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ILLINOIS POLLUTION CONTROL BOARD

May 26, 2004

IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	R04-22
REGULATION OF PETROLEUM LEAKING	)	(UST Rulemaking)
UNDERGROUND STORAGE TANKS	)	
(35 ILL. ADM. CODE 732)	)	
	)	
IN THE MATTER OF:	)	
	)	
PROPOSED AMENDMENTS TO:	)	
REGULATION OF PETROLEUM LEAKING	)	R04-23
UNDERGROUND STORAGE TANKS	)	(UST Rulemaking)
(35 ILL. ADM. CODE 734)	)	Consolidated

The Rulemaking Proceeding, before the Illinois Pollution Control Board, was held May 26, 2004, at the Lincoln Library, Carnegie North Room, 326 South Seventh Street, Springfield, Illinois, commencing at 9:30 a.m.

Reported By: Ann Marie Hollo, CSR, RMR  
License No.: 084-003476

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 4

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 17 Appearing on behalf of IEPA

18 Illinois Environmental Protection Agency Witnesses  
 Gary P. King, Douglas W. Clay, P.E.,  
 19 Harry A. Chappel, P.E., Brian Bauer,  
 Hernando A. Albarracin, and Chris Kohrmann  
 20

## EXHIBITS

Exhibit Number	Marked	Admitted
21 Exhibit Number 24	8	8
22 Exhibit Number 25	17	17
Exhibit Number 26	30	30
23 Exhibit Number 27	43	43
24 Exhibit Number 28	191	191

1                   HEARING OFFICER TIPSORD: Good morning.  
2           Welcome back. My name is Marie Tipsord, and I've been  
3           appointed by the Board to serve as hearing officer in  
4           these combined proceedings entitled, In the Matter of  
5           Proposed Amendments to Regulations of Petroleum  
6           Leaking Underground Storage Tanks, 35 ILL. Admin. Code  
7           732 and 734. Docket number is R04-22 and 23.

8                   To my right is Dr. Tanner Girard. Presiding  
9           board member to his right is Board Member Tom  
10          Johnson. My immediate left is Anand Rao for the  
11          technical staff, and to his left is Alisa Liu also  
12          from our technical staff.

13                  In addition, Erin Conley with our staff is  
14          here today. She was in Bloomington yesterday. Erin,  
15          thanks a lot. She is the one who's responsible for  
16          getting the rooms together and making all the  
17          arrangements. Good job. Thank you.

18                  This is a continuation of the second hearing  
19          in this proceeding. The sole purpose of today's  
20          hearing is to allow the Illinois Environmental  
21          Protection Agency to respond to pre-filed questions  
22          and any follow-up questions. We will not be hearing  
23          testimony from parties today.

24                  Yesterday we discussed possible hearing

1 dates. And as we discussed off the record, those  
2 dates are now fluid. Although it looks like we're  
3 going to go with June 21st continuing through Friday  
4 if necessary. We will then reconvene on July 6th to  
5 hear testimony from Dan Goodwin and one of the members  
6 of PIPE. We will set the pre-filing deadline later  
7 today after we check a couple of things.

8           Anyone may ask a follow-up question.  
9 However, we're going to do things a little  
10 differently. I'm going to let Ms. Manning proceed on  
11 behalf of PIPE. And I will not stop her unless I see  
12 a hand from the audience. We're not going to stop  
13 after every question and ask if someone has a  
14 follow-up. I think that just slows down the  
15 proceeding. If you have a question, raise your hand.  
16 After I acknowledge you, please state your name and  
17 who you represent, and then you may ask your  
18 question.

19           Again, I advise you, I will only allow  
20 questions. We did veer a little bit late yesterday  
21 into testimony. If I catch you testifying, I will  
22 swear you in, but that I also will politely ask you to  
23 state your question.

24           We are only through about 44 -- 33 of these

1 questions. We have 107 from PIPE, 35 from CW3M and  
2 additional from Professional Engineers. The volume of  
3 questions is such that we need to -- as much as we  
4 want to develop a complete and full record, we really  
5 do need to stick with questions and pertinent  
6 questions. And I thank you in advance, and I thank  
7 you for yesterday.

8           Again, I note that there are pending motions  
9 before the Board in this proceeding. We will not hear  
10 any discussion regarding these motions on the record.  
11 If any of you wish to comment on the pending motion,  
12 you may do so by filing written response with the  
13 clerk of the Board and serving response on persons  
14 listed on the service list.

15           Again, we're going to continue as we did  
16 yesterday. Since we're getting a little late start,  
17 we're probably going to break at 11:30. At 11:30,  
18 we'll break for a brief break. We'll break from 1:00  
19 to 2:00 for lunch. Again, this room is being used  
20 this evening, so we have to be out of here. So we'll  
21 adjourn around 4 o'clock again today.

22           At this time, I'd like to ask Dr. Girard if  
23 he has anything to add.

24           BOARD MEMBER GIRARD: Well, good morning, and

1 I thank you for all your efforts. I'd just like to  
2 reemphasize what Hearing Officer Tipsord said this  
3 morning. That we're probably going to be a little  
4 more hard-nosed about just the questions today. Some  
5 of you were veering into testimony. I know you're  
6 itching to testify, but the quickest way to get to  
7 that is to get through these questions. So many of  
8 you in the audience are engineers. You can multiply  
9 the number of questions we got yesterday by how many  
10 questions are left, and you can see that this process  
11 will take weeks if we don't get on with it. And we  
12 would like to hear you testify. The quickest way to  
13 do it is to get through these questions. Thank you.

14 HEARING OFFICER TIPSORD: Mr. Rominger?

15 MR. ROMINGER: A couple things from  
16 yesterday -- we had some information we thought we  
17 would provide clarification first. I have got  
18 information regarding personnel numbers.

19 HEARING OFFICER TIPSORD: Let me remind  
20 everyone that all the Agency witnesses were sworn  
21 yesterday. And since this was a recessed hearing,  
22 they're still sworn today.

23 MR. CLAY: I just want to clarify a response  
24 to one of the questions regarding -- from yesterday

1 regarding the number of people in the state and  
2 federal LUST payroll.

3 I explained that the head count over the past  
4 five years has not varied much at all. It's in  
5 between 73 to 76 people over the last five years. I  
6 think in summary, Ms. Manning said 50 to 75 people do  
7 LUST work. And I just wanted to clarify that.

8 50 of the 75 would be the LUST technical  
9 staff and LUST claims staff that review land reports,  
10 budgets and claims on a daily basis. In addition to  
11 that, there are three staff in the LUST claims unit  
12 and four and a half head count in the LUST section  
13 that are either administrative support, database entry  
14 people or other support directive to those technical  
15 staff.

16 In addition, we have two attorneys that do a  
17 hundred percent LUST work. And well over 50 percent  
18 of the records the bureau of land deals with and well  
19 over 50 percent of the FOIA requests that the bureau  
20 of land receives are for LUST, and many of the FOIA  
21 requests are from consultants.

22 So I would characterize the LUST personnel as  
23 LUST personnel that 65 percent of the 75 percent do  
24 100 percent LUST work. I'm sorry. 65 head count

1 out of the 75 head count do 100 percent LUST work.

2 MR. ROMINGER: We also have two additional  
3 exhibits to submit. One is a revision of Harry  
4 Chappel's attachment 9. There were questions  
5 yesterday regarding the locations of the sites. And  
6 that's been revised to include the city and county for  
7 each of those incidents, and we have copies of those  
8 back on the table.

9 HEARING OFFICER TIPSORD: We'll mark that as  
10 Exhibit 24 if there's no objection. Seeing none,  
11 we'll mark that as Exhibit 24.

12 [Exhibit Number 24 was marked for  
13 identification and admitted into evidence.]

14 MR. ROMINGER: And we also have a chart for  
15 the LUST average date to process claims. We thought  
16 that would provide some helpful information with  
17 respect to some questions yesterday. And Bill  
18 Radlinsky of the Agency can explain that table.

19 He needs to be sworn in. He was not sworn in  
20 yesterday.

21 [Witness sworn.]

22 MR. RADLINSKI: My name is Bill Radlinski,  
23 and I work for the Bureau of Land for the Illinois  
24 EPA.



1           Yesterday there was some discussions about  
2     the timeliness of processing claims. So I thought  
3     we'd put in some back board from our tracking system.  
4     And we have a sheet available that's titled, LUST  
5     Average Days to Process Claims. And I'd like to  
6     briefly explain that, since it's not exactly intuitive  
7     as to how it's set up.

8           You'll note we have a copy in front of you  
9     that there are basically -- if you go across the top,  
10    there are three primary sections. One is entitled  
11    total time. And then we have another section that  
12    includes the queue time, incomplete application and  
13    the application accepted to paid.

14           And then we have the third section which  
15    lists various parts within the Agency. The LCU time,  
16    technical review time, agency fiscal and word  
17    processing, all the way to BOL fiscal and  
18    comptroller.

19           So when we set this up, it was more of a  
20    management tool to see how long it was taking to  
21    process claims.

22           And basically the second section dealt with,  
23    within the pay per flow itself, how long it was  
24    taking. And then the third section dealt with, within

1 the operation of BLO how much it was taking. And what  
2 we have is statistics here that are from January 1,  
3 2003 through the end of the calendar year, December  
4 31, 2003.

5 Now, if you go down, if you look at the  
6 left-hand side, you will see that the types of  
7 requests are divided in three types. Old program,  
8 early action, budget claims and then total. And  
9 beneath each of those is a number of claims that we  
10 process.

11 For instance, old program, there was 676  
12 requests that we actually paid early action to, under  
13 35, budget claims 1469. So this is the workload that  
14 you see. And the total amount was 2,380 requests.  
15 These are requests that we approved. If we look at  
16 the total time, you'll see that the average total time  
17 for all of those requests was almost 98 days. You can  
18 also see that for each type of request, there's a  
19 different time period. The longest time, the old  
20 program. The shortest being the budget claims.

21 You can also notice that our biggest workload  
22 is in the budget claim area. If you go to the second  
23 section beginning with the queue time, the queue time  
24 is basically from when the application arrives until

1     it's picked up by the reviewer.  So when the  
2     application arrived, it doesn't mean we immediately  
3     start to review it.  We don't do that, because we have  
4     some applications coming in, and we don't have enough  
5     resources.  That is, people to handle all the  
6     application.  So they have to sit in the queue for a  
7     while.  And this is basically the queue time that we  
8     have that we've experienced prior to picking it up by  
9     reviewing and starting its review.  When a reviewer  
10    picks it up, that logs it in.

11             And then we have a second section here, the  
12    incomplete application.  Oftentimes when you pick up a  
13    application, we don't have enough information in order  
14    to deem a complete application.  So we continue  
15    processing.  In that case, there are certain -- it  
16    takes a certain amount of time to get the complete  
17    information or the missing information from the  
18    applicant.  And that's what the incomplete application  
19    time period is.

20             And then the acceptance.  Once we've accepted  
21    it to when it's actually paid, you can see the amount  
22    of time it takes there.

23             Now, the third section deals with -- well,  
24    the LCU time in LUST claims unit, within that

1 technical, which would be the LUST section, how much  
2 time does it stay within the Agency fiscal and word  
3 processing area and processing of these invoices? And  
4 then we have a review time. Once that information is  
5 done before we actually send it down to be signed off  
6 to fiscal and sent to the comptroller.

7 And then the last portion when it returns  
8 back to the bureau for an official bureau chief's  
9 signature and routed back to administration for them  
10 to send it to the comptroller.

11 So you can easily see here the different time  
12 periods that we have experienced through 2003. I  
13 think that should explain this. And if there's any  
14 questions, I'll be glad and try to answer those.

15 MS. MANNING: Thank you.

16 QUESTIONS BY MS. MANNING:

17 Q. Mr. Radlinski, I have a couple of questions.

18 A. Sure.

19 Q. What do old program -- what do you consider  
20 to be old program, just so that we have an  
21 understanding?

22 A. The old program of claims are before Title  
23 16, I believe?

24 MR. OAKLEY: 731 sites.

1 Q. All 731 sites?

2 A. (BY MR. OAKLEY) All 731 sites.

3 Q. So where are all the 732 sites?

4 A. In the early action.

5 MR. RADLINSKI: Early action and budget  
6 claims.

7 Q. So budget claims include corrective action  
8 plans? All of the budget claims include all of the  
9 corrective action claims?

10 A. (BY MR. RADLINSKI) Yes, absolutely.

11 Q. The total time, 172.8, is that an average of  
12 the 676?

13 A. That's correct.

14 Q. And that's true of all the hours then?

15 A. That's correct. I also note that each  
16 section should total -- for instance, each section  
17 under the old program should total 172.8. Each  
18 section under the early action should total 84.6. So  
19 all of those numbers are basically broken down into  
20 the various elements.

21 Q. In the column marked LCU time, where it has  
22 in parenthesis -- you have a foot note on the bottom,  
23 incomplete application, then do I understand that the  
24 incomplete application is an average of 12 days?

1           A.    That's correct.

2           Q.    Anything that was an incomplete application  
3 is an average of 12 days?

4           A.    Right.

5           Q.    And that's true of the columns?

6           A.    And that is included in the 120.  For  
7 instance, under the LCU time, the old program, we just  
8 decided to separate it out internally because I was  
9 concerned about how much time was within their control  
10 and then how much time of that amount was outside of  
11 their control, waiting for additional information.

12          Q.    Do you have a similar data sheet from  
13 1-1, 2004 through today's date?

14          A.    We did -- we ran some information for January  
15 through March, not for this particular purpose.  But  
16 in the past, yes, we have similar information.

17                    One of the problems that we experienced was  
18 in April, we had some issues with the comptroller.  
19 The comptroller decided that LUST claims could  
20 possibly be tax related.  So we could not make  
21 payments because they had to come up with a decision  
22 whether or not they were related for tax purposes.  
23 And until that decision was made, we held payments.  
24 So we had some things that would skew the data.  So we

1 thought for this particular purpose, the best thing to  
2 do would be to look at a consistent stretch, which was  
3 2003.

4 Q. So basically the numbers would be much larger  
5 in 2004 for the first six months? For the first few  
6 months experience of 2004?

7 A. Yeah, but they would not be much larger, a  
8 little. For instance, I think the three months -- I  
9 think our average was 115 days for the first three  
10 months.

11 Q. In which column?

12 A. For the total column.

13 MS. MANNING: Okay.

14 HEARING OFFICER TIPSORD: Anything further?

15 MS. MANNING: I have nothing further. Thank  
16 you.

17 QUESTIONS BY MR. RAO:

18 Q. What's the reason for the queue time being so  
19 high for the old requests, old program requests?

20 A. We've split the staff into a certain number  
21 of handling the old requests and the rest of the staff  
22 handling early action and the budget claims. Most of  
23 our requests are in early action and budget claims.  
24 So there's less staff working on the old. It's

1 something that we've considered about adjusting, but  
2 we're not ready to do that yet until we begin seeing  
3 how the rest of the current process starts to fall  
4 out.

5 The other thing is, is that the old program  
6 requests generally have more detail to them, and it  
7 takes a little longer to review those.

8 The other thing I should indicate is that  
9 we're under a time frame for the budget requests. So  
10 we want to make sure we -- so we do handle more -- we  
11 make sure we handle those.

12 MS. MANNING: I have one more question.

13 QUESTIONS BY MS. MANNING:

14 Q. We had some discussion yesterday on the  
15 record about the complexity of various different sites  
16 and various different incidents. And I'm wondering  
17 whether the Agency tracks at all the distinction in  
18 either time frames or the distinction in numbers of  
19 different kinds of cases in terms of if they're high  
20 priority, low priority, whether they're a corrective  
21 action plan? You know, those kind of things. Or do  
22 you generally lump them in these categories that we  
23 see right here?

24 A. I'm sorry. What you see is what you get



1 here. This is how we track them. This is the  
2 specificity which we track them as far as the LUST  
3 claims goes.

4 MS. MANNING: Okay. Thank you.

5 HEARING OFFICER TIPSORD: If there's no  
6 objection, we'll admit that as Exhibit 25. Seeing  
7 none, it's admitted as Exhibit 25.

8 [Exhibit Number 25 was marked for identification  
9 and admitted into evidence.]

10 HEARING OFFICER TIPSORD: Anything further?  
11 Or are we ready to proceed with questions?

12 MR. ROMINGER: I believe that's all we have.

13 HEARING OFFICER TIPSORD: Again, I'm going to  
14 remind you that I'm going to let Ms. Manning proceed  
15 until I see a hand raised, and then I will politely  
16 interrupt, and we'll go on from there.

17 MS. MANNING: Thank you, Madam Hearing  
18 Officer and members of the Board and technical staff  
19 of the Board. Again, I thank you all for and on  
20 behalf of my firm, being able to appear here this  
21 morning and continue asking questions of the Agency.  
22 We'll try to be a little bit more diligent this  
23 morning in trying to get through. We realize we have  
24 a lot of questions, and we'll get through them as

1 expeditiously as possible. And I think everybody will  
2 be happy to know we're going to start with questions  
3 in the 40s.

4 But before I do that, I just have a couple  
5 questions from some of the documents that were  
6 submitted yesterday. This won't take very long, but  
7 we need some foundation in order to properly prepare  
8 our testimony.

9 First of all, I wanted to thank the Agency  
10 for presenting to us the information this morning  
11 about where these sites are in Mr. Chappel's  
12 document. They're consistent, I think, with the  
13 information we had figured out last night as well,  
14 with the exception of incident site number 980162,  
15 which we would like you to check out at some point in  
16 time, because our information is that there was never  
17 a budget submitted, never a reimbursement claim  
18 submitted or nothing submitted regarding that incident  
19 site. So you don't need to answer that right now, but  
20 that's the information we have on that. Otherwise the  
21 locations are consistent with our information.

22 The second -- would you like to respond to  
23 that now?

24 MR. CHAPPEL: No, sir. Or, no, ma'am.

1 MS. MANNING: Thank you.

2 MR. CHAPPEL: I was making a comment to him.

3 MR. KING: What was the number again?

4 HEARING OFFICER TIPSORD: It's on Exhibit  
5 Number 24.

6 QUESTIONS BY MS. MANNING:

7 Q. Right. 980162, site number 8 on this list.  
8 And I assume these site numbers, 1 through 25, are  
9 just for purposes of this particular appendix,  
10 correct? I mean, they have no other significance,  
11 other than this is our list of 25. And this is the  
12 order that we're presenting them in this table?

13 A. (BY MR. CHAPPEL) Correct.

14 Q. The second question I had about the documents  
15 you submitted yesterday has to do with Exhibit  
16 Number 19, the landfills that accept LUST soils. I  
17 don't think we talked yesterday about how this  
18 document was prepared. And if someone could explain  
19 it to me please, for purposes of the record, who  
20 prepared the document and how it was prepared, because  
21 we have information that's different on some of these  
22 landfills.

23 A. (BY MR. ALBARRACIN) I'll address that  
24 question.

1           I talked to someone in our permit section,  
2 one of the managers in the permit section. And I  
3 asked him if there was a map available or some  
4 information available that will show us where the  
5 landfills are located in Illinois, all the landfills,  
6 and particularly the ones that accept LUST soils. And  
7 he actually referred me to a report that the Agency  
8 puts out every year, the Landfill Capacity Report.

9           Q. I'm raising it now, the Nonhazardous Waste  
10 Landfill Annual Report?

11          A. (BY MR. ALBARRACIN) Correct. I believe  
12 that's the one.

13          Q. Okay.

14          A. And I also talked to someone in our GIS group  
15 who said, oh, we have that map. We put it together  
16 every year. I can generate it for you. So after I  
17 had a draft copy of the map, I went back to the permit  
18 section, and I asked him to verify the information.

19                 So he circulated information through his unit  
20 to make sure that there weren't any landfills that are  
21 no longer accepting waste, perhaps closed, or any one  
22 that may be missing from the map. And that's what we  
23 have. I mean, that's the information I got from the  
24 permit section. And I really don't have any

1 information regarding, you know, any other permits or  
2 anything like that. This is what I received from  
3 them.

4 Q. Okay. This map looks like the same map  
5 that's in the nonhazardous waste book, with the  
6 exception of the reference of landfills receiving LUST  
7 soils in 2004. It looks like it's different than  
8 anything that's in this map. So I assume -- and  
9 correct me if I'm wrong -- that that was added for  
10 specific purposes of this proceeding?

11 A. That's correct.

12 MS. MANNING: Okay. And as I said, we'd be  
13 presenting testimony in terms of -- particularly some  
14 of the downstate landfills that don't accept the LUST  
15 waste, but thank you.

16 HEARING OFFICER TIPSORD: Actually,  
17 Ms. Manning, just for clarification, you did give the  
18 title of the book, but you didn't give the year of  
19 publication. So just to be --

20 MS. MANNING: I'm actually looking at the  
21 2002 annual report, but I recognize that the Agency  
22 does it every year. I just happen to have it in my  
23 office, the 2002 one, which I think may be the most  
24 recent.

1           MR. ALBARRACIN: The 2003, I thought that  
2 that was also put out -- we're working already on the  
3 2004, but I think that would be a while. I'm not  
4 sure, to be honest.

5           HEARING OFFICER TIPSORD: Thank you.

6           MS. MANNING: Thank you.

7           MS. MANNING: Let's skip immediately to  
8 question number 50.

9           Q. The question is, what  
10 information does the Agency have regarding the number  
11 of sites successfully remediated in the last five  
12 years on a yearly basis? Please provide. What have  
13 been the annual expenditures from the fund directly  
14 related to those remediations?

15           You testified yesterday, Mr. Clay, about that  
16 information. Does the Agency have any documentation  
17 of that beyond your testimony yesterday?

18           A. (BY MR. CLAY) This information is all in our  
19 annual reports that's on the Web site.

20           Q. And is there any expected date of delivery of  
21 the most recent annual report? Because we recognize  
22 that the annual reports kind of aren't going to give  
23 us any information from this particular year. And  
24 what's been happening in the last 12 months, for

1 example, or even what happened last fiscal year.

2 A. No. We compiled the information for 2003,  
3 which was 640 closed landfills. And we reimbursed  
4 69.1 million dollars. I don't have a specific date  
5 when that would be available. 640 closed LUST sites.

6 HEARING OFFICER TIPSORD: At this time,  
7 Mr. Clay, we've talked a lot about those annual  
8 reports, and I know they're available on the Web page,  
9 but I am going to ask what annual reports you used,  
10 you used to compile that information either be  
11 included in the record either as an exhibit at the  
12 next hearing or as a pre-filed document later on, but  
13 that may be an exhibit at the next hearing.

14 MR. CLAY: Okay.

15 HEARING OFFICER TIPSORD: Thank you.

16 MS. MANNING: Does the Hearing Officer's  
17 request to the Agency also include any data they've  
18 already prepared that are public documents that are  
19 going to be put into the most recent annual report  
20 that's not necessarily published yet?

21 HEARING OFFICER TIPSORD: If you would like,  
22 we can certainly ask for that as well. The annual  
23 reports I just know we talked about and are already  
24 available.

1           Do you have any objection to providing that  
2 information?

3           MR. ROMINGER: I'm sorry. I didn't hear that  
4 last request.

5           HEARING OFFICER TIPSORD: Go ahead,  
6 Ms. Manning.

7           MS. MANNING: I was looking for as well, for  
8 all the documents that you're preparing to put into  
9 the annual report for, I would assume, fiscal year  
10 2004, which hadn't been prepared yesterday.

11          MR. KING: We do that on a calendar year  
12 basis. We're only in May. So we would not have  
13 that. You know, we've got seven months to go before  
14 we completed the data for here.

15          Q. Do you have the data already prepared for the  
16 year ending 2003? Is that on the Web site?

17          A. (BY MR. CLAY) That's the information I just  
18 gave you.

19          Q. But is the background information on the Web  
20 site in an annual report?

21          A. What are you talking about, background  
22 information? All of this information is gathered from  
23 the database, our database, LUST database, which is  
24 also available on the Web. And anyone, you know, in



1 this room could do the same search for how many sites  
2 were closed in 2003. I mean, that's where that  
3 information has come from. I'm not sure what you mean  
4 by background.

5 Q. Does the Agency prepare an annual report for  
6 the LUST unit?

7 A. Correct.

8 Q. And what's the last annual report the Agency  
9 prepared that's available on the Web site or that you  
10 are going to present pursuant to Hearing Officer  
11 Tipsord's request?

12 A. The last one available on the Web site is  
13 2002. We're currently on the approval process to  
14 post -- it's in the process of being posted for 2003.

15 Q. As that would be the most relevant  
16 information. And my question is, could we have that  
17 information as well?

18 A. (BY MR. KING) For 2003?

19 Q. Yes.

20 A. Like I said, it's in the process of getting  
21 finished, and hopefully it will be done by next year.  
22 I mean, this report has to go through our director,  
23 and it's just in the approval process right now.

24 MS. MANNING: Thank you. Let's move on.

1                   Q.    Question number 51.  What  
2   information does the Agency have concerning the  
3   estimated number of LUST sites in Illinois that still  
4   need to be remediated?  Please provide any information  
5   you have regarding this.

6           A.    (BY MR. CLAY)  There are roughly 10,100 sites  
7   that still have not received the no further  
8   remediation list.

9           HEARING OFFICER TIPSORD:  Could you repeat  
10   that?  I'm sorry.  Could you repeat that number?

11          MR. CLAY:  I'm sorry.  10,100.

12          Q.    (BY MS. MANNING)  That have not received the  
13   still further no remediation letter?

14          A.    That's correct.

15          Q.    How many of those sites, to your knowledge,  
16   are currently in the pipeline?  In other words, have  
17   some sort of document for review before the Agency?

18          A.    I don't have the figures as far as review for  
19   the Agency.  I would say that all, nearly all of those  
20   are what I would consider in the pipeline.  I mean,  
21   they all remove tanks.  They've all probably removed  
22   backfill.  They're somewhere in the pipeline.  Maybe  
23   at the very beginning, maybe at the end, but I would  
24   characterize almost all those in the pipeline.

1 MS. MANNING: Thank you. I have no further  
2 questions on question number 51.

3 Q. Under the proposed  
4 regulations on number 52 now, does the Agency  
5 anticipate reimbursing a higher or lower percentage of  
6 the cost on a single project as compared to the  
7 reimbursement under the historical LUST fund  
8 reimbursement guidelines? I'm on 52 now.

9 A. We anticipate reimbursing the reasonable  
10 costs for directive action. I don't know whether  
11 that's going to a high or lower number.

12 MS. MANNING: I have no further questions on  
13 that.

14 Q. 53, what specific projects and  
15 incident numbers were used to develop the rate  
16 schedules and in Subpart H and what contaminants were  
17 present? I believe -- correct me if I'm wrong -- as  
18 to the first part of the question, number 53, those  
19 specific projects and incident numbers, are those  
20 referred to on this appendix? Which I think is --

21 HEARING OFFICER TIPSORD: Exhibit 24 now.

22 MS. MANNING: Thank you.

23 Q. Is that correct?

24 A. (BY MR. CHAPPEL) No. My testimony is those

1 were only used for the specific purposes I stated in  
2 my testimony. Those weren't used in Subpart H.

3 Q. What specific project and incident numbers  
4 were used to develop the rate schedule in Subpart H?

5 A. Which one?

6 Q. In all of Subpart H.

7 A. (BY MR. CLAY) We don't have a specific  
8 incident numbers for these.

9 Q. Okay.

10 QUESTIONS BY HEARING OFFICER TIPSORD:

11 Q. Excuse me. Let me ask a clarifying  
12 question.

13 You don't have specific incident numbers for  
14 the remaining parts of Subpart H other than -- I guess  
15 my question is, how do you know then where that  
16 information came from?

17 A. (BY MR. KING) I mean, what we were going  
18 through yesterday is we've got various rate schedules  
19 in there. I mean, part of the difficulty of the  
20 question is, is just in a general way asking about the  
21 rate schedules. And each one was developed in a  
22 different way, and not all of them were based on  
23 incidents. I mean, we talk about some of the outside  
24 sources that the Agency used, and each schedule had

1 its own methodology.

2 Q. So you didn't necessarily use historical data  
3 within the Agency to develop all of the rate sheets?

4 A. Well, we used historical experience. But as  
5 far as specific sites, I don't know that each one of  
6 them looked at specific sites.

7 MR. CLAY: I mean, when we looked at specific  
8 sites, we used those to verify or compare the number  
9 that we were proposing. That is identified in the  
10 testimony.

11 HEARING OFFICER TIPSORD: Okay, thank you.

12 MS. MANNING: I have nothing further.

13 HEARING OFFICER TIPSORD: Ms. Hesse?

14 QUESTIONS BY MS. HESSE:

15 Q. Were some of the rates that you used rates  
16 from the spreadsheet that you had developed over -- I  
17 don't know exactly which periods of time. Were some  
18 of those rates, rates that were used in the proposed  
19 rules?

20 A. (BY MR. BAUER) Are you talking about the --

21 MR. CHAPPEL: Yeah. Which ones?

22 MR. BAUER: The rate sheets that were  
23 provided in the request?

24 Q. Yes.

1           A.    (BY MR. BAUER)  Yes.  I said they are used in  
2   the hollow-stem auger rates.

3           MS. HESSE:  There is a copy attached to  
4   CW3M's pre-filed testimony.  I actually brought those  
5   for a copy of an exhibit.

6           HEARING OFFICER TIPSORD:  Actually, yeah,  
7   let's do, since it keeps coming up.  It will be a good  
8   idea.  Thank you.

9           MS. HESSE:  And I'll give one of those to  
10   you.

11          HEARING OFFICER TIPSORD:  Pre-filed testimony  
12   or questions?

13          MS. HESSE:  Pre-filed testimony.

14          HEARING OFFICER TIPSORD:  If there's no  
15   objection, we'll enter this as Exhibit 26.  Seeing  
16   none it's entered as Exhibit 26.

17                   [Exhibit Number 26 was marked for  
18                   identification and admitted into evidence.]

19          Q.    (BY MS. HESSE)  Could you identify them from  
20   Exhibit 26 which of the rates you would have used in  
21   developing proposed Subpart H?

22          A.    (BY MR. BAUER)  Like I said before, we  
23   used -- I think we used the soil boring per foot  
24   rate.  I think we used the mobilization rate.  We used

1 a lot of the monitoring well rate with all the  
2 components of the monitoring well. And on the  
3 corrective action site, the 55 and 20 are pretty  
4 similar to our rates proposed, even though they  
5 weren't developed with the spreadsheet.

6 Q. 55 and 20 referring to what?

7 A. On the corrective action; excavation,  
8 transportation, disposal and backfilling.

9 Q. 55 being excavation and transportation and  
10 disposal?

11 A. Yes.

12 Q. And then 20 being the cost for backfill?

13 A. Yes. We might have used some of the lab  
14 stuff. I'm not sure. We used the lab data that we  
15 used for generating our costs, which was taken right  
16 from the laboratory group themselves, but we might  
17 have used some of this.

18 Q. And then was this spreadsheet that's been  
19 marked as Exhibit 26, was that information that was  
20 derived from the number of LUST sites with the LUST  
21 incident number being provided?

22 A. Mm-hmm.

23 Q. That's "yes"?

24 A. Yes. I'm sorry. I had my mouth full.

1 Q. Now, when I look at the costs for disposal,  
2 there's a per gallon cost listed here. If I look on  
3 the first page, there's two numbers listed.

4 A. Yeah.

5 Q. Actually, there's three columns, and in two  
6 columns, there is a number of \$3.

7 A. Yes.

8 Q. And then there's a number that says \$5.

9 A. Yeah.

10 Q. What's the difference? I mean, could you  
11 explain why there's the two different numbers, what  
12 those represent?

13 A. Well, I know that the second column is the  
14 new number, and the third column is an old number from  
15 an old spreadsheet. It was just done -- not an old  
16 spreadsheet. An old rate sheet that the Agency had  
17 used.

18 Q. And what does "new" mean here?

19 A. It was the new number based on the date that  
20 we generated in this spreadsheet.

21 Q. So does the new number reflect the average?

22 A. Actually, those numbers are the average on  
23 the standard remediation.

24 Q. So the \$3 is an average, and then the \$5 is



1 an average among standard deviation?

2 A. No.

3 Q. No?

4 A. The new number is an average of the standard  
5 deviation. The old number is the old number from a  
6 previous rate sheet that was calculated through a  
7 different spreadsheet.

8 Q. And yesterday we were talking about the rate  
9 for disposing of a gallon of contaminated water, and I  
10 believe that was -- what was that? 68 cents a gallon?

11 A. That's correct.

12 Q. And yesterday you mentioned the 68 cents a  
13 gallon was right -- what was the source of the  
14 68 cents a gallon if the average number is \$3?

15 A. Well, this rate was generated from the  
16 disposal of groundwater or collected during drilling  
17 operations, and that average was at \$3 per gallon, and  
18 that would be disposed of by the drum. The 68 cents  
19 that we're talking about was data collected from -- I  
20 believe it was collected from -- I don't recall where  
21 it was collected from. But it was for groundwater  
22 that was disposed via a separate method.

23 Q. And yesterday we were trying to figure out  
24 how you got the information, and I thought you

1 mentioned that there was another spreadsheet that that  
2 information was on.

3 A. I believe that came from -- I'm not sure, but  
4 I am pretty sure it came from Doug Oakley's  
5 spreadsheet, that historical data.

6 Q. Do you have a spreadsheet?

7 A. (BY MR. OAKLEY) Our data was gathered from  
8 actual claims that was submitted throughout the  
9 program. We fed them into a computer, calculated the  
10 average and standard deviation. So we came up with a  
11 range. And then we let the market set the rate. That  
12 was our theory.

13 As I said before prior to this, that's how we  
14 came up with our rates. We had a range. We didn't  
15 have one specific number. We had a range. Now, if he  
16 used our rate plus the standard deviation, I presume  
17 that's what he used. If he used a high rate, or the  
18 low rate, frankly, I don't know.

19 Q. When you say "he used," that would be?

20 A. Brian.

21 Q. Brian?

22 A. Brian. If he used some of our data -- I  
23 presume he's testified that he has -- which particular  
24 data he used, frankly I'm unsure of.

1 Q. But you would have had some kind of  
2 spreadsheet or some documents on the computer that he  
3 could have relied on? Is that what I'm understanding?

4 A. Previously, yes.

5 MS. HESSE: Okay. Thank you.

6 HEARING OFFICER TIPSORD: Anything further?

7 MS. MANNING: No. I have nothing further on  
8 that. And in fact, we'll avoid question 57 now, too,  
9 because that's kind of in the context of the question  
10 that was asked by Ms. Hesse.

11 HEARING OFFICER TIPSORD: Okay.

12 QUESTIONS BY MS. MANNING:

13 Q. 55, though, I'm going to ask it in a little  
14 different way than here on this sheet, on the  
15 document.

16 But is it the Agency's position that any  
17 costs associated with amended plans or budgets are not  
18 reasonable and therefore are not reimbursable?

19 A. (BY MR. CLAY) I would say that generally  
20 that is the case, I mean, if a plan is approved and  
21 conditions change and there's an extraordinary  
22 condition that happens at the site.

23 For example, if you're doing a corrective  
24 action, and you come across additional tanks that you

1 didn't know were there, that may warrant an  
2 amendment. If it's amendments responding to a denial  
3 or modification by the Agency, that is intended to be  
4 in the lump sum.

5 Q. Would you explain that further? Intended to  
6 be in the lump sum?

7 A. The lump sum established for that plan is a  
8 lump sum for an approvable plan. And so if it wasn't  
9 an approvable plan the first time, I don't think the  
10 Agency should be paying for an amendment to be -- for  
11 an additional cost for an amendment to get it to the  
12 approvable stage.

13 Q. Has that historically been the Agency's  
14 position? Or is that a new position as a result of  
15 these proposed regulations?

16 A. That is a new position.

17 Q. So historically then, the Agency from your  
18 perspective has been paying for any cost associated  
19 with an amended plan that was requested? That the  
20 plan has been amended at the request of the Agency?

21 A. Let me answer the first --the last part of  
22 that first.

23 The request of the Agency, because it didn't  
24 meet the requirements of the rules and statute, and,

1 yes, it had been the case, and we have paid for three,  
2 four, five amendments to plans that did not meet the  
3 regulations.

4 Q. From the Agency's perspective?

5 A. They did not meet the regulations from the  
6 Agency's perspective, that's correct.

7 Q. Thank you. Would you agree, Mr. Clay, that  
8 sometimes amendments are necessitated as well from a  
9 distinction or a difference in judgment, if you will,  
10 on the part of your project managers and the LPE or  
11 LPGs or consultants who are presenting the claim?

12 A. I think if it's a misunderstanding or a  
13 distinction, I think it would be a very minimal cost  
14 to correct that. So there could be those judgment  
15 issues, but I think it would be very minimal. But I  
16 think in most of our denials, it's because it clearly  
17 did not meet the regulations.

18 MS. MANNING: We'll have testimony on that.  
19 We're not going to argue with you, and we're going to  
20 proceed and go to the next question. I don't have any  
21 further questions. Does anyone else?

22 Q. On Number 56, just as a point of  
23 clarification, I think we went through this yesterday,  
24 but in regard to the tasks and group of tasks proposed

1 in Subpart H to be reimbursed on a unit basis, is it  
2 the Agency's expectation that those will be viewed as  
3 flat rates, and that will be the rate that will be  
4 charged, and that there should be no rate in excess of  
5 that and no rate below that?

6 A. (BY MR. CLAY) I think it's the Agency's  
7 expectation that the large majority of the rates will  
8 fall within at or below those rates. If there are  
9 rates below that, we would expect that those are the  
10 rates that are billed, and those are the rates that  
11 would be reimbursed.

12 Q. And, conversely, if the actual rates are more  
13 than that, the Agency will not pay them?

14 A. Unless there is justification through the  
15 extraordinary situation, that's correct.

16 Q. And could you cite to me what regulation  
17 you're referring to then? What proposed regulation in  
18 terms of the extraordinary circumstances?

19 A. Sure.

20 BOARD MEMBER JOHNSON: 734.855.

21 MS. MANNING: Thank you.

22 Q. And it's actually only in  
23 734? Not in 732?

24 A. No.

1 Q. There's a comparable one in 732? Thank you.

2 And it's also 732.855? Thank you.

3 I have no further questions on 56.

4 HEARING OFFICER TIPSORD: Go right ahead, but  
5 I'll ask again, if anybody has any questions, I'll  
6 recognize you.

7 MS. MANNING: Thank you. 57 we're going to  
8 avoid -- not necessarily avoid it. The fact of the  
9 matter is, we've answered it from the rest.

10 Q. 58. Subpart H, Section 734.810,  
11 this area is addressed on page 2 of Mr. Bauer's  
12 testimony. Do the proposed rates include the costs  
13 for slurry?

14 A. (BY MR. BAUER) Yes.

15 Q. 59.

16 HEARING OFFICER TIPSORD: We have a  
17 question.

18 MR. GOODIEL: Russ Goodiel.

19 QUESTIONS BY MR. GOODIEL:

20 Q. Are you aware of the costs of slurry to  
21 abandon an underground tank? Do you know how much  
22 slurry actually costs to do that? Have you checked  
23 into that?

24 A. (BY MR. BAUER) To the actual rate of

1     itself or --

2           Q.    The material to go into the tank to abandon  
3   the tank properly.

4           A.    I did not look at the individual material,  
5   no.

6           Q.    It could be as much as \$57 or \$65.

7                   HEARING OFFICER TIPSORD:  Mr. Goodiel --

8                   MR. GOODIEL:  I'm sorry.

9                   HEARING OFFICER TIPSORD:  Thank you.

10   Ms. Manning?

11                                QUESTIONS BY MS. MANNING:

12           Q.    59, we've asked a bit of this yesterday in  
13   follow-up to other questions.  So I'm going to  
14   simplify question 59.

15                   The 20 LUST sites that were evaluated, I  
16   think these are on page 2 of your testimony.  Are  
17   these the same sites that are also included then on  
18   the errata sheet, the appendix of the errata sheet?  
19   You testified at the first hearing that 20 LUST sites  
20   were evaluated and 9 were used for tank removal or  
21   abandonment.

22           A.    (BY MR. BAUER)  Yes.

23           Q.    Mr. Bauer, correct?

24           A.    Yes.



1 Q. Now, what were those sites?

2 A. I believe they were the same sites that was  
3 on attachment B of the errata, too.

4 Q. And do you know how many of these sites were  
5 in early action at the time you looked at them?

6 A. They were all early action, I believe.

7 Q. Okay. And how did you choose these sites?

8 A. I just went to the file cabinet and started  
9 pulling files.

10 Q. Of the nine that you -- okay.

11 HEARING OFFICER TIPSORD: Ms. Hesse has a  
12 follow-up.

13 MS. MANNING: Go ahead.

14 QUESTIONS BY MS. HESSE:

15 Q. When you pulled the files from the file  
16 cabinet, was there any particular basis for pulling  
17 the files? The jacket, the thickness of the file, any  
18 particular criteria you used?

19 A. No. I just pulled them until I got what I  
20 thought was enough.

21 Q. So you took all of the first nine you came to  
22 in the file cabinet?

23 A. Well, actually, I took 20.

24 Q. 20?

1           A.    I might have opened a different drawer at one  
2 point in time or something like that.  It wasn't based  
3 on any reason whatsoever.  I just opened a drawer.

4           Q.    And then how were they placed in the file  
5 cabinet to begin with?  Alphabetical order, incident  
6 number order?

7           A.    I believe they're by incident number.

8                         QUESTIONS BY MS. MANNING:

9           Q.    And how many different contractors do these  
10 represent?

11          A.    (BY MR. BAUER) I don't know.

12          MS. MANNING:  Thank you.  I have no further  
13 questions of him.

14          MR. ROMINGER:  Claire, on that, since we've  
15 covered that appendix, we have since the beginning of  
16 the hearing, we have a sheet showing the locations of  
17 those sites on that attachment.  So we could enter  
18 that as an exhibit.

19          MS. MANNING:  You haven't entered that as an  
20 exhibit yet, have you?

21          MR. ROMINGER:  No, but we could enter that as  
22 an exhibit as far as the locations.

23          MS. MANNING:  And, yes, the majority of  
24 them -- I think 13 are in Cook County, 3 are in DuPage

1 County, if I'm not mistaken, and the rest are in  
2 downstate, but the great majority of them are in Cook  
3 and DuPage County for purposes of the record. Pardon?

4 MR. ROMINGER: I thought we were talking  
5 about attachment B.

6 HEARING OFFICER TIPSORD: Right. You're  
7 talking about what was admitted as Exhibit 24, which  
8 is attachment A on errata 2.

9 MS. MANNING: Right.

10 HEARING OFFICER TIPSORD: He's talking about  
11 Exhibit B to errata 2.

12 MS. MANNING: I'm not sure I've seen that  
13 then.

14 MR. ROMINGER: Why don't we go ahead and  
15 enter this as an exhibit.

16 HEARING OFFICER TIPSORD: We will admit that  
17 as Exhibit 27.

18 [Exhibit Number 27 was marked for  
19 identification and admitted into evidence.]

20 MR. ROMINGER: It's got both attachment A and  
21 B.

22 MS. MANNING: Right. I need to see this.  
23 Thank you. Is that over on the public table over  
24 there?

1 HEARING OFFICER TIPSORD: Yes.

2 Seeing none, we'll admit that as Exhibit 27.

3 MR. ROMINGER: Again, we didn't have that at  
4 the beginning. We received that since the beginning  
5 of the hearing.

6 QUESTIONS BY MS. MANNING:

7 Q. Mr. Bauer, I would just ask in pulling these  
8 files -- and hopefully this will get to the bottom of  
9 it in this line of questioning -- it was the Agency's  
10 perspective in pulling these files in using them to  
11 develop attachment A and attachment B, that these were  
12 a representative sample of LUST sites that the Agency  
13 sees?

14 A. (BY MR. BAUER) Yes.

15 MS. MANNING: Thank you. I'm ready to move  
16 on to 60.

17 Q. Mr. Bauer, on page 4 of your  
18 testimony, you state that rates include all costs for  
19 mobilization and demobilization to and from the site,  
20 labor, decontamination, drilling, etcetera. Were you  
21 aware of how far any of the sites that you looked at  
22 were from the contractor?

23 A. (BY MR. BAUER) No.

24 Q. We'll move on to C then. Did you look at the

1 RS Means Guide for Environmental Work when you  
2 compiled any of these rates?

3 A. No.

4 Q. And number D --

5 HEARING OFFICER TIPSORD: Excuse me.

6 Ms. Manning, you identified that as RS?

7 MS. MANNING: It is RS Means. I'm sorry. In  
8 the question itself, it says Means Guide for  
9 Environmental Work. It's more further developed in  
10 some of the filings that we have presented to the  
11 Board. It's actually a document entitled, RS Means.

12 HEARING OFFICER TIPSORD: Thank you.

13 Q. (BY MS. MANNING) And letter D, does the IEPA  
14 define travel costs differently from mobilizing and  
15 demobilizing? If so, how?

16 A. (BY MR. BAUER) Yeah.  
17 Mobilization/demobilization in the instance that we're  
18 talking about is for the drill rig to and from the  
19 site. Travel time is for the consultant to get to and  
20 from the site.

21 MS. MANNING: Thank you.

22 HEARING OFFICER TIPSORD: Go ahead.

23 MR. DOTY: Good morning. Duane Doty, Applied  
24 Science Industries.

1                                   QUESTIONS BY MR. DOTY:

2           Q.    In the past, you've felt comfortable  
3 reimbursing these charges identified such as  
4 mobilization charges, travel expenses? You've  
5 reimbursed those in the past, correct?

6           A.    Correct.

7           Q.    So up until now, they've been deemed  
8 reasonable charges. So can you kind of explain why  
9 now you feel that those particular charges would be  
10 unreasonable?

11          A.    We have included those into our rates.

12          Q.    Which? The per foot rate?

13          A.    The per foot rate.

14          Q.    Has it changed to recognize that these costs  
15 are now included in that rate?

16          A.    Yeah. Our per foot rate includes a certain  
17 amount for mobilization.

18          Q.    And was there some type of average travel  
19 time? 30 minutes? Like the half day maybe?

20          A.    Well, we used a lump sum. We don't -- again,  
21 mobilization of a drill rig and mobilization,  
22 typically how the Agency sees it in budgets and in  
23 bills is in a lump sum. They just say it costs me  
24 \$250 to get the drill rig out at the site, whether

1 it's five blocks or five miles. So regardless, that's  
2 what they're billing us, and that's how we did it. I  
3 think the average that I used, and it was like \$320,  
4 something like that. And we just figured that into  
5 the rate. It was in the testimony.

6 Q. So that is now a dollar per foot to be  
7 inclusive in that, right?

8 A. Yeah. If they billed it separately, it still  
9 would be -- I mean, that's not an issue. That's fine.

10 MR. DOTY: Okay, thanks.

11 QUESTIONS BY MS. MANNING:

12 Q. Has there been a time, Mr. Bauer -- to follow  
13 up on that line of questioning -- the Agency changed  
14 the reasonable reimbursement determination from travel  
15 time to actually a lump sum of \$250?

16 A. (BY MR. BAUER) I don't understand the  
17 question.

18 Q. Did the Agency ever just as a rate determine  
19 that \$250 was the maximum that it would ever pay for  
20 mobilization?

21 A. I believe so, yes. I think that was on the  
22 rate sheet -- or not the rate sheet. The spreadsheet.

23 Q. And at what point in time did it make that  
24 determination?





1 A. How long had we had it as a lump sum?

2 Q. Yes.

3 A. I think we've always used it that way.

4 MS. MANNING: Thank you.

5 HEARING OFFICER TIPSORD: Ms. Hesse?

6 QUESTIONS BY MS. HESSE:

7 Q. Mr. Bauer, in the proposed rules, you're  
8 using a number of -- correct me if I'm wrong -- \$23  
9 per foot for drilling and monitoring a well?

10 A. (BY MR. BAUER) Yeah, I believe so.

11 Q. And in Exhibit 26, I believe on the first  
12 line, you have listed soil boring per foot at \$24?

13 A. (BY MR. CLAY) What exhibit are you referring  
14 to?

15 Q. Exhibit 26. That's the spreadsheet.

16 HEARING OFFICER TIPSORD: Exhibit 26, it was  
17 the one that you entered?

18 MS. HESSE: Yes, the spreadsheet.

19 MR. BAUER: All right. I got the exhibit.

20 Now, which one?

21 Q. (BY MS. HESSE) On the very first row, very  
22 first line, it says soil boring per foot.

23 A. Yes.

24 Q. And that's at \$24 a foot; is that correct?

1           A.    That's correct.

2           Q.    And yet there's additional costs here related  
3 to soil boring, and you're now saying those additional  
4 costs were included in the per foot rate; is that  
5 correct?  That additional activities are now included  
6 in the per foot rate of \$23 that were not included in  
7 the \$24 per foot rate?

8           A.    In the development of our numbers, the \$23 is  
9 all that we can support in our proposal, and that did  
10 include the breakout costs for mobilization.  And we  
11 also include a certain rate for decont. that was  
12 broken out.

13          Q.    But on Exhibit 26, the spreadsheet, you have  
14 a separate charge for mobilization?

15          A.    Right.  We included that.  We took that into  
16 our factoring.  This spreadsheet is an average of  
17 standard deviation.  The number that you're referring  
18 to, the Agency used an average to calculate what we  
19 proposed in Subpart H.

20          Q.    So in the proposed rules, you're saying that  
21 unless -- just to let me summarize.  When you're  
22 coming up with your numbers in the proposed rules,  
23 unless it's the average cost or below the average  
24 cost, the cost is not reasonable?  Is that what it

1 boils down to?

2 A. (BY MR. CLAY) I think that we're saying the  
3 figure that we can support is \$23 a foot, and we were  
4 paying \$24 on a previous rate sheet. That may have  
5 been too high.

6 Q. So you're saying what you would pay before  
7 you're not going to consider reasonable anymore?

8 A. I think what we're proposing is the  
9 reasonable -- these numbers are what we're going to  
10 consider reasonable that we currently have before the  
11 Board in this rule-making.

12 QUESTIONS BY MS. MANNING:

13 Q. So, Mr. Clay, would you deny that the  
14 Agency's numbers, that the Agency's proposed numbers  
15 actually reflect in this particular instance that  
16 we're talking about a lesser reimbursement than the  
17 Agency has historically paid?

18 A. (BY MR. CLAY) I think that would be true.

19 Q. It's not that you're denying it? And it's  
20 true that it is the lesser reimbursement?

21 A. It's true that it is lesser, a lesser amount,  
22 right.

23 BOARD MEMBER GIRARD: I have a question.

24 QUESTIONS BY BOARD MEMBER GIRARD:

1 Q. Then so essentially what you're saying is, is  
2 that the average cost for these activities is the  
3 reasonable cost? Is that what you're saying?

4 A. (BY MR. CLAY) Well, let me make a statement  
5 on that.

6 And maybe, Brian, if you want to add to it.

7 I think some of these numbers were developed  
8 with averages and some are above averages. But I  
9 think that generally when we're talking about  
10 reimbursement with public funds, I don't think it's  
11 unreasonable to use the average number as a reasonable  
12 number. That's correct.

13 Q. And so if someone came in with a proposal for  
14 a higher estimate for performing a particular task at  
15 a site, they would have to justify it under either  
16 Section 734.855 or 732.855, the unusual or  
17 extraordinary expense category?

18 A. That's correct.

19 Q. In the language there, you have if an owner  
20 or operator incurs unusual and extraordinary expenses,  
21 the cost eligible for payment to substantially exceed  
22 the amount is set forth in Subpart H.

23 Now, it sounds to me like you put the word  
24 "substantially" in there, but it sounds to me like

1 you really don't need that word in there. You're  
2 saying that any cost you see coming in above your  
3 Subpart H needs to be justified.

4 A. I think any cost needs to be justified. I  
5 think the reason we put "substantially" in there is  
6 that in this example, if something was coming in at  
7 \$23.10, we would hope that, you know, that wouldn't be  
8 something the person would try to make -- spend the  
9 time to make that justification. They certainly  
10 could.

11 But the reason we put "substantial" is  
12 because this is a process to streamline the entire  
13 reimbursement process, the entire LUST program. And  
14 if we have, you know, half the sites go in through  
15 this extraordinary demonstration, I don't think it's  
16 going to serve to streamline the program.

17 Q. However, if we have a moving point there, if  
18 Subpart H in every case is not the upper limit, the  
19 maximum amount, how will the parties applying know  
20 whether 10 cents is the cutoff for that particular  
21 cost? Or maybe it's 50 cents, or maybe it's a dollar  
22 more? How will those decisions be made?

23 A. Well, I think those are maximum amounts. And  
24 so if someone comes in and says it was \$23.10 for this

1 contractor that I hired, I don't think that the Agency  
2 is going to consider that adequate justification. If  
3 the justification is that here are the conditions at  
4 the site, and this is why \$23 a foot is not  
5 appropriate, and it's something over \$23 a foot,  
6 that's what we would consider.

7 But the fact that this is what the  
8 consult -- or this is what the driller/subcontractor  
9 is charging, I don't think the Agency would consider  
10 that adequate justification.

11 Q. But essentially it still goes back to the  
12 amounts in Subpart H being maximum, and anything that  
13 comes in over that for any particular expense  
14 category, they're going to have to justify and show  
15 that the assumptions you made in coming up with  
16 Subpart H are not met by their particular site?

17 A. Right, and those are maximums. And as I had  
18 it in my original testimony, we expect that the large  
19 majority, over 90 percent of all the costs will be  
20 within the Subpart H rates.

21 BOARD MEMBER GIRARD: Thank you.

22 QUESTIONS BY MS. MANNING:

23 Q. To follow up with that then, Mr. Clay.

24 You expect very little activity under Section

1 732.855; is that correct?

2 A. (BY MR. CLAY) I would hope so, yes.

3 HEARING OFFICER TIPSORD: Ms. Hesse?

4 QUESTIONS BY MS. HESSE:

5 Q. Thank you. Given what the Agency used to  
6 consider reasonable the standard deviation, would you  
7 please explain to us why the Agency is now taking the  
8 position that only the average or below is reasonable?

9 A. (BY MR. BAUER) I think one aspect of it  
10 is -- and I could testify to this in reviewing budgets  
11 that are submitted -- is that, well, we used those  
12 rate sheets. We used the average and standard  
13 deviation. And when we were reviewing a budget, we  
14 might have only maybe one, two, three costs that were  
15 over that, those line items or something like that, or  
16 if at all.

17 If you look at the whole picture of a plan, I  
18 think the average is a more reasonable figure across  
19 the board. You have to look at it as -- I don't think  
20 you can look at the proposal in one rate. You have to  
21 look at the whole thing, what the whole stage one site  
22 investigation reimbursement is. And those are pretty  
23 comparable to what people are submitting today.

24 MR. CLAY: I think that's demonstrated in our

1 example that we provided at the last hearing, the  
2 hearing in Chicago, where it went through and showed  
3 one example what would be reimbursed. So I think you  
4 need to look, as Brian said, at the entire amount we  
5 reimbursed instead of focussing on one rate.

6 MR. BAUER: We were combining stuff just to  
7 simplify the process.

8 Q. Could I go back to something Mr. Clay said,  
9 where he thought that using the average rate would  
10 cover 90 percent of the costs? And I believe --

11 A. (BY MR. CLAY) I didn't say that.

12 Q. And what did you say?

13 A. I said that I felt like the average  
14 cost -- it was reasonable when we're talking about  
15 just, you know, reimbursement of public funds, I said  
16 that I said we hope that over 90 percent would fall  
17 under the Subpart H rates and that less than 10  
18 percent would go to the demonstration of extraordinary  
19 circumstances.

20 Q. Have you done any statistical analyses to see  
21 if a population -- you only use the average  
22 number -- whether 90 percent of that would fall within  
23 the average?

24 A. No.



1 MS. HESSE: Thank you.

2 HEARING OFFICER TIPSORD: Ms. Manning?

3 QUESTIONS BY MS. MANNING:

4 Q. As a follow-up to that, Mr. Clay. You  
5 mentioned you referred to the underground storage tank  
6 as the disbursement of public funds. Just to clarify,  
7 does the Agency not use the underground storage tank  
8 fund as sort of a self-insurance fund?

9 A. The underground storage tank fund was set up  
10 originally to meet the federal financial assurance  
11 requirements. At that time, one million dollars, or  
12 still one million dollars. As we had testified to  
13 yesterday, there's a number of states that have set up  
14 those funds to meet that requirement.

15 Q. Right. We're just talking Illinois right  
16 now.

17 A. Right. And so that's the reason it was set  
18 up; to meet that requirement and to reimburse owners  
19 and operators for reasonable corrective action cost.

20 Q. And the specific money from the fund comes  
21 directly from a tax on the gasoline; is that correct?

22 A. It's a tax and a environmental fee, correct.

23 Q. The owners and operators pay directly into  
24 the fund from the tax, the monies they received and

1 collect from the tax on gasoline; is that correct?

2 A. Yeah. Owners and operators usually pay that  
3 tax as a percentage of, you know, as a fee per gallon  
4 on what they sell.

5 Q. So it's a fund with a specific use?

6 A. Correct.

7 Q. Thank you. An environmental use?

8 A. That's correct.

9 Q. Thank you. For the specific purpose of  
10 remediating underground storage tank sites that have  
11 been contaminated by gasoline in the State of  
12 Illinois; is that correct?

13 A. Well, the fund was set up as a financial  
14 assurance mechanism to meet the financial assurance  
15 requirements.

16 Q. To remediate properties that have been  
17 contaminated in the State of Illinois by virtue of  
18 underground storage tanks, correct?

19 A. Correct.

20 MS. MANNING: Thank you. Just a second  
21 please. I'm seeing if we can dispense with some  
22 questions.

23 HEARING OFFICER TIPSORD: Take all the time  
24 you need.

1           MR. KELLY: Joe Kelly with United Science  
2 Industries.

3                           QUESTIONS BY MR. KELLY:

4           Q. Just for some clarification questions in  
5 regard to the exhibit that was presented.

6                           With additional information from the sites we  
7 had using your data set, why in preparing Subpart H in  
8 the proposed rules, why is data collected from  
9 historical sites in regard to like, say, field work,  
10 monitoring, well installation, dollar per yard for  
11 soil removal, and yet in terms of professional work,  
12 in terms of reports and plans and budget preparation,  
13 the Agency sought a particular group of consultants or  
14 other people to get their information as far as the  
15 number of hours it would take, and didn't use  
16 historical data for the number of hours it would take  
17 to provide plans and budgets?

18           A. (BY MR. CLAY) I'll respond to that. The  
19 hours for the plans and budgets -- when we went to the  
20 Consulting Engineers Council of Illinois, they felt  
21 and we felt it would be a good source to look at what  
22 hours went into these plans and reports. Consulting  
23 Engineers Council of Illinois from the very beginning  
24 said we can't comment on rates. You know, that's an

1 antitrust issue. We just can't do that. So they, you  
2 know, did not provide any of that, which we understood  
3 the reason.

4           So in those situations, we relied on  
5 historical numbers. As when we -- Harry and Brian  
6 both testified to, you know, we did contact some of  
7 the people who supplied -- you know, the drillers and  
8 tank removal contractors, you know, to see if their  
9 numbers are reasonable. And trucking associations.  
10 But primarily we used the historical numbers, other  
11 than the time to put in the plans and reports.

12         Q. Mr. Bauer has already described his method  
13 for selecting the sites. And just for clarification,  
14 is it safe to say that in selecting these sites, there  
15 was no consideration taken into who the consultants  
16 were or the contractors?

17         A. (BY MR. BAUER) No.

18         Q. Also there was no consideration taken into  
19 what regions of the state this work was performed?

20         A. No.

21         Q. Another question I have. We've been talking  
22 about this rate sheet, spreadsheet and all these other  
23 sheets that were used to determine reasonableness in  
24 the past and perhaps in the future.

1           Approved budgets -- when the Agency approved  
2 a budget, and let's assume they used these rate  
3 sheets, or whatever sheet, they're only going to  
4 approve a certain amount for hours or rates or unit  
5 rate, correct? I mean, you have to get an approved  
6 budget?

7           A.    (BY MR. CLAY) Yes. There has to be an  
8 approved budget before payment can be made.

9           Q.    And what is only going to be reimbursed is  
10 only going to be a part of the approved budget? I  
11 think you've provided that testimony before. You have  
12 to have an approved budget and has been reviewed and  
13 compared to something to determine what is being  
14 reasonable? And then it's reimbursed, right?

15          A.    (BY MR. OAKLEY) If the type of amounts are  
16 equal to or less than those line items, it will be  
17 paid.

18          Q.    And I believe the testimony has already been  
19 provided previously that the Agency feels that the  
20 proposed rules will be in line with 90 percent, or  
21 whatever within these sites will be in line with what  
22 has already been reimbursed? The rates that you felt  
23 were reasonable, being reimbursed, approved by the  
24 budget and so forth?

1           A.    (BY MR. CLAY) I said 90 percent or more  
2 would be in line with the proposal in Subpart H.

3           Q.    And that's based on information from the  
4 information we've already collected -- you've already  
5 collected from historical data, or whatever, or rates  
6 or volumes or whatever, hours that you deemed as  
7 reasonable previously?

8           A.    That is based on our testimony. Much of  
9 which we relied on is historical data, correct.

10           MR. KING: I'd just like to follow up on one  
11 thing on Doug's testimony.

12                   I mean, there was almost to me an inference  
13 that somehow it was inappropriate for us to be talking  
14 with the Consulting Engineers Council, and hopefully  
15 that was not an inference.

16                   But I just want to clarify on the record that  
17 we have consulted with Consulting Engineers Council  
18 many times over the last 15 years with regards to our  
19 cleanup programs, including the LUST program. And so  
20 it's just been a long, long-term relationship in terms  
21 of us getting advice from them as to things that we're  
22 about to work on. So I just wanted to clarify that.

23           MS. MANNING: And just so -- I have to  
24 clarify that as well to Mr. King's comment.

1           There was no inference on the part of PIPE or  
2 anybody on our side of the table at all that there's  
3 anything inappropriate about consulting with the  
4 Engineers Council of Illinois. We would expect that  
5 the Agency would do that.

6           If we have any concerns at all in some of the  
7 questions we're asking, it's just in terms of we have  
8 a dispute as to whether you actually took some of the  
9 information that the work group presented to you, and  
10 we'll present that in our own testimony.

11           But certainly such consultations are not  
12 inappropriate. We would expect that you would work  
13 with all of the public interest groups who are  
14 supporting professional engineers and geologists in  
15 the State of Illinois in the remediation of  
16 underground storage tank sites and all of the other  
17 engineering that's done in terms of protecting the  
18 environment.

19           HEARING OFFICER TIPSORD: Go ahead.

20           MR. RENGUSO: Bob Renguso.

21           QUESTIONS BY MR. RENGUSO:

22           Q. Brian, I was just curious. You said you had  
23 one file cabinet to draw most --

24           A. I might have used more than one.

1 Q. I'm just curious. How many file cabinets  
2 does the Agency have that contains that? And are they  
3 all in one particular file bank of cabinets?

4 A. Probably. I have no clue.

5 MR. OAKLEY: We've got close to 70 cabinets.

6 Q. 70? And they're all basically in one bank,  
7 and you just picked one at random?

8 A. Yeah.

9 Q. It wasn't the one closest to your office or  
10 anything like that?

11 A. Actually, it's in another building, yeah.

12 MR. CHAPPEL: You had to walk over there.

13 MR. BAUER: I mean, I went towards the -- at  
14 the time I collected the data, I went towards the  
15 newer data.

16 Q. The newer data?

17 Okay, thank you.

18 QUESTIONS BY MS. MANNING:

19 Q. Mr. Bauer, just to clarify, you're a reviewer  
20 of the Agency, a project manager? And you review  
21 underground storage tank sites?

22 A. (BY MR. BAUER) That's correct.

23 Q. And how many underground storage tank  
24 sites would you personally have reviewed? A



1 percentage, if you will, of all of the underground  
2 storage tank sites that the Agency sees?

3 A. I've never done the math.

4 Q. Pardon?

5 A. I've never done the math to see what  
6 percentage of the sites I've reviewed.

7 Q. Well, you have the same case load or review  
8 load as every other project manager?

9 A. (BY MR. CLAY) I'm going to say generally  
10 3 to 4 percent if you figure 34 project managers with  
11 the same case load, so.

12 Q. Thank you. Thank you, Doug.

13 A. Brian may do a few more because he's, you  
14 know, got more than 10 years' experience, you know,  
15 than somebody new off the street. So that's why I  
16 said 3 or 4 percent.

17 Q. Thank you. And the sites that you collected,  
18 were they from your group of your review group or just  
19 generally sites that the Agency looked at?

20 A. (BY MR. BAUER) Just generally sites that the  
21 Agency looked at, nothing that -- I might have. I  
22 don't know.

23 HEARING OFFICER TIPSORD: Just a point of  
24 clarification, Mr. Clay. When you said 3 to 4

1 percent, you mean that was 3 or 4 percent of the case  
2 load per year? Not that he's reviewed 3 to 4 percent  
3 of the entire underground storage tank sites?

4 MR. CLAY: That's correct, per year.

5 HEARING OFFICER TIPSORD: Mr. Goodiel?

6 QUESTIONS BY MR. GOODIEL:

7 Q. Just to clarify, Mr. Bauer.

8 Of those sites that you reviewed, how many  
9 exactly were your specific sites that you were the  
10 project manager?

11 A. I didn't record that data. I just went to  
12 the file cabinet and pulled stuff. I didn't pull ones  
13 that were mine or anything like that. I don't know.

14 Q. Well, by looking at these sites that are  
15 referenced, can you guesstimate how many of those  
16 sites you were project manager on?

17 A. No. I was, I think, assigned over 400 sites.

18 HEARING OFFICER TIPSORD: Ms. Manning?

19 QUESTIONS BY MS. MANNING:

20 Q. Just to clarify. I think we had asked this  
21 yesterday, but the first two numbers of an incident  
22 site are the years that that incident was reported; is  
23 that correct?

24 A. (BY MR. CLAY) Well, if it's prior to 2000,

1 it would be 98 with four digits. If it's a 2000 or  
2 later, it would be 2000 and then four digits. And  
3 then 2001 and then four digits.

4 Q. But my question is, several of these sites  
5 are early '90s. In fact, one of them is in '89.

6 HEARING OFFICER TIPSORD: Which exhibit are  
7 you looking at?

8 MS. MANNING: I'm looking at their Exhibit  
9 Number 27.

10 MR. CHAPPEL: That's the date the incident  
11 was reported. They could have done early action in  
12 2003.

13 Q. Well, did that --

14 A. (BY MR. CHAPPEL) Well, we don't know that.

15 Q. So you don't know when the work was performed  
16 that you're using to evaluate and to use as the  
17 Agency's standard, if you will, in terms of putting  
18 these things into the appendixes, the averages?

19 A. (BY MR. BAUER) Which appendix are you  
20 looking at?

21 Q. It's regarding the testimony that the first  
22 set of incident numbers goes to attachment A and the  
23 second set of incident numbers go to attachment B.  
24 The first set of incident numbers are very old.

1           HEARING OFFICER TIPSORD: For the record,  
2 attachment B to errata sheet 2 is the average dollar  
3 per hour cost of personnel.

4           MR. BAUER: Right, right.

5           MS. MANNING: Actually, I'm referring to  
6 Exhibit Number 27.

7           HEARING OFFICER TIPSORD: Right.

8           MS. MANNING: That Mr. Rominger put into  
9 evidence this morning.

10           HEARING OFFICER TIPSORD: This is actually  
11 attachment A, which was Mr. Chappel's original Exhibit  
12 9 to his testimony.

13           MR. CLAY: I would just like to say that the  
14 incident number has no bearing whatsoever on when work  
15 was performed.

16           And, Brian, do you want to comment on the  
17 numbers?

18           And we try to use the work performed within a  
19 year or two of when you collected that data.

20           MR. BAUER: Yeah. It was within a period of  
21 time. And they were -- I'm assuming they were all  
22 high priority corrective action. And it takes a  
23 number of years sometimes to get that far in the  
24 process.

1 Q. (BY MS. MANNING) Well, as far excavation  
2 costs, though, excavation costs are generally related  
3 to the removal of the tank, correct?

4 A. No.

5 Q. I mean, isn't that fairly early in the  
6 process as a general perspective?

7 A. No. The tank has probably been gone  
8 since -- these numbers are not taken from early  
9 action. It's more for high priority corrective  
10 action.

11 MR. CLAY: The excavation was part of the  
12 corrective action.

13 MR. BAUER: That's correct.

14 MR. CLAY: Which was towards the end of the  
15 process.

16 And I'd like to remind the Board these 25  
17 sites that you're referring to in attachment A of our  
18 errata were used to compare it to the rate that we're  
19 proposing. It was not used to develop that rate.

20 QUESTIONS BY MR. DOTY:

21 Q. The sites that were used to come up with the  
22 excavation, transportation and disposal rates that you  
23 brought in this morning, do you have any idea of what  
24 the average volume was that was moved on each of these

1 jobs? I'm just curious. Do you know?

2 A. (BY MR. CLAY) No.

3 Q. But they would be used, same numbers, on  
4 early action during the removal of backfill material,  
5 which is probably quite a bit smaller volume than this  
6 list here? Is that fair to say?

7 A. (BY MR. CHAPPEL) I don't know.

8 MR. BAUER: We don't know

9 QUESTIONS BY MS. MANNING:

10 Q. Just to clarify on this discussion, which by  
11 the way, Mr. Clay, I appreciate you alerting the Board  
12 that, but, you know, from our perspective, that's a  
13 distinction without a difference as well, whether they  
14 were used to develop the rate or compare it to the  
15 rate that's been developed. It's a distinction  
16 without a difference.

17 But in any event, just so that we have this  
18 clarified for the record, the Agency is not able to  
19 testify as to any of the work was performed that led  
20 to the comparison of the rate or the actual rate  
21 itself based on these sites; is that correct?

22 A. (BY MR. CLAY) I don't think we have that  
23 information right now, no.

24 MS. MANNING: Thank you.

1           Let's move on then.

2                           Q.   Let's go to 63.  As it  
3   pertains to Section 734.820, drilling, well  
4   installation and well abandonment, Mr. Bauer stated  
5   that the Agency evaluated seven LUST sites and  
6   extrapolated the data for 2-inch monitoring wells.

7                           Could you explain how you extrapolate 2-inch  
8   wells to larger wells?

9           A.   (BY MR. BAUER)  The extrapolation was done  
10   just for like concrete and bentonite and sand, and how  
11   much was needed additionally.  For a 4-inch well, you  
12   would need twice as much as a 2-inch well.

13           Q.   The Agency, as a matter of course,  
14   particularly hasn't been involved in installing any  
15   large wells, have you?

16           A.   No.

17           Q.   Did you collect any data for the larger wells  
18   installation?

19           A.   I think we did collect some data, yes.  It  
20   wasn't an overabundance.

21           Q.   Would you provide that to us please?  Or tell  
22   us at least what kind of data you collected.

23           A.   I'd have to look into that.  I don't seem to  
24   have that here.  I thought I may.

1 MR. CLAY: We can look into providing that.

2 Q. Question 69. Referring to your testimony on  
3 page 15, Mr. Bauer, under the professional consulting  
4 service, free product removal, you state that the  
5 number of half days shall be determined by the Agency  
6 on a site-specific basis. How will the Agency make  
7 this determination?

8 A. (BY MR. CLAY) I'll respond to that.

9 Q. Thank you.

10 A. It would be based on the demonstration  
11 provided by the consultant or experience, and reviewed  
12 on a case-by-case basis.

13 Q. And when would the consultant make that  
14 demonstration?

15 A. They should make that on their initial  
16 submittal justifying how many half days are required.

17 Q. How many half days are required?

18 A. Yes.

19 Q. So the original budget is to amend --

20 A. Part of the plan and budgets submittal. I  
21 assume those would come in at the same time.

22 Q. Let's move to question 70.

23 HEARING OFFICER TIPSORD: Before we do that,  
24 Ms. Manning, let's go off the record.



1 [Off-the-record discussion.]

2 HEARING OFFICER TIPSORD: Back on the record  
3 then.

4 Q. (BY MS. MANNING) Going back to the question  
5 Mr. Clay just answered. Based on the submittal, this  
6 submittal would contain, would it not, an LPE or an  
7 LPG certification in that it's a budget?

8 A. (BY MR. CLAY) Yes, that's correct.

9 Q. And given that certification will be  
10 contained, what reliance does the Agency expect to  
11 have on the certification of the engineer and or the  
12 geologist that that amount of time is necessary to  
13 adequately perform the job?

14 A. That would certainly be considered.

15 I might add, too, though, that that is free  
16 product. So for the first 45 days, there will not be  
17 a budget, and it would just be based on the work that  
18 was done and demonstration

19 QUESTIONS BY MR. DOTY:

20 Q. In the first 45 days, the half days would  
21 still have to be demonstrated, even though the work  
22 has already been performed, right?

23 A. It would be demonstrated in the bill package.

24 MR. DOTY: Right, thanks.

1                                   QUESTIONS BY MS. MANNING:

2           Q.    If the Agency reviewer, who may or may not be  
3           an engineer or geologist, disagrees with the LPE or  
4           LPG certification as to what was reasonable, the  
5           Agency will reject that claim; is that correct?

6           A.    (BY MR. CLAY) We would either reject a claim  
7           or ask for further justification prior to taking  
8           action, one of the two.

9           Q.    And just so I understand the process, asking  
10          for further justification really is a denial. How  
11          does that work? When you ask for further  
12          justification in terms of your reimbursement process,  
13          do you do that by letter?

14          A.    I'll respond to that, and Doug Oakley will  
15          also respond.

16                       From a LUST section standpoint on the plan  
17          and anything involving the budget, it could be either  
18          through the project manager communicating with the  
19          consultant via telephone, asking for that information,  
20          or it could be written through a denial. I think  
21          that's simpler to what Mr. Oakley -- how he would  
22          handle it.

23                       But, Doug, do you want to comment on that?

24                       MR. OAKLEY: I process it very similar. For

1 instance, if a claim -- if we're waiting on a site  
2 classification completion report to be submitted so we  
3 can pay a site classification claim, it's not unusual  
4 to call a consultant and say could you fax us a copy  
5 of that as soon as you receive it? -- rather than send  
6 a final decision later denying it. We simply hold  
7 it. We can't hold it obviously 120 days.

8 MR. DOTY: I have a question.

9 QUESTIONS BY MR. DOTY:

10 Q. I assume you mean the reviewer may pick up  
11 the phone or draft a letter, whatever, to try to get  
12 some additional information? That their means of  
13 communication, is that kind of left up to them? Is  
14 there a preference that you offer? That first try  
15 this, then try this? Or is it just kind of left up to  
16 the reviewer themselves?

17 A. (BY MR. CLAY) It's pretty much up to the  
18 reviewer. But what I have said to staff in the past  
19 is that, you know, if we can get this information via  
20 a phone call, it's saving us a lot of time and effort.

21 Q. And they recognize that?

22 A. And they recognize that. And I mention it  
23 all the time. So I mean, that would certainly be our  
24 preference.

1           Now, you know, if there's 30 deficiencies,  
2 we're probably not going to make a phone call. If  
3 we're looking for one or two things, then my  
4 preference would be to make that phone call.

5           And, you know, the other thing, it depends on  
6 the workload of the individual. I mean, there may not  
7 be time for that. If we're at the 30th day in the  
8 process, then it only makes sense to make that phone  
9 call.

10                           QUESTIONS BY MS. MANNING:

11           Q. As a follow-up, we recognize, Mr. Clay, that  
12 there might be various different reasons why a permit  
13 reviewer would call or might not call the particular  
14 consultant that is requesting the claim.

15                           My question, though, is, is there any  
16 regulatory obligation that is present in these  
17 proposed rules that would require the Agency to give a  
18 heads-up, if you will, to an applicant for  
19 reimbursement and or corrective action and or a plan  
20 when the Agency intends a denial or intends a  
21 modification prior to making that decision final?

22           A. (BY MR. CLAY) No, there is not.

23           Q. Thank you. Is it the Agency's intention with  
24 these proposed rules, Mr. Clay, to really prescribe in

1 the first instance and at the front end, the amount of  
2 work, the number of hours that are necessary or that  
3 the Agency determines reasonable related to the  
4 specific tasks associated with underground storage  
5 tank removal and abatement and remediation regardless  
6 of the LPE/LPG certification?

7 A. It's not a matter of prescribing it. It's a  
8 matter of identifying what the Agency wants, and I  
9 guess the State, because these are rules that we're  
10 asking, but feel reasonable for the task to be  
11 performed.

12 Q. Thank you. Let's move to Question 72. This  
13 relates to Mr. Chappel's testimony on the  
14 reasonableness of the \$57 per yard rate for  
15 excavation, transportation and disposal.

16 In developing this \$57 amount, what  
17 consideration was given to owners and operators  
18 located in remote areas of the state? And what  
19 consideration was given to owners and operators  
20 located in the Chicago area who have higher landfill  
21 rates and longer truck times?

22 A. (BY MR. CHAPPEL) Well, I don't know.

23 Q. Actually, go ahead. Go ahead.

24 A. The second part, I don't know if I

1 necessarily agree that Chicago has higher landfill  
2 rates and longer trucking times due to traffic. I  
3 have no evidence of that.

4 Q. Okay.

5 A. Remote areas of the state, the information  
6 that we reviewed in developing all these rates, we did  
7 not take references to where they may or may not have  
8 been located or how far they had to go necessarily to  
9 a landfill. The numbers that we developed were based  
10 on our historical rates, what we were seeing in terms  
11 of budgets and reimbursement packages.

12 And when we developed our comparison table to  
13 see if we were in the right ballpark, the numbers that  
14 we have there we provided today. Where those are  
15 located in what city and what county, so.

16 And we provided the map that shows where we  
17 think the landfills are that can receive this type of  
18 waste in the State of Illinois.

19 HEARING OFFICER TIPSORD: Ms. Hesse?

20 QUESTIONS BY MS. HESSE:

21 Q. Mr. Chappel, when you said that the number  
22 was based on your historical information, did you have  
23 any charts or documents to back up that historical  
24 information? For example, can you find that on the

1 spreadsheet that we've marked as Exhibit 26?

2 A. (BY MR. CHAPPEL) The spreadsheet that I'm  
3 looking at that I believe you referred to, Exhibit 26,  
4 the numbers listed on there are the Agency's  
5 acceptable reasonable amounts for those two  
6 activities. It doesn't have anything listed, as far  
7 as I know, as to any kind of data accumulated or  
8 prepared from actual submittals.

9 Q. So there is no incidents that we can track  
10 back to, to come up with that number? Is that what  
11 you said?

12 A. Correct.

13 Q. It's a little hard to follow this document  
14 because of it being printed out on multiple pages.

15 When did you first start using the \$55 per  
16 cubic yard?

17 A. (BY MR. OAKLEY) Probably around 1995 maybe.  
18 That was, as I testified yesterday, a benchmark. If  
19 you could show us excavation, transportation, disposal  
20 for 55 or less, we considered it reasonable. If it  
21 was higher, we would ask for a detailed breakdown of  
22 excavation costs, transportation costs and disposal  
23 costs, all those invoices associated with all that.  
24 If you can justify a higher rate, then we consider

1 it. That's been my testimony all along.

2 Q. Excuse me a second.

3 MS. MANNING: While she's thinking, I'll ask  
4 a follow-up.

5 QUESTIONS BY MS. MANNING:

6 Q. It's your intention that this number is no  
7 longer a benchmark? But this number is the Agency's  
8 determination of what the maximum amount that it will  
9 consider reasonable, unless and until the applicant  
10 can make a showing under the extraordinary  
11 circumstances provision; is that correct?

12 A. (BY MR. CLAY) That's correct.

13 QUESTIONS BY MS. HESSE:

14 Q. Okay. You had mentioned that the \$55 number  
15 went back to about 1995. Has the Agency collected any  
16 additional data since then, other than what you  
17 testified to as the one exhibit you prepared for these  
18 hearings, as to try to document whether that was still  
19 an accurate number?

20 A. (BY MR. OAKLEY) Not that I'm aware of.

21 Q. And that's even though that sometimes people  
22 would come in and justify that perhaps they had a  
23 truck longer or something, and so they had reasonably  
24 higher costs?



1           A.    That's correct.  By the same token, we see it  
2   lower in certain cases.  So, yes, that's correct.

3                   HEARING OFFICER TIPSORD:  Ms. Manning?

4                   MS. MANNING:  Number 77.

5                   QUESTIONS BY BOARD MEMBER JOHNSON:

6           Q.    Just to reiterate something we talked about  
7   in Chicago.

8                   If someone -- obviously we keep referring to  
9   these figures as the maximum amount.  And as we said  
10   before, someone is going to have to submit a billing  
11   statement to justify that.  If they submit a billing  
12   statement that has a figure 20 percent lower than the  
13   maximum amount, that's what you're going to reimburse,  
14   correct?

15           A.    (BY MR. CLAY)  That's correct.

16                   BOARD MEMBER JOHNSON:  Okay.

17                   QUESTIONS BY MS. MANNING:

18           Q.    But if there's any amount above any of the  
19   amounts the Agency is determining to be reasonable in  
20   its proposed rules, that will be automatically  
21   rejected unless the applicant makes a demonstration  
22   under the extraordinary circumstances; is that  
23   correct?

24           A.    (BY MR. CLAY)  That would be correct.

1 Q. Thank you.

2 Number 77. Mr. Chappel, on page 7 of your  
3 testimony, you use a half-day rate to allow for the  
4 project planning/oversight, travel, per diem, mileage  
5 transportation, lodging and equipment, as well as  
6 plans, reports, applications for payment and  
7 documentation. And there is no provision for  
8 additional submittals. And I would assume if there is  
9 an additional submittal, the Agency would consider  
10 that not reasonable because it's all part of a lump  
11 sum.

12 Why was the data that you collected -- was  
13 the data you collected based on actual consultant  
14 information? Or was it based on certain assumptions  
15 of what would be reasonable? And if so, what are  
16 those assumptions?

17 A. (BY MR. CHAPPEL) The half-day rate, I'll let  
18 Brian respond to. I don't think I testified of any  
19 half-day rates in mine. Which part are you talking  
20 about?

21 MR. CLAY: This needs to be clarified because  
22 there are half-day rates which would include on site,  
23 oversight, travel, per diem, mileage, and then you've  
24 got plans, reports. None of that -- no plans or

1 reports are billed on a half-day rate.

2 Q. Where the Agency proposes half-day rates, on  
3 what basis did the Agency determine that a half day  
4 would be reasonable, a reasonable cutoff for the work  
5 performed that is signed off by an LPE or LPG that is  
6 determined to be reasonable?

7 A. (BY MR. CLAY) The half day is just a unit,  
8 okay? And the unit, I think, was actually suggested,  
9 as we said before, in our conversations with CECI. We  
10 have talked about a day or an hour. I mean, that's  
11 the unit. The rate itself, I think, we testified to  
12 yesterday as to how that was developed.

13 But is there concern that a half day is an  
14 inappropriate unit and should be a quarter of a day or  
15 an hour? I mean --

16 Q. Well, certainly we wouldn't want it less than  
17 a half a day. But we'll get into that with our  
18 testimony.

19 I don't think we have any further questions.  
20 Let's go to 78.

21 HEARING OFFICER TIPSORD: Excuse me. Just  
22 for point of clarification.

23 QUESTIONS BY HEARING OFFICER TIPSORD:

24 Q. We keep talking about half a day, and I think

1 you said yesterday -- how many hours is a half a day?

2 A. (BY MR. BAUER) Five.

3 HEARING OFFICER TIPSORD: Thank you.

4 QUESTIONS BY MR. DOTY:

5 Q. I have a question about the half day. It  
6 probably doesn't happen very often, but occasionally a  
7 day can go beyond the 10th hour. Is there going to be  
8 a third half day or a maximum of two half days?

9 A. I guess it would depend on the  
10 circumstances. They're based on other tasks.

11 Q. Supervising the dig and haul, that was a  
12 half-day example, right?

13 A. Right.

14 Q. If you're trying to beat the weather, like  
15 for right now, or taking advantage of extended  
16 daylight hours or whatever, if you can stretch your  
17 project on for any reason to maintain productivity  
18 beyond a 10th hour, can you expect to be reimbursed  
19 for that?

20 A. No. If you look at the definition of half  
21 days, it says it shall not exceed two per calendar  
22 day.

23 Q. So just go home?

24 A. Well, it's an extenuating circumstance. If

1 you demonstrated -- but you wouldn't bill it as  
2 another half day. You would make a demonstration that  
3 this is why it took me 12 hours.

4 Q. So demonstrate on the time and material basis  
5 through the historical circumstance, not the half day  
6 then?

7 A. Right.

8 MR. DOTY: Okay, thanks.

9 QUESTIONS BY HEARING OFFICER TIPSORD:

10 Q. Just on this half-day rate, I have another  
11 question.

12 Yesterday when we were asking questions of  
13 Mr. Bauer, he testified that he looked at the  
14 Department of Labor's overtime regulations, and it  
15 causes me to ask this next question.

16 Certainly the Agency doesn't presume that  
17 somebody's half-day rate or somebody's half day might  
18 be within a 9:30 to 5:00 work day. I mean, they could  
19 be doing that in the evening, at which point in time  
20 the consultant may have to be paying overtime for that  
21 expenditure. You wouldn't have any knowledge one way  
22 or another whether they would or wouldn't; is that  
23 correct?

24 A. (BY MR. BAUER) Right.

1 HEARING OFFICER TIPSORD: Thank you.

2

3 QUESTIONS BY MS. MANNING:

4 Q. 78. According to the Agency, a proposed  
5 alternative technology cannot exceed costs for  
6 conventional technology or other available alternative  
7 technologies. Mr. Chappel then explained that all  
8 plans and budgets will be reviewed for  
9 reasonableness.

10 Regarding the alternative technology -- and I  
11 assume this will be something that the Agency already  
12 has a sign-off on by an LPE or LPG  
13 certification -- what criteria will be used to  
14 determine whether the alternative technology is  
15 reasonable and who would make those determinations?

16 A. (BY MR. CHAPPEL) It will be made by the  
17 reviewer.

18 Q. The project manager?

19 A. Based on the regulations, which state that a  
20 conventional technology is \$77 in cubic yard cost. So  
21 the cost of the alternative technology would be  
22 compared to that.

23 Q. So it's the Agency's intention that if  
24 alternative technology is necessary for a particular

1 site or is justified for any reason for any technical  
2 and engineering reason, the applicant would -- the  
3 rate that would apply would be the conventional  
4 technology, unless or until a demonstration was made  
5 again under that particular provision, 730 -- what is  
6 it?

7 A. (BY MR. CLAY) The regulation stated that  
8 alternative technology -- and I'm referring to  
9 regulations that have been in existence, I believe,  
10 since '93. That the alternative technology cannot  
11 exceed -- I think it's exceed or exceed 5 percent over  
12 the conventional technology, okay? So that would be  
13 the first cut.

14 I mean, if you come in and the alternative  
15 technology is a hundred dollars a cubic yard as far as  
16 the area of contamination, and that could have been  
17 removed at \$77 a cubic yard, that would be denied,  
18 okay?

19 Q. A hundred dollars would be denied because the  
20 expectation is the only reasonable cost would have  
21 been 77?

22 A. No. It's because if it could have been  
23 removed under conventional technology, why would the  
24 Agency be expected to pay \$23 a cubic yard more for an

1 alternative technology?

2 Now, the alternative technology, the criteria  
3 for what's reasonable is not \$77 a cubic yard or  
4 less. It is based on the demonstration of what the  
5 consultant makes on time and materials. It's based as  
6 to what is reasonable.

7 And in most cases, we see alternative  
8 technologies significantly less than conventional  
9 technologies. So it's not anything less than 77 is  
10 going to be approved or considered reasonable. That  
11 would not be the case.

12 Q. The Agency would be making a determination,  
13 however, as to the reasonableness of the use of the  
14 alternative technology if that use exceeds a  
15 conventional cost; is that correct?

16 A. We would be making a determination whether  
17 there's a reasonable expectation that the technology  
18 would be successful in remediating the contamination  
19 to do appropriate cleanup objectives, yes.

20 Q. And is it correct that your project reviewer  
21 would make that determination?

22 A. What we would -- the project manager/reviewer  
23 would do the initial review. And in most cases, they  
24 would consult with their unit manager.



1           And we may even have a group of -- in the  
2 past, we had a group set up that would review these  
3 alternative technologies. There was a group of  
4 managers, a group of senior project managers that  
5 would look at these from consistency reasons, and make  
6 comments to the project manager that they could take  
7 back and relate to the consultant. It was not just  
8 one person in a cubicle making that determination.

9           They're going to see input through guidance  
10 documents, which we talked about at the last hearing,  
11 that PIPE had requested that the Agency put together.  
12 They're going to consult management and other  
13 expertise that's available to us.

14           MR. DOTY: May I ask a question?

15                       QUESTIONS BY MR. DOTY:

16           Q. If the cost comparison of the alternative  
17 technology to the conventional dig and haul, in a  
18 situation where a tank owner may be considering  
19 alternative technologies because the conventional  
20 cannot or for whatever reason not hit the 77 -- maybe  
21 it's too small of volume, too far to truck, whatever  
22 the reason is -- not extenuating. Or, I guess, would  
23 that be an extenuating circumstance? Is the dig and  
24 haul, the conventional technology, no longer the

1 option for him based on the volume or distance? Would  
2 that be an extraordinary circumstance?

3 A. (BY MR. CLAY) Yes.

4 Q. Yes, it would be? So in that situation, is  
5 he comparing, the owner/operator, the demonstration of  
6 the cost of the alternative technology -- is it to be  
7 compared to the cost of conventional technology at  
8 that particular site, even if that turns out to be \$87  
9 a cubic yard? What's the alternative technology cost  
10 trying to beat? Conventional side by side? Or do  
11 they have the \$77 cap, too?

12 A. What is it you're trying to compare? Are you  
13 trying to make a demonstration that you need more  
14 dollars per cubic yard to haul to the landfill?

15 Q. If the owner is wanting to propose or is more  
16 comfortable with an alternative technology than a  
17 conventional technology, for whatever reason, side by  
18 side comparison, at that particular site, is he  
19 comparing it to the actual cost, estimated cost, to  
20 dig and haul? Or is he comparing it to the \$77?

21 A. Initially it would be to the 57 and 20.

22 Q. And demonstration of the extraordinary  
23 circumstance, but doesn't want to use that particular  
24 technology, would prefer a send-to approach, for

1 example, what is he comparing his cost analysis to?

2 A. I think in that case, it would be to this  
3 extraordinary demonstration. Let me give you an  
4 example. We used this in the past.

5 If you have to excavate in downtown Chicago,  
6 you might because of the skyscrapers and everything,  
7 you may have to do additional shoring, take other  
8 precautions. It may cost more than \$77 for  
9 excavation, transportation and backfill.

10 Q. But some owners would prefer maybe an in situ  
11 approach? That's not so disruptive to a business, for  
12 example? For whatever reason, they would just prefer  
13 an in situ approach?

14 A. Right. That would have to be compared to  
15 whatever the cost of conventional technology for that  
16 site was determined to be, whether it be 77 or a  
17 higher demonstration is approved.

18 MR. DOTY: Okay, thanks.

19 MS. MANNING: We're moving to question 84.

20 I'm sorry. Ms. Hesse doesn't want to move on.

21 MS. HESSE: I'm sorry.

22 QUESTIONS BY MS. HESSE:

23 Q. Before we move to 84, one of the additional  
24 things in the proposed rules is, it appears to require

1 a comparison of one alternative technology to another;  
2 is that correct?

3 A. (BY MR. CLAY) That's correct.

4 Q. And what about the alternative technologies?  
5 Are you going to require -- first of all, does that  
6 require triple work in developing cost estimates if  
7 someone has to cost out the various types of  
8 alternative technologies?

9 A. We're not expecting, you know, you to look at  
10 12 alternative technologies or 6 alternative  
11 technologies and provide cost estimates. It's more of  
12 a cursory review.

13 You know, we've got a new technology here, or  
14 I could use injection of an oxygen release compound at  
15 half the cost. You know, I mean, I think it's going  
16 to be obvious. We're not going to get down to, well,  
17 you know, this is \$5,000 more, and therefore it's not  
18 approvable. I mean, we understand there's  
19 variations.

20 And so we're not expecting that you come in  
21 with every time the cost of other technologies -- any  
22 alternative technology submittal. However, the Agency  
23 may require that if we see a technology that is  
24 significantly higher than something similar that has

1     been used in the past by other consultants.

2           Q.    What if, for example, one consulting firm has  
3     a technology they use, and it's a certain cost, but  
4     it's a patented type of technology.  So that if  
5     anybody else wanted to use that technology, they would  
6     have to obtain a license.  Did you take anything like  
7     that into consideration?

8           A.    In terms of what?

9           Q.    In terms of cost comparison or who would be  
10    able to use what technology without violating a  
11    patent, infringing on someone else's patent?

12          A.    We didn't take that into account.  I mean, if  
13    there's a cost for getting a license for that  
14    technology, that would be part of the cost estimate,  
15    the overall cost as to the alternative technology.

16          Q.    So if someone, company wide, wanted to  
17    compare the cost of their Y alternative technology to  
18    company Xs, and Xs had it patented, so company Y would  
19    include any licensing cost in the cost comparison?

20          A.    Yeah.  I think we're looking at total cost.  
21    We would expect the total cost that you're asking for  
22    reimbursement to be compared.

23                            QUESTIONS BY MR. GOODIEL:

24          Q.    I have a follow-up on that.

1           If you submitted a corrective action plan  
2     justifying \$85 a cubic yard, you submit that plan with  
3     all the justifications, is the Agency then going to  
4     come back and say, no, you've got to look at  
5     alternative remediation? And if that is the case, how  
6     would that additional corrective action plan be paid?

7           A.    (BY MR. CLAY) It comes in, and it's \$85 a  
8     cubic yard, for whatever reason, for removal. And  
9     then we approve that, and then you would move on.

10          Q.    What's to keep you from saying 85 is too  
11     high, even though there's justification of we want you  
12     to look at alternative remediation? I mean that  
13     option is available to you? And just to -- I guess to  
14     plan for. That is my question.

15          A.    Well, I don't think it's an option available  
16     to us. I mean, the consultant -- or I shouldn't say  
17     consultant. Or the owner/operator always has the  
18     option of doing conventional technology. So I mean,  
19     if there's an alternative technology half the cost,  
20     and they want to dig it up, they can do that. And the  
21     regulations support that.

22                   HEARING OFFICER TIPSORD: Go ahead.

23                                QUESTIONS BY MR. DOTY:

24          Q.    I think I've come across in the past

1 some, "Are you sure you've considered other  
2 alternative technologies?" Or the Agency would prefer  
3 that you consider different technology or a different  
4 cleanup objective. That's been a denial in the past.

5           And I think where I may be going with the  
6 question is, if I get a response, an owner gets a  
7 response like that forcing him to submit another or  
8 even pretty much the same corrective action plan,  
9 whether he elects to be pushed in that direction or  
10 not, is he going to be expected to be reimbursed for  
11 one plan?

12           A.    (BY MR. CLAY) Well, I think part of that is  
13 looking at it on a case-by-case basis. There's a  
14 difference between changing your mind and doing, for  
15 example, a pilot study to find out this isn't going to  
16 work. So we would expect --

17           Q.    That's not what I'm asking.

18           A.    Well, I know. Okay. But the situation that  
19 I'm familiar with, and I think you're talking about,  
20 Duane, is you've got groundwater contamination, and  
21 there's an ordinance. We may have said have you  
22 considered using an ordinance? Or the contamination  
23 is so slightly above the tier 1 remediation objective  
24 and the proposal is to dig under 8,000 cubic yards.

1 And we said, well, have you considered anything else  
2 here? I mean, it would be orders of magnitude  
3 cheaper. I mean, I don't think we're saying you must  
4 do this.

5 But you know, I think, you know, we need to  
6 go on record by saying to the owner and operator, and  
7 the consultant, have you even considered this? As  
8 opposed to just blanketly approving it. So I mean, I  
9 don't think we've required that, but my knowledge  
10 is -- I mean, I don't think it's inappropriate for a  
11 project manager saying have you considered this?

12 Q. I wasn't -- I had no particular site in  
13 mind. I've just seen several letters over the last  
14 several months or years, or whatever, where they have  
15 asked to consider different objectives. I didn't have  
16 any particular site in mind.

17 A. Nor did I.

18 Q. Well, you mentioned -- I think I know the  
19 ones you're talking about. I wasn't talking about any  
20 particular site.

21 A. I wasn't talking about any either. I threw  
22 out those numbers.

23 Q. And I don't necessarily disagree that you  
24 probably do want some assurances that other options



1 have been considered, but does it have to be a  
2 rejection point forcing the owner/operator to submit a  
3 second plan?

4 A. Well, again, in my experience -- and you  
5 might have a specific example you're talking  
6 about -- that was not the only rejection point, I  
7 don't believe. Now, if that was the situation, I can  
8 review that.

9 Q. And in a hypothetical situation, does it have  
10 to be a rejection point? Can't the question just be  
11 asked instead of the plan rejected?

12 A. That's what I would prefer it to be asked in  
13 a phone conversation.

14 MR. DOTY: Good. I appreciate it.

15 QUESTIONS BY MS. MANNING:

16 Q. I'll ask a follow-up to a question to that as  
17 well.

18 Is it the Agency's expectation that that  
19 review and that question of that judgment would be a  
20 technical issue that somebody at the Agency's level  
21 who is an engineer or a geologist is actually asking  
22 the question in terms of whether they've considered  
23 something else? Or is it the Agency's expectation  
24 that reviewers who do not have any technical expertise

1 should be asking that question of the permit  
2 applicant, of the applicant?

3 A. (BY MR. CLAY) Well, I do think that's a  
4 technical issue, but I think every one of our project  
5 engineers have technical expertise. I don't think you  
6 have to have an engineering or geology degree or be a  
7 PE or professional geologist to have technical  
8 expertise. I would expect that question could be  
9 asked to any of my project managers.

10 Q. And you would then likewise expect that any  
11 of your project managers could deny it because they do  
12 not agree with the judgment of the licensed  
13 professional engineer or geologist who signed off on  
14 that technology being the most adequate and most  
15 reasonable?

16 A. Well, as I said, if that question comes up, I  
17 wouldn't expect that to be the only denial point or  
18 denial point. I would hope that there would be that  
19 conversation with the consultant and potentially owner  
20 and operator, you know, regarding have you considered  
21 these other options? So I don't see that as being the  
22 only denial point.

23 In all cases, the project manager is not  
24 signing that letter. Just the unit manager that is

1 reviewing that is signing that letter. So if they had  
2 any questions or concerns about the denial point, they  
3 would bring that up to the project manager.

4 Q. Again, there's no requirement in these rules  
5 for the Agency to again give a notice of potential  
6 denial or a conversation or have any kind of  
7 conversation between the permit manager or anybody  
8 above them with the person requesting the decision  
9 from the Agency; is that correct?

10 A. There is no requirement, no.

11 MS. MANNING: Thank you. 84.

12 HEARING OFFICER TIPSORD: Mr. Goodiel?

13 QUESTIONS BY MR. GOODIEL:

14 Q. If in hindsight that project manager suggests  
15 an alternative remediation, and the consultant and  
16 owner sees that, well, maybe this is more economical,  
17 the development of that second corrective action plan,  
18 what's the status on the reimbursement, on the  
19 development of that?

20 A. (BY MR. CLAY) We would look at that on a  
21 case-by-case basis. I can't say that in all cases it  
22 would be, you know, reimbursed. I think we'd have to  
23 look at that on a case-by-case basis.

24 HEARING OFFICER TIPSORD: Ms. Manning?

1 MS. MANNING: One second.

2

3

QUESTIONS BY MS. MANNING:

4

Q. Question 84. At the March 15th hearing, the

5

Agency was asked about remotely monitoring sites.

6

Does the Agency expect the owner/operator -- first of

7

all, does the Agency expect that they're going to be

8

monitoring sites or expect the owner/operator to pay

9

for remote station monitor sites? I mean, I guess

10

this is just some follow-up that we want in terms of

11

what your point was at that March 15th hearing about

12

the remote monitoring.

13

A. (BY MR. CLAY) If the Agency requires a

14

remote monitoring, it would be to replace frequent

15

trips to the remediation site to monitor whether the

16

treatment unit was still operating or operating

17

effectively. And it would be more the purpose of

18

saving corrective action costs. You know, if we did

19

require this monitoring, the Agency would reimburse

20

for that remote monitoring at a reasonable cost.

21

MS. MANNING: Thank you.

22

HEARING OFFICER TIPSORD: All right. With

23

that, I think the 30 minutes arrived. I want to thank

24

you all for keeping focussed and sticking with

1 questions. We're moving right along. Let's take an  
2 hour lunch break. We'll come back at 12:30. And  
3 hopefully we'll have some more details on the  
4 hearing. Thank you.

5 [Lunch break.]

6 HEARING OFFICER TIPSORD: We're back on the  
7 record. And we'll go zipping right along.

8 QUESTIONS BY MS. MANNING:

9 Q. Number 86. If I'm skipping any of these, I'm  
10 doing it intentionally.

11 HEARING OFFICER TIPSORD: Okay.

12 Q. 86, this is a short question.

13 On page 23 of the hearing transcript,  
14 Mr. Oakley referred to discussing and consulting with  
15 owners and operators. Did you really mean that you  
16 talked to specific owners and operators in development  
17 of these rules? And if so, which ones?

18 A. (BY MR. OAKLEY) During the course of my  
19 everyday activity, I speak with lots of consultants  
20 and owners/operators. It's just a general part of my  
21 duties. I have probably spoken to most people in this  
22 room at one point or another. I don't keep specific  
23 phone logs. So the answer to the question is, I can't  
24 specify which owner/operator.

1 Q. Thank you. I'm informed that we want to go  
2 back to 85, too. So I'll take you back.

3 The Agency stated on the record, I believe,  
4 at the last hearing, that no permits were allowed  
5 primarily because of the incident with the escalated  
6 NPDES permit rates. Has the Agency considered  
7 allowing an exception for LUST sites with the Bureau  
8 of Water? And what is the Agency's position with  
9 permits of vis-a-vis the underground storage tank  
10 sites?

11 A. (BY MR. CLAY) I'll answer the first part of  
12 that, and Gary can answer the second part.

13 The first part is, it's not a matter of  
14 having an agreement with the Bureau of Water. I mean,  
15 that would be a statutory change. So we couldn't just  
16 have an agreement with them to implement that.

17 Q. Thank you.

18 MR. KING: I mean, the way you phrased the  
19 question, are you talking about why has the Agency  
20 seen fit to disadvantage owners and operators? Is  
21 that it?

22 MS. MANNING: I'm going to defer to Joe  
23 Kelly.

24 Joe, would you like to ask this question?



1     whether, in essence, the UST fund was supplementing a  
2     number of other Agency and non-Agency activities  
3     through permit fees. And the more we thought about  
4     it, we really didn't think that that was appropriate  
5     for the UST fund to be supporting those other  
6     programs.

7           Q.     (BY MR. KELLY) But wasn't that an act of the  
8     governor? I mean, if I'm the owner/operator, it's not  
9     my fault that all of a sudden they decided to go from  
10    zero dollars for an NPDES permit when we  
11    had -- there's owner/operators who have gotten bills  
12    for \$10,000 that didn't cost them anything.

13           I agree with transferring more money from one  
14    department to the other. But if I'm the  
15    owner/operator, and all of a sudden I'm faced with a  
16    \$10,000 NPDES permit bill -- and I agree. I can see  
17    the logic of why should I transfer state money from  
18    the LUST fund over here to the Bureau of Water? How  
19    is that my fault as the owner/operator?

20           A.     (BY MR. KING) Is that a rhetorical question?

21           Q.     Yes.

22           A.     Well, I guess it's a statement.

23           BOARD MEMBER GIRARD: Can I ask him a  
24    follow-up question?



1                   QUESTIONS BY BOARD MEMBER GIRARD:

2           Q.    Do you think there's a statutory problem with  
3    paying for these permits out of the UST fund?

4           A.    (BY MR. KING)  I don't think it's a statutory  
5    problem.  As we've seen the situation develop over the  
6    last year with regards to the various funds that are  
7    in place and functions that the Agency and other  
8    agencies have, it just didn't seem to us to be logical  
9    for the UST fund to be supporting those programs  
10   through payment of reimbursement fees.

11                   I mean, we had an example.  To give you an  
12   example, what we had happen this year is there was a  
13   transfer of money, a conscious transfer of money out  
14   of the UST fund to the Agency's Bureau of Air program,  
15   okay?  That was 30 million dollars that was  
16   transferred.  But at the same time, the Agency was  
17   given authority to reimburse owners and operators  
18   30 million dollars out of the antipollution bond  
19   fund.

20                   I think if there's going to be a decision to  
21   use the UST fund to buttress other programs, I think  
22   it needs to be a conscious decision made by those who  
23   are responsible for determining how programs within  
24   the state are funded, rather than just kind of the

1 Agency making a de facto funding of other programs  
2 through the reimbursement of calling other fees  
3 reimbursable.

4 The other factor was just -- was the lack of  
5 control on some of these things. What if, for  
6 instance, some local government decides to impose a  
7 very, very substantial fee relative to tank sites? I  
8 mean, is it then going to be the state UST fund now  
9 supporting the local government's efforts because they  
10 see that as an opportunity to get money from the  
11 state? I mean, it just seemed to us the more we  
12 thought about it, that having a de facto support of  
13 other programs and other funds from the UST fund just  
14 didn't seem to be appropriate.

15 Q. But the bottom line is, you cannot carry on  
16 these activities without a permit, can you?

17 A. Right. That would be the responsibility of  
18 the owner/operator to pay those fees to get the  
19 permits.

20 Q. But won't that then skew the, you know, the  
21 types of treatment they will be looking at if --

22 A. Well, it could make a difference.

23 And, for instance, one of the things that we  
24 had discussed relative to the NPDES fee on long-term

1 pump and treatment systems, we have been concerned  
2 over a number of years, because we've had pump and  
3 treat systems that have been in place, for sometimes a  
4 decade, that have not finished the job. And, you  
5 know, we continue to reimburse those and reimburse  
6 those.

7           And if all of a sudden now an owner/operator  
8 is going to be responsible for paying an NPDES fee  
9 relative to that system, they may actively decide to  
10 choose a different mediation and finish up the  
11 project. So it could have some impact on the nature  
12 of the technology chosen, but I don't know that that's  
13 necessarily wrong or bad public policy.

14           Q.   When the plan was approved for a treatment  
15 system like the example you used, you would have had  
16 those costs in that plan on a per year basis?

17           A.   Not necessarily, because we're talking about  
18 projects that -- we have projects that are still  
19 ongoing that were put in place in the early '90s  
20 before we even had a budget review system, and there  
21 was no NPDES fee at that time.

22           BOARD MEMBER GIRARD: Thank you.

23           QUESTIONS BY MS. MANNING:

24           Q.   As a follow-up to that.

1           And leaving aside NPDES permit fees, because  
2           historically nobody paid an NPDES permit fee. It's  
3           correct, is it not, that the Agency historically,  
4           pursuant to the UST fund, has paid OSFM removal fees,  
5           IDOT oversize load permit fees and various land bureau  
6           permit fees, and in these proposed rules is asking the  
7           Board to discontinue that practice?

8           A.    (BY MR. KING) Yes, we have paid those. And,  
9           yes, we are asking the Board to adopt a different  
10          regulation from the way we have operated.

11          MS. MANNING: Thank you.

12          HEARING OFFICER TIPSORD: Ms. Hesse?

13                    QUESTIONS BY MS. HESSE:

14          Q.    Just as an additional follow-up.

15                    Now, to do this work if a permit is required,  
16           for example, an air permit, that would also be part of  
17           the overall plan for doing remediation, right?

18          A.    (BY MR. KING) A permit is required based on  
19           the technology that's being used, yes.

20          Q.    And so that they would have to obtain a  
21           permit, right?

22          A.    Yes.

23          Q.    And under the Act, isn't the Agency required  
24           to reimburse reasonable costs?

1           A.    That's true, yes.

2           Q.    And if getting a fee of complying with what's  
3 required under the Act to do the work, isn't that  
4 something the Agency would consider reasonable?

5           A.    We have considered that to be a reasonable  
6 cost in the past.  We are proposing that we're  
7 adopting a rule that says that's no longer an eligible  
8 cost.  I mean, we have various categories of items  
9 within the rules that the Agency had paid on over the  
10 years.

11                   And we came to the Board and requested that  
12 the Board adopt a different rule from the way things  
13 have been administered.  So the decision on matters of  
14 public policy and in this kind of issue as to what is  
15 a reasonable cost and what is an eligible cost,  
16 ultimately lies with the Board in their rule-making  
17 function.

18           MS. HESSE:  Okay.

19           HEARING OFFICER TIPSORD:  Ms. Manning?

20           MS. MANNING:  Thank you.

21                   QUESTIONS BY MS. MANNING:

22           Q.    Just to follow-up, too.  On the Clean Air Act  
23 transfer of 30 million dollars, Gary, Mr. King, that  
24 money is available to be used for the UST fund and has

1     been used, however, through the bonding authority; is  
2     that correct?

3             A.     (BY MR. KING)  Yes.

4             Q.     Okay.  So an additional bond was sought for  
5     that 30 million dollars?

6             A.     I don't know the mechanics of -- I don't know  
7     the mechanics of when bonds were issued and what  
8     exactly was done.  However, it's very clear in looking  
9     at the comptroller site, you know, we paid out  
10    \$29,997,634, or whatever it is, from the antipollution  
11    bond fund to go to for reimbursement of underground  
12    storage tank sites.

13            Q.     But you don't have an end date?  Do you know  
14    whether that ends at the same time?  I think you  
15    testified that the bonding authority ends in 2013 or  
16    2014?

17            A.     That's a different issue.  The money, it's  
18    money coming out of the UST fund on a monthly basis to  
19    pay debt service on bonds that were issued back in the  
20    early '90s.  The 30 million dollars that we were  
21    provided in bond -- from bonds this time, there was no  
22    additional debt service on that.

23                                QUESTIONS BY BOARD MEMBER RAO:

24            Q.     I have a follow-up.

1           Mr. King, you mentioned that in the past, the  
2 Agency was reimbursing for these permit fees or any  
3 associated fees. Do you have any information as to  
4 what percentage of the overall, you know,  
5 reimbursement that, you know, the permit fees and such  
6 were considered on an annual basis?

7           A. (BY MR. CLAY) The air fees, I think, were a  
8 few hundred dollars. I'm not real sure, but I mean,  
9 probably some of the consultants could speak to that  
10 better.

11           And you said reimburse all fees. We've never  
12 reimbursed all fees, because there's examples where  
13 someone has come to us and said this off-site person,  
14 you know, wants a fee for off-site access, and we said  
15 that's not a reimbursable cost.

16           And, again, it goes to where is the limit?  
17 How do you limit that? You know, if the person says  
18 they want a million dollars to come on site, is that  
19 something that's going to be expected to be  
20 reimbursed?

21           QUESTIONS BY BOARD MEMBER JOHNSON:

22           Q. Is your proposal then to disallow these  
23 permit fees that you previously allowed, is that based  
24 upon a policy decision in order to make that

1 consistent because of the NPDES?

2 A. (BY MR. KING) I think that's true. I don't  
3 know exactly what's up with the NPDES issue relative  
4 to the legislation. But we just thought from -- as we  
5 thought about it in the public policy issue, we were  
6 led into that thought process by the NPDES issue, but  
7 I don't think it's dependent upon that issue.

8 MR. CLAY: And I might add, in the past,  
9 there were a few fees, and now there's soon to be more  
10 fees, and was a extremely small percentage, probably  
11 less than a percent.

12 And now, you know, if you're talking about  
13 these 10-year pump and treat systems, you're talking a  
14 hundred thousand dollars, which has now become a  
15 significant portion, you know, of the cost. And that  
16 needs to be taken into consideration and taken into  
17 consideration when the owner chooses that remediation  
18 if they're going to be asked to pay that fee.

19 MR. RAO: Thank you.

20 QUESTIONS BY MR. DOTY:

21 Q. I have a couple questions.

22 I understand the concern with the NPDES fee.  
23 They went from next to nothing or nothing to a whole  
24 lot of money. And did you not consider that as just



1 the cost of remediation compared to other  
2 alternatives? I mean, can that kind of take care of  
3 itself that way, now that particular methodology has  
4 become \$10,000 a year more expensive compared to a  
5 different technology? I mean, you can address that  
6 situation.

7 But I think I'm probably a little bit more  
8 concerned with the owner/operator doesn't always have  
9 a choice when addressing leaving an underground  
10 storage tank system to avoid a permit situation,  
11 whether they're removing, abandoning --

12 HEARING OFFICER TIPSORD: Could you get to  
13 your question please?

14 Q. Yeah. I mean, that was taken into  
15 consideration in this decision-making process that  
16 some of these permits are not exactly avoidable?

17 A. (BY MR. KING) I really don't have anything  
18 further to add in response to that, to what I said  
19 before.

20 MR. DOTY: Okay. That was it.

21 HEARING OFFICER TIPSORD: Ms. Manning?

22 QUESTIONS BY MS. MANNING:

23 Q. Number 87. Mr. Bauer, you  
24 testified -- and it's found on page 26 of your hearing

1 transcript. When you were discussing, I believe,  
2 appendix E, that the reimbursed personnel rate was  
3 based on the task performed, not necessarily the title  
4 of the person performing the tasks. Since tasks are  
5 delineated in the table, how do you expect that the  
6 owner/operator will be able to know what's allowed?  
7 What particular title the Agency determines is  
8 reasonable to be doing what specific task?

9 A. (BY MR. BAUER) We did provide a document  
10 called personnel title descriptions and duties  
11 summary, and that was located on page 34 of the draft  
12 budget billing forms. That was submitted in the first  
13 hearing as an exhibit, I believe.

14 HEARING OFFICER TIPSORD: I'm sorry. We're  
15 losing you. Could you speak up?

16 MR. BAUER: It was part of the draft budget  
17 billing forms that was submitted at the first hearing  
18 as an exhibit. I don't know which number.

19 MS. MANNING: I don't believe it's been put  
20 into evidence.

21 MR. BAUER: Oh, maybe it hasn't then.

22 MR. ROMINGER: I believe we did at the first  
23 hearing.

24 HEARING OFFICER TIPSORD: As an exhibit?

1           MR. ROMINGER: Yes. If not, we can do a new  
2 one.

3           HEARING OFFICER TIPSORD: Let me check the  
4 list. I seem to have misplaced the exhibit that had  
5 the first 15 exhibits on it. We'll check. If not, we  
6 can get that at the next hearing.

7           MS. MANNING: We'll move on to another  
8 thing. 91.

9           Of course, if anybody else feels free to  
10 answer any of these questions, if you're dying to hear  
11 the answers of them, feel free to go ahead and do it  
12 yourself.

13                           QUESTIONS BY MS. MANNING.

14           Q. 91. A LUST site has been classified as a  
15 high priority site. However, additional plume  
16 identification work is required to define the degree  
17 and extent of the contamination before a corrective  
18 action plan can be developed.

19                           These are a series of questions, by the way,  
20 that we would refer to as "real world" examples  
21 similar to those that were talked about yesterday by  
22 Jay Cook.

23                           Part A. Will the work be required -- will  
24 the work required to develop the plume identification

1 corrective action plan be reimbursed?

2 Part B. How will the drilling of boreholes  
3 and installation of monitoring wells be reimbursed?

4 And part C. After completion of the plume  
5 identification work, how will development of the  
6 remediation CAP be reimbursed?

7 And part D. Does the Agency expect that the  
8 plume identification corrective action plan will be a  
9 non-reversible expense for the owner/operator or that  
10 the remediation corrective action plan will be a  
11 nonreimbursable expense for the owner and operator?

12 A. (BY MR. BAUER) For 91, a), sites classified  
13 pursuant to method one or two would require additional  
14 work to define the extent of contamination, and these  
15 costs will be considered reimbursable.

16 Q. What additional work? So if the licensed  
17 professional engineer, licensed professional geologist  
18 determines that a certain amount of work is necessary  
19 in order to meet, a), the Agency will consider that  
20 reasonable in terms of time and material?

21 A. (BY MR. CLAY) What we would do is look at  
22 how it compares to the stage one and stage two and  
23 stage three. For example, if the work required after  
24 the site classification was just off-site delineation,

1 then we would compare that to stage three. If it was  
2 on site and off site, then it would be, you know,  
3 conceivably stage one, stage two and stage three. So  
4 it depends on where it fits in. If it was  
5 classification under method, 732.312 should have  
6 defined the full extent as part of the classification.

7 MR. WIENHOFF: Jeff Wienhoff for CW3M.

8 QUESTIONS BY MR. WIENHOFF:

9 Q. If I understand, that's the intent, but could  
10 you cite where the half day for the drilling and those  
11 kind of numbers are actually in 732?

12 HEARING OFFICER TIPSORD: Could you repeat  
13 your name?

14 MR. WIENHOFF: Jeff Wienhoff, CW3M Company.

15 MR. CLAY: All of the half-day rates and all  
16 of that is in Subpart H.

17 Q. (BY MR. WIENHOFF) Right. I understand  
18 that. But I don't believe that the half days for the  
19 drilling is anywhere in 732 Subpart H. I may be  
20 incorrect, but it's only 734 Subpart H.

21 A. (BY MR. BAUER) The way we have always did  
22 that would be a site-specific review.

23 QUESTIONS BY MS. MANNING:

24 Q. Mr. Bauer, what is a site-specific review?

1 Would you explain this and go through that for us?

2 A. (By Mr. Bauer) What we're considering a  
3 site-specific review, I guess, would be where it --

4 MR. CHAPPEL: A site-specific review is very  
5 similar to the question under 91. It applies to one  
6 site has one question and has one answer. It can't be  
7 applied to the other 10,000 LUST sites. Let me finish  
8 my answer.

9 Q. Mr. Chappel --

10 A. It's one site, one question and one answer.  
11 It cannot be applied to the other 10,000 sites in the  
12 state.

13 Q. You'll have to excuse me. I don't understand  
14 how that applies from a procedure and process point of  
15 view, and the Board is here to develop rules asked for  
16 by the Agency.

17 And I think that all we're doing is asking to  
18 have an answer in terms of when the Agency does a  
19 site-specific review, what's the expectation on the  
20 part of the Agency vis-a-vis the consultant filing  
21 either the corrective action plan or the budget report  
22 in terms of designated as something site specific that  
23 gets it into a different process than just an  
24 automatic denial because it doesn't fit the program.

1           A.    (BY MR. CLAY) I think what we're looking at  
2 right now, I think what the idea was, depending on  
3 where you are at in the classification process, you  
4 would opt into or you would follow 734 to complete  
5 that site classification.

6                   And, again, it would be where are you in the  
7 process? I mean, you may have already done some site  
8 investigation beyond classification when these rules  
9 become effective, but you may not have fully did it.  
10 So we would look at where you are in the process and  
11 what plans, reports would apply.

12                   And the half day, I mean the half day, I  
13 think, you know, for borings in a half day is going to  
14 apply. I don't think -- you know, unless you can  
15 justify it otherwise, that two borings is all I can do  
16 in a half a day in the classification, but in site  
17 investigation, I can do four. I mean, unless you can  
18 justify that, you know, it would apply to the four,  
19 the half-day rating.

20                                   QUESTIONS BY MR. WIENHOFF:

21           Q.    I understand what you're saying, but for  
22 simplification, wouldn't be easier if you just simply  
23 inserted that paragraph into 732? So instead of just  
24 assuming that that's what's going to happen? Couldn't

1 you just have added those Subpart H paragraphs into  
2 732?

3 A. (BY MR. CLAY) We will take that under  
4 advisement and consider recommending to the Board that  
5 they add the half-day rate to 732.

6 MR. WIENHOFF: Thank you.

7 BOARD MEMBER JOHNSON: Consider what, Doug?  
8 I'm sorry.

9 MR. CLAY: Recommending to the Board that  
10 they add the half-day rate to 732 Subpart H.

11 HEARING OFFICER TIPSORD: Go ahead.

12 QUESTIONS BY MR. KELLY:

13 Q. I have one follow-up question with regards to  
14 that.

15 732, under these regulations of 732  
16 corrective action plan and 734 equivalent action plan  
17 would be reimbursed the same amount for conventional  
18 technology, correct?

19 A. (BY MR. CLAY) That's correct.

20 Q. However, if you're doing all this drilling  
21 and plume remediation, which needs to be included in  
22 the 732 CAP, but not in the 734 CAP, wouldn't the cost  
23 be higher to prepare that 732 CAP because you have to  
24 report all this half day of drilling and stuff that



1 you're doing in order to prepare your 732 CAP?

2 MR. CLAY: Brian?

3 MR. BAUER: The half days are not part of  
4 that.

5 Q. No, no. I understand that.

6 But there's \$5,120 for a CAP in both sites in  
7 734. You've got \$9,600 and defined your plume for all  
8 your reporting for however many, 20 wells. But in  
9 732, if you do site in stage one, you've done four  
10 wells, and then you have to go back and do the other  
11 16, and also report that as part of your CAP.

12 So that \$9,600 of reporting, or say, stage  
13 one of the \$4,800 of reporting that you get in 734 is  
14 not allowed for that plume delineation in 732, because  
15 it has to be reported there. But yet the cost of the  
16 CAP are the same.

17 A. (BY MR. CLAY) I guess I'm not understanding  
18 the question. I think the plume delineation is once  
19 you -- aside from method one and method two, the plume  
20 delineation in 732 and 734 is exactly the same.

21 Q. Right. However, you have to -- in a CAP in  
22 734, you don't have to report that plume delineation,  
23 and a CAP in 732, you do have to issue the report, the  
24 analytical and the boring logs and all those things in

1 the 732 CAP, high priority CAP, that you don't have to  
2 report in your 734 high priority CAP because you  
3 already submitted it.

4 A. I mean, we would consider if you're  
5 doing -- I mean, I've done method one and method two.  
6 So you've still got to do your high priority CAP to  
7 define the extent. That's where we would be looking  
8 at how this fits into a stage one, stage two and stage  
9 three report preparation.

10 So I mean, we would reimburse those costs in  
11 accordance with those plans. So we just need to see  
12 where it fits in. That's where -- you know, we can't  
13 very well say, you know, you'll get stage one, stage  
14 two, stage three if what all you need to do is what's  
15 equivalent to stage three.

16 Q. But there is nowhere in 7 -- is there  
17 anywhere in 732 which provides for that payment?

18 A. I thought there was, but we will review that.

19 MR. KELLY: Thank you.

20 QUESTIONS BY MR. DOTY:

21 Q. I think that's pretty much where I was  
22 going.

23 The reimbursement as far as allowable costs,  
24 the reporting of, do you need to pick up a stage two,

1 the reimbursement process, and the ceiling, the cost  
2 containment of ceilings would also apply? So would  
3 the 732 be eligible for reimbursement after approval  
4 of the stage three CAP, similar to what you're  
5 proposing?

6 A. I mean, I think we intended that to be paid  
7 consistent with 734. So we'll review that. I mean,  
8 if it's not clear or we think we need to make changes,  
9 that's fine. Or at least we'll identify how we see  
10 that working based on current wording.

11 Q. It's just a substitution for what's commonly  
12 called like a pre CAP is what I've seen referred to  
13 it. It's called a different report, but parallels the  
14 stage one, two and three process?

15 A. Right, right.

16 MR. DOTY: Thanks.

17 HEARING OFFICER TIPSORD: Ms. Manning?

18 QUESTIONS BY MS. MANNING:

19 Q. 92. A LUST site is very small and requires  
20 only one round of drilling on site. Stage 1 site  
21 investigation as defined in sections 734.315, stage 1  
22 investigation. The stage 2 site investigation is not  
23 needed because the stage 1 investigation extended to  
24 the property boundaries. The state 3 investigation

1 involves up to three rounds of drilling with off-site  
2 access required for two highway authorities and four  
3 different off-site property owners. Two of the  
4 off-site properties are owned by corporations with  
5 several tiers of management and multiple application  
6 forms necessary to authorize access. The cost to  
7 identify and secure the multiple off-site access  
8 agreements exceed the maximum payment amount as  
9 provided in Subpart H, Section 734.845, professional  
10 consulting services. The owner/operator is notified  
11 and billed for the work necessary to advance the stage  
12 3 investigation.

13 Part A. Will the work required to obtain the  
14 multiple off-site access agreements be reimbursed?

15 And Part B. Does the Agency expect that the  
16 site-specific cost to obtain multiple off-site access  
17 agreements will be a nonreimbursable expense for the  
18 owner/operator based upon the maximum payment amounts?

19 A. (BY MR. CLAY) If it's determined reasonable  
20 based on the consultant's demonstration, and in our  
21 view, then it would be reimbursable.

22 But I mean, you know, that's where you need  
23 to -- the consultant needs to justify, you know, that  
24 time to get any off-site access. I mean, there is a

1 limit. We've had companies work on off-site access  
2 for several years. They're doing that for liability  
3 purposes, but I don't think that we would consider  
4 that reasonable for reimbursement.

5 Q. And how is that justification made? Largely  
6 on paper?

7 A. Yes. I mean, I would expect that I call this  
8 person, I call these people asking for off-site access  
9 or send them a letter. This is how much time it took  
10 for each one, and you know, we met with these people,  
11 or I met with their attorneys, and this is how much  
12 time it took. I mean, I would expect, you know, that  
13 kind of documentation.

14 Q. And if the reviewer who is reviewing it and  
15 reading that piece of paper decides that in that  
16 person's opinion, that's not a reasonable expenditure,  
17 it will be denied? And the course of action would  
18 either be an appeal to the Board or give up on that  
19 expenditure; is that correct?

20 A. I think if there's any budget issues that  
21 fall under this extraordinary -- or don't fall under  
22 the Subpart H lump sum ratings, it would go to this  
23 rule, what we talked about yesterday. So it would not  
24 be that one person making that decision. It would be

1 a group of Agency managers making that decision.

2 HEARING OFFICER TIPSORD: Ms. Hesse?

3 QUESTIONS BY MS. HESSE:

4 Q. You had mentioned this group. Is that the  
5 PHE group?

6 A. (BY MR. CLAY) This is a new group.

7 Q. Is it going to have a function similar to the  
8 existing BAG?

9 A. It would be similar. It would be looking at  
10 anything that falls outside of the realm of Subpart H.

11 Q. In your experience, how often has BAG  
12 overridden a project manager's recommendation and  
13 allowed for higher reimbursement than the project  
14 manager is going to allow?

15 A. I wouldn't have that information.

16 Q. Has it happened ever?

17 A. It has happened, but I couldn't tell you how  
18 many times.

19 Q. Once, twice?

20 A. I don't know. I really don't.

21 Q. Do you keep records of that?

22 A. Records of -- I don't think so. I don't  
23 think we have records of the project manager  
24 recommendations, I don't believe.

1                                   QUESTIONS BY MS. MANNING:

2           Q.   Mr. Clay, on this management group, will you  
3 be proposing or will the Agency be putting a manager  
4 group into place formally, procedurally through, for  
5 example, an EPS rule making?

6           A.   No.

7           Q.   So you could have it today and not have it  
8 tomorrow if the Agency found that it wasn't serving  
9 its purpose; is that correct?

10          A.   That's correct.

11                               MS. MANNING:   Okay.

12                               QUESTIONS BY BOARD MEMBER JOHNSON:

13          Q.   And it's specifically a group that you intend  
14 to put together to review these, what, 855 situations?

15          A.   (BY MR. CLAY) Yes, that's correct. And the  
16 reason for that would be for consistency of our  
17 conversations with regard to 855.

18          Q.   You're going to be busy.

19                               QUESTIONS BY MS. MANNING:

20          Q.   And just to follow up with that as well.  
21 Since there's no formal opportunity for the  
22 owner/operator to factor in, other than the papers  
23 that are presented to the Agency, I assume this review  
24 would be an internal management discussion of what's

1 on paper?

2 A. (BY MR. CLAY) That's true.

3 MS. MANNING: Thank you.

4 MR. ALBARRACIN: I would like to correct  
5 that. The BAG group no longer exists. I just wanted  
6 to say that.

7 Q. (BY MS. MANNING) What's the distinction  
8 between the BAG group and this new group that's going  
9 to be formed?

10 A. (BY MR. ALBARRACIN) The BAG group reviewed  
11 all budget decisions that came before it, only budget  
12 decisions.

13 MR. CLAY: There's not that much distinction  
14 between it. It was a group that we used prior to not  
15 using the rates. It's been disbanded. I don't know  
16 what we call this new group.

17 Q. BAG. I'm just kidding.

18 A. (BY MR. CLAY) Let me add one more thing,  
19 though.

20 That, you know, you talked about these  
21 decisions being made in writing. I don't think that's  
22 inconsistent with any decision that the Agency may  
23 make, or for that matter, a lot of other agencies  
24 make. I mean, they make it based on the written



1 documentation they give.

2 We have meetings, you know, usually upon the  
3 consultant's request, face-to-face meetings on issues  
4 just like every other group in the Agency. Some  
5 groups do have draft permits, but I think they take  
6 response to those in writing. I don't think it's a  
7 group that sits down to make that decision. I think  
8 it may be a draft permit, but they don't have the  
9 volume by any means that the LUST section has.

10 So, yes, it's generally expecting that an  
11 argument or an argument to defend an application or a  
12 request for plan approval or corrective action  
13 approval or a NFR letter is documented in writing and  
14 presented in writing.

15 Q. You're aware, though, are you not, Mr. Clay,  
16 that there's Board case law dealing with a permit  
17 review process that before any permit denial is  
18 formalized by the Agency, there's an expectation that  
19 the permit applicant will be given what's referred to  
20 as a wells (phonetic) letter, which is a notification  
21 of the expected denial, and opportunity to present  
22 information in order to get that permit heard that  
23 would be then part of the permit record?

24 A. (BY MR. CLAY) I am aware of that. And I

1 believe that that document, that presentation would be  
2 expected to be made in writing.

3 And, again, the permit, those permits are  
4 usually pretty significant permits, you know, volume  
5 wise or size wise, but they don't have the number of  
6 sites, the volume that we have. And so I'm not sure.  
7 I don't think that is an option for us to issue a  
8 draft every time we're getting ready to make a  
9 decision.

10 Q. Some of these reimbursement sites, though,  
11 are upwards of the request -- for the whole site is  
12 upwards of \$300,000? Is that not --

13 A. In upwards of a million dollars.

14 Q. Yes.

15 A. That's correct.

16 Q. And there are permit decisions that the  
17 Agency makes that are much lesser in terms of the  
18 cost?

19 A. I don't think permits require any cost  
20 analysis.

21 MS. MANNING: Thank you.

22 MR. KING: I'm getting a little confused  
23 here. I mean, the permit programs, I mean, that I'm  
24 thinking about, they have to do a public action with

1 regards to whether they're going to approve or deny a  
2 permit. I mean, are you suggesting that we somehow  
3 have a process that we ahead of time are notifying  
4 everybody of every decision we make in a public form?

5 Q. (BY MS. MANNING) Well, let me suggest to you  
6 that my question is geared actually toward the idea  
7 that an Agency decision at any point in the process in  
8 the underground storage tank program is considered a  
9 permit decision and the permit appeal is attached to  
10 go to the Board, and it's treated as a permit  
11 decision, and that's how your process treats it.  
12 That's how the Board process treats it. And that's  
13 the focus of my question.

14 A. (BY MR. KING) Well, I think if you want to  
15 propose a procedure that's similar to what the  
16 permitting process is in terms of providing public  
17 notice relative to the actions being taken, you know,  
18 I think you certainly in your testimony can present  
19 that, but I think you need to think very carefully  
20 what the consequences of what that would be in terms  
21 of the overall delay on our action to be able to take  
22 action on sites.

23 You know, as Doug was saying, we take  
24 literally thousands of actions yearly. And if you're

1 going to include additional process, required process  
2 on top of that, that significantly delays those  
3 activities. I mean, that would be something, you  
4 know, obviously if the Board would adopt that kind of  
5 approach, we would follow it, but it would certainly  
6 slow things down considerably.

7 MR. ALBARRACIN: I would just say on a  
8 monthly basis easily, we are sending out 320 to 350  
9 decisions easily. I would say that's an average,  
10 since we seem to be talking about averages a lot. But  
11 easily we send 320 to 350 a month.

12 Q. And how long would you estimate that the  
13 Agency would be sending that many letters out?

14 A. (BY MR. ALBARRACIN) The LUST section?

15 Q. Yes.

16 A. I will speak personally. I've been with the  
17 LUST section since '96. So that's eight years.  
18 Probably during that time period, it's been going on  
19 at that rate.

20 Q. Now, you all would admit, would you not,  
21 that -- and I'm not going to testify here. But at the  
22 risk of testifying, correct me if I'm wrong, but the  
23 Board's case load, and one could -- I'm sure that you  
24 all are aware of it and certainly by going on the

1 Board's Web site, you can be aware of it. That in the  
2 last two years, the Board's appeal rate on underground  
3 storage tank cases, reimbursement cases, in  
4 particular, has risen substantially.

5           If you take those eight years, and say,  
6 you've been sending that many letters out that year  
7 for every month for the last eight years -- for the  
8 last two years there's been a huge expansion of the  
9 number of cases being appealed to the Board -- to what  
10 factors would the Agency attribute that expansion? We  
11 obviously will testify on our side. But I would like  
12 to hear from the Agency as to why they think there's  
13 so many appeals to the Board on these reimbursement  
14 questions.

15           A. (BY MR. KING) I mean, partly you have to  
16 look at -- if you look at the number of companies that  
17 are filing appeals, half of the appeals come from two  
18 firms. One half of the appeals pending before the  
19 Board come from two firms. Let me --

20           Q. One of those firms that --

21           HEARING OFFICER TIPSORD: Let him finish.

22           MR. KING: If you compare the number of  
23 appeals that are occurring now with the number of  
24 appeals that occurred in the early '90s, it's much

1 lower.

2 In the early '90s, we had a very significant  
3 problem with the number of appeals that were  
4 occurring, and that didn't get resolved until the  
5 Board adopted a set of regulations in 1994 and  
6 established a procedure for the Agency to follow.  
7 That reduced the number of appeals significantly to  
8 the last couple of years.

9 We think having the set of rules that we have  
10 in Subpart H, we think that will also combat the  
11 number of appeals that are occurring. It will make  
12 things more regimented for people to follow, and there  
13 will be less appeals.

14 Q. (BY MS. MANNING) Just as a point of  
15 clarification. The petitioner in all of those matters  
16 that we talked about are different petitioners than  
17 their owners and operators. They're not environmental  
18 remediation businesses; is that correct?

19 A. That's true.

20 Q. I mean, we're talking various owners and  
21 operators who have hired --

22 A. There are various owner and operators, but if  
23 you look at the consultants who are involved in those  
24 appeals from owners and operators, two of them

1 represent half of the appeals.

2 Q. And we'll have testimony in terms of the  
3 larger volume of business of those companies as well.

4 A. Okay.

5 HEARING OFFICER TIPSORD: Mr. Goodiel?

6 QUESTIONS BY MR. GOODIEL:

7 Q. Do you not think that there would be more  
8 appeals from other consultants if it wasn't so  
9 expensive to do that process? There are consultants  
10 out there who simply cannot afford to, you know, hire  
11 a lawyer and go to the Pollution Control Board. If  
12 that wasn't such an expensive time-consuming process,  
13 would you not see potential increase?

14 A. (BY MR. CLAY) Well, as Ms. Manning pointed  
15 out, the owner and operator is the one who appeals  
16 that. So I don't know.

17 QUESTIONS BY MS. MANNING:

18 Q. But when the matter in dispute is \$5,000, and  
19 the bill is going to be \$30,000 to recoup \$5,000, it's  
20 not a very good business judgment, is it, to appeal  
21 it?

22 A. (BY MR. KING) But, again, if you're talking  
23 about a budget, if you're talking about appealing a  
24 budget, that's not money that's been expended, okay?

1 So it's different if there's been a cut relative to  
2 costs that have been incurred. But if an appeal is  
3 filed based on a budget review, those are not dollars  
4 that have been expended yet. That's a decision that  
5 somebody is appealing because they want to spend those  
6 extra dollars, even though the Agency has said we  
7 don't think they need to in order to move forward on  
8 the project.

9 Q. And let's not forget -- and correct me if I'm  
10 wrong -- but that budget would have been signed by a  
11 licensed professional engineer or licensed  
12 professional geologist as required by law?

13 A. (BY MR. CLAY) Correct.

14 Q. Thank you.

15 93. An owner and operator has proposed a  
16 corrective action plan to remediate soil contamination  
17 by the conventional technology of excavation and  
18 disposal and to remediate the groundwater by the  
19 alternative technology of applying oxygen release  
20 compound to the floor of the excavation in order to  
21 promote bioremediation. The Agency has modified the  
22 CAP to approve the disposal. However, the alternative  
23 technology was designed and the CAP was modified to  
24 include only the monitoring of the groundwater after



1 the excavation to determine the effectiveness of the  
2 soil remediation upon the groundwater. Depending upon  
3 the post soil remediation groundwater contamination  
4 result, an amended CAP must be submitted to complete  
5 the groundwater contamination.

6 a) How will the work required to develop and  
7 write the post remediation soil groundwater amended  
8 CAP be reimbursed to the owner/operator when the  
9 original CAP was modified by the Agency?

10 And b) Does the Agency expect that the  
11 amended CAP for groundwater will be a nonreimbursable  
12 expense to the owner/operator based upon the maximum  
13 payment amounts?

14 A. (BY MR. CLAY) The CAP is reimbursed in a  
15 lump sum. So it would be that amount, unless  
16 demonstrated additional costs are warranted for  
17 reimbursement.

18 Keep in mind that the lump sum amounts are  
19 for conventional technology. So if a submittal of a  
20 amended CAP to address the groundwater, which would be  
21 an alternative technology, additional CAP costs, CAP  
22 preparation costs would be considered on a time and  
23 materials basis.

24 Q. Thank you.

1           94. The owner/operator desires to remediate  
2 a LUST site to a TACO tier 1, class 1 residential  
3 objectives, and a CAP was approved by the Agency for  
4 conventional technology. The conventional technology  
5 was completed. However, closure indicate that  
6 residual contamination remains along the property  
7 boundary and underneath the structure located on the  
8 site. The situation was not anticipated based upon  
9 the analytical results available at the time the CAP  
10 was written, or the budget was written in that matter  
11 Mr. King talked about earlier. The owner and operator  
12 has decided to propose an engineered barrier and a  
13 highway authority agreement to deal with the less  
14 residual contamination. And an amended CAP and budget  
15 is necessary to propose the institutional controls and  
16 engineer barriers. Reimbursement has already been  
17 received for the cost of the original CAP.

18           a) How will the work required to develop and  
19 write the amended CAP be reimbursed?

20           b) Does the agency expect that the amended  
21 CAP to utilize the tools of TACO will be a  
22 nonreimbursable expense to the owner and operator  
23 based upon the maximum payment?

24           And c) Modeling of the residual

1     contamination was not anticipated; however, not  
2     required by TACO. How does Subpart H address the cost  
3     to the owner and operator necessary to model the  
4     residual contamination?

5             And d) Does the Agency expect that the plume  
6     identification CAP will be a nonreimbursable expense  
7     for the owner or operator or that the remediation CAP  
8     will be a nonreimbursable expense for the  
9     owner/operator based upon the maximum -- I'm sorry.  
10    I'm sorry. I went to the -- I'm sorry.

11            We're going to go back, and ask how does  
12    Subpart H, okay, address the cost to the  
13    owner/operator necessary to deal with this typical  
14    situation where a small amount of residual  
15    contamination must be addressed based upon closure  
16    sample analytical results? Does the Agency consider  
17    the cost nonreimbursable?

18            A. (BY MR. CLAY) I guess my first question  
19    would be why the site investigation did not accurately  
20    identify this contamination when the CAP was  
21    developed.

22            But having said that, Subpart H does include  
23    costs for development of highway authority agreement.  
24    The CAP itself is a lump sum, and that's what the

1 Agency would anticipate reimbursing, unless its  
2 extenuating circumstances were identified. And in  
3 addition, there is a cost in Subpart H for doing a  
4 TACO evaluation.

5 And I think I might add that if you're simply  
6 doing, you know, a highway authority agreement and  
7 TACO modeling, maybe of an engineered barrier, and I  
8 think it's pretty straightforward and would be  
9 something that could be submitted in a corrective  
10 action completion report and wouldn't necessarily  
11 require a change or an amended CAP.

12 QUESTIONS BY MR. DOTY:

13 Q. Would it require an amendment to the budget?

14 A. (BY MR. CLAY) Yes, it would.

15 MR. DOTY: Okay, thanks.

16 QUESTIONS BY MS. MANNING:

17 Q. 95. The owner/operator proposes conventional  
18 technology to address the on-site soil contamination  
19 and a groundwater deed restriction to deal with the  
20 on-site groundwater contamination. The closure  
21 samples from the floor of the excavation reveal an  
22 unanticipated exceedance of the Csat limit. An  
23 amended CAP and budget must be written to investigate  
24 the vertical extent. After the vertical extent of the

1 Csat limit exceedance is investigated, another amended  
2 CAP must be written and approved to remediate the Csat  
3 limit exceedance.

4 a) How does Subpart H address the cost to  
5 the owner/operator necessary to write the amended CAP  
6 to investigate the vertical extent of the Csat limit  
7 exceedance?

8 b) How does Subpart H address the cost to  
9 the owner/operator necessary to write the second  
10 amended CAP to propose a remediation method for the  
11 Csat limited exceedance?

12 And c) Does the Agency consider the cost of  
13 the Csat limit amended CAP to be nonreimbursable based  
14 upon the maximum payment amounts?

15 A. (BY MR. CLAY) Well, this seemed like an odd  
16 one as well. I'm wondering why a site investigation  
17 did not identify such high levels of contamination  
18 exceeding Csat as an extremely high level. And I  
19 don't understand why that was not identified in the  
20 investigation.

21 So, you know, this would have to be reviewed  
22 on a case-by-case basis as far as any additional cost,  
23 but I'd have real concerns about the certification on  
24 that site investigation.

1 HEARING OFFICER TIPSORD: Mr. Kelly?

2 MR. KELLY: Can I give a clarification on the  
3 question?

4 HEARING OFFICER TIPSORD: As long as it's in  
5 the form of a question. If you're going to answer the  
6 question, then I'll have to swear you in, and I need  
7 you to wait.

8 QUESTIONS BY MR. KELLY:

9 Q. Assuming the site investigation is done on  
10 some type of grid, is it not possible that that  
11 particular area cannot be missed and therefore would  
12 not be in the CAP? Because do you not do an  
13 investigation on a 5 by 5 grid?

14 A. (BY MR. CLAY) So you're saying there's a  
15 possibility that exceeds Csat?

16 Q. It might be one sample.

17 A. I think we would look at that on a  
18 case-by-case basis. If that were the case, then  
19 additional CAP costs may be considered. But generally  
20 we would not. I mean, we don't normally see that.

21 HEARING OFFICER TIPSORD: Thank you,  
22 Mr. Kelly.

23 QUESTIONS BY MS. MANNING:

24 Q. 96. An owner/operator proposes an

1 alternative technology for the remediation of soil and  
2 groundwater at a site. The site is rural with ample  
3 space available for land farming. The alternative  
4 technology of land farming is presented in a CAP and  
5 rejected by the Agency based upon lack of supporting  
6 documentation. And the need to collect additional  
7 information to validate the alternative technology.  
8 The Agency did not perform a 45-day completeness  
9 review to allow the owner/operator time to provide the  
10 information needed by the Agency. The owner/operator  
11 has already written one CAP and now is faced with the  
12 additional expense of obtaining the information  
13 requested by the Agency and revising a CAP.

14 Question a) utilizing the maximum payment  
15 amounts of Subpart H, how will the cost of obtaining  
16 the additional information and writing the revised CAP  
17 be reimbursed?

18 And b) Could a proper 45-day completeness  
19 review by the Agency as provided in 732.505 prevent  
20 the rejection of such alternative technology CAPs?

21 And c) Could the Agency offer any guidance  
22 documents or other information designed to standardize  
23 the required supporting document for an alternative  
24 technology CAP and prevent potential for out-of-pocket

1 expenses to the owner/operator that the maximum  
2 payment amounts of Subpart H will create?

3 A. (BY MR. CLAY) I would not consider what  
4 you've described to be a completeness review issue,  
5 more of a technical issue as far as technical  
6 deficiencies. This would be an alternative technology  
7 and should be budgeted and billed on a time and  
8 materials basis.

9 The Agency would have already approved the  
10 payment for the CAP, one which would be expected, one  
11 which we would have expected the consultant to have  
12 submitted in an approvable -- as an approvable CAP.  
13 We would have to look carefully at the request for  
14 additional costs for the amendment. In other words,  
15 this is something that would be reasonably expected,  
16 in what we had approved in a budget for a CAP. And if  
17 it wasn't submitted, we'd have to look at whether  
18 additional costs were warranted.

19 As far as the completeness of review, it's  
20 doubtful that the Agency would have cut this on a  
21 complete review. This sounds like technical issues in  
22 the way I read the question.

23 And, yes, we will try to provide  
24 documentation or guidance documents to help



1 standardize what we're looking for in alternative  
2 technologies. We've nearly completed one for  
3 bioremediation that will be available soon. We've  
4 sent it out in a draft already, so.

5 Q. 97. The owner/operator has proposed to  
6 utilize a groundwater ordinance to exclude the  
7 groundwater ingestion migratory pathway. However, a  
8 certain amount of work must be performed by the  
9 owner/operator in order to educate the municipality  
10 concerning the function and advantages of a  
11 groundwater ordinance. Does the Agency expect that  
12 the cost of dealing with the municipality to obtain a  
13 groundwater ordinance will be a nonreimbursable  
14 expense to the owner/operator?

15 b) Once the groundwater ordinance is in  
16 place, the owner/operator must model the groundwater  
17 contamination to predict the migration of  
18 contamination. And in accordance with TACO, letters  
19 must then be sent to off-site property owners.  
20 Depending on site-specific conditions, as many as 10  
21 or 12 property owners may be needed to be contacted.  
22 Based upon the maximum payment amounts, how does  
23 Subpart H address the cost to the owner/operator  
24 necessary to model the contamination for groundwater

1 ordinance? Identify the many off-site property  
2 owners, and write the off-site property owner  
3 notifications?

4 c) Does the Agency expect that the cost of  
5 modeling, identifying off-site property owners and  
6 writing the off-site property owner notifications to  
7 be a nonreimbursable expense when utilizing a  
8 groundwater ordinance to exclude the groundwater  
9 ingestion pathway?

10 A. (By Mr. Clay) We do have an amount in  
11 Subpart H for developing an ordinance. TACO costs an  
12 additional -- TACO costs are also in Subpart H. If  
13 there are an extraordinary number of off-site  
14 properties or extraordinary amount of time for  
15 developing that ordinance, we would reconsider that  
16 under extraordinary situations.

17 But I want to emphasize that we have  
18 developed the letter that can be sent and all the  
19 regulatory requirements to offer site property  
20 owners. It's a fill-in-the-blank type of letter. So  
21 that letter has been developed.

22 Model ordinances have been developed on our  
23 Web site that would meet all the regulatory  
24 requirements and have routinely been adopted by

1 municipalities. So a lot of this work has been done  
2 and is available on the Web site. I understand that  
3 people want to put their own mark on it, but we've  
4 developed documents, and we have requirements to meet  
5 the regulations and will facilitate much quicker  
6 reviews by the Agency if those documents are used.

7 Q. As a follow-up to that question, just because  
8 it relates to TACO. Just for purposes of the record,  
9 when the underground storage tank program first came  
10 into effect, obviously it was pre TACO, correct?

11 A. That's correct.

12 Q. And even when the TACO program came into  
13 place, underground storage tank remediation was not  
14 originally subject to TACO; is that correct? Were you  
15 doing underground storage tank remediations -- I guess  
16 when did underground storage tank remediations start  
17 utilizing the TACO regulations? At what point in  
18 time?

19 A. In 1996, I and members of the LUST program  
20 were at the very beginning of the development stage of  
21 TACO. In fact, TACO is based on a risk based  
22 corrective action referred to with the acronym, RBCA,  
23 developed by USEPA. And that is, is used as a frame  
24 work for -- it was developed for LUST sites. The

1 Agency decided to utilize this across all remediation  
2 programs, but it was actually developed for LUST sites  
3 nationally. Most states that adopted some form of  
4 this RBCA. Illinois is very -- it's called TACO. So  
5 we were involved from the very beginning of TACO, the  
6 LUST program as well as the Agency.

7 Q. Thank you.

8 98. The owner/operator's LUST site has been  
9 inactive because a previous consultant has gone out of  
10 business. The LUST site is in the corrective action  
11 phase. Soil remediation or an alternative technology  
12 was previously approved in a CAP, and the remediation  
13 was performed by the previous consultant. However,  
14 closure samples revealed that residual contamination  
15 remains. The site has been inactive for several  
16 years. The owner/operator contracts a consultant to  
17 complete the remediation process and obtain closure of  
18 a LUST site. The new consultant must FOIA all  
19 information and write an amended CAP to deal with the  
20 residual contamination. The amended CAP will propose  
21 to utilize tools of TACO to obtain closure. Assume  
22 that an ELUC and a highway authority agreement are  
23 possibly remediation methods. The cost of the  
24 original CAP prepared by the previous consultant has

1     been reimbursed several years ago.

2             a) Does the Agency expect that the cost of  
3     the amended CAP written by a new consultant will be a  
4     nonreimbursable expense to the owner and operator?

5             b) The new consultant identified in 98, in  
6     the question above, informs the owner and operator  
7     that the cost of professional services to write the  
8     TACO CAP will exceed the maximum payment in Subpart H  
9     as approved by the Agency. The cost to reviewing FOIA  
10    information, developing an amended CAP, dealing with  
11    off-site property owners to obtain an ELUC and dealing  
12    with highway authority will be significantly higher  
13    than the maximum payment amounts resulting in an  
14    out-of-pocket expense to the owner/operator. However,  
15    since alternative technologies are reimbursed on a  
16    time and material basis within Subpart H, a more  
17    costly alternative technology CAP would be fully  
18    reimbursable by the Agency and would result in no  
19    out-of-pocket expense to the owner and operator.

20             I guess that's the question.

21             And c) Does the Agency expect that the  
22    maximum payment amounts of Subpart H will force an  
23    owner/operator to bypass the far less costly TACO  
24    remediation method in favor of an alternative

1 technology remediation method because the  
2 out-of-pocket expense to the owner/operator is  
3 significantly less than the alternative technology?

4 A. (BY MR. CLAY) This is site specific and very  
5 variable. I mean, we would consider when a new  
6 consultant takes over a project, we would consider  
7 reasonable costs for that new consultant. I mean,  
8 there is a -- you know, reasonable cost would be  
9 considered for reviewing the file.

10 I guess in B, I don't understand why the  
11 maximum payment amounts are exceeded and so much  
12 higher than what we've got in Subpart H. That's  
13 something that could be identified. That's something  
14 that would have to be identified. I don't know why  
15 it's so much higher to develop these documents. The  
16 type of remediation chosen is really up to the owner  
17 and operator.

18 MR. KING: If I could just add to that. One  
19 of the things that we have struggled with over the  
20 years, and we've tried to get additional statutory  
21 authority, and part of our regulation addresses in  
22 here is that we want to encourage people to use TACO.  
23 The more that we can encourage that to happen, we  
24 think the overall project costs will be lower. And,

1 you know, we do not have anything in our proposal that  
2 would mandate somebody to use the TACO tier 2 as  
3 opposed to a conventional technology if they wanted  
4 to. But I mean, I think we would certainly like to  
5 hear suggestions and proposals which would increase  
6 the use of TACO versus more expensive alternatives.

7 HEARING OFFICER TIPSORD: Okay.

8 QUESTIONS BY MR. DOTY:

9 Q. Would you consider allowing an owner/operator  
10 to regain access to the LUST fund after an NFR letter  
11 if he chose to use TACO, instead of actively remediate  
12 his site at a later date if he needed to remediate  
13 because of a problem? Right now he can't get back  
14 into the fund, I mean. Would you consider -- I think  
15 this might be an encouragement to the owner/operator  
16 if you consider making that change.

17 A. (BY MR. CLAY) For someone to come back in  
18 after an NFR letter is issued and if he used the TACO  
19 approach instead of actively remediating his site?

20 MR. KING: But the NFR --

21 Q. Vapors show up for whatever reason. There  
22 needs to be something -- an environmental situation  
23 needs to be addressed that's linked back to a site  
24 that was TACO'd out instead of remediated. Right now

1 that owner/operator, he would be forced to address the  
2 problem certainly, but he's not allowed back in the  
3 fund because he elected to TACO out to get his NFR.  
4 Would you consider changing that?

5 A. (BY MR. CLAY) There hasn't been a new  
6 release, right.

7 Q. No.

8 A. Well, I don't -- I mean, everything has been  
9 signed off and certified by a PE or PG who said  
10 everything was fine and met the regulations.

11 Q. Oh, now you recognize the certifications?  
12 Okay.

13 A. Well, no. I mean, why wasn't this identified  
14 previously?

15 Q. Just unforeseen. I'm just asking.

16 The Agency sees the same materials that -- I  
17 mean, you've reviewed it when you approved closure.  
18 You've seen the same information as the consultant,  
19 and you agreed with the closure.

20 So I mean, for whatever reason, the  
21 owner/operator has to address that release at a later  
22 point, an unforeseen condition, to the consultant or  
23 owner/operator and to the Agency, reviewing the same  
24 information, and he's not allowed back in the fund to



1 address that particular situation. And I think that  
2 it's a common concern with the owner/operator.

3 A. (BY MR. CLAY) Is this a common occurrence?

4 Q. No. I said it's a common concern that may  
5 deter the owner/operator from trying to use TACO. I  
6 mean, I'm just bringing this up because you want to  
7 encourage the owner --

8 HEARING OFFICER TIPSORD: I need to cut you  
9 off, because I think they got your question and we'll  
10 let them answer, and then we will move on.

11 MR. KING: The suggestion we have a very  
12 limited -- but relative to NFR letters related to  
13 off-site contamination, I don't know if what you're  
14 suggesting would work, but we certainly could take  
15 that under advisement.

16 MR. DOTY: I mean, it would still be a rare  
17 occasion.

18 HEARING OFFICER TIPSORD: Ms. Hesse?

19 QUESTIONS BY MS. HESSE:

20 Q. Related to this question, I think kind of the  
21 question in point is what if the NFR letter becomes  
22 void for a technical reason? For example, if a  
23 property was an industrial property, something that is  
24 starting to crop up more and more.

1           For example, in the City of Chicago where  
2 someone obtained an NFR letter assuming an engineered  
3 barrier, assuming institutional controls, because the  
4 anticipation was that it was main industrial, but  
5 justification moves in. So the change in the property  
6 is going to be residential, but it was TACO'd out  
7 under a commercial or industrial cleanup standard. Is  
8 there an opportunity for someone to have access to the  
9 fund when the NFR letter -- after an NFR letter would  
10 become void?

11           A.   (BY MR. KING) If the situation would be  
12 posed, I would be absolutely against allowing somebody  
13 to come back into the fund under that circumstance.  
14 That is clearly a business decision that was made. If  
15 there's been a change of use, then there's an  
16 opportunity for a new owner to put his own money into  
17 the project, clean it up to either standard, and then  
18 be able to move on. That is not something that should  
19 be paid for with UST fund.

20           MS. MANNING: We're going to skip to 103.

21                           QUESTIONS BY MS. MANNING:

22           Q.   The Agency has provided copies of DRAFT  
23 budget and billing forms along with some examples.  
24 However, no example was provided for an alternative

1 technology CAP budget. Can the Agency provide an  
2 example of an alternative technology CAP budget?

3 A. (BY MR. CLAY) These are case by case.  
4 There's not materials. So I guess the answer is no.

5 Q. 104. Concerning Subpart C: In 734.505,  
6 review of plans, (b), the Agency has 120 days in which  
7 to review a plan, budget or report. However, in  
8 Section 734.335, the owner and operator only has 30  
9 days after approval of a site investigation completion  
10 report to submit a corrective action plan to the  
11 Agency. The same 30 days is also required for the  
12 presentation of a corrective action completion report  
13 in Section 735.345 corrective action completion  
14 reports paragraph (a). The same 30 days is required  
15 in 734.330 site investigation report.

16 a) Why is the Agency given 120 days for each  
17 review of each report while the owner/operator is only  
18 allowed 30 days to execute the approved plan and to  
19 prepare and submit a report?

20 b) Why not allow the owner and operator a  
21 more realistic 120 days for report preparation and  
22 submittal?

23 And I would add to that, c) Why does the  
24 Agency consider that it has 120 days for each and

1 every decision it makes under the rules?

2 A. (BY MR. CLAY) First, I'll just say I think  
3 it's a different function of Agency review, the  
4 hundreds or even thousands of sites that we're dealing  
5 with, for one thing, than, you know, implementing a  
6 plan, which has already been prepared and wants to be  
7 approved by the Agency.

8 And secondly and most importantly, it's a  
9 statutory frame work. 120 days is in the statute and  
10 30 days is in the statute.

11 Q. Okay. We'll debate that, but --

12 A. Well, it is. I think, isn't it? I mean,  
13 I'll look.

14 Q. I don't believe there's 120 days for each and  
15 every decision that the Agency makes. There's  
16 probably a 120-day reference in the statute to some of  
17 those decisions.

18 And correct me if I'm wrong, there's been a  
19 recent statutory change that unlike the permit  
20 program, if an Agency doesn't make its decision at 120  
21 days, the repercussion is not an approved decision of  
22 the Agency, but a denied decision of the Agency. So  
23 it's denied, and an appeal is necessitated as a result  
24 of the Agency making a determination in 120 days; is

1 that correct?

2 HEARING OFFICER TIPSORD: Excuse me. Before  
3 you answer that, Ms. Manning, too far. I'm going to  
4 have to ask you to be sworn in.

5 [Ms. Manning was sworn.]

6 HEARING OFFICER TIPSORD: Thank you.

7 MS. MANNING: Thank you.

8 Q. Go ahead.

9 A. (BY MR. CLAY) The 120 days is in the  
10 statute, and it identifies in the statute and in the  
11 regulations where it applies. And, you know, if you  
12 want to debate what constitutes a plan or report or  
13 budget, then, you know, we can do that.

14 But a 120-day denial after 120 days being  
15 denied, by operation of law, does not apply to  
16 applications for payment when there's been an approved  
17 budget. That would be approvable by the operation of  
18 law. The 30 days for implementation of a site  
19 investigation plan or corrective action plan is within  
20 the statute. And, you know, I'm not sure what you're  
21 suggesting, but if you're suggesting 120 days be taken  
22 out, I don't think the Agency would be opposed to  
23 that.

24 MR. KING: The denial, by operation of law,

1 that's a requirement in order to make sure that the  
2 UST fund is recognized as a financial assurance  
3 mechanism.

4 MR. CLAY: That was the issue with the USEPA  
5 back in '95, I believe it was, when they actually  
6 withdrew approval of the UST fund as a financial  
7 assurance mechanism. That was a big issue with them.

8 Q. I assume you have a letter to that effect or  
9 something from USEPA?

10 A. (BY MR. KING) I'm sure we do.

11 Q. Okay, thank you. Just to clarify something  
12 else on the record.

13 You were talking the hundreds of thousands of  
14 reviews you do each and every day. And just so that I  
15 have a point of clarification about the workload in  
16 terms of the review, it's my understanding you said  
17 that about 320 letters a month; is that correct?

18 A. (BY MR. ALBARRACIN) 320 to 350.

19 Q. 320 to 350 a month? And you've been doing it  
20 for eight years maybe?

21 A. Maybe.

22 Q. And you have 65 or 75 -- you have 65  
23 full-time personnel devoted to the function of  
24 reviewing LUST sites pursuant to the LUST -- you have

1 65 people contributing to those 320 letters a month,  
2 correct?

3 A. (BY MR. CLAY) Yeah. Let's back up here. I  
4 understand there's a LUST section and there's a LUST  
5 claims unit. What Hernando is speaking to is a LUST  
6 section, which is 34 project managers, 5 managers,  
7 unit managers and myself. And then there's the  
8 support staff with that, the administrative support  
9 that actually mail the letters out and copy the  
10 letters. We've got the file room people and the FOIA  
11 people. So that's one group. Mr. Oakley in the LUST  
12 claims unit is 10 technical staff, as well as support  
13 staff to mail the things, letters out to enter them  
14 into a database. He sends out an additional 150 --

15 MR. OAKLEY: 200 letters a month.

16 MR. CLAY: -- letters a month from the LUST  
17 claims unit.

18 Q. Those are decision letters as well?

19 A. (BY MR. OAKLEY) That's correct.

20 Q. So all those letters that we're talking  
21 about, your 320 to 350 a month, and your 250 a month?

22 A. (BY MR. CLAY) 150 to 200.

23 Q. Are appeal decisions? Are final decisions of  
24 the Agency?

1           A.    Yes.  They are final decisions of the  
2 Agency.

3           Q.    Just so that I understand then.  Of your 250?

4           A.    (BY MR. OAKLEY)  200 to 250 on an average.

5           Q.    What letters does your group send out?

6           A.    Final decision letters regarding claims,  
7 claims decisions.

8           Q.    Okay.  On budgets, on corrective budget  
9 action plans?

10          A.    Budgets, early actions, 731s.  Every single  
11 decision we make regarding a claim, we send a letter.

12          Q.    Okay.  All reimbursement claims?

13          A.    Correct.

14                MR. CLAY:  Reimbursement, not budgets.  He's  
15 talking about claims with approved budgets are already  
16 done.

17                MR. OAKLEY:  All claims.  731 claims don't  
18 have an approved budget.

19          Q.    And your 350 letters or 320 to 350 letters  
20 are?

21          A.    (BY MR. ALBARRACIN)  Final decisions on plans  
22 and budgets and completion reports and site  
23 investigation -- let's put it that way.  Plans,  
24 budgets and reports.



1 Q. So if you've already approved a budget and  
2 those claims are included within that budget from  
3 Mr. Oakley's unit, there's very little review  
4 necessary if it's already been approved in the budget;  
5 is that correct?

6 A. (BY MR. OAKLEY) We're still obligated to  
7 send out final decision letter when we make a decision  
8 upon a claim, even though it's already been approved  
9 in the budget.

10 MR. CLAY: And I think Mr. Oakley testified  
11 earlier that yesterday that that is a streamline  
12 process when there is an approved budget.

13 MR. OAKLEY: The review process.

14 Q. Okay. I understand.

15 A. Okay.

16 MS. MANNING: We're on our last question  
17 also.

18 Q. If you look at the language in  
19 732.503 (f), the question would be whether the IEPA  
20 intended from this section that an owner or operator  
21 will not be able to submit an amended plan if the IEPA  
22 rejects the work plan or approves a work plan with  
23 modifications.

24 A. (BY MR. CLAY) The owner/operator can submit

1 an amended plan, but the plan and report will be paid  
2 at the lump sum rate unless demonstrated as an unusual  
3 or extraordinary circumstance.

4 HEARING OFFICER TIPSORD: Mr. Doty?

5 QUESTIONS BY MR. DOTY:

6 Q. The modifications to that plan, those  
7 modifications were accepted. But in executing that  
8 plan, it's deemed that maybe the first estimate as to  
9 what work was performed, it doesn't meet those  
10 activities performed? Do you want to just approach  
11 that like an extraordinary circumstance to avoid -- if  
12 the plan proposes so much work, so many cubic yards,  
13 the Agency reduces the yardage, but in executing the  
14 plan, you've underestimated -- the Agency has  
15 underestimated it maybe. How does that get worked out  
16 without disadvantaging the owner's reimbursement? I  
17 mean, he would have to at least submit an amended  
18 budget, right? An expense to that?

19 A. (BY MR. CLAY) The expense to that would be  
20 in the lump sum rates.

21 Q. Which would already have been reimbursed? So  
22 he wouldn't get --

23 A. It may have been reimbursed. It was already  
24 in the budget. But, again, when we set these lump

1 sums out, our anticipation or expectation was that  
2 that was a lump sum from an approvable plan and  
3 budgeting. So, you know, that's what we anticipated.  
4 So an amendment needs to fall in that lump sum.

5 Q. You recognize that straps you with being  
6 right a hundred percent of the time?

7 A. Well, the reason we modify plans and budgets  
8 is an attempt to expedite the remediation process. So  
9 we're not denying something because everything isn't  
10 perfect. And then you have to come in and potentially  
11 wait up to another 120 days. So the idea is that you  
12 modify that plan or budget.

13 Q. Right. But if you modify an error -- as it  
14 turns out an error, which is going to happen. I mean,  
15 it's a human error. But how does the owner/operator  
16 not add to the out-of-pocket expense because of that  
17 decision?

18 A. Well, I think if it's our error, then I think  
19 we would consider additional costs.

20 Q. And that's the scenario I was trying to  
21 describe.

22 A. Okay.

23 HEARING OFFICER TIPSORD: Thank you. All  
24 right. Thank you, Ms. Manning. I think we'll take a

1 break.

2 Dr. Girard?

3 BOARD MEMBER GIRARD: I'd just like to make  
4 one comment.

5 I think this morning everybody did a great  
6 job of sticking to questions, and we were very  
7 efficient. We've begun to slip a bit after lunch.

8 So while you're on break, think about ways  
9 that we can get the rest of these 42 pre-filed  
10 questions answered today with the time allotted,  
11 because I think the next set of hearings will be much  
12 smoother. I know you're chomping at the bit to  
13 testify, but if we have all the Agency's answers in  
14 the transcript, then your testimony is going to be  
15 that much more valuable in the next round. So let's  
16 think about how we can get through these questions and  
17 get them done today and on the record.

18 HEARING OFFICER TIPSORD: Let's take a  
19 10-minute break.

20 [Brief break.]

21 HEARING OFFICER TIPSORD: As we go back on  
22 the record, I think I already told everyone the  
23 transcript will be expedited. So it will be done and  
24 should be posted by June 2nd. The hearing officer

1 will go out today scheduling the new hearings in the  
2 matter. And if you have any questions about  
3 pre-filing testimony, you should contact Cathleen  
4 Crowley (sp) at area code (312) 814-6929, as I will be  
5 unavailable tomorrow.

6 BOARD MEMBER JOHNSON: I object.

7 HEARING OFFICER TIPSORD: And I think we're  
8 ready now to begin with pre-filed questions by CW3M.

9 MS. HESSE: Thank you. During the break and  
10 during the course of Ms. Manning's questions, we were  
11 able to get a lot of our questions answered. So we  
12 will skip over a number of those, but we still do have  
13 a few questions we would like to ask.

14 QUESTIONS BY MS. HESSE:

15 Q. I'll start with question number 2 regarding  
16 the increase in maximum payment amounts. And this  
17 goes primarily to the inflation allowed for increases  
18 in payment amounts.

19 The question is, from what time period was  
20 data which was evaluated when creating rates  
21 obtained? And I think we discussed that. So the  
22 question is, why does the Agency propose waiting two  
23 and a half years to begin raising the rates for  
24 inflation?

1           A.    (BY MR. BAUER)  Because the Agency believes  
2           that the proposed rates are reasonable for the time  
3           period until the July 1, 2006 adjustment.

4                    HEARING OFFICER TIPSORD:  I'm sorry.  I  
5           didn't get your last word.

6                    MR. BAUER:  The Agency believes that the  
7           proposed rates are reasonable for the time period  
8           until the July 1, 2006 adjustment.

9           Q.    How was the implicit price deflator for gross  
10           national product selected as the inflation factor over  
11           other inflation factors such as the consumer price  
12           index?

13           A.    The Agency uses the implicit price deflator  
14           for the gross national product in its contracts with  
15           environmental consultants.  The Agency tracks this  
16           figure and is familiar with it.

17           Q.    Why was inflation capped at 5 percent?

18           A.    (BY MR. CLAY)  I don't think we've ever seen  
19           it over that.

20                    MR. BAUER:  The most that we've ever seen, I  
21           guess, since we've been tracking is  
22           2 percent.  So that was it.

23           Q.    If the inflation rate is greater, would the  
24           Agency consider increasing it by the actual inflation

1 rate?

2 A. You said if --

3 Q. If the inflation rate is greater than 5  
4 percent, why would the Agency not consider paying the  
5 actual inflation rate?

6 A. (BY MR. CLAY) I mean, we could look at that  
7 and consider that, but I mean, it would be based on  
8 what we were proposing, which is the implicit price  
9 inflator for gross national product and not the other  
10 reference that you referred to.

11 Q. If there is inflation, for example, of  
12 6 percent inflation, would the Agency still limit the  
13 change to 5 percent?

14 A. (BY MR. CLAY) Yeah. I mean, that's the way  
15 it reads. It's 5 percent either way. We would  
16 consider changing it both for inflation and deflation.

17 Q. Have you seen any instances of deflation  
18 during the period of time when you've been tracking  
19 these rates?

20 A. We don't track those. It's a completely  
21 different group than the Agency. And we can check and  
22 see if -- I doubt there has been. But I think we can  
23 check, because is that something you want us to check  
24 on? If it's important?

1 Q. It's something that would be of interest,  
2 yes.

3 A. Okay. We'll check on that.

4 Q. Skip to question number 6.

5 Brian Bauer testified in support of 732.820  
6 (b) that the Agency is assigning directly proportional  
7 rates to well installation. However, isn't the only  
8 difference between -- what is the difference between  
9 the cost of the 15 foot and 20 foot well the amount of  
10 riser pipe, sand and bentonite?

11 A. (BY MR. BAUER) Yes.

12 Q. Are there other factors? And in fact, aren't  
13 those 3 factors, of only 3 factors of 11 factors, that  
14 are used in calculating a well rate?

15 A. Yes.

16 Q. And are there other factors that are done  
17 also constant for each well?

18 A. Yes.

19 Q. So why has the Agency not proposed a formula  
20 which out of constant for the factors that were  
21 constant? For example, times the number of wells.  
22 Plus another factor that would be a constant for those  
23 factors would be variable?

24 A. (BY MR. BAUER) I think our overall approach



1 to this is to try to simplify everything to simplify  
2 the reimbursement process, to simplify on the budget  
3 forms. And so we used the simplest approach we could  
4 think of.

5 Q. Skipping to number 8.

6 Mr. Bauer had testified in support of  
7 732.485 (a)(2), one-half of the average daily  
8 expenses. Did the Agency do any calculations which  
9 leads to those rates? It describes miscellaneous  
10 supplies, such as gloves, sampling jars, plastic bags  
11 and all other incidental materials, a PID and vehicle  
12 are also included in the half-day rate. However, the  
13 Agency has historically also reimbursed equipment,  
14 such as survey equipment and water level meter. Under  
15 which of the proposed mechanisms are these costs to be  
16 covered?

17 A. (BY MR. BAUER) I would say we did not do any  
18 calculations for gloves, sampling jars and stuff like  
19 that. We just made an assumption.

20 Q. So how could gloves, sampling jars and those  
21 things be included as a reimbursable expense?

22 A. They're included as part of the half-day  
23 rate. We allowed \$20 per every half day for those  
24 costs. Again, we are trying to simplify it. We don't

1 want to have to say, well, I'm going to use eight  
2 pairs of gloves in a budget and think we were trying  
3 to simplify the process and allow that to be billed on  
4 a half-day rate. So that the consultants would not  
5 have to justify they used eight pairs of gloves and  
6 bill on that.

7 Q. So how did the Agency determine if the Agency  
8 created these spreadsheets? Did the Agency go  
9 through any reports to figure out what it's proposed  
10 as a reasonable cost for that half-day rate?

11 A. (BY MR. BAUER) You don't want to know what's  
12 in the half-day rate? You want to know where the \$20  
13 that we got that we used in the half-day rate came  
14 from for the miscellaneous expenses?

15 MR. WIENHOFF: Yes, yes. I'm just looking  
16 for the \$20.

17 QUESTIONS BY MR. WIENHOFF:

18 Q. Did it just round up to \$500? Is that why  
19 \$20 was chosen? Was it because --

20 A. We just estimated \$20. I mean, I don't even  
21 think we see that \$40 in a day miscellaneous  
22 typically.

23 Q. For survey equipment and water levels, are  
24 those included in those miscellaneous charges? Or are

1 those included elsewhere? Or are they not included at  
2 all?

3 A. We included in the half-day rate \$50 for PID,  
4 and that's why we used it based on a hundred dollars a  
5 day. A PID would not typically be needed on other  
6 days, we don't believe. So that equipment rate, or  
7 whatever, would include other types of equipment  
8 besides the PID.

9 Q. On a day when a PID would be required, would  
10 a survey equipment and water level meter also be  
11 required? For instance, if you're drilling and using  
12 a PID, you wouldn't also want to have a water level  
13 meter to test to see what the water level was at while  
14 you were drilling?

15 A. Those are included in our rates.

16 Q. Those are included? Okay. And typically  
17 what has been your historic rate for survey equipment  
18 and water level meters?

19 A. I don't know. I don't know.

20 Q. All right. We can move on. We'll provide  
21 testimony as to what the historic rates are.

22 HEARING OFFICER TIPSORD: A point in  
23 clarification. The citation in the question is to  
24 732.485 (a)(2). We don't find that.

1           MR. WIENHOFF: I'm not exactly sure. I don't  
2 have a copy with me. It's his support of the half-day  
3 rate.

4           HEARING OFFICER TIPSORD: Okay.

5           MR. WIENHOFF: I can -- if you have a copy, I  
6 can find it. Do you have his testimony?

7           HEARING OFFICER TIPSORD: Do you need 732.485  
8 consulting services?

9           MR. WIENHOFF: That sounds right.

10           QUESTIONS BY MS. HESSE:

11           Q. Question number 10. Mr. Bauer had testified  
12 in support of 734.845 (b)(2), that two half days for  
13 one full day or one full day of drilling. How did the  
14 Agency come to the conclusion that drilling only  
15 required one consulting personnel to be on site?

16           A. Based on Agency experience in reviewing  
17 budgets, it is our professional consulting personnel  
18 in the field during drilling activities that has been  
19 the norm.

20           Q. Did the Agency take into account increased  
21 sampling requirements of 734?

22           A. The increased sampling should not pose any  
23 additional need for personnel, since the rate is based  
24 on a number of borings conducted.

1 Q. Is allowing for one consulting personnel to  
2 be present for drilling activities consistent with the  
3 number of personnel proposed by CECI?

4 A. I do not believe CECI proposed any rates of  
5 this nature.

6 Q. We'll move on to number 11.

7 Mr. Bauer, you testified in support of the  
8 appendix E.

9 HEARING OFFICER TIPSORD: Excuse me,  
10 Ms. Hesse.

11 MS. MANNING: I had a follow-up to that last  
12 question.

13 MS. HESSE: Sure.

14 QUESTIONS BY MS. MANNING:

15 Q. I think the question had to do with the  
16 number of personnel, not the rate.

17 A. (BY MR. CLAY) I don't recall. I mean, I'd  
18 have to go back and review notes. I'm not sure. I  
19 don't recall any suggestion one way or another on the  
20 number of personnel. There may have been. I just  
21 don't recall it.

22 MS. MANNING: Okay. Thank you.

23 QUESTIONS BY MS. HESSE:

24 Q. Number 11. Mr. Bauer's testimony in support

1 of appendix E.

2           The reimbursed personnel rate is based on the  
3 task performed, not necessarily the title of the  
4 person performing the task. Did the Agency consider  
5 if this provision discriminates against small  
6 businesses that have only a few employees? i.e., a  
7 small firm cannot afford to hire a registered  
8 professional because they do not have enough, quote,  
9 registered professional work for them to do full time  
10 and cannot afford to pay them registered professional  
11 rates because they would be required to bill them at a  
12 lower rate for some of the tasks which they will need  
13 to perform.

14           Is that something the Agency considered?

15           A. (BY MR. CLAY) We did consider that. And  
16 from the information we've always heard is that the  
17 smaller firms have less overhead, and, you know, would  
18 actually have lower rates than larger firms. So I  
19 think it doesn't disadvantage the smaller firms at  
20 all.

21           Q. From whom did you hear that smaller firms  
22 have lower overhead?

23           A. I just heard that in passing. Is that not  
24 the case? I won't ask the question. I'm sorry.

1 Q. I would have answered that.

2 This is just as a follow-up to that. At the  
3 Agency, if there's, for example, an instance where one  
4 of your technical staff members needs a report copied  
5 and can't wait for a secretarial person to do -- a  
6 clerical person to do it for them, do they go ahead  
7 and make the copies?

8 A. (BY MR. CLAY) Probably.

9 Q. And I assume they're still paid at the  
10 regular salaries, aren't they?

11 A. They're paid at the regular salaries.  
12 They're not paid at \$130 an hour.

13 I might add that the idea here is that you've  
14 got a firm, and you've got two or three people, and  
15 you've got a professional engineer and you've got a  
16 geologist and you have a administrative support  
17 person. You know, it's more likely in those  
18 situations that that geologist and engineer may be  
19 making copies or may be taking water samples, which a  
20 technician would typically do.

21 In those cases, we wouldn't expect to see,  
22 you know, all -- you know, 40, 50, 60 hours a week,  
23 whatever that professional engineer, for example,  
24 works, billing at \$130 when they are making copies and

1 they're sampling. Or they're checking to see, you  
2 know, if the equipment is still working at a remote  
3 site.

4           So what we typically see in some of the  
5 smaller firms, in those cases I mean, we've seen PE  
6 rates in the \$80 per range. And I assume they're  
7 taking into account that type of thing. They have  
8 less overhead, and they may be billing at \$80 an hour  
9 for all of their activities they do because they're in  
10 a smaller firm.

11         Q. But do you know if that's a fact? Or are you  
12 just guessing?

13         A. What's that?

14         Q. Do you know if that is a fact or are you  
15 speculating?

16         A. Do I know what's a fact? I know that people  
17 are billing -- professional engineers are billing much  
18 less than \$130 an hour.

19         Q. What I'm referring to is your estimate that  
20 at firms where PEs may be billing at \$85 an hour, that  
21 they may also be including the time they spend for  
22 doing things that might not be PE work.

23         A. That's an assumption.

24         Q. Number 12. In Mr. Bauer's testimony in



1 support of 734.840(a), the square foot rates for  
2 installation of asphalt are from the 2003 National  
3 Construction Cost Estimator. When you used that  
4 document, Mr. Bauer, did you review the introduction  
5 to the National Construction Estimator which explains  
6 how to use the guide prior to using its numbers?

7 A. (BY MR. BAUER) Yes.

8 Q. Did you use the required area of modification  
9 factor?

10 A. The area modification factor was not  
11 utilized. The factor was not utilized because the  
12 instructions in the portion of the area of  
13 modification factors states these percentages are  
14 composites of many costs and will not necessarily be  
15 accurate when estimating costs of any particular part  
16 of a building.

17 So it was for a -- they were used for the  
18 lump, like a whole entire building project, and that's  
19 the way I thought it was to be interpreted is using it  
20 for this one component. And they were consistent with  
21 budgets and bills, the costs that we were seeing  
22 coming in.

23 Q. Did you use the overhead and markup factor?

24 A. No, I did not. These factors are factors for

1 overhead and profit and are for general contractors,  
2 handling charges and load-up personnel rates should  
3 cover these factors.

4 QUESTIONS BY MR. WIENHOFF:

5 Q. Would contractors not perform the asphaltting  
6 work, would they not need overhead profit to do that  
7 work, the consultant would not be there laying the  
8 asphalt? A contractor would be.

9 A. The overhead and profit markup factor in  
10 that, in front of that book is for the general  
11 contractor.

12 Q. It's not for the person performing the work?

13 A. It's for the general contractor, and we  
14 provide a handling charge per statute. I believe that  
15 would cover those costs.

16 QUESTIONS BY MS. HESSE:

17 Q. Was cost included for supervision such as a  
18 foreman being present?

19 A. (BY MR. BAUER) No. We assumed that handling  
20 charges would be part of the administration -- it  
21 would include the administration of that.

22 Q. The question was about costs for a  
23 supervision, such as a foreman being present, not the  
24 handling charge.

1           A.    (BY MR. CLAY) Is that a foreman by the  
2 subcontractor doing the --

3           Q.    Yes.

4           A.    (BY MR. CHAPPEL) What I understand from  
5 Brian is when I looked at this professional cost  
6 estimator, those rates that he was testifying to  
7 included all personnel.

8           Q.    So it's your belief that the rate included a  
9 supervisor from the subcontractor who is doing the  
10 asphaltting to be present?

11          A.    (BY MR. BAUER) Yes.

12          Q.    And in the asphalt replacement rate was  
13 subgrade preparation included?

14          A.    It was not. Subgrade was assumed to be  
15 covered during the backfill stage, which included the  
16 backfill rate.

17          Q.    Did the concrete replacement rate include  
18 subgrade preparation?

19          A.    No.

20          Q.    Skipping down to question number 13.

21                                QUESTIONS BY MR. DOTY:

22          Q.    You mentioned that -- this is kind of  
23 difficult here. I think the question was, did you  
24 consider subbase preparation? Is that right? And

1 you said that that would be included in the  
2 backfilling?

3 A. Yes.

4 Q. There would be a subbase preparation for a  
5 barrier, too, right? The engineered barrier in an  
6 area that would not have been excavated, how would  
7 that be addressed?

8 A. (BY MR. CLAY) Well, there may or may not be.

9 Q. But a lot of people will use the engineered  
10 barriers over areas that were not excavated. I mean  
11 that's why the barrier is there. How do you address  
12 the subbase preparation for that, that measurement?

13 A. (BY MR. CLAY) We didn't consider that.

14 Q. Okay. Can we?

15 A. Yes. I think so.

16 MR. DOTY: Thanks.

17 QUESTIONS BY MR. KELLY:

18 Q. One question I have. You said that costs for  
19 preparation in subgrade would be part of backfilling.  
20 Is it not current Agency policy that they do not pay  
21 for compaction or compaction testing? Therefore the  
22 backfill may not be properly compacted to allow for  
23 the asphalt claim?

24 A. (BY MR. BAUER) Compaction is a listed

1 ineligible cost in, I think, 732.606 right now.

2 Q. So how am I going to prepare the subbase for  
3 asphalt if compaction is not allowed?

4 A. It's not eligible. I didn't say it's not  
5 allowed. I had no part in that. I don't have an  
6 answer for it.

7 MS. MANNING: Excuse me. I didn't hear that  
8 last sentence. I didn't do that?

9 MR. BAUER: I didn't do the previous  
10 regulations. I had no part in that.

11 QUESTIONS BY MR. DOTY:

12 Q. Where in the process of -- you're in the  
13 process of revising. Can it be revised as parts of  
14 this ruling and then to allow some compaction? Does  
15 anybody know originally why the compaction was  
16 disallowed originally? Maybe?

17 HEARING OFFICER TIPSORD: I'm not sure that  
18 we -- I'm sure that's interesting, but since  
19 compaction is not, I would prefer that we check back  
20 through the old rules before we ask them, and the  
21 Board opinions, and see if there's any discussion,  
22 unless you have a quick answer you can give us right  
23 now.

24 MR. KING: When the rule -- I just didn't

1 think that was appropriate to include because the  
2 compaction in that context would be related to not a  
3 remediation aspect, but what would be billed on top of  
4 that. So it's kind of a builder foundation issue.

5 QUESTIONS BY MR. GOODIEL:

6 Q. But with the development of engineered  
7 barriers, compaction does become a necessary evil in  
8 order to have an effective engineering barrier? Now,  
9 that law was written before engineering barriers were  
10 actually put in place.

11 A. (BY MR. CLAY) I think it depends on what the  
12 engineer -- I mean, you're paving an area that's  
13 already gravel and has no parking lot for a while, and  
14 you're paving that. I'm not sure that there is much  
15 preparation that you need to do. I mean, I  
16 don't -- well, I'm not going to ask the question.  
17 I'll ask that one later.

18 MS. HESSE: Give me a microphone, so maybe  
19 everybody now can hear me now.

20 QUESTIONS BY MS. HESSE:

21 Q. To follow-up on that, if you're asking or  
22 would prefer, as you indicated before, someone to use  
23 TACO to reduce cleanup costs, would the agent say at a  
24 minimum in those circumstances, consider preparation

1 of the base upon which to install an engineered  
2 barrier be a reimbursable cost?

3 A. (BY MR. KING) I mean, when you think about  
4 it -- but, again, the context that I made that comment  
5 was in a situation where we would be requiring a  
6 methodology to require people to go through TACO as  
7 opposed to going through something that's more  
8 expensive.

9 I mean, if everybody wants to go that route  
10 where everybody -- if you do a TACO tier 2 or you do a  
11 TACO tier 3 and comes up with a number, and everybody  
12 is going to do that, and whenever you get the lowest  
13 number, that's the way we're going to do it. And  
14 that's an acceptable way to proceed, you know. I  
15 think that's a different kind of system.

16 MR. CLAY: I think there has to be a minimum  
17 standard of 4 inches of asphalt identified, too. I  
18 mean, you know, if you're preparing a surface for a  
19 transfer station or some other area, that requires a  
20 handling of a lot higher load, I don't think that's an  
21 eligible reimbursement cost.

22 You know, the other thing is we have  
23 to -- there has to be a specific specification for  
24 that, the compaction. And we'd have to -- I mean,

1 we'd have to change it in the regulations. And I'll  
2 have to check. I don't know if compaction is an  
3 ineligible item in the statute or not. We'd have to  
4 check.

5 Q. In question number 13, in Mr. Chappel's  
6 introduction previously, and as we had mentioned  
7 earlier, discussed earlier today, Mr. Chappel stated  
8 that he was in private practice as a co-owner in two  
9 environmental consulting firms. When you were working  
10 as a registered professional engineer in the private  
11 sector, did you certify any plans and budgets for  
12 submittal to the LUST section?

13 A. (BY MR. CHAPPEL) I believe so, yes.

14 Q. Did you ever certify any budgets that  
15 exceeded the maximum amounts listed in these proposed  
16 amendments as being reasonable costs?

17 A. I don't recall.

18 Q. Skip to number 16. In Mr. Chappel's  
19 testimony in support of 732.825, the conversion factor  
20 for tons to cubic yards was specified. The specified  
21 conversion factor is 1.5 tons per cubic yard. Is this  
22 conversion factor which -- is this the conversion  
23 factor which is currently used by IEPA?

24 A. In technical review of plans and budgets,



1 yes.

2 Q. How about --

3 A. I'm sorry. The question is, is the 1.5 used?

4 Q. Yes.

5 A. No, it's not.

6 Q. What number is used?

7 A. In the submitted testimony or the submitted  
8 information that's an exhibit this morning? What is  
9 that? That technical sheet. There's a memorandum  
10 dated March 3, 1992 from Mr. Tod Rowe to LUST section  
11 staff, which specifies --

12 HEARING OFFICER TIPSORD: Can you identify  
13 what you're looking at?

14 MR. CHAPPEL: This is attachment C to my  
15 errata, errata 2. Exhibit 15.

16 HEARING OFFICER TIPSORD: Thank you.

17 MR. CHAPPEL: And the memo is the technical  
18 staff's review memo that they use for converting tons  
19 to cubic yards.

20 Q. Are these the numbers that are used?

21 A. I'm sorry?

22 Q. Those are the numbers that are used as  
23 conversion factors?

24 A. For the technical staff reviewing plans and

1 budgets, yes.

2 Q. Is the Agency aware that in the prior  
3 revision to 732, the Board specified that the  
4 conversion rate would be 2 grams per cubic meter? I'm  
5 sorry. Cubic centimeter. Which was equivalent to  
6 1.68 cubic tons per yard?

7 A. I'm aware that that appendix of the existing  
8 732 uses that conversion factor, yes.

9 Q. Is there a reason the Agency has chosen not  
10 to use the Board specified conversion rate, which was  
11 established following public comment in the prior rule  
12 making?

13 A. We believe the 1.5 is a more reasonable  
14 number for the types of soils in Illinois.

15 Q. Skip to number 17. Mr. Chappel testified in  
16 support of 732.825 that the figure for backfill does  
17 not include cost for a consultant's oversight. Are  
18 costs for a consultant's oversight of backfill  
19 operations included anywhere in Subpart H?

20 A. They're included in 732.845 (d)(2) and  
21 734.825 (c)(2).

22 Q. Skipping to number 19. In Mr. Chappel's  
23 testimony in support of 732.845. The hours estimated  
24 for the various activities discussed were derived in

1 consultation with the Consulting Engineer's Council of  
2 Illinois. Were the hours proposed for categories  
3 provided by the CECI at lump sum values or maximum  
4 allowable values or an estimated average amount of  
5 time?

6 A. It was estimated hours required to complete  
7 that activity.

8 Q. Was that a maximum estimated number of hours,  
9 or was that a typical or average number of hours?

10 A. It's the ad hoc committee's total office  
11 labor hour estimate, and it's included with  
12 Mr. Goodwin's pre-filed testimony if you want to check  
13 the wording.

14 Q. When the Agency used that data -- because I  
15 believe you testified earlier that you had used that  
16 information to come up with cost numbers -- did the  
17 Agency strictly adhere to the same scope of work for  
18 which CECI had proposed the various values? Or did  
19 the Agency add tasks to the scope of work without  
20 increasing the number of hours to do the work?

21 A. I don't think we consciously added tasks to  
22 the list without adding to the scope of hours.

23 Q. For the personnel title breakdowns, did the  
24 Agency adjust the CECI proposal in any way when it

1 calculated its dollar amounts to do certain tasks?

2 A. (BY MR. CLAY) We looked at -- I mean, some  
3 of the tasks that you'll see in Mr. Goodwin's  
4 testimony suggested things such as postage, posting  
5 the bill separately. And the Agency felt like this  
6 should be included in the lump sum amount.

7 Q. Anything else besides postage?

8 A. The items are listed there. We include one  
9 lump sum amount. So it would be postage and mileage.  
10 Film and photo finishing, postage, copying charges.

11 Q. Those are all included as a lump sum?

12 A. That's correct.

13 Q. Was reimbursement claim preparation included  
14 by the CECI in each of its reports? Or was it listed  
15 as a separate item with its own set of hours?

16 A. (BY MR. CHAPPEL) It was listed as a separate  
17 item.

18 Q. And did the Agency consider that as a  
19 separate item then?

20 A. No, we didn't. Based on the overall approach  
21 we were taking in Subpart H, we were of the opinion  
22 that the number of hours specified by this specific  
23 task would cover the hours required to apply for  
24 reimbursement for each of those tasks.

1 Q. You said for this specific task. Which  
2 specific task?

3 A. 20- and 40-day reports, 60 hours, early  
4 action tank removal, 12 hours.

5 Q. So just let me interrupt here. So you're  
6 saying for the 12 hours for early action, that would  
7 also include the time to prepare the reimbursement  
8 claim?

9 A. Correct.

10 QUESTIONS BY MR. WIENHOFF:

11 Q. So to address the question you answered  
12 earlier. So the Agency did consciously add  
13 reimbursement claim to the scope of work without  
14 increasing the number of hours?

15 A. (BY MR. CHAPPEL) No. We did not feel that  
16 the scope of work for the reimbursement activity would  
17 involve any amount of hours. It's going to be  
18 relatively easy.

19 Q. So reimbursement just happens? It doesn't  
20 take any time?

21 QUESTIONS BY MS. HESSE:

22 Q. Is that your testimony?

23 A. (BY MR. CLAY) We didn't increase the number  
24 of hours. We felt like for the number of hours, we

1 could add that task, and we're not saying it doesn't  
2 take any time. But we added that to the lump sum for  
3 the different tasks, the 45-day report

4 QUESTIONS BY MR. WIENHOFF:

5 Q. Just to clarify. You increased the scope of  
6 work without increasing the number of hours?

7 A. (BY MR. CHAPPEL) No. We may have -- well,  
8 we'll have to think about it. I'm not really sure  
9 whether we increased the scope of work or we didn't  
10 increase the scope of work, or whether we increased  
11 the number of hours or we didn't increase the number  
12 of hours. We felt that the activities included within  
13 those 60 hours, for example, for 20- and 45-day report  
14 was a sufficient number of hours to prepare the 20-,  
15 45-day report and the reimbursement application.  
16 That's what I'm saying.

17 Q. And what I'm asking then, did CECI consider  
18 listing the activities for that 60-hour estimate it  
19 provided? Does it list reimbursement preparation?

20 A. No.

21 MR. CLAY: Keep in mind, too, that what we're  
22 proposing is to greatly simplify the reimbursement  
23 process. And CECI, I believe their estimate was based  
24 on the old process.

1 MR. WIENHOFF: Okay.

2

3 QUESTIONS BY MS. HESSE:

4 Q. Skipping to number 22. There's a series of  
5 questions that relate back to Exhibit Number 22. Also  
6 I was reminded that actually the questions relate to  
7 the prior testimony about other sites and some of the  
8 attachments to the Agency's pre-filed testimony.

9 Question 22, in attachment to Mr. Chappel's  
10 pre-filed testimony, is the Agency aware that rates  
11 included in the attachments for Arizona, which was  
12 labeled quote, "2003 cost ceilings," closed quote, are  
13 consistently higher than the rates that are listed for  
14 Arizona in attachment 2?

15 A. (BY MR. CHAPPEL) We were not, but we are  
16 now.

17 Q. Is there a reason you wish to share with us  
18 as to for the discrepancy?

19 A. I have no idea how I did that. But did we  
20 provide new information for Arizona which outlines  
21 their current rates and what they are? So correct  
22 information has been submitted for the Arizona  
23 program.

24 Q. 23, is that a similar situation? The

1 question reads, are you aware that costs in this  
2 section haven't been effective since 2001? The  
3 current costs listed on the Colorado Web site are  
4 higher.

5 A. Again, that is an error that I can't  
6 explain. Have we submitted Colorado's most up-to-date  
7 numbers? Yes, we have.

8 MS. HESSE: I'd like to ask a follow-up  
9 question on Indiana's number related to the number for  
10 excavation, transportation, disposal and backfill that  
11 was listed in Exhibit 22.

12 HEARING OFFICER TIPSORD: Ms. Hesse has just  
13 handed me a copy of payment corrective action and  
14 third party liability claims from the access liability  
15 trust fund, pages 10 and 11. We'll mark that as  
16 Exhibit 28 if there's no objection. Seeing none,  
17 we'll mark it.

18 [Exhibit Number 28 was marked for identification and  
19 admitted into evidence.]

20 MS. HESSE: I would also like to note at the  
21 bottom, it does say Indiana Administrative Code. And  
22 I'll just add as well with that testimony that these  
23 are documents that CW3M had caused to be pulled off  
24 Indiana's Web site.



1 HEARING OFFICER TIPSORD: So ahead.

2 MS. HESSE: Okay.

3 Q. Now, in Exhibit 22, the number to  
4 excavate, transport, dispose and backfill a cubic yard  
5 is listed as \$43.59. Could you please explain to me  
6 where on this form or how the Agency came up with a  
7 number of \$43.59?

8 MR. ROMINGER: Which question are we on?

9 MS. HESSE: This is not a pre-filed  
10 question.

11 MR. CHAPPEL: Based on what you just handed  
12 out?

13 Q. (BY MS. HESSE) Yes.

14 A. (BY MR. CLAY) We could check on that one.  
15 You've just given this to us. So we can get back to  
16 you on that and tell you. I mean, I would have to  
17 assume we have converted it to cubic yards, and we'd  
18 have to get back to you on that.

19 MR. KOHRMANN: Chris Kohrmann.

20 MR. CLAY: He was sworn yesterday.

21 HEARING OFFICER TIPSORD: You're still sworn  
22 in today.

23 MR. KOHRMANN: I believe in doing that, I  
24 used the 1.5 conversion factor, and then also I looked

1 at the Indiana. It gives mileage per hauling. So I  
2 used all the states where they include mileage for  
3 transportation, I used a round-trip estimate of 200  
4 miles.

5 QUESTIONS BY MR. WIENHOFF:

6 Q. 200 miles?

7 A. (BY MR. KOHRMANN) Yes.

8 Q. And my interpretation of these rules are that  
9 the landfill fees are billed as the landfill bills?  
10 There is no maximum rates. What did you use for the  
11 landfill rate?

12 A. I don't know if I added that in or not. I'd  
13 have to check my notes on that.

14 MR. WIENHOFF: All right.

15 QUESTIONS BY MS. HESSE:

16 Q. Skipping now to number 28. And in  
17 considering what tasks and what personnel would be  
18 allowed to be reimbursed for work at the site, did the  
19 Agency review any of the OSHA regulations for  
20 construction work in conjunction with effort to  
21 develop the field oversight rates and number of  
22 consulting personnel required for certain activities?

23 A. (BY MR. BAUER) No.

24 Q. Is the Agency aware of whether OSHA has

1 specific requirements for competent persons doing  
2 construction activities and excavation activities?

3 A. (BY MR. CHAPPEL) We don't implement OSHA.  
4 We don't know.

5 Q. But the Agency did not take into account  
6 whether it might be necessary to have people like that  
7 present in order to do the work?

8 A. I don't know how we can take into account  
9 something we don't know anything about.

10 Q. Question number 30. And this goes to  
11 Subpart H in general. Is the Agency aware that its  
12 proposed rates for personnel are actually less than  
13 previously approved rates? For example, the proposed  
14 rates are 26 percent less, less than the personnel  
15 rates previously approved by the Agency for site  
16 classification. \$13,400 previous versus \$9,870  
17 currently. What new information led the Agency to  
18 make this adjustment?

19 A. (BY MR. BAUER) The one thing I would say,  
20 again, the rate sheets that we used -- that are used  
21 was an average on the standard deviation. The rate  
22 sheets previously were not available to the public.  
23 The rate sheets were used as a screening tool to  
24 identify costs or groups of costs that may be

1 excessive, where additional information would be  
2 needed to approve those costs or rates.

3 Q. Do you know if during the last few years,  
4 personnel rates, salaries, etcetera, have generally  
5 gone up or down?

6 A. (BY MR. CLAY) I don't know if they have or  
7 not.

8 Q. Have salaries at IEPA generally gone up or  
9 down during the last few years?

10 A. Mine has gone down.

11 MR. CHAPPEL: Mine has gone down.

12 MR. KING: Mine has gone down.

13 MR. OAKLEY: Mine has gone down.

14 Q. 26 percent?

15 A. (BY MR. KING) 4 percent.

16 Q. Question 31. Subpart H provides maximum  
17 costs for writing specific reports, if the Agency  
18 requests additional information which is already  
19 present in the report or requires revisions which  
20 exceed the minimum requirements of the Act, is there  
21 any mechanism for payments of these costs?

22 A. (BY MR. CHAPPEL) The lump sum costs include  
23 any miscellaneous correspondence, faxes, telephone  
24 calls. All that is included with the lump sum of

1 cost.

2 Q. What about the situation where there is a  
3 one-page letter or numerous phone calls that are  
4 actually incurred because of an Agency personnel  
5 error? For example, the Agency reviewer didn't read  
6 the whole report or misread something in the report.

7 A. Well, I assume that if it was due to an  
8 Agency error, that we would consider those costs.

9 Q. Number 32. The Agency has repeatedly stated  
10 that it cannot complete reviews of costs based on time  
11 and materials without the assistance of some sort of  
12 guidance rate. On that basis, what criteria will the  
13 Agency use to determine reasonableness on a time and  
14 materials basis for items such as alternative  
15 technologies and free product removal?

16 A. (BY MR. CLAY) We review these on a  
17 case-by-case basis, and base that determination on the  
18 demonstration of reasonableness of the costs by the  
19 consultant and our experience.

20 Q. Number 34. Instead of setting lump sum  
21 rates, did the Agency consider using formulas that  
22 took into account site-specific factors, such as  
23 distance from services? Another example, actual  
24 landfill costs? If so, why was that idea rejected?

1           A.    (BY MR. CLAY) We looked at a number of  
2 options to simplify the budget reimbursement process.  
3 We believe this is the best option. We looked at  
4 requiring bids. We looked at a number of other  
5 options.

6                    But, again, the goal of this rule  
7 making -- one of the goals of this rule making is to  
8 simplify and streamline the process, and we felt like  
9 this was the best option.

10           Q.    Number 35. The Agency provides costs for  
11 excavation and disposal and then alternative  
12 technologies must be budgeted on a time and materials  
13 basis. The Agency also requires cost comparisons to  
14 conventional technology for alternative technology  
15 proposals. What is the Agency considering  
16 conventional groundwater treatment technology and what  
17 is its mechanism for payment?

18           A.    (BY MR. CLAY) Any groundwater treatment  
19 technology should be based on time and materials. By  
20 definition, there is no conventional technology for  
21 groundwater treatment

22                    QUESTIONS BY MR. WIENHOFF:

23           Q.    So then why would groundwater remediation be  
24 required to have a cost comparison since there is no

1 conventional technology to compare it to?

2 A. The Agency could compare it to other  
3 groundwater technologies, but there would be no  
4 conventional technology to compare it to, yes.

5 Q. In your initial submittal, you would not  
6 provide a cost comparison? But if the Agency required  
7 one, you would be expected to be provided one?

8 A. (BY MR. CLAY) That's correct.

9 MR. WIENHOFF: Thank you.

10 QUESTIONS BY MS. HESSE:

11 Q. Number 36. If the fuel tax exemption for  
12 off-road diesel is lifted, excavation and backfill  
13 costs will increase. Is there any provision to raise  
14 rates if this or any other factors outside normal  
15 inflation occur, which could directly cause an  
16 increase in costs?

17 A. (BY MR. CLAY) The Agency or any party can  
18 propose change to these regulations at any time.

19 QUESTIONS BY MR. WIENHOFF:

20 Q. And in your experience, how long does that  
21 procedure typically take?

22 A. (BY MR. CLAY) Well, when do we file those?  
23 I mean, it is a lengthy process, and everybody  
24 understands that.

1           But, you know, the gist of the question is,  
2           if there's a change that affects these rates, we've  
3           got an inflation factor proposed in there. If there's  
4           a significant change, I'm not sure how we do that, you  
5           know, aside from a Board proceeding.

6                            QUESTIONS BY MS. HESSE:

7           Q.    Number 37. And I do have one after that. So  
8           I apologize in advance. It's rule number 38 here.

9                            37. The regulations should include the  
10           methods and procedures for setting rates, not for  
11           rates themselves. This way, factors outside the realm  
12           of normal inflation, such as a fuel tax exemption,  
13           inflation, such as off-road diesel can be addressed  
14           more quickly. What is the Agency's reason for  
15           publishing rates in the regulations as opposed to  
16           simply calculating a method for determining the rates  
17           in which the rates can more easily be adjusted for  
18           changing "real world" situations?

19           A.    (BY MR. CLAY) As I said previously, we  
20           looked at other options and felt this was the best  
21           option. Again, remember one of the goals was to  
22           simplify the process.

23                            What you're proposing, or the way I  
24           understand what you're proposing, I believe it would



1     only complicate the process and make it that much more  
2     difficult.

3           Q.     Would it complicate the process?  Or would we  
4     end up with a lot more sites coming in under the  
5     provision that allows increased costs and the  
6     extenuating circumstances or the unusual  
7     circumstances?

8           A.     I think that we believe these costs are  
9     reasonable.  And like I said, we designed these so  
10    that a very small percentage could come in under the  
11    extraordinary circumstances.

12                           QUESTIONS BY MR. WIENHOFF:

13          Q.     How do you envision that the process would be  
14    more complicated if the rates were simply published on  
15    the Web site as opposed to being published in the  
16    regulation?

17          A.     (BY MR. CLAY)  Well, the rates  
18    themselves -- let me go back.  Are you talking about  
19    publishing Subpart H on the Web site?  Or just like  
20    personnel rates without hours attached to them?

21          Q.     Right.  We'll say -- say you have in the  
22    regulation, there's a half day which you get four  
23    borings for a half a day.  The actual rate for half a  
24    day is on the Web site, and the regulations allow you

1 to post that on your Web site. And then if something  
2 occurs, then you can change it more easily.

3 And the regulation says you can have an  
4 excavation, disposal, transportation rate on the Web  
5 site. And that way if off-road diesel was listed, as  
6 they've discussed, and that would cause  
7 trucking -- or would cause excavation equipment to go  
8 up and backfill costs to go up because of that. Then  
9 you could adjust it to 58 instead of 57, without  
10 having to spend nine months in here.

11 A. Well, I understand. That sounds good in  
12 practice, but the reality is there are so many costs  
13 in here. I mean, what if the costs of road goes up,  
14 and what if the cost of gas goes down, and the cost of  
15 diesel goes down? Which I hope it does soon. But I  
16 mean, there's some costs that you're talking about  
17 now, getting us away from the inflation factor, that  
18 have to be monitored almost constantly. And, you  
19 know, I don't understand how that simplifies the  
20 process.

21 Q. Well, I mean, if those costs adjusted, now  
22 what you're saying if the cost of road goes up, you'd  
23 have to go to the Board to get it? So I think  
24 that -- I'll stop from giving testimony. I would

1 think --

2 A. (BY MR. KING) To me it sounds like what  
3 you're suggesting with this is that the Board adopt a  
4 rule which authorizes the Agency to adopt a rate?

5 Q. Right. Yes, adopt a rule.

6 A. Outside of rule making?

7 Q. No. Adopt a rule that says --

8 A. I mean, the Agency, we would publish  
9 something, and it wouldn't be a rule. We would  
10 publishing something on our Web site, and that would  
11 be the number.

12 Q. The rule says you calculate your excavation,  
13 disposal, transportation rate this way. You do that.  
14 And then it's published on the Web site. So it's  
15 published within the context of the rule. And it's  
16 published in a way that's approved by the Board.

17 A. (BY MR. CLAY) I guess if you calculate it  
18 this way and that's a fairly simple way as opposed to,  
19 you know --

20 Q. Just once a year revise those calculations.  
21 Spend a week and do them, and then you have your new  
22 rate. It may go up, it may go down. I don't know.  
23 I'll stop. I don't want to testify.

24 A. I think it sounds like maybe something you

1 would want to propose an adjustment on.

2

3

QUESTIONS BY MS. HESSE:

4

Q. Earlier this afternoon, Mr. Oakley, you said  
5 that typically in a typical month you would send out  
6 150 to 200 review letters. Of those letters, how many  
7 reimbursed in full the requested costs?

8

A. (BY MR. OAKLEY) I would have no way of  
9 knowing that without checking.

10

Q. Do you have a ballpark idea?

11

A. I'm hesitant to give you that, you know. I  
12 really can't say without checking the data.

13

Q. As far as the number of letters that go out  
14 from the LUST unit, the estimate was 320 to 350 a  
15 month. Of those letters, how many of those are  
16 approvals or denials of proposed budgets?

17

A. (BY MR. CLAY) I don't have that data.

18

MR. ALBARRACIN: We wouldn't know. We'd have  
19 to check. There's no way to tell that right now.

20

Q. But that's some information you could provide  
21 to us?

22

A. (BY MR. CLAY) I don't know. It may take a  
23 significant amount of time to do that.

24

Q. Is this information that's on the Agency's

1 Web site?

2 A. Yes. That's where we would get it from.

3 Q. So that we could look up the information if  
4 it's too much bother for you?

5 A. Yes, that's correct.

6 HEARING OFFICER TIPSORD: Thank you. That  
7 leaves us with one set of pre-filed questions from the  
8 Professional Engineers. And I believe Ms. Manning is  
9 going to take care of those as well.

10 MS. MANNING: Thank you. And Mike Rapps of  
11 Rapps Engineering, who will be testifying on behalf of  
12 the Illinois Society of Professional Engineers at our  
13 hearings coming up on June 21st, he will be filing  
14 pre-filed testimony, and he has asked me to ask  
15 questions of the Agency that have been pre-filed.

16 These questions were pre-filed by Kim  
17 Robinson who is the former director of the Capital  
18 Development Board and the current executive director  
19 of the Illinois Society of Professional Engineers.

20 The Illinois Society of Professional  
21 Engineers is an association of more than 2,000  
22 professional engineers, engineers in training and  
23 engineering students. The Illinois Society of  
24 Professional Engineers' members have interest in this

1 proceeding insofar as the Agency proposal has the  
2 potential to impact their employment and the manner in  
3 which they conduct their professional activities. The  
4 questions herein are directed to the Agency, in  
5 general, and not any one specific individual.

6 QUESTIONS BY MS. MANNING:

7 Q. The first question is, that the Agency has  
8 testified that in the past 15 years, it has approved  
9 over half a billion dollars of reimbursement. And  
10 that was Mr. Clay's testimony following the  
11 transcript?

12 A. (BY MR. CLAY) Half a billion.

13 Q. Half a billion. Thank you. It says half a  
14 billion. Sorry if I read that wrong. Half a billion  
15 dollars in reimbursement.

16 And as a means to gauge the significance and  
17 impact of the Agency's proposal, but recognizing that  
18 a precise accounting may not exist, can the Agency  
19 provide at least a rough estimate of how these funds,  
20 that half billion dollars, have been distributed over  
21 the course of the last several years, particularly  
22 what percentage of the funds was dispersed to  
23 engineers/consultants, to excavation contractors, to  
24 laboratories, to landfills, to truckers, to cement

1 contractors, to pavers, to those various businesses?  
2 Recognizing there are -- and by determining this, it  
3 may demonstrate that the portion of reimbursement  
4 monies being distributed for consulting is, is in many  
5 cases, a small fraction of the actual project cost?

6 A. (BY MR. CLAY) To the first part of the  
7 question, 100 percent can be distributed to the owners  
8 and operators. 100 percent has been distributed to  
9 the owners and operators.

10 Q. Because the liability is with the owners and  
11 operators?

12 A. Because it's the statutory and regulatory  
13 requirement the Agency only reimburse the owners and  
14 operators. We don't keep track of what percentage of  
15 that goes to consulting invoices or drilling invoices,  
16 or you know, those other different types of, you  
17 know -- what the owner and operator has contracted for  
18 those services.

19 And if I may ask a short question. I'm not  
20 sure what you would consider a small percentage. I  
21 don't know what, you know, ISPE is considering  
22 reasonable or small percentage that would go to  
23 consultants.

24 Q. I think the question simply is, does the

1 Agency have any idea or keep any track of how the  
2 funds are dispersed based on projects? And it sounds  
3 to me like what your answer is, Doug, is that the  
4 Agency has no such information. And the half a  
5 billion dollars in reimbursement that has come out of  
6 the underground storage tank fund, from your  
7 perspective, goes to owners and operators in any sort  
8 of disbursement category? And that simply is an  
9 assumption on the Agency's part, but there's no  
10 documentation on how that's dispersed?

11 A. (BY MR. CLAY) That's correct.

12 Q. Thank you. The second question is, what  
13 approximate fraction of LUST remediation is  
14 accomplished by TACOing out versus the conventional  
15 dig and haul versus the pump and treat or other  
16 alternative technologies?

17 A. (BY MR. CLAY) We really don't track projects  
18 in that manner. And this is a very simplified, I  
19 guess, way of stating that. I mean, there's almost  
20 always soil removed at a site. Nothing else during  
21 early action.

22 We've seen a number of times where there's  
23 been a pump and trade system going on for years and  
24 doesn't meet remediation objectives. So they revise



1 an ordinance.

2           So I don't think it's one category. I think  
3 you're going to see a number of different technologies  
4 or techniques or, you know, use of TACOing in one area  
5 and use -- almost always excavating and removing  
6 disposal of some soil at every site. But we don't  
7 track in that manner.

8           Q. Thank you. I'm going to just skip over C  
9 because we've already rehashed that. We've gone  
10 through that.

11           And D, I'm going to take a literary license  
12 with and ask the question my way. Given that  
13 engineers and geologists are professionals and are  
14 licensed as such, much like lawyers and doctors are  
15 licensed, and given that lawyers aren't regulated in  
16 how much time they spend in court or in proceedings,  
17 and given that doctors aren't regulated in terms of  
18 how much time they spend operating on patients or  
19 visiting patients or determining what a patient's  
20 needs are, per this rule making, does the Agency  
21 propose to limit the amount of reimbursable time that  
22 a licensed professional engineer may devote to the  
23 investigation of remedial design of LUST incidents,  
24 despite the law itself requires the certification of

1 an engineering geologist on such incidents?

2 A. (BY MR. KING) Well, I'm very disappointed  
3 that you rephrased the question because it begins with  
4 discussion of the English Common Law. And I saw that  
5 as being a first opportunity in 15 years of testifying  
6 where I could actually talk about the English Common  
7 Law and take us back to the Magna Carta.

8 BOARD MEMBER JOHNSON: Just have at it.

9 MR. CLAY: It will be 45 minutes.

10 HEARING OFFICER TIPSORD: No, we actually  
11 don't have that.

12 MR. KING: Because I have a nice little  
13 discourse planned here as to the source of law  
14 relative to these items, but I'll kind of skip to the  
15 punch line, much to everybody's delight and my  
16 chagrin.

17 What we are proposing is not a limit on the  
18 amount of reimbursable time. What we were doing, what  
19 we were proposing is just an amount of reimbursable  
20 dollars. I think the source of the authority for  
21 doing that, it goes back to a long ways for doing  
22 that.

23 But there's certainly many clear examples in  
24 our current society where there are restrictions

1 similar to this imposed on professionals. I think one  
2 of the key areas that we've seen grow is in the area  
3 of the medical field where doctors, as a matter of  
4 insurance policies, are told how much they're going to  
5 get paid for a surgical operation. Now, they can do  
6 it slow or they can do it fast, but that's all they're  
7 going to get. And that's a concept that has come into  
8 play in our society now.

9 So there are certainly constraints as far as  
10 minimum to professionals based on unit rates, and what  
11 we have here is a similar type of situation.

12 Q. Just as a quick follow-up to that. You would  
13 agree, would you not, that the certification of a  
14 licensed professional engineer and a licensed  
15 professional geologist is that person's professional  
16 judgment that the site is going to be remediated in a  
17 way that is protective of human health and environment  
18 and meets all the regulations of the State of  
19 Illinois?

20 A. They sign a certification that says that?  
21 Yes, they do.

22 MS. MANNING: Thank you.

23 HEARING OFFICER TIPSORD: Ms. Hesse?

24 QUESTIONS BY MS. HESSE:

1           Q.    Mr. King, given all the controversy that  
2           there is lately about managed care, health care costs  
3           and all those other issues, you really want this  
4           program to go there?

5           A.    (BY MR. KING) Well, you know, do we want it  
6           to go there? No. But do we want it to continue to be  
7           paid out almost 65 million dollars a year when we're  
8           seeing a reduction in the number of NFRs being issued,  
9           the number of releases being reported and so on? As I  
10          talked about, and Mr. Clay talked about yesterday,  
11          that certainly is not a good process.

12                    We're in a situation now where as I testified  
13          yesterday, as Board Member Novak pointed out, the fund  
14          in a matter of weeks is going to be broke. And we  
15          need to have a system that is different than what we  
16          have now in order to control costs.

17                    The system that we are proposing has a great  
18          deal of similarity to systems that have been  
19          successfully utilized in many other states. And we  
20          think it is a worthy system for the Board to put into  
21          rules.

22                    We certainly are going to go to, and have,  
23          and are in the process of scheduling further meetings  
24          with PIPE in the interim to discuss further

1 refinements. And we certainly are willing to consider  
2 additional refinement to what we've proposed, but we  
3 think it is a valid approach as far as the system of  
4 looking at cost containment.

5 QUESTIONS BY MS. MANNING:

6 Q. I have a question regarding your point that  
7 the number of NFR letters are decreasing.

8 You would agree, would you not, that NFR  
9 letters are not in and of themselves the only source  
10 of reimbursement, or a benchmark for how much money is  
11 being spent and how much remediation is going on and  
12 the complexity of sites or anything like that? So  
13 that if NFR letters are decreasing over the years,  
14 that doesn't mean less work is being performed? It  
15 simply means you have lesser NFR letters, but there's  
16 lots of work still going on?

17 A. (BY MR. KING) here's the point that's  
18 important as far as -- and, again, I'm going to draw  
19 from my experience from other programs, particularly  
20 in our site remediation program.

21 In that program, an owner/operator wants an  
22 NFR letter, because the NFR letter means the project  
23 is completed. And in that program, we are seeing an  
24 increase in the number of NFR letters that have been

1 issued in the last several years. There's been a  
2 dramatic increase.

3 And yet with the LUST program, it seems like  
4 there's a lot of money being spent, but the ultimate  
5 result of the owner and operator getting a letter,  
6 which is closing out his liability relative to that  
7 site, closing his need to do further remediation, now  
8 being able to do whatever transaction he wants to do  
9 at that property, the number is going down.

10 Q. But there's still quite a bit of sites that  
11 are in the pipeline, so to speak, that you've  
12 testified to earlier that will be getting NFR letters?

13 A. That's true. There are many. There are  
14 still 10,000 sites in the pipeline. That is  
15 definitely correct.

16 Q. And there aren't any less in the pipeline  
17 than there ever have been historically?

18 A. I'm not sure what that means.

19 MR. CLAY: I don't know what that means.

20 Q. You don't have any less work than you've had  
21 five years ago in terms of the amount of sites that  
22 are being remediated?

23 A. (BY MR. KING) That's true. We have lots of  
24 work to do. There's no question about that.

1 Q. As do the people out there doing the  
2 remediation.

3 Thank you.

4 HEARING OFFICER TIPSORD: Ms. Hesse?

5 QUESTIONS BY MS. HESSE:

6 Q. In around '98, '99, was there a change in  
7 technical requirements related to underground storage  
8 tanks?

9 A. (BY MR. CLAY) You're referring to the  
10 upgrade requirements?

11 Q. Yes.

12 A. That were implemented on a federal level in  
13 1998? I think the tank owners and operators were  
14 given 10 years to upgrade their tanks and meet certain  
15 and higher technical standards, leak detection,  
16 secondary contaminant, that type of thing. That was  
17 effected -- I believe it was December of '98.

18 There was also a period of time -- let me see  
19 if I can get this correct. '98 was the deadline.  
20 They could take the tank out -- they had one year  
21 after that date to close the tank, I believe. An  
22 owner/operator to actually take that tank out of  
23 service for a year. And then at the end of that year,  
24 take another additional year to close the tank. So we

1 were seeing the effects of that '98 deadline with an  
2 increased number of releases reported because where  
3 tanks are being removed between '97 and 2000.

4 Q. And along with that, with that increase  
5 because of all the tanks being removed, isn't it  
6 possible that initially the Agency saw a number of NFR  
7 letters go through as the tanks that had the minor  
8 releases, the easier to clean up releases have been  
9 completed, so that the Agency could issue NFR letters  
10 for those tanks?

11 A. Some of those would be that situation. Some  
12 we have released would be that situation as well. I'm  
13 not sure that -- I wouldn't characterize it as the  
14 10,000 sites that are left being more complicated  
15 ones.

16 Q. But couldn't there still be some sites that  
17 are sort of carried over from the '97 through 2000  
18 upgrade work that are still being remediated and are  
19 still in the system because they're the more  
20 complicated, more expensive sites?

21 A. They could. There are still some of those in  
22 the system. I wouldn't say some of them may be in the  
23 system because they're more complicated. Some of them  
24 may be in the system because inactivity. We've got



1 complicated. We have got sites from the late '80s  
2 that are still in the system, and it doesn't  
3 necessarily mean they're complicated. It just means  
4 that the applicant has not sought a "no further  
5 remediation" letter.

6 HEARING OFFICER TIPSORD: It looks like that  
7 must be it for today.

8 BOARD MEMBER JOHNSON: Can I -- just let me  
9 ask this.

10 QUESTIONS BY BOARD MEMBER JOHNSON:

11 Q. We've got stuck on the specificity and the  
12 specific points here, and I kind of wanted to ask a  
13 broad question of you guys. And I think it touches on  
14 stuff that all of you sitting at the proponent's table  
15 one way or another have mentioned during the course of  
16 yesterday and today.

17 It seems to me there's a number of reasons  
18 that you at the Agency have initiated this process,  
19 that you've talked about streamlining the process.  
20 You've talked about simplifying the reimbursement  
21 procedure. You've talked about reducing the number of  
22 appeals. And I'm certain that part of it is that you  
23 wanted to properly promulgate this rate schedule rule,  
24 that for some period of time anyway, used and are no

1 longer using.

2           As you pointed out, Gary, we started this  
3 Wednesday morning in Bloomington with two documents,  
4 one showing the current cash balance on hand in the  
5 UST fund, and the other having a projected  
6 carry-forward figure into FY '05 of less than  
7 \$150,000. And I guess it seems to me that you can  
8 then infer that at least a portion or at least in the  
9 back of someone's mind -- and part of the reason for  
10 the initiation of that particular rule is that you're  
11 seeking to protect the fund, and you're seeking to  
12 make sure that what we've got there now doesn't go  
13 away, and we don't end up broke as Chairman Novak  
14 pointed out.

15           And I guess my question is, A, is that in  
16 fact an elucidated reason that you're going forward  
17 with this rule making? And, B, isn't it natural then  
18 to infer in that, that what you're trying to do is to  
19 seek to reduce the total overall payments out of the  
20 fund?

21           MR. KING: We certainly -- we want to have a  
22 UST fund that has long-term integrity. We think that  
23 is critical to protection of human health of the  
24 environment in the state. We think it's critical to

1 the protection of owners and operators, and we think  
2 it's critical for the consultants and contractors to  
3 do work on the underground sites. It's our  
4 responsibility to reimburse reasonable costs.

5 We think that, yes, in the overall scope of  
6 things, yes, I think this will end up reducing costs  
7 that are -- that will still be in the range of  
8 reasonable. I mean, I think we'll end up having costs  
9 that are somewhat lower, but they are still going to  
10 be in that reasonable range. So I guess I would say I  
11 agree with the comments that you stated.

12 BOARD MEMBER JOHNSON: Thanks.

13 HEARING OFFICER TIPSORD: I want to thank you  
14 all for your attention. I want to thank you all for  
15 your hard work in the last two days. We've gotten a  
16 lot of good information that will help the Board as we  
17 proceed along in this rule making.

18 As you all know, we are far from done now.  
19 We have currently scheduled a hearing going out today  
20 or tomorrow scheduling hearings beginning June 21st to  
21 go day to day through Friday of that week if  
22 necessary. Pre-filed testimony is due by June 7th,  
23 and you may file that by fax.

24 The transcript should be ready and on the Web

1 hopefully by June 2nd.

2 We will then have a second or another set of  
3 hearings starting July 6th to hear the testimony of  
4 the two people who can't be there on the June 21st.

5 If you have any questions about the hearing,  
6 or about the pre-filed testimony, you can contact  
7 Cathleen Crowley. Her phone number is  
8 (312) 814-6129. I will be back on June 14th and can  
9 be reached at that time. You may also always leave a  
10 message on my voice mail, and I'll get back to you  
11 when I get back in again. Thank you very much.

12 Do you have anything to add to that,  
13 Dr. Girard?

14 BOARD MEMBER GIRARD: No. Thank you for your  
15 work, and hopefully we won't take the whole week on  
16 June 21st. Don't wait until Friday to come. We'll go  
17 Monday, Tuesday, Wednesday until we get done.

18 HEARING OFFICER TIPSORD: Thank you very  
19 much, and we're adjourned.

20 [End of proceeding.]

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CERTIFICATION

I, Ann Marie Hollo, Certified Shorthand Reporter Registered Professional Reporter, Registered Merit Reporter and Notary Public duly and qualified in and for the State of Illinois, do hereby certify that the foregoing rule-making proceeding before the Illinois Pollution Control Board came before me on May 26, 2004, at the Lincoln Library, Carnegie North Room, 326 South Seventh Street, Springfield, Illinois.

I further certify that the foregoing transcript is a true and correct transcript of my original stenographic notes.

I further certify that I am neither attorney or counsel for, nor related to or employed by any of the parties to the action in which this proceeding is taken; and furthermore, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in the action.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Notarial Seal this 1st day of June, 2004.

Ann Marie Hollo, CSR, RMR  
NOTARY PUBLIC