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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS AYERS OIL COMPANY,

Petitioner,

vs.

No. PCB 03-214

ILLINOIS ENVIRONMENTAL

(UST Appeal)

PROTECTION AGENCY,

Respondent.

Proceedings held on January 7, 2004 at 8:30 a.m., at the
Illinois Pollution Control Board Hearing Room, 1021 North Grand
Avenue East, Springfield, Illinois, before Hearing Officer Carol
Sudman.

Reported by: Darlene M. Niemeyer, CSR, RPR, CCR
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A P P E A R A N C E S

MOHAN, ALEWELT, PRILLAMAN & ADAMI
BY: Fred C. Prillaman
Attorney at Law
1 North Old Capitol Plaza, Suite 325
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On behalf of Illinois Ayers Oil Company.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
BY: John J. Kim
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Springfield, Illinois 62794-9276
On behalf of the Illinois EPA.

Also present:
Cindy Davis, CSD Environmental Services
Joseph Truesdale, CSD Environmental Services
Carol Hawbaker, IEPA

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P R O C E E D I N G S

(January 7th of 2004; 8:30 a.m.)

HEARING OFFICER SUDMAN: Good morning. My name is Carol Sudman. I am a Hearing Officer with the Pollution Control Board. This is the hearing for PCB 03-214, Illinois Ayers Oil Company versus IEPA. It is January the 7th of 2004, and we are beginning at 8:30 a.m. This hearing is continued from December the 3rd of 2003. I will note for the record that there are no members of the public present.

At issue in this case is the Agency's modification of the high priority Corrective Action Plan regarding Petitioner's underground storage tank, located at 310 State Street in Beardstown, Cass County. This hearing was noticed pursuant to the Act and the Board's rules, and will be conducted pursuant to Sections 101.600 through 101.632 of the Board's procedural rules.

At this time I would like to ask the parties to please make their appearances on the record.

MR. PRILLAMAN: Fred Prillaman, Springfield, Illinois, representing the Petitioner, Illinois Ayers Oil Company.

MR. KIM: John Kim, with the Illinois EPA.

HEARING OFFICER SUDMAN: Are there any preliminary matters to discuss on the record?

MR. PRILLAMAN: Your Honor, we have furnished to Counsel a motion to admit depositions, and I have filed that with the

1 Hearing Officer this morning. This is a motion directed to the
2 Hearing Officer.

3 We took three depositions in this case. The three
4 deponents have been noticed to appear. The question arose as to
5 how best to handle that; read the same depositions into the
6 record, read the same questions and get the same answers and take
7 four hours, or just agree that they can go in. We tried the
8 agreement. That didn't work. So I am moving to a motion,
9 because, number one, that is what the Board allows. Number two,
10 that is what the Supreme Court's rule allows. Number three,
11 that's what the reported decisions decided under the Supreme
12 Court Rules allow.

13 These depositions contain testimony that are admissions of
14 the party, the party being the Illinois EPA. They are
15 depositions that deal with this case only, and this case has many
16 issues in it, and we have delved into all of them in these depositions.
17 So the depositions are there for the record subject to the right of the
18 Illinois EPA, of course, to call any or all of these deponents
19 and either seek clarification, modification, whatever Counsel
20 thinks he needs to do.

21 But for purposes of our case-in-chief, these depositions
22 are allowed to go in. We move that they be admitted. I have
23 actually put exhibit numbers on them. I believe they are
24 Exhibits 2, 3 and 4 in the package that I gave you this morning.

1 I think the authorities are well set out, and I think it is
2 clear beyond any dispute that these are all admissable. I do
3 have the case with me if you want to read the actual quote from
4 the Board's recent case in which this very issue came up. The
5 case is Saline County Landfill, PCB Number 02-108. It is a May
6 16th of 2002 decision. It is right on point. There can't be a
7 case any closer on point. There were three Agency depositions
8 offered into evidence, and there was an opposition to it. The
9 Hearing Officer, who was Steve Langhoff, allowed them in over
10 objection.

11 The Board heard arguments on that very issue and sided with
12 the Hearing Officer and said, the Board affirms the Hearing
13 Officer's allowance of the depositions as evidence. The Agency
14 was present to cross-examine the witnesses, and the deposition
15 testimony explains the administrative record. I can't find a
16 case any closer on point, and there are no opposing cases.

17 HEARING OFFICER SUDMAN: Mr. Kim?

18 MR. KIM: Well, the Agency opposes the motion. I haven't
19 had the benefit of seeing the motion until this morning, so I am
20 not able to -- I have not looked at the case that Mr. Prillaman
21 has just referred to. So I wouldn't be able to respond directly
22 to what it does or does not say, I guess.

23 But as a general matter, I guess it is troubling to find
24 that there is the notion that discovery depositions, which are --

1 which, in this case, were not noticed as evidentiary depositions
2 and, therefore, were not putting the Agency on notice that these
3 depositions would be used or would be offered up as direct
4 evidence, that discovery depositions could still somehow be, you
5 know, admitted over the objection of the Agency.

6 As the Hearing Officer, I am sure, knows, discovery
7 depositions, by their nature, are more wide-ranging than what you
8 would expect to find in hearing testimony. There is no Hearing
9 Officer present during discovery depositions to hear objections
10 as to relevance, to hear objections as to anything else. There
11 were a number of questions that were elicited during the
12 discovery depositions that were very likely appropriate for
13 discovery depositions, but not appropriate or certainly would
14 have been challenged had they been offered in a hearing context.

15 Mr. Prillaman's statement that while the Agency is now
16 present and we can just simply try and correct that by
17 cross-examination, what that does is that imposes a great
18 prejudice upon us. It allows the direct admission of statements
19 that we would have otherwise contested, so that instead of us
20 being able to argue that they should never be heard to begin
21 with, now we are saying, well, okay, we are going to put them in
22 and now we will just try and fix them after they have already
23 gone in. We have not had the opportunity to raise objections to
24 the Hearing Officer as to a number of the questions that were

1 posed to the deponents as to a number of the issues that came up
2 and so forth.

3 So it could have very clearly be done, that these
4 depositions could have been noticed as evidentiary depositions.
5 The Agency could have then conducted any cross-examination or
6 could have posed more rigorous objections, or could have, if
7 necessary, contacted the Hearing Officer during the course of the
8 depositions to get rulings, if that was necessary, so that this
9 kind of thing wouldn't come up. But that was not done. They
10 were noticed as discovery depositions.

11 I think it would be inappropriate to allow those in this
12 case, especially when, as Mr. Prillaman has noted, the deponents
13 have all been noticed. He can call them all as witnesses. They
14 are all prepared today. And there really doesn't seem any need
15 to otherwise admit documents which contain information that would
16 never be -- or certainly would not go unchallenged by the Agency.

17 HEARING OFFICER SUDMAN: Mr. Prillaman, they were
18 definitely discovery depositions in Saline in the precedent that
19 you cited?

20 MR. PRILLAMAN: Absolutely.

21 HEARING OFFICER SUDMAN: Okay.

22 MR. PRILLAMAN: I went on line to find the transcript and
23 couldn't. This is hearsay. You can object if you want. But I
24 called one of the lawyers in the case, Steve Hedinger, a former

1 partner of mine, who handled this case. He said these were, in
2 fact, discovery depositions. It is right on point. It is on all
3 fours.

4 HEARING OFFICER SUDMAN: Okay.

5 MR. PRILLAMAN: I will just give you the case if you want
6 to read the language.

7 HEARING OFFICER SUDMAN: Okay. Sure.

8 MR. KIM: Could I have a chance to, if nothing else, go get
9 a copy for myself so that I --

10 MR. PRILLAMAN: Would you rather see it?

11 HEARING OFFICER SUDMAN: Please show Mr. Kim, and then you
12 can --

13 MR. KIM: I can go make a copy so the Hearing Officer can
14 look at the same time I do, if you would like.

15 HEARING OFFICER SUDMAN: That's okay. I really don't need
16 a copy. I mean, I trust that Mr. Prillaman read it to me
17 correctly.

18 I am ready to make a decision on this. I would like to
19 note for the Board that I also had not seen this motion before
20 hearing. I have also not seen the discovery depositions.
21 However, I do believe that the precedent that Mr. Prillaman cited
22 is on point in this case. And I am going to grant the motion
23 based on this precedent in which the Board has previously allowed
24 the admission of discovery depositions in this type of action.

1 MR. PRILLAMAN: Thank you, Your Honor.

2 (Whereupon said documents were admitted into
3 evidence as Petitioner's Exhibits 2, 3 and 4 as
4 of this date.)

5 MR. KIM: Could I at least have the opportunity to read
6 the case before we proceed any further?

7 HEARING OFFICER SUDMAN: Yes.

8 (Mr. Kim reviewing documents.)

9 MR. KIM: Well, I just had one -- I have some questions
10 that I would like to raise to the Board. First of all, in the
11 Saline County case that Mr. Prillaman cited to, one of the issues
12 there was -- I think there were two issues. One was whether or
13 not the depositions would be allowed over the objection of the
14 Agency. And, two, whether or not the depositions would be taken
15 as an admission by the Agency. And it says here that the Hearing
16 Officer also accepted the depositions as an offer of proof from
17 Saline County Landfill, Inc., and that they constituted an
18 admission by the Agency.

19 Then it goes on to say, "the Board affirms the Hearing
20 Officer's allowance of the depositions as evidence. The Agency
21 and the County were present to cross-examine the witnesses, and
22 the deposition testimony explains the administrative record.
23 Concerning SCLI's offer of proof, however, the Board will not
24 consider the depositions as an admission by the Agency that the

1 area of the interior separation berm at issue today received
2 siting approval for waste placement in 1982. Such use of the
3 depositions is unnecessary."

4 If -- I am not sure exactly how to read that statement in
5 conjunction with what he is asking for here. But I don't know
6 that -- I think what he is asking for is that not only would
7 everything in the depositions be admitted, but be admitted as
8 admissions. Again, the purpose of discovery depositions is
9 twofold. It is, one, to allow opposing Counsel to discover
10 whatever information they may need to prepare themselves for
11 hearing. And, two, to create information from which they can
12 seek to impeach a witness who provides testimony later on during
13 a hearing.

14 In this case, if everything in the depositions is going to
15 be taken as an admission, as opposed to just testimony, and I
16 don't know if there is a fine line there or not, but -- because I
17 can't -- I am not exactly sure what the context was of the
18 Board's statement there that they are not going to accept the
19 depositions there as admissions on some key issue, but --

20 MR. PRILLAMAN: That's an incorrect summary.

21 MR. KIM: Well, I am just simply reading. I have not had a
22 chance to read the whole opinion. I am simply reading just the
23 three paragraphs that he had highlighted that I think spoke to
24 this. So all I am saying is I don't exactly know what the Board

1 meant by that. But the Board clearly stated that the depositions
2 would not be taken as an admission as to what I think was a key
3 issue in that case.

4 If that is -- if you are going to follow the precedent of
5 that case, I think you need to do so that if there is any key
6 issues here that these depositions not be taken as admissions by
7 the Agency on that -- on, you know, any key issues.

8 Second, I guess I would just like a clarification from the
9 Hearing Officer that in the future should the Agency consider any
10 discovery deposition to be fair game for admission into evidence
11 over objection?

12 MR. PRILLAMAN: I don't think that is a fair question to
13 ask this Hearing Officer in this case.

14 HEARING OFFICER SUDMAN: Well, wait. I am not going -- I
15 mean, I am not going to comment on that at this time. I don't
16 know.

17 MR. KIM: Well, I guess, what I -- that's fine. I mean, we
18 will just simply have to treat discovery depositions as
19 evidentiary depositions from this point on, I suppose, because,
20 you know, we can't allow this kind of thing to go on. You know,
21 we are not going to allow one-sided depositions to take place
22 from here on out.

23 If that's your ruling, that's fine. We will just -- you
24 know, we will conduct ourselves in the future accordingly.

1 HEARING OFFICER SUDMAN: Perhaps this may be a case where
2 the Board comes out with some language with a more specific
3 ruling on that. But before we move on, let me -- can I see that,
4 the copy?

5 MR. PRILLAMAN: The case?

6 HEARING OFFICER SUDMAN: Yes.

7 MR. PRILLAMAN: Yes.

8 HEARING OFFICER SUDMAN: Thanks.

9 (The Hearing Officer reviewing the document.)

10 HEARING OFFICER SUDMAN: I think, upon further review of
11 this case, I am going to tailor my ruling to more closely follow
12 the language that is in this case, Saline County Landfill versus
13 IEPA, PCB 02-108, to grant the motion to allow the depositions as
14 evidence, and any portion of the deposition that constitutes an
15 admission by the Agency as admitted right now as an offer of
16 proof.

17 MR. PRILLAMAN: Thank you, Your Honor.

18 MR. KIM: Thank you.

19 HEARING OFFICER SUDMAN: All right. Are there any more
20 preliminary matters to discuss?

21 MR. KIM: Well, if we are going to handle the discovery
22 depositions in that manner, I believe there are some references
23 here and there in the discovery depositions that, again, we would
24 have raised as objections and sought exclusion on that testimony

1 by the Hearing Officer. Would it be appropriate at whatever time
2 in the hearing, I guess, if it comes up, that we be allowed to go
3 through and ask to see if some of the testimony that we find
4 questionable in the deposition transcripts be stricken? I mean,
5 do I have any recourse as to some of the information in there
6 that I would find objectionable?

7 HEARING OFFICER SUDMAN: Yes.

8 MR. KIM: When should we do that? Because if this is being
9 offered as direct testimony, then should I do it before Mr.
10 Prillaman closes his case, because it would seem to compromise
11 his direct case? Or should I do it on --

12 HEARING OFFICER SUDMAN: Yes.

13 MR. KIM: I guess it would be the cross-examination of
14 their testimony or, you know, whatever your preference is.

15 HEARING OFFICER SUDMAN: Either one of those, you know. I
16 guess whatever makes more -- now, are these depositions for these
17 two individuals?

18 MR. PRILLAMAN: No, these are --

19 HEARING OFFICER SUDMAN: These are people who are --

20 MR. PRILLAMAN: These are Agency people, one of whom is
21 right here, Carol Hawbaker.

22 HEARING OFFICER SUDMAN: Oh, okay.

23 MR. PRILLAMAN: The other two are upstairs. It was just
24 like the Saline County case, three Agency people.

1 HEARING OFFICER SUDMAN: Yeah, why don't we do it at the
2 end of his case.

3 MR. KIM: Okay. Sure.

4 (Carol Hawbaker exited the hearing room.)

5 MR. PRILLAMAN: Okay. Your Honor, I would like to make a
6 brief opening comment.

7 HEARING OFFICER SUDMAN: Yes, please.

8 MR. PRILLAMAN: Thank you. This is a case that involves a
9 facility in Beardstown, Illinois, that was the subject of an
10 application for a phase one corrective action. Now, phase one
11 corrective action is investigation only. It is not digging or
12 hauling. It is a plan and a budget to investigate. So this is
13 an investigation case involving a very high priority or severe
14 release of petroleum from underground storage tanks in
15 Beardstown, Illinois, at a facility owned and operated by the
16 petitioner.

17 The original application contained a plan and a budget that
18 was filed on July the 20th of 2002. And that was rejected by the
19 Agency on October the 11th of 2002. The Board will be taking
20 official notice, and I will ask the Board to take official notice
21 of its own order in Case 03-70 involving this exact same
22 facility, in which the Board extended the time to appeal that
23 original rejection for a period of 90 days.

24 The legislature amended the Environmental Protection Act to

1 allow for that very procedure whereby an applicant for a permit,
2 who does not like the decision of the Agency, does not have to
3 clog the Board's dockets but, instead, should be given the
4 opportunity to extend the time period for 90 days, go to the
5 Agency, and work it out.

6 The testimony will show that we, in fact, did those things;
7 went to the Agency, and, we thought, worked it out. The record
8 will show that the application in this case, in 03-214, was
9 filed. Then after that meeting on December the 4th of 2002, and
10 for purposes of preserving our rights in the first case, that we
11 had done the 90 days extension on, and that is 03-70, we did file
12 an appeal, which is still pending, and we did that on February
13 the 13th of 2003, as a proforma matter, figuring we would get the
14 budget approved and the plan approved, and that would be the end
15 of the matter.

16 Unfortunately, it didn't happen. On March 28th of 2003,
17 the Agency modified the plan, modified the budget in a way that
18 was entirely objectionable. It was not consistent with what we
19 believe they had said that we should do. And as a consequence,
20 we filed this appeal on May the 3rd of 2003.

21 As the Hearing Officer knows, from our periodic
22 conferences, we have been working on trying to get this thing
23 resolved without having to impose upon the Board up until now,
24 but we have not been successful. So here we are.

1 The evidence will demonstrate that the application, as
2 submitted to the Agency, complied completely with the
3 Environmental Protection Act and the regulations, in that it
4 proposed a plan that was necessary to investigate this site for
5 all of the matters set forth in the Act and the regs that you are
6 to look for and identify and use as a basis for preparing to do
7 the remedial action necessary.

8 The evidence will also show that the plan does not call for
9 more than what is necessary. It calls for what is necessary. It
10 is not an excessive plan in that regard. The evidence will also
11 show that the dollars that were budgeted to do this work, which
12 is a modest amount -- it is about a \$52,000.00 case; that is all
13 this case is -- was a reasonable amount to do this work and
14 necessary to do this work so that the investigation would be
15 meaningful and useful for future purposes.

16 Both the plan was cut and the budget was cut in this case
17 in a way that was entirely objectionable, contrary to law,
18 contrary to the equities, contrary to facts, contrary to science.
19 We will demonstrate that all that is required in the Act and the
20 regs was done in this case. We will go through the application.
21 We will go through the chronology. We will put the case in
22 context. And we hope to expose the way that the Agency goes
23 about doing this isn't fair or reasonable, and it is completely
24 arbitrary, based upon documents that we have never seen and that

1 they still won't show us. We have no idea how they arrived at
2 their decision.

3 So as a consequence, we think what we are going to put on
4 is a case that will demonstrate fairness and reasonableness and
5 accuracy and compliance. We do not think the Agency can rebut
6 that case.

7 HEARING OFFICER SUDMAN: Mr. Kim, would you like to make an
8 opening statement?

9 MR. KIM: Simply that the Illinois EPA believes that the
10 decision under appeal was consistent with the Environmental
11 Protection Act, with the Board's regulations, and with the
12 information that was before it at the time of its decision, as
13 contained within the administrative record.

14 HEARING OFFICER SUDMAN: Thank you.

15 MR. PRILLAMAN: We call Joe Truesdale.

16 HEARING OFFICER SUDMAN: Mr. Truesdale, would you like to
17 have a seat over here.

18 MR. KIM: Before we go on, is Number 1 the record?

19 MR. PRILLAMAN: No. Number 1 is the application.

20 MR. KIM: Okay. Right.

21 MR. PRILLAMAN: For clarification, before we start, there
22 is an administrative record that was filed in this case by the
23 Agency. And I believe that it is paginated, as filed with the
24 Board; is that correct?

19

1 MR. KIM: Yes.

2 MR. PRILLAMAN: All right. That is not part of my case,
3 because the Agency record generally is just the Agency record,
4 and can be referred to as the Agency record. Is that your
5 experience, John?

6 MR. KIM: Yes. The only reason I brought that up was the
7 copy here is, I think, taken from part of the administrative
8 record.

9 MR. PRILLAMAN: That is correct. Our Petitioner's Exhibit
10 Number 1 is a portion of the Agency record, consisting of the
11 application in issue in this case. I want it to be part of our
12 case, because that helps make out our prima facie case. The
13 fairness, the reasonableness, the validity of that application
14 and all of the facts and document therein, all the numbers, all
15 the explanations are a part of our case.

16 So I want Petitioner's Exhibit Number 1 to be part of our
17 case, and Mr. Truesdale will be talking about that at this point
18 in time.

19 MR. KIM: The only reason I brought it up was that I saw
20 that it did not contain all the pages. I didn't know if you left
21 those out by mistake or intentionally.

22 HEARING OFFICER SUDMAN: Darlene, would you please swear in
23 the witness.

24 (Whereupon the witness was sworn by the Notary

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Public.)

J O S E P H W. T R U E S D A L E,

having been first duly sworn by the Notary Public, saith as follows:

DIRECT EXAMINATION

BY MR. PRILLAMAN:

Q. State your full name for the record, please.

A. Joseph W. Truesdale.

Q. Mr. Truesdale, what do you do for a living?

A. I am a professional engineer with CSD Environmental Services, Inc.

Q. Where is CSD Environmental Services located?

A. Springfield, Illinois.

Q. Did you bring with you a resume?

A. Yes.

MR. PRILLAMAN: All right. I would like to call the Hearing Officer's and Mr. Kim's attention to Petitioner's Exhibit 8.

Q. (By Mr. Prillaman) Do you have it in front of you --

A. No.

Q. -- or do you want me to bring you the copy you gave me?

HEARING OFFICER SUDMAN: Here. I have got it.

THE WITNESS: Thank you.

Q. (By Mr. Prillaman) Mr. Truesdale, I am going to hand

1 you what has been marked as Petitioner's Exhibit Number 8, and I
2 am going to ask you to review that and tell me --

3 HEARING OFFICER SUDMAN: He can look at my copy.

4 MR. PRILLAMAN: Okay. That might be easier because I have
5 got these in a book.

6 HEARING OFFICER SUDMAN: Yes.

7 MR. PRILLAMAN: Thank you.

8 Q. (By Mr. Prillaman) I will ask you if that is a true and
9 correct copy of your resume, up-to-date?

10 A. Yes.

11 Q. It consists of two pages?

12 A. Yes.

13 Q. Can you briefly explain to the Board your educational
14 background and experience as it relates to this case?

15 A. I have degrees in environmental engineering, as well as
16 applied geology and hydrogeology, in addition to an Associate's
17 degree in engineering technology and land surveying. I have
18 taken post graduate level course work in subsurface flow in
19 porous media, analysis of environmental systems.

20 Q. Please slow down.

21 A. Advanced soil mechanics. I have been with CSD
22 Environmental Services as a staff engineer since 1998. I
23 currently hold a position as professional engineer, senior
24 project manager. I am responsible for design of remediation

1 plans, management of environmental restoration projects. I also
2 lead a team of scientists, engineers, who are responsible for
3 developing alternative technologies for investigation analysis
4 and remediation of contaminated sites.

5 I am a member of multiple industry groups, including Water
6 Environment Federation, American Chemical Society, National
7 Ground Water Association. I have presented papers and verbal
8 presentations at national seminars, including Battelle. I have
9 also conducted in-house training for Illinois Environmental
10 Protection Agency staff on application of in-situ bioremediation
11 of petroleum-impacted sites. I think that's a good summary.

12 Q. How is it that you believe that any or all of that
13 educational background and experience pertains to your
14 involvement in the case in question, being the Ayers Oil site in
15 Beardstown, Illinois?

16 A. The investigation portion of any project deals with
17 multidisciplines including geology, engineering, chemistry,
18 statistics, a multitude of disciplines, which I have either had
19 direct education or subsequent training in.

20 Q. All right. I call your attention to Petitioner's
21 Exhibit Number 1, which is the application filed in this case on
22 or about December 12th of 2002. It should be marked as
23 Petitioner's Exhibit Number 1. And you also have your own copy,
24 I think, with a cover on it.

1 A. Yes.

2 Q. They should be the same document.

3 A. Yes.

4 Q. Would you quickly review that and tell me whether that,
5 in fact, is the application that is in issue in this case?

6 A. Yes, it is.

7 Q. What was your responsibility in connection with the
8 preparation of that document?

9 A. At the time I was the project manager in charge of
10 preparation of this report, correspondence with the Agency, and
11 subsequent implementation of any approved Corrective Action Plan.

12 Q. All right. So you would be the key person to draft the
13 document with some help from others at CSD, I take it?

14 A. That's correct.

15 Q. Okay. I am going to ask you some questions about that
16 document.

17 MR. PRILLAMAN: But before I do, I would like to move into
18 evidence Petitioner's Exhibit Number 1, being the application
19 itself, as well as Petitioner's Exhibit 8, which is Mr.
20 Truesdale's resume.

21 HEARING OFFICER SUDMAN: Any objection, Mr. Kim?

22 MR. KIM: No objection.

23 HEARING OFFICER SUDMAN: Okay. Petitioner's Exhibit
24 Numbers 1 and 8 are admitted.

1 (Whereupon said documents were admitted into
2 evidence as Petitioner's Exhibits 1 and 8 as of
3 this date.)

4 MR. PRILLAMAN: For clarification, Madam Hearing Officer,
5 those three depositions that we talked about as being admitted, I
6 want the record to show those are Exhibits 2, 3 and 4 in your
7 package.

8 HEARING OFFICER SUDMAN: Okay. Thank you very much.

9 Q. (By Mr. Prillaman) Mr. Truesdale, was this the first
10 time that this application or a version thereof was submitted to
11 the Agency to do a phase one investigation or a phase one
12 corrective action investigation?

13 A. No.

14 Q. It is true, is it not, that you also are the person who
15 prepared the application for this very site that proposed a plan
16 and a budget for this phase one corrective action investigation
17 on July the 20th of 2002; is that correct?

18 A. That's correct.

19 Q. And that was rejected; is that correct?

20 A. That's correct.

21 Q. And as a consequence, are you aware of the fact that
22 your company, CSD, and your client, the Petitioner in this case,
23 requested me to arrange extra time so you could work it out with
24 the Agency?

1 A. Yes.

2 Q. In fact, were you the person asked or tasked to do the
3 working out with the Agency?

4 A. Yes.

5 Q. No lawyers were present at that meeting, were they?

6 A. No.

7 Q. Can you tell us briefly what occurred at the meeting
8 after the Board -- strike that -- after the Agency rejected the
9 first application in 03-70 and before this application,
10 Petitioner's Exhibit Number 1, was filed?

11 A. There were actually two meetings with Agency staff after
12 denial of the original plan. The first meeting included myself;
13 Cindy Davis; Carl Adams, who represented the Petitioner; Bill
14 Flashly, a representative of the Illinois Petroleum Marketers
15 Association; Harry Chappel; Doug Clay; and Tom Hedinger. In that
16 meeting we discussed two plans for two different sites that were
17 very similar in nature, both of which were denied. One was the
18 Beardstown site, which is in question. The other one is a
19 site -- a Royal Oil site in Gibson City, Illinois.

20 Q. Could you spell that? Is that Royal?

21 A. Royal Oil, correct.

22 Q. In Gibson City?

23 A. In Gibson City, Illinois, yes.

24 Q. Let's stop you just there for a second. The meetings

1 that you had with the Agency before you filed Petitioner's
2 Exhibit Number 1, but after the Agency had rejected your original
3 application, concerned really two sites that had a similar plan?

4 MR. KIM: I am going to object. These are leading
5 questions.

6 MR. PRILLAMAN: I am clarifying what he said.

7 MR. KIM: Well, I think you can ask him without giving him
8 the answers.

9 HEARING OFFICER SUDMAN: You are leading a bit. If you
10 would just watch that in the future.

11 MR. PRILLAMAN: All right.

12 Q. (By Mr. Prillaman) Did you understand the question?

13 A. Yes, both plans were phase one Corrective Action Plans
14 for investigative purposes using direct-push soil and ground
15 water sampling techniques.

16 Q. That is the key issue of commonality between the two
17 sites and the two plans?

18 A. Yes.

19 Q. Okay. And to your recollection, do you believe that you
20 had arrived at an appropriate resolution as to what to put in the
21 new plans for both Royal Oil and Ayers?

22 A. For the Ayers site, Harry Chappel requested a second
23 meeting.

24 MR. KIM: Objection. Hearsay.

1 MR. PRILLAMAN: This is hearsay by an Agency person who is
2 a party in this case, and that's always admissable. So I believe
3 that is an improper objection.

4 MR. KIM: Well, again, it is a little unusual because we
5 have got discovery depositions serving as direct testimony, but
6 it is hearsay. It is an out of court statement. Mr. Chappel is
7 here. Mr. Chappel, if he would like, can testify as to what he
8 did or did not say during the meeting. Mr. Truesdale can
9 certainly testify as to what his impressions were and what his
10 understanding was. But I don't think he should be telling -- he
11 shouldn't be providing in his testimony what Mr. Chappel said or
12 what anybody else in that meeting said.

13 HEARING OFFICER SUDMAN: I agree. I think we should limit
14 his testimony to his impression of the meeting, and Mr. Chappel
15 can be questioned as to what he said.

16 THE WITNESS: Let me rephrase.

17 MR. PRILLAMAN: Maybe I didn't phrase my response to that
18 objection properly. The objection is to a statement made by an
19 Agency person, which is an admission by an Agency person. It is
20 not a third party. It is an Agency person. They are a party in
21 this case. And the point made by Counsel that he is here and can
22 testify goes to my point that he can clarify anything he wants.
23 You always are allowed to have a witness testify as to what a
24 party said because they are parties. It is hearsay, but only in

1 the theoretical sense, not in the objectionable sense. It is
2 admissable.

3 HEARING OFFICER SUDMAN: All right. Just go ahead and
4 answer the question as best as you can.

5 And we will address it later on for you, Mr. Kim.

6 THE WITNESS: A side meeting was requested by the Agency
7 staff at that time, which was subsequent to the original meeting.
8 That meeting included Harry Chappel, Carol Hawbaker, and myself,
9 to discuss the issues of the Ayers site independent from the
10 previous meeting.

11 Q. (By Mr. Prillaman) Okay. And in that meeting, was it
12 discussed -- well, strike that.

13 In that meeting, did the issue come up as to whether a
14 push-driven technology was acceptable for purposes of obtaining
15 water samples during investigation?

16 A. In the first meeting, yes.

17 Q. I call your attention to Petitioner's Exhibit Number 9,
18 which is the Agency fact sheet, regarding the use of push-driven
19 technology. Do you have that in front of you?

20 A. Yes.

21 Q. Is it true, Mr. Truesdale, that the reason for denial of
22 the original plan was that you --

23 MR. KIM: Objection. This is leading.

24 MR. PRILLAMAN: All right. Strike that. You are right. I

1 am trying to move this along.

2 Q. (By Mr. Prillaman) Can you tell the Hearing Officer and
3 the Board why it is that the Agency rejected your original plan
4 that included the use of push-driven technology to collect water
5 samples?

6 A. One of the --

7 MR. KIM: I am going to object to the form of the question.
8 He is asking why the Agency did something. He can ask as to what
9 his opinion is as to why the Agency did something. But he is
10 not -- the Agency staff can testify best as to why they did or
11 did not deny the plan.

12 Q. (By Mr. Prillaman) All right. Let me leave that
13 question in, but before I ask you to answer it, I am going to do
14 one more thing. I call your attention to Petitioner's Exhibit 6.
15 That is a permit appeal that was filed in this case on February
16 13th of 2003. And I call your attention to the attachment to the
17 Agency's denial letter in Petitioner's Exhibit 6. Do you see
18 that?

19 A. Yes.

20 Q. Okay. Specifically, I call your attention to Attachment
21 A, paragraph five, the second full paragraph at the bottom of the
22 page. Would you read that into the record, please?

23 A. "The plan fails to meet the above requirements for the
24 following reasons: The plan proposes direct-push ground water

1 sampling. The Illinois EPA wishes to clarify that monitoring
2 wells must be installed to obtain ground water samples.

3 Q. Was that reason for denial the subject of your meeting
4 with the Illinois EPA?

5 A. Yes.

6 Q. Was it conceded by Harry Chappel and by Carol Hawbaker
7 at that meeting that that was an incorrect reason for denial?

8 MR. KIM: Again, objection. This is, first of all --
9 several points. First of all, we are now getting into
10 dispositive matters related in a separate appeal that has been
11 filed by Petitioner, but it is not consolidated testimony on
12 that, and is going to go to the ultimate issues in this case. I
13 don't think it is appropriate in this context here.

14 Second, I am going to renew my objection. I mean, he is
15 now asking for this witness' belief as to what Agency witnesses
16 said, and the nature of the question is what Agency witnesses
17 said to concede points that, you know, again, relate to an appeal
18 that we have not even gotten to yet. So I think the question is
19 objectionable. The form of the question is objectionable. If he
20 wants to rephrase it, he can do that. He is asking for Agency
21 admissions. I mean, that is just --

22 HEARING OFFICER SUDMAN: Can we rephrase it to his opinion
23 of the outcome of the meeting?

24 MR. PRILLAMAN: Yes, Your Honor, I can do that. I can get

1 at it several ways.

2 Q. (By Mr. Prillaman) The best way, I think, is now that we
3 have had that particular paragraph read into the record and we
4 are in a meeting with Mr. Truesdale and Mr. Chappel and Ms.
5 Hawbaker; is that correct?

6 A. The original meeting also included Tom Hedinger and Doug
7 Clay.

8 Q. And others from the Illinois EPA?

9 A. Correct.

10 Q. At that meeting you were discussing the reasons for
11 denial of the original plan and what could be done to correct it;
12 isn't that correct?

13 A. Correct.

14 Q. At that point in time, Petitioner's Exhibit 9, which is
15 the Agency fact sheet, came up during the discussion; did it not?

16 A. That's true.

17 Q. All right. Would you tell us, then, how that document
18 came to be discussed by the parties, what it is that you said and
19 what it is that either Carol or Harry Chappel said about that
20 document and how it relates to what you want to do at this site
21 to investigate?

22 MR. KIM: I am going to pose the same objection. What he
23 is seeing is this witness' statement as to what Agency witnesses
24 said. If he wants to state what his impressions of what they

1 said were, that is fine. If he is asking for statements, he
2 should -- he can call those people and ask what their testimony
3 was.

4 MR. PRILLAMAN: That's an entirely incorrect statement of
5 how you try a lawsuit, when you have one party against the other.
6 You put a witness on the stand to say what did the other side
7 say. Those are admissions of the other side.

8 HEARING OFFICER SUDMAN: I understand. I mean, we have to
9 find out what happened in the meeting, you know. I don't
10 remember how you phrased the question. Was it his -- what
11 impression were you left with as a result of the conversation
12 that you had at the meeting?

13 MR. PRILLAMAN: I asked him to state for the record what
14 was said about Petitioner's Exhibit 9, which didn't have
15 Petitioner's Exhibit Number 9 on it at that time.

16 HEARING OFFICER SUDMAN: Okay.

17 MR. PRILLAMAN: How did it come up in the conversation,
18 what did you say about it, and what did the Agency people say
19 about it and how it relates to this site, whether this
20 push-driven technology can be used or can't be used to collect
21 water samples.

22 HEARING OFFICER SUDMAN: I am going to allow him to go
23 ahead and answer that.

24 THE WITNESS: I brought the fact sheet, Exhibit 9, to the

1 Agency's attention during the meeting. Doug Clay was aware of
2 the fact sheet. I don't know if anyone else was. Doug Clay, at
3 that time, conceded that direct-push sampling could be used for
4 ground water sampling.

5 Q. (By Mr. Prillaman) And that is contrary to what the
6 Agency's denial point was, isn't it?

7 A. Yes.

8 Q. So that you don't need to install monitoring wells to
9 obtain ground water samples, do you?

10 A. That's correct.

11 Q. You can use direct-push technology, can you not?

12 A. That's correct.

13 Q. So that when you prepared and filed, then, the
14 application that is in issue in this case, which is Petitioner's
15 Exhibit Number 1, you did propose to use --

16 MR. KIM: Objection. These are -- I understand leading
17 questions to a point, but...

18 MR. PRILLAMAN: Okay.

19 MR. KIM: I don't think this witness -- the last ten
20 questions the witness has been asked I don't think he has had to
21 answer more than yes or no to any more than one or two of them.

22 MR. PRILLAMAN: That's incorrect, but I will back off of --

23 HEARING OFFICER SUDMAN: Thank you.

24 MR. PRILLAMAN: -- my aggressive approach here, John. I am

1 just trying to finish early.

2 Q. (By Mr. Prillaman) Mr. Truesdale, did you propose to use
3 direct-push technology in the application which is in issue in
4 this case, as Petitioner's Exhibit Number 1?

5 A. We proposed both direct-push soil and ground water
6 sampling, yes.

7 Q. Okay. So the direct-push method was to be used to
8 collect both ground water as well as soil samples?

9 A. Correct.

10 Q. Okay. Was this consistent with what you had discussed
11 at your meeting with the Illinois EPA before you filed the
12 application?

13 A. Yes.

14 MR. PRILLAMAN: Okay. I would like to offer now into
15 evidence Petitioner's Exhibit Number 9.

16 MR. KIM: No objection.

17 HEARING OFFICER SUDMAN: Okay. Petitioner's Exhibit Number
18 9 is admitted.

19 MR. PRILLAMAN: Okay.

20 (Whereupon said document was admitted into
21 evidence as Petitioner's Exhibit 9 as of this
22 date.)

23 Q. (By Mr. Prillaman) Mr. Truesdale, I would like to ask
24 you, then, some questions about Petitioner's Exhibit Number 1.

1 Can you first verify that the statements appearing in
2 Petitioner's Exhibit Number 1 are true and accurate?

3 A. Yes, they are, and certified by my signature.

4 Q. All right. They remain true and accurate, to your
5 knowledge, as of this day?

6 A. Correct.

7 Q. Okay. Can you identify for the Board the hours
8 estimated by you to be necessary for the tasks that were
9 identified in this Petitioner's Exhibit Number 1, which were --
10 some of which were cut by the Agency? Could you go through and
11 identify the hours that were estimated by you to be necessary?

12 A. The first hour estimate --

13 Q. Can you refer to the page of the application, and I will
14 try to find the corresponding page in the Agency record.

15 MR. KIM: I think the pagination on your Exhibit 1 is the
16 Agency's pagination.

17 MR. PRILLAMAN: Good. Well, he is looking at his own
18 version.

19 MR. KIM: Oh, I'm sorry. I see. Okay. Sure.

20 Q. (By Mr. Prillaman) At the bottom of that page, Joe, are
21 the paginations that we are going to need for purposes of this
22 transcript.

23 A. The first hour estimate was for in-depth investigation,
24 and it is listed on page 68 of Exhibit Number 1.

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1 Q. Okay. What is that hourly number?

2 A. It is 50 hours.

3 Q. Okay. Can you tell us how you arrived at the 50 hours?

4 A. I used an average production rate of 160 lineal feet per
5 day, divided by the 520 lineal feet of boring that was proposed
6 in the application. I included one half hour per direct-push
7 ground water sample, and included one hour per relocation to off
8 site sampling locations.

9 Q. I call your attention to Petitioner's Exhibit Number 13.
10 Do you see that document?

11 A. Yes.

12 Q. Is that an accurate calculation of how you arrived at
13 the 50 hours?

14 A. Yes.

15 Q. Tell us, if you can, whether all or any part of the
16 items that make up this calculation were discussed by and between
17 you and Harry Chappel and Carol Hawbaker at your Agency meeting
18 before you filed this application?

19 A. Yes, I explained that our average production rates were
20 approximately 160 lineal feet per day. I believe that I
21 mentioned that it ranged somewhere from 140 to 170. I described
22 how the direct-push ground water samples would be obtained. I
23 drew diagrams on the dry erase board, depicting the sampling
24 equipment and strategy, at the request of the Agency

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1 representatives. And we had detailed discussions about the
2 proposed locations of all borings, all of which the Agency
3 ultimately agreed to in the meeting and in the subsequent plan.

4 Q. All right. As to each of the persons -- well, strike
5 that.

6 What person's hours were cut by the Agency in connection
7 with this proposed investigation; do you recall?

8 A. Professional engineer hours were cut.

9 Q. From what to what?

10 (Ms. Carol Hawbaker re-entered the hearing
11 room.)

12 A. From the original application to the revised application
13 we made reductions in labor hours. And then subsequent to
14 submittal of the second application, the Agency made additional
15 reductions in labor hours and rates for professional engineer,
16 project engineer, field manager, and I believe that is
17 professional geologist also.

18 Q. I am going to call your attention to Petitioner's
19 Exhibit Number 16. Do you see that document?

20 A. Yes.

21 Q. Is that a portion of the application that was rejected,
22 but was the subject of your discussion with the Agency that you
23 are talking about at this moment?

24 A. Yes.

1 Q. What was the personnel cost estimate in that budget?

2 A. The original application was \$36,084.00.

3 Q. Okay. You just testified that you cut some items from
4 that budget, did you not?

5 A. We made some reductions, yes.

6 Q. All right. I call your attention to Petitioner's
7 Exhibit Number 1, pages 72 and 73. Do you have those in front of
8 you?

9 A. Yes.

10 Q. Are those the corresponding pages in the Petitioner's
11 Exhibit Number 1 that correspond to Petitioner's Exhibit Number
12 16 in the previous application?

13 A. Yes, they are.

14 Q. In the previous application you said that the budgeted
15 or estimated hours for personnel for this investigation were
16 \$36,084.00. What was the reduced amount that you proposed the
17 second time around in Petitioner's Exhibit Number 1?

18 A. We proposed \$32,514.00, and made applicable reductions
19 according to the scope of work changes. Since the total number
20 of boring locations and the general scope of work was not
21 altered, primarily the only alterations were in analysis. The
22 personnel costs did not change appreciably, but the appropriate
23 reductions were made.

24 Q. So overall the Petitioner's Exhibit Number 1 was a

1 reduction from the application that had been rejected?

2 A. Correct.

3 Q. This is as a consequence of your conference with the
4 Illinois EPA before you filed Petitioner's Exhibit Number 1;
5 isn't that correct?

6 A. Correct.

7 Q. What experience do you have in conducting direct-push
8 borings for purposes of conducting both a soils investigation and
9 water sampling?

10 A. I have been in charge of projects that include
11 direct-push soil and ground watering sampling on four other
12 occasions.

13 Q. For purposes of estimating the number of hours necessary
14 to conduct direct-push borings for both soil and ground water
15 collection, do you believe you have enough experience to make an
16 accurate prediction of how long that will take?

17 A. Yes.

18 Q. All right.

19 A. We have tested -- we have actually -- CSD has conducted
20 field tests on our own also in order to develop numbers for
21 average estimating purposes.

22 Q. Do your confirmatory tests confirm that the estimated
23 number of hours that you estimated in Petitioner's Exhibit Number
24 1 are accurate?

1 A. Under the geologic conditions at this site, yes.

2 Q. I call your attention to Petitioner's Exhibit Number 1
3 again. I would like for you to turn to page 16 of that document,
4 which is a drawing. I would like for to you explain to the Board
5 and to the Hearing Officer.

6 MR. KIM: I am sorry. I was distracted. Can you tell me
7 what page again?

8 MR. PRILLAMAN: Page 16 of Petitioner's Exhibit 1, which
9 would also be page 16 of the administrative record.

10 MR. KIM: Thank you very much.

11 Q. (By Mr. Prillaman) Do you see that document?

12 A. Yes.

13 Q. Could you explain to the Board how many direct-push
14 borings you proposed for soil and ground water and where you
15 proposed to do them? And then I will ask you some follow-up
16 questions about them.

17 A. We proposed a total of 13 direct-push soil and ground
18 water sampling locations, the majority of which were down
19 gradient from the source, some of which were in the source area.
20 A single location was up gradient, in order to characterize
21 potential input of contaminate mass from an off site location.
22 And the final boring location was placed side gradient to
23 evaluate additional potential contaminant flux from a second
24 potential off site location.

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1 Q. As I look at Petitioner's Exhibit Number 1, page 16, I
2 see a drawing of a -- it looks like a building and next to it is
3 a discount smoke shop?

4 A. That's correct.

5 Q. Is this the property in question?

6 A. Yes.

7 Q. Okay. Then I see boring locations to the top of the
8 page which is actually slightly to the south, isn't it?

9 A. Primarily to the west.

10 Q. I am looking at an area in the lower right hand corner
11 that says north is to the right and down. My question is this,
12 are borings B16, B15, B14, B13 and B17 all off site?

13 A. Yes, in addition to B5.

14 Q. Then on the bottom of the page another one, B5, is also
15 off site?

16 A. Correct.

17 Q. Why did you believe that those boring locations were
18 necessary to do this investigation in conformance with the Act
19 and the regulations?

20 A. As we discussed in the meeting with the Agency
21 personnel, boring B5 was located to evaluate potential source
22 contaminant mass flux from an off site location located to the
23 east of State Street. Boring B6 was also located in order to
24 evaluate flux from a potential -- a second potential off site

1 source located to the south of Fourth Street. The remaining
2 borings, B17 was located at that approximate distance based on
3 preliminary ground water contaminant transport modeling conducted
4 using TACO equation R26, as outlined in the application. The
5 remaining three off site borings were located so as to evaluate
6 the lateral spread of the plume across the approximate center
7 line as estimated, using equation R26.

8 Q. Okay. Did you discuss these boring locations and the
9 need for them before -- strike that.

10 Did you discuss these boring locations and the need for
11 them with Agency personnel before you filed Petitioner's Exhibit
12 Number 1?

13 A. Yes.

14 Q. Are you stating for the record that at these boring
15 locations that are shown on here with a B in front of them, both
16 on site and off site, that you were going to do direct-push
17 sampling of both soil and ground water?

18 A. That is correct, as it was specified in the application.

19 Q. Can you describe to the Board how a direct-push ground
20 water sample is obtained?

21 A. There are actually two ways you can obtain samples using
22 direct-push technology, one of which is with a screen point
23 sampler. The other is a prepacked well that is installed in the
24 direct-push bore hole after removal of the direct-push tooling.

1 That's the primary difference between the two. The screen point
2 sampler allows the collection of sample through the direct-push
3 tooling without removing it and installing subsequent equipment.
4 The application outlined collection of ground water samples using
5 a 24-inch retractable screen point sampler connected to a
6 peristaltic pump. The peristaltic pump is --

7 Q. Would you spell peristaltic for the Court Reporter?

8 A. Yes. I want to make sure I spell it right. It is
9 P-E-R-I-S-T-A-L-I-C.

10 Q. You were describing a screen point sampler which you had
11 proposed to use in this case as part of your ground water
12 sampling using direct-push technology. Had you completed your
13 description?

14 A. I think so.

15 Q. Okay. That is also all described in the application
16 itself; is it not?

17 A. Correct.

18 Q. How does this differ from how a direct-push soil sample
19 is obtained?

20 A. Different tooling is used to collect the soil sample. A
21 hollow tube is essentially advanced into the subsurface, which
22 allows the soil to be extracted. As the direct-push equipment is
23 pushed through the subsurface, the open tube allows the soil that
24 the direct-push rod is being advanced through to be extracted

1 into the tube and then brought to the surface for evaluation.

2 Q. Is there a difference in the amount of time it takes to
3 collect the soil sample as opposed to collecting the ground water
4 sample?

5 A. Yes.

6 Q. Can you explain that for us, please?

7 A. Different tooling is required for a ground water sample.
8 The screen point has to be placed in the direct-push outer rod.
9 We discussed in the application it is a dual-tube system. So the
10 outer casing remains in place and different tooling is placed
11 inside that hollow outer casing in order to collect the
12 appropriate samples. So once a soil sample is collected and
13 brought to the surface, new tooling is placed down the hole.

14 With direct-push methods, the soil sample has to have this
15 open end at the bottom in order for the soil to come into the
16 direct-push rod. So a second hole has to be advanced in order to
17 collect the ground water samples since it has different tooling
18 required to collect ground water as compared to the soil sample.

19 The screen point sample is a solid core with a point at the
20 end advanced through the soils. Once you get to the location
21 where the ground water sample is to be collected, you extract
22 that outer casing and expose the screen section of that inner rod
23 screen point. Tubing is placed down the hollow opening inside
24 the inner tube and a low flow ground water sampling method is

1 used to extract ground water from the subsurface through the
2 screen point left exposed.

3 Q. All right. When you estimated the number of hours that
4 it would take to do the investigation, did you include the
5 estimated number of hours necessary to do both soil sampling
6 using direct-push technology and water sampling --

7 A. Yes.

8 Q. -- using direct-push technology?

9 A. Yes.

10 Q. Was that clear in the application that you were
11 estimating hours for both?

12 A. Yes.

13 Q. How long does it take for the ground water to enter the
14 screen?

15 A. It depends on the geologic conditions. As I mentioned,
16 I have done this type of sampling at four other sites. We don't
17 propose this type of sampling in fine grain materials any longer
18 because it takes an exorbitant amount of time. In these
19 unconsolidated deposits, depending on depth, times typically
20 range from 20 minutes to an hour and a half, depending on depth
21 and the formation characteristics.

22 Q. But in this particular case, you did have to advance the
23 probe and wait for ground water to enter the space before you
24 could collect it; isn't that correct?

1 A. Correct.

2 Q. So some time was used -- strike that. You have not done
3 it yet.

4 Some time was estimated to be required to wait for the
5 water to accumulate before you could extract it and test it;
6 isn't that correct?

7 A. That's correct.

8 Q. And that was factored into your overall estimate of --

9 MR. KIM: Objection. Leading questions. These are all
10 leading questions.

11 HEARING OFFICER SUDMAN: I agree.

12 MR. PRILLAMAN: I will reask the --

13 HEARING OFFICER SUDMAN: They are of a rather complicated
14 nature, though. To the extent that you can refrain from using
15 leading questions, please do so. I do understand some of these
16 are kind of -- you would be fishing for a little while.

17 Q. (By Mr. Prillaman) Was the time necessary to wait for
18 the water to accumulate factored into your estimated overall time
19 to do this investigation in Petitioner's Exhibit Number 1?

20 A. Yes, it included the time to wait for the formation to
21 produce water, as well as the time required to extract the water
22 to the surface from depth using low flow technologies and small
23 diameter tubing.

24 Q. To the extent you have not already done so, can you

1 describe how your application, which is Petitioner's Exhibit
2 Number 1, was designed to determine the nature of the
3 contamination?

4 A. We proposed investigation at various locations down
5 gradient lateral to the source area and up gradient of the source
6 area. We also proposed direct-push ground water samples at
7 various depths in order to characterize contaminant distribution
8 in the subsurface and potential variation and contaminant mass
9 with depth and in different geologic formations encountered
10 during site classification activities.

11 We also proposed to log the soil samples encountered at
12 each boring in order to identify and verify locations of
13 potential natural migration pathways that were encountered and
14 identified during site classification and to classify the soils
15 in accordance with ASTM standards in order to verify that the
16 position stated in the site classification report was, in fact,
17 accurate at all locations, including off site properties, as it
18 relates to the heterogeneities and nonhomogenous nature of the
19 soil encountered at the site during site classification.

20 Q. Was all of this explained clearly in the application
21 itself?

22 A. Yes.

23 Q. To the extent you have not already done so, can you
24 explain for us how Petitioner's Exhibit Number 1 was designed to

1 determine the concentration of the contamination?

2 A. We proposed that ground water samples be collected and
3 soil samples also from a limited number of the borings that I
4 agreed to during the meeting with the Agency. The ground water
5 samples were proposed at two different depths in each of the 13
6 borings. Those samples were to be analyzed in the laboratory for
7 BTEX constituents.

8 Q. To the extent you have not already answered this
9 question, can you explain how the investigation plan, appearing
10 in Petitioner's Exhibit Number 1, was designed to determine the
11 direction of movement of the contamination?

12 A. Yes. As I mentioned before, the borings were oriented
13 such that we had samples from down gradient, lateral, and up
14 gradient locations relative to the source.

15 Q. Was this plan also designed to determine the rate of the
16 movement of the contamination?

17 A. That's correct.

18 Q. How so?

19 A. By evaluating the change in concentration along an axis
20 of a plume, such as the axis identified by B12, B14, and B17.
21 Using ground water modeling techniques and statistical evaluation
22 you can evaluate what the relative rate of migration would be
23 expected to be.

24 Q. Was the plan also designed to determine the extent of

1 the contamination?

2 A. Yes, based on our model results we didn't expect the
3 plume to extend beyond 200 feet. So the farthest boring proposed
4 was placed at that 200 feet radius. All of the other borings
5 were proposed within that radius in order to evaluate the lateral
6 spread of the plume.

7 Q. Again, referring to Petitioner's Exhibit Number 1, which
8 is the plan contained in the application itself, could you
9 explain how it was designed to determine the significant physical
10 features of the site and surrounding area that may affect
11 contaminant transport and risk to human health and safety and the
12 environment?

13 A. As I mentioned previously, we proposed to log the soils
14 at each boring location in order to further evaluate the natural
15 migration pathways identified during site classification.

16 Q. Mr. Truesdale, in your opinion, were these design
17 features that you have just described sufficiently detailed to
18 inform the Agency permit reviewer of each of these purposes?

19 A. Yes.

20 Q. By the way, after you submitted your application,
21 Petitioner's Exhibit Number 1, did you get any phone calls asking
22 to explain or clarify anything?

23 A. Not that I recall.

24 Q. Okay. Let's turn our attention to the budget portion of

1 Petitioner's Exhibit Number 1. Petitioner's Exhibit Number 1 is
2 an application for the approval of both a plan and a budget;
3 isn't that correct?

4 A. Correct.

5 Q. Calling your attention to the budget portion of
6 Petitioner's Exhibit Number 1 that you prepared, did that budget
7 include an accounting for all costs associated with the
8 implementation and completion of the site investigation plan?

9 A. Yes.

10 Q. Can you explain for us as to each such cost how that
11 particular cost item is, in fact, associated with the
12 implementation and completion of the site investigation plan?

13 A. Each of the line items listed on the forms used -- first
14 of all, the forms are the Agency supplied forms that are required
15 to be used by law and the Act.

16 Q. As you refer to those forms, would you use the exhibit
17 that is marked Petitioner's Exhibit Number 1, because it has got
18 the pagination at the bottom of it.

19 A. Okay.

20 Q. What I am asking you to do is for each such cost, just
21 explain how it is associated with the implementation of that plan
22 that we have just gone through?

23 HEARING OFFICER SUDMAN: And please mention what page you
24 are looking at, too.

1 THE WITNESS: On page 68, the investigation costs are
2 broken down into the drilling components, the number of borings,
3 relative depth, and the purpose of the boring specified on the
4 forms. The associated hour estimate is included in the location
5 provided on the forms. Other costs associated with the sampling,
6 including the sampling tubes, concrete coring equipment,
7 decontamination equipment, etcetera, are detailed on that same
8 page, 86.

9 Q. Or 68?

10 A. Excuse me. It is 68.

11 Q. Let me just stop you right there. Are these costs that
12 appear on page 68 in your opinion all associated with the
13 implementation of the plan?

14 A. Yes.

15 Q. Are they all necessary for the implementation of the
16 plan?

17 A. Yes.

18 Q. In your opinion, are they all reasonable?

19 A. Yes.

20 Q. Are they based upon your experience in doing this
21 before?

22 A. They are.

23 Q. Okay. How is it that each of these costs to be incurred
24 in the performance of site investigation, will, in fact,

1 implement the plan? I mean, for example, you have got
2 decontamination equipment, steam cleaner, etcetera, five units,
3 96 hours a day, \$480.00. I am a layman. I am looking at this,
4 and I don't know, and I don't know if the Board knows. They
5 probably do. But explain how each of these items, in fact,
6 advances the cause and is necessary to advance the cause to
7 implement the plan?

8 A. The decontamination equipment is required to remove
9 residual contaminants from the sampling equipment prior to
10 advancing at an alternate location in order to prevent potential
11 cross-contamination.

12 A concrete coring machine is required to provide an opening
13 in impervious materials in order to allow effective sample
14 collection and prohibit omission of potentially important
15 geologic information located immediately below the concrete
16 material.

17 The disposable sampling tubes are required in order to
18 extract the soils that are to be logged and evaluated to the
19 surface.

20 Drilling labor is obviously required in order to conduct
21 the work.

22 Utility locate on site non JULIE is required, because JULIE
23 does not locate utilities on private property. In order to avoid
24 damaging potential utilities and endangering the health and

1 safety of the contractors, the utilities on site must be located.

2 The utility truck and job trailer are required as listed at
3 the bottom of page 68.

4 The Bentonite chips are required to seal the bore holes
5 after completion in order to prevent additional flux of
6 contaminants from the surface to the subsurface.

7 Q. You have got in the middle of page 68 an estimate of 50
8 hours for direct-push investigation, at \$140.00 per hour.

9 A. Correct.

10 Q. What costs are included in the \$140.00 per hour rate?

11 A. That includes the drill rig, all the tooling, the
12 direct-push screen point sampler, and all equipment that is not
13 listed as alternate equipment in the subsequent table.

14 Q. Okay. Would you continue your testimony on the same
15 questions as you move through this application, explaining as to
16 each of the costs you estimated here in your budget, how they are
17 associated with the site investigation plan and why they are
18 necessary and reasonable?

19 A. Page 70 is the beginning of the break down for
20 laboratory analysis costs. It includes costs for BTEX analysis,
21 physical soil parameters necessary for performance of risk based
22 corrective action calculations, and samples for landfill --
23 general landfill acceptance, slash, TACO evaluation. Page 71 is
24 the same, BTEX samples for ground water analysis in order to

1 evaluate the concentration extent and relative distribution of
2 contaminants in the subsurface.

3 Page 72 lists a break down of personnel costs in accordance
4 with the preceding directives. All the tasks are broken down as
5 specified on the plan -- or on the form.

6 Q. Can I stop you right there? We have had some testimony
7 about pages 72 and 73 already. You have already testified, I
8 believe, that the total amount appearing on page 73 is a
9 reduction from what you had originally proposed and what the
10 Agency requested?

11 A. That's correct.

12 Q. Would you focus now on the people in this list of
13 personnel to be used to implement the plan. Focus on the people
14 who the Agency cut, either in hours or in rates or both, and
15 explain what those people are to do. I know they appear on here,
16 but tell us what these words mean and why it is necessary for
17 these people to do this work with that many hours?

18 A. The reductions focus on professional engineer,
19 professional geologist, project engineer and field manager.

20 Q. Right.

21 A. Field manager was cut entirely from the budget for
22 excessive personnel on site. In the budget we had two personnel
23 responsible for ground water sample collection at eight hours
24 apiece. If only one person was there on the site it would

1 essentially take twice the time to collect the samples, so we
2 would have 16 hours for one versus eight hours for two, which
3 gets you to the same total labor hour estimate.

4 Professional engineer was reduced from five to two.
5 Professional engineer, in accordance with the Illinois
6 Professional Engineer's Act, is required to oversee all phases of
7 work, which he is subsequently signing and certifying. And two
8 hours is obviously not enough time to oversee the 60, 70, 80, 90,
9 100, 150, 200 and 280, upwards of 400 hours that are specified in
10 the plan elsewhere under the other items.

11 Q. So you believe five hours is reasonable for a
12 professional engineer to do the tasks that are listed on page 72
13 under professional engineer?

14 A. I don't personally, but it was one of the items that was
15 discussed in the meeting, and it was a concession that I made to
16 appease Agency representatives.

17 Q. It was ten originally?

18 A. Correct.

19 Q. That was more reasonable, right?

20 A. I think so.

21 Q. Go on to the next item.

22 A. The staff geologist hours were reduced for R26 modeling
23 and CAP design. R26 modeling is an interactive and iterative
24 process, especially in early stages of site investigation, where

1 limited data is available. It requires the evaluation of
2 specific input parameters, including hydraulic conductivity,
3 source width, source depth, porosity, hydraulic gradient, and
4 initial source concentrations. All of those variables must be
5 determined by evaluation of the boring logs, the laboratory
6 analytical results, the ground water contour maps, the hydraulic
7 conductivity analysis, etcetera.

8 Those parameters are then input into a one-dimensional
9 contaminant transport model, analytical model, which includes
10 first order decay and calculates the concentration along the
11 center line of a plume from a constant plain or source mass.

12 We typically do some model verification and that entails
13 essentially inputting a parameter and seeing what the results are
14 at a known source or a known point within the plume from
15 additional subsequent sample locations that are preexisting
16 during the modeling. This is pretty standard model sensitivity
17 analysis and validation during any numerical or analytical ground
18 water modeling. Let's see. Professional --

19 Q. Let's stop there. We are talking about staff geologist;
20 are we not?

21 A. Correct.

22 Q. In your opinion, based upon your experience, is the 24
23 hours that you estimated enough to do the modeling that you just
24 described and the CAP design?

1 A. Including the CAP design, yes.

2 Q. Is it excessive?

3 A. I don't think so, no.

4 Q. Okay. Let's continue on. I believe the next -- if you
5 want to stay with staff geologist, fine. Is that what you were
6 doing?

7 A. Staff geologist. The CAP design portion is essentially
8 just preparation of the plan as it is specified in the initial
9 guidance statement on page 72. Tasks are divided as drafting,
10 data collection, plan, report or budget preparation. So that is
11 how it was broken down on the lines in accordance with the Agency
12 provided forms.

13 Q. What I want you to do is to identify each of the other
14 persons whose hours were cut and explain why those hours need to
15 be restored and why you believe that they are reasonable
16 estimates of hours needed?

17 A. I don't recall if the project engineer title was the
18 hours were cut or the rate was reduced exclusively.

19 Q. Well, let's talk about the engineer. What is a project
20 engineer as opposed to a professional engineer?

21 A. A project engineer is simply not licensed in the State
22 of Illinois as professional engineers. The training requirements
23 are similar. Has a degree, a bachelor's degree in engineering
24 and professional -- licensure as a professional engineer is

1 entirely voluntary and you are not required to become a licensed
2 professional engineer, but you are allowed to apply to be a
3 licensed professional engineer if you have both the education and
4 experience requirements specified in the Illinois Professional
5 Engineering Act.

6 Q. Are the estimated hours for the project engineer, in
7 your opinion, fair and reasonable and necessary for the
8 implementation of the plan?

9 A. Yes, they are. The project engineer hours listed here
10 include design and development of the Corrective Action Plan and
11 budget. It also includes client-Agency correspondence and
12 project coordination, which would include meetings with the
13 Agency staff to determine the items that they would like to see
14 included in the report, application. Also includes time for
15 preparation of the reimbursement request application subsequent
16 to completion of the items specified in the application.

17 Q. Let's finish up the personnel, if you will, and focusing
18 on the names of the people -- not names, but the categories of
19 the people who the Agency cut in terms of hours. And explain why
20 those hours are necessary for the implementation of the plan?

21 A. The project engineer at that time would have been, as I
22 said, myself. I was responsible for development of the CAP,
23 determining the appropriate locations of direct-push borings,
24 evaluating the boring logs and sample results to determine the

1 appropriate depths for which samples were to be collected. And
2 identification and evaluation of the potential migration pathways
3 identified in the site classification completion report. And
4 assurance that the plan, as provided in the application, would,
5 in fact, be sufficient to meet the minimum requirements of the
6 Act in determining the relative extent of contamination resulting
7 from this release. And evaluating any potential adverse effects
8 resulting from this release to human health and the environment.

9 Q. I call your attention to page 74, which are equipment
10 costs. And I would like to ask the same questions. First, are
11 those costs associated with the site investigation plan?

12 A. Yes, they are.

13 Q. Are they reasonable costs?

14 A. Yes.

15 Q. Will they be incurred in the performance of site
16 investigation?

17 A. Yes, they will.

18 Q. Can you explain to the Board how each of these costs
19 are, in fact, associated with the implementation of the plan,
20 focusing on the ones that were cut? And if I recall here, they
21 cut \$849.30 in equipment costs; isn't that correct?

22 A. That's correct.

23 Q. Just quickly go over each and tell me why all of these
24 are necessary to implement the plan and tell me why the time that

1 you estimated and the unit rates that you estimated are
2 reasonable, based on your experience?

3 A. As specified on the sheet, the PID and the pH meter were
4 estimated to be used for five days, which corresponds to the
5 investigation hour estimate provided on page 68 previously. The
6 EnCore samplers were estimated based on the number of sample --
7 the soil samples approved by the Agency in accordance with 5035,
8 analysis for BTEX, two EnCore samplers must be submitted to the
9 laboratory for each BTEX sample. Since we had six samples that
10 were approved by the Agency, 12 EnCore samplers were required.

11 A camera was also reduced. We had two days of camera use
12 instead of five. Since the work that was going to be conducted
13 was relatively similar in nature, there was no reason to have
14 pictures from all five days, when a couple of days would be more
15 than adequate to illustrate to the Agency the work that was being
16 conducted. The unit rates are typical rates used in the
17 Agency -- or within the industry or rental rates that we
18 typically charge to clients.

19 Q. Are any of the time units or rental units excessive?

20 A. No.

21 Q. Calling your attention to page 76, field purchases,
22 these are not big items, but would you explain to the Board why
23 these are necessary and reasonable?

24 A. Miscellaneous retail purchases includes ice, film, and

1 miscellaneous parts in the field. Ice is required for
2 preservation of samples in the field. UPS. Let's see. We have
3 film. Obviously, that is required for documenting photographic
4 evidence of what is being conducted. It is a relatively small
5 cost on a per day basis so we don't charge for disposable gloves
6 and shovels and spades and miscellaneous equipment. We lump it
7 into a miscellaneous purchase cost which is covered on item one.

8 UPS, shipment of samples to the laboratory. Soil and
9 ground water samples are very heavy and are shipped in coolers.
10 And \$50.00 per sample per day is probably actually now slightly
11 low. Our recent costs are actually a little bit higher than
12 that.

13 The ground water sampling pump is obviously required in
14 order to obtain the ground water samples. The screen point
15 sampler and the disposable ground water sampling tube is also
16 required to obtain direct-push screen point sampler ground water
17 samples.

18 Q. The next page is photocopying. And that, obviously, is
19 necessary, you feel, to implement the plan?

20 A. We are required to submit reports to the Agency in
21 duplicate, and as a result, photocopying is required.

22 Q. The final form here that the Agency asks you to fill out
23 is on page 78 for handling charges. Can you explain how you
24 arrived at those numbers and why you believe they are both

1 necessary to implement the plan and reasonable?

2 A. The subcontractors who would be performing some of the
3 work items specified in the application are listed under item A,
4 subcontractor charges. The subsequent amounts required to
5 complete the subcontractor tasks are also listed. And the
6 handling charges where they calculate it according to the sliding
7 scale presented at the top of page 78.

8 Q. Okay. Now, the handling charges were cut, were they
9 not, in proportion to the cuts -- the reduction in the number of
10 direct-push?

11 A. That's correct.

12 Q. Was there any other objection to the handling charges,
13 that you know of?

14 A. No.

15 Q. Okay. Could you explain, for the record, who Heartland
16 Drilling and Remediation is?

17 A. Heartland Drilling and Remediation is a drilling
18 contractor owned by Cindy Davis. It provides subcontracting
19 services throughout the State of Illinois to various consultants
20 and public sector entities.

21 Q. Okay. I call your attention to Exhibit 18B. Is that a
22 brochure that describes who Heartland Drilling and Remediation,
23 Inc., is?

24 A. Yes.

1 Q. You mentioned it is owned by Cindy Davis. Is that your
2 boss at CSD?

3 A. Yes.

4 Q. Is that what CSD stands for?

5 A. That's correct.

6 Q. I call your attention to Exhibit 18A. Is that a
7 brochure describing the company you work for?

8 A. That is correct.

9 Q. It is your testimony that Cindy Davis is the owner of
10 both of those corporations?

11 A. That's correct.

12 Q. Let's go back to page 70 of Petitioner's Exhibit Number
13 1, which is the analysis costs. Were those cut, as well? You
14 had estimated \$3,010.00 to do those. Can you explain why they
15 are all necessary and reasonable? Do you recall whether the
16 Agency cut any of those?

17 A. There were some reductions for the physical soil
18 analysis required to do subsequent TACO evaluation and reduction
19 in the soil analysis required for subsequent landfill disposal
20 and TACO evaluation.

21 Q. Can you explain to the Board why it is that those cuts
22 must be restored in order to carry out this plan?

23 A. In order to develop risk based objectives for subsequent
24 determination of appropriate clean up levels, these parameters

1 must be obtained during investigation in order to calculate the
2 appropriate risk based objectives under TACO.

3 Q. In your approach to doing this high priority site
4 investigation, do you have any guidance or are you using any
5 guidance from an authoritative source, such as the United States
6 EPA?

7 A. Yes, actually, there are several guidance documents for
8 site investigation promulgated by the U.S. EPA. One of the ones
9 that we use as guidance for phase one site investigations is EPA
10 document 510-B-97-001, Expedited Site Assessment Tools for
11 Underground Storage Tank Sites, a Guide for Regulators.

12 Q. I call your attention to Petitioner's Exhibit Number 10.
13 Do you see the document?

14 A. Yes.

15 Q. Is that the document that you just identified as one
16 that you use in your preparation of these site investigation
17 plans?

18 A. Yes.

19 (Cindy Davis exited the hearing room.)

20 Q. Mr. Truesdale, is this a document that you brought to
21 the attention of the Agency before you filed Petitioner's Exhibit
22 Number 1?

23 A. Yes.

24 Q. Did you mail that over to one of the attendees of the

1 meeting that you just talked about?

2 A. Yes, I did.

3 Q. Who was that?

4 A. Doug Clay.

5 Q. Does he run the department over here for the Leaking
6 Underground Storage Tank?

7 A. He does.

8 Q. So he is more or less the boss of Harry Chappel, who is
9 the boss of Carol Hawbaker; is that the way it goes?

10 A. As I understand, yes.

11 Q. Okay. Thank you. Is your application and plan, which
12 is Petitioner's Exhibit Number 1, consistent with the guidance
13 set forth by the U.S. EPA in Petitioner's Exhibit 10?

14 A. Yes.

15 Q. Mr. Truesdale, to the extent you have not answered this
16 already, will any of the costs that you estimated in your budget
17 be used for site investigation activities that are in excess of
18 those required to meet the minimum requirements of Title 16?

19 A. No, not at all.

20 Q. All right. Now, you have already explained, haven't
21 you, how you arrived at the number and placement of the wells in
22 the plan?

23 A. Yes.

24 Q. To your knowledge, this was all not only explained to

1 the Agency ahead of time but agreed to by them?

2 A. Correct.

3 Q. Would you explain how you arrived at the number and
4 types of samples and analysis that you proposed in this plan?

5 A. As I believe I mentioned before, the soil samples were
6 reduced from the original submittal as concession, agreed to
7 during the Agency meeting. The ground water samples were
8 determined based on the specifications indicated in the
9 application on page six of Exhibit 1. The approximate depths
10 specified correlate to the various geologic formations
11 encountered and identified during a site classification and
12 illustrated on the cross-section provided on page 19 of Exhibit
13 Number 1.

14 (Cindy Davis re-entered the hearing room.)

15 Q. Okay. Mr. Truesdale, do you believe that each of your
16 planned goals are required pursuant to the Act and regulations?

17 A. Yes.

18 Q. Was there any goal that was set forth in your plan to
19 investigate this site that was beyond what the Act and the regs
20 required you to do?

21 A. Not at all.

22 Q. All right. I call your attention again to an exhibit
23 that we have talked about before. It is Petitioner's Exhibit 6.
24 That was the permit appeal that was filed in this case -- correct

1 that. In Case 03-70. Do you have that in front of you?

2 HEARING OFFICER SUDMAN: My exhibits have become a little
3 disorganized here.

4 MR. PRILLAMAN: Off the record.

5 (Discussion off the record.)

6 HEARING OFFICER SUDMAN: Okay. We have it.

7 MR. PRILLAMAN: Okay. Back on.

8 Q. (By Mr. Prillaman) Calling your attention to the
9 attachment to the Agency's letter. First of all, the Agency's
10 letter in that case which rejected your application for this very
11 same site was dated what?

12 A. The application was delivered to the Agency 06-18 of
13 '02.

14 Q. But it was rejected by the Agency --

15 A. Oh. The rejection letter --

16 Q. It is stamped on page one of the letter.

17 A. October the 11th of 2002.

18 Q. Your testimony earlier was that you went over -- you
19 asked for a 90 day extension, got it, went to the Agency and had
20 a meeting; is that right?

21 A. Correct.

22 Q. You said in the meeting you discussed both this and a
23 similar case like it in Gibson City called Royal Oil; isn't that
24 correct?

1 A. Correct.

2 Q. In which you proposed to do the same type of direct-push
3 ground water and soil sampling?

4 A. Yes, that's correct.

5 Q. Okay. I call your attention to the Attachment B of the
6 Agency's letter, paragraph three, at the top of the second page
7 of Attachment B. Do you see that?

8 A. Yes.

9 Q. In that letter the Agency was requesting that you give
10 the Agency some additional documentation; isn't that correct?

11 A. Yes.

12 Q. On the left-hand side of that document is a note. Is
13 that in your handwriting?

14 A. Yes.

15 Q. Okay. Can you read that note for the record, please?

16 A. Need to clarify. Like Royal Oil.

17 Q. Okay. What does that mean?

18 A. It meant that the investigation that was proposed was
19 essentially identical to that which was approved for the Royal
20 Oil facility.

21 Q. So are you testifying for the record that the Royal Oak
22 facility --

23 A. Royal Oil.

24 Q. Oil. What is Royal Oak?

1 (Laughter.)

2 MS. DAVIS: That is the Nissan Dealer.

3 MR. PRILLAMAN: Oh.

4 (Laughter.)

5 Q. (By Mr. Prillaman) So the Royal Oil facility, similar to
6 this, was, in fact, approved by the Agency?

7 A. That's correct.

8 Q. The investigation plan was approved?

9 A. That's correct.

10 Q. And they were both the subject of the same conference,
11 were they not?

12 A. The initial meeting, yes.

13 Q. Okay. Now, in this case the Agency has stated that
14 certain things were excessive, that you are doing more than you
15 need to do in order to investigate this site. Do you understand
16 that?

17 A. Yes.

18 Q. Can you explain to the Board what you understand the
19 Agency's cuts in the number of direct-push sampling was based
20 upon?

21 A. In summary, the statement was, as I recall, something to
22 the effect that ten of the direct-push borings were not required
23 to be sampled and logged since the site has been classified as
24 homogenous during site classification.

1 Q. Is that a correct analysis that the Agency made?

2 A. No, it is not.

3 Q. Can you explain why it is not correct?

4 A. In site classification we are required to determine
5 whether the soils are consistent with what is specified in Berg,
6 not whether or not they are homogenous.

7 Q. Who is Berg?

8 A. Berg is an old geologist that drafted a map that
9 illustrates the relative distribution of shallow geologic
10 deposits across Illinois.

11 Q. And your testimony is that the Berg Analysis that was --
12 I take it was that described in your application in Petitioner's
13 Exhibit 1?

14 A. Yes, it was.

15 Q. The Berg Analysis of the regional geology here was what,
16 again?

17 A. AX type stratigraphy which was defined by Berg as modern
18 river alluvium consisting of a mixture of gravel, sand and silt
19 along streams variable in composition and thickness.

20 Q. How is it, then, that your proposed number of
21 direct-push borings for both soil and ground water was consistent
22 with what was necessary to investigate this site, based upon what
23 Berg said was the nature of the soil there?

24 A. The Act requires evaluation of potential natural

1 migration pathways. Since the soils at the site were specified
2 as variable in composition and thickness without quantifying that
3 variability across the potential limits of the plume, there would
4 be no way to fully evaluate those identified natural migration
5 pathways or, as a matter of fact, would not be able to identify
6 those potential natural migration pathways on off site locations,
7 whatsoever.

8 Q. So is it your testimony, therefore, that both the number
9 and location of the borings that you proposed are necessary to do
10 those things?

11 A. That's correct.

12 Q. Are any lesser number than what you proposed -- strike
13 that.

14 Would any lesser number than what you proposed be effective
15 to achieve the goals of your plan?

16 A. No, and more may ultimately be required.

17 Q. You were proposing, I take it, the minimum number
18 necessary, were you not?

19 A. Yes.

20 Q. But the Agency cut it still further, did it not?

21 A. That's correct.

22 Q. In your testimony the Agency was wrong on that, isn't
23 it?

24 A. I believe.

1 Q. All right. And why was this investigation, this phase
2 one investigation necessary in order to design an ultimate clean
3 up of the site?

4 A. In order to effectively remediate any threat, you first
5 have to identify what the limits and characteristics of that
6 threat consist of. So for an environmental site with
7 contaminants that pose a threat to human health and the
8 environment, you must identify both the nature, relative
9 distribution, or all of the above; nature, relative distribution,
10 and concentrations of those contaminants and potential pathways
11 for exposure to populations.

12 Q. All right. You testified that the Agency cut your
13 investigation costs, did you not?

14 A. Yes.

15 Q. In the Agency's rejection letter, which is part of the
16 Agency record in this case, and I don't know what page, but it is
17 the last part of the Agency record in this case. Did the Agency
18 describe or identify how they made the cuts for your
19 investigation costs?

20 A. Yes. There was a reference that direct-push
21 investigation should take two days to complete.

22 Q. Is that correct?

23 A. No.

24 Q. Why isn't it correct?

1 A. That is, in parenthesis, based on eight direct-push
2 borings per day. That excludes any mobilization to off site
3 locations and any collection of direct-push ground water samples.

4 Q. All right. That is what the Agency assumed was
5 appropriate; is that right?

6 A. Correct.

7 Q. Why is that incorrect?

8 A. It does not consider the time required to collect
9 direct-push ground water samples or mobilize to off site
10 locations, reset up all of the equipment required for
11 decontamination, the collection of the ground water samples, and
12 containerization of the waste materials generated.

13 Q. Is this based upon your experience in the matter?

14 A. Correct.

15 Q. All right. What were the other cuts?

16 A. Essentially, all of the other cuts specified that they
17 were modified accordingly to the reduction in time.

18 Q. I call your attention to Petitioner's Exhibit Number 14.
19 Do you see that?

20 A. Yes.

21 Q. Now, is this your own attempt to try to figure out what
22 the Agency actually did cut in the investigation costs?

23 A. That's correct.

24 Q. This was not submitted to you by the Agency, was it?

1 A. No.

2 Q. This level of detail was not even given to you by the
3 Agency, was it?

4 A. No, that is why I tried to determine how the numbers the
5 Agency indicated in their letter were derived.

6 Q. Assuming, for purposes of this question, that this is
7 the way the Agency cut your investigation costs down, would you
8 quickly go through each of the items that were cut and tell the
9 Board why those are improper cuts for purposes of conducting this
10 investigation?

11 MR. KIM: Before he answers, this brings up a question and
12 I probably should have raised this with some of the other
13 exhibits. Are all of the exhibits that you have referenced and
14 that he has testified to going to be -- I'm sorry. If those are
15 going to be offered as evidence, I would have objections and I
16 probably should have raised them as we went along, but I was not
17 sure if they were going to be offered.

18 If it is going to be offered at this point, and for that
19 matter, if several of the others that have already been discussed
20 are going to be admitted or going to seek to be admitted, then I
21 would have some objections that I would like -- I guess I should
22 raise that now to see if it is going to be allowed and then the
23 testimony could either proceed or he can move on.

24 MR. PRILLAMAN: Now may be an appropriate time, and maybe

1 we could take a break and I will go through my exhibit list and I
2 will offer into evidence those that have already had some support
3 to them, because I think it is appropriate. And I will indicate
4 to Mr. Kim what other exhibits I intend to introduce into
5 evidence and perhaps we can take a five minute break.

6 HEARING OFFICER SUDMAN: Okay. That sounds good. Let's
7 take a five minute break.

8 (Whereupon a recess was taken from 10:35 to
9 10:45 a.m.)

10 HEARING OFFICER SUDMAN: Okay. Let's go back on the
11 record.

12 MR. PRILLAMAN: At this time I would like to offer into
13 evidence Petitioner's Exhibits 5, 6 and 7, to which I believe Mr.
14 Kim has no objection.

15 MR. KIM: That is correct.

16 MR. PRILLAMAN: I would also like to offer into evidence
17 Petitioner's Exhibit Number 10, which has been testified to by
18 Mr. Truesdale as the U.S. EPA guidance document on Expedited Site
19 Assessment Tools.

20 MR. KIM: Should we -- do you want to take these one by one
21 if I have objections or do you want him to just list the whole
22 number?

23 HEARING OFFICER SUDMAN: Why don't we just go through them
24 until you have an objection. I mean, do you object to this one?

1 MR. KIM: Yes.

2 HEARING OFFICER SUDMAN: On what grounds?

3 MR. KIM: I am going to object that this was not -- that
4 reference to this document -- well, I suppose I could -- this was
5 not really asked, and I could reserve this until
6 cross-examination, I guess, but I don't think this document was
7 referenced in the plan and budget that was submitted to the
8 Agency. I don't think it is part of the record. I understand
9 that the rationale was that this was provided to Doug Clay prior
10 to the decision.

11 However, Doug Clay did not review any part of the plan and
12 the budget that is under appeal right now. Therefore, it is just
13 the same thing as if you give it to any another person in the
14 LUST section that did not review this plan. It was not something
15 that was considered by the people who reviewed it and, therefore,
16 it is outside the record. I think that if I were to call Harry
17 Chappel and Carol Hawbaker, they would testify that they did not
18 know of the existence of this document or that they did not
19 review this document in the context of the plan and budget under
20 appeal.

21 MR. PRILLAMAN: Well, two responses, Madam Hearing Officer.
22 The first is that Doug Clay is not just anybody. He is the boss.
23 He oversees Harry Chappel, who, in turn, oversees Carol Hawbaker.

24 Number two, it was given to Doug Clay not ahead of the

1 decision, but ahead of the actual filing of the application after
2 the meeting in which it was discussed what should be in the
3 application. So it was given to the boss who was at the meeting.
4 Whether it is filtered down to somebody, that is not our problem.

5 But the third reason and perhaps the most important reason
6 is that it is an authoritative document drafted by a credible
7 source on a point that is in issue in this case. What is a good
8 way to do these kinds of site assessments. Here are guides on
9 how to do them. It seems to me it has much credibility, has much
10 relevance and, in fact, in this case was a document that was
11 furnished to the Agency for its use.

12 We had no idea for certain who would end up with this
13 Petitioner's Exhibit Number 1, and would write the letter. You
14 know, it is the luck of the draw. It is like federal judges in
15 federal court. You don't know who you are going to get. But the
16 document then went to the boss, Doug Clay.

17 So it has all kinds of reasons why it has relevance and
18 pertinence to this case, besides the testimony of Joe, in that he
19 patterned much of what he did here on that guidance.

20 HEARING OFFICER SUDMAN: I am going to go ahead and admit
21 this along with Exhibits 5, 6 and 7.

22 (Whereupon said documents were admitted into
23 evidence as Petitioner's Exhibits 5, 6, 7 and
24 10 as of this date.)

1 HEARING OFFICER SUDMAN: Okay. So let's move on.

2 MR. PRILLAMAN: I do have others, while we are talking
3 about exhibits. At this point I would also like to offer into
4 evidence Petitioner's Exhibit 13. That was a sheet of paper that
5 merely mirrored his testimony on how he arrived at the estimated
6 hours for investigation, which he testified he went over with the
7 attendees of the meeting prior to submitting Petitioner's Exhibit
8 1. It is more in the nature of a demonstrative exhibit that just
9 kind of memorializes his testimony. In some respects it is
10 duplicative, but I think it is helpful to see it in hard copy.

11 MR. KIM: Again, I am going to object to that, because this
12 was not part of the record. I don't know when this document was
13 prepared. There was no testimony as to when he actually put this
14 particular exhibit together. In his testimony I believe he --
15 and I was trying to track as best I could. I don't think he said
16 all of the specific line items that are presented in this
17 document were what he conveyed during the hearing. My
18 understanding was that he testified that he explained how he did
19 his average rates. He said that -- he explained that there were
20 some ranges. He explained how the samples were to be taken. He
21 drew some diagrams. He discussed some locations.

22 I don't think this level of specificity, first of all, was
23 conveyed by his testimony that he -- that was presented to the
24 Agency. And, furthermore, again, this particular document, I

1 don't know when this was prepared, but I am assuming it was
2 prepared after we received our -- after we issued our decision,
3 and it certainly was not included as part of the original
4 decision -- or part of the original application. And one of the
5 concerns we have had is that we don't think that the application
6 and the budget had sufficient information. This is going to
7 simply supplement what was provided to us, and it is going to
8 present an unfair portrayal to the Board because we didn't have
9 the benefit of this information, of this exhibit.

10 HEARING OFFICER SUDMAN: Anything further?

11 MR. PRILLAMAN: I don't believe that on the hours for
12 investigation you gave as a reason for cutting them that we
13 didn't explain them to you. I don't believe that is given in the
14 denial letter. I may be wrong, but I think that is an improper
15 statement.

16 I think it has got value. It is certainly credible. It
17 has a sponsoring witness to it. I think it is probably something
18 that the testimony itself would cover it. So in some senses I
19 say it may be duplicative. But I think on the whole it is a
20 beneficial document for the Board to see, particularly since he
21 went over these same figures with Agency people before he
22 submitted Petitioner's Exhibit Number 1 and made these same
23 conclusions and estimates.

24 MR. KIM: Well, if it is duplicative then I think his

1 testimony can stand. I didn't object to his testimony as to how
2 he was describing how he came up with his rates. This document
3 was not presented to the Agency. I don't think there has been
4 any testimony that it was. This document was not included as
5 part of the Corrective Act Plan. It was not included as part of
6 the budget. I don't think that --

7 HEARING OFFICER SUDMAN: I agree. I am going to take this
8 one as an offer of proof. He certainly gave an ample amount of
9 testimony, and to the extent that this document, Exhibit 13, is
10 duplicative of that testimony, I just can't tell right now from
11 looking at it. So I am just going to take this one as an offer
12 of proof.

13 (Whereupon said document was admitted as an
14 offer of proof as Petitioner's Exhibit 13 as of
15 this date.)

16 MR. PRILLAMAN: Okay. I would like to offer at this time
17 Petitioner's Exhibit 16. Number 16 is the two-page excerpt from
18 the original application in Case Number 03-70 that was the
19 subject of the meeting and the subject of the cuts that were
20 agreed to by the Petitioner. I think Mr. Adams was at the
21 meeting and Mr. Truesdale and we have already had testimony on it
22 comparing those two pages from the original application from the
23 same two pages in the application in this case, Petitioner's
24 Exhibit Number 1, showing about a \$4,000.00 reduction. I think

1 it is obviously helpful since he has already testified to it.

2 HEARING OFFICER SUDMAN: 16?

3 MR. PRILLAMAN: 16. If you look at the second page, if I
4 remember, that was a \$36,000.00 estimate for personnel. And if
5 you look at Petitioner's Exhibit Number 1, those same two pages,
6 it is about \$32,000.00. And he has gone over how he arrived at
7 that, and, you know, begrudgingly made cuts in hours in things
8 like professional engineers, even though he thinks that is
9 probably less than what is needed here. But the Agency wanted it
10 so he did it.

11 MR. KIM: I am not going to object to 16.

12 HEARING OFFICER SUDMAN: Okay. Then 16 is admitted.

13 (Whereupon said document was admitted into
14 evidence as Petitioner's Exhibit 16 as of this
15 date.)

16 MR. PRILLAMAN: I would like a few more questions before I
17 offer Petitioner's Exhibit Number 14 into evidence. I have a few
18 more questions of Mr. Truesdale.

19 HEARING OFFICER SUDMAN: All right. Please continue.

20 MR. PRILLAMAN: Thank you.

21 Q. (By Mr. Prillaman) Mr. Truesdale, we were talking about
22 Petitioner's Exhibit Number 14, which I think you have in front
23 of you, which is a document that you prepared, did you not?

24 A. Yes.

1 Q. In an attempt to try to figure out how the Agency
2 arrived at the cuts it made in investigation costs?

3 A. Correct.

4 Q. What I was asking you to do -- first, did you sit
5 through the depositions of Carol Hawbaker and Harry Chappel and
6 Brian Bauer?

7 A. Yes.

8 Q. And you not only sat through those, have you reviewed
9 those?

10 A. Yes.

11 Q. Have you also looked at the answers to interrogatories
12 in this case?

13 A. Yes.

14 Q. Based upon your understanding of all of the explanations
15 that the Agency has given up to now, is there anything about this
16 sheet of paper that you have put together as Petitioner's Exhibit
17 14 that is inconsistent with what the Agency's answers to my
18 questions have been?

19 MR. KIM: I am going to object. Clearly, the question
20 indicates that this document was prepared after we issued our
21 final decision. This document -- the question itself is asking
22 the witness to take into account matters which took place after
23 the decision at hand. The information on here was not something
24 that was ever presented to the Agency. It is clearly some post

1 decision notes that were taken by the deponent.

2 I don't know that -- I think, again, the Board's rules are
3 very clear and the Board case law is very clear. If it is
4 documents that are prepared beyond the date of decision, it is
5 not something that should be considered as part of the record,
6 and it is not something that should be considered by the Board.

7 MR. PRILLAMAN: Well, let me respond to that. First of
8 all, the document itself is in the record. It has simply been
9 marked up to show what the Agency's decision was because the
10 Agency didn't tell us what its decision was. We had to go into
11 discovery and depositions and finally get out of them what it is
12 that they did. This shows graphically on one piece of paper,
13 which I guess we could do in ten pages of written brief if we
14 wanted to. This shows on one piece of paper how the Agency got
15 from what was proposed to what they say is reasonable. And I
16 think it is very helpful from that standpoint unless it is wrong.

17 I think this is what the Agency did do. Everything that
18 Mr. Truesdale says he has reviewed leads him to believe this is
19 how they got there. The number comes out exactly right. I think
20 it is helpful so that we can go through this and ask questions
21 about why this was an incorrect decision on the part of the
22 Agency to make this cut and that cut and so forth. It shows just
23 how they got from point A to point B. It is very helpful.

24 MR. KIM: It is not a question of whether or not it is

1 helpful. It is a question of whether or not this was prepared
2 before our decision. And it was not prepared before our
3 decision. Our decision speaks for itself, for better or for
4 worse. The information within the decision speaks for itself and
5 this is simply not something that was ever before us, and it
6 should not be considered by the Board. Again, I don't think the
7 Board rules are very -- have any doubt on that.

8 HEARING OFFICER SUDMAN: Are you moving to admit this now
9 or are you just asking --

10 MR. PRILLAMAN: I want to ask some questions about it. He
11 is objecting to my even asking questions about it. It is not
12 admitted into evidence. I will offer it at this point into
13 evidence. I think there is enough sponsorship of it and
14 description of it as to how he believes the Agency got from what
15 he proposed to what they suggested in their denial letter.

16 See, they were supposed to have done something like this
17 under the law, and they didn't. And it took this lawsuit and
18 discovery to get this out of them. And now that we are there, we
19 have a document that will help us discuss each of the separate
20 cuts that they made and why they are unreasonable cuts, why they
21 are wrong.

22 MR. KIM: Well, we were -- first of all, I take issue with
23 the notion that our final decision was legally deficient somehow
24 or factually deficient. If it was, that is something that they

1 could have alleged and that they could bring up in a separate
2 matter. Apparently what the argument is, is that they are trying
3 to fill in gaps in our decision. Well, it is our decision and,
4 again, it stands on its own merits and the information stands on
5 its own merits.

6 HEARING OFFICER SUDMAN: Mr. Kim, if I may just interrupt
7 you to agree with you. I think the Board is, you know, certainly
8 familiar with the EPA's determinations and reading them and
9 figuring them out. I don't think this document is necessary.
10 Also, you know, there seems to be disagreement as to whether it
11 is even correct. It was also something that was created after
12 the Agency issued its determination. For that combination of
13 reasons, I am not going to admit this. I will take it as an
14 offer of proof, but I agree with the Agency.

15 MR. PRILLAMAN: Okay.

16 (Whereupon said document was admitted as an
17 offer of proof as Petitioner's Exhibit 14 as of
18 this date.)

19 Q. (By Mr. Prillaman) Mr. Truesdale, you proposed 13
20 borings to 20 feet for direct-push subsurface investigation of
21 soils, did you not?

22 A. Yes.

23 Q. What was that reduced to?

24 A. Three.

1 Q. How many feet?

2 A. I assume 20 feet. I don't believe it was specified. So

3 I don't think they took issue with what was proposed.

4 Q. So three times 20 is how many feet?

5 A. Sixty feet.

6 Q. Okay. They reduced the total feet to be bored from 520

7 to what?

8 A. I don't think they specify that either.

9 Q. They allowed you to do 13 borings to 20 feet. That is

10 260 feet; isn't that correct?

11 A. Correct.

12 Q. They allowed you to do three more borings to 20 feet.

13 That is another 60 feet?

14 A. Right.

15 Q. So 260 and 60 equals how many feet?

16 A. 320.

17 Q. So they reduced 520 down to 320, did they not?

18 A. Correct.

19 Q. Is the investigation something that can be done to

20 achieve the purposes of the Act and the regulations by cutting it

21 from 520 to 320?

22 A. No.

23 Q. Why not?

24 A. The potential pathways identified in site classification

1 would no longer be evaluated.

2 Q. You had estimated, for direct-push investigation, 50
3 hours at \$140.00 per hour for \$7,000.00, had you not?

4 A. Correct.

5 Q. And how many hours did the Agency reduce the direct-push
6 investigation down, from 50 to what?

7 A. That also was not specified. I took it, from the
8 letter, they said two days. I assume that was two eight hour
9 days.

10 Q. But you estimated ten hour days, didn't you?

11 A. Correct.

12 Q. So two eight hour days times -- well, two times eight is
13 16 hours, which is what they allowed you to do this entire
14 investigation; is --

15 A. Correct.

16 Q. -- that correct?

17 A. Yes.

18 Q. Is that sufficient?

19 A. No.

20 Q. They reduced the Decon equipment from five to what days?

21 A. I don't think that was specified either, once again.
22 Since the -- I made the assumption it was reduced to two days,
23 since the letter specified that the other reductions were made
24 accordingly.

1 Q. All right. Are two days sufficient to use Decon
2 equipment for the plan that you proposed?
3 A. No.
4 Q. How many days are required?
5 A. At least five.
6 Q. All right. They reduced the Decon labor down
7 completely, eliminated it, did they not?
8 A. Correct.
9 Q. Is that feasible or even reasonable to carry out your
10 plan by eliminating Decon labor?
11 A. No.
12 Q. Why not?
13 A. Someone has to do the job.
14 Q. All right. Was ten hours -- ten days reasonable?
15 A. That's an hour.
16 Q. Yes, it is an hour. That is an hour, yes.
17 A. Yes.
18 Q. Okay.
19 A. I believe so.
20 Q. They reduced the disposable sampling tubes from 70 to
21 what?
22 A. To six, I believe.
23 Q. Is --
24 A. I don't think that was specified either. All of these

1 were my assumptions based on the numbers that were provided.

2 Q. Again, the letter that you got, that is the -- we will
3 call it the modification letter that is the subject of the appeal
4 in this case, did not give this level of detail, did it?

5 A. Correct.

6 Q. So you had to kind of back calculate using answers that
7 came to you from discovery, did you not?

8 A. No, actually, it was done prior to discovery, and it was
9 based on reasonable assumptions derived from the limited amount
10 of information provided in Attachment A.

11 Q. Have you learned anything from discovery that
12 contradicts your assumptions?

13 A. No.

14 Q. Okay. Does it confirm your assumptions?

15 A. For the most part, yes.

16 Q. Can your plan be implemented by reducing disposable
17 sampling tubes from 70 down to six?

18 A. The original plan, no. The Exhibit 1 as submitted, no.

19 Q. Okay. Your testimony is you believe that they did that
20 reduction to conform to their reduction in the number of borings?

21 A. Correct.

22 Q. You have already testified as to why the number of
23 borings should never have been reduced?

24 A. Correct.

1 Q. Okay. They eliminated all drilling subcontractor labor,
2 50 hours; isn't that correct?

3 A. Correct.

4 Q. Can your plan be carried out and can the Act and the
5 regulations be complied with by eliminating drilling labor?

6 A. No.

7 Q. Why not?

8 A. Someone has to do the job.

9 Q. Was the number of hours excessive?

10 A. It is equivalent to the number of hours for the
11 direct-push investigation.

12 Q. All right. The utility truck, five days, was eliminated
13 from your investigation costs, wasn't it?

14 A. Correct.

15 Q. Why is that necessary as part of investigation?

16 A. It is specified at the bottom of the page that the
17 utility truck and job trailer are used to transport monitor well
18 construction supplies, drilling support equipment, such as
19 concrete coring machine, Decon equipment, drums, etcetera.

20 Q. Is this consistent with your experience?

21 A. Yes.

22 MR. KIM: Just a clarification. I understand that -- is
23 this all testimony that is being presented in an offer of proof,
24 or is this testimony not relied upon -- I mean, is this done as

1 opposed to offering Exhibit 14 into evidence?

2 MR. PRILLAMAN: It is neither. It is direct testimony.

3 MR. KIM: Okay. Just so I am clear, it appears that Mr.
4 Truesdale is looking down. He is --

5 HEARING OFFICER SUDMAN: He is not looking at Exhibit 14.

6 MR. KIM: Okay. Could you specify what it is he is looking
7 at?

8 THE WITNESS: Exhibit 1.

9 MR. KIM: What page in Exhibit 1?

10 THE WITNESS: Page 68.

11 MR. KIM: Thank you.

12 Q. (By Mr. Prillaman) The same question with regard to job
13 trailer. Your understanding is that they cut job trailer
14 entirely from investigation costs, and is it your testimony that
15 is required to be part of your investigation?

16 A. It is included in the previous discussion listed at the
17 bottom of page 68.

18 Q. Were you able to calculate what -- strike that.

19 The Agency allowed only \$3,647.00 to do the investigation;
20 isn't that correct?

21 A. Correct.

22 Q. Have you calculated what that would come out to per
23 lineal foot if you were forced to do it the way the Agency is
24 suggesting that you do this investigation?

1 A. Yes, yes.

2 Q. What did you come up with?

3 A. I believe it was less than \$12.00 a foot. My
4 recollection is about \$11.50.

5 Q. You are not looking at Petitioner's Exhibit Number 14
6 when you say that, are you?

7 A. No.

8 Q. Can this job -- in your experience, can this
9 investigation, to collect this information necessary to
10 characterize this site and get ready for a remediation plan, can
11 it be done for \$11.40 per lineal foot?

12 A. I don't recall ever seeing a quote from any drilling
13 contractor I have worked with that had a per foot charge all
14 inclusive of less than \$12.00 a foot.

15 Q. All right.

16 A. They are usually significantly more.

17 Q. Now, calling your attention to Petitioner's Exhibit 15.
18 That document consists of three pages, does it not?

19 A. Yes.

20 Q. It is true, isn't it, that you prepared this document
21 after the decision was made in this case?

22 A. Correct.

23 Q. Let me just ask you some questions about it, and Mr. Kim
24 can object if he wants. Were you asked to prepare kind of a

1 backup or an alternate investigation cost based on \$30.00 per
2 lineal foot?

3 MR. KIM: Actually, I am going to object now just to head
4 it off, and then he can go on. But he just testified that he
5 prepared this after our decision. So I am just going to have the
6 same objection.

7 MR. PRILLAMAN: Okay. Let me just speak to that. Mr.
8 Truesdale is here to say that his plan, as prepared originally,
9 should be affirmed in full and the Agency should be ordered to
10 approve it. What I am suggesting here with Petitioner's Exhibit
11 15 is an alternate. Not that it supplants the original request,
12 but in the event the Board were to decide that the original plan,
13 as submitted, were somehow defective or excessive or violative of
14 the Act or something like that, I want the witness to testify as
15 to a back up. If that is not something that Mr. Kim wants me to
16 proceed, I will stop the questioning right now, if you are not
17 interested in that. If you are going to object to it, I won't do
18 it.

19 MR. KIM: Well, I am trying to phrase my words here. If
20 the Petitioner wants to present what they think is a reasonable
21 position for the Board to take in terms of not necessarily
22 affirming the Agency 100 percent or not necessarily rejecting --
23 denying the Agency -- reversing the Agency 100 percent, then I
24 suppose he is free to do that. He can present testimony to that

1 affect. But in terms of documentation, again, if this is
2 something that is going to be presented as evidence, the same
3 objection would apply.

4 MR. PRILLAMAN: We withdraw any effort to try to work with
5 the Agency on this. We are not going to pursue that question at
6 all.

7 HEARING OFFICER SUDMAN: So you are not going to move
8 Exhibit 15?

9 MR. PRILLAMAN: No.

10 HEARING OFFICER SUDMAN: Okay.

11 Q. (By Mr. Prillaman) I call your attention to Petitioner's
12 Exhibit Number 17. Do you see that document?

13 A. Yes.

14 Q. Is that a fair and accurate summary of the Agency cuts
15 and approvals for this project?

16 A. Yes.

17 Q. Have you verified that the percentages that were
18 approved on the right-hand column under D are the percentages of
19 what the Agency says you should be able to do each component of
20 this work for?

21 A. Just in my head they appear to be roughly correct.

22 Q. Okay. Let's ask you just line item by line item. You
23 have proposed to do investigation for \$12,666.60. Can you do
24 that investigation for 28.8 percent of that?

1 A. Not at all.

2 Q. The same thing with the other components, the analysis
3 costs, the personnel costs, the equipment costs, field purchases
4 and handling charges, can you carry out this plan on these
5 reduced percentages of approval?

6 A. No.

7 Q. Is it your opinion, based upon your background and
8 experience, that the costs that you estimated in the budgets, in
9 fact, are necessary to carry out the plan?

10 A. Correct.

11 MR. PRILLAMAN: All right. I would offer into evidence
12 Petitioner's Exhibit Number 17 as a summary of the cuts in this
13 case as compared to the amounts requested and, therefore, the
14 percentages approved also being accurate.

15 MR. KIM: No objection.

16 HEARING OFFICER SUDMAN: Okay. Petitioner's Exhibit Number
17 17 is admitted.

18 MR. PRILLAMAN: Okay.

19 (Whereupon said document was duly admitted into
20 evidence as Petitioner's Exhibit 17 as of this
21 date.)

22 MR. PRILLAMAN: If you give me just a second, I want to go
23 over one more document.

24 HEARING OFFICER SUDMAN: Okay.

1 Q. (By Mr. Prillaman) Mr. Truesdale, in your opinion, was
2 the plan that is the subject of this case, in Petitioner's
3 Exhibit Number 1, prepared in accordance with generally accepted
4 engineering practices?

5 A. Yes.

6 MR. PRILLAMAN: I have no further questions.

7 HEARING OFFICER SUDMAN: Thank you. Mr. Kim?

8 MR. KIM: Yes. Could I take just a moment?

9 HEARING OFFICER SUDMAN: Sure.

10 (Whereupon a short recess was taken.)

11 CROSS EXAMINATION

12 BY MR. KIM:

13 Q. Mr. Truesdale, you did such a fine job on direct I am
14 having a hard time composing my questions for cross.

15 A. I try to do my best.

16 Q. I am sure you will do fine. I am going to try and
17 phrase my questions to you in the order that they were asked on
18 direct examination. So if anything I ask or if I characterize
19 one of your answers and you don't think that it is correct, then
20 just by all means let me know. Because I don't want to misstate
21 your testimony.

22 A. Thank you.

23 Q. Let's start with page -- could you direct your attention
24 to page 68 of Exhibit 1, which I believe is also the

1 administrative record. You testified that -- I am looking in the
2 middle of the page there where it says direct-push investigation.
3 Hours, 50, times \$140.00 per hour equals \$7,000.00. Do you see
4 that?

5 A. Yes.

6 Q. You testified, didn't you, that \$50.00 an hour -- or 50
7 hours -- I apologize -- were what you believed were reasonable to
8 implement the plan in the investigation portion of the plan as
9 set forth; is that correct?

10 A. Correct.

11 Q. You gave some breakdowns as to how you arrived at the 50
12 hours; is that right?

13 A. Correct.

14 Q. Is that break down included anywhere else in the budget
15 portion of the package that was sent to the Agency that led to
16 the decision under appeal?

17 A. There are no locations to put that type of break down in
18 the Agency provided forms.

19 Q. Was that information provided in the Corrective Action
20 Plan portion of the package?

21 A. That information is not requested in the Corrective
22 Action Plan portion of the application.

23 Q. So it is correct that that break down that you testified
24 to is not included in either the Corrective Action Plan or the

1 budget; isn't that correct?

2 A. Correct.

3 Q. You also testified, I believe, that in the course of at
4 least one of the two meetings that you participated in prior to
5 your submission of the Corrective Action Plan and the budget that
6 is now under appeal, in those meetings with the Agency staff that
7 it was expressed by the Agency that the overall costs included in
8 the budget needed to be reduced; is that right?

9 A. Correct.

10 Q. The Agency did not specify exactly how much should be
11 reduced, did they?

12 A. Correct, they did not.

13 Q. If you look at page 72 and 73 of Petitioner's Exhibit
14 Number 1, which is also the administrative record. That is the
15 personnel line item break down for the Corrective Action Plan
16 that is under appeal, or that led to the decision that is now
17 under appeal; is that right?

18 A. Correct.

19 Q. Petitioner's Exhibit 16, if you have got that?

20 A. Yes.

21 Q. That is the personnel line item break down that was
22 included in the Corrective Action Plan that was submitted prior
23 to the current plan that is under appeal and that led to the
24 decision that is the subject of the appeal in a separate case; is

1 that right?

2 A. Correct.

3 Q. We don't have the Corrective Action Plan that was
4 submitted in the first case as one of the exhibits before us; is
5 that right? And the Corrective Action Plan that corresponds to
6 Petitioner's Exhibit 16; is that right?

7 A. I am not aware of all of the exhibits.

8 Q. Well, let's put it this way -- okay. In the exhibits
9 that you have talked about so far, do you remember any exhibit
10 that would have been the Corrective Action Plan that was
11 associated with Petitioner's Exhibit Number 16?

12 A. No, just the Agency's letter.

13 Q. Okay. Is it safe to say that the scope and the terms
14 and the proposal in the Corrective Action Plan that is affiliated
15 with Petitioner's Exhibit Number 16 differs from the Corrective
16 Action Plan that is Petitioner's Exhibit Number 1?

17 A. Yes.

18 Q. In other words, it is not --

19 A. Yes.

20 Q. Okay. So it is not the same plan, is it?

21 A. Huh-uh.

22 Q. Okay. I apologize for the disjointed nature of my
23 questions. You covered a wide range of information. You also
24 testified, I believe, that CSD has conducted field tests, and I

1 don't know if there is anything more, but at least field tests to
2 estimate the number of hours that would be expected for
3 direct-push sampling; is that accurate?

4 A. Specifically for direct-push ground water sampling.

5 Q. Ground water sampling. Thank you. You testified that
6 that field -- those field test results confirmed the hours that
7 you included in the present budget?

8 A. Those results as well as other projects conducted under
9 the LUST program using direct-push ground water sampling.

10 Q. Okay. You didn't make reference to any of those field
11 tests in your Corrective Action Plan, did you? Yes or no?

12 A. No.

13 Q. You didn't make reference to those field tests in the
14 budget, did you?

15 A. We had Agency staff on site during one of those tests.

16 Q. Okay. But I am asking in the budget that is now under
17 appeal?

18 A. No.

19 Q. Okay. Thank you. Let's look to page, I think it is 16,
20 of the Petitioner's Exhibit Number 1, which is also the
21 administrative record. You went through and gave a description
22 of what the rationale was of the different locations of the
23 borings and the proposed borings and so forth. Do you recall
24 that?

1 A. Yes.

2 Q. Is it fair to say that all the locations that are marked
3 sequentially from B1 through B17 are the proposed boring
4 locations?

5 A. No. If you look at the legend, B1 was a previous boring
6 location.

7 Q. I apologize. Okay. So other than B1, would B2
8 sequentially through B17 be the proposed --

9 A. No, B1, 2, 3 and 4 were all conducted during site
10 classification along with site class SC1/MW1.

11 Q. Okay.

12 A. So B5 through 17.

13 Q. Okay. That clarifies it for me. And let me do some
14 quick math. That would be 13 additional locations, then; is that
15 correct?

16 A. Yes.

17 Q. Your proposal was that at each of those locations you
18 would conduct soil borings and ground water borings; is that
19 correct?

20 A. Correct.

21 Q. Okay. That's how you came up with a total of 26 new
22 borings?

23 A. Correct.

24 Q. It is your understanding that the Agency did not object

1 to the ground water borings but, rather, the soil borings at
2 those locations; is that correct?

3 A. Correct.

4 Q. Okay. It was your testimony that among other -- that
5 the reason those additional ten soil borings are needed are to
6 assist in the investigation of natural migration pathways; is
7 that correct?

8 A. Correct.

9 Q. And that justification, was that provided in the
10 Corrective Action Plan?

11 A. Yes.

12 Q. Can you tell me, in Petitioner's Exhibit Number 1, where
13 that was referenced?

14 A. On page six, paragraph two, there is reference to the
15 soil samplings. The soil borings -- excuse me -- in order to
16 better define and evaluate the extent and relative distribution
17 of petroleum contaminants in the subsurface. There is also a
18 reference to the geologic nature of the material and the expected
19 heterogeneities on pages eight and nine.

20 Q. I am sorry. You said on pages eight and nine?

21 A. Right. There is a discussion of the generalized
22 subsurface geology and the observed heterogeneities.

23 Q. Okay. I am doing a quick scan of pages eight and nine
24 and also page six.

1 A. Okay.

2 Q. And you don't specifically make reference to natural
3 migration pathways, do you?

4 A. On page eight it says areas designated A2 AX and
5 circular 532 present a high potential for both surface and ground
6 water contamination. High hydraulic conductivities on the order
7 of one times ten to the minus third centimeters per second make
8 these materials an excellent medium for contaminant transport.
9 That is essentially the definition of a migration pathway.

10 Q. Okay. Are you going to be sampling for chemicals in
11 those borings, or was that included in your proposal?

12 A. Originally, yes, the Agency didn't agree and, once
13 again, as a concession, we reduced the number of soil samples
14 that would be laboratory analyzed. We proposed, in the plan, to
15 log and screen the soil borings in the field without laboratory
16 analysis to back it up --

17 Q. Okay. So the --

18 A. -- since that was all that was allowed.

19 Q. I'm sorry for interrupting. So the soil borings, the
20 additional 13 soil borings would not -- were not proposed to
21 include lab analysis; is that correct?

22 A. Originally they were.

23 Q. Okay. But I am talking specifically about the
24 Corrective Action Plan that is under appeal right now; is that

1 correct?

2 A. That was the concession that was made in accordance to
3 the Agency's request.

4 Q. Okay. These pauses are good. That means I don't have
5 questions.

6 A. As long as we get a lunch break, take all the time you
7 want.

8 (Laughter.)

9 Q. Just as a general matter, then, I guess, the proposal
10 that CSD made that is contained within the CAP, which is
11 Petitioner's Exhibit Number 1, was that two separate borings
12 would need to be taken, one for soil and one for ground water at
13 the locations B5 through B17; is that right?

14 A. Correct.

15 Q. That is based upon the technology and equipment that CSD
16 intended to employ?

17 A. In accordance with all the screen point sampling
18 equipment that we were aware of at the time.

19 Q. Do you know if it is possible to conduct soil and ground
20 water borings without having to do one boring each?

21 A. Direct-push --

22 MR. PRILLAMAN: Excuse me. Are you talking about on
23 January 7th of 2004, or when this plan was --

24 MR. KIM: Well, at the time the plan was -- certainly, all

1 my questions are geared towards up to the time of the decision.

2 Q. (By Mr. Kim) So as of the time you made your
3 application, let's put it that way, as of the time that
4 Petitioner's Exhibit Number 1 was submitted, was it possible to,
5 by virtue of one boring, to do a soil and ground water -- take a
6 soil and ground water boring?

7 A. With direct-push methods only by way of installing a
8 prepacked well.

9 Q. Okay. You have signed off on, I am assuming -- well,
10 let's ask. How many Corrective Action Plans for high priority
11 LUST sites, L-U-S-T, sites have you been involved with in terms
12 of your role as a professional engineer for CSD?

13 A. As a professional engineer or as a project manager?

14 Q. Well, let's start with professional engineer.

15 A. I have been licensed as a professional engineer since
16 last year. Corrective Action Plans submitted to the Agency since
17 then, probably ten.

18 Q. Okay. Then prior to your receiving your PE license, you
19 were employed by CSD for a period of time as a project engineer;
20 is that correct?

21 A. Correct.

22 Q. During that time I am assuming that you also assisted in
23 the preparation of Corrective Action Plans for high priority LUST
24 sites, as well?

1 A. Correct.

2 Q. And in your experience gleaned from -- in your
3 experience with CSD, who would you say, in your opinion, whose
4 obligation is it to present a complete plan in terms of a
5 Corrective Action Plan and a budget for a high priority site to
6 the Agency?

7 A. The project manager that signs off in accordance with
8 the certification.

9 Q. Okay. So, for example, in this particular case, looking
10 at page --

11 A. Page 14.

12 Q. Page 14. Thank you. Page 14 of Petitioner's Exhibit
13 Number 1, that's the type of certification you are talking about;
14 is that right?

15 A. Exactly.

16 Q. And in this particular case, for this CAP, you were the
17 person that signed off as the consultant; is that right?

18 A. Correct. Obviously, the owner/operator has
19 responsibility and, obviously, that's why they contract with us
20 to make --

21 Q. Sure.

22 A. -- sure that they meet their responsibilities under that
23 certification.

24 Q. Sure. Okay. Can we turn to page 70 of the Petitioner's

1 Exhibit Number 1.

2 A. Yes.

3 Q. Looking there, that's the break down of analysis costs;

4 is that correct?

5 A. Correct.

6 Q. Okay. Do you have a copy of the administrative record

7 before you, by any chance?

8 A. No.

9 HEARING OFFICER SUDMAN: I have a copy, John.

10 MR. KIM: Oh, okay. Thank you.

11 Q. (By Mr. Kim) Okay. It is at the very end. If you could

12 look at page 86.

13 A. Yes.

14 Q. That is the final decision that is under appeal in this

15 case; is that correct?

16 A. Correct.

17 Q. That's the final decision that was issued in response to

18 the Corrective Action Plan and budget that are contained in

19 Petitioner's Exhibit Number 1; is that right?

20 A. Correct.

21 Q. Then on pages 90 through 92, those are the specific

22 deductions or modifications that were made to the budget; is that

23 correct?

24 A. Correct.

1 Q. Okay. On page 70 of Petitioner's Exhibit Number 1, the
2 first line item there is the three moisture content samples at
3 \$10.00 per sample, for a total of \$30.00, proposed to be taken;
4 is that correct?

5 A. Correct.

6 Q. Where were those samples going to be taken from, which
7 locations?

8 A. The specific locations were probably not documented in
9 the plan. It is an iterative procedure that is outlined in that
10 Expedited Site Assessment Tools for Underground Storage Tank
11 Sites, as a matter of fact.

12 Q. Okay. That is Petitioner's Exhibit Number 10; is that
13 correct?

14 A. Correct.

15 Q. Okay. So your testimony is that the specific locations
16 of those three samples is not contained within the Corrective
17 Action Plan or the budget; is that right?

18 A. It is not possible given the heterogeneity of the --

19 Q. It is just a yes or a no.

20 A. Yes.

21 Q. Going a little bit further down, there is line item that
22 says three natural organic carbon fraction, paren, FOC, close
23 paren, samples at \$50.00 per sample for a total of \$150.00. Do
24 you see that line item?

1 A. Yes.

2 Q. There is no reference in the Corrective Action Plan or
3 budget as to where those samples would be taken from either; is
4 that correct? Yes or no?

5 A. Yes.

6 Q. Then further down, just a couple of lines down, three
7 bulk density samples at \$35.00 per sample, for a total of
8 \$105.00. There is no reference in the Corrective Action Plan or
9 the budget as to where those samples would be taken; isn't that
10 correct?

11 A. Correct.

12 MR. PRILLAMAN: I am going to object to this line of
13 questioning as to the form, which is an Agency form, which does
14 not provide for a place to identify where samples will be taken
15 from, as being relevant at all, particularly in light of the
16 Agency's own letter in this case, which is the Agency record,
17 page 91, Number 3, where they talk about analysis costs. They
18 cut \$490.00, but not for that reason.

19 That does not say that they cut \$490.00 because we didn't
20 know where we are going to take the samples. That is not in
21 there. I mean, you can't come up with new reasons today if they
22 are not in the denial letter.

23 MR. KIM: Item Number 3 says \$490.00 for adjustment in
24 analysis costs. These costs are inconsistent with the associated

1 technical plan. I just asked him if the locations of those costs
2 were found anywhere in the Corrective Action Plan, which is the
3 technical plan. He said no.

4 Our argument is the locations are not specified. We don't
5 know where they want to take it. It is not consistent with the
6 plan. The plan does not specify that those type of samples will
7 be taken or where they will be taken.

8 MR. PRILLAMAN: This is absolutely the first time we have
9 ever heard that. That is something that you can just call up and
10 ask about. I mean, this is ridiculous to say now today for the
11 first time, even in all of the discovery, that the problem with
12 our estimated analysis costs were that we didn't identify where
13 each of the samples were going to be taken. That is not in the
14 denial letter and wasn't in any of your answers to
15 interrogatories or anything.

16 MR. KIM: Again --

17 HEARING OFFICER SUDMAN: I am going to allow the
18 questioning to stand. You can make that argument in your brief,
19 if you would like.

20 Q. (By Mr. Kim) Okay. Again, on page 70, a little further
21 down, under Subsection 2, soil analysis costs. There are a
22 number of samples that were proposed to be taken, one sample
23 each. The first line item is one pH sample at \$10.00 per sample,
24 for a total of \$10.00. Do you see that?

1 A. Yes.

2 Q. Okay. The Corrective Action Plan and the budget do not
3 specify where that sample will be taken; is that correct?

4 A. That is correct.

5 Q. The same question for the next line.

6 MR. PRILLAMAN: The same objection to the same line of
7 questioning.

8 MR. KIM: I think it has been ruled on so --

9 MR. PRILLAMAN: Well, but I don't want to --

10 HEARING OFFICER SUDMAN: Yes. Would you like to make a
11 standing objection to that line of questioning?

12 MR. PRILLAMAN: To the same line of questioning, yes.

13 HEARING OFFICER SUDMAN: Okay.

14 MR. PRILLAMAN: Thank you.

15 Q. (By Mr. Kim) The next question -- or the next line item,
16 rather. One paint filter sample at \$10.00 per sample for a total
17 of \$10.00. The location of that paint filter sample is not
18 specified in the Corrective Action Plan or budget, is it?

19 A. Correct.

20 Q. Okay. The same question for the next two; one TCLP lead
21 sample --

22 A. Correct.

23 Q. -- and one flash point --

24 A. Correct.

1 Q. Okay. On page -- could you look to page 73, please?

2 A. Yes.

3 Q. Okay. I believe you testified that it didn't make sense

4 that -- and, again, correct me if my characterization is wrong.

5 But I think your testimony was something to the effect that the

6 Agency's decision to cut the line item for the field manager,

7 where the description was ground water sample collection, did not

8 make sense because your proposal included two people to do the

9 work. Otherwise, one person would have to do twice the work; is

10 that correct?

11 A. Correct.

12 Q. Okay. The other person that was identified in the

13 proposed plan to do the work -- or the proposed budget, there on

14 page 73, was someone identified as a field technician; is that

15 correct?

16 A. Correct.

17 Q. Okay. On page -- just before that, on page 72 of the

18 budget --

19 A. Yes.

20 Q. -- about halfway down, there is a line item for a staff

21 geologist, 24 hours of work at \$72.00 an hour, for a total of

22 \$1,728.00. The task to be performed is R26 modeling and CAP

23 design. Do you see that?

24 A. Correct.

1 Q. Okay. There is no break down of how much time of the 26
2 hours is intended for R26 modeling and how much time is for CAP
3 design, is there?

4 A. What is provided is actually more break down than what
5 is required in the opening statement of that page.

6 Q. So is that found somewhere else? Is that what you are
7 saying?

8 A. It is not requested in the Agency's provided --

9 Q. So there is no break down is your answer?

10 A. No.

11 Q. Correct?

12 A. Correct.

13 Q. Okay. There is reference made in the Corrective Action
14 Plan to results of the R26 modeling; isn't that correct?

15 A. Correct.

16 Q. And those modeling results were not included with the --
17 I am sorry. They were --

18 A. They were.

19 Q. They were included. I take that back. That's correct.
20 On pages 72 through 73, it shows Exhibit 1. That is at least one
21 place. I don't know if there is others. But that is at least
22 one place, if not the only place, where the hourly rate proposed
23 for each job title is found; is that correct?

24 A. That's the only place I am aware of.

1 Q. Okay. I believe we have talked about -- you identified
2 the different personnel titles that had their hourly rates
3 adjusted downwards?

4 A. Correct.

5 Q. Just so I can remember, it was a professional engineer;
6 is that right?

7 A. Correct.

8 Q. And a staff geologist?

9 A. Yes.

10 Q. What were the others? You know them probably quicker
11 than I do.

12 A. As I mentioned, I don't recall if the project engineer
13 was reduced in hours and rate or just rate.

14 Q. Okay.

15 A. And professional geologist.

16 Q. Yeah. I am just talking at this point about rates.

17 A. Yes.

18 MR. PRILLAMAN: May I correct, Mr. Kim?

19 MR. KIM: Yes.

20 MR. PRILLAMAN: Staff geologist, I don't think was cut in
21 rates. Only in hours.

22 MR. KIM: Okay.

23 THE WITNESS: Yes, right. There are two parallel lines of
24 reduction, rate and hours, and I don't recall the exact.

1 Q. (By Mr. Kim) Okay. So for rates, at least, it was a PE,
2 professional engineer, a project engineer, and I think those were
3 the two?

4 MR. PRILLAMAN: The field manager was cut entirely. So I
5 guess hours and rate.

6 MR. KIM: Right. My question was more --

7 MR. PRILLAMAN: Just rate.

8 MR. KIM: -- what was adjusted downwards.

9 Q. (By Mr. Kim) So as far as the professional engineer,
10 \$150.00 per hour, how did you arrive at the rate of \$150.00 per
11 hour?

12 A. It is a standard rate that CSD uses for billing purposes
13 for professional engineers. It is a rate we charge to all of our
14 clients regardless of whether or not they are in the LUST program
15 or subconsulting project to other consultants or other public and
16 private sector entities.

17 Q. How is that -- do you know how that rate was arrived at?

18 A. Yes, it is based on a standard overhead and profit
19 multiplier and salary, slash, compensation for the individual.

20 Q. You said a standard overhead and profit multiplier?

21 A. Correct.

22 Q. Can you explain what that is?

23 MR. PRILLAMAN: For the record, we do have Cindy Davis
24 here, whose testimony was going to go to rates. I didn't ask the

1 witness anything about rates.

2 THE WITNESS: I don't develop the rates. I just use the
3 ones that are developed.

4 MR. KIM: Okay. Well, maybe these are better asked for
5 Cindy, then. Again, I will reserve my questions on those for Ms.
6 Davis.

7 Q. (By Mr. Kim) Would the same thing -- would the rental
8 rates for the equipment, would that be something that you would
9 have involvement in or would that be Ms. Davis that would be more
10 involved with that?

11 MR. PRILLAMAN: Our testimony is going to be from Cindy
12 Davis that she does all of the rate pricing.

13 MR. KIM: Okay. Including the equipment stuff?

14 MR. PRILLAMAN: Yes.

15 MR. KIM: Okay. I will just withhold that until Ms. Davis
16 testifies.

17 Q. (By Mr. Kim) Okay. You testified on a number of items,
18 for example -- well, let's see. I am looking at pages now -- at
19 page 68 of the administrative record, and Petitioner's Exhibit
20 Number 1.

21 A. Yes.

22 Q. Okay. First of all, you testified as to what you
23 believed the Agency's -- I am looking now on the table that has
24 at the top in the columns, other costs, number of units, unit

1 costs, total costs.

2 A. Correct.

3 Q. Do you see where I am?

4 A. Yes.

5 Q. Okay. You gave testimony as to what you believed the
6 Agency's decision meant in terms of how those particular line
7 items were either cut or modified. Do you recall that?

8 A. I just made assumptions based on the information
9 provided in the letter in an attempt to try to reach a number
10 that was equivalent to what was approved in the Agency's letter.

11 Q. Okay. In terms of some of your assumptions and the
12 testimony you gave based on your assumptions, for example, for
13 a -- let's see. Oh, for the Decon equipment, the steam cleaner,
14 etcetera, number of units, I think that is five days, unit cost,
15 \$96.00 per day, a total cost of \$480.00?

16 A. Correct.

17 Q. I believe your testimony was that at least five days
18 would be needed for the plan proposed; is that right?

19 A. Correct.

20 Q. Similarly, in -- for the disposable sampling tubes, the
21 number of tubes, 70, your testimony was at least 70 would be
22 needed for the plan as submitted; is that correct?

23 A. Correct.

24 Q. Okay. Just a moment?

1 A. Okay.

2 MR. KIM: I don't have anything further at this point.

3 HEARING OFFICER SUDMAN: Any redirect?

4 MR. PRILLAMAN: Just a few, Your Honor.

5 REDIRECT EXAMINATION

6 BY MR. PRILLAMAN:

7 Q. Mr. Truesdale, you were asked whether the Agency in its

8 meeting specified how much they wanted you to reduce when you

9 came back in the second time around. Do you remember that

10 question?

11 A. Yes.

12 Q. You said the Agency didn't specify how much. Is that

13 your answer?

14 A. That's correct.

15 Q. Did you agree that any reductions should be made?

16 A. In rates, no.

17 Q. Why did you agree to reduce the overall cost of this

18 investigation?

19 A. In an effort to avoid appeal.

20 Q. That was the only reason, wasn't it?

21 A. Essentially.

22 Q. All right. Sorry about that.

23 (Laughter.)

24 Q. Now, you were asked questions about why didn't you put

1 information in your application, in, say, the analysis portion of
2 it, I think pages 70 and 71, why didn't you put information in
3 there as to where these samples were going to be taken. Do you
4 remember that question?

5 A. The ones that were referenced, the BTEX samples were
6 identified. The others that were referenced, we have no way of
7 telling where to collect those samples. Like I said, it is an
8 iterative process that is described in the U.S. EPA publication.
9 And given the heterogenous nature, the variability of thickness,
10 composition, position, location of potential natural migration
11 pathways, there is no way for us to determine ahead of time where
12 the specific locations would be. It is something that has to be
13 determined based on observations obtained in the field.

14 Q. All right. You still, however, maintain that the
15 analyses need to be done, do you not?

16 A. As is mentioned in the same U.S. EPA document, yes.

17 Q. Okay. Did you get a telephone call from the reviewer
18 asking you where are these locations going to be?

19 A. Not that I recall, no.

20 Q. Have you ever before in submitting a plan similar to
21 this to the Agency been asked by the Agency to elucidate on this
22 form, F-1 analysis cost, as to where the analysis are going to be
23 taken --

24 A. No.

1 Q. -- in a similar situation?

2 A. No, I have actually gotten letters from Agency staff
3 conceding that they realize that those analysis are necessary at
4 some point in corrective action, and will oftentimes allow us to
5 do it in site classification, although not directly allowed under
6 the Act.

7 Q. Is it necessary to put -- to even try to guess when you
8 apply to the Agency for approval of a plan such as this, an
9 investigation plan, to try to guess where the samples will be
10 taken?

11 A. We do sometimes if the soils are more homogenous and a
12 reasonable determination can be made as to where the appropriate
13 location would be.

14 Q. But when the soils are heterogenous --

15 A. There is absolutely no way to tell.

16 Q. You can't do it?

17 A. No.

18 Q. Nor were you asked to do it?

19 A. Right, correct.

20 Q. The same kinds of questions were asked of you on pages
21 72 and 73 of Petitioner's Exhibit Number 1, which is also the
22 record in this case -- strike that -- which is also pages 72 and
23 73 of the record in this case. Were you asked to give any
24 greater or more detailed break down of the tasks to be performed

1 by these people?

2 A. No.

3 Q. All right. This is an Agency form; is it not?

4 A. Correct.

5 Q. All right. Were you asked to -- strike that.

6 Have you been asked in your prior submittals to the Agency
7 wherein you submit a budget for a Corrective Action Plan or for a
8 phase one corrective action investigation, to give any greater
9 detail than what you gave the Agency in this case?

10 A. No.

11 Q. And those -- I take it you have had applications for a
12 plan and budget approvals approved by the Agency in many cases;
13 have you not?

14 A. Certainly.

15 Q. In those cases the Agency person assigned to the review
16 has not called and asked you to further elucidate or specify the
17 tasks; isn't that a correct answer?

18 A. Yes, correct.

19 Q. Now, staying with pages 72 and 73, you were asked
20 questions on page 73 about the ground water sample collection
21 activities?

22 A. Correct.

23 Q. You had two people down for doing that, one at a rate of
24 \$90.00 per hour, that's the field manager, and the other at

1 \$66.00 an hour, and he is a field technician or she is a field
2 technician; is that right?

3 A. Correct.

4 Q. Now, assuming, for purposes of this question, that OSHA
5 laws allowed only one person to be out there to do this.

6 A. Good point.

7 Q. Assuming that to be true.

8 A. Good point.

9 Q. We will talk about that. Assuming only one person, it
10 would be the field manager, wouldn't it?

11 MR. KIM: Objection. This is all leading.

12 Q. (By Mr. Prillaman) All right. Who would it be between
13 the two?

14 A. If -- the most logical person would be the field
15 manager. He is the one that is responsible for the collection.
16 The technician is assisting, essentially, for data quality
17 purposes. It is always beneficial to have someone of reasonable
18 experience in charge of what is going on in the field.

19 Q. And to your knowledge, would OSHA allow one person to do
20 it?

21 A. That's a good point. No.

22 MR. PRILLAMAN: Okay. No further questions.

23 HEARING OFFICER SUDMAN: Okay.

24 MR. KIM: Just a couple of short ones.

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REXCROSS EXAMINATION

BY MR. KIM:

Q. Again, just to clarify, the U.S. EPA document that you have referred to that is Petitioner's Exhibit Number 10, again, that document is not specifically referenced in the Corrective Action Plan, is it?

A. No, it is one that is available on --

Q. All right. Mr. Truesdale --

A. -- the U.S. EPA web site.

Q. -- I appreciate that, but yes or no? It is --

A. No.

Q. -- not included, is it?

A. No.

Q. And that document is not referenced in the budget; is that correct?

A. No.

Q. For what it is worth, you just testified as to OSHA requirements?

A. Uh-huh.

Q. Having some -- placing some restriction and so forth. Are OSHA requirements applicable in this particular instance?

A. OSHA requirements for hazardous waste operations are always applicable at contaminated sites.

Q. Would that be as opposed to Illinois Department of --

1 MS. HAWBAKER: Labor Relations.
2 Q. (By Mr. Kim) -- Labor Relations regulations?
3 A. That is state versus federal. The same --
4 Q. So you are --
5 A. -- applicability.
6 Q. Okay. So --
7 MS. HAWBAKER: It is --
8 MR. KIM: Carol, no.
9 MS. HAWBAKER: I'm sorry.
10 MR. KIM: Okay. That's fine. Thank you. That's all.
11 Nothing further.
12 MR. PRILLAMAN: Thank you. Nothing further.
13 HEARING OFFICER SUDMAN: No more questions, Mr. Truesdale.
14 You may step down.
15 MR. KIM: And it is two till noon.
16 MS. HAWBAKER: Yes, two minutes to spare.
17 HEARING OFFICER SUDMAN: Good job. Thank you very much.
18 (The witness left the stand.)
19 HEARING OFFICER SUDMAN: Let's go off the record for a
20 minute.
21 (Discussion off the record.)
22 HEARING OFFICER SUDMAN: Okay. We will go back on the
23 record and start up again with the Petitioner's next witness,
24 please.

1 MR. PRILLAMAN: We call Cindy Davis.

2 HEARING OFFICER SUDMAN: Darlene, would you swear in the
3 witness.

4 (Whereupon the witness was sworn by the Notary
5 Public.)

6 C I N D Y S U E D A V I S,
7 having been first duly sworn by the Notary Public, saith as
8 follows:

9 DIRECT EXAMINATION

10 BY MR. PRILLAMAN:

11 Q. Ms. Davis, would you state your full name for the
12 record?

13 A. Cindy Sue Davis.

14 Q. What do you do for a living?

15 A. I own an environmental engineering company.

16 Q. Where is it located?

17 A. Springfield, Illinois.

18 Q. What is the name of it?

19 A. CSD Environmental Services.

20 Q. Do you have in your employ Joe Truesdale?

21 A. Yes.

22 Q. Okay. Who else worked for you at the time that the
23 application that is the subject of this case was filed?

24 A. Do you want me to list each employee or --

1 Q. If you can tell me by job description; I had two field
2 managers and three --

3 A. Okay.

4 Q. --project managers, that kind of thing.

5 A. Okay.

6 Q. Give us a sense of how big your firm is?

7 A. I have two project engineers, Joe Truesdale and Kyle
8 Blumhorst.

9 Q. Okay.

10 A. An administrative assistant, Sherry Cochran. Two field
11 technicians, Mark Semring and Pete Correll. A geologist, a staff
12 geologist, Brandon Hargrave. Myself, a professional geologist.
13 And probably some other administrative assistant type help. They
14 are part-time and come and go.

15 Q. Okay. Fine. How long have you had this firm?

16 A. I started it in 1992. So I believe that's 11 years.

17 Q. Okay. I call your attention to Petitioner's Exhibit
18 Number 18. Would you take a quick look at that. Is that a
19 current resume that you prepared at my request?

20 A. Yes, it is.

21 Q. Could you briefly describe your educational and work
22 experience to date?

23 A. I have a bachelor's of science degree in geology from
24 Eastern Illinois University. I graduated in 1984. In 1985 I was

1 employed by the Illinois EPA in RCRA compliance as a compliance
2 specialist. I worked in the compliance section for one year, and
3 then I was asked if I would like to take a job using my geology
4 degree in the permit section, which at that time was actually
5 still the compliance section. They were kind of combined.

6 Q. We are talking land permit?

7 A. Land permit. What I did, my job there was to evaluate
8 proposals as they came in for ground water monitoring networks
9 for hazardous waste facilities and solid waste facilities.

10 Q. So you had to evaluate whether the spacing of the wells
11 and the depth of the wells and the construction of the wells and
12 the purpose of the plan was adequate?

13 A. We had to -- yes, to that. Plus, we had technical
14 guidance documents that we relied on that were issued from the
15 U.S. EPA. So we basically would look at the plan to make sure it
16 met the technical guidance documents and met the regulations, and
17 made recommendations to the owner/operator in terms of either
18 draft permit denial points or phone conversations, meetings,
19 whatever, to express to them what our problems were with their
20 permit application.

21 Q. And when you say you were working in compliance, were
22 you talking about reviewing plans for investigatory purposes or
23 for remediation purposes?

24 A. Not remediation. In hazardous waste it didn't seem like

1 anybody every remediates anything. I think the lawyers make sure
2 that doesn't happen (laughter). It is all investigation. What
3 we were investigating was rate and extent of contamination of any
4 kind of releases that would have occurred from landfills or
5 regulated units.

6 Q. How many years did you do this?

7 A. I was there from 1986 to somewhere around -- I think it
8 should tell me (laughter). To '90.

9 (The deponent reviewing Petitioner's Exhibit
10 Number 18.)

11 A. From 1987 to 1990, right.

12 Q. Okay. Then what did you do?

13 A. Then I was hired as a subunit manager in the leaking
14 underground storage tank section. At that time the underground
15 storage tank section was split into -- there were three subunit
16 managers; a northern one, a southern one, and then an engineering
17 subunit manager. I had southern, which was everything but Cook
18 and Colehour Counties.

19 Q. Okay.

20 A. I looked at underground tank -- I had people underneath
21 me. I think I had ten reviewers that worked underneath me who
22 read the reports as they came into the Agency and, you know, made
23 comments if they met the regulations and appropriate guidance.

24 Q. And this would be under what they call the old law?

1 A. It was under old law, correct.

2 Q. But would it have included the plans for investigatory
3 purposes and plans for actual site remediation purposes?

4 A. Yes, it did.

5 Q. So you were familiar with the process before you left
6 the Agency?

7 A. Very familiar.

8 Q. Okay. When you left the Agency you started your own
9 firm?

10 A. Yes.

11 Q. Okay. I call your attention to Petitioner's Exhibit
12 Number 18A.

13 A. Okay.

14 Q. Is that a brochure that accurately describes your firm
15 that did the consulting work in this case?

16 A. Yes, it is.

17 Q. Okay. While we are looking at exhibits, I want you to
18 look also at Petitioner's Exhibit Number 18B. I want to ask you
19 a few questions about that as well. Did there come a time, Ms.
20 Davis, that you later formed a second corporation for drilling
21 and remediation purposes?

22 A. Yes, I formed one in the year 2000. I bought my own rig
23 and started up my own environmental drilling company and
24 contractors.

1 Q. Is that a separate corporation?

2 A. It is a separate corporation and has a separate set of
3 Brooks. It has its own warehouse location. It is a totally
4 different type of operation than CSD Environmental.

5 Q. Is it available for contracting to, say, me for any
6 work?

7 A. It is available to anybody, and we do work other than
8 just for CSD.

9 Q. So Heartland works for CSD and anybody who wants to hire
10 them, right?

11 A. Correct.

12 Q. They are proposed to be used on this particular job, are
13 they not?

14 A. Yes, they are.

15 Q. They are shown in the application as the drilling and
16 remediation subcontractor for certain tasks?

17 A. Yes, they are.

18 Q. Okay. Going back to your experience. For CSD, you have
19 done what kind of work for the last 11 years in your role as the
20 president of CSD?

21 A. My role is an evolving one. I started out and it was
22 just myself as the only employee. And as the business grew I
23 added people to help me. So originally I wrote all -- I did
24 everything. I wrote all the plans. Copied everything. Did my

1 own drafting. The whole thing. A one-man show. As we picked up
2 more clients and more work, obviously, I picked up people to help
3 me with different tasks.

4 Q. What kinds of tasks?

5 A. Well, you know, the first task was picking up somebody
6 to help with all the typing and drafting.

7 Q. Okay.

8 A. Then I hired a geologist to help go out in the field so
9 that I would be able to stay in the office and write the reports
10 while they went out in the field and collected the data.

11 Q. Okay.

12 A. Eventually I hired Joe as an engineer. He had just
13 graduated from college. I hired him to come in and assist us
14 with writing -- with writing reports and plans.

15 Q. When you say reports and plans, are you including
16 reports and plans that are submitted to the LUST unit of the
17 Illinois EPA?

18 A. Correct. Probably 97 percent of our work is in the LUST
19 field. We submit on behalf of our clients reports to help them
20 comply with the Illinois environmental regulations.

21 Q. Just so I understand the word reports, we sometimes call
22 those applications, do we not, requests for approval and that
23 kind of thing?

24 A. Right. There are 20 day reports, 45 day reports, site

1 classification work plans, site class completion reports,
2 Corrective Action Plans, reimbursement requests.

3 Q. Okay. Would the application that is the subject of this
4 case, which is Petitioner's Exhibit Number 1, be one of those
5 reports that you have been used to doing for 11 years?

6 A. Yes, it is.

7 Q. So is it fair to say that you are familiar with the
8 various personnel who are described as being tasked on this case?

9 A. Yes, I am.

10 Q. Okay. I call your attention to the exhibit that lists
11 the personnel to be used on this case to implement the plan, and
12 it is at pages 72 and 73.

13 MR. KIM: Before you get too far, just for the record, I am
14 not going to have any objections to 18A or 18B, either of those
15 documents.

16 MR. PRILLAMAN: I will now offer into evidence, then,
17 Petitioner's Exhibits 18, 18A, and 18B.

18 HEARING OFFICER SUDMAN: Okay. Those three are admitted.

19 (Whereupon said documents were duly admitted
20 into evidence as Petitioner's Exhibits 18, 18A
21 and 18B as of this date.)

22 HEARING OFFICER SUDMAN: You are looking at Petitioner's
23 Exhibit 1, page 73?

24 MR. PRILLAMAN: Page 72 and 73 right now, yes.

1 HEARING OFFICER SUDMAN: All right.

2 Q. (By Mr. Prillaman) That's the form provided by the
3 Agency that was filled out by your firm in this case for
4 personnel. Are you familiar with the fact that the Agency cut
5 the professional engineer's rate down from \$150.00 per hour to
6 \$130.00?

7 A. Yes, I am.

8 Q. You are?

9 A. (Nodded head up and down.)

10 Q. Can you tell us how you arrived at the \$150.00 an hour
11 to begin with?

12 A. Right. We take what we pay the employee, his salary,
13 plus the company contributions for employment, state and federal,
14 Medicare, and Social Security. We have to match -- well, on
15 unemployment we have to pay all of the unemployment. We have to
16 match whatever the employee pays into Social Security. So we add
17 that on to their salary. Plus any other -- it does not include
18 health insurance on that number.

19 So we get what we call a direct wage. We multiply that
20 times a standard engineering profit multiplier. That profit
21 multiplier covers stuff like employees health insurance, and
22 paying the light bill, and all of our overhead costs in a firm,
23 our overhead plus profit. I mean, we are not a not-for-profit
24 company. We do need to make money to stay in business. From

1 that, then, you determine your hourly rate.

2 My employees are paid -- I just checked the board out here
3 with what positions the Agency has posted. They are paid about
4 the same. They are all about the same. I know what the Agency's
5 salaries are. I have gotten the data from CMS. So we are all in
6 the same ball park as to what our employees are paid. So I know
7 that's the standard going rate, what I pay.

8 Q. That was my next question. Is this CSD's -- we will
9 call your company CSD -- usual and customary rate for the PE
10 position at \$150.00 an hour?

11 A. At the time of this, yes.

12 Q. As a matter of fact, hasn't the Agency approved that
13 rate before.

14 A. Yes, it has.

15 Q. I call your attention to Petitioner's Exhibit 19. Can
16 you tell us what Petitioner's Exhibit 19 is?

17 A. It is a spread sheet that I had a person on my staff
18 develop by going through our payment request and our budgets,
19 stating whether or not -- what rate we had been approved at and
20 been paid for in the past.

21 Q. Okay. So when it is approved for request for
22 reimbursement, you actually not only got the approval, but you
23 were paid that dollar amount; is that correct?

24 A. We were paid that dollar amount.

1 Q. But the budget approvals may not have already been
2 approved -- strike that -- paid, but they were approved in the
3 budget?

4 A. That is correct.

5 Q. You may not have done that job yet?

6 A. Correct.

7 Q. Those are Illinois EPA LUST section approvals of that
8 rate for jobs, what, similar to this?

9 A. For underground storage tank jobs and the date of the
10 letter that we issued from EPA and the project name is all on
11 there, along with incident numbers.

12 Q. Has this rate been paid by CSD's clients in the past?

13 A. Yes, it has.

14 Q. Okay. Are you familiar with the rates charged by other
15 environmental consultants situated similarly to CSD, in that they
16 perform similar environmental services in the same part of
17 Illinois?

18 A. Yes, I am.

19 Q. What is the basis of that knowledge?

20 A. From time to time we take over projects that another
21 consultant worked on. When we get those projects from our
22 owner/operator or client often the invoices are also included in
23 that in order for reimbursement requests to have been completed.
24 So I have the opportunity to look at other consultants' invoices.

1 I have also, through the Freedom of Information Act, received
2 budgets from other consultants that have been submitted to the
3 Agency on a leaking underground storage tank site.

4 I belong to the Consulting Engineers Council and meet with
5 my peers regularly, and although -- you know, side bar issues
6 that we are talking about, you know, what are rates, what kind of
7 costs are going up for our firms, things likes that.

8 I attend a seminar once a year. It is called PSMJ. I am
9 not sure what all PSMJ stands for. But they have classes for
10 engineering -- people who own and operate engineering firms, to
11 help you determine how you set prices and how you determine if
12 you are being profitable and evaluate your business.

13 Q. Calling your attention to the rate of \$150.00 an hour
14 for professional engineer and \$114.00 for project engineer, you
15 have already testified that have you been paid and approved at
16 \$150.00 for professional engineer. Has the Agency either paid or
17 approved \$114.00 an hour for project engineer on similar LUST
18 submittals?

19 A. Yes, numerous times.

20 Q. Does that also appear on Petitioner's Exhibit 19?

21 A. Yes, it does.

22 Q. From time to time does the Agency call that person by
23 different names?

24 A. Yes, they do.

1 Q. So what do you -- you try to call it what the Agency
2 calls it?

3 A. We have a little guessing game that goes on. We always
4 called them project engineers, but then we -- when we submitted a
5 budget one time it came back cuts. We are, like, well, okay.
6 They did pay it. Now they are not paying it. Well, maybe that
7 is because we need to call it senior. Because they have broken
8 these levels down. Now maybe they pay engineers based upon
9 experience. It is all secret. I don't know.

10 Q. Is any of this --

11 A. I just have to take a guess.

12 Q. That is my question. Is any of this rulemaking? Are
13 there rules that you can look at to tell you this?

14 A. No, no.

15 Q. No? So it is a guessing game?

16 A. So it is a guessing game. So then I would resubmit and
17 then the next application as a senior project engineer and try
18 \$114.00. If they pay me, then I know they have a new title
19 called senior project engineer, and that I need to now submit
20 under.

21 Q. Is it your testimony that the person who is described in
22 Petitioner's Exhibit Number 1, pages 72 and 73, as project
23 engineer, at \$114.00 an hour, performs the same type of work as
24 the persons shown in Petitioner's Exhibit Number 19, as project

1 engineer, senior engineer, and I think you have a third category
2 there?

3 A. Yes. But we did change our titles later because we
4 hired in a new engineer about a year ago. So that we had to --
5 we didn't want to charge him out at \$114.00 since he didn't have
6 any experience.

7 Q. Right. I am trying to make sure we have apples and
8 apples here.

9 A. Okay.

10 Q. We submitted -- you did. You submitted to the Agency a
11 budget that called for a project engineer to do certain tasks at
12 \$114.00 an hour; is that correct?

13 A. Yes.

14 Q. I asked you whether project engineers doing the same
15 kind of work at \$114.00 an hour had been approved by the Agency
16 on prior jobs, and you prepared Petitioner's Exhibit Number 19,
17 right?

18 A. Yes.

19 Q. Are we talking about the same category of persons here,
20 even though the name might be slightly different?

21 A. Actually, we are talking about the same two people in
22 this case, yes.

23 Q. Oh, okay. The exact same people?

24 A. The exact same people.

1 Q. All right. Based upon your knowledge and familiarity
2 with the rates that are charged by others situated similarly to
3 CSD for these categories of persons, what are the prevailing
4 market rates in Central Illinois for persons in these categories
5 that are charged by environmental consultants that are situated
6 similar to you?

7 A. Well, I recently obtained a survey. I purchase a survey
8 every once in a while to see what the prices are across the U.S.,
9 and it did have a break down for the Midwest for people -- it
10 didn't have LUST projects, but it had water, wastewater, firms
11 zero to 21 in size, people. It said that the standard billing
12 rate for a professional engineer was between \$132.00 to \$155.00,
13 I think.

14 Q. So you are lower than the high end of that?

15 A. Right.

16 Q. Okay. Is it your testimony as well that these rates --
17 let's finish that. What about that second category, that project
18 engineer category? What did your information tell you about
19 that?

20 A. I believe the information said it was, like, from
21 \$120.00 to \$130.00 per hour.

22 Q. So you are lower than what you believe the standard
23 market prevailing rates are for that category?

24 A. Right.

1 Q. And, yet, the Agency cut that to \$100.00 per hour; is
2 that correct?

3 A. That's correct.

4 Q. You established the rates for these people based upon
5 the --

6 MR. KIM: Objection to the leading.

7 MR. PRILLAMAN: Let me put the word did.

8 MR. KIM: Or how did you establish.

9 HEARING OFFICER SUDMAN: Yes.

10 MR. KIM: You don't have to tell her how she did it. You
11 can ask her how she did it.

12 MR. PRILLAMAN: Well, all right.

13 MR. KIM: I have let almost all of these questions go. I
14 understand some of them just get to the point. But, I mean, I
15 think looking at the transcript will indicate that most of the
16 questions are leading. That's fine, but to a point, I think.

17 HEARING OFFICER SUDMAN: Would you please rephrase your
18 question.

19 Q. (By Mr. Prillaman) Did you base your rate making on any
20 particular experience that you have?

21 A. No. Our rates were as I said. It is based upon what we
22 pay the employee plus benefits, which is our direct wage times a
23 profit multiplier to derive an hourly rate.

24 Q. Okay.

1 A. That's the standard way it is done in the engineering
2 business.

3 Q. All right. Let's move to other rates that appear in
4 this application besides personnel rates. Let's begin, still in
5 Petitioner's Exhibit 1, on page 68, with the investigation costs.
6 There are --

7 HEARING OFFICER SUDMAN: Excuse me. I am sorry to
8 interrupt.

9 Do you have my Petitioner's Exhibit Number 1, by any
10 chance?

11 MR. TRUESDALE: Yes, I do.

12 (Laughter.)

13 HEARING OFFICER SUDMAN: That would help me in following
14 along.

15 MR. TRUESDALE: Sorry about that.

16 (Mr. Truesdale passing document to the Hearing;
17 Officer.)

18 HEARING OFFICER SUDMAN: That's okay. Thank you. Sorry
19 for the interruption. Please continue.

20 Q. (By Mr. Prillaman) What I would like you to do is to
21 simply go through, beginning on page 68, Petitioner's Exhibit 1,
22 where rates are shown, and continue on through the rest of the
23 exhibits for investigation and analysis and equipment costs where
24 you have set the rate and just tell me how you arrived at those

1 rates and why they are reasonable.

2 A. Okay.

3 Q. And each time you do it, tell me what page you are on
4 and what rate you are talking about.

5 A. I assume we are starting with page 68; is that correct?

6 Q. Yes. I think that is the first place I see rates.

7 A. Okay. The first rate I see is \$140.00 per hour. That
8 rate was determined -- well, it is an equipment rate. And how
9 all equipment rates are determined in our company is you take the
10 purchase price of the equipment plus any ancillary equipment.
11 Like, in this case it is the drill rig and the drill rods and
12 stems, all the equipment you need in order to run that drill rig.
13 The gooseneck trailer that the drill rig goes on, and a 250,
14 F-350 Ford to pull the trailer and the rig. I send two trucks
15 and two trailers out on the job site. This \$140.00 an hour is
16 just for the drilling rig, tooling, trailer and truck.

17 You take the purchase price, you figure out the average
18 life of that equipment and you use an amortization schedule. We
19 used one out of Excel spreadsheets that determines that. And you
20 also calculate how many billable days you have in a year, or how
21 many billable hours, depending on if you are going to derive an
22 hourly price or a day price. And you put all of that into the
23 amortization schedule, and it comes out and tells you what you
24 need to charge per hour in order to pay for the equipment.

1 Q. Has CSD, in working for other clients on LUST projects,
2 been approved and paid at \$140.00 an hour for this item in the
3 past?

4 A. Yes, numerous times.

5 Q. Okay. Move on to the next rate.

6 A. The next rate is mobilization, at \$250.00 per mob. That
7 rate, actually, the Agency just came up with the \$250.00 per mob.
8 I don't -- I assume that is supposed to cover the guy's time to
9 drive there. And I don't know. I don't know what all their
10 costs are. They give us \$250.00. That's what I put in there.
11 That's how I determine that price.

12 Q. That has been standard from the Agency in the past?

13 A. Yes.

14 Q. Okay. What I am going to try to do is just identify
15 those in which the Agency cut the rates, if I can find that
16 exhibit.

17 A. Okay. Well --

18 Q. Let's go to the Decon equipment.

19 A. Okay. All the equipment, which is going to be Decon
20 equipment, concrete coring machine, those two are based upon the
21 same way. What the equipment costs versus amortization of that
22 equipment, is how we determine the price on that.

23 The drilling is -- the Decon labor is, again, factored in
24 by what -- this one actually is factored in by the direct wage

1 times a multiplier. But I actually take a loss on this employee,
2 because my -- it is more than -- \$45.00 an hour equivalent out
3 to somebody making about \$6.00 or \$7.00 an hour. I do pay more
4 than that for my drilling labor, but the Agency won't pay --
5 usually we find won't pay any more than that. So I just put down
6 \$45.00 an hour. It is less than what I actually calculate.

7 Q. To avoid a fight?

8 A. Yes.

9 Q. Okay.

10 A. The disposable sampling tubes, I purchase these. They
11 are throwaway tubes that you use when you are collecting a soil
12 sample. They are not reusable. The \$7.98, I believe it costs us
13 \$7.00 to buy them from the manufacture. So we have just a slight
14 amount of markup on there.

15 The same thing with Bentonite chips. It is the price that
16 we pay plus a slight amount of markup.

17 Utility locate, again, we purchased our -- what we have
18 found is that JULIE does not come on site to our gasoline
19 stations and locate. They will locate the edges, but not on the
20 site. So we purchased equipment to do our own locating on site
21 to protect our employees, so we don't drill through product lines
22 and electric lines. That equipment -- again, we amortize that
23 equipment and the life of that equipment to come up with a price.
24 That includes the labor to do that locate also.

1 Q. Has that been paid at that rate before by the Agency,
2 the \$300.00 a day for utility locate?

3 A. Yes, it has.

4 Q. Again, I don't know that the Agency cut that.

5 A. I don't know either.

6 Q. Because they didn't tell us.

7 A. Right. Okay. Utility truck and job trailer, that is
8 the other truck and trailer that hauls the equipment. Basically
9 \$60.00 a day, another amortization. But also we checked with
10 Hertz Rent-a-Car and everywhere else. You can't take -- I cannot
11 pull a 30-foot job trailer with a Pinto. It has to be pulled
12 with an F-250 or at least a three-quarter ton pickup truck. So I
13 have to rent a pickup truck. You cannot rent a pickup truck in
14 Springfield. So I have to own my own. But my comparable rates,
15 when I go on line, you can't rent a truck for less than \$75.00 a
16 day. So I am below what it would cost me to go out and rent a
17 truck to do the job.

18 Q. All right. Do you -- as we look at this page 68 and
19 those rates and the unit costs that are shown on here, is it your
20 testimony that you are the one that did that pricing?

21 A. Yes, I am the one that does the pricing.

22 Q. Okay. Are any of these rates excessive or beyond that
23 which you have been paid before by the Agency?

24 A. No, they are not.

1 Q. Okay. Let's move to the next page. I don't see any
2 rates on page 69. I see some rates on pages 70 and 71 for
3 sampling. The Agency cut, I think, \$490.00 from this. I don't
4 know if they ever told us where. But let's talk about the rates.

5 A. The rates on analysis are strictly straight from our
6 laboratory. What our laboratory provides is what we put on here.
7 So there is no markup, nothing. We just take what the laboratory
8 charges.

9 Q. And you say your laboratory. You subcontract that out?

10 A. We subcontract, right.

11 Q. Okay. Are these rates that have been submitted and
12 approved to the Agency before?

13 A. I assume. I don't know on that one for sure.

14 Q. Okay.

15 A. Like I said, I really don't -- how analytical it --
16 anytime you use a subcontractor, you take the subcontractor
17 prices plus your handling charge that is allowed in the back.

18 Q. Okay. But you base these rates on what you had been
19 charged and had paid before?

20 A. Yes.

21 Q. My question was has the Agency approved your previous
22 payments of these rates before?

23 A. Yes.

24 Q. Okay. Now, let's move -- let's skip over personnel,

1 because I think we have touched on that.

2 A. Okay.

3 Q. And the next rates appear in the equipment costs on page
4 74.

5 A. Okay. PID, pH, and water level indicator are all
6 equipment that we actually own. And, again, it is amor -- I
7 can't say the word now -- amortized over the life of the
8 equipment to come up with the daily price. And those prices are
9 checked. Occasionally we do have to rent if one of our equipment
10 breaks down. So we also have a book from Hazco that has their
11 rental prices in it. So we also know that prices we charge are
12 not out of line.

13 Q. That was my next question. Is your unit rate that you
14 charge for equipment that you own based on amortization in
15 excess --

16 A. No.

17 Q. -- of what the fair market rate is?

18 A. No. And, actually, it is cheaper because if you rent
19 it -- if you rent this equipment, then you have to pay the
20 Federal Express or the postage to get it to you and to get it
21 back. You have to pay extra days, because you rent the machine
22 while it is in shipment. So it is cheaper to own it for the --
23 on the agency's behalf, what you are charging.

24 EnCore samplers and bailers, those are, again, items that

1 are purchased. We buy them in bulk and then, you know, the price
2 is -- you know, we add just a slight amount on our supplies to
3 come up with a unit rate.

4 The utility truck, the same way. This is CSD's truck. The
5 other trucks we talked about were under Heartland. But the
6 equipment -- the rate is all determined the same way.

7 Q. Okay. Are these rates that are shown on page 74 rates
8 that have been approved before by the Agency?

9 A. Yes, they are.

10 Q. Are they in excess of what the fair market rate is?

11 A. No, they are not.

12 Q. I call your attention to page 76. Field purchases are
13 shown again as units, times numbers of units. I guess that's a
14 rate. Did you do that pricing?

15 A. Yes, I did.

16 Q. Okay. Can you just quickly tell the Board why these are
17 fair and reasonable numbers?

18 A. Okay. Well, the miscellaneous retail purchases at
19 \$10.00 each, we don't try to keep track of how many gloves we use
20 and how many -- you know, in terms of disposable supplies, other
21 than bailers and EnCore samples. We have to purchase ice to keep
22 the samples cool. So we just derived -- instead of trying to
23 calculate how much you are going to use for each job, we came up
24 with a standard. It is \$10.00, a minimum \$10.00 charge. It is

1 up to the project engineer or whoever is putting the plan
2 together to determine how many of those units he needs.

3 UPS is based upon our actual cost, what it costs us. We
4 supply receipts to that, showing that that is what it cost us.
5 If it does not cost us \$50.00, we don't get reimbursed \$50.00.

6 Q. Right.

7 A. The ground water pump, again, we purchase that equipment
8 and it basically is amortized over the life of the equipment. A
9 peristaltic pump has a very short life. So with your
10 amortization, you are going to charge more because of the short
11 life of it.

12 Sampling tubes, this actually shouldn't -- it is tubing.
13 You actually have to have the poly tubing that goes -- the pump
14 goes down the well. You have to have enough tubing for however
15 long your well is, however deep that is, or your screen point
16 sampler. It is not reusable. It is not able to be
17 decontaminated. So that price is what it costs us, with a slight
18 amount of markup.

19 Q. Are these prices for these four items shown on page 76
20 prices that have been previously approved and paid by the
21 Illinois EPA?

22 A. Yes, they are.

23 Q. Are they in excess of what the fair market value is for
24 those items?

1 A. They are below fair market value.

2 Q. And then, finally, under field purchases we have

3 photocopying, seven cents a page. I am not even going to ask a

4 question about that.

5 A. Okay.

6 Q. Let's move on to the handling charges. Are you aware

7 that the Agency cut your handling charges?

8 A. Yes, I am.

9 Q. Will you quickly -- do you understand that they cut that

10 only on the basis of having reduced the amount of work that they

11 wanted these people, these three subcontractors to do?

12 A. Yes, I understand that the subcontract amounts they

13 changed and, therefore, the -- how you determine handling charges

14 changed because they changed the subcontract amount.

15 Q. Okay. But there is no -- there is no objection in this

16 denial letter or this letter from the Agency to the use of any

17 three of these subcontractors, is there?

18 A. No.

19 Q. Okay. And Heartland Drilling is owned by you, as well;

20 is it not?

21 A. Yes, it is.

22 Q. Okay. I do see one more item. Did you price, on page

23 79, the miscellaneous retail purchases? Or is that -- okay.

24 Yes. That is a duplication; is it not?

1 A. Uh-huh.

2 Q. Oh, I see. Okay. That's another basis for handling
3 charges. All right. I call your attention to Petitioner's
4 Exhibit 17.

5 A. Okay. We are looking.

6 Q. It is a one-page document that just summarizes the
7 Agency cuts and approvals.

8 A. Okay.

9 Q. I am going to ask you a question about first Column A,
10 the bottom line total. Do you understand that this project for
11 this phase one high priority corrective action investigation was
12 estimated to cost \$52,367.96?

13 A. Yes.

14 Q. Is that lower than what you had proposed originally with
15 the Agency?

16 A. Yes, it is.

17 Q. In your opinion, the Agency has cut it 42 percent. Can
18 you do this work for 42 percent of that number?

19 A. No, I cannot.

20 Q. Is that based on your experience with having done these
21 before?

22 A. Yes, it is. I couldn't find anybody else to do it for
23 that price.

24 Q. Is it your opinion that the \$52,367.96 is what it will

1 take to do this work properly?

2 A. Yes, sir.

3 Q. Is it excessive?

4 A. No.

5 Q. Is it beyond what is necessary to do this work?

6 A. No.

7 MR. PRILLAMAN: I would offer into evidence Petitioner's
8 Exhibit Number 19, which is the spreadsheet that shows the rates
9 that have been paid or approved by the Agency for the categories
10 of personnel in question.

11 MR. KIM: We would object to that.

12 HEARING OFFICER SUDMAN: On the same grounds as the other
13 documents?

14 MR. KIM: Correct. In addition, there is reference to at
15 least one or two line items here that relate to packages that
16 were decided after -- I mean -- well, yeah, the document itself,
17 I think she testified, was prepared after the final decision was
18 issued. There is information contained referencing these letters
19 of the dates of the EPA decision that postdate the final decision
20 that is under appeal here.

21 In addition, I mean, it is unclear what type of plans these
22 were, what type of payment request this was, what type of budget
23 this was. There is no -- it is unclear as to -- you know, what
24 we have before us is a high priority corrective action site

1 investigative plan and budget. There is no information on this
2 sheet that describes, you know, to make sure that we are talking
3 about -- comparing apples and apples and oranges to oranges.

4 MR. PRILLAMAN: May I ask a few more questions, then, on
5 that exhibit? Because I disagree with those objections.
6 Commercial law, of course, the best evidence of what is
7 reasonable is what the person was paid in the past. But,
8 nevertheless, he has raised questions as to whether these are
9 apples and apples. And we will just lock that in right now.

10 MR. KIM: Well, my primary objection, though, again, is
11 that this is information that was prepared after the date of the
12 decision. And as a result, it should not be considered by the
13 Board.

14 MR. PRILLAMAN: I am sorry. That has been -- that is an
15 old -- this hearing is after the date of decision and maybe it
16 shouldn't be considered.

17 MR. KIM: There is plenty of case law that --

18 HEARING OFFICER SUDMAN: Well --

19 MR. PRILLAMAN: That doesn't make sense.

20 MR. KIM: There is plenty of case law on the fact that
21 documents prepared after the date of the decision should not be
22 considered by the Board and that they are outside the record.

23 HEARING OFFICER SUDMAN: That is true. The Board is pretty
24 particular about that. If you would like to ask questions that

1 you -- do you have any questions that address that objection?

2 MR. PRILLAMAN: Well, now --

3 MR. KIM: Well, I don't -- I don't mean to cut off Mr.
4 Prillaman. But he has elicited testimony that --

5 HEARING OFFICER SUDMAN: Well --

6 MR. KIM: -- we have not objected to that says that --
7 where Ms. Davis testified that she has been paid, you know,
8 higher amounts in the past. If that is her testimony, that is
9 fine. It is this document that we are objecting to.

10 MR. PRILLAMAN: All right. Well, let me just ask some more
11 questions and then I will be done.

12 HEARING OFFICER SUDMAN: Okay. So you are not moving this
13 document, or you are?

14 MR. PRILLAMAN: I am not withdrawing the motion. I just
15 want to ask some more questions, and then I will renew the
16 motion.

17 HEARING OFFICER SUDMAN: Okay.

18 MR. PRILLAMAN: Because I think what we are going to do is
19 demonstrate that this is probably the easiest way for the Board
20 to understand how many times and in what situations that are
21 common to this case that the Agency has approved these rates for
22 these people for LUST projects. I am just going to have to go
23 through each one of these and explain.

24 Q. (By Mr. Prillaman) Do you have that in front of you,

1 Number 19? Explain for the record how it is that the payment --

2 HEARING OFFICER SUDMAN: Mr. Prillaman, we have got to
3 finish this hearing today. This is a decision deadline case. I
4 don't want to spend another hour with this witness going through
5 these, you know, one by one.

6 I mean, I agree with Mr. Kim's assessment. This is a
7 document that was not part of the Agency record, which is what we
8 are really bound to here. I believe that your witness has given
9 a lot of testimony regarding the reasonableness of the rates, the
10 rates she charges, you know, and rates in general. I don't think
11 you need this document, and I do not believe that it is
12 admissable.

13 I am not going to admit it, but I will take it as an offer
14 of proof if you would like to argue it further in your brief.
15 Okay?

16 (Whereupon said document was admitted as an
17 offer of proof as Petitioner's Exhibit 19 as of
18 this date.)

19 MR. PRILLAMAN: Yes. I would like to ask one question in
20 the offer of proof, as part of the offer of proof.

21 HEARING OFFICER SUDMAN: Yes. Please proceed.

22 MR. PRILLAMAN: To further demonstrate why this is a
23 relevant and pertinent document.

24 HEARING OFFICER SUDMAN: Okay.

1 Q. (By Mr. Prillaman) Ms. Davis, you have prepared Exhibit
2 19, and you showed two different categories of people on it;
3 isn't that correct?

4 A. Yes.

5 Q. Is there anything about the work done by the
6 professional engineers at \$150.00 an hour that was approved by
7 the Agency, or is there anything about the project engineer, also
8 called other names such as engineer and senior engineer, that in
9 any way is different in terms of the substance of the work done
10 than that which is proposed to be done by professional engineer
11 and project engineer on this job?

12 A. No, they are the same.

13 Q. Okay.

14 A. These were LUST corrective actions, many of them. The
15 same type of work.

16 Q. Okay.

17 A. We do the same type of work. I mean, Joe's job is the
18 same pretty much from day-to-day.

19 Q. Okay. So there is no substantive difference.

20 MR. PRILLAMAN: I have no further questions.

21 HEARING OFFICER SUDMAN: Okay. Thank you.

22 MR. PRILLAMAN: At this time I think that is your apples
23 and apples. I think that is a basis for it. By the way, more
24 than half of the documents that have been admitted into evidence

1 were not in front of the Agency at the time of this application,
2 but they help to explain things that are in the application and
3 things that are part of the case. They are helpful documents.
4 They are admissable for a lot of reasons.

5 The fact that something was not prepared and handed to the
6 Agency in the application does not automatically mean the Board
7 can't consider it. This is the kind of thing -- the Owens Oil
8 case, which has been cited to the Board in one of my motions, was
9 a case in which the Agency had been paying a rate over and over
10 and over again and --

11 HEARING OFFICER SUDMAN: Mr. Prillaman, I made my ruling on
12 this particular document. I would ask you to reserve your
13 argument for your brief, please.

14 MR. PRILLAMAN: Okay.

15 HEARING OFFICER SUDMAN: Thank you.

16 MR. KIM: I just have one or two questions for Ms. Davis.

17 CROSS EXAMINATION

18 BY MR. KIM:

19 Q. You said that when you calculate hourly rates, and I
20 think this applies for both the professional engineer and also
21 for the project engineer, that you use a formula that basically
22 is what you called direct wage times a standard profit
23 multiplier? Is that the right term?

24 A. Uh-huh, yes.

1 Q. Okay. And the standard profit multiplier is something
2 that basically is an allowance that takes into account things
3 like overhead, profit, insurance, and things like that; is that
4 right?

5 A. That's correct.

6 Q. Okay. And the direct wage, you said, is comprised of
7 what you pay the employee, which I guess you would have to sort
8 of break down into an hourly rate, right?

9 A. No, I can -- yes, I take the salary and --

10 Q. Right.

11 A. -- then I add -- yes, I do.

12 Q. You see what I mean?

13 A. Yes, I do.

14 Q. Okay. So it is what you pay the employee plus what the
15 company contributes to what?

16 A. To Illinois and federal unemployment.

17 Q. Okay. So the unemployment contribution?

18 A. Social Security.

19 Q. Social Security.

20 A. And Medicare.

21 Q. Medicare. Okay. And those contributions, are those --
22 I don't know this, since I work for the government and someone
23 writes me a check. I don't write people checks. The
24 contribution that we are talking about, the Medicare and the

1 Social Security, is that something that is based on the base pay?
2 Or is that a standard formula per person? Or how is that -- how
3 do you come up with those figures, I guess, is what I am
4 wondering?

5 A. We have a bookkeeping program that calculates our
6 payroll for us.

7 Q. Okay.

8 A. And it is based upon -- the federal government sets a
9 rate, and our bookkeeping program has it in there.

10 Q. Okay.

11 A. It gets updates on line.

12 Q. Okay.

13 A. I don't how they set it. It calculates on our program
14 for us.

15 Q. I guess what I am wondering is, aside from what you pay
16 the employee, there is three other things; there is what you pay
17 for unemployment contributions, there is what you pay for
18 Medicare, and what you pay for Social Security, right?

19 A. Yes.

20 Q. I would assume, at least as to, say, Social Security,
21 that would be dependent upon what you pay the employee?

22 A. Oh, yes. All of them are based upon what you pay the
23 employee, correct, yes.

24 Q. Okay. Great. And it is going to be, like you say,

1 based on some formula, some percentage of what you pay the
2 employee?

3 A. Yes.

4 Q. Okay. Is it -- and maybe you don't know this, because
5 you put this into a formula. Are those -- there is four
6 components that go into a direct wage, then. Those three, the
7 unemployment contribution, Medicare, Social Security, plus what
8 you pay the employee?

9 A. Yes.

10 Q. Of those four components, obviously, what you pay the
11 employee would be the greatest component?

12 A. Yes.

13 Q. Then do you have any guesstimate? I don't. Do you have
14 any guesstimate as to what the other -- how much of a percentage
15 the other three portions would be compared to what you pay the
16 employee?

17 A. The largest one is going to be Social Security. I don't
18 know what percentage. But if you think about your own paycheck
19 and see how much they take out for Social Security --

20 Q. I would rather not.

21 (Laughter.)

22 A. Okay. The State matches exactly what was taken out of
23 yours.

24 Q. It is something like --

1 A. So --

2 Q. Well, I don't even want to guess.

3 A. Yes. It is not pretty, is it?

4 (Laughter.)

5 Q. No.

6 (Laughter.)

7 Q. Is it a single digit percentage? Is it double?

8 A. I don't know.

9 Q. I don't even know. Well, okay.

10 A. It is -- like I said, our payroll does it automatically.

11 Q. Sure. The standard profit multiplier, how do you -- is

12 that a fixed figure regardless of who the person is?

13 A. Yes.

14 Q. How did you arrive -- is that something that -- what is

15 that figure? Is that a number, a discrete number?

16 A. It is a number that you multiply your direct wage by.

17 Q. What is that number?

18 A. That number -- we have a target multiplier of 3.5.

19 Q. What does target multiplier mean?

20 A. Target means that is what we try -- you have to set your

21 goals at 3.5, because you lose money on every job because things

22 get out of control or -- you never get three and a half --

23 Q. Okay.

24 A. -- as your profit. So you set a target at three and a

1 half so that you come out at three.

2 Q. Oh, I see. So 3.5 is your target, but you usually come
3 out at around three?

4 A. Yes.

5 Q. Okay. But the higher the multiplier, obviously, the
6 greater you are able to take profit and account for overhead and
7 so forth and so on; is that right?

8 A. Yes.

9 Q. So if I were going to back calculate, if the project --
10 or if the professional engineer was being paid -- was being
11 charged at \$150.00 per hour --

12 A. Uh-huh.

13 Q. -- I would basically be able to figure out what the
14 direct wage was if I divide \$150.00 per hour by the multiplier?

15 A. Uh-huh.

16 Q. And then I would be able to come up with the direct
17 wage?

18 A. Yes, you would.

19 Q. Okay. And you testified that you happened to check our
20 job posting sheets and you saw that our figures were comparable
21 to yours.

22 A. Yes.

23 Q. And I don't know who that speaks better or ill of.

24 (Laughter.)

1 Q. Do any of your employees, for example, make over -- and
2 I am not asking for names or specific dollars.

3 A. Okay.

4 Q. Do any of your employees make over \$100,000.00 a year?

5 A. No.

6 Q. Okay. And that would include the professional engineer?

7 A. Correct.

8 MR. KIM: Okay. I don't think I have anything further.

9 HEARING OFFICER SUDMAN: Okay.

10 MR. PRILLAMAN: Nothing further.

11 (The witness left the stand.)

12 MR. PRILLAMAN: If we are going to take a break now, fine.

13 HEARING OFFICER SUDMAN: Okay.

14 MR. PRILLAMAN: The only other thing that I would want to
15 do would maybe read some things in the record from answers to
16 interrogatories as part of my case-in-chief. I would rather do
17 that right before we start.

18 MR. KIM: I still have this horrible bugaboo about these
19 discovery depositions.

20 HEARING OFFICER SUDMAN: Yes. Let's take lunch first, if
21 you don't mind.

22 Is that okay with you?

23 MR. PRILLAMAN: Yes.

24 MR. KIM: Yes.

1 HEARING OFFICER SUDMAN: We will go off the record for an
2 hour. It is 1:00. We will reconvene at 2:00.

3 (Whereupon a lunch recess was taken from 1:00
4 p.m. to 2:05 p.m.)

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A F T E R N O O N S E S S I O N

(January 7th of 2004; 2:05 p.m.)

HEARING OFFICER SUDMAN: Okay. We are ready to go back on the record.

Mr. Prillaman, you had something more you wanted to present for your case?

MR. PRILLAMAN: Yes. As part of our case-in-chief I want the Board to accept into evidence admissions made by the Agency, pursuant to the Board Rule 101.616 and Supreme Court Rule 212(a)(2), and Supreme Court Rule 213(h).

The following responses to Petitioner's first set of interrogatories, they appear as Petitioner's Exhibit 11, but I only want the following questions and answers to be made part of my case as admissions. And I am looking, again, at Petitioner's Exhibit 11. The first one is Interrogatory 3, and the answer thereto for the limited purpose of showing how the Agency made its decision, and not for the truth or accuracy of that decision.

MR. KIM: That's beginning on page --

HEARING OFFICER SUDMAN: The bottom of page two?

MR. PRILLAMAN: Yes, it begins on the bottom of page two, all of page three, and ends at the top of page four.

Okay. The next one is 5. Again, for the limited purpose of showing how the Agency arrived at the decision using an internal guidance document, and not for the truth or the

1 correctness of doing so.

2 Number 6, for all purposes. Number 7, for all purposes.

3 Strike that. For 7, I want that admitted for the limited purpose
4 of showing how the norms and averages are conducted or prepared
5 or assembled, but not for the accuracy or truth of the way that
6 is done.

7 Number 8, again, for the limited purpose of showing that
8 the rate sheet was used in this case, but not for the validity or
9 the appropriateness of that.

10 Number 9, I want admitted for all purposes.

11 Number 13, for all purposes.

12 Number 14, for the limited purpose of identifying the
13 Agency rate sheet, but not for the appropriateness of using that
14 sheet in this case or in any case.

15 For Number 15, I want in for all purposes. Strike that. I
16 want the -- up to the first comma I want in for all purposes.
17 But I want to limit the second part of that answer for the
18 purpose of showing that a rate sheet was used in this case but
19 not for the appropriateness of using that.

20 For 20, for the limited purposes of showing that the
21 Agency, in fact, used a rate sheet, but not for the
22 appropriateness of it.

23 For 21 and 22, for all purposes. We are reserving -- as
24 you can see, Your Honor, we are reserving the right to object to

1 the Agency's use of that rate sheet in this case. I think the
2 Board needs to know that it was, in fact, used, and this is the
3 only -- this is the best place, I think, where it is described
4 that it, in fact, was used.

5 The other -- do we have a ruling on that motion?

6 HEARING OFFICER SUDMAN: Are you moving this now?

7 MR. PRILLAMAN: Yes, that is for those portions of
8 Petitioner's Exhibit Number 11, as so limited in some respects
9 for some of those questions.

10 HEARING OFFICER SUDMAN: You don't have any objection to
11 this, do you?

12 MR. KIM: No.

13 MR. PRILLAMAN: Okay.

14 HEARING OFFICER SUDMAN: Yes, this is admitted.

15 (Whereupon said document was admitted into
16 evidence as Petitioner's Exhibit 11 as of this
17 date.)

18 MR. PRILLAMAN: Then for Petitioner's Exhibit Number 12, I
19 marked that as an exhibit. I would want it admitted into
20 evidence only for the purpose of demonstrating that the Agency
21 refused to give documents other than the document that was
22 attached to it, but without admitting to the validity of the
23 document that was attached as an exhibit and without admitting
24 that it was an appropriate document to use in this case.

1 HEARING OFFICER SUDMAN: Again, Mr. Kim, you don't have any
2 objection to this?

3 MR. KIM: No objection.

4 HEARING OFFICER SUDMAN: I will admit this. Exhibits 11
5 and 12 are admitted.

6 (Whereupon said document was duly admitted
7 into evidence as Petitioner's Exhibit 12 as of
8 this date.)

9 MR. PRILLAMAN: Okay. Petitioner rests.

10 HEARING OFFICER SUDMAN: Okay. Thank you very much.

11 Mr. Kim?

12 MR. KIM: Well, one preliminary matter before I call my
13 first witness. Mr. Prillaman and I discussed prior to, I think,
14 going on the record that included in his exhibits that have been
15 admitted, this would be Exhibits 2, 3 and 4, the discovery
16 depositions, included in those are exhibits to the exhibits,
17 exhibits that were used during the course of the depositions.

18 The Agency does not have any objection to those other than
19 there is a document that has been identified as Plaintiff's
20 Exhibit Number 4, and it is under the -- the title of it is job
21 performance guidance. I believe that document is found in all --
22 at the end of all three of the depositions in question. I
23 believe Mr. Prillaman is amenable to simply excluding that
24 exhibit, since no testimony was really ever drawn from it and

1 none of the deponents had any real information based on that. So
2 as long as that is agreed to.

3 MR. PRILLAMAN: I agree with that.

4 HEARING OFFICER SUDMAN: Okay.

5 MR. PRILLAMAN: Call Carol Hawbaker.

6 HEARING OFFICER SUDMAN: Could you swear the witness.

7 (Whereupon the witness was sworn by the Notary
8 Public.)

9 C A R O L H A W B A K E R,

10 having been first duly sworn by the Notary Public, saith as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. KIM:

14 Q. Ms. Hawbaker, could you find Petitioner's Exhibit Number
15 2, and put that before you?

16 A. Okay.

17 Q. As you may know, that is a document that is a transcript
18 of a discovery deposition that you took -- or that you
19 participated in on November the 25th of 2003. Do you recall
20 giving that deposition?

21 A. Yes.

22 Q. The way I am going to ask you questions today is that we
23 are going to treat the testimony that was taken in the deposition
24 and that is laid out here in transcript form as if this was your

1 direct testimony. And then I will, I guess, be working off of
2 this to conduct cross-examination.

3 MR. KIM: Before I do that, what if there are portions of
4 this transcript that I want to raise as an objection? I mean,
5 would you entertain a request to have line items stricken or is
6 that not even possible?

7 HEARING OFFICER SUDMAN: I will entertain a request.

8 MR. KIM: Okay. I don't know that I am necessarily going
9 to have anything.

10 HEARING OFFICER SUDMAN: Yes.

11 MR. KIM: This may take me awhile, since I am not used to
12 doing it this way.

13 Q. (By Mr. Kim) Ms. Hawbaker, during your deposition
14 testimony, you testified that you came to the Illinois EPA
15 approximately a little over three years ago; is that correct? Do
16 you remember that?

17 A. Yes, September of 2000.

18 Q. Since that time, do you have an idea how many LUST sites
19 you have reviewed technical plans for?

20 A. I am a project manager for 201 sites at last count.

21 Q. In the time that you have been employed at the Illinois
22 EPA, do you know roughly how many high priority Corrective Action
23 Plans you have reviewed?

24 A. Approximately 70.

1 Q. Would those plans -- some or all of those plans have an
2 accompanying budget?

3 A. Yes.

4 Q. Would you say -- it may not be all, but is it most? Or
5 is it all?

6 A. All.

7 Q. Okay. I believe during your deposition you testified
8 that you utilized a rate sheet to assist you in determining
9 reasonableness. Do you recall that?

10 A. Yes.

11 Q. Okay. Attached at the end of that transcript, so it is
12 going to be at the very end of that, as an exhibit, there is a
13 document entitled Plaintiff's Exhibit 3. Can you find that?

14 A. Yes.

15 Q. Okay. That is -- what is that document?

16 A. It looks to be the memo or the cover for the rate sheet
17 guidance document that would have been in affect at the time the
18 decision was made for this site.

19 Q. Is this the memorandum and is the -- and then the
20 accompanying rate sheet, is that what you used in this particular
21 case?

22 A. Yes.

23 Q. Then the two pages that follow, are those portions of
24 that rate sheet?

1 A. Yes.

2 Q. Okay. What is the significance of those portions that
3 are shown there?

4 A. It looks as though the portions that are shown apply to
5 the rate cuts that I made in conjunction with this budget that is
6 under appeal.

7 Q. Okay.

8 MR. PRILLAMAN: Before he continues with this, I want the
9 record to show that we are objecting and have objected from the
10 very start. And, in fact, it is the subject of that emergency
11 motion to compel discovery. We are objecting to the Agency's use
12 of the rate sheet to determine reasonableness of rates of any
13 kind for the reasons appearing in the emergency motion. And I
14 understand the motion was denied by the Board to compel
15 discovery.

16 But the basis of it was, and I will repeat it, it is a
17 rule. It is enforced. It did not go through rulemaking. And
18 the basis for it remains a secret. We were never able to
19 participate in it. It is being used in this case arbitrarily
20 against us without our knowledge. And until we did discovery we
21 didn't even know it was done. We object to it. And we object to
22 testimony based on it. We object to any reliance upon it as
23 authority for doing what the Agency did in reducing any rates in
24 this case. I want that to be a standing objection.

1 HEARING OFFICER SUDMAN: Okay.

2 Q. (By Mr. Kim) I may veer away from the transcript here
3 from time to time. But you were the project manager that
4 reviewed the Corrective Action Plan and budget found in
5 Petitioner's Exhibit Number 1; is that correct?

6 A. Yes. That is the one under review, correct?

7 Q. Yes.

8 A. Yes.

9 Q. I don't know if you have the administrative record in
10 front of you, but if you can find that record, and look to the
11 letter that begins on page 86. After you have found that --

12 A. Yes, I found it.

13 Q. Can you tell me what that letter is?

14 A. What that letter is, is a modification letter for the
15 site investigation Corrective Action Plan.

16 Q. It is your understanding that's the letter that is
17 currently under appeal?

18 A. Yes.

19 Q. Did you have any role in preparing this letter?

20 A. Yes.

21 Q. What was that?

22 A. I reviewed the project and made the recommendations.

23 Q. Included with the letter are some attachments that begin
24 on -- I guess it is just one. It begins on page 90. Can you see

1 that?

2 A. Yes.

3 Q. It is broken down into two sections. Can you describe
4 what section one is?

5 A. Section one are the total amounts allowed for each
6 section of the budget. Section two is the costs that have been
7 deducted from the budget and the reasons why.

8 Q. Who prepared Attachment A?

9 A. I did.

10 Q. If you look to page 90, under section two, item number
11 one, is that an \$8,910.72 adjustment for investigation costs?

12 A. Yes.

13 Q. And the second paragraph, could you describe what
14 information -- well, let me rephrase that. What was the purpose
15 or what was the basis for your making that \$8,910.72 adjustment?

16 A. In the plan I cut ten direct-push borings that were not
17 being used to define the extent of the plume.

18 Q. If you look on page 16 of Petitioner's Exhibit 1, you
19 will see a site map. Where are the ten borings that you did not
20 approve?

21 A. The borings that I did approve for soil were B12, B9 and
22 B7. The borings that I did not approve for soil are B8 -- well,
23 actually, it would be B5, B6, B8, B10, B11, B13 through B17.

24 Q. Okay. Why did you approve soil borings for B7, 9 and

1 12?

2 A. I believe that those were being used to define the
3 extent of the soil contamination plume.

4 Q. Okay. Why did you not approve them for the other
5 borings?

6 A. The other borings were not being used to define the
7 extent of contamination for soil.

8 Q. Did you approve those boring locations for any other
9 purpose?

10 A. Yes, for ground water.

11 Q. So those ten boring make up the ten that you cut that
12 are reflected on page 90, is that correct, of --

13 A. Yes.

14 Q. -- the administrative record? Let's look at page 90,
15 the second paragraph there. Take a look at it sentence by
16 sentence.

17 HEARING OFFICER SUDMAN: Page 90 of --

18 MR. KIM: The administrative record. I apologize.

19 Q. (By Mr. Kim) The second paragraph under section two,
20 item one. Would you read that first sentence?

21 A. As ten direct-push borings are in excess of the minimum
22 requirements of Title 16, the direct-push investigation should
23 take two days to complete. In parenthesis, eight direct-push
24 borings per day.

1 Q. Okay. Can you explain again why the ten direct-push
2 borings were in excess of the minimum requirements?

3 A. They were not being used to define the extent of
4 contamination.

5 Q. Okay. What was the purpose that was explained as to why
6 they would be used?

7 A. In the budget it stated that they would be used to log
8 and classify soils pursuant to 732.308(a).

9 Q. When you say that, are you referring to page 68 of
10 Petitioner's Exhibit 1?

11 A. Yes.

12 Q. What is your understanding of Section 732.308(a)?

13 MR. PRILLAMAN: First of all, can we find the sentence
14 where it says that? Page 68?

15 MR. KIM: Yes.

16 MR. PRILLAMAN: Okay. I see it. Okay.

17 Q. (By Mr. Kim) Again, what is your understanding of
18 Section 732.308.(a)?

19 A. That section actually is a requirement for soil boring
20 logs to be taken for all activities that are done during site
21 classification.

22 Q. Has this facility undergone site classification?

23 A. Yes.

24 Q. Has that portion of the remediation of this facility

1 concluded?

2 A. Yes.

3 Q. How did it conclude?

4 A. It was classified as high priority.

5 Q. So reliance on this section, 732.308, do you think that
6 is appropriate, in terms of justifying the borings in this
7 particular case?

8 MR. PRILLAMAN: I will object. That is not what this
9 exhibit says. That question cannot be asked based on what the
10 exhibit says.

11 Q. (By Mr. Kim) Well, if you could, on page 68 of the
12 record, or the Petitioner's Exhibit Number 1, about halfway down
13 the page, would you please read the sentence that begins each of?

14 A. Each of the 13 locations will be initially probed and
15 continuously sampled to classify and log the subsurface soils in
16 accordance with 35 IAC 732.308(a).

17 Q. Now, how did you interpret that sentence?

18 A. That sounds like they were trying to do a physical soil
19 classification.

20 Q. Okay. And what problem did you have with that?

21 A. That was already done in site classification.

22 Q. Okay. I am sorry to keep going back and forth here.
23 Looking back now again on page 90 of the administrative record,
24 the second part of that first sentence, I believe you read,

1 stated that the direct-push investigation should take two days to
2 complete, parenthesis, eight direct-push borings per day, close
3 parens. Do you see that?

4 A. Yes.

5 Q. What was your basis for making that statement?

6 A. Which part?

7 Q. That's --

8 A. For the two days to complete?

9 Q. Why don't we take that first, sure.

10 A. My rationale for that is based on information that I had
11 talked to with my unit manager. He had indicated that eight
12 direct-push borings per day was an acceptable rate.

13 Q. Okay. So that was your -- that was the basis for that
14 second part of the first sentence; is that correct?

15 A. Yes.

16 Q. Okay. Can you read the next sentence in that second
17 paragraph?

18 A. Therefore, the cost for the direct-push investigation,
19 drilling labor, utility truck, job trailer, decontamination
20 activities, and disposable sampling tubes have been modified
21 accordingly.

22 Q. What does that mean?

23 A. That means they have been cut from the days that they
24 had requested to two days.

1 Q. Okay. So that now it is consistent with what your
2 modification is?

3 A. Yes.

4 Q. What is the next sentence?

5 A. Please note the drilling labor and utility truck must be
6 included in the geoprobe per day cost.

7 Q. What is the basis for that statement?

8 A. That is what I was told is how the rates were
9 determined.

10 Q. Who told you that?

11 A. Brian Bauer.

12 Q. Can you read the next sentence?

13 A. Job trailer is part of mobilization costs and are
14 included in the mobilization rate.

15 Q. Okay. What is the sentence after that?

16 A. Sampling tubes have been modified from 70 to six.

17 Q. Why was that modification made?

18 A. Actually, I never did understand why there was 70. I
19 went to six because there were six samples that were going to be
20 taken, soil samples.

21 Q. Okay. Then what is the last sentence?

22 A. In addition, for costs for direct-push investigation,
23 drilling labor, utility truck, and job trailer are not reasonable
24 as submitted.

1 Q. What was the basis for that conclusion?

2 A. That was based on comparison with the rate sheet.

3 Q. Okay. Let's focus or let's stay on the subject of the

4 soil boring logs that were proposed. How many soil borings were

5 proposed by the Corrective Action Plan?

6 A. Soil borings?

7 Q. Yes.

8 A. Thirteen.

9 Q. Okay. And then how many soil samples?

10 A. Six. Two samples from three borings.

11 Q. Okay. Would you turn to page six of Petitioner's

12 Exhibit Number 1.

13 A. Yes.

14 Q. In the second full paragraph -- or the first full

15 paragraph. I apologize. Some of the text is underlined. Do you

16 see that?

17 A. Yes.

18 Q. Okay. Is this where CSD, in the CAP, proposed to use

19 six additional on site soil borings and seven off site borings?

20 A. Yes.

21 Q. Does it go on to address soil sample collection?

22 A. It goes on to say where the soil samples will be

23 collected from, what borings they will be collected from.

24 Q. Okay. And what was your interpretation of that

1 language?

2 A. They were only going to be collecting soil samples for
3 chemical analysis from three of the 13 borings.

4 Q. So how did that relate to the necessity for the
5 remainder of the borings?

6 A. There was no necessity for the rest of the borings in
7 high priority site investigation.

8 Q. Okay. Let me go back to your transcript here. Okay.
9 Let's look next on page 91 of the administrative record.

10 A. Okay.

11 Q. I am not going to go through each one of these line item
12 by line item. But I wanted to focus specifically on the first
13 one. How would you characterize the modifications that were made
14 to the budget in this case? Did they fall in certain groups or
15 types of deductions or what have you?

16 A. Could you clarify that, please.

17 Q. Sure. Well, look at item number two -- or paragraph
18 two. I'm sorry. Can you describe what that modification was?

19 A. It was a cut that was made in the rates of the concrete
20 coring machine and Bentonite chips.

21 Q. What was that adjustment based upon?

22 A. The rate sheet.

23 Q. Okay. I guess just to speed things up, that is kind of
24 what I am getting at. Are some of the deductions that were made,

1 or some modifications made in the budget based solely on
2 comparison with the rate sheet.

3 A. Yes. Some of them.

4 Q. Some of them. Sure. Can you identify which of those
5 items were based upon comparison with the rate sheet?

6 A. Would you like me to go through each one, each point?

7 Q. Well, how about this. If you just go through -- you
8 said item number two was based upon that; is that correct?

9 A. Yes.

10 Q. What about number three, was there anything in there?

11 A. No, that was not based on the rate sheets. That was
12 based on that these analysis were not mentioned in the plan.

13 Q. What about number four, anything there based on rate
14 sheets?

15 A. Yes, the rates were.

16 Q. Okay.

17 A. I cut rates.

18 Q. Those are personnel rates primarily?

19 A. Yes, those are personnel rates.

20 Q. Okay. Did you do a comparison for the field manager
21 personnel rate?

22 A. I don't believe I did. I cut the field manager entirely
23 for excessive personnel at the site.

24 Q. So that was not based on the rate?

1 A. No.

2 Q. So that was based on -- well, we will come back to that.

3 Item number five, was there anything there based upon comparison

4 with the rate sheet?

5 A. The pH ORP temperature meter.

6 Q. Okay. Looking on page 92, item number six, anything

7 there?

8 A. The camera.

9 Q. How about item number seven?

10 A. I believe I cut the number of sample shipments.

11 Q. Okay. That would be in accordance with what?

12 A. I didn't see the need for five sample shipments. I

13 allowed for two, which would be for two days of sampling.

14 Q. Does that relate back to the two days that were

15 referenced in item number one?

16 A. Yes.

17 Q. Item number eight, did that have anything to do with

18 comparison with rate sheets?

19 A. No, it did not.

20 Q. Okay.

21 A. I requested a line item estimate.

22 Q. How about item number nine?

23 A. It was cut based on modifications made elsewhere in the

24 budget and the rate of the pump was unreasonable.

1 Q. Okay. What is your understanding of how the rate sheet
2 is intended to be used?

3 A. It has been intended to be used as a guidance document
4 to help us determine reasonableness.

5 Q. If you did not rely on the rate sheet, how would you go
6 about reviewing reasonableness?

7 MR. PRILLAMAN: Well, I am going to object to that. How
8 would you have done something? The testimony is that she looked
9 at a piece of paper that somebody gave her and said that's it,
10 and that's what she imposed. She didn't do anything else.

11 You are holding us to a high standard here. I would say
12 that that is an improper question to ask the reviewer; how would
13 you have done it had you been given a choice or had someone not
14 let you look at the rate sheet. I think that is an improper
15 question.

16 MR. KIM: I will withdraw the question.

17 HEARING OFFICER SUDMAN: Thank you.

18 Q. (By Mr. Kim) Let me ask you this. Let me go about it a
19 different way. How useful is the rate sheet for what you stated
20 was its purpose?

21 A. It is useful.

22 Q. In what way?

23 A. It helps us determine what the guidelines are and what
24 the basis are of charges that are being made.

1 Q. Okay. Let's look at some of the other items, then, that
2 were not made based upon the rate sheet. I believe you were --
3 in item number three, those were -- that is an adjustment that
4 was not made based upon the rate sheet; is that right?

5 A. That is correct.

6 Q. Why was that adjustment made?

7 A. Because there was no mention in the plan as to where the
8 samples were being taken, or that these samples were being taken.

9 MR. PRILLAMAN: I am going to object. That is not in the
10 letter.

11 MR. KIM: I did not ask her what was in the letter. I
12 asked her what the basis for her decision was.

13 MR. PRILLAMAN: I thought the basis for the decision was
14 supposed to be in the letter.

15 MR. KIM: Well, that's a legal argument he can make as to
16 the sufficiency of the letter. I am asking the project manager
17 why she made the decision.

18 HEARING OFFICER SUDMAN: I will allow the question.

19 MR. KIM: Can you read that answer back? I'm sorry.

20 (Whereupon the requested portion of the record
21 was read back by the Reporter.)

22 MR. KIM: Okay. Thank you.

23 Q. (By Mr. Kim) Again, in item three, can you read the
24 second sentence that begins these costs?

1 A. In the first paragraph?

2 Q. Yes.

3 A. These costs are inconsistent with the associated

4 technical plan.

5 Q. Okay. Then read the next sentence.

6 A. One of the overall goals of the financial review is to

7 assure that costs associated with materials, activities, and

8 services shall be consistent with the associated technical plan.

9 Q. Why did you believe those costs were not consistent with

10 the associated technical plan?

11 A. Because they were not mentioned in the plan.

12 Q. In item number four, you said previously that there were

13 some adjustments made based upon comparison with the rate sheet?

14 A. Yes.

15 Q. Were there any other adjustments made in item four

16 beyond rate sheet adjustments?

17 A. Yes. We cut some of the time that was proposed for

18 activities to be taken.

19 Q. Okay. And let's kind of go through these one by one.

20 Do you know if there was time cut for the professional engineer

21 time?

22 A. Yes, it was cut from five to two.

23 Q. Okay. You would think I would know this by now. Is it

24 page -- I am looking in the Corrective Action Plan budget to see

1 where the tables are. Is it 68?

2 MR. PRILLAMAN: No.

3 THE WITNESS: 72.

4 Q. (By Mr. Kim) It is 72. Thank you. If you could turn to
5 page 72 of Petitioner's Exhibit, which is, I am sure, where you
6 are already at. The first line item there is for profession
7 engineer. Do you see that?

8 A. Yes.

9 Q. And you billed five hours of work?

10 A. Uh-huh.

11 Q. Is that the adjustment that you made, in terms of hours?

12 A. I cut it from five hours to two hours.

13 Q. Okay. What was your basis for doing that?

14 A. Five hours -- to review and certify, it shouldn't take
15 five hours. It should only take about two.

16 Q. Okay. What is your understanding of what is going to be
17 involved in reviewing and certifying?

18 A. Reading the report and certifying that all is correct.

19 Q. Then for the project engineer, did you cut any hours for
20 the project engineer?

21 A. The total, I believe, was 156 hours for the entire
22 budget and I allowed 40.

23 Q. That's for the different line items for the project
24 engineer?

1 A. Yes, for the total of the budget.

2 Q. Okay. What was your justification? Or what was your
3 basis for making that adjustment?

4 A. Because I had made some cuts in the plan that exceeded
5 the minimum requirements would have cut the amount of time that
6 would have been required. And I felt that the hours that were
7 being proposed was unreasonable for the task that needed to be
8 accomplished.

9 Q. How did you arrive at the new figure that you modified
10 it down to?

11 A. At 40 hours?

12 Q. Yes.

13 A. I felt that what was being done, that should be ample
14 time for the project engineer to complete the task that he is
15 required to.

16 Q. Okay. I understand when you made your reduction from
17 the rate sheet that you were looking at a document, right?

18 A. Yes.

19 Q. What was your -- did you have any document that you were
20 looking at when you made adjustment as to hours?

21 A. No.

22 Q. Okay. So what was your base of information or what have
23 you that you used in making that modification?

24 A. I believe it was based on the experience of looking at

1 budgets and seeing how much time is required to complete the
2 activities for high priority site investigation.

3 Q. Okay. Thank you. Then staff geologist, did you cut any
4 hours there?

5 A. Yes, I did. I believe it was 88 hours total, and I cut
6 it to 40 hours, as well.

7 Q. Okay. Can you explain how you happened to come about
8 that figure and why you cut it down to that figure?

9 A. Based on the tasks that are being done and based on
10 budgets of other companies that -- what is a reasonable number of
11 hours to complete the tasks.

12 Q. Okay. These tasks that are described here, are these
13 things that you have seen in other budgets?

14 A. Yes.

15 Q. Okay. So there is nothing here that is necessarily a
16 case of first impression with you?

17 (The witness reviewing document.)

18 A. No.

19 Q. Then you also previously alluded to your adjustment as
20 to the field manager, which is found on page 73. What was the
21 adjustment that you made there for that line item?

22 A. I cut the entire field manager position, because it was
23 excessive personnel on the site.

24 Q. What was your basis or what was your source of

1 information for that?

2 A. I didn't feel as though it took two people eight hours
3 each to collect ground water samples.

4 Q. Okay. Were the adjustments that you made in hours done
5 in the context of the adjustment made in item number one of the
6 final decision?

7 A. Yes, in some ways.

8 Q. So let me put it a different way. In item number one,
9 you made an adjustment as to the number of borings that you would
10 allow; is that correct?

11 A. Yes.

12 Q. Did that decision impact other of these items that are
13 found throughout the Attachment A?

14 A. Yes.

15 Q. Okay. Item number five, were there some adjustments
16 made in that item that did not have to do with a direct
17 comparison with the rate sheet?

18 A. Yes.

19 Q. What would those have been?

20 A. I reduced the item days to two days used to correspond
21 with the two days allowed for a geoprobe investigation.

22 Q. Okay. Then I am looking at the second paragraph under
23 item five. The PID -- well, what were the items that you reduced
24 to two days work?

1 A. The PID, the pH ORP temperature meter and the utility
2 truck.
3 Q. Okay. Then did you make an adjustment regarding EnCore
4 samples?
5 A. Yes, I reduced them from 12 to six.
6 Q. What was the basis there?
7 A. That they only would need six in order do the soil
8 sampling.
9 Q. That would be the soil sampling that they proposed or
10 the soil sampling that you modified it to?
11 A. No, the soil sampling that they proposed.
12 Q. Okay. You didn't make an adjustment as to soil
13 sampling, did you?
14 A. No. They proposed to do chemical analysis for three
15 borings, and I allowed that.
16 Q. Item number six, I think you said previously, was based
17 on a rate sheet comparison; is that right?
18 A. Yes.
19 Q. Okay. Item number seven, was that also?
20 A. No, that was based on five days or five shipments of UPS
21 sample shipping.
22 Q. And then what --
23 A. And --
24 Q. I'm sorry. Go ahead.

1 A. And I cut it down to two days.

2 Q. What was your basis for doing that?

3 A. I worked on the assumption that they would ship their
4 samples at the end of each work day.

5 Q. The two days would be, again, consistent with -- I am
6 sorry. I'll strike that.

7 Item number eight, was that based on a direct comparison
8 with the rate sheet?

9 A. No.

10 Q. What was the basis for that adjustment?

11 A. We require a line item estimate, and miscellaneous
12 retail purchases were lumped together.

13 Q. Okay. Item number nine. I think you said at least some
14 of that was based upon comparison to the rate sheet; is that
15 correct?

16 A. Yes. The rate was cut and then the time was cut.

17 Q. How was the time cut?

18 A. I reduced it from, I believe, five days to two days.

19 Q. Okay. What was the basis?

20 A. Because of the modifications and the assumption that
21 eight geoprobes can be done per day allowing for two days of
22 investigation work.

23 Q. Then the last item is number ten, and what is that
24 adjustment for?

1 A. Handling charges.

2 Q. And were there any independent reasons for making that
3 adjustment, or how did that adjustment come to be?

4 A. Based on the adjustments made elsewhere in the budget, I
5 adjusted the handling charges accordingly.

6 Q. So that is basically sort of a consequence of items one
7 through nine; is that correct?

8 A. Yes.

9 Q. Okay. Let's go back to -- let's beat this dead horse
10 one or two more times. Going back to the question of the soil
11 borings, what was your understanding or what is your recollection
12 of the representation made in the site classification completion
13 report as to the Berg Circular?

14 A. It appeared to be consistent with the Berg Circular,
15 which is an AX soil classification type.

16 Q. What is your understanding of how the Berg Circular is
17 intended to be used in the context of someone submitting a site
18 classification completion report?

19 A. Actually, it is being used as an initial review tool to
20 get a preliminary idea of what the soil types would be like in a
21 specific area.

22 Q. Okay. In this particular situation, the Petitioner is
23 asking for additional soil sampling to be done. That is what was
24 cut in your decision; is that correct? I am sorry. Soil borings

1 to be taken; is that correct?

2 A. Yes, that is correct, soil borings.

3 Q. Okay. Is that something -- at what phase should that
4 kind of -- if that kind of proposal is made, at what phase should
5 that be made?

6 A. Site classification.

7 Q. The particular technology that was going to be proposed
8 or that I think was proposed in this CAP and budget was at the
9 different locations found on page 16 of Petitioner's Exhibit
10 Number 1, and borings B -- well, the ones you described that were
11 B5 through 17 consecutively, with the exception of B7 or B --
12 yeah, right, with the exception of B7 and 9.

13 Let me rephrase that. When I refer to borings B5, 6, 8,
14 11, 13, 14, 15, 16, 17, I am going to refer to those as the ten
15 borings, okay?

16 A. (Nodded head up and down.)

17 Q. What was your understanding of how they were going to be
18 taking -- in the proposal, how they would take soil and ground
19 water samples at the ten borings?

20 A. They were never proposed to take soil samples from the
21 ten borings.

22 Q. Okay. What were they proposing to do?

23 A. According to the budget, they were going to log and
24 classify soils pursuant to 732.308(a).

1 Q. Okay.

2 MR. PRILLAMAN: Excuse me. I think she is reading that

3 wrong. What page, again, is that?

4 MR. KIM: We are looking at page 16.

5 THE WITNESS: No, where she just read from. That is not

6 the word that is used.

7 MR. KIM: I don't think she read from anything. I think

8 that was her testimony.

9 MR. PRILLAMAN: I think we are getting confused with what

10 the record says and what the testimony is.

11 THE WITNESS: Would you like me to read it again?

12 MR. PRILLAMAN: Yes. Do you have that? What page is that.

13 MR. KIM: What page are you looking at?

14 THE WITNESS: Page 68.

15 MR. KIM: Okay.

16 THE WITNESS: Each of the 13 locations will initially be

17 probed and continuously sampled to classify and log subsurface

18 soils in accordance with 35 IAC 732.308(a).

19 MR. PRILLAMAN: So it is "in accordance with," and not

20 "pursuant to"? That is my point.

21 THE WITNESS: In accordance with.

22 MR. PRILLAMAN: Okay. Very good. Thank you.

23 Q. (By Mr. Kim) So anyway, again, looking at page 16, there

24 was a proposal to take borings at the ten boring locations for

1 both ground water and soil; is that correct?

2 A. They did not propose any sampling in the ten borings
3 that were cut.

4 Q. I am sorry. I keep saying that. What were they
5 proposing for those?

6 A. It sounded as though they were going to classify the
7 soils.

8 Q. Okay. I am getting my terms confused, so I apologize.
9 Just a moment. I am just trying to make sure I get everything I
10 needed to get. I think you testified to this in the deposition,
11 but just so we are clear on this, what is your understanding of
12 contacting -- of the option of contacting a consultant that
13 submitted a plan or budget prior to the decision deadline if you
14 have got some questions about the sufficiency or insufficiency of
15 the plan or budget?

16 A. We are not required to call them.

17 Q. Okay.

18 A. The final decision or the decision is based on the
19 letter.

20 Q. What letter?

21 A. Whatever letter is being generated.

22 MR. KIM: Okay. I don't have anything further.

23 HEARING OFFICER SUDMAN: Okay. Mr. Prillaman?

24 MR. PRILLAMAN: Yes. Thank you.

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CROSS EXAMINATION

BY MR. PRILLAMAN:

Q. Do you have that deposition in front of you?

A. Yes.

Q. It is Exhibit 2?

A. Yes.

Q. At the back of that exhibit, on page 78 of the version I am looking at, it is page 21, but it has a shrunken version of that page in the upper left-hand corner. Do you see that?

A. Yes.

Q. Wait. I am looking at Exhibit 3. I want to look at 2. I am sorry. The same question, different page. It is page 102. I am sorry, Carol.

A. I am sorry. What? Page 102?

Q. Yes.

A. In the deposition?

Q. In the deposition. It is page 27 of the --

A. Right.

Q. -- eight and a half by eleven. Okay. It calls for you to read over the deposition and either find the same to be true and correct or to make changes. And you made no changes; isn't that correct?

A. Yes, that is correct.

Q. All right. The deposition then was given based upon

1 your personal knowledge; isn't that correct?

2 A. Yes.

3 Q. Okay. Is there anything about the statements you made
4 in your deposition that was done under oath that were not
5 deliberate?

6 A. Could you rephrase the question, please?

7 MR. KIM: Well, I am going to object. I don't understand
8 the form of the question. I mean, it has been --

9 MR. PRILLAMAN: I will reask it. I don't want to confuse
10 the witness.

11 MR. KIM: Okay.

12 Q. (By Mr. Prillaman) Is there anything about what you said
13 in this deposition under oath that was not done deliberately?

14 A. Again, could you clarify?

15 Q. Were your answers deliberate?

16 A. Were my answers --

17 MR. KIM: I am going to object because the whole purpose
18 behind apparently offering these discovery depositions as
19 testimony is that they are what they are. If he is going to
20 second guess the answers that he has already provided basically
21 as direct evidence or direct testimony, then I am going to find
22 that objectionable. If he doesn't like it, then he should have
23 taken it out before.

24 If he has got some questions on cross-examination, and he

1 would like to address it within the scope that I have asked her,
2 I think he is free to do that.

3 HEARING OFFICER SUDMAN: I am not entirely sure what you
4 are getting at, either.

5 MR. PRILLAMAN: Well --

6 HEARING OFFICER SUDMAN: I mean, I think you can assume
7 they were deliberate. I mean, she is --

8 MR. PRILLAMAN: All right. Well, that's fine. I do assume
9 that.

10 HEARING OFFICER SUDMAN: I --

11 MR. PRILLAMAN: And if we all assume that, I will go on. I
12 agree. I agree with that point.

13 Q. (By Mr. Prillaman) Ms. Hawbaker, you were asked some
14 questions about a particular page in the application, and I
15 believe it is page 68. It appears in Petitioner's Exhibit Number
16 1 and also at the Agency record at page 68?

17 A. Page 68 on the Agency record?

18 Q. Yes.

19 A. Yes.

20 Q. Okay. And in the sentence that you read into the record
21 about the 13 locations will be initially probed, there is a
22 reference in that sentence to 732.308(a), is there not?

23 A. Yes.

24 Q. And you took that to mean that -- not that the way the

1 soils were going to be logged were going to be done in accordance
2 with 732.308(a). You believed that meant that all they were
3 going to do is just do classification; is that right?

4 A. No.

5 Q. What else were they going to do besides classification
6 with those soil samples?

7 A. I am not aware. It was not made clear.

8 Q. It was not made clear. You said in your testimony that
9 it sounds like they were doing soils classification. Do you
10 remember that testimony?

11 A. Yes, that is what it sounds like.

12 Q. All right. Is it possible they were actually attempting
13 to define or to determine the extent of contamination?

14 A. No.

15 Q. That is not even possible?

16 A. No.

17 Q. And what do you base that opinion on?

18 A. Because they didn't propose any chemical analysis in the
19 soil borings.

20 Q. So you think that without chemical analysis you cannot
21 do soil borings to help you define the extent or determine the
22 extent of contamination; is that your testimony?

23 A. Yes.

24 Q. You stated that regional geology was uniform at this

1 site, didn't you?

2 A. Relatively uniform in accordance with the Berg Circular.

3 Q. Okay. Is it your testimony that you believe that the

4 reason that the soils were done -- the soil borings were to be

5 done in accordance with this plan is because the soils were

6 heterogenous or homogenous?

7 A. It is irrelevant.

8 Q. Okay. So even if they are heterogenous, it cannot be

9 done as part of this investigation; is that your testimony?

10 A. Not as part of this high priority site investigation.

11 Q. Okay. That is based upon what, again?

12 A. It is based on the requirements for high priority site

13 investigation, which requires us to define the extent of

14 contamination.

15 Q. In the Agency record there are two pages of your notes.

16 Do you have the Agency record in front of you?

17 A. The administrative record, yes.

18 Q. The Agency administrative record, yes.

19 A. Yes.

20 Q. Now, what pages do those appear on? I think they are 84

21 and 85.

22 A. Yes, they are 84 and 85.

23 Q. Did you type up this document?

24 A. Yes, I did.

1 Q. Okay. You didn't give this document to the Petitioner
2 in this case, did you?

3 A. No, this is for the division file.

4 Q. And it was -- was this your choice of titles, technical
5 review notes?

6 A. No.

7 MR. KIM: I am going to object to any questioning having to
8 do with these two pages. I think this goes beyond the scope of
9 what the direct testimony was that I elicited from Ms. Hawbaker.
10 I think it is outside the scope of cross-examination, which is
11 where Mr. Prillaman is at right now.

12 HEARING OFFICER SUDMAN: Are you relating this back to
13 anything that -- I don't recall them discussing it. Are you
14 relating this back to anything?

15 MR. PRILLAMAN: Well, I did have one question. I am
16 concerned about something. She does say general site
17 information, see previous notes. And we don't have any previous
18 notes.

19 HEARING OFFICER SUDMAN: Okay. Was that the point you were
20 getting at?

21 MR. PRILLAMAN: Yes.

22 HEARING OFFICER SUDMAN: Okay.

23 MR. PRILLAMAN: I am wondering, as she is talking about
24 having reviewed things, and we are supposed to have the record,

1 and I've done discovery and don't have it. All I have got are
2 these two pages, and it just says, see previous notes. I was
3 just going to ask where they are.

4 MR. KIM: Again, I think that is outside the scope of
5 direct. This document was in the possession of opposing Counsel
6 at the time the depositions were taken. He could have asked her
7 then as part of what has turned out to be his direct examination.
8 He didn't do so.

9 HEARING OFFICER SUDMAN: I think we can move on. I mean,
10 you have already said you don't have the notes. You weren't
11 given the notes. She has already said that.

12 Q. (By Mr. Prillaman) Let's go over those -- let's go over
13 some of your answers in which you said that you relied either
14 wholly or in part on the rate sheet in this case. Do you
15 remember those questions, Mr. Kim's questions to you?

16 A. Today?

17 Q. Today.

18 A. Yes.

19 Q. Okay. Let's start with number two. We are looking
20 again at your section two of Attachment A on page 90. This is
21 your modification letter.

22 A. Yes.

23 Q. Okay. In number two you said that was an adjustment
24 based upon the rate sheet; is that correct?

1 A. In some things they were based on the rate sheets. In
2 others, they were deducted based on the amount of time.

3 Q. All right. Is it a true statement that in applying the
4 rate sheet you didn't deviate from what the rate sheet told you;
5 is that correct?

6 A. That is --

7 Q. You didn't go up or down one iota?

8 A. No.

9 Q. Okay. And you didn't look behind the rate sheet, did
10 you, to see what the rate sheet was based upon or how it was
11 arrived at?

12 A. No.

13 Q. You said you looked at other budgets for purposes of
14 determining the appropriateness of time; is that correct?

15 A. Based on my experience in seeing time in other budgets.

16 Q. Okay. So you were relying on other documents to base
17 your opinion of reasonableness and time in this case?

18 MR. KIM: I am going to object. I believe her testimony
19 was that on some of the decisions that she made she was basing
20 them upon her past experience of reviewing past documents.

21 HEARING OFFICER SUDMAN: I agree. I think you misstated
22 her testimony a bit.

23 Q. (By Mr. Prillaman) It was just something that you
24 remembered? You didn't look at any documents?

1 A. No.

2 Q. You just remembered this?

3 A. Yes.

4 Q. You remembered about how much time it took to do things
5 because you had looked at budgets before, is --

6 A. Yes.

7 Q. -- that the way you did that? You didn't specifically
8 pick up any budget that was like this one for a plan like this
9 one to do a comparison, did you?

10 A. No, I did not.

11 Q. You didn't really talk to any of the other Agency
12 reviewers to see if they had budgets or plans like this to see
13 what they did, did you?

14 A. I talked to Brian and Harry in context with this budget.

15 Q. Okay. You talked to Harry, as stated in your
16 deposition, right, about how many borings can you do in a day?

17 A. Yes.

18 Q. I don't remember you testifying on direct about Brian.
19 What was it that you talked to Brian Bauer about?

20 A. I imagine about rates.

21 Q. You imagine about rates?

22 A. I talk to Brian Bauer a lot.

23 Q. Okay. You don't specifically recall having talked to
24 Brian Bauer in this case, though, do you?

1 A. Not specifically.

2 Q. You talked about the number of EnCore samples that were
3 needed. Do you recall that testimony?

4 A. Yes.

5 Q. Is that based at all upon EPA method 5035?

6 A. Actually, after reviewing EPA method 5035, the six that
7 would have been allowed would have been increased to 18.

8 Q. So are you confessing error?

9 A. Yes.

10 Q. If you are wrong about the number of soil borings that
11 should be allowed in this investigation, isn't it true that you
12 must restore time that you cut in other items, where you cut
13 based on the cut in borings?

14 MR. KIM: I am going to object. That is assuming something
15 that -- well, first of all, it is an assumption that the decision
16 was wrong, which we have not made. He is calling for speculation
17 as to what should happen if the Board decides otherwise. Our
18 decision is what it is. She did what she did based upon that.
19 And I think that is -- I don't think that there is any reason for
20 her to speculate as to what she would have done under a different
21 set of circumstances.

22 HEARING OFFICER SUDMAN: I agree.

23 Q. (By Mr. Prillaman) What I was going to ask you is to go
24 through those that are relying exclusively on the cut of soil

1 borings, the cut of ten soil borings, that then related to your
2 cuts in time, people to work on the project, your cut in other
3 items, and to tell me which ones, if the ten were restored, would
4 also be restored?

5 MR. KIM: I am going to object. He can ask the first part,
6 I mean, because I think she testified to that, you know, based
7 upon her initial reduction what followed because of that. But,
8 you know -- I think that serves his purpose. I mean, going,
9 again, beyond that is just speculation on her part.

10 HEARING OFFICER SUDMAN: Yes, I think -- you are asking her
11 what -- if that initial cut hadn't been made, what else would
12 have been restored?

13 MR. PRILLAMAN: Yes. She sometimes would say I made a cut
14 here because in part I cut over here. I am trying to reverse the
15 process to find out if the main cut is restored, and the main cut
16 is cutting ten soil borings, if that is restored, what cuts are
17 restored in kind of reverse order.

18 MR. KIM: That is speculation because that was not done.

19 MR. PRILLAMAN: I thought it was. I thought she said it
20 was. I'm sorry. If it was not done, and you made cuts elsewhere
21 for reasons other than and not relying on the cuts in the soil
22 borings, then I stand corrected.

23 MR. KIM: Again, she testified, and I don't know that it is
24 necessarily a problem for her to testify again, that some of the

1 deductions that were made or some of the adjustments that were
2 made stemmed from item number one. But Mr. -- you know, opposing
3 Counsel is asking well, let's reverse that, and while it may not
4 be the same --

5 HEARING OFFICER SUDMAN: Yes, I understand. I agree. She
6 is testifying as to what did happen, what adjustments she did
7 make. I think it is rather speculative and difficult to do to
8 reverse that process. And, you know, I think that is too
9 speculative right now.

10 MR. PRILLAMAN: All right.

11 Q. (By Mr. Prillaman) When you asked Mr. Chappel how many
12 direct-push borings could be collected -- strike that -- samples
13 could be collected in a day, did you give any other information
14 about your hypothetical question to him, such as soil type or
15 depth?

16 A. I don't believe so.

17 Q. Did you, when you asked that question of Mr. Chappel,
18 did you make it clear to him that ground water samples were also
19 going to be collected at the same time?

20 A. That is an assumption.

21 Q. I am asking did you tell Mr. Chappel?

22 A. No.

23 Q. You did not, did you?

24 A. I probably did not.

1 Q. Probably did not. All right. Did you hear Mr.
2 Truesdale's testimony today?

3 A. Yes.

4 Q. When he explained what he wanted -- strike that -- why
5 he wanted to install these borings at these new locations, is
6 that different than what you understood the original application
7 to say?

8 A. Could you please define which borings you are referring
9 to?

10 Q. All right. He said that he was installing borings for
11 purposes of determining the extent of contamination. Do you
12 remember that testimony of Mr. Truesdale today?

13 MR. KIM: I am going to object. I didn't -- there were no
14 questions posed on direct relating to her impressions of Mr.
15 Truesdale's testimony. So I think anything elicited in response
16 to that is beyond the scope.

17 HEARING OFFICER SUDMAN: I know we did discuss the borings.
18 Are you relating this back to something Mr. Kim brought out?

19 MR. PRILLAMAN: Yes. Mr. Kim had her testify what she
20 thought Mr. Truesdale's application meant, what it sounded like
21 what she felt, and those are all --

22 HEARING OFFICER SUDMAN: I am going to ahead and allow -- I
23 will allow the question.

24 Q. (By Mr. Prillaman) I am just trying to ask now that you

1 have heard Mr. Truesdale testify in kind of maybe different
2 terminology than what you read into the record, do you now
3 understand what the purpose of the 13 additional soil borings
4 were for?

5 A. I understand that three of the soil borings were to
6 define the extent and the other ten were to log and classify
7 soils.

8 Q. So even after hearing Mr. Truesdale today that is still
9 what you believe that was for?

10 A. Yes.

11 MR. PRILLAMAN: Okay. No further questions.

12 HEARING OFFICER SUDMAN: Mr. Kim?

13 MR. KIM: Nothing further.

14 HEARING OFFICER SUDMAN: Thank you very much. You may step
15 down.

16 (The witness left the stand.)

17 HEARING OFFICER SUDMAN: It is 3:20. I would propose that
18 we take a five minute break.

19 MR. KIM: Sure. We only have one more witness.

20 HEARING OFFICER SUDMAN: Okay.

21 (Whereupon a short recess was taken from 3:20
22 to 3:25 p.m.)

23 HEARING OFFICER SUDMAN: Okay. We will go back on the
24 record.

1 (Carol Hawbaker not present in the hearing room
2 after the recess.)

3 HEARING OFFICER SUDMAN: Would the Respondent please call
4 your next witness.

5 MR. KIM: I call Brian Bauer.

6 HEARING OFFICER SUDMAN: Darlene will swear you in.

7 (Whereupon the witness was sworn by the Notary
8 Public.)

9 B R I A N B A U E R,

10 having been first duly sworn by the Notary Public, saith as
11 follows:

12 DIRECT EXAMINATION

13 BY MR. KIM:

14 Q. Would you state your name for the record.

15 A. Brian Bauer.

16 Q. Actually, Brian, the way we are -- you may be aware of
17 this. But just so we are clear, the way we are doing this today
18 is that you recall giving a deposition in this case on November
19 25th of last fall?

20 A. Yes.

21 Q. Okay. The transcript from that testimony is basically
22 going to be considered by the Board as your direct examination by
23 the Petitioner. So could you please get a copy, if you don't
24 already, of Exhibit Number 4. Is Petitioner's Exhibit Number 4

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1 in front of you?

2 A. I got it.

3 HEARING OFFICER SUDMAN: He has it.

4 Q. (By Mr. Kim) Okay. Do you recognize that document?

5 A. Yes.

6 Q. Is that a transcript of the deposition that you gave in
7 this case on November 25th?

8 A. I believe so.

9 MR. KIM: Okay. I apologize. Brian did give me a
10 certification with some corrections, but I think the only
11 correction --

12 Q. (By Mr. Kim) There were two line item corrections that
13 you made. I left those back at my office. I think one was for
14 the proper spelling of Jason Donnelly and one was three words,
15 what of something. It was just a minor transcription error,
16 right?

17 A. Yes, it was not substantial.

18 Q. Okay. So other than that there are no changes to the
19 transcript?

20 A. (Nodded head up and down.)

21 Q. Okay. If you would look -- I will try to take this in
22 order of the deposition. Okay. If you would look on what is
23 page eight of the transcript or page three of the exhibit. Do
24 you see what I mean? Each page of the exhibit has four pages of

1 transcript on it?

2 A. Uh-huh.

3 Q. So page eight of the transcript.

4 A. Yes.

5 Q. Line 11 and line -- there was a question that is asked
6 on line 13 and there is an answer that is given. Can you read
7 that just to refresh your recollection of your testimony?

8 A. Do you want me to read --

9 Q. You don't need to read it out loud. Just read it to
10 yourself.

11 A. All right.

12 (The witness reviewing document.)

13 A. Okay.

14 Q. Okay. Your testimony there relates to what is termed as
15 the maximum figure that is found on the rate sheet; is that
16 right?

17 A. Yes.

18 Q. Okay. Can you explain how that maximum figure is
19 intended to be used that is found on the rate sheet?

20 MR. PRILLAMAN: We are going to renew the objection that we
21 have made all along, that the Agency's reliance upon the rate
22 sheet in this case --

23 HEARING OFFICER SUDMAN: Yes, sir, you have a standing
24 objection.

1 MR. PRILLAMAN: -- is improper.

2 HEARING OFFICER SUDMAN: Yes.

3 Q. (By Mr. Kim) Again, the question was could you explain
4 how the maximum figures is intended to be used that is found on
5 the rate sheet?

6 A. A maximum dollar amount or rate on the rate sheet is a
7 rate where a project manager can, I guess, approve without any
8 further or additional information.

9 Q. Okay. So if the dollar figure that is presented in a
10 proposed budget, for example, for a high priority corrective
11 action is at or below the maximum figure on the rate sheet, what
12 would happen? What would the product manager do?

13 A. If it was at it or below it?

14 Q. Yes.

15 A. The project manager would approve it.

16 Q. If it was above the rate sheet figure, what would the
17 project manager do?

18 MR. PRILLAMAN: I am going to object. How does he know
19 what a project manager would do? Are we looking at some guidance
20 here? Are we looking at instructions? There is no foundation
21 for this man to say what the 15 different project reviewers would
22 do or wouldn't do in a case. In fact, the interrogatory I read
23 into the record says that they don't coordinate any of this
24 stuff. That is in the record. So I don't see any foundation for

1 these questions.

2 MR. KIM: Well --

3 HEARING OFFICER SUDMAN: Would you like to set some
4 background information?

5 MR. KIM: Sure. I would first direct the Board's attention
6 to the transcript itself, because I think 99 percent of the
7 testimony that as taken of the transcript relates to Mr. Bauer's
8 role in preparing and generating the rate sheet. So I think he
9 is in as good a position as anybody to testify as to what the
10 intention of the sheet is and how it is intended to be used.
11 But, again, I think that is established in the deposition. I
12 have no problem going into a little more detail now.

13 Q. (By Mr. Kim) What is your involvement in -- let's take a
14 step back. At the end of your deposition transcript as part of
15 Exhibit Number 4 there are some exhibits. There is something
16 entitled Plaintiff's Exhibit Number 3. Do you see that?

17 A. Yes.

18 Q. What is that document?

19 A. A copy of the memorandum and portions of the rate sheet
20 from January the 15th of 2003.

21 Q. Are you familiar with this memorandum?

22 A. Yes.

23 Q. Are you familiar with the portions, and for that matter,
24 the entire rate sheet that is included thereafter?

1 A. Yes.

2 Q. How are you aware of the rate sheet that is found in
3 redacted form there? What has been your involvement with the
4 rate sheet?

5 A. I put the memo together for Doug and -- for Doug Clay
6 and Doug Oakley to sign, and all of the attachments that were
7 attached to it. And I do some of the daily gathering for the
8 rates.

9 Q. Okay. Do you believe that you know how the rate sheet
10 was intended to be used by the project managers in the LUST
11 section?

12 A. Yes.

13 Q. Okay. What is your understanding of how the rate sheet
14 is intended to be used by project managers in a case where a rate
15 presented in a high priority Corrective Action Plan budget is
16 above the maximum rate found on the rate sheet?

17 A. It would either be -- that particular item would be
18 either denied or modified down to the maximum level.

19 Q. Okay. Is it possible that that figure, that higher
20 figure that is included on the budget would ever be approved or
21 ultimately be approved?

22 A. Yes, if additional information was provided to justify
23 that cost.

24 Q. Okay. Let me continue to go through the -- well, let's

1 just stick with that. So the document that is identified as
2 Plaintiff's Exhibit 3, what is the date on that memorandum?

3 A. January the 15th of 2003.

4 Q. Okay. Were you involved in the preparation of the rate
5 sheet prior to that date?

6 A. Yes.

7 Q. Have there been more than one rate sheets?

8 A. Yes.

9 Q. When did you -- I believe your testimony in your
10 deposition was that -- what is your best recollection of when you
11 began involvement with preparation of the rate sheet?

12 A. I think sometime in 1996.

13 Q. So since that time up until January the 15th of 2003,
14 did you have a continuing role in preparation of rate sheets used
15 by the LUST section?

16 A. Yes.

17 Q. When you first became involved with the preparation of
18 the rate sheet -- well, let me rephrase that question.

19 How did you first become involved with the preparation of
20 the rate sheet? What led to your getting involved, let's put it
21 that way, other than being in the wrong place at the wrong time?

22 (Laughter.)

23 A. Yeah. I'm not sure. I think maybe -- it might go back
24 to there must have been, like, a work group that I was assigned

1 to do that had done it.

2 Q. Was there any change in law that led to the necessity of
3 having something like this?

4 A. Yeah, Title 16 was enacted.

5 Q. How was Title 16 different from the previous law that
6 the LUST section used?

7 A. It required the submission of budgets.

8 Q. Did that new requirement play a role in the LUST section
9 developing a rate sheet?

10 A. It was the reason for it, yes.

11 Q. Okay. I believe you testified during your deposition
12 that the rate sheet is essentially calculated by taking the
13 average of the sample that you have collected and adding one
14 standard deviation. Do you recall that?

15 A. Yes.

16 Q. Would you look on page nine of Exhibit 4, which is --
17 and then specifically once you get to page nine, page 30 of the
18 deposition transcript.

19 A. Okay.

20 Q. From line six could you read down to the end of that
21 page, and then the first four lines on page 31 of the transcript.
22 And just let me know when you are done.

23 (The witness reviewing document.)

24 A. Okay.

1 Q. Do you have a better recollection as to how that
2 calculation that is used as part of the test or procedure,
3 whatever you want to call it, how that was arrived at in
4 generating the rate sheet? I think your testimony in the
5 deposition was that the first time you used the procedure is when
6 you developed the first rate sheet. How did you happen to use
7 that formula of an average plus one standard deviation?

8 A. It was used previously by the -- I guess the
9 reimbursement section people had used that to develop their own
10 rate sheets.

11 Q. Okay.

12 A. We just copied their formula.

13 Q. Okay. Do you recall who it was in the LUST section that
14 looked into that?

15 A. I think it was John Stellar and Doug Oakley.

16 Q. Okay. I thought there was something in your deposition,
17 but I can't find it right now. Okay. Well, what is the
18 practical result of using the formula of an average plus one
19 standard deviation in terms of percentage of costs that you would
20 expect to see being at or below the maximum figure?

21 A. It would be 84 percent.

22 Q. Okay.

23 A. Is that right?

24 Q. Okay. Well, let's put it this way just to -- well,

1 strike that.

2 When you were involved with the -- first became involved in
3 the preparation of a rate sheet, was there ever any consideration
4 given to determining reasonableness of rates on a side-by-side
5 basis?

6 A. No.

7 Q. Why not?

8 A. It wouldn't be a feasible practice to do that. It would
9 be very inconsistent and be a free-for-all.

10 Q. Okay. So inconsistency, is that something that the rate
11 sheet was intended to address?

12 A. Yes.

13 Q. Are there any other benefits that were intended to be
14 derived by using the rate sheet, aside from consistency?

15 A. It aides in the -- in the speed of the review. I mean,
16 it is easier. There is a high volume in the LUST section.

17 MR. KIM: Okay. I have no further questions.

18 HEARING OFFICER SUDMAN: Okay. Mr. Prillaman?

19 MR. PRILLAMAN: Yes.

20 CROSS EXAMINATION

21 BY MR. PRILLAMAN:

22 Q. I call your attention to your deposition, which appears
23 at Exhibit 4. Exhibit 3 to it, which is that short memo dated
24 January the 15th of 2003, subject, rate sheet. Do you see that?

1 A. Yes.

2 Q. Now, your testimony and the answer to Mr. Kim's
3 question, was that if a rate appears in a budget that is above
4 the maximum rate in your rate sheet, what should happen is that
5 that rate should be denied or modified downwards or additional
6 information must be submitted. Wasn't that your testimony?

7 MR. KIM: I am going to object. That was not his
8 testimony. I believe his testimony was that the rate should
9 either be rejected or modified downward. And then my question
10 was could that figure ever be approved, and he said yes if there
11 were additional justification provided.

12 MR. PRILLAMAN: That is the --

13 HEARING OFFICER SUDMAN: Okay.

14 MR. PRILLAMAN: -- third choice.

15 Q. (By Mr. Prillaman) Okay. But that is not what the memo
16 says, is it? Doesn't the memo say that if there is a request for
17 reimbursement above an amount the project manager or the project
18 reviewer should discuss the matter with the unit manager?

19 A. Yes.

20 Q. That is not what you said, though, is it?

21 MR. KIM: I would object. That is, again -- I think Mr.
22 Prillaman is taking that sentence out of context. And I think if
23 that sentence is read into the record then it would clarify his
24 question.

1 MR. PRILLAMAN: Well --

2 MR. KIM: Well, the sentence that he is referring to --

3 HEARING OFFICER SUDMAN: Let me see that for a moment.

4 (The witness passing document to the Hearing
5 Officer.)

6 MR. KIM: -- reads the rate sheet is meant to be a guidance
7 document. Therefore, any request for reimbursement for costs
8 above the amounts listed on the rate sheet, if justifiable,
9 should be discussed with your unit manager.

10 HEARING OFFICER SUDMAN: Yes, I am not sure that your
11 question -- what you asked him was inconsistent with his
12 testimony. I think it was --

13 MR. PRILLAMAN: He didn't mention that if you get -- if one
14 of these reviewers gets a request for reimbursement or a budget
15 that has in it a rate that is higher than on this rate sheet, he
16 didn't mention that what you do is you walk over to your unit
17 manager and talk to your unit manager. He didn't mention that.
18 And that didn't happen in this case. And that's what he tells
19 them to do here. That's my point.

20 MR. KIM: Again, that is open to interpretation. That's
21 his reading of that.

22 HEARING OFFICER SUDMAN: I agree. It is open to
23 interpretation, so I am not going to -- I think it is okay. He
24 is just pointing out what the memo says. Okay.

1 Q. (By Mr. Prillaman) How many rate sheets have you helped
2 put together since 1996?

3 A. Maybe five. Maybe six. I don't know.

4 Q. Five or six?

5 A. Yes.

6 Q. How many of those have gone through a formal rulemaking?

7 A. None.

8 Q. Why not?

9 A. I don't know.

10 Q. You said that Title 16 required that you develop this
11 rate sheet; was that your testimony?

12 MR. KIM: I am going to object. That was not his
13 testimony.

14 MR. PRILLAMAN: All right. Let me see if I read my notes
15 right.

16 Q. (By Mr. Prillaman) Title 16 required budgets, therefore,
17 we developed the rate sheet. Was that your testimony?

18 A. Yep.

19 Q. Okay. Are you testifying here that something in Title
20 16 requires the Agency to develop its own rate sheet?

21 MR. KIM: Again, I am going to object. That is not what he
22 testified to.

23 MR. PRILLAMAN: Well, I am asking if that's his testimony.

24 HEARING OFFICER SUDMAN: Okay. You may answer.

1 THE WITNESS: Repeat the question, please.

2 (Whereupon the requested portion of the record
3 was read back by the Reporter.)

4 THE WITNESS: I would say indirectly.

5 Q. (By Mr. Prillaman) How so?

6 A. Title 16, 732 requires the Agency to determine
7 reasonableness. It is the only way we have figured out how to
8 determine reasonableness.

9 Q. Do you think that formal rulemaking would be a good idea
10 to try to set rates rather than you just doing it on your own?

11 MR. KIM: Objection. That is speculation. He can testify
12 as to what he has done. He has already testified that these have
13 not undergone a rulemaking.

14 MR. PRILLAMAN: Well, let me -- I will withdraw the
15 question.

16 HEARING OFFICER SUDMAN: Okay.

17 Q. (By Mr. Prillaman) Have you sought or obtained input
18 from members of the regulated public in preparing this rule, this
19 rate sheet?

20 A. This particular one?

21 Q. Yes.

22 A. No.

23 Q. All right. Is it a correct statement that you do not
24 share this rate sheet with the regulated public? You keep it

1 secret, don't you?

2 A. Correct.

3 Q. That has been true since 1996?

4 A. Yes.

5 Q. And isn't it further true that you do not share with the
6 general public the database from which these various rate sheets
7 have been prepared from 1996 through the present time?

8 A. Correct.

9 Q. You keep those secret, too, don't you?

10 A. Yes.

11 Q. Isn't it true that you have never allowed any member of
12 the general public to scrutinize that database to see if your
13 rate sheet is even accurate; isn't that correct?

14 A. Yes.

15 Q. Why?

16 A. Do I know why we don't give that out?

17 Q. Yes. Why don't you let someone else look at it to see
18 if it is even correct?

19 A. It would be -- my answer would be my opinion. But I
20 think that if we gave out that information, people would all
21 charge the maximum rates and we could never collect data again.

22 Q. That's the sole reason why you don't do it?

23 A. I said that's my opinion. I don't know why the Agency
24 doesn't.

1 Q. Because you are adjusting these rate sheets from time to
2 time, five or six times since 1996, it is kind of a moving
3 target, isn't it?

4 MR. KIM: Objection to the characterization. What is a
5 moving target?

6 HEARING OFFICER SUDMAN: Yes, that --

7 Q. (By Mr. Prillaman) It is different document each time
8 that you make this change, isn't it?

9 MR. KIM: Again, I am going to object. He has testified
10 that there have been different rate sheets since that time. I am
11 not sure what the --

12 HEARING OFFICER SUDMAN: I am not really understanding that
13 question either.

14 Q. (By Mr. Prillaman) Well, as time goes by, what you are
15 telling me and telling the Board is that you change these rate
16 sheets over the years in this secret procession that you go
17 through here, and from time to time those reviewers who are asked
18 to review budgets and reimbursement requests are given different
19 rate sheets to look at, are they not?

20 A. Yes.

21 Q. Okay. And those are not documents that anyone else
22 knows about except the Agency; is that correct?

23 A. Yes.

24 Q. Okay. Now, you said that you can't set rates on a

1 site-by-site basis because that would be a free-for-all? Was
2 that your quote?

3 A. Yes.

4 Q. What do you mean by that?

5 A. It would be just extremely difficult to be able to --
6 people would be -- consultants would be very upset, because if I
7 was cutting something down, a rate down, and the project manager
8 that sat next to me was not cutting that rate down, they would be
9 upset. People would not -- there would be no conformity.

10 Q. There would be no conformity. So from reviewer to
11 reviewer there is good reason to have conformity, isn't there?

12 A. Yes.

13 Q. Consistency?

14 A. Consistency.

15 Q. As a matter of fact, the Agency policy is to not have
16 conformity and consistency, isn't it?

17 MR. KIM: Objection. That is a -- well, I am not sure what
18 the basis for that question is.

19 MR. PRILLAMAN: Well, it is --

20 MR. KIM: But it is pure spec -- I mean, it is
21 argumentative.

22 HEARING OFFICER SUDMAN: It is --

23 MR. PRILLAMAN: Let me just read it into the record one
24 more time and I will have some comments on it. It is something

1 that is already in evidence.

2 HEARING OFFICER SUDMAN: Oh, okay.

3 MR. PRILLAMAN: All right. This is an answer to
4 interrogatory, if I can find those. I think it is number two,
5 isn't it? No, it is not.

6 HEARING OFFICER SUDMAN: Exhibit 11?

7 MR. PRILLAMAN: Exhibit 11 here?

8 MR. KIM: Yes.

9 Q. (By Mr. Prillaman) Okay. First of all, do you have
10 Exhibit 11 in front of you?

11 HEARING OFFICER SUDMAN: I have it.

12 MR. PRILLAMAN: Okay. I am going to ask a question about
13 it.

14 (The Hearing Officer passing document to the
15 witness.)

16 Q. (By Mr. Prillaman) Mr. Bauer, you are the one that
17 helped prepare answers to these interrogatories; isn't that
18 correct? It says that at the bottom, right?

19 A. Yes.

20 Q. Would you read into the record Question Number 15 and
21 the answer thereto?

22 A. Okay.

23 Q. It is on page 12 of Exhibit Number 11, the top of the
24 page. It is already in evidence. I just want to ask a question

1 about it.

2 MR. KIM: Well --

3 HEARING OFFICER SUDMAN: Can I see it?

4 THE WITNESS: Sure.

5 (The witness passing document to the Hearing
6 Officer.)

7 MR. KIM: Again, I am going to -- well, I am going to
8 object to the question in that I think it is beyond the scope of
9 the direct examination that was just elicited.

10 MR. PRILLAMAN: It follows on the question that he just
11 answered, and that is it would be a good idea to have consistency
12 and engineers would be upset if there were not consistency. So
13 let's talk about consistency and what the Agency policy is to try
14 to achieve that. And that is in Number 15, and I think I can ask
15 him questions about that.

16 HEARING OFFICER SUDMAN: Okay.

17 MR. KIM: But I did not -- I didn't elicit any questions as
18 to what the Agency policy was. So I think that is beyond the
19 scope of my questioning of Mr. Bauer. I asked Mr. Bauer about
20 Petitioner's Exhibit Number 3. That's it.

21 HEARING OFFICER SUDMAN: I think you have elicited a lot of
22 testimony on this. I will let you ask one more question, but I
23 would like to move on. I think you have already made your point
24 that you are trying to make.

1 Q. (By Mr. Prillaman) All right. Let me ask this, Mr.
2 Bauer. Isn't it a true statement that the Agency has no policy
3 that ensures that final decisions of the Agency regarding LUST
4 budget review decisions that are appealable to the Pollution
5 Control Board are consistent with one another? Isn't that a true
6 statement?

7 A. Yes.

8 Q. Okay. You talked about the average plus one standard
9 deviation formula that you copied from the reimbursement people?

10 A. Uh-huh.

11 Q. Do you remember those questions and answers?

12 A. Yes.

13 Q. Has this formula that is used by you in preparing the
14 rate sheet, has it been reviewed by a professor of statistics or
15 anyone who is competent in the field of statistics to see if the
16 manner in which you are collecting random samples and the manner
17 in which you are putting together your database is, in fact,
18 scientifically valid? Do you understand the question?

19 A. Yes. As far as I am aware of, no professor has reviewed
20 it.

21 Q. Has anyone outside of the Illinois EPA reviewed it for
22 accuracy, validity?

23 A. No.

24 Q. Do you think that would be a good idea to let somebody

1 do that?

2 MR. KIM: Objection. Speculation.

3 MR. PRILLAMAN: No, it's not. This is important.

4 HEARING OFFICER SUDMAN: Well, I think you have already
5 asked it. I think we -- well, if you have an opinion, you --

6 MR. PRILLAMAN: I think the Board would like to know this.

7 HEARING OFFICER SUDMAN: If you have an opinion, please
8 express your opinion as to that question.

9 THE WITNESS: It is just standard statistics. I don't...

10 HEARING OFFICER SUDMAN: Okay.

11 Q. (By Mr. Prillaman) So your answer is what; it would not
12 be a good idea to let anybody else look at it who is competent in
13 this area?

14 A. I don't feel a need for it, no.

15 Q. That's because it is so basic and fundamental that
16 anybody could do it?

17 A. Yes.

18 MR. PRILLAMAN: I have no further questions.

19 MR. KIM: I only have one follow-up.

20 REDIRECT EXAMINATION

21 BY MR. KIM:

22 Q. You were asked about the number of rate sheets that have
23 been generated since 1996 that you have worked on, and you said
24 it was something like five or six?

1 A. Yes.

2 Q. Why were there more -- why were rate sheets changed or
3 replaced during that time period?

4 A. Because the Agency got new data that supported, you
5 know, different rates.

6 Q. So the rate sheets, as one newer rate sheet was
7 developed and the older one was set aside, what was the intention
8 behind using the newer rate sheet as opposed to the older rate
9 sheet?

10 A. To be consistent with what -- not consistent. We needed
11 up-to-date data and to be -- you know, to move with the times, I
12 guess.

13 MR. KIM: Nothing further.

14 HEARING OFFICER SUDMAN: Anything further?

15 MR. PRILLAMAN: I have no further questions of this
16 witness.

17 HEARING OFFICER SUDMAN: All right. Thank you very much.

18 (The witness left the stand.)

19 HEARING OFFICER SUDMAN: Okay. Before we hear closing
20 arguments, I would like to --

21 MR. PRILLAMAN: Oh, I have a -- I need --

22 HEARING OFFICER SUDMAN: Oh.

23 MR. PRILLAMAN: -- to call somebody to rebut some of this
24 testimony.

1 HEARING OFFICER SUDMAN: Oh, okay.

2 MR. PRILLAMAN: I have a rebuttal person, Joe Truesdale.

3 HEARING OFFICER SUDMAN: All right.

4 (Whereupon the witness was previously sworn by
5 the Notary Public.)

6 J O S E P H W. T R U E S D A L E,
7 having been previously duly sworn by the Notary Public, saith as
8 follows:

9 REBUTTAL EXAMINATION

10 BY MR. PRILLAMAN:

11 Q. Mr. Truesdale, you have testified in this case before
12 and you remain under oath. Do you understand that?

13 A. I do.

14 Q. And you sat here and listened to Carol Hawbaker's
15 testimony, did you not?

16 A. Yes, I did.

17 Q. I would like to ask you just a couple of questions to
18 clarify something as to what was the purpose of the direct-push
19 soil borings that were proposed in this plan?

20 MR. KIM: I'm sorry. I have no objection to the question.
21 I just -- it is a practical matter. Do you know if Mr. Truesdale
22 is going to testify as to anything Mr. Bauer testified to?

23 MR. PRILLAMAN: Yes, he is.

24 MR. KIM: Oh, okay.

1 MR. PRILLAMAN: He is going to talk a little bit about
2 statistics.

3 MR. KIM: Okay. That is fine.

4 MR. PRILLAMAN: Do you have to leave, Brian?

5 THE WITNESS: He would like to.

6 (Laughter.)

7 MR. PRILLAMAN: So would I.

8 (Laughter.)

9 MR. KIM: Is it possible for him to -- you to talk about
10 Brian's first?

11 MR. PRILLAMAN: Okay. Let me back off that question. We
12 won't talk about the soil borings now.

13 MR. KIM: I appreciate that.

14 MR. BAUER: Me, too.

15 Q. (By Mr. Prillaman) Mr. Truesdale, why is it that you
16 want to review the database that makes up the rate sheet that was
17 used against your client in this case?

18 A. To determine that the statistical evaluation is valid in
19 the constraints of the population that is being evaluated. What
20 that means is calculating average is very straightforward for a
21 normally distributed sample set. There has been no evaluation
22 done with the sample set that was collected by the EPA, based on
23 their testimony, to determine if that sample set is, in fact,
24 distributed normally.

1 There has been no verification that the sample collection
2 strategy is, in fact, representative of the population being
3 evaluated as a whole. There are statistical methods that are
4 available to evaluate that type of scenario, but it has not been
5 done.

6 Q. Based upon Mr. Bauer's testimony that he gave in his
7 deposition, which is now his direct testimony, and based upon his
8 answers to interrogatories in which he explained how he took the
9 average plus one standard deviation, and how he collected the
10 data, what is it about that formula that he used and that
11 methodology that you believe is flawed?

12 A. I believe -- can I read the interrogatory and read the
13 statement?

14 Q. Yes?

15 A. The question -- the answers from the questions to the
16 interrogatories.

17 Q. Yes.

18 MR. PRILLAMAN: I think that was 11, right?

19 MR. KIM: Yes, 11.

20 MR. PRILLAMAN: It is Exhibit 11, and it is --

21 MR. KIM: Is it seven, page seven? And is it actually
22 interrogatory seven also?

23 MR. PRILLAMAN: Yes. It begins on page five.

24 MR. KIM: Okay.

1 THE WITNESS: Actually, the answer that I was looking for
2 is on page seven, item E of the answer.

3 Q. (By Mr. Prillaman) Okay. So the --

4 A. All budgets submitted for a particular phase of
5 corrective action are compiled. Submittals that involve the same
6 consultant are reduced such that in the end one submittal from
7 each consultant that has submitted a budget of that type, the
8 sample period remains. That introduces bias into a sample. It
9 is no longer a random sample selection.

10 Q. That was the methodology testified to by Mr. Bauer as
11 being used by the Agency in preparing the rate sheet?

12 A. Correct.

13 Q. How is it that that introduces bias into the formula?

14 A. Let's say -- should I use my pond scenario? Do you want
15 me to go through that one? Or is that too complex?

16 Q. I think it is too complex.

17 A. Okay.

18 Q. Let's use the --

19 A. Okay. Let's say we have -- someone went to an orchard
20 and picked one apple and two oranges. And someone else went to
21 an orchard and picked one apple and six oranges, and brought
22 those back. And Brian wanted to calculate what the average
23 quantity of apples and oranges in that orchard would be, assuming
24 that a sample was selected that was representative.

1 He would then throw out five of the oranges that the second
2 person collected, because they were from the same individual. He
3 would throw out three of the oranges from the first individual,
4 because they were the same person. And calculate that there were
5 50 percent apples and 50 percent oranges in that orchard, which
6 would be blatantly wrong.

7 Q. And that's what is being done by the Agency in
8 collecting the database --

9 A. It entirely --

10 Q. -- in this case?

11 A. It entirely negates the spread of data across the sample
12 set.

13 Q. Have you been able to look at the database that was used
14 in this case?

15 A. Not at all. I just know basic principles of statistics,
16 that statement made in interrogatories is essentially in error
17 for the basic premise of statistics as they stand. It violates
18 the most basic principles of statistics.

19 MR. PRILLAMAN: All right. Now, if you would like to
20 either cross him on this, and then Brian can leave, and then I
21 can go into the direct-push, or how do you want to do this?

22 MR. KIM: Umm...

23 MR. PRILLAMAN: That's the only question I had about
24 statistics.

1 MR. KIM: Okay. You know what, you can probably go on.

2 And, Brian, you can go.

3 MR. BAUER: Okay.

4 (Mr. Bauer exited the hearing room.)

5 MR. KIM: That's fine. Thank you. I appreciate that.

6 MR. PRILLAMAN: That's fine.

7 Q. (By Mr. Prillaman) Okay. Now, Mr. Truesdale, there has
8 been some confusion about why you proposed for your client to
9 install -- or you are not going to install. You are going to
10 propose 13 additional soil samples at locations you identified in
11 your testimony?

12 A. Correct.

13 Q. Did you explain in your application to the Agency what
14 the purpose of installing those new direct-push borings is?

15 A. Yes.

16 Q. Could you explain one more time what that is and when
17 you are doing it, explain why it is not simply revisiting old
18 site classification stuff that you did last year?

19 A. Right. We stated that the purpose of the borings was to
20 better define and evaluate the extent and relative distribution
21 of petroleum contaminants in the subsurface.

22 Q. Where do you say that?

23 A. On page --

24 Q. You are looking at Petitioner's Exhibit Number 1?

1 A. Yes, page six. And we also discuss the evaluation of
2 natural pathways identified during site classification on page
3 eight and -- or nine and ten. Or eight and nine. I am sorry.

4 Q. Okay. So you put it in the plan, you talked about it in
5 direct, in the answers to my questions.

6 A. Correct.

7 Q. And didn't you also go over this with John Kim in answer
8 to his questions?

9 A. I believe so.

10 Q. And, yet, there is still one stumbling block. There is
11 another document in here that is part of the budget that contains
12 a sentence that, apparently, according to the testimony of Carol
13 Hawbaker, negates everything you just said and turns this all
14 into some kind of another site classification exercise.

15 Let's see if I can find that estimate. I think it was the
16 estimate for investigation.

17 A. Page 68.

18 Q. Now, was that -- yes, page 68. That sentence in the
19 middle of the page says, and I will read it just so we can be
20 clear. Each of the 13 locations will initially be probed and
21 continuously sampled to classify and log the subsurface soils?

22 A. Correct.

23 Q. In accordance with 35 IAC 732.308(a)?

24 A. Correct.

1 Q. Now, what purpose does it serve to even reference
2 732.308(a) at that point?

3 A. Just to identify the methodology that would be used
4 while logging the soil borings --

5 Q. While logging them?

6 A. -- to be safe. Correct.

7 Q. Okay. I understand. Now, does that negate any of the
8 information in the substantive portion of the plan itself as to
9 why you intend to install these new direct-push borings?

10 A. Not at all. We made no reference that we were intending
11 to comply with 732.308. Simply, that we were following a
12 protocol that is established in 732.308.

13 Q. Okay. What significance do you derive from the comments
14 by Ms. Hawbaker about what you are doing on these 13 direct-push
15 soil borings in regard to sampling the soils? There is a
16 distinction between sampling continuously and sampling for
17 chemicals.

18 A. Not necessarily. A sample for chemical analysis is a
19 subset of the continuous sample obtained from a boring. Once the
20 boring is continuously sampled, field screened, and observed for
21 evidence of contamination, and a discrete sample section of that
22 continuous sample is selected for subsequent laboratory analysis.

23 Q. So it remains -- even though you are not testing or
24 sampling for chemicals, it does remain, does it not, a soil

1 boring done for the purpose of determining the extent of the
2 contamination?

3 A. Correct.

4 Q. Okay. So nothing you have said in this application says
5 that it is for just site classification, is it?

6 A. Not at all.

7 Q. Okay. So, in conclusion, then, you believe that all of
8 the new --

9 MR. KIM: Objection. Leading.

10 MR. PRILLAMAN: All right.

11 Q. (By Mr. Prillaman) Will you tell us whether or not,
12 based upon what you heard Ms. Hawbaker say, whether or not you
13 believe that her cut of those ten wells was appropriate?

14 A. It certainly wasn't. In order to comply with the Act we
15 must evaluate all potential natural and man-made migration
16 pathways that are identified in site classification.

17 Q. That is what this was?

18 A. Exactly.

19 MR. PRILLAMAN: All right. Thank you. No further
20 questions.

21 CROSS EXAMINATION

22 BY MR. KIM:

23 Q. I am going to make an ill-advised foray into the world
24 of statistics, Mr. Truesdale. I pulled out my college statistics

1 book awhile back, and I didn't understand any of it and I took
2 the class, but that's why I went to law school.

3 (Laughter.)

4 Q. Let me give an example for you.

5 A. Sure.

6 Q. If I am trying to determine what the average rate is
7 that is being charged by consultants, and let's say that there is
8 consultant A and there is consultant B.

9 A. Correct.

10 Q. Consultant A charges \$100.00, and consultant B charges
11 \$80.00.

12 A. Okay.

13 Q. The total is \$180.00. Divide that by two. The average
14 is \$90.00; is that right?

15 A. Correct.

16 Q. Okay. If I take consultant B, charging \$80.00, and
17 consultant A, and I take into account him charging \$100.00 once,
18 and then I factor in another \$100.00, and another \$100.00, and
19 another \$100.00 so, in other words, I have got four times that I
20 am going to add what the rate of consultant A is, and one time
21 for consultant B, that comes up to \$100.00, plus \$100.00, plus
22 \$100.00, plus \$100.00, plus \$80.00, and we have \$480.00. Does
23 that sound about right?

24 A. Correct.

1 Q. And you divide that by one, two, three, four, five. And
2 I believe \$480.00 divided by five is 96.

3 A. I will take your word for it.

4 Q. Okay. Well -- yeah.

5 A. Yes, that's correct.

6 Q. You have five times 90 and --

7 A. I didn't have as many minutes to run it through the
8 calculator here.

9 Q. That's what I was doing while you were talking. So that
10 is a -- so, by analogy, if the Agency is trying to determine what
11 a consultant -- what the average amount is that a consultant is
12 charging, don't you see that it makes sense to throw out
13 multiples of a consultant, because if you take into account one
14 consultant's figure over and over and over again, you have a
15 possibility of prejudicing that random sample. Does that make
16 sense?

17 A. Yes, but --

18 Q. Well --

19 A. -- random sampling negates the possibility of that type
20 of analysis.

21 Q. Well, but by the example that I just gave you, you would
22 agree that factoring that in multiple times would not give you an
23 accurate reflection of what the consultants in my pool, A and B,
24 are charging on an average basis; isn't that right?

1 A. No, that is incorrect.

2 Q. Okay. You don't agree with that?

3 A. No.

4 Q. Okay.

5 A. Not at all. According to statistics -- actually, I can
6 give you an equation that specifies how that is done. And it is
7 a factor of N for how many samples are selected. So as you
8 mention the 100, 100, the 100 is N, however many times over that
9 happens to be, and that's how you calculate a mean.

10 MR. KIM: Okay. Nothing further.

11 HEARING OFFICER SUDMAN: Mr. Prillaman?

12 MR. PRILLAMAN: Nothing further.

13 HEARING OFFICER SUDMAN: Thank you very much, Mr.
14 Truesdale.

15 (The witness left the stand.)

16 HEARING OFFICER SUDMAN: Is everyone finished presenting
17 their case?

18 MR. KIM: Yes.

19 MR. PRILLAMAN: Yes.

20 HEARING OFFICER SUDMAN: Okay. Before we hear closing
21 arguments, I would like to go off the record to discuss
22 transcript availability and a briefing schedule, which I will
23 then read into the record. Off the record.

24 (Discussion off the record.)

1 HEARING OFFICER SUDMAN: Okay. We will go back on the
2 record.

3 We have just had an off-the-record discussion regarding
4 post hearing briefs. The parties have agreed to a briefing
5 schedule as follows: The transcript of these proceedings will be
6 available from the court reporter on January the 12th.

7 The public comment deadline is January the 20th of 2004,
8 and any public comment must be filed in accordance with Section
9 101.628 of the Board's procedural rules.

10 Petitioner's brief is due February the 9th of 2004.
11 Respondent's brief is due March the 2nd of 2004. And
12 Petitioner's reply, if any, is due March the 8th. The mailbox
13 rule will apply.

14 At this time I would like to ask the Petitioner if he would
15 like to make a closing argument?

16 MR. PRILLAMAN: I will waive closing argument. Our
17 arguments will appear in our briefs.

18 HEARING OFFICER SUDMAN: Okay. Mr. Kim?

19 MR. KIM: We would also waive closing arguments.

20 HEARING OFFICER SUDMAN: Okay. At this time I will note,
21 again, that there are no members of the public present.

22 I will proceed to make a statement as to the credibility of
23 witnesses testifying during this hearing. Based on my legal
24 judgment and experience, I find all of the witnesses testifying

1 to be credible.

2 At this time I will conclude the proceedings. It is 4:25.

3 I thank you all for your participation, and we stand adjourned.

4 MR. KIM: Thank you.

5 MR. PRILLAMAN: Thank you.

6 HEARING OFFICER SUDMAN: Thank you.

7 (The hearing concluded at 4:25 p.m.)

8 (The Hearing Exhibits were retained by Hearing
9 Officer Sudman.)

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1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MONTGOMERY)

3 C E R T I F I C A T E
4

5 I, DARLENE M. NIEMEYER, a Notary Public in and for the
6 County of Montgomery, State of Illinois, DO HEREBY CERTIFY that
7 the foregoing 247 pages comprise a true, complete and correct
8 transcript of the proceedings held on the 7th of January A.D.,
9 2004, at 1021 North Grand Avenue East, Springfield, Illinois, in
10 the case of Illinois Ayers Oil Company v. Illinois Environmental
11 Protection Agency, in proceedings held before Hearing Officer
12 Carol Sudman, and recorded in machine shorthand by me.

13 IN WITNESS WHEREOF I have hereunto set my hand and affixed
14 my Notarial Seal this 10th day of January A.D., 2004.
15
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18 Notary Public and
19 Certified Shorthand Reporter and
20 Registered Professional Reporter

21 CSR License No. 084-003677
22 My Commission Expires: 03-03-2007
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