
7 the \$10,000 deductible was supplied?

8 **Q. We're speaking of the Books --**

9 A. Mark Books?

10 **Q. Mark Books.**

11 A. At that time in June 2008, there was  
12 a push to clear the backlog of claims in our  
13 section. We had a very, very large backlog so we  
14 were under pressure to get these claims reviewed  
15 quickly and eventually paid. So a process was put  
16 in place to do this. We recruited more people  
17 basically internally. So at that time there was a  
18 claims unit, approximately ten people I would say,  
19 and we added approximately another 15 people. I  
20 looked at a list before I came here today. There  
21 was 26 people who reviewed claims in June 2008.

22 **Q. And where did those extra 15 people**  
23 **come from?**

24 A. They came mostly from our section,

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1 technical people, people who do technical reviews,  
2 and there was at least one, Mark Books, who came  
3 from a different section.

4 **Q. Okay. And what were these people**  
5 **tasked to do?**

6 A. They were asked to review these  
7 claims. So there was approximately 700 claims  
8 that we processed and for that process we setup a  
9 procedure and the main theme was to streamline the  
10 review of these claims. So claims that were over  
11 120 days old are deadlined, regulatory deadline.  
12 Those claims were reviewed a lot more quickly than  
13 the claims that were not -- that were under 120  
14 days old.

15 So the process was streamlined  
16 meaning the reviews were done more quickly.  
17 Things were not checked as closely.

18 **Q. So at that time that Mr. Books**  
19 **reviewed the first one, he was just under orders**  
20 **to look at them and get them paid?**

21 A. Basically, yes. He looked at a few  
22 things. Compare to what was approved in the  
23 budget. There were certain things that definitely  
24 had to be checked. We were not -- for example, we

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1 would not pay more than what was approved in the  
2 budget. So that was one thing to check, but it  
3 was basically looking at what was in front of him  
4 and I believe, you know, he didn't have to pull  
5 the file.

6 **Q. Okay. So the file that Ms. Elston**  
7 **talked about pulling for her review, he would not**  
8 **have been required to do that?**

9 A. Right.

10 **Q. Then when we get to the claim that**  
11 **was reviewed by Ms. Elston and Brian Bauer, were**  
12 **those procedures then changed?**

13 A. Yes. After I believe in March of  
14 2009, there was a change internally where we  
15 became -- we, meaning the technical side of the  
16 program, became more involved in the review of  
17 these claims. So that's when Brian Bauer became  
18 involved, sort of a liaison between the claims  
19 unit and the technical side of things. So things  
20 were checked more closely.

21 In the past, the claims unit if  
22 they had any questions on the technical side of  
23 things they would come to us and ask us questions.  
24 For example, we have more than one deductibility

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1 determination, which deductible would apply. We  
2 would answer those questions. So by having the  
3 technical side of things look at these claims, it  
4 would make the review hopefully run more smoothly  
5 and any -- it's not really a separate process.  
6 The fiscal side of things goes hand in hand with  
7 the technical side of things because we review  
8 budgets, we approve budgets and then when the  
9 claim comes in we have to compare it to the  
10 budget.

11 That happened sometime after  
12 March of 2009, I believe, and eventually the LUST  
13 claims unit was folded and Cathy Elston is the  
14 only one left from that original group and the  
15 rest of the people who review claims are from the  
16 technical part of the program.

17 **Q. Okay. The LUST incident tracking**  
18 **database, with the information on there, can you**  
19 **explain what type of databases that LUST uses?**

20 A. The database that we use is an  
21 Access database, Microsoft Access database. And  
22 it has all kinds of different information in there  
23 and most of that information is shown online. I  
24 will say if you download the database you will get

1 most of the information that we see. One part you  
2 don't get if you download it is the enforcement  
3 information. We claim confidentiality on that  
4 one. But most of the information if you download  
5 it, it is available. What you see on the screen  
6 if you go online, it is a lot of what we see  
7 internally.

8 **Q. But it's not everything?**

9 A. It is not everything.

10 **Q. Okay. When -- do you have sites in**  
11 **the LUST program where the ownership of the site**  
12 **changes hands?**

13 A. Yes.

14 **Q. And when the ownership of the site**  
15 **changes hands, does there need to be a new**  
16 **deductible or does the deductible go along with**  
17 **the former party?**

18 A. The deductible goes with the site.  
19 So regardless of who owns the site, regardless of  
20 how many times the site is sold or -- it is not  
21 necessarily about selling the site, but who takes  
22 on the liability of the cleanup. The deductible  
23 always goes with the site.

24 **Q. So when a new owner comes on to the**

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1 **property, they take all liability for that site?**

2 A. If they -- yes, if they elect to  
3 proceed, that's the process that we have in place  
4 now. Before I believe 2006 we didn't have this  
5 process. But if the person or the party or the  
6 company elects to proceed as owner, as we call it,  
7 then they assume all liability for the cleanup.

8 **Q. So they take the site as they found**  
9 **it?**

10 A. Yes.

11 **Q. So whatever had been done on the**  
12 **site that forwards through to the next party, they**  
13 **don't have to start over?**

14 A. Correct.

15 **Q. Finishing up, is there anything else**  
16 **that you want to discuss regarding this claim?**

17 A. I will say that the process of the  
18 election to proceed as owner is not required by  
19 the agency. You know, if anybody wants to take  
20 over a cleanup, that is a voluntary action and  
21 that is something I point out to people on the  
22 phone. We have a fact sheet online. There is a  
23 form to do this process, but it is totally  
24 voluntary. It is in the -- in the rules available



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1 for people to takeover a cleanup, but it is  
2 voluntary.

3 Now, if somebody wants to  
4 takeover a cleanup and move forward and  
5 potentially access the fund to get this done and  
6 get reimbursed, then you do have to elect to  
7 proceed as owner. That's something the fire  
8 marshall will require in order to process the  
9 eligibility and deductibility form application  
10 because now we have a new party and they need --  
11 if there is already a deductible for this  
12 particular site, then the new party needs to get  
13 online, meaning they need to submit an application  
14 to the fire marshall, and get their name changed,  
15 the previous owner changed to the current owner in  
16 order to make this process work because this new  
17 party will be the one signing forms, applying for  
18 reimbursement, so on and so forth.

19 And that also helps with the  
20 issue that was brought up earlier about the W-9  
21 form. If we have an old eligibility determination  
22 that is ABC Gas Station, let's say it was given to  
23 an entity, and now comes a different entity and  
24 they submit claims for reimbursement to us and

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1 they submit their own W-9, when it goes to the  
2 comptroller, it will probably come back -- if the  
3 previous person applied for reimbursement, it is  
4 going to come back probably because they're going  
5 to say "This is not the party that applied for  
6 reimbursement before."

7           And something that we do check  
8 is that the W-9 -- the person that owned the  
9 entity and the W-9 matches the eligibility. Now,  
10 if that match cannot be easily made, if we're told  
11 "This is the same company really or the same  
12 entity," well, we have the option of asking for  
13 some documentation that will make this link. So  
14 maybe the party doesn't have to go and change the  
15 eligibility determination with the fire marshall,  
16 but we can accomplish this with some documentation  
17 that ties the two together. Some kind of a link.

18           For us to be sure -- we do this  
19 to be sure that we're paying the correct party.  
20 We don't want to issue -- or we don't want the  
21 comptroller to issue a check to a different party.  
22 Let's say the money gets used or the check gets  
23 cashed and then the other party that is doing --  
24 the current owner comes in and says "I want to get

1 paid for this amount of work." We're not going to  
2 pay for the same work twice.

3 So we're trying to make sure  
4 that we pay the correct party in this process,  
5 with the W-9. And I will add that, you know, when  
6 we reviewed those 700 claims, there was another  
7 round after that, another 400 claims. So that was  
8 the time period where things were -- as a program,  
9 we were falling behind. We were not making  
10 headway in the claims review process and that's  
11 where the whole restructure took place and that's  
12 why the technical people were brought in to manage  
13 this process as well.

14 **Q. So it's fair to say that mistakes**  
15 **could have been made during that time when you**  
16 **were trying to get all those claims approved?**

17 A. It is fair to say that, yes.

18 MS. JARVIS: Okay. I have no  
19 further questions.

20 C R O S S E X A M I N A T I O N

21 BY MR. SHAW

22 **Q. I just have a few. It sounds to me**  
23 **you're describing a situation in which priorities**  
24 **had to be made within the agency to get rid of**

1     **this backlog --**

2             A.       Correct.

3             **Q.       -- and things had to move? But**  
4     **isn't it also true at that time that the**  
5     **eligibility deductibility determinations had to be**  
6     **reviewed by the technical people?**

7             A.       Had to be reviewed by the technical  
8     people?

9             **Q.       Yes. Aren't the technical**  
10    **submittals required to have attached eligibility**  
11    **deductibility determinations?**

12            A.       Yes. Every budget that is submitted  
13    to us must contain this application from the fire  
14    marshall and we use it to compare to what we  
15    received from the fire marshall before that.  
16    Every claim has to have that eligibility  
17    determination also, again, to compare to what we  
18    have from the fire marshall.

19            **Q.       So it's true then that the**  
20    **eligibility deductibility determination with a**  
21    **\$10,000 deductible was submitted multiple times to**  
22    **the agency and no problem was identified, no**  
23    **objection was made and it was not simply this one**  
24    **person didn't do his job or -- that's probably**

1     **unfair.**

2                     **You're saying he was told to,**  
3     **you know, prioritize and move it through. This**  
4     **went through there several times through several**  
5     **different reviewers, isn't that true?**

6             A.       I don't know that that is  
7     necessarily true. What I will say is the claim  
8     that we have at issue was assigned to Mark Books.  
9     He looked -- he only worked with what was in front  
10    of him, the application that was in front of him.  
11    That application did contain the eligibility with  
12    the \$10,000 deductible. So he did not look any  
13    further. That was done in an effort to expedite  
14    and review the 700 claims that we had on hand.

15                    So how many people -- subsequent  
16    to that, I mean I would imagine that eligibility  
17    would have been submitted with all the budgets  
18    that have been submitted so far. In that process,  
19    that review of those budgets and those plans is  
20    done by a separate staff person.

21             **Q.       And if I understand correctly the**  
22     **priority you're making here is fairly consistent**  
23     **with what I see in the Environmental Protection**  
24     **Act, which is when the agency gets applications in**

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1 the LUST program, if the agency does not make a  
2 decision within a certain amount of time, and some  
3 instances that means the application is deemed  
4 denied, for applications for payment it means that  
5 it is deemed approved, is that correct?

6 A. That's correct.

7 Q. So, in a sense, the legislative  
8 priority here is that if the work is correct, the  
9 balance of the equity should be to pay for that  
10 work even if you didn't get a chance to review it  
11 that closely, is that fair?

12 A. That's fair to say. We streamlined  
13 the process. We looked at -- we did look at the  
14 Environmental Protection Act to make sure that we  
15 were within the law to do this.

16 Q. And then you say mistakes were made  
17 and you get calls from people wanting to know  
18 about electing to proceed as owners. Do you tell  
19 the people to call you, that mistakes would be  
20 made and this may be the biggest mistake you've  
21 made by electing to proceed as an owner --

22 A. No.

23 Q. -- because we're not accountable for  
24 our mistakes because we've got limited resources?

1     **Do you tell them about the mistakes?**

2             A.       No, I do not.  When I say that  
3 mistakes are made, I mean, we are reviewing  
4 thousands of these claims.  So, intuitively, I  
5 will say "Yeah, mistakes can be made" because  
6 these are reviewed by humans and after all we're  
7 a bureaucracy, but I don't tell that to people on  
8 the phone.  I don't tell them this is the biggest  
9 mistake because that would almost be giving legal  
10 advice.

11                    I do say it would be helpful to  
12 talk to an attorney, look at our fact sheet, check  
13 with the fire marshall before you sign this form  
14 to elect to proceed because they may tell you what  
15 the deductible might be if there isn't one already  
16 and if there is one already, they will tell you  
17 what the deductible will be.  That kind of thing.  
18 But I don't encourage or discourage.  I just  
19 basically present the facts submitted and point  
20 people to our documentation online.

21             **Q.       Isn't it true that in the form that**  
22 **the agency uses to approve elections to proceed**  
23 **that the agency advises the recipient to check**  
24 **with the State Fire Marshall as you've just**

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1 **suggested?**

2 A. That's correct.

3 **Q. So it's not at all abnormal for**  
4 **someone who is electing to proceed to take over a**  
5 **cleanup to then go get another eligibility**  
6 **deductibility determination?**

7 A. Well, what that -- what that  
8 statement means in the letter is that you do need  
9 to go check with the fire marshall to see. If  
10 there isn't a deductible already and nobody has  
11 ever applied, if the previous owner never applied  
12 for a deductible and therefore never submitted a  
13 claim, then they need to submit this application  
14 to the fire marshall to get a deductible issued  
15 and part of that process will include the fire  
16 marshall asking for an acceptance letter to elect  
17 to proceed as owner.

18 More than likely, the fire  
19 marshall has a different party as owner in their  
20 records and if there is one already, meaning one  
21 deductible has already been issued to the previous  
22 owner, then this process -- I'm going to be sort  
23 of speaking for the fire marshall, the process is  
24 to get that name changed to the new party, the new



1 entity, the new person in order for the process to  
2 go smoothly with us, as I said earlier, so that a  
3 new party, you know, can sign forms, submit the  
4 claim for reimbursement, match things and say they  
5 match and let's approve this claim.

6 **Q. If I'm understanding you correctly,**  
7 **you're saying the bulk of all the circumstances of**  
8 **taking over a cleanup, the estate needed to get a**  
9 **new election or needed to get an eligibility**  
10 **determination and sign documents as the estate and**  
11 **work as the estate, but you're arguing that that**  
12 **doesn't remove them from the sins of the past or**  
13 **whatever happened before? Am I understanding you**  
14 **correctly or maybe I'm not? Let me break this --**

15 A. When a new -- in this case, when the  
16 estate took over as owner and that was sometime --  
17 I actually don't remember what year that was.  
18 Anyway, they take responsibility from that point  
19 forward. From that point forward.

20 So, you know -- so as owner they  
21 may be eligible for reimbursement, people --  
22 that's what we mostly talk about, reimbursement  
23 and money and that kind of thing. But they also  
24 would be eligible for a no further remediation

1 letter.

2 So let's say somebody wants to  
3 take over a cleanup. They're not worried about  
4 reimbursement let's say. They don't care. Or  
5 maybe they're not eligible, the tanks are not  
6 eligible let's say, but they want the no further  
7 remediation letter because if they come to our  
8 program, they get the letter for free. If they go  
9 to the voluntary cleanup program, it will cost  
10 them money.

11 So that election is -- we talk a  
12 lot about reimbursement, but it is also being  
13 eligible to receive the no further remediation  
14 letter. So they take over from that point  
15 forward.

16 MR. SHAW: No further questions.

17 MS. JARVIS: I just have a couple  
18 clarifying questions.

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

20 BY MS. JARVIS

21 **Q. When we issue letters after a**  
22 **technical person looks at a plan and a budget, do**  
23 **we ever review or look at the deductible or make**  
24 **mention of the deductible?**

1 A. No, we do not.

2 Q. And say that we have a site that  
3 changes ownership mid-remediation, so the 45-day  
4 letter, the 20-day letter, they've all been  
5 submitted, maybe a site investigation has been  
6 done, do we allow the new owner to go back and  
7 redo?

8 A. No, we don't.

9 Q. So they start at that moment in  
10 time, but the stuff that had been done before  
11 they're stuck with whatever had been done before?

12 A. That's correct. If we have already  
13 approved the previous work, there is no need to go  
14 back.

15 Q. Okay.

16 MS. JARVIS: No further questions.

17 MR. SHAW: I just have one question.

18 R E C R O S S E X A M I N A T I O N

19 BY MR. SHAW

20 Q. When you say -- I understand what  
21 you're saying what has happened has happened and  
22 you can't change that, but, for instance, some of  
23 the things that do change, the deductible rules  
24 change and the deductible changed under the

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1 **program in the last few years to allow for \$5,000**  
2 **deductibles.**

3 **Is it the agency's position that**  
4 **if a site qualifies for a \$5,000 deductible under**  
5 **the terms of the statute, it does not get a \$5,000**  
6 **deductible if there is a previous deductible**  
7 **determination made that was higher?**

8 A. That's correct. If the site already  
9 has a deductible for the same incident, we're  
10 talking about the same occurrence, the same  
11 incident, then the higher deductible applies and  
12 that is clear in the law. There is no wiggle  
13 room. I mean, if somebody calls me about this and  
14 say "We just got hit with a higher deductible, is  
15 there anything you can do about it?" There is  
16 nothing we can do about it. The law is very  
17 clear. It is a very black and white decision and  
18 we do talk about these things.

19 We meet weekly in our section  
20 and we talk about all kinds of different things;  
21 technical things, fiscal things, and I would guess  
22 that we talk about this. Brian checks with us in  
23 these meetings. I have this situation. You know,  
24 I think -- you know, he will give his opinion and

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1 we will talk about it, but it is fairly, fairly,  
2 fairly straightforward unless there is something  
3 unusual about it, but that is usually not the  
4 case.

5 The law is very clear and we  
6 really have no choice, but to apply the higher  
7 deductible, again, for the same occurrence because  
8 a site may have more than one release. Each  
9 release may have a different deductible. Usually  
10 not, but it is possible. So if there are multiple  
11 deductibles we will issue one, we will apply only  
12 one and it is the higher one or the highest one if  
13 there are more than two.

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

16 MS. JARVIS: I have nothing further.

17 HEARING OFFICER WEBB: Thank you.

18 Ms. Jarvis, do you have anything further you would  
19 like to present?

20 MS. JARVIS: No, we rest.

21 HEARING OFFICER WEBB: Okay. I'll  
22 discuss a few housekeeping items on the record.  
23 The transcript is due by April 22nd and will be  
24 posted on the Board's website. The public comment

1 deadline is April 24th. Any public comment must  
2 be filed in accordance with Section 101.628 of the  
3 Board's procedural rules. The petitioner's brief  
4 is due by May 6th and the respondent's brief is  
5 due by May 27th and petitioner's reply brief is  
6 due by June 3rd.

7 Mr. Shaw, would you like to make  
8 any closing statement?

9 MR. SHAW: No, we'll reserve our  
10 statement for the brief.

11 HEARING OFFICER WEBB: Ms. Jarvis?

12 MS. JARVIS: We will do likewise,  
13 reserve our statement for the brief.

14 HEARING OFFICER WEBB: In that case,  
15 we will conclude the proceedings. We stand  
16 adjourned and I thank everyone for their  
17 participation.

18 MR. SHAW: Thank you.

19 MS. JARVIS: Thanks.

20 HEARING OFFICER WEBB: Thank you.

21

22

23

24

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1 STATE OF ILLINOIS )  
2 ) SS.  
3 COUNTY OF COOK )  
4

5 I, Steven Brickey, Certified Shorthand  
6 Reporter, do hereby certify that I reported in  
7 shorthand the proceedings had at the trial  
8 aforesaid, and that the foregoing is a true,  
9 complete and correct transcript of the proceedings  
10 of said trial as appears from my stenographic  
11 notes so taken and transcribed under my personal  
12 direction.

13 Witness my official signature in and for  
14 Cook County, Illinois, on this \_\_\_\_\_ day of  
15 \_\_\_\_\_, A.D., 2014.

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\_\_\_\_\_  
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