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ILLINOIS POLLUTION CONTROL BOARD

May 25, 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 25, 2004, at the  
McLean County Law and Justice Center, Room 700,  
Bloomington, Illinois, commencing at 9:00 a.m.

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

1 APPEARANCES:  
 Illinois Pollution Control Board  
 2 100 West Randolph Street  
 Suite 11-500  
 3 Chicago, Illinois 60601  
 By: Marie Tipsord, Esq., Hearing Officer  
 4

Illinois Pollution Control Board Members:  
 5 Chairman J. Philip Novak, Esq.  
 G. Tanner Girard, Ph.D.  
 6 Thomas E. Johnson, Esq.  
 Andrea Moore, Esq.  
 7 Anand Rao, Senior Environmental Scientist  
 Alisa Liu, P.E.  
 8

Posegate & Denes, P.C.  
 9 111 North Sixth Street  
 Springfield, Illinois 62701  
 10 By: Claire A. Manning, Esq.  
 Appearing on behalf of PIPE and ISPE  
 11

Barnes & Thornburg  
 12 Suite 4400  
 One North Wacker Drive  
 13 Chicago, Illinois 60606-2809  
 By: Carolyn S. Hesse, Esq.  
 14 Appearing on behalf of CW3M

15 Illinois Environmental Protection Agency  
 1021 North Grand Avenue East  
 16 Springfield, Illinois 62794  
 By: M. Kyle Rominger, Esq.  
 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 16	9	11
22 Exhibit Number 17	9	11
Exhibit Number 18	9	11
23 Exhibit Number 19	10	11
Exhibit Nos. 20 - 22	10	11
24 Exhibit Number 23	11	11

1           HEARING OFFICER TIPSORD: Good morning. And  
2 I apologize for my voice. If you can't hear me at any  
3 time throughout the day, please raise your hand, and  
4 I'll try to pump it up a little bit.

5           My name is Marie Tipsord. I've been  
6 appointed by the Board to serve as hearing officer in  
7 these combined proceedings entitled, In the Matter of  
8 Proposed Amendments to Regulations of Petroleum  
9 Leaking Underground Storage Tanks, 35 ILL. Admin. Code  
10 732 and 734. The docket numbers are R04-22 and  
11 R04-23.

12           To my right is Dr. Tanner Girard, the Board  
13 member assigned to this matter. Also present to his  
14 right is Board Member Thomas Johnson. We are  
15 expecting Chairman Philip Novak and Board Member  
16 Andrea Moore at any moment. To my left is an Anand  
17 Rao, our technical staff. And with him -- and she  
18 will be in just a second -- is Alisa Liu.

19           This is the second hearing to be held in this  
20 proceeding. The sole purpose of today's hearing and  
21 tomorrow's is to allow the Illinois Environmental  
22 Protection Agency to respond to pre-filed questions  
23 and any follow-up questions from the first hearing as  
24 well as follow-up questions to the pre-filed

1 questions.

2           The Board will not hear testimony from any  
3 other parties today or tomorrow, as noted in the May  
4 13, 2004 hearing officer order.

5           I will schedule additional hearings to allow  
6 for testimony by all interested parties. We will  
7 discuss possible hearing dates off the record later  
8 today. I anticipate that what we're going to do is we  
9 have some preliminary matters, some exhibits to be  
10 admitted. We'll admit the exhibits, and then we will  
11 allow -- we will start with questions.

12           Given the most extensive, we'll let Claire  
13 Manning read the questions on behalf of PIPE. The  
14 Agency will answer the question. We will allow  
15 follow-ups to that question and only to that  
16 question. If I feel you're going too far afield, I  
17 won't hesitate to say, no, we need to stop and come  
18 back and just concentrate on this question. PIPE had  
19 an extensive number of questions, and hopefully  
20 everything will be covered.

21           After PIPE, we'll do CW3Ms. And finally  
22 we'll do the professional engineers. We will get  
23 through as much as possible today.

24           Anyone may ask a question. However, I do ask

1 that you raise your hand, wait for me to acknowledge  
2 you. And after I've acknowledged you, please state  
3 your name and who you represent before you begin your  
4 questions. And remember to always say who you are.  
5 The court reporter -- there's a lot of you out there,  
6 and there will be a lot of you who asks questions.  
7 Neither I or the court reporter are going to be able  
8 to remember everybody's names, I'm sorry to say.

9 I also want to advise you in advance that you  
10 have to ask questions and only questions. If I feel  
11 you're veering over into testimony, I will swear you  
12 in, but I will then completely ask you to state your  
13 question. We have far too many questions to get  
14 through over the next two days to let everyone have a  
15 chance to speak off the cuff and testify. You'll get  
16 your opportunity to testify at later hearings. And I  
17 apologize in advance if I become too abrupt, but I  
18 really do think we need to get through these questions  
19 if we want to move forward. We have to stick to the  
20 questions.

21 I also note that there's pending motions  
22 before the Board in this proceeding. We will not hear  
23 any discussion regarding those motions on the record  
24 or off the record please. If any of you wish to

1 comment on the pending motions, you may do so by  
2 filing a written response with the clerk of the Board  
3 and serving the response on the persons listed on the  
4 service list.

5 Please speak one at a time. If you're  
6 speaking over each other, the court reporter nor I  
7 will be able to get your questions. We won't be able  
8 to get them on the record. Please note that any  
9 question asked by the Board member or staff are  
10 intended to help build a complete record for the  
11 Board's decision and not to express any preconceived  
12 notion or bias.

13 Currently my plan is to proceed until  
14 approximately 11:00 a.m., and when we will take a  
15 10-minute break. There's a soda machine right outside  
16 the door. The rest rooms are right outside the door.  
17 There's vending machines down on six as well. We will  
18 then go from 11:00 until 1:00 p.m., and at 1:00 p.m.  
19 we will take a break, or approximately 1:00 p.m. We  
20 will take a lunch break of approximately one hour, and  
21 we will reconvene around 2 o'clock and go until  
22 4 o'clock. This building closes at 4:35. So we will  
23 have to recess around 4 o'clock.

24 Over to my left there are signup sheets for

1 the notice and service list. You may also sign up for  
2 the notice and service list on the Board's Web page.  
3 If you wish to be on the service list, you will  
4 receive all pleadings and pre-filed testimony in this  
5 proceeding.

6 In addition, you must serve all of your  
7 filings on the persons on the service list. If you  
8 wish to be on the notice list, you will receive all  
9 Board and hearing officer orders and the rule making.  
10 If you have any questions, though, about which list  
11 you might like to be on, you may ask me at a break.

12 At this time, I'd like to ask Dr. Girard if  
13 he has anything he'd like to say.

14 BOARD MEMBER GIRARD: Thank you. Good  
15 morning. On behalf of the Board, I welcome everyone  
16 to this second hearing on the proposal to amend the  
17 UST rules. The Board appreciates all the time and  
18 effort that various groups and individuals have  
19 invested in this rule making. We look forward to the  
20 pre-filed questions today and hope to hear the  
21 testimony today or tomorrow. Thank you.

22 HEARING OFFICER TIPSORD: Thank you,  
23 Dr. Girard.

24 At this time, we're going to do a preliminary

1 matter. The Agency has several documents that they're  
2 going to enter as an exhibit. They have copies of  
3 that stuff over there. So, Mr. Rominger, if you would  
4 like to start.

5 MR. ROMINGER: Yeah. I didn't -- I forgot  
6 what order I had those in. So --

7 HEARING OFFICER TIPSORD: That's okay. We'll  
8 figure it out.

9 MR. ROMINGER: First let me have the second  
10 errata sheet. It contains some changes in response to  
11 questions at the first hearing, and we'll go through  
12 that in a little bit. We have made for the Board --

13 HEARING OFFICER TIPSORD: Excuse me. Alisa,  
14 we have a copy for you up here. Sorry. Go ahead.

15 MR. ROMINGER: We also have copies of the  
16 Board and Agency provisions relating to record  
17 retention.

18 HEARING OFFICER TIPSORD: Okay. Hold on one  
19 minute, because I have to actually physically mark  
20 them.

21 MR. ROMINGER: Okay.

22 HEARING OFFICER TIPSORD: Off the record.

23 [Off-the-record discussion.]

24 HEARING OFFICER TIPSORD: Okay, Kyle. Go

1 ahead.

2 MR. ROMINGER: Next I have copies of Board  
3 and Agency regulations pertaining to record retention,  
4 similar to what we have proposed in these rules.

5 HEARING OFFICER TIPSORD: That is Exhibit  
6 16.

7 [Exhibit Number 16 was marked for identification.]

8 MR. ROMINGER: And then we have a copy of a  
9 sheet showing the current balance of the UST Fund.

10 HEARING OFFICER TIPSORD: The Dan Hines --

11 MR. ROMINGER: Yes, from the comptroller  
12 site.

13 HEARING OFFICER TIPSORD: I'll mark that as  
14 Exhibit 17.

15 [Exhibit Number 17 was marked for identification.]

16 MR. ROMINGER: Then we have a spreadsheet of  
17 fund balances, I believe, 2002 through 2004.

18 [Exhibit Number 18 was marked for identification.]

19 HEARING OFFICER TIPSORD: Again, all of these  
20 are available over here to the right. Okay.

21 MR. ROMINGER: And then we have a map of  
22 landfills in the state. We have a larger poster of  
23 that. When it comes time for that, we'll put that up  
24 on the wall for people to see.

1           HEARING OFFICER TIPSORD: We'll mark that as  
2 Exhibit 19.

3           [Exhibit Number 19 was marked for identification.]

4           MR. ROMINGER: Okay. And then we have the  
5 sheet, which is a summary of the costs and amounts in  
6 Subpart H.

7           HEARING OFFICER TIPSORD: General guidelines?

8           MR. ROMINGER: Yes.

9           HEARING OFFICER TIPSORD: Okay.

10          MR. ROMINGER: Next we have a flowchart of  
11 the LUST claims voucher process.

12          HEARING OFFICER TIPSORD: Okay.

13          MR. ROMINGER: Then we have a summary of  
14 state UST regulations.

15          HEARING OFFICER TIPSORD: We'll mark that as  
16 Exhibit 21.

17          [Exhibit Numbers 20, 21 and 22 were marked  
18 for identification.]

19          HEARING OFFICER TIPSORD: Sorry, Exhibit 22.

20          MR. ROMINGER: And this is the final.

21          HEARING OFFICER TIPSORD: Let me set these  
22 over here. Okay.

23          MR. ROMINGER: The last exhibit, we prepared  
24 a summary of different states' regulations. We wanted

1 to submit that separately for the Board. That's just  
2 a copy of 31 states' regulations pertaining to the  
3 reimbursement in those states. I don't know if it  
4 refers specifically to those, but we just wanted to  
5 have those for the Board.

6 HEARING OFFICER TIPSORD: You really do want  
7 me to carry a lot of stuff back to Chicago. We'll  
8 mark that as Exhibit 23.

9 [Exhibit Number 23 was marked for identification.]

10 HEARING OFFICER TIPSORD: If there's no  
11 objection, those exhibits will be admitted. Seeing  
12 none, the exhibits are admitted.

13 [Exhibit Numbers 16 - 23 were admitted into  
14 evidence.]

15 MS. MANNING: Madam Hearing Officer, Claire  
16 Manning for the Professionals of Illinois for the  
17 Protection of the Environment. Could you just  
18 summarize what those exhibits are? And maybe hold  
19 them up, so that we have a connection in terms of the  
20 numbers of the exhibits? Because it was hard to  
21 follow, I think, the map -- I'm not sure that the map  
22 was over here.

23 MR. ROMINGER: No. The map, we have a larger  
24 one to hang up.

1 MS. MANNING: Just so we have a copy of the  
2 numbers, and we make sure that we're following  
3 correctly.

4 HEARING OFFICER TIPSORD: No problem.

5 MS. MANNING: Thank you.

6 HEARING OFFICER TIPSORD: Exhibit 15 is the  
7 errata.

8 MS. MANNING: Thank you.

9 HEARING OFFICER TIPSORD: Exhibit 16 is the  
10 Illinois Administrative Code. 17 is a cash balance  
11 with Dan Hines. 18 is the state underground storage  
12 tank fund spreadsheet. 19 is the map. 20 is titled,  
13 General Guidelines, and it's two pages, back and  
14 front.

15 MS. MANNING: Thank you.

16 HEARING OFFICER TIPSORD: 21 is the  
17 flowchart. Well, it's just one page. 22 is titled,  
18 State UST Reimbursement Regulations.

19 MS. MANNING: Thank you.

20 HEARING OFFICER TIPSORD: And then 23 is the  
21 big, thick document of all the actual state  
22 regulations, which I'm assuming you didn't make copies  
23 of, right?

24 MR. ROMINGER: No, no, just the one.

1           HEARING OFFICER TIPSORD: Then I think we're  
2 ready to proceed. And I think we're ready to  
3 proceed. Shall we go ahead and swear all the  
4 witnesses at once and get that out of the way?

5                           [Witnesses sworn.]

6           MR. ROMINGER: First I thought we'd go  
7 through some issues from the first hearing. There  
8 were things we were going to follow up on.

9           I'll note the pages in the transcript for the  
10 first hearing and briefly describe the issue. The  
11 first one we have is on page 34 to 35 and page 171 to  
12 178. And the question is regarding sites that elected  
13 into 734 and what requirements they need to meet from  
14 734 once they elect into 734. We've covered this  
15 briefly in the errata sheet on paragraph 3, which  
16 we'll go through in a little while.

17           Would you prefer -- a few of these are  
18 covered in the errata sheet. Do you want to cover  
19 those now, or just wait when we go through the errata  
20 sheet?

21           HEARING OFFICER TIPSORD: I think we might as  
22 well cover them now.

23           MR. ROMINGER: Okay. That's covered on  
24 paragraph 3 of the errata sheet, pages 2 and 3. And

1 we've just tried to explain that when somebody opts  
2 into 734, that the Agency would look at the work  
3 they've done to date and decide where they need to go  
4 from there, and that they wouldn't necessarily need to  
5 meet the specific requirements of the site  
6 investigation.

7           And we put an example in there. For example,  
8 if somebody's already defined the extent of  
9 contamination on site, they don't necessarily need to  
10 go back and meet the strict requirements that are in  
11 734 regarding the locations, specific locations of  
12 sampling. That that can be deemed as met.

13           The next issue is on page 277 of the first  
14 hearing transcript. There's a question regarding  
15 financial interest and whether that was intended to  
16 include people that have only professional  
17 relationship. The term "advisory" was used in that  
18 definition. And to correct that, what we've done in  
19 the errata under paragraph 1 is just delete the word  
20 "advisory" from that. So it was not intended to  
21 include somebody, say, an attorney who is just hired  
22 to provide advice.

23           The next one is on page 40 41 of the first  
24 transcript in regard to Board decisions where the EPA

1 rates have been upheld, and Doug has something on  
2 that.

3 MR. CLAY: The best example we could find  
4 that was solely a rate issue was in the Todd Service  
5 Station versus the Illinois Environmental Protection  
6 Agency. And the Board decision is dated January 22nd  
7 of 2004. That was solely a rate issue and upheld the  
8 Agency's rates in this case.

9 Other decisions by the Board on appeal in  
10 favor of the Agency involve other issues, such as  
11 documentation, whether the activity was corrective  
12 action, the time performed -- time to perform the  
13 activity, in addition to whether the rate was  
14 reasonable. So we felt like that Todd was solely a  
15 rate issue and was a good example of the Board  
16 upholding the Agency rate.

17 MR. ROMINGER: I think it was just a question  
18 regarding past appeals with the rates that we've  
19 used. And we just didn't find cases where that was  
20 specifically an issue, so.

21 Page 103 of the first hearing transcript, we  
22 said we would look into prescribing a method of  
23 measuring free product in the rules. And I'll let  
24 Harry answer that. The measurement on one-eighth of

1 an inch on the product.

2 MR. CHAPPEL: Right. I mean, I've looked  
3 back through the USEPA documents, and everybody talks  
4 about being able to detect free production, but there  
5 is no specific test, like ASTM 5936, that tells you  
6 how to measure for free product.

7 The best advice I can give is that when  
8 measuring from a well -- I think we're going to  
9 clarify that in the rules -- that this is a sample  
10 from a well. You look at the amount of free product  
11 in your baler and you measure it. If need be, you use  
12 a ruler to tell if it's an eighth of an inch or not.  
13 So it would be from a baler, using a ruler.

14 MR. ROMINGER: In the errata sheet on  
15 paragraph 7, 8 and 11, we've added that in, as  
16 measured in a groundwater monitoring well, so it  
17 specified the location, but we could not find, I  
18 guess, technical background on a specific method of  
19 measurements.

20 On page 104 and 105 of the transcript, there  
21 was a question regarding the reason behind the  
22 definition of property damage. That is in the rules.

23 MR. KING: The question was related to  
24 language that was added to the statutory definition as

1 part of our proposal here. We were just simply using  
2 the definition in part 734 that we had used in part  
3 732 that was adopted in 1994.

4 We went back and looked at the record of the  
5 previous hearings to figure out why that additional  
6 language was put in. There was no reference to that  
7 in the record that we found. And I mean, I stirred my  
8 brain cells from remembering back when those rules  
9 were adopted, and my best recollection is that we  
10 included that language so that it didn't have a  
11 situation where an owner or operator was damaging his  
12 own property on site and then claiming that was a  
13 property damage that should be reimbursed.

14 MR. ROMINGER: Okay. On pages 114 through  
15 116, there was some comments about amending similar  
16 requirements for tanks greater than 15,000 gallons.  
17 And also sampling requirements for the backfill. And  
18 we've amended those in the errata sheet under  
19 paragraphs 4 and 5. For tanks -- for the floor sample  
20 for tanks greater than 15,000 gallons and greater,  
21 we've simply deleted the last sentence from  
22 732.202(h)(1)(B) and the counterpart in  
23 734.210(h)(1)(B). So it goes back to the original,  
24 what was in the original proposal, which is merely

1 sampling the floor below each end of the tank, one  
2 sample from below each end.

3 Under paragraph 5 on sampling the backfill,  
4 you request, "see the change at the top of page 4 of  
5 the errata sheet," and we've changed that to sampling  
6 the backfill every 100 cubic yards, and that's  
7 backfill that's returned to the excavation.

8 Page 123 and 124 of the transcript, there was  
9 an issue over the time frames between early action  
10 activities and free product. Both have a 45-day time  
11 frame. And Hernando is going to provide some  
12 clarification on that.

13 MR. ALBARRACIN: Regarding early action, the  
14 45-day time frame begins at the time that the release  
15 is called into IEMA. And a number of activities need  
16 to take place during that time frame, and that's  
17 outlined in the regulations. For example, what needs  
18 to happen within 20 days and what needs to happen  
19 within 45 days of the IEMA date.

20 Regarding free product, the 45-day time frame  
21 begins when product is discovered. That may happen  
22 during the early action time frame, or it may happen  
23 at a later time. There was some confusion between the  
24 two 45-day time frames. They're separate. So the

1 45-day time frame for free product begins at any time  
2 when the product is discovered.

3 And at that point, a number of activities  
4 need to take place, and we will need a report that  
5 documents the activities. We've also proposed if the  
6 activities are going to continue more than 45 days, we  
7 need a plan and a budget if reimbursement is sought.  
8 So that's basically the difference between the two  
9 45-day time frames.

10 MR. ROMINGER: The next issue on page 148 and  
11 149 of the transcript, there was some discussion on  
12 sampling below the groundwater table. Initially, we  
13 said that borings would go to a specific depth or  
14 until groundwater in bedrock was encountered, and  
15 we've amended the provisions to allow the borings to  
16 go below the groundwater and sampling to occur there  
17 if site-specific conditions warrant. And we've made  
18 changes in the errata sheet under paragraph 6 and 10  
19 to make those changes.

20 On page 154 and 155 of the transcript, there  
21 was a question regarding the depth of the borings, and  
22 felt there was an inconsistency, and I think that it  
23 was from assessing -- I don't know -- is she here? Is  
24 that still a concern?

1 MS. HESSE: I am sorry? I didn't hear a  
2 question.

3 MR. ROMINGER: There's a question regarding  
4 the different depths of the boring. Some go to 30  
5 feet. Did you still have a question about that, that  
6 needed to be clarified?

7 MS. HESSE: Not right now.

8 MR. ROMINGER: On page 162 through 171, there  
9 was some questions regarding costs associated with  
10 cleanups under 732.300(b), and there was a proposed  
11 change to a Board note following that provision.

12 MR. CLAY: On pages 162 to 171 of the  
13 transcript, there was discussion about the purpose of  
14 the proposed changes to the Board note following  
15 Section 732.300(b).

16 The Board note states that the owner and  
17 operators proceeding under this section may not be  
18 entitled to full payment from the fund. However,  
19 Section 732.606(z) states that cost incurred after  
20 early action activities are ineligible if the  
21 owner/operator chose to clean up the site pursuant to  
22 732.300(b). The amendments to the Board note is  
23 proposed to make the Board note consistent with  
24 Section 732.606(z), and to notify owners and operators

1 proceeding under Section 732.300(b) the costs -- their  
2 costs are not eligible for payment.

3 Background on Section 732.300(b). Section  
4 732.300(b) is a provision that allows owners and  
5 operators to clean up a site without first classifying  
6 it as a no further action site, low priority site or  
7 high priority site. This allows owners and operators  
8 to just clean up the site and submit a corrective  
9 action completion report when the cleanup is done.  
10 However, this shortcut is taken at the owner's and  
11 operator's risk.

12 Under Section 732.606(z), such cleanups are  
13 ineligible for reimbursement. This is because the  
14 site has not been classified, and the minimum  
15 corrective action requirements for the site are  
16 unknown. For example, if a site were really a no  
17 further action site, no corrective action would be  
18 required.

19 MR. ROMINGER: Okay. I think on that -- I  
20 think when we looked back at the transcript, the  
21 discussion on this got kind of confusing, but that  
22 change was simply made so the Board note was  
23 consistent with the later provision under the  
24 ineligible costs, the 606(z) provision. So it is just

1 really for consistency purposes.

2 HEARING OFFICER TIPSORD: Just one moment of  
3 clarification. We did swear you in, too, right, when  
4 we swore in all the witnesses?

5 MR. ROMINGER: Oh, no.

6 [Witness sworn.]

7 MR. ROMINGER: Okay. Page 216 through 218 of  
8 the transcript. There is a question regarding  
9 732.411(f) and why that was added in the last one.

10 MR. CLAY: Section 732.411(f) was added by  
11 the Board in its proposed first rule notice opinion  
12 and order. The Board stated -- the Board notes that  
13 an NFR letter does not absolve LUST owner or operator  
14 from liability for cleanup of off-site releases, even  
15 where an NFR letter has been issued. See Board note  
16 proposed at Subsection 732.411(f), proposed rule first  
17 notice opinion and order was November 1, 2001 page  
18 12.

19 MR. ROMINGER: The next one is on page 223.  
20 There were questions regarding wording for concrete  
21 and asphalt replacement costs. And we proposed a  
22 revision to that in paragraph 13 of the errata sheet,  
23 which is on page 9 and 10.

24 Brian, did you want to explain the changes we

1 made to that?

2 MR. BAUER: Sure. Basically, we added a  
3 whole section for the kind of -- we had an oversight.  
4 We only included costs for engineering barriers. So  
5 this time, we also included any costs for replacement  
6 of asphalt and or concrete as part of the corrective  
7 action in this.

8 We also, under some of the costs, based on  
9 some of the comments from -- I believe it was probably  
10 the rates. That they made some comments about the  
11 rates for tax purposes and mobilization charge. We'll  
12 cover that a little later.

13 MR. ROMINGER: On page 229 through 231 of the  
14 transcript, we said we would look into Section  
15 578(a)(1) of the Act regarding a requirement and its  
16 relation to the Agency's review of all reports versus  
17 10 percent of the reports submitted.

18 MR. CLAY: The issue was, you know, whether  
19 the Agency is looking at all the reports, and I think  
20 10 percent was used. There's actually a 20 percent  
21 number in the regulations at 732.504(a)(3). And so I  
22 don't believe there's any percentage in the statutes  
23 themselves.

24 At 578(a)(1), the statute talks about review

1 based on generally accepted audit and accounting  
2 practices. And this is when this refers to when  
3 there's been a budget approved ahead of time, and that  
4 is what we do. The budget has been approved. And  
5 what the LUST claims unit will do is basically add up  
6 invoices, make sure that the costs are eligible and  
7 are consistent with the plan that had been approved,  
8 the plan and budget had been approved.

9 In addition, 732.504(a)(3) talks about the 20  
10 percent of site classification reports being  
11 reviewed. That is the goal as stated in 732.504(a).

12 That section goes on further under 732.504(b)  
13 to state the Agency may conduct a full review of any  
14 plan or report not selected in accordance with the  
15 provisions of this section.

16 In 732.504(c), notwithstanding any other  
17 limitation of review, the Agency may conduct a full  
18 technical review of any plan of report identified in  
19 this section.

20 And in 732.504(d), it identifies the Agency's  
21 decision on whether or not to select plans, reports  
22 for full review shall not be subject to appeal.

23 MR. ROMINGER: In the same area on pages 228  
24 through 229 and page 231, the Agency was to look at

1 language regarding documents and wording of the Agency  
2 "may" versus the Agency "must" look at certain  
3 documents when reviewing plans and reports.

4 MR. CLAY: Here, yeah. The question was  
5 whether the Agency shall review all documents that the  
6 professional engineer, professional geologist or  
7 owner/operator use in their submittal. And I think  
8 it's a different function. The Agency's function is  
9 different than the professional engineer and  
10 professional geologist submitting the plan and  
11 report.

12 So we feel like the wording as proposed,  
13 "which the Agency may review any and all technical  
14 and financial information relied upon by the owner and  
15 operator, the professional engineer or professional  
16 geologist in developing the plans, budgets or report,"  
17 is not inconsistent with other wording in the  
18 regulations.

19 MR. ROMINGER: On page 40, there was issue  
20 regarding payment of concrete replacement more than  
21 once. Page 240. I don't know if I said 240.

22 The issue was replacement of concrete where,  
23 say, the tanks are pulled up and they repave the  
24 parking lot or the station. Then they later do

1 corrective action and tear up that again. So, in  
2 effect, you have concrete being replaced two or three  
3 times. And we wanted to limit that to a replacement  
4 of one time being reasonable.

5           There was a suggestion that we add a  
6 provision in, just stating that concrete replacement  
7 is not paid more than once, and we've done that under  
8 paragraph 12 of the errata sheet. And we've just  
9 added a sentence that says the destruction and  
10 replacement of concrete, asphalt and paving shall not  
11 be paid more than once.

12           And on page 241 through 242 of the  
13 transcript, there appeared to be a typo or something  
14 miscommunicated among one of Gary's comments regarding  
15 transfers between the funds.

16           MR. KING: I just wanted to go over this one  
17 because I felt it was fairly important because the  
18 transcript does not accurately state what I said. And  
19 in this instance, the mistake turned the entire  
20 statement around 100 percent.

21           What happened was the word -- what I said was  
22 "not." And that word in the transcript became "now."  
23 And I just wanted to clarify that this is on page 242  
24 of the last hearing transcript, and I'll just read the

1 phrase as I said it. The phrase was, "Our conclusion  
2 was that the legislature really was not intending that  
3 kind of interfund transfer."

4 MR. ROMINGER: On 250 of the transcript,  
5 there was an issue regarding record keeping  
6 requirements in other regulations. And we submitted  
7 copies of those, and those are the ones marked as  
8 Exhibit 16. Those are record retention requirements  
9 from other Board and Agency regulations.

10 On page 279 of the transcript, the last two  
11 sentences of the first paragraph, there needs to be a  
12 correction on that one.

13 MR. CLAY: Yeah. Actually, I think it's the  
14 last sentence, where it says, "In fact, in most cases,  
15 the large majority of cases it's why we established  
16 the numbers that we did. We feel they won't fall  
17 under these rates." It should read: "We feel the  
18 majority of costs will fall under these rates."

19 What that's referring to is the  
20 transportation, excavation and disposal costs. And  
21 some of the questions leading up to that is the  
22 distance from landfills and was that taken into  
23 account. And it was taken into account, and we've got  
24 a map being put up here, and there's several copies

1 going around that identify the solid waste landfills  
2 that will accept LUST soils in the State of Illinois.

3 And if you'll note on the map, I believe  
4 there is a landfill that will accept these soils  
5 within 50 miles of any site in the State of Illinois,  
6 with the exception of the very northwest portion of  
7 Jo Daviess County, which I think the maximum distance  
8 is around 75 miles. So there are landfills throughout  
9 the State of Illinois that will accept LUST soils.  
10 And this map identifies those landfills.

11 HEARING OFFICER TIPSORD: Just for the  
12 record, that's been admitted as Exhibit 19.

13 CHAIRMAN NOVAK: Can I ask a question on this  
14 map? I notice on Maryview (sp) Landfill, you know,  
15 your indication about an operating permit pending. I  
16 understand that permit has been approved, and they are  
17 accepting waste. Is that correct? In Will County?  
18 At the Joliet arsenal?

19 MR. ALBARRACIN: It may be. You know, that  
20 was put together in the last week. And information I  
21 received from the permit section was that it was  
22 pending. It may be approved. Maybe it was just a  
23 matter of information-getting.

24 CHAIRMAN NOVAK: That's kind of close where I

1 used to live, and I understand there's a lot of  
2 activity going around at the site. So I just thought  
3 I had heard that the permit was approved, and they  
4 were beginning to accept waste.

5 MR. ALBARRACIN: That may be the case.  
6 That's why we weren't sure.

7 CHAIRMAN NOVAK: Let's assume it is accepting  
8 the waste. How do they go about, through the Agency,  
9 to accept LUST soil? Do they have to apply for a  
10 special permit for that?

11 MR. CLAY: They have to -- well, the permit  
12 or the landfill's permit to accept specific types of  
13 waste.

14 CHAIRMAN NOVAK: Right, right.

15 MR. CLAY: Then they would have to apply for  
16 a permit to do that. Or the company that wants to  
17 dispose of the waste, they would have to, you know, do  
18 their pre-qualification for the landfill to accept  
19 that waste. And that's all stated in the permit  
20 issued by our permit section, the landfill permit.

21 MR. ALBARRACIN: The permit should specify  
22 what they can accept.

23 CHAIRMAN NOVAK: Okay. Thank you.

24 MR. ROMINGER: Finally on page 284 and 285 of

1 the transcript, there was an issue regarding how some  
2 of the costs for Subpart H were derived. And we want  
3 to make sure there was not a misconception that the  
4 numbers were based just on 25 sites and what those 25  
5 sites that were discussed were actually used for. And  
6 I'll let Harry elaborate on that.

7 MR. CHAPPEL: Well, the 25 sites that are in  
8 a pending of my original testimony -- first of all,  
9 we've submitted a revised pending with the spreadsheet  
10 I was using. I did check the formulas, and they  
11 weren't right. So there should be a revised  
12 attachment 9 to my testimony we have submitted in the  
13 errata.

14 MR. ROMINGER: That's in the errata.

15 MR. CHAPPEL: And then if you look at  
16 attachment 9 of those 25, we were just pulling these  
17 out to see how these numbers would fall within our  
18 proposed rates. And I've added the occurrence numbers  
19 or the incident numbers. So if anybody wants to go  
20 back and check these specific sites to see what those  
21 numbers were.

22 MR. ROMINGER: That's attachment A to the  
23 errata sheet.

24 MR. CHAPPEL: Attachment A?

1 MR. ROMINGER: Yes.

2 MR. CHAPPEL: Originally I hadn't included  
3 the incident numbers because I didn't think it was  
4 necessary to let everybody know what these sites  
5 were. But if it's important, the incident numbers are  
6 here now. You can check those sites, find out exactly  
7 what reports they were, what they're based on and what  
8 the numbers were. But I think now my formula adds up  
9 correctly, and it comes up from correct totals for  
10 excavation, transportation and disposal and backfill  
11 costs for these 25.

12 MR. ROMINGER: And these 25, you used  
13 on -- how did you use them? Not to develop numbers,  
14 but just to check the numbers?

15 MR. CHAPPEL: It was to check the numbers to  
16 see if we picked 25 of these, where would their costs  
17 in these 25 fall within our proposed \$77 rate. And if  
18 you look at them, for excavation, transportation and  
19 disposal, our rate of \$57, I think 22 of these 25 fall  
20 under that rate, which is 88 percent.

21 If you look at the backfill number of \$20 a  
22 cubic yard that we proposed, 19 of 22, which is all we  
23 had data for, which is 86 percent, fall under our  
24 proposed number.

1           MR. ROMINGER: Okay. Those are all the  
2 issues we had as far as from the first hearing that we  
3 wanted to cover.

4           I'll quickly run through the errata sheet  
5 just to explain the changes we have proposed there.  
6 And, again, these are mainly from issues that came up  
7 at the first hearing or discussion after that.

8           Number 1, just the change to the financial  
9 interest definition, where we took out the word  
10 "advisor."

11           Number 2, the proposal originally had the  
12 effective date as being the date that the legislative  
13 changes that initiated this rule-making went into  
14 effect. And we're changing that just to propose the  
15 effective date of the rules just to prevent any  
16 unintended retroactive application of the  
17 regulations.

18           Number 3 is clarification for owners and  
19 operators that opt into Sub 734. So that if they've  
20 done work prior to opting into 734, we can take that  
21 into account in relation to the requirements under  
22 734. And in some cases, they could be deemed to  
23 satisfy some of the specific requirements of 734.

24           Paragraph 4 is the sampling requirements for

1 the excavation floor for UST removal excavations. And  
2 that's just deleting the last sentence from that  
3 subsection. The last sentence was proposed in the  
4 first errata sheet, but we're proposing to take that  
5 back out.

6 Paragraph 5 is a change regarding the  
7 sampling of backfill that's returned to the  
8 excavation. And just simply changing that to one  
9 representative sample for every 100 cubic yards that  
10 are returned to the excavation.

11 Paragraph 6 is a change noted in bold,  
12 allowing borings to be drilled below the groundwater  
13 table if site-specific conditions warrant.

14 7 and 8 are for measurements of free product,  
15 and just specifying that that is to be measured in the  
16 groundwater monitoring well.

17 Paragraph 9 is in response to the Board's  
18 technical staff suggestion regarding changing the  
19 words "or within" to "and within." And the changes  
20 are shown in bold.

21 Paragraph 10 is another provision regarding  
22 sampling below the groundwater table.

23 Number 11 is the measurement of free product  
24 in the groundwater monitoring well.

1           Number 12 is the provision stating that  
2 concrete, asphalt and pavement replacement is just to  
3 be paid one time.

4           Number 13 is the revised concrete, asphalt  
5 paving reimbursement.

6           Paragraph 14, we changed the proposed section  
7 732.614 and 734.665 regarding audits and access to  
8 records. And we just made this change to clarify  
9 specifically the types of documents that are routinely  
10 used under these regulations. The statutory language  
11 refers to all data, reports, plans, documents and  
12 budgets. And we just put in the specific titles of  
13 the documents used under the LUST program just to  
14 provide more clarification. So we specifically  
15 referred to reports, plans, budgets and applications  
16 for payments as documents that are included under  
17 that, that provision.

18           Attachment A is the revised attachment of the  
19 various testimony that he just discussed. Corrections  
20 were made to standard deviation in the last line of  
21 the chart and to the final chart.

22           Attachment B is a corrective version after  
23 attachment 12 to Harry's testimony. Two sites were  
24 removed from that chart because they were missing the

1 number of personnel hours. And then the totals and  
2 averages on that chart were recalculated.

3 Attachment C and D is additional information  
4 to support testimony for the proposed conversion  
5 factor of 1.5 tons per cubic yard. And those are two  
6 technical references that have conversion factors in  
7 those.

8 That sort of gets us up-to-date for today.  
9 To start for today, Gary has some statements regarding  
10 the fund's status and also on statistical analysis.

11 MR. KING: If you have trouble hearing in the  
12 back, please raise your hand, and we'll speak up.

13 I wanted to talk a few minutes this morning  
14 about two of the exhibits we've introduced. The first  
15 one is Exhibit 17 and the second one is Exhibit 18.

16 Exhibit 17 is just a page off of the  
17 comptroller's Web site. This is from yesterday  
18 morning. And it shows the balance in the underground  
19 storage tank fund as of yesterday, May 24th. And that  
20 amount is approximately 8.5 million dollars.

21 The second document is entitled, State  
22 Underground Storage Tank Fund, and that's Exhibit 18.  
23 And what we've tried to do with that is compile the  
24 information that is on the comptroller's Web site and

1 put it into one sheet in order to give the Board and  
2 participants an idea of what's been going on with  
3 regards to the underground storage tank fund over the  
4 last three years. This is all information that is on  
5 the comptroller's Web site. It's not displayed in  
6 quite the way it is here, because we've had to combine  
7 certain columns.

8 But just kind of going through it, if you  
9 look at the right, right side of the top, where it  
10 says carried forward into FY '02, \$71,523,872, that  
11 was the amount of money in the fund as of July 1st of  
12 '01.

13 And you'll see on that right-hand column,  
14 there's been a progressive decline in the balance of  
15 the fund. And we are now projecting that as of July  
16 1st of 2004, which is literally only weeks away, the  
17 balance in the fund will be \$131,872.

18 In looking at that, you certainly can ask why  
19 has there been such a precipitous drop in the fund?  
20 And I think there's, really just looking at it,  
21 looking at it from a numbers basis, if you look at the  
22 funding that's allocated to the agencies to operate  
23 the underground storage tank program, namely the state  
24 fire marshal, the department of revenue and IEPA,

1 those numbers in total have stayed pretty consistent.  
2 Obviously, the debt service, that has stayed  
3 consistent over those three years.

4           What we have seen is -- there's a statutory  
5 transfer provision. The governor is part of the  
6 decision relative to the need to find money in special  
7 funds. To help balance the budget, there was two  
8 substantial transfers amounting to about  
9 24 million dollars. One occurred in FY '04 and then  
10 another transfer in FY '05.

11           And then the other big factor is the  
12 reimbursement claims. As you'll see, the  
13 reimbursement claims over the period 2002 through 2004  
14 have been very substantial. The total for those three  
15 years, that has been 189 million.

16           And to give you some perspective on that,  
17 between 1989 and 2001, the State paid 435 million  
18 dollars in reimbursement claims over that approximate  
19 12-year period. In the last three years, we've paid  
20 out 189 million roughly. So you can see there's been  
21 a substantial payout of reimbursement claims over the  
22 past three years.

23           In fact, we are looking at it, and the  
24 71 million dollars that we reimbursed in FY '04 was

1 the second highest year that we have ever had  
2 reimbursements. The highest year was back in the  
3 early '90s when we reimbursed about 85 million dollars  
4 in one year, and that was the result of the State  
5 issuing bonds, very large amount of bonds, which  
6 allowed us to clear off an enormous backlog that had  
7 developed.

8 You know, so that's kind of where things are  
9 at. And I just wanted to give that summary statement  
10 relative to the fund status.

11 Excuse me. It was just mentioned to me that  
12 I said the wrong years for when the transfers  
13 occurred. The transfers were not '04 and 03. They  
14 were FY '04 and FY '04.

15 CHAIRMAN NOVAK: Is the funding source still  
16 one tenth of percent on the --

17 MR. KING: The total is --

18 CHAIRMAN NOVAK: What year do the bonds  
19 expire? 2014 or something like that?

20 MR. KING: Yes. This 13 -- essentially  
21 14 million dollars, the debt service will be paid up  
22 through and will continue through 2013.

23 MR. CLAY: January 10, 2013.

24 BOARD MEMBER GIRARD: I have a question. Do

1 you expect the fund to bring in about 70 million  
2 dollars this next year, or will it bring in more?

3 MR. KING: You know, if you look at the UST  
4 fee revenues, they have been pretty consistent over  
5 the last three years. 70, 66 and 1/2, 70 million. I  
6 would expect it would be around the same amount in FY  
7 '05.

8 CHAIRMAN NOVAK: So are you anticipating  
9 another diversion in FY '05 of 12 million dollars? I  
10 mean, that's being discussed about all these other  
11 funds as well.

12 MR. KING: Well, frankly, I mean, this is  
13 beyond --

14 CHAIRMAN NOVAK: This is beyond our control?

15 MR. KING: This is absolutely beyond our  
16 control.

17 The reason why I was identifying there's  
18 8 million dollars in the fund today, and that we're  
19 projecting that there's going to be a carry-over  
20 balance of \$131,000 starting FY '05, there isn't money  
21 to take.

22 BOARD MEMBER JOHNSON: That means between  
23 today and June 30th, you expect to have expenditures  
24 of 8 and 1/2 million dollars?

1           MR. KING: Yes. And that's kind of -- you  
2 know, we're projecting for the fourth quarter lapse  
3 period a total of 15 million dollars, which, you know,  
4 that's consistent with what we've done in the previous  
5 two years, so.

6           CHAIRMAN NOVAK: What do you project to bring  
7 in the month of June, which is still FY '04?

8           MR. KING: We're projecting --

9           CHAIRMAN NOVAK: I mean, just to get a  
10 constant figure, you figure the last month of FY '04  
11 is going to generate --

12          MR. KING: Right, as you can see.

13          CHAIRMAN NOVAK: 8 million, 7 and 1/2 million  
14 dollars, right?

15          MR. KING: What we're projecting for the  
16 fourth quarter right now is about 11 and 1/2 million  
17 dollars. Now, you know, it could be more than that.  
18 It could be less. I mean, there's, as you can see, in  
19 some of these months, there's quite a bit of jumping  
20 around as to what comes in at any given quarter.

21          CHAIRMAN NOVAK: I just want to get it  
22 straight from the comptroller's office. There's a  
23 balance of 8 and 1/2 million, and you have -- what is  
24 it? 88? Is it 88 million in outstanding warrants?

1 In other words, committed dollars?

2 MR. KING: No, no. That just means that on  
3 Friday, okay? On Friday the 21st, the comptroller  
4 issued warrants of \$88,000.

5 CHAIRMAN NOVAK: Excuse me. I'm sorry.

6 MR. KING: Then dropped the fund level to  
7 88.5.

8 CHAIRMAN NOVAK: But you have claims in the  
9 pipeline that have to be paid, that have been  
10 approved, that have gone through the process in your  
11 division? They have to be charged against this  
12 8.5 million dollars?

13 MR. KING: Yes, sir, that's correct.

14 CHAIRMAN NOVAK: Let's assume May 31st is the  
15 end of the fiscal year, all right? In the next week  
16 or so. What do we have left in the bank then?

17 MR. KING: As of next week?

18 CHAIRMAN NOVAK: I mean, off the top of your  
19 head. Are the claims that have been submitted by the  
20 vendors to remediate these sites, do they exceed  
21 8.5 million dollars?

22 MR. OAKLEY: I believe they do, at or close  
23 to it.

24 CHAIRMAN NOVAK: So assuming May 31st was the

1 end of this fiscal year, we'd be broke?

2 MR. OAKLEY: That's correct.

3 MR. KING: Again, just to clarify what the  
4 term "broke" means in that context. There is a  
5 continuing source of revenue. However, we are going  
6 to be in a situation where the claims against the  
7 fund, there won't be sufficient funds to pay the  
8 claims as they're coming in. There's going to be  
9 developing a waiting period. What that's going to be,  
10 we don't know at this point.

11 CHAIRMAN NOVAK: Okay, thank you.

12 MR. ROMINGER: I just have one final thing  
13 before we get into the questions.

14 On Exhibit 20, we have a cost summary. It's  
15 a two-page sheet, which just may serve as an easy  
16 reference for the different costs under Subpart H. We  
17 thought that might be handy for people to refer to.  
18 And that just lists out the activities and the amounts  
19 that are the maximum amounts that can be reimbursed  
20 for those activities under the proposed Subpart H.

21 And I think we're ready to start with the  
22 questions.

23 HEARING OFFICER TIPSORD: Okay. Let's go off  
24 the record for just a second.

1 [Off-the-record discussion.]

2 HEARING OFFICER TIPSORD: Let's go back on  
3 the record.

4 We will begin with the questions presented by  
5 Professionals of Illinois for the Protection of the  
6 Environment.

7 MS. MANNING: Thank you. I'm Claire Manning,  
8 and I'm here representing the Professionals of  
9 Illinois for the Protection of the Environment, PIPE,  
10 this afternoon -- this morning. And I thank the Board  
11 for the opportunity to be heard today on the Agency's  
12 proposal.

13 We've been working very diligently together,  
14 and we have a number of questions we'd like asked  
15 today.

16 Before I do that, Madam Hearing Officer, is  
17 it possible that I just ask a couple of follow-up  
18 questions for some of the information that was brought  
19 forward this morning?

20 HEARING OFFICER TIPSORD: Absolutely.

21 QUESTIONS BY MS. MANNING:

22 Q. The first is, Mr. King, Gary, with your  
23 testimony on the fund balances, do you have  
24 information as well in terms of the status of the

1 actual remediation that has occurred over the last  
2 three years and how that compares to the actual  
3 remediation that occurred in the years prior?

4 A. (BY MR. KING) I have, but I think Doug Clay  
5 could.

6 MR. CLAY: I'm sorry. I wasn't paying any  
7 attention. I'm sorry. Can you repeat the question?

8 Q. (BY MS. MANNING) Sure. Basically, I'm just  
9 asking, since you made the point that I think that for  
10 the last three years, obviously, there's more claims  
11 being paid in terms of remediation of properties.

12 My point and my question is, does the Agency  
13 have information as well in terms of the status of  
14 remediation and how remediation has occurred over the  
15 course of the last three years and how that might  
16 compare to the status of remediation in this state  
17 prior to that time?

18 A. (BY MR. CLAY) Yes. Actually, one of PIPE's  
19 questions, number 50, sort of goes to that. And it  
20 asks for the amount of number of sites closed and how  
21 much is reimbursed over the last five years.

22 For example, in 2000, there were 1,011 sites  
23 closed receiving NFR letters. 2001, 835; 2002, 796;  
24 2003, 640. And through April of 2004, 249. In

1 comparison to the -- okay.

2 Q. Okay. What do you mean by that? Those that  
3 have received NFR letters?

4 A. Correct.

5 Q. The only question I had on the information  
6 that you gave us this morning at this point in time  
7 is, on the errata sheet, I think you -- Exhibit Number  
8 15, attachment A. We appreciate now that there's  
9 incident numbers on there.

10 And I guess this question is to Mr. Chappel.  
11 The incident numbers, Harry, the 25 that you have  
12 listed there, how did you choose those 25?

13 A. (BY MR. CHAPPEL) Those were reports that  
14 were in-house that were readily available. And we  
15 pick them off of the reviewer's desk and look at them  
16 and summarize the data.

17 Q. Do you know what years they were from? Or  
18 were they all from the same fiscal year? Or do the  
19 two numbers reflect --

20 A. It reflects when it was reported. The  
21 reports could have been from, you know, a year ago or  
22 two years ago, anywhere from 2002 to 2004, or 2001 to  
23 2004. No, I don't know the exact date or when the  
24 actual reports would have been submitted or reviewed

1 or approved.

2 MS. MANNING: Okay, thank you. Those are the  
3 only two follow-up questions we have right now in  
4 terms of the various information that was presented  
5 this morning. And I guess if it's all right with the  
6 Board, I'll proceed with the questions that have been  
7 pre-filed.

8 HEARING OFFICER TIPSORD: Go ahead.

9 MS. MANNING: Thank you.

10 QUESTIONS BY MS. MANNING:

11 Q. The first question is really in the nature of  
12 the production of documents. And in order to ensure  
13 that we in fact have and have presented to the  
14 Board -- that the Board has been presented with all  
15 the information upon which the Agency is relying in  
16 terms of the development of this proposal.

17 And the question itself says please produce  
18 all documents relied upon in justification of the  
19 development of the reimbursement rate set forth in  
20 these proposed rules. Please provide all standard  
21 rate sheets that have been utilized by Agency  
22 reviewers in the last three years in reviewing the  
23 reasonableness of budgets, plans and reimbursement  
24 claims sought pursuant to the Agency's LUST program.

1 Please provide foundation for all such documents and  
2 examination of all such documents, the basis for the  
3 creation of such documents, the basis of reliance upon  
4 such documents for determining of reasonableness of  
5 rates.

6 And, again, this question is not necessarily  
7 asking for anything that's already been put into the  
8 record, but is asking for any information that may not  
9 yet have been put into the record, but yet is used in  
10 reliance on any of the information that's brought  
11 forward in terms of the reasonableness of the rates  
12 that the Agency is asking the Board to approve in its  
13 rule-making.

14 A. (BY MR. KING) Well, we have not attempted to  
15 produce all the documents relied upon, simply because  
16 of the fact that, as we stated at the last hearing and  
17 throughout the pleadings, we're really relying on  
18 information that we have been gathering as an Agency  
19 for many years. And, really, to try to produce all  
20 these documents would -- we're talking millions of  
21 pages of documents. And it didn't seem like that was  
22 really kind of the intent behind it or really  
23 necessary for the Board to see that much -- that kind  
24 of information.

1           You know, I guess my suggestion would be to  
2 maybe if we have an off-the-record discussion as to  
3 what documents PIPE really is concerned about seeing,  
4 and then we can kind of see if we can figure out what  
5 those are and produce those, and then those would be  
6 available at a subsequent hearing.

7           Q.   As a follow-up question for that and an  
8 example of why PIPE is interested in the information,  
9 the question -- another question I would have, as an  
10 example to Harry Chappel, would be on the information  
11 we just talked about in appendix A that has the site,  
12 the list of incident sites.

13           The question is, are those rates that have  
14 been granted and that are included on that piece of  
15 paper, have they been relied upon in terms of the rate  
16 sheets that have been developed? In other words, are  
17 those numbers, numbers that were requested by  
18 companies who are doing the reimbursement, who are  
19 doing the remediation? Or are those numbers actually  
20 what the Agency paid out?

21           A.   (BY MR. CHAPPEL) Those are the numbers  
22 requested. That was the budget that they submitted to  
23 us. These were all based on budgets that were  
24 in-house, and those are the numbers proposed by the

1 applicant or the owner/operator.

2 Q. So they were not -- at least in your sheet on  
3 appendix A or attachment A to the document, the errata  
4 sheet document you put into evidence this morning,  
5 those are numbers that were proposed to be paid and  
6 not necessarily numbers that were actually paid?

7 A. That's correct.

8 Q. That's truly all of the numbers that the  
9 Agency has thrown out in terms of the Board? Or are  
10 some of these numbers as well numbers that in reliance  
11 on those numbers, it's actually what the Agency has  
12 been paying historically on the basis of the rate  
13 sheets?

14 A. To the best of my knowledge, the numbers  
15 presented in the appendixes and the numbers that we've  
16 used are based on numbers that have been proposed to  
17 the Agency by the applicant or owner/operator prior to  
18 any review or any anything like that.

19 Q. And we'll go through and make sure of that.  
20 And, again, we appreciate now that the site incident  
21 numbers are there so that we can do that.

22 The second question also goes to the --

23 HEARING OFFICER TIPSORD: Before you go to  
24 the second question, does anyone else have follow-up

1 on the first question from PIPE? Go ahead, Ms.

2 Hesse.

3 MS. HESSE: If I speak from back here, can  
4 you hear me okay?

5 HEARING OFFICER TIPSORD: Yes. Could you  
6 identify yourself please?

7 MS. HESSE: I'm Carolyn Hesse. I represent  
8 CW3M.

9 QUESTIONS BY MS. HESSE:

10 Q. Just to follow up on the line of questioning  
11 Claire was asking.

12 In these budgets that you use for developing  
13 your appendix 9, were those taken only from budgets  
14 that had been already approved by IEPA?

15 A. (BY MR. CHAPPEL) No. These were proposed  
16 budgets.

17 Q. Did you prepare -- let me back up a second.

18 Were those numbers taken from a spreadsheet  
19 that IEPA had used from which IEPA has developed rate  
20 sheets?

21 A. Attachment 9.

22 MR. BAUER: I don't think we used that for  
23 the rate sheets at all. It was never used. The data  
24 for that document was not used in making the rate

1 sheets. We used this just to confirm our historical  
2 data.

3 Q. So to try to understand what you just said.  
4 The data that you have in appendix 9 was not used to  
5 develop the rate sheets? Is that what you said?

6 A. (BY MR. BAUER) The 25 sites that --  
7 MR. CHAPPEL: Yes. That was not used as part  
8 of the rate sheet.

9 Q. Did IEPA develop a large spreadsheet from  
10 which it developed rate sheets at various times?

11 A. (BY MR. BAUER) Yeah.

12 Q. Was that basic spreadsheet also used to  
13 develop the information in appendix 9?

14 A. (BY MR. CHAPPEL) No.

15 Q. Was appendix 9 developed totally  
16 independently from the rate sheets using totally  
17 separate reports that were selected separately from  
18 the rates IEPA used previously?

19 A. I don't know if any of the data found in  
20 attachment 9 would have been used as a number  
21 somewhere in the spreadsheet in the past. I can't  
22 confirm or deny that, and I don't think Brian can.  
23 But attachment 9 was just reports we had available  
24 in-house that we pulled together and looked at for

1 purposes of developing, you know, the numbers that we  
2 have here. I mean, it wasn't taken off of any old  
3 spreadsheet or any old rate sheet. It was reports,  
4 proposed budgets that were in-house at the time we  
5 prepared them.

6 Q. So that was developed totally independently  
7 of your other rate sheets that you've developed?

8 A. (BY MR. BAUER) Yes.

9 MS. HESSE: Okay. Can I ask a couple of  
10 other follow-up questions on those points? If that's  
11 okay?

12 HEARING OFFICER TIPSORD: I'm sorry. Did you  
13 have follow-up questions from some stuff this  
14 morning?

15 MS. HESSE: From some other stuff Claire was  
16 asking about and other things this morning.

17 HEARING OFFICER TIPSORD: Go ahead.

18 Q. (BY MS. HESSE) Mr. Clay, I believe you gave  
19 some testimony about statistics for expenditures from  
20 the fund that correlated that with NFR letters that  
21 were given out. Did you do any correlation between  
22 that and new incidents being reported?

23 A. (BY MR. CLAY) We do have that information  
24 available in our annual report and the information on

1     how much is paid out in reimbursements. The number of  
2     incidents reported and the number of incidents closed  
3     are on our Web site and our annual reports. If you  
4     hold on for one second, we've got cumulative totals.  
5     Let me just subtract these real quick.

6             For 2000 through 2002 -- in 2002, there was  
7     616 report of releases. 2001, 1,057. And 2000,  
8     1,220. Over the last five years, I'd say we've seen a  
9     steady decrease in the number of incidents reported.

10            QUESTIONS BY MS. MANNING:

11            Q.    What is the status of your 2004 annual  
12     report? Is that one ready yet? Your fiscal year  
13     2004?

14            A.    (BY MR. CLAY) We did it on a calendar year.  
15     And the 2003 annual report for calendar year 2003  
16     should be on the Web site any day. It's completed,  
17     and it is in the process of being put on the Web site.

18            Q.    Can you give us information in terms of the  
19     incidents reported in fiscal year 2004?

20            A.    I don't have that information with me right  
21     now, but it is fewer than -- I'll give you information  
22     on 2002, 2001, but 2003 is fewer than 2002. And the  
23     trend for 2004 right now is fewer than the previous  
24     year.

1 HEARING OFFICER TIPSORD: Before we move  
2 forward, Ms. Moore has a question about attachment 9.

3 QUESTIONS BY BOARD MEMBER MOORE:

4 Q. Just attachment A, the costs. I just wonder  
5 if there was any attempt at trying to -- when this  
6 list of incidents was put together, if there was an  
7 attempt to try to develop those incidents from the  
8 different regions of the state.

9 A. (BY MR. CHAPPEL) No. We just took what was  
10 available in-house at that time.

11 Q. You would have that available, though, from  
12 all over the state, right?

13 A. Right. They should be from all -- well, I  
14 can't say. I mean, it could have been a day where  
15 everything we had in-house was from Chicago.

16 BOARD MEMBER MOORE: Okay, thank you.

17 QUESTIONS BY MS. HESSE:

18 Q. Okay. Mr. Clay, did you also try to  
19 correlate, as you were comparing the various years, if  
20 there have been any changes in the complexity of sites  
21 that required remediation?

22 A. (BY MR. CLAY) No, we did not.

23 Q. And then the final question along this line  
24 is, did you make any attempt to determine when the

1 costs were actually incurred as opposed to when they  
2 were reviewed by IEPA and approved?

3 A. Regarding the totals of how much is  
4 reimbursed?

5 Q. Yes.

6 A. No. The numbers that we report are based on  
7 when we reimburse those amounts.

8 Q. Just a couple other quick follow-up questions  
9 of those this morning.

10 The table you had showing distance from  
11 landfills, when you were talking about the distances,  
12 are those road miles or air miles?

13 A. Those would be as the crow flies, road  
14 miles -- I mean air miles. I'm sorry.

15 Q. Air miles?

16 A. Yes.

17 Q. Thank you. And then one other question to  
18 follow up.

19 The chart that you presented on state  
20 transfer of funds, what was your source of  
21 information?

22 A. (BY MR. KING) Are you referring to the  
23 column, statutory transfer?

24 Q. Yes.

1           A.    That comes from the Comptroller Hines'  
2    Web site.

3           Q.    And that would be considered funds that were  
4    transferred out of the underground storage fund for  
5    other state uses?

6           A.    Right.

7           MS. HESSE:   Thank you.

8           BOARD MEMBER JOHNSON:   Just briefly, Doug.

9           QUESTIONS BY BOARD MEMBER JOHNSON:

10          Q.    You said that the last several years the  
11    number of sites that you've remediated has steadily  
12    decreased.  And earlier and pursuant to this chart,  
13    total expenditures has steadily increased.  So I guess  
14    by extrapolation, we can figure that the dollar spent  
15    for remediation per site is increasing dramatically?

16          A.    (BY MR. CLAY)  We don't actually track it  
17    that way, but I mean, we don't really track it that  
18    way.  I think, you know, we estimate around a hundred  
19    thousand dollars per site on average.  When the  
20    program first began, it was higher than that.  But we  
21    don't track it per site.  It's more how much is  
22    reimbursed per year.  But I think you could conclude  
23    that there are fewer NFR letters being issued for the  
24    amount of monies reimbursed.

1                   BOARD MEMBER JOHNSON: Okay. Thanks.

2                   MR. COOK: Jay Cook with United Science  
3 Industries and also a member of PIPE. I have a  
4 question for Mr. Chappel with regard to changes made  
5 to the Agency's errata sheet.

6                                   QUESTIONS BY MR. COOK:

7           Q. That attachment has two columns that list the  
8 number of hours that would be indicated for various  
9 tasks, those apparently being 20- and 45-day report  
10 preparation and then oversight.

11                   My question is, as it relates to the  
12 historical spreadsheets and the development of the  
13 rate sheet, did the historical spreadsheets and the  
14 rate sheet that was developed, did those include  
15 number of hours to perform those various tasks, those  
16 tasks being the 20- and 45-day report and the field  
17 oversight? Or were the rates provided in the rate  
18 sheet and the historical spreadsheets purely costs per  
19 hour for certain types of professional services?

20           A. (BY MR. BAUER) You mean like a professional  
21 engineer rate? Like that?

22           Q. Right. Was the rate sheet simply a rate,  
23 acceptable rate per hour, for an engineer as an  
24 example?

1           A.    That would be correct.

2           Q.    And were there any historical data collected  
3   that would suggest that the time to prepare a 20- or  
4   45-day report would be "X"?  Or does this list of the  
5   number of hours that we see in attachment B the first  
6   time that that information is really been analyzed in  
7   sort of this format?

8           A.    I believe it's the first time that we've  
9   ever --

10          Q.    The first time?

11          A.    Yes.

12          Q.    The follow-up question.  Can you give me an  
13   idea of the number of 20- and 45-day reports that the  
14   Agency may have processed over the past decade or so?

15          A.    I don't have that.

16                MR. CLAY:  Probably 10,000 to 15,000.

17          Q.    Okay.

18                MR. CHAPPEL:  It would depend on the number  
19   of incidents.  Don't you have a summary of how many  
20   incidents we have had reported in the decade?  That  
21   would be about the number.

22          Q.    And then if I could, I've got another  
23   follow-up question for Mr. Clay.

24                With regard to the -- going back to the

1 question about the complexity of the remediations.  
2 The proposed work plans and budgets that the Agency  
3 now is reviewing for corrective action, would you say  
4 that the percentage of those work plans, budgets that  
5 are proposing, what I might refer to as more  
6 sophisticated or complicated types of remediation, are  
7 increasing on a percentage basis, as opposed to sites  
8 that could simply be TACO'd out or request a "no  
9 further remediation" letter due to lower levels of  
10 contaminants on site?

11 A. (BY MR. CLAY) I guess I would say that there  
12 is more of a use of alternative technologies than  
13 we've seen in the past as opposed to digging holes. I  
14 think that there are still a lot of sites that could  
15 utilize the tools of TACO and could probably reach  
16 closure, but I would say that there is more use of  
17 alternative technologies.

18 MR. COOK: Okay.

19 QUESTIONS BY MS. MANNING:

20 Q. The Agency doesn't track as well as -- a  
21 follow-up to that -- the increase, potential increase  
22 in sale of properties and sale of old underground  
23 storage tank sites and that type of thing?

24 A. (BY MR. CLAY) We do not track the sale of

1 property, no.

2 Q. So you're only tracking incident and incident  
3 numbers?

4 A. And closures and that type of thing, right.

5 MS. MANNING: Okay. Thank you.

6 HEARING OFFICER TIPSORD: Go ahead.

7 QUESTIONS BY MS. MANNING:

8 Q. The second question is simply to produce any  
9 published documents, including the date of  
10 publication, that contain any standard industry rates  
11 that the Agency may or may not -- may have relied upon  
12 in developing its proposal to the Illinois Pollution  
13 Control Board. And if no such documents were relied  
14 upon, what I'm asking is, whether the Agency did in  
15 fact rely on those documents, and if so, what are  
16 they?

17 A. (BY MR. CLAY) I think all of the published  
18 documents that we relied upon have been referenced in  
19 testimony, and that would be primarily the testimony  
20 of Harry Chappel and Brian Bauer.

21 The Agency has also surveyed additional, a  
22 number of additional states, and would like to submit  
23 or we have submitted as Exhibit 22, a summary of  
24 those, the states' information regarding the rates

1 that they've established either in regulation or  
2 written guidance as far as what they will reimburse  
3 for LUST cleanup work. And I'd like to go through  
4 that summary and highlight a few items, if I may.

5           Currently there's 48 states that have  
6 implemented some form of remediation. Or I'm sorry.  
7 Some form of reimbursement for remediation of leaking  
8 underground storage tanks. All 48 states must review  
9 reimbursement claims and budgets with regard to  
10 reasonableness.

11           Four of the states delegate reimbursement  
12 through a third party insurance agency. Five states  
13 require a competitive bid process consisting of no  
14 less than three bids. The remaining 38  
15 states -- that's excluding Illinois -- have  
16 established regulatory rates for consultant fees,  
17 equipment costs, activity costs, etcetera.

18           31 states' regulation mandate suspension  
19 action to be taken by the regulating agency against  
20 consultants performing UST remediation work where  
21 discrepancies are found. In most cases, the  
22 consultants are prohibited from performing UST-related  
23 work for a period of no less than one year followed by  
24 a year of probation. Should the consultant violate

1 prohibition, the subject consultant is permanently  
2 barred from performing state  
3 reimbursement -- reimbursed UST remediation work.

4           The aforementioned 31 states also have audit  
5 authority, requiring the records to be kept no less  
6 than four years following state site closure. The  
7 majority of states allow the regulating agency to  
8 certify which consultants may perform state  
9 reimbursement UST work.

10           On the next few pages there's a -- oh, some  
11 of the information we pulled out of other states as  
12 far as what they pay for site classification work,  
13 site investigation work, corrective action. And I  
14 won't go through that in detail.

15           I would like to direct your attention to the  
16 last page regarding consultant rates. You'll notice  
17 this is the -- and professional engineer equivalent  
18 rate and number of states. I point out that one of  
19 the 22 states listed PE rates higher than the Illinois  
20 EPA is proposing. And that one that's higher is \$137  
21 as opposed to \$130, which we're proposing. And the  
22 average professional engineer rates of the ones  
23 presented is 98.8.

24           And I'd also like to point out the

1 excavation, transportation, disposal and backfill  
2 rates. The average of the ones listed is 74.8. I'm  
3 sorry. We had this revised since then. 73.35. We  
4 also drop the high and low, and it comes out to  
5 71.92. That's just a summary of the other state  
6 regulations and guidance.

7 Q. As a follow-up to that, Doug, did you  
8 actually consult with this in preparation of your  
9 proposal to the Board? Or did you consult with this  
10 later in terms of after the proposal had been  
11 presented to the Board?

12 A. There were several states' regulations,  
13 including Harry Chappel's testimony, we surveyed. And  
14 we contacted all these states after the first hearing  
15 and after our preparation of the rules.

16 Q. And on the consultant rates per hour, do you  
17 have any more detailed information in terms of whether  
18 it was professional engineer, one with any years of  
19 experience? Or did you take the middle level rate or  
20 the highest level rate or the lowest level rate in  
21 terms of extrapolating the data from the other states?

22 A. I don't have that information. I'd have to  
23 refer to the individual regulations.

24 Q. And the individual regulations, were you

1 going to put those into evidence?

2 A. That has been submitted as Exhibit --

3 Q. But that one hasn't been prepared publicly  
4 yet. The latter exhibit was actually identified, but  
5 I don't think -- and I think it was put into evidence,  
6 but I don't think there's a public document of that  
7 created yet; is that correct?

8 HEARING OFFICER TIPSORD: It's this.

9 MR. CLAY: It's 23.

10 MS. MANNING: It's that large? Okay, thank  
11 you.

12 HEARING OFFICER TIPSORD: I have a follow-up,  
13 if I may about --

14 MS. MANNING: Go ahead.

15 QUESTIONS BY HEARING OFFICER TIPSORD:

16 Q. I notice that -- and I may just be  
17 overlooking it honestly. I don't see, like, Ohio or  
18 Michigan in these summaries. Am I overlooking it?

19 MS. MANNING: Or New York.

20 MR. CLAY: Michigan no longer has a UST  
21 fund. They've gone, I believe, to insurance. And  
22 New York does competitive bidding.

23 MR. KOHRMANN: We have Ohio's regs., but  
24 they're not a case-by-case basis. They're one of

1 those where they bring them all in and pre-certify  
2 them.

3 HEARING OFFICER TIPSORD: I'm going to need  
4 to have you state your name and have you sworn in.

5 MR. KOHRMANN: Chris Kohrmann and project  
6 manager with the Illinois EPA.

7 [Witness sworn.]

8 HEARING OFFICER TIPSORD: Thank you. That  
9 was all.

10 QUESTIONS BY MS. MANNING:

11 Q. Back to question number 2, though.

12 Were there any industry documents or any  
13 publication of the environmental uses for any  
14 remediation that were consulted in preparation of the  
15 proposal that was presented to the Board?

16 A. I think everything is in, as I said, Brian  
17 and Harry's testimony.

18 Brian, what was the document that we referred  
19 to?

20 MR. BAUER: Natural Construction Estimator.

21 Q. Not the specific environmental one, but the  
22 general construction estimator?

23 A. (BY MR. BAUER) Yeah. I didn't think there  
24 was an environmental one for the construction

1 estimator.

2 Q. And in what way was that publication relied  
3 upon? For every rate that was proposed to the Board  
4 or for a select few of those?

5 A. For a select few that we didn't have, like,  
6 historical data for.

7 MR. CLAY: Like I said, I think where we use  
8 those is identified in the testimony.

9 MS. MANNING: Okay, thank you.

10 HEARING OFFICER TIPSORD: Are there any  
11 follow-ups on question 2?

12 QUESTIONS BY BOARD MEMBER JOHNSON:

13 Q. Are these maximum amounts in like your  
14 proposed rates? Are each of these maximums?

15 A. (BY MR. CLAY) Yes.

16 QUESTIONS BY MS. MANNING:

17 Q. Maximum in terms of no one can go over them  
18 or they're presumed reasonable? And there is an  
19 ability within the regulation itself, those massive  
20 8 inches of documents, that you've gone through them  
21 specifically enough to know that the program in that  
22 state doesn't allow for anything greater than those in  
23 certain circumstances?

24 A. (BY MR. KOHRMANN) That's the maximum.

1 HEARING OFFICER TIPSORD: I didn't hear  
2 that. I'm sorry.

3 MR. KOHRMANN: Those are all maximum.

4 Q. (BY MS. MANNING) So in terms of just the  
5 two? The hour rates for the professionals, which we  
6 haven't established what level of professional it is,  
7 though?

8 A. I can answer that. That is Illinois'  
9 equivalent of a professional engineer.

10 Q. One level of professional engineer, not --

11 A. That is a senior professional engineer and  
12 what they would use for their review time for project  
13 oversight.

14 Q. A senior professional engineer is different  
15 than just a -- are we talking any years of experience  
16 in any of these? Or just --

17 A. Each state varies. Some of them have three  
18 years, some of them have seven years.

19 Q. And do any of them have ranges from a  
20 starting range to a higher range?

21 A. Yes.

22 Q. So which rate do you use? The top end or the  
23 middle?

24 A. I used the top.

1 MS. MANNING: Okay.

2 QUESTIONS BY MR. COOK:

3 Q. I have a question on the cover sheet. It  
4 states that 38 states have established regulatory  
5 rates for consultant fees, equipment costs, activities  
6 costs, etcetera. And the last page of that same  
7 attachment under consultant rates per hour, it  
8 appeared that there are 22 rates. So I'm curious as  
9 to where the other 16 states fell -- and this kind of  
10 goes back to the issue of New York and that sort of  
11 thing, but where are those?

12 A. (BY MR. CLAY) Well, for New York, New York  
13 requires a competitive bidding process.

14 Q. Are there any figures available to show what,  
15 even though we've got competitive bidding, to show  
16 what the average engineer rate and per hour of  
17 New York might be?

18 A. No.

19 Q. And then on the rates for excavation,  
20 transportation, disposal and backfilling.

21 MR. CLAY: There's 20 states listed. The  
22 other 18 are the same?

23 MR. KOHRMANN: Some of those states didn't  
24 actually have it broken down like that. It would

1     require competitive bids. Or they would require where  
2     they pre-certify all their consultants. And they base  
3     them off those rates when they come in. And then  
4     there are a number of other states that I did get  
5     numbers from just to verify, but I couldn't make them  
6     public record because they are internal numbers.

7           Q.     (BY MR. COOK) Like you said, they are  
8     internal numbers?

9           A.     (BY MR. KOHRMANN) Other states have internal  
10    numbers, but they were not publishing them.

11          Q.     So they're not in the public domain in that  
12    state?

13          A.     Right.

14                 MR. COOK: Thank you.

15                 HEARING OFFICER TIPSORD: Ms. Hesse?

16                 MS. HESSE: One other follow-up question.

17                         QUESTIONS BY MS. HESSE:

18          Q.     For the various rates that were taken from  
19    the different states that are listed in this, what  
20    time frame was used for those states? For example,  
21    were these rates from 2003? Are they rates from 1998  
22    or some other year?

23          A.     (BY MR. KOHRMANN) They all vary. It's all  
24    their latest rate that they use, though, what they are

1 currently using to approve their budgets.

2 Q. And how did you obtain these? Are these  
3 published in the regulations?

4 A. Some are published. A lot, I had to call and  
5 do a lot of email work on.

6 Q. Do you know how the states develop those  
7 rates?

8 A. I believe a lot of them are listed in the  
9 regulations. It's part of the regulatory process.  
10 It's how they did that. A combination of the -- I  
11 guess the current industry standard, industry rate.  
12 And then a lot of the competitive bidding.

13 And then also when they get together, all the  
14 groups and their consultants, they propose their  
15 rates, and then they look at all of those as a whole  
16 and come up with a number from that. Some of them do  
17 it yearly. Some of them update it every two years,  
18 four years.

19 Q. And are these numbers average numbers? Or  
20 are they --

21 A. Which numbers are you referring to?

22 Q. For example, rates for excavation,  
23 transportation and disposal.

24 A. No. Those are the maximum amounts.

1                                   QUESTIONS BY MS. MANNING:

2           Q.    And those are the only two rates you  
3   extrapolated?  I mean, you only extrapolated the  
4   engineering rate and the excavation rate?  Not any of  
5   the other rates, the myriad of other rates?

6           A.   I did them all.  That's just what we  
7   presented.  I mean, the stack of papers is that big,  
8   so.

9           Q.    Okay.  Did you do any information about do  
10   they keep track of the cost of an average?  Do they  
11   keep costs of remediation at all?

12          A.    Yes, they do.

13          Q.    And how did they compare in terms of  
14   remediation dollars?

15          A.    About the same.

16          Q.    Okay.

17          A.    Some were far less, and a couple like  
18   California were much higher.

19          Q.    Did you do that for the states that are more  
20   comparable to Illinois, too, in terms of demographic  
21   information?

22          A.    Yes, we did all that, but I mean, I looked at  
23   every state that had a program.

24          Q.    And in many of those states that are more

1 demographically comparable to Illinois, for example,  
2 Pennsylvania, New York to some extent, those aren't  
3 part of your rate sheet because they have a different  
4 kind of process of either competitive bidding --

5 A. Yes, like an insurance company.

6 HEARING OFFICER TIPSORD: We're ready for the  
7 next question.

8 MS. MANNING: Thank you.

9 QUESTIONS BY MS. MANNING:

10 Q. The third question goes to -- asks for a  
11 written explanation of the reimbursement process.

12 Just to simplify this process for all of us,  
13 because although the regulations are very complicated,  
14 they have many decision points. So PIPE wanted the  
15 Agency to explain from its perspective how it views  
16 the reimbursement process.

17 And I notice that you did give us and present  
18 to the Board as exhibit, I believe, 1 -- thank  
19 you -- the LUST claims voucher process. Is this in  
20 response to question 3?

21 A. (BY MR. OAKLEY) Yes.

22 Q. Would you mind just going through it?

23 A. Well, these activities occur after the claim  
24 has been reviewed for ineligible costs. And once all

1 that is done --

2 Q. Ineligible or eligible?

3 A. Ineligible and eligible, and make sure all  
4 the proper documentation is in place. This is after  
5 the actual claim review process is finished. This is  
6 where we start the payment process, the actual process  
7 that it takes to process the claim for payment.

8 So in the first bubble there, we determine  
9 the amount to be paid and route it upstairs to our  
10 fiscal department. We include the vendor information,  
11 the FIN number, incident numbers, the amounts to be  
12 paid. If it's not correct, it's sent back, and we'll  
13 call the owner/operator. And we've had some problems  
14 lately with some W9 forms. Or the comptroller's  
15 requiring some newer W9 forms.

16 So in some cases, these are kicked out up at  
17 the fiscal level. So that's essentially what happens  
18 there.

19 If all that information is correct, it's  
20 entered into the accounting information system that's  
21 routed back to me for signature. Then after I sign  
22 them all up, I try to gather them every couple of  
23 weeks. It's usually around a hundred or so claims,  
24 and it can vary. Prices can vary based on the amounts

1 that they're requesting. I sign them all and ship  
2 them at that point to our financial management unit.  
3 They sign off on them for the bureau chief.

4 And then it's routed back to our fiscal  
5 people, and they assign a voucher number and route it  
6 to CMS. And if it's complete and makes it through  
7 CMS, then they run an accounting approval tape and  
8 generate the invoice vouchers and schedules and  
9 reports and send that back to fiscal. And then fiscal  
10 prepares the actual invoices, which are then forwarded  
11 by the agency director to the comptroller.

12 Q. Are you aware of how long this process takes  
13 once the Agency makes an approval, and a check is  
14 actually issued and sent to the owner and operator?  
15 What kind of time frame from your perspective are we  
16 looking at?

17 A. Our data indicates that during calendar year  
18 2003, it took 97 days from the time we received the  
19 claim until payment was complete.

20 Q. You mean the time you approved the complaint?

21 A. No. Actually, that was the time we received  
22 the claim from the average date. Now, that  
23 includes -- we have old program sites, which obviously  
24 take longer. But if you factor all the data, it was

1 97 days from the time we received a complete claim  
2 until payment occurred. That's what our computer  
3 says.

4 Q. And you don't have any documentation of that,  
5 though, to present today? We could go through that?

6 A. I don't have it with me. I could provide it.

7 Q. And are we talking about a claim that's  
8 already been approved in the budget versus --

9 A. All claims. This is all claims. Budget  
10 approved claims, I believe, are even quicker.

11 Q. Okay. We'll present testimony on this as  
12 well when it's our turn. So I'm not going to argue  
13 about it --

14 A. Okay.

15 Q. -- today. But in terms of that's the process  
16 for reimbursing the claim once there has been an  
17 approval.

18 The next question actually goes more toward,  
19 however, the question of the review process itself and  
20 the various points upon which the Agency has to make a  
21 determination in that review process, each of which I  
22 believe the Agency has a statutory right to take 120  
23 days, if I'm not correct, for all of those points.

24 A. That's correct.

1           Q.    Thank you.  The four different kinds of  
2 reimbursement review processes, Doug, if you'd like to  
3 explain.  There's the corrective action plan, the  
4 corrective action budget, you know, and those kinds of  
5 things.

6                   How many decision points are there that the  
7 Agency can make in the current rules and regulations  
8 that they can take up 120 days upon which to make a  
9 decision regarding a claim?

10           A.    (BY MR. CLAY)  If you've got a -- you've got  
11 a site investigation plan or site classification plan,  
12 depending on whether you're in the Public Act or 732.  
13 Associated with that is the budget associated with the  
14 site investigation plan or the site classification  
15 plan.  Those are submitted at the same time in most  
16 cases.  So the 120 days would be running concurrently  
17 for those.

18                   Then you have the corrective action plan and  
19 an associated budget with that.  So, again, those 120  
20 days would be running concurrently to those.

21                   At the end of the site investigation or site  
22 classification process, there is approval of the  
23 completion report that has a 120-day time frame, but  
24 there's no associated budget with that unless the

1 original budget needs to be amended.

2 The same thing with the corrective action  
3 completion report. Once corrective action has been  
4 completed, they submit a corrective action completion  
5 report. The Agency has 120 days to take action on  
6 that. And, again, there isn't an associated budget  
7 with that, unless there's a need to amend that  
8 previously approved budget.

9 Q. And at any point in time there's a denial or  
10 modification, unless the owner and operator accepts  
11 that denial and modification, if they present any new  
12 information to the Agency or make a change, then the  
13 120-day renews itself again? Could you explain the  
14 Agency's position on that?

15 A. Yes. I mean, any time there are amendments  
16 submitted as a result of a denial or modification by  
17 the Agency, based on the statute and the regulations,  
18 there's 120 days to take action on those amendments.

19 MS. MANNING: Are there any follow-up  
20 questions?

21 MR. GOODIEL: Russ Goodiel. I'm with Applied  
22 Environmental Solutions.

23 QUESTIONS BY MR. GOODIEL:

24 Q. The first question is, how often are

1 reimbursement checks issued to owners/operators? Once  
2 a month, twice a month?

3 A. (BY MR. OAKLEY) Twice a month.

4 Q. Twice a month?

5 A. Yeah.

6 Q. Why are there some months where it appears  
7 that there are no checks issued to the owner/operator?

8 A. That has just been recently because of all  
9 the problems.

10 Q. Well, it goes back to, I mean, earlier. I  
11 think there was like in October of last year, there  
12 appeared that there was no money issued to  
13 owners/operators.

14 A. There was a slowdown because of an  
15 appropriation issue last year. It was right around  
16 the time -- I believe around maybe August or so,  
17 because we had some problems. We hadn't appropriated  
18 enough money or something to that effect. But that  
19 would be the only reason.

20 Q. Then is there a limit that the Agency will  
21 reimburse to owners/operators each month? Is there  
22 3 million, 4 million?

23 A. No.

24 Q. Okay. And then speaking of appropriations,

1 was there not another governmental appropriation last  
2 Monday of 10 million dollars that is not included on  
3 some of those documentations?

4 A. I don't know. That was a governor  
5 appropriation. I'll let Gary speak to that.

6 MR. KING: Let me -- that's a good question,  
7 and it's kind of an adjunct to the presentation I made  
8 earlier this morning.

9 If you pull out the chart, one of the things  
10 I did for kind of a simplification of things, this  
11 fiscal year there was in addition to what I have here,  
12 there was an additional 30 million dollars transferred  
13 out of the tank fund. It was done in three chunks,  
14 the last third, the last 10 million of that happened  
15 in May, okay? That 30 million was transferred. It  
16 was transferred to our bureau of air programs, so that  
17 they could meet operating requirements. At the same  
18 time, in FY, in this current FY, 30 million dollars in  
19 bonds were provided to the Agency to pay for  
20 reimbursement claims.

21 So, in essence, this is what I said before.  
22 It makes it a little difficult in looking at that Web  
23 site because we've been actually reimbursing claims  
24 out of two funds this last year because of this

1 transfer. We've been reimbursing out of the tank fund  
2 072, and then we've been reimbursing out of the  
3 antipollution bond fund, which is fund 551. And, you  
4 know, out of the pollution bond fund, we've  
5 reimbursed -- when I looked at it last week, we  
6 reimbursed \$29,997,000. So we've got like another  
7 3,000 to go. We're just waiting for another voucher  
8 to go. That will heat up that last \$2,000 or \$3,000  
9 amount. So it's a little complicated on that.

10 And, yes, there was that transfer out. The  
11 column here where I had reimbursement claims is for FY  
12 '04 is an accumulation of what was paid out of 551  
13 and out of 072.

14 Q. 072?

15 A. 072, yes.

16 QUESTIONS BY MS. MANNING:

17 Q. As a follow-up to that. When you look at the  
18 comptroller's site, and there is a section called the  
19 awards and grants, is that the money that's the  
20 reimbursement money? Do you know what it's called on  
21 the Web -- on the comptroller's Web site in terms of  
22 what they line item all of the reimbursement dollars?

23 A. (BY MR. KING) I'm pretty sure awards and  
24 grants is the right item.



1 classification under 732. It's clear under the  
2 current 732, that site classification cannot be  
3 reimbursed until the Agency has approved the site  
4 classification completion report. So that's why we  
5 were making that parallel, but we are proposing to  
6 change that.

7 Q. I see that has been proposed, but I'm still  
8 unclear, you know. Once a plan is implemented, the  
9 budget has been approved, why couldn't the Agency not  
10 review and approve a billing app. for that stage of  
11 work?

12 A. Like I say, we're making the parallel to a  
13 732 site classification where it's clear we cannot do  
14 that because the regs. do not allow us to approve for  
15 payment of those costs until the completion report has  
16 been submitted and approved.

17 MS. MANNING: What rule are you citing that  
18 precludes you from doing that, Doug?

19 MR. CLAY: One second.

20 HEARING OFFICER TIPSORD: You know, we're  
21 almost to the point we're going to take a break.  
22 Would you like to get back to us after the break? Is  
23 there any follow-up on this question before? If not,  
24 let's take a short break, and you can get back to that

1 after the break.

2 [Brief break.]

3 HEARING OFFICER TIPSORD: We're going to go  
4 back on the record.

5 Mr. Clay, you were going to look up that.

6 MR. CLAY: Yes. Section 732.606(h) reads  
7 applications for payments of costs associated with the  
8 site classification may not be submitted prior to  
9 approval or modification of a site classification  
10 completion report.

11 MS. MANNING: Can you repeat that again  
12 please?

13 MR. CLAY: 732.606(h).

14 MS. MANNING: Okay. Thank you. I don't have  
15 a follow-up question for that answer.

16 HEARING OFFICER TIPSORD: And then are we  
17 ready to move on to the next question? I think we're  
18 on 5.

19 MS. MANNING: I have another follow-up  
20 question before that.

21 HEARING OFFICER TIPSORD: Okay.

22 QUESTIONS BY MS. MANNING:

23 Q. And this has to do with, Doug, your testimony  
24 earlier about the 10 percent and 20 percent audit

1 function versus a full review of the Agency.

2 When the Agency reviews a claim for payment  
3 of a cost that's already been in an approved budget,  
4 does it do a full review? Would it consider what the  
5 Agency reviews, a full review of those claimed costs  
6 that are already in an approved budget, and does it  
7 take an additional 120 days to do so?

8 A. (BY MR. CLAY) I would say we have up to 120  
9 days, and I would characterize it as an audit. I'd  
10 like Doug Oakley to talk about exactly what they look  
11 like.

12 MR. OAKLEY: When we look at budget approved  
13 claims, it is different than early action, in that we  
14 don't look at individual rates. We look to make sure  
15 the costs associated with certain activities are  
16 within the line that -- that's like six budget line  
17 items. And if those costs for those activities fall  
18 at or below those line items, that's as far as we go,  
19 other than looking for mandatory documents.

20 Q. So if the costs are all included in the  
21 budgeted approved amount, they're approved?

22 A. Amounts, plural. It's within the six -- it's  
23 not a bottom line. It's within those six lines.

24 What we would do, for instance, you have

1 field investigations. Let's say investigation. That  
2 would be one line, or I believe six of them. And then  
3 you have a total at the bottom. What we do is look at  
4 the individual lines to make sure the activities  
5 associated with those individual lines are equal to or  
6 less than.

7 Q. So in your opinion, if one doesn't match up  
8 and it's over in terms of the number of hours or it's  
9 over in terms of the number of -- the particular  
10 amount?

11 A. Amounts only. We don't look at hours, right.

12 Q. If it's over the amounts that have been  
13 budgeted, it would be a complete denial then?

14 A. No.

15 Q. Then what would happen?

16 A. We would deny down the amount that was  
17 approved for that particular line. And then at that  
18 point, an amendment would be required or something.

19 Q. And so what happens then? Do you write a  
20 letter to the applicant?

21 A. Yes. What we do is we write a final decision  
22 letter and explain which line that they exceeded, and  
23 that's that.

24 Q. And you consider you have 120 days to perform

1 that review?

2 A. Correct.

3 Q. And after 120 days, you send the letter out  
4 saying that you modified it by such and such?

5 A. Yes.

6 Q. And the party has a right to appeal to the  
7 Board if they don't like that?

8 A. Right.

9 Q. That's basically what the process is?

10 A. Yes.

11 Q. That kind of gets us into our next question.  
12 Whether you at the Agency -- please provide -- this is  
13 number 5 -- examples of the various types of  
14 communications the Agency routinely sends an entity  
15 when it modifies or disapproves an entity's requested  
16 budget, plan or reimbursement request. Please explain  
17 how this communication is similar or dissimilar to a  
18 permit denial letter. Please compare the LUST process  
19 to the permit review process.

20 Let's take that first part of that. Does the  
21 Agency have standard letters it sends out? And if so,  
22 could you in this record provide those standard  
23 letters to the Board? Do they change from time to  
24 time? We notice some of the members of PIPE get

1 different kinds of language in it at different points  
2 in time. Does the Agency have the standard denial  
3 letter that it issues?

4 A. (BY MR. CLAY) We have templates, and we have  
5 variables as part of those. You know, we could  
6 provide that. I'm not sure what purpose that serves  
7 in this rule-making.

8 Q. Well, I think just to make sure that we all  
9 understand what the Agency's decision-making process  
10 is. And it is something we can do informally as well,  
11 but if the Agency changes kind of the vernacular it  
12 uses in denial or in review, that should be part of  
13 the rule-making process, as opposed to just a letter  
14 that's sent out and changed from time to time. It  
15 would seem, you know, that it would behoove us all to  
16 make sure we're all on the same page when we're asking  
17 the Board to go ahead and approve these rules.

18 A. Well, I do not believe that the wording in  
19 every letter should be part of the rule-making. So I  
20 do not believe that would be appropriate.

21 Q. Rather than get into that then today, my  
22 question, my basic question is, do you have such  
23 standard letters? And they change from time to time,  
24 correct?

1           A.    Yes.

2           Q.    Do they differ depending on whether the  
3           action is a review of a budget versus a review of a  
4           corrective action plan versus a review of a claim for  
5           payment pursuant to a budget that's been approved?

6           A.    Yes.  I mean, we have templates for all of  
7           those because you've got different references to  
8           regulation and statutes obviously.  And, you know, the  
9           idea is to standardize as much as we can, so that we  
10          don't have typos in our reference to a statute or  
11          something like that.  You know, we standardize that as  
12          much as we can.  And then the specifics of the denials  
13          are in the variables.

14          Q.    Do you want to explain that?  The specifics  
15          of the denials are in the variables?

16          A.    Well, there's variables, such as if -- we'll  
17          use it as a budget issue.  If the denial point is that  
18          this is not corrective action, and therefore is  
19          ineligible, then we have a variable for that so that  
20          every project manager says it the same way, instead of  
21          every project manager quoting a unique paragraph that  
22          is intended to say that.  So I mean, the idea is that  
23          we standardize as much as we can and use these  
24          templates for all of the different types of letters we

1 send out.

2 Q. You would agree that if there's a  
3 determination that something is not corrective action,  
4 however, that that really should be a determination  
5 that's part of the rules and the rule-making? Not  
6 something that's just decided in a letter from time to  
7 time in terms of this? Obviously, there may be unique  
8 situations that were not envisioned when we're doing  
9 the rule-making, but --

10 A. Well, I mean, that's a case by case,  
11 site-specific call, as far as, you know, whether  
12 there's corrective action or not. There's no way that  
13 we could list every possible item that is not  
14 corrective action in any rule.

15 MR. KING: If I could just point out, we're  
16 up to -- and this is in 732.606. We're now up  
17 to -- that's ineligible corrective action. We're now  
18 up to triple F.

19 Q. What is and isn't corrective action?

20 A. (BY MR. KING) Ineligible corrective action.  
21 So there are -- I don't know what triple F means in  
22 numbers, but there are many, many instances where we  
23 define that in the statute. Or excuse me. In the  
24 regulations.

1 Q. And my question, Gary, is, that when you said  
2 variables, that's what you would be talking about?  
3 That's part of what you're talking about? What  
4 particular number of the regs someone is citing,  
5 that's a variable obviously in terms of what's put in  
6 the letter?

7 A. (BY MR. CLAY) Yes.

8 MS. MANNING: I don't have any further  
9 follow-up on question 5.

10 HEARING OFFICER TIPSORD: Anyone else? Go  
11 ahead then.

12 MS. MANNING: Thank you.

13 QUESTIONS BY MS. MANNING:

14 Q. I think on question 6, we approached this a  
15 couple of different ways.

16 But the question here is, does the Agency  
17 ever deny reimbursement for items that it has at an  
18 earlier point, in a budget for example, approved? And  
19 if so, for what reasons?

20 A. (BY MR. OAKLEY) The only thing I can think  
21 of is if we were to see obvious ineligible costs or  
22 perhaps lack of supporting documentation, but other  
23 than that, no.

24 Q. Obvious ineligible costs?

1           A.   Well, I'm saying if a claim was submitted for  
2 a budget that was approved that included ineligible  
3 costs, I believe we would deny those costs.

4           Q.   Even if you earlier approved the costs as  
5 being eligible in the budget?

6           A.   We do not approve costs in budgets. I'm  
7 talking about the claim review process.

8           MR. CLAY: Let me give you an example.

9                    If on one of the line items -- and I think  
10 this is one of the line items. Field purchases. And  
11 if there is a flagpole on the invoice for the field  
12 purchases, Doug is going to cut that because that is  
13 obviously not corrective action.

14                   Now, as he said, he didn't do a detailed  
15 review where he looks at, you know, every single item,  
16 but that's going to be something that jumps out at us  
17 as an obvious ineligible item that would be cut.

18           Q.   But so long as all of the items are  
19 contemplated within the budget and the budget has been  
20 specific enough, and those items that are being  
21 claimed for recovery are in fact part of the budget,  
22 you approve that?

23           A.   (BY MR. OAKLEY) Right.

24           Q.   But you have 120 days within which the Agency

1 believes it has to perform that review; is that  
2 correct?

3 A. That's correct.

4 MS. MANNING: I have no further follow-up  
5 on 6.

6 HEARING OFFICER TIPSORD: I just have one, so  
7 that I'm clear.

8 QUESTIONS BY HEARING OFFICER TIPSORD:

9 Q. If someone submits a budget and they have a  
10 flagpole in field purchases, and your budget person  
11 approves that, then when it gets to Mr. Oakley, he  
12 might then not reimburse it because it doesn't fall  
13 within the category; is that correct? Of corrective  
14 action?

15 A. (BY MR. CLAY) If it was in the plan, and you  
16 know it should have been cut at that point, but Doug  
17 would also -- Doug Oakley would also in his group cut  
18 that as an ineligible item.

19 HEARING OFFICER TIPSORD: Thank you.

20 MS. MANNING: Just as a follow-up to your  
21 initial answer to that question.

22 QUESTIONS BY MS. MANNING.

23 Q. My understanding of it -- and correct me if  
24 I'm wrong, Doug -- Doug and Doug.

1           A.    (BY MR. OAKLEY) That's squared.

2           Q.    My understanding was you didn't see the  
3 flagpole referenced in the budget as it was -- the  
4 budget was less specific than the claimed amount was,  
5 and that's why the budget got approved, correct?

6           A.    In reality, we would probably flag something  
7 like that and say this appears to be an ineligible  
8 cost. That that was the case and that's how it really  
9 works.

10           MR. CLAY: But you're right. It's probably  
11 not that specific. And it was identified on an  
12 invoice and in a more specific manner, and that's why  
13 LUST claims unit would have cut it.

14           Q.    Does the Agency have any forms it uses from a  
15 standard perspective to tell all of the owners and  
16 operators that this is a standard budget you ought to  
17 use? And if you use this budget, and you put all your  
18 costs down up front and give them to us, and then it  
19 will be easier for you when you go through the other?  
20 I mean, do you have a standard form that you use for  
21 budgets and submittals or corrective action plans for  
22 that matter?

23           A.    (BY MR. CLAY) We have standard forms. They  
24 don't go into, I guess, as much detail as we're

1 proposing, I think, with these regulations in  
2 Subpart H, unless we submitted revised budgets for  
3 these, you know, that we would use for these  
4 regulations, but we do have standard forms, and those  
5 are available on our Web site.

6 Q. All of the forms that you would use in the  
7 UST process --

8 A. Yes.

9 Q. -- are available? You have no other forms --

10 A. Not that I'm aware of.

11 Q. -- that you could use or people can access  
12 that aren't on the Web site?

13 A. No. All of our forms are on the Web site.

14 Q. Now, we're talking about forms that the  
15 public would use to send to you as opposed to any  
16 review or evaluation forms?

17 A. (BY MR. BAUER) We don't have any review or  
18 evaluation forms anywhere.

19 HEARING OFFICER TIPSORD: I have a question.

20 QUESTIONS BY HEARING OFFICER TIPSORD:

21 Q. What if there's an eligible cost? And  
22 it's -- you said you have a form and somebody submits  
23 things like on the wrong line. Is that something then  
24 you would look at? You would catch at the next thing

1 and maybe deny eligibility?

2 A. (BY MR. OAKLEY) If they're over on the line  
3 item, we would deny it. If there was some problems  
4 associated with it, perhaps being submitted under the  
5 wrong line, that would be worked out with Doug's  
6 group. And if it needed to be moved, then that would  
7 be his decision.

8 MR. CLAY: We'd have to modify the budget.

9 HEARING OFFICER TIPSORD: Thank you. Anyone  
10 else? You raised your hand earlier. Is it taken care  
11 of?

12 MR. COOK: No questions.

13 HEARING OFFICER TIPSORD: Okay.

14 MS. MANNING: Number 7?

15 HEARING OFFICER TIPSORD: Number 7.

16 QUESTIONS BY MS. MANNING:

17 Q. When does the Agency require the  
18 certification of a licensed professional engineer or  
19 geologist? Obviously understanding that the statute  
20 requires certification of a licensed professional  
21 engineer and geologist at various statutory points.  
22 And what significance, if any, does the Agency  
23 attribute to these certifications?

24 A. (BY MR. CLAY) Well, as you said, the

1 regulations and statute requires the certification for  
2 reports and budgets, the completion of reports and  
3 budgets.

4 We, also as part of the forms, require the  
5 consultant to sign the plan as well, the site  
6 investigation or classification plan as well as the  
7 corrective action plan. And it's required by the Act  
8 and the regulations to give, you know, due  
9 consideration to it.

10 Q. What do you mean by due consideration?

11 A. It's required to be certified. And, you  
12 know, that's one of the main things we look for.

13 Q. Does the Agency have a position on what the  
14 legislative intent and or the regulatory  
15 intent -- actually, what the legislative intent was in  
16 requiring a certification of a licensed professional  
17 engineer and then a licensed professional geologist in  
18 certain instances, in certain matters before the  
19 Agency in the LUST program?

20 A. (BY MR. KING) Well, let me broaden that  
21 because there are certification requirements,  
22 particularly for LPEs, not just in the LUST program,  
23 but in permit programs and our other corrective action  
24 programs.

1           So it's really been a legislative and  
2 regulatory conclusion that's been put in many  
3 regulations, only one of which is really dealing with  
4 a reimbursement process, and that's the tank program.

5           The purpose of having a certification by an  
6 engineer or a geologist is to assure that there's a  
7 person of appropriate technical ability, has signed  
8 off on a technical proposal. That is what I think has  
9 always been the purpose of those certification  
10 requirements.

11          Q.    Are there instances in performing a full  
12 review, when the Agency performs a full review, that  
13 an engineer and or a geologist would sign off on a  
14 particular task taking 30 hours of time, and someone  
15 at the Agency at the first level of review who is not  
16 an engineer or a geologist would be in a position to  
17 routinely deny that cost as being excessive, even  
18 though it was signed off and certified by a licensed  
19 professional geologist and or engineer? And if so,  
20 could you explain such circumstances?

21          A.    (BY MR. CLAY) I don't know what you mean by  
22 routinely, but I mean, we do review what's been  
23 submitted now on a case-by-case basis and determine  
24 whether or not that's reasonable. Those decisions are

1 actually signed by their unit manager. So, you know,  
2 there is a person with a lot of experience, you know,  
3 actually signing the approval, denial or modification  
4 letter, but I'm not sure what you mean by routinely.

5 Q. Well, I guess what I'm asking is, in the  
6 Agency's management of the LUST program, is there a  
7 distinction between a full review of work performed  
8 that's been signed off by a licensed professional  
9 engineer or geologist and the reasonableness of that  
10 amount of work in that particular task and that  
11 judgment that has been signed that that particular  
12 work was required, the number of hours were required,  
13 versus a reasonable determination, for example, on how  
14 much the excavation cost should have been on a purely,  
15 I mean, rate issue? Is there a distinction in the  
16 Agency's mind in terms of the type of review it would  
17 perform to determine reasonableness in both those  
18 distinction contexts?

19 A. I think that we would look at either in the  
20 same manner.

21 MS. MANNING: I have no further follow-up on  
22 that.

23 HEARING OFFICER TIPSORD: Okay. Ms. Hesse?

24 MS. HESSE: Just a couple follow-up points on

1 that.

2 QUESTIONS BY MS. HESSE:

3 Q. Mr. Clay, you had mentioned that the unit  
4 manager signs off on any letters that would deny  
5 unreasonable. For example, amounts of time spent on a  
6 project. Do the unit managers actually go back before  
7 they sign these letters and review the reports to see  
8 if they think the amount of time spent was  
9 unreasonable?

10 A. (BY MR. CLAY) In most cases, they're relying  
11 on the project manager's recommendation, but they  
12 certainly would review the project manager's review  
13 notes. And if there's any questions, you know, they  
14 may have questions for the project manager.

15 Q. How many of the project managers are either  
16 licensed professional engineers or licensed  
17 professional geologists?

18 A. I don't have the exact number. We've got at  
19 least a couple professional engineers and a couple  
20 professional geologists.

21 Q. And how many of those project managers have  
22 actually had field experience in removing underground  
23 storage tanks?

24 A. We have at least -- we have one unit manager

1 that has experience in that, and I'm not aware of any  
2 other.

3 Q. How many project managers do you have at the  
4 Agency?

5 A. This is one of your pre-filed questions.

6 MS. MANNING: It goes to number 10. It's  
7 fine with me. And then I won't ask number 10. I'll  
8 let Ms. Hesse go through that, if that's all right  
9 with the Board.

10 HEARING OFFICER TIPSORD: That's fine.

11 MR. CLAY: There are 34 project managers, and  
12 5 unit managers and myself as far as technical staff  
13 in the LUST section. These include environmental  
14 protection engineers, environmental protection  
15 geologists, environmental protection specialists, the  
16 LUST claims unit which reviews the claim for  
17 reimbursement. And it includes eight comp.  
18 technicians, one account supervisor, one engineering  
19 technician, one methods and procedure associate and  
20 one manager.

21 The technical staff reviews plans, reports  
22 and budgets associated with the cleanup of leaking  
23 underground storage tanks. The LUST claims unit staff  
24 review and process payment requests for reimbursement

1 from the UST fund. Qualifications of all of these  
2 positions can be obtained by using the CMS Web site.

3 In addition -- well, this was question number  
4 10. But in addition, there are OSFM staff and  
5 department of revenue staff paid out of the UST fund,  
6 which was part of the question number 10.

7 Q. (BY MS. HESSE) Out of all those people, just  
8 one person has had field experience in removing  
9 underground storage tanks?

10 A. A number of them have had field experience.  
11 I'm only aware of one that has actually had field  
12 experience of removing underground storage tanks.

13 MS. HESSE: Okay. Thank you.

14 HEARING OFFICER TIPSORD: Go ahead.

15 QUESTIONS BY MR. COOK:

16 Q. With regard to the professional  
17 engineer/professional geologists' certifications,  
18 Mr. King testified that part of the reason or the  
19 reason for that certification is to establish that  
20 someone that was technically qualified and competent  
21 had reviewed the work. The current certifications  
22 also require -- or isn't it correct that the current  
23 certifications also require that those professionals  
24 attest that the costs were incurred and were

1 reasonable?

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

3 Q. And does the Agency currently also review  
4 those costs submittals before they provide a  
5 reimbursement to ensure that the costs are reasonable?

6 A. That's correct.

7 Q. And historically has that been the case that  
8 the Agency has reviewed the cost submittals to make  
9 sure that they were reasonable?

10 A. Historically, yes, we have.

11 Q. And is the Agency obligated to  
12 pay -- historically have they been obligated to pay  
13 any costs that were not reasonable?

14 A. We have not been obligated to pay any costs  
15 that were not reasonable.

16 Q. So any submission that was submitted and not  
17 reasonable would not have been paid?

18 A. If the Agency made that determination, that's  
19 correct.

20 MR. COOK: Okay. Thank you.

21 HEARING OFFICER TIPSORD: Anything further?

22 Question number 8.

23 MS. MANNING: Before we get to question  
24 number 8, I just had some follow-up, if I might, with

1 question number 5, because of some questions from  
2 Ms. Hesse and Mr. Cook.

3 HEARING OFFICER TIPSORD: Okay.

4 QUESTIONS BY MS. MANNING:

5 Q. We didn't get into number 5, how this process  
6 is similar or dissimilar to the permit process.

7 But my specific question is, I understand  
8 that you send letters of denial and or modification to  
9 an owner and an operator who is requesting  
10 reimbursement from the fund for approval of the  
11 corrective action report or approval of the budget.  
12 What kind of communication, oral, other than the  
13 written communications that the denial and or  
14 modification letter, what kind of communication does  
15 your UST unit have when it intends a modification or  
16 denial? What kind of communication does it have with  
17 the owner/operator or whoever has submitted the budget  
18 or the reimbursement claim on behalf of the owner and  
19 operator?

20 A. (BY MR. CLAY) You know, a lot of that  
21 depends on the specific situations. If all we need is  
22 a PE cert., then the project manager may pick up the  
23 phone and ask for the PE cert., and you know, or  
24 request it to be submitted, you know, as soon as

1 possible. It may be that the denial modification is  
2 made, you know, in writing.

3 Q. Would I be correct in saying that most of the  
4 communications in writing, very little of the  
5 communication is between the person who has actually  
6 requested the information and the reviewer on the  
7 Agency staff?

8 A. Well, I wouldn't characterize it as little  
9 communication. I would say most of the communication  
10 is in writing, but there is significant communication  
11 verbally or by email as well.

12 Q. On intended denials or intended  
13 modifications?

14 A. I think just communication regarding the  
15 project, not necessarily regarding communication prior  
16 to us making a modification or denial. That's usually  
17 in writing.

18 Q. You're familiar with the Agency's land permit  
19 process, aren't you, Doug?

20 A. Yes.

21 Q. Could you give a comparison from an Agency  
22 review point of how the LUST program is similar or  
23 dissimilar in terms of your administration of that  
24 program to, for example, an administration of a permit

1 program where the Agency review the permits?

2 A. Well, it's been a while since I worked in  
3 permits, over 10 years. But I think what you're  
4 getting to is whether or not they do draft denials or  
5 draft modifications, and I believe they do.

6 Q. You believe who does?

7 A. Permit.

8 Q. Oh, the permits --

9 A. -- does. And I think that if that's what  
10 you're -- the just of your question is -- or gist of  
11 your question is, we don't do drafts simply because of  
12 the volume of work that we've got and the resources  
13 that we have to review that work.

14 Q. So basically the Agency -- correct me if I'm  
15 wrong -- takes the position that in the LUST program,  
16 if a claim is going to be either modified or denied,  
17 there's no obligation on the part of the Agency to  
18 notify the applicant that that is the intended action  
19 and give the applicant an opportunity to correct  
20 whatever deficiency is there?

21 A. Are we obligated to?

22 Q. Yes.

23 A. No. We are not obligated to.

24 Q. And you don't routinely?

1 A. No.

2 Q. No, you do not routinely?

3 A. No, we do not routinely give them that  
4 opportunity without -- you know, without a formal  
5 written denial modification. They always have the  
6 opportunity to respond to that modification or denial.

7 Q. In which case, it's another 120 days that  
8 kicks in, correct?

9 A. Correct.

10 Q. If they're going to offer any change at all,  
11 they've got another 120 days to wade through that  
12 review?

13 A. Right.

14 Q. And the other choices are to accept your  
15 modification or to appeal that modification to the  
16 Board or to accept the modification?

17 A. Correct.

18 MS. MANNING: Okay. I have no -- I'm ready  
19 to go on to --

20 HEARING OFFICER TIPSORD: Question 8?

21 MS. MANNING: Thank you.

22 QUESTIONS BY MS. MANNING:

23 Q. I think that he answered this. The question  
24 that please provide copies of all forms and

1 standardized documents utilized by the Agency in its  
2 LUST program. And I believe that you've answered that  
3 all of the forms that the Agency would use in the LUST  
4 program we can find by going to your Web site; is that  
5 correct?

6 A. (BY MR. CLAY) That's correct, correct.

7 Q. And any other standardized documents?

8 A. There already are a number of fact sheets and  
9 publications on our Web site.

10 Q. And any other standardized documents would  
11 not be being used by the Agency at this point in time  
12 in terms of any review documents or anything like  
13 that; is that correct?

14 A. I am not -- I don't know specifically what  
15 you're talking about. I mean, is there a document  
16 that you're referring to?

17 Q. Well, I wouldn't know. I wouldn't know what  
18 documents the Agency has in terms of internal  
19 documents that you utilize in the reviewing any of the  
20 claims for reimbursement.

21 A. We are not -- I can't think of anything that  
22 we're using right now as far as reviewing claims for  
23 reimbursement, any other documents.

24 MS. MANNING: Thank you.

1                   HEARING OFFICER TIPSORD: Go on to question 9  
2 then.

3                   MS. MANNING: Thank you.

4                   QUESTIONS BY MS. MANNING:

5           Q. Question 9 also asks that you provide to the  
6 Board, for purposes of this record, copies of any  
7 memos or directives that explain or direct the LUST  
8 unit staff on how to perform the various type of  
9 reviews that are performed, so that we all, both the  
10 public and the Board, have kind of an idea of how it  
11 is the Agency reviews these claims for reimbursement.

12           A. (BY MR. CLAY) I think this goes back to  
13 Gary's answer 1.

14                   These documents -- I'm not sure -- are  
15 applicable to the rule-making. And, you know, right  
16 now we're reviewing claims based on the documentation  
17 provided by the owner and operator and their  
18 consultant. We're reviewing it on a case-by-case  
19 basis. And we're relying on experience, our  
20 experience in doing those reviews.

21                   MS. MANNING: I have no follow-up to question  
22 10.

23                   HEARING OFFICER TIPSORD: Okay. Mr. Cook?

24                   MR. COOK: I've got some further follow-up

1 questions.

2 QUESTIONS BY MS. COOK:

3 Q. You testified that you had one staff that had  
4 been involved in the removal of tanks. Is  
5 that -- just to clarify. Was that the physical act of  
6 removing the tank with an excavator or backhoe or  
7 oversight in the field?

8 MR. CLAY: Harry Chappel, would you please  
9 explain your experience.

10 MR. CHAPPEL: Oversight?

11 MR. CLAY: Okay.

12 Q. (BY MR. COOK) And with regard to the rest of  
13 the staff, I assume the others may have experience in  
14 consulting type activities in the private sector?

15 A. (BY MR. CLAY) Some would have consulting in  
16 the private -- I don't know specifically off the top  
17 of my head. I mean, I think all project managers  
18 have, you know, observed different operations, tank  
19 rules, sampling, that type of thing.

20 Q. Irrespective of whether it was in the  
21 environmental field or not, do you have any staff in  
22 the LUST section that have been business owners?

23 A. I don't know.

24 MR. COOK: Okay, all right. No further

1 questions.

2 HEARING OFFICER TIPSORD: Go ahead. Yeah,  
3 wait, wait. Sorry. Follow-up to number 10?

4 QUESTIONS BY MR. GOODIEL:

5 Q. In relation to the amounts paid for IEPA  
6 operations each quarter, why is there such a large  
7 fluctuation in that amount, as much as probably  
8 \$600,000 from quarter to quarter? Are you looking at  
9 the state underground storage tank fund?

10 A. (BY MR. KING) Right.

11 Q. And you're looking at this current year?

12 A. I mean, I can't give you the specifics on all  
13 of that, but one of the things that we also have as  
14 far as an income source that contributes to pay IEPA  
15 operations is a grant from the federal government that  
16 usually runs about, oh, about 1.7 million dollars a  
17 year, and that doesn't come all at once. And, you  
18 know, it will come in different parts of the year.  
19 And we'll use that to pay operational expenses when it  
20 comes in. So you'll see a certain amount of  
21 fluctuation based on that.

22 QUESTIONS BY MS. MANNING:

23 Q. Are there any conditions based on that grant?

24 A. (BY MR. KING) Well, yes. There are

1 certain -- many conditions. It's a federal grant.

2 Q. Would you explain those conditions, at least  
3 how they would relate to the particular rule-making  
4 here?

5 A. I can't -- I mean, no, I can't explain it as  
6 I sit here. I'd have to have a copy of it and look  
7 through it.

8 MR. CLAY: I mean, not the specifics, but I  
9 mean, generally we have a cooperative agreement with  
10 the USEPA for 1.7 million dollars to implement the  
11 LUST program in Illinois. That equates to about  
12 40 percent of the LUST program. And so 60 percent is  
13 supported by the UST fund and 40 percent supported by  
14 this federal cooperative agreement.

15 Q. And you're talking about the Agency's  
16 administration of 40 percent of the 1.7 billion, I  
17 think you said it was, Gary?

18 A. (BY MR. KING) No. 1.7 is 40 percent.

19 MR. CLAY: 1.7 is the federal grant, and that  
20 supports about 40 percent of the LUST program.

21 Q. Operations?

22 A. Yes.

23 Q. In the IEPA operations column, correct?

24 A. The operations column. It's just UST money.

1           MR. KING: It does not include federal that  
2 we receive.

3           Q. So basically that's 60 percent? That figure  
4 is about 60 percent of the actual cost of the LUST  
5 unit? Of the Agency's LUST operations?

6           A. (BY MR. KING) The Agency's overall  
7 operations and support, including the staff, and then  
8 including costs and things like that.

9           Q. But USEPA's cost, I mean their money is all  
10 used for --

11          A. (BY MR. CLAY) Staff.

12          Q. -- administration of the program? And not  
13 used for any remediation of sites; is that correct?

14          A. That's correct. 100 percent is used for  
15 staff. And then, you know, there's a little, you  
16 know, equipment money in there and the standard --

17          Q. Computers?

18          A. Computers, yeah.

19           MS. MANNING: Okay.

20           HEARING OFFICER TIPSORD: Anything further on  
21 question 10? Moving on to question number 11 then.

22                    QUESTIONS BY MS. MANNING:

23           Q. Does the Agency have any statistics or  
24 performance measures that you maintain or did maintain

1 regarding the LUST program, which would identify any  
2 statistics, goals or objectives that may have been  
3 prepared for use in the Agency's strategic planning  
4 and or performance review process?

5 A. (BY MR. CLAY) We produce an annual report  
6 each year, which includes the number of releases  
7 reported, the number of releases cleaned up, the  
8 amount of reimbursed from the fund, etcetera. The  
9 reports are on line, on our Web site at  
10 [www.epa.state.il.us](http://www.epa.state.il.us).

11 As far as goals, USEPA has established goals  
12 of cleaning up 14,900 sites by 2005.

13 Q. 14,500 sites?

14 A. 900, 14,900.

15 Q. And will that be in your FY '04 annual  
16 report? Do you identify those in your annual report?  
17 Or for what purpose did you identify that goal?

18 A. Well, it was a goal given, goal given to us  
19 by USEPA. And it's tied to our cooperative  
20 agreement.

21 I'm going to ask Gary King just to explain it  
22 a little further.

23 MR. KING: On a national basis, USEPA really  
24 assigned performance goals as far as the number of

1 closure that each state was supposed to complete by  
2 the end of 2005. And there was a lot of disagreement  
3 by states, including Illinois, with regard to the  
4 number that they were assigned because we didn't think  
5 it was probably achievable.

6 Q. And that number is from what time to what  
7 time in terms of the 14,500 (sic) sites?

8 A. (BY MR. KING) It's total.

9 Q. From the beginning of the program?

10 A. From the beginning of the program.

11 Q. And where are we in terms of the state, in  
12 terms of how many sites we've actually cleaned up to  
13 date?

14 A. (BY MR. CLAY) Approximately 12,700 to date.

15 Q. And the USEPA wants us to achieve  
16 14,500 (sic) by what date again?

17 A. The end of 2005, and that would be --

18 Q. Fiscal year 2005?

19 A. Fiscal year --

20 Q. Which would be December 31st?

21 A. September 30th.

22 Q. September 30th, that's right. September 30,  
23 2005?

24 A. That would be --

1           CHAIRMAN NOVAK: No, 2006.

2           MR. CLAY: No. That would be September 30,  
3 2005, the 2005 fiscal year, right.

4           Q. Did you do any state performance review  
5 measures as well, in addition to the USEPA performance  
6 measure? Did you do anything for the State of  
7 Illinois in terms of tracking your performance in the  
8 LUST fund?

9           A. I don't recall what we had to do on the  
10 strategic plan. They were all in line with what we  
11 were reporting to USEPA as far as, you know, cleanups  
12 reporting, cleanups completed. We did convert those  
13 to acres completed, or cleaned up with just simply a  
14 multiplier.

15          Q. Do you have those reports to the EPA on line?

16          A. To USEPA?

17          Q. Yes.

18          A. No.

19          Q. Do you have them available publicly?

20          A. I'm sure that USEPA would provide them. I  
21 don't --

22          MR. KING: I'm not sure what you're asking.

23          Q. I was just wondering if there was a public  
24 document that sets forward your agreement with the

1 USEPA in the performance measures between USEPA and  
2 the Illinois EPA regarding the UST fund, if there's a  
3 public document that you could make as part of this  
4 proceeding?

5 A. (BY MR. CLAY) Well, first of all, that has  
6 nothing to do with the UST fund, okay? The UST fund  
7 is a federal financial assurance mechanism that has  
8 been approved by USEPA to meet federal financial  
9 insurance requirements. The sites required to be  
10 cleaned up, or the goal that they've set for us has no  
11 tie to the UST fund, whether it was a UST fund or not  
12 a UST fund. The goal is the same. They don't tie  
13 anything to the UST fund. And their only concern is  
14 that we have a solvent UST fund, if it's approved as a  
15 financial assurance program.

16 Q. So there's no potential repercussions if you  
17 don't meet the federal goal?

18 A. I don't know what the repercussions would  
19 be. We've asked that question, and they say this is a  
20 goal. There isn't necessarily one tied to it.

21 MS. MANNING: I don't have any further  
22 follow-up, but Ms. Hesse does.

23 QUESTIONS BY MS. HESSE:

24 Q. Just a couple quick follow-ups just to

1 clarify.

2           The 14,900 sites are all underground storage  
3 tank sites?

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

5           Q.    And is this as a result of the Government  
6 Results Performance Act, or whatever the name of the  
7 federal act was, that USEPA is setting this goal?

8           A.    Yes, GPRA -- and I don't recall what the  
9 acronym stands for right now.

10           HEARING OFFICER TIPSORD: Okay.

11           QUESTIONS BY MR. GOODIEL:

12           Q.    You said you don't know if there were  
13 repercussions. Then, what, is there a sunset date for  
14 this federal grant to assist in paying for IEPA  
15 operations?

16           A.    We renew it every year. I mean, it's all  
17 dependent upon what is passed in the federal budget.  
18 Over the last several years, nationally there's been  
19 around 72, 73 million dollars nationally for the  
20 UST/LUST programs. Or I think that's just for the  
21 LUST program. That's distributed through the 50  
22 states as well as tribes. And for the last several  
23 years, our amount of 1.7 million has remained  
24 constant. But, you know, that all depends on

1 Congress, and tomorrow it could be zero conceivably.

2 Q. And if this were taken away and were made  
3 zero, then that 1.7 would have to come out of the  
4 Illinois UST fund to pay for IEPA operations; is that  
5 correct?

6 A. Well, it would have to be passed by the -- as  
7 part of a budget, and appropriated with the general  
8 assembly and the governor. Or the other option would  
9 be those, you know, staff that are supported by that  
10 federal budget, you know, would be laid off.

11 QUESTIONS BY MS. MANNING:

12 Q. As a follow-up to that question.

13 Taking the last five years as an example, has  
14 the Agency's LUST unit grown in numbers, decreased in  
15 numbers? Could you give us a sort of estimate, Doug,  
16 of how many employees you might have had five years  
17 ago in the UST unit and how many you have now?

18 A. I don't recall exactly how many we've had.  
19 There's been, I guess, a slight increase. I would  
20 have to -- I would estimate maybe three, four people.  
21 There hasn't been much of an increase at all. Like I  
22 said, maybe three or four people. I don't know the  
23 exact numbers.

24 Q. And how many employees did you say you

1 currently have now in the UST unit?

2 A. I think there's 34 project managers in the  
3 LUST section and in the LUST claims unit --

4 MR. OAKLEY: 13.

5 MR. CLAY: 13.

6 MR. OAKLEY: That includes clerical and  
7 computer staff and managers.

8 Q. So 47 about? Does that sound right? About  
9 47 people in the LUST unit?

10 A. (BY MR. CLAY) There's 13, which includes  
11 everybody that Doug Oakley just mentioned. What I  
12 referred to in the LUST section was 34 project  
13 managers. And there's also, as I said earlier, five  
14 unit managers, myself as far as technical staff. And  
15 we have two administrative support and then another  
16 person that is half-time administrative support.

17 Q. And so how long would you estimate, how many  
18 years has the Agency been running with about 47  
19 employees?

20 A. Like I said, I don't know that there's been  
21 that big of an increase in the last several years. I  
22 mean, that's something, I guess, we can find out and  
23 have either at tomorrow's hearing, or you know, can  
24 provide.

1 MS. MANNING: Thank you.

2 HEARING OFFICER TIPSORD: Go ahead.

3 QUESTIONS BY MR. COOK:

4 Q. Since we're talking about budget issues and  
5 issues of revenue, the only source of revenue right  
6 now -- or there's two sources it sounds like. The  
7 grants to help administer the program, and then also  
8 the motor fuel tax and environmental impact fee.

9 The Agency is paid out roughly about a half a  
10 billion dollars, I think. In excess of a half a  
11 billion dollars over the course of the program.

12 I'm familiar with some of the public  
13 universities that take technology from those  
14 universities from their science program, technology  
15 programs, and they've instituted technology transfer  
16 programs. Some of those universities are partnering  
17 with the private sector to essentially incubate  
18 technologies. And those universities then receive  
19 some form of royalty or some form of revenue when  
20 these technologies start up or are successful.

21 You testified earlier that you've seen a lot  
22 of new alternative technology proposals. And I'm not  
23 aware right now that there are any plans or that there  
24 is any program that might serve as an additional

1 source of revenue long-term for the LUST program if an  
2 alternative technology were to come out of Illinois  
3 and be partially funded by the LUST program.

4 But is that something that the Agency might  
5 consider in the future? And if the Agency would  
6 consider that, is that even something that you would  
7 have the authority to implement currently?

8 A. (BY MR. CLAY) I am not sure I exactly  
9 understand the question. The Agency would fund a  
10 technology from a university?

11 Q. Well, you've got a lot of alternative  
12 technologies that are being proposed to the  
13 alternative technology group. Some of these  
14 technologies are well proven. Others are in more of  
15 the early developmental stages.

16 And it would seem reasonable to me that if  
17 the Agency chose to fund a technology that was in the  
18 developmental stage, it's taking somewhat of a  
19 financial risk if that technology proves successful,  
20 and could be used in other states or in other  
21 countries, that the Agency should share some of the  
22 benefits from that risk. And I was just curious if  
23 that was something that the Agency might be able to  
24 entertain.

1           A.    I mean, when someone has come with a new  
2    technology that we don't have a lot of experience in,  
3    we have approved those on a limited scale, you know,  
4    for specific sites, for specific applications.  But I  
5    mean, that's for a specific application.  And if  
6    there's demonstration that it's reasonable, that it  
7    will work, you're talking about getting involved  
8    earlier on, you know, in the research and development  
9    part.

10                I'm not sure that we would -- I mean, we'd  
11    have to look at that on a case-by-case basis.  It  
12    depends on, you know, whether the Agency had thought  
13    that it was going to be successful.  Does that answer  
14    your question?

15           Q.    I think so.  Just generally, I'm trying to  
16    look for other sources of revenue to cover some of  
17    these costs, so.

18           A.    I mean, we have approved new technologies  
19    that we have no experience in, and the person  
20    proposing it has very little experience in, but has  
21    done some research.  And, you know, there is a  
22    reasonable likelihood that it's going to be  
23    successful.

24                The other thing that comes into play there is

1 the cost in technology and how it compares to  
2 conventional technology as well as other technologies.

3 MS. MANNING: Thank you.

4 HEARING OFFICER TIPSORD: Number 12.

5 MS. MANNING: Number 12.

6 QUESTIONS BY MS. MANNING:

7 Q. Does the Agency track the number of  
8 remediation successfully accomplished on a periodic  
9 basis? That's the first part of that.

10 And I think, actually, Doug, you've already  
11 answered this -- correct me if I'm wrong -- but except  
12 for maybe this fiscal year, you basically gave us  
13 numbers earlier in the morning. And I think that's  
14 already on the record, except for this fiscal year.  
15 And I think if you could get that information to us as  
16 well, because I think we left that you were still  
17 doing the annual report for fiscal year 2004; is that  
18 correct?

19 A. (BY MR. CLAY) Well, it's based on a calendar  
20 year, and we've completed one for 2003, and obviously  
21 2004 is not over. But if you want the number of  
22 cleanups reported and completed through today, we can  
23 do that.

24 Q. Okay. That's good. You could just give us

1 that number tomorrow then.

2 Does the Agency track the number of requests  
3 that are approved as compared to those that are  
4 modified or denied on a periodic basis? If so, please  
5 provide with us any statistical measures. In other  
6 words, do you watch the percentage of which you get a  
7 claim? And it's either approved or modified or denied  
8 versus straight approvals?

9 A. We do not track that on a periodic basis.

10 MS. MANNING: I have no follow-up for that.

11 HEARING OFFICER TIPSORD: Anyone else?

12 Question 13?

13 QUESTIONS BY MS. MANNING:

14 Q. In Section 734.810, how were the rates  
15 developed for the three categories of USTs to be  
16 removed or abandoned? And what specific tasks/work  
17 were included in each category? We're starting to get  
18 into some of the technical questions, I think.

19 A. (BY MR. BAUER) I mean, on this, I did  
20 provide a discussion of development of the numbers in  
21 the written testimony, but if you want me to rehash  
22 that, I will.

23 Q. Please.

24 A. The evaluation of 20 LUST sites --

1           HEARING OFFICER TIPSORD: Thank you. Could  
2 you slow down just a little bit? Your words are  
3 blending together. So slow down just a little.

4           MR. BAUER: Sorry.

5           HEARING OFFICER TIPSORD: Okay.

6           MR. BAUER: We had broken out separate  
7 charges. At the nine LUST sites, a total of 34 UST  
8 were either removed or abandoned. They had an average  
9 cost for each of just \$3,152.71. Based on the  
10 Agency's experience, this average cost is consistent  
11 with the amount the Agency has seen historically for  
12 LUST removal within a typical range of 6,600 gallons.

13           The specific tasks, which are included, are  
14 all tasks necessary for the removal of the UST,  
15 including but not limited to the covering, cleaning,  
16 removing and disposing of the UST. All activities  
17 usually is done by a tank removal subcontractor. Such  
18 activities as soil sampling, backfill removal and  
19 backfilling excavation were not included.

20           Q. I think the question is, what example does  
21 the Agency use? And how did you determine what  
22 sites -- what samples did you use to come up with your  
23 number? From what years? From what types?

24           A. They were pretty much the same sites provided

1 in --

2 Q. In Harry's appendix A, attachment A?

3 A. Attachment B.

4 Q. B? So if we look at those incident numbers,  
5 which are now provided, we'll be able to tell that  
6 your numbers came from those particular incidents?

7 A. Right.

8 HEARING OFFICER TIPSORD: And that's for the  
9 record, attachment B to Exhibit 15, which is the  
10 errata sheet.

11 MR. BAUER: It's attachment B to the errata.

12 HEARING OFFICER TIPSORD: Right.

13 Q. (BY MS. MANNING) But you have no information  
14 right now for us in terms of what those sites are,  
15 what those incident reports are? For us to ascertain  
16 what years they were, what location of the state, what  
17 geography? We're going to have to go and look at that  
18 incident report on the Web site and sort of ascertain  
19 that ourselves? Or was there some information you can  
20 give us in terms of those sites?

21 A. (BY MR. BAUER) I never took into  
22 consideration the locations and things like that.

23 Q. How about years? How about when the  
24 approvals were done, when you were reviewing them?

1           A.    What we do is just recently -- and it was all  
2    from 2002 incidents, 2001 incidents that have to be  
3    relative.

4           Q.    And are they representative of various  
5    different owners and operators, various different  
6    remediation companies?  The incident report will tell  
7    us that?

8           A.    You can get that information off the Web  
9    site, I believe.

10          Q.    When you came up with your figures, were you  
11    looking at budgets or plans or corrective action plans  
12    or --

13          A.    Applications for payment.  They were bills.

14          Q.    So basically you just looked at the bills?

15          A.    Yes.

16          Q.    And you looked at, as you said before, the  
17    amount requested or the amount paid?

18          A.    It would be the amount requested.

19                MS. MANNING:  I have no further questions on

20    13.  Does anybody else?

21                MR. COOK:  I'm confused.

22                        QUESTIONS BY MR. COOK:

23          Q.    You referenced attachment B; is that correct?

24          A.    Yeah.

1 Q. And you were talking about tank removal  
2 costs?

3 A. Yes. Those are on the same sites. I'm not  
4 saying the information is on that same one, but those  
5 are the same sites.

6 Q. So the information is for 20- and 45-day  
7 reports? And these are the same incidents numbers?

8 A. Yeah, the same incident numbers.

9 MR. COOK: Okay.

10 HEARING OFFICER TIPSORD: Any additional  
11 follow-up?

12 MS. MANNING: I don't. Do you?

13 MR. COOK: No.

14 HEARING OFFICER TIPSORD: Did you have  
15 follow-up?

16 MR. RENGUSO: Bob Renguso with Marlin  
17 Environmental.

18 QUESTIONS BY MR. RENGUSO:

19 Q. I was just wondering if the Agency considered  
20 the new changes to part 170 of the state fire  
21 marshal's rules regarding underground storage tank  
22 removal requirements, specifically the use of supplied  
23 air by the contractor for the cutting and cleaning of  
24 the underground storage tanks.

1           A.    (BY MR. BAUER) No. We looked at historical  
2 data.

3           Q.    So these are purely numbers from 2001 and do  
4 not reflect current requirements from the state fire  
5 marshal's office?

6           A.    If they made the change after that, then it  
7 does not.

8           MR. RENGUSO: Thank you.

9                    QUESTIONS BY MS. MANNING:

10          Q.    Those incident numbers, have you been able to  
11 tell us when the remediation was performed and what  
12 year?

13          A.    (BY MR. BAUER) I didn't collect that data  
14 when I was collecting the data.

15          MS. MANNING: Okay.

16          HEARING OFFICER TIPSORD: Anything further?

17          MS. MANNING: Number 14?

18          HEARING OFFICER TIPSORD: Okay.

19                    QUESTIONS BY MS. MANNING:

20          Q.    In 734.815, free product or groundwater  
21 removal or disposal, how were the rates of 68 cents  
22 per gallon or \$200, whichever is greater, developed?  
23 And what specific tasks were included in each  
24 category? Again, we don't need you to rehash any

1 prior testimony, but obviously we have more questions  
2 from whatever testimony you might have given earlier.

3 A. (BY MR. BAUER) I'll go back and re-read what  
4 I had. If you looked at the 57 reimbursement claims  
5 where free product and contaminant groundwater  
6 removal --

7 HEARING OFFICER TIPSORD: Mr. Bauer, you need  
8 to slow down when you read.

9 MR. BAUER: Yes. I'm sorry. This is the  
10 average costs to remove, transport and dispose of free  
11 product and or contaminant groundwater was calculated  
12 at 68 cents per gallon.

13 Q. (BY MS. MANNING) Now the 57 sites, could you  
14 identify those for us?

15 A. That I could not.

16 Q. How did you choose them?

17 A. They were just data we collected. Yeah, it  
18 was billing packages pending before the Agency or  
19 actually that we had already paid.

20 Q. So those could have been sites where the  
21 remediation could have been performed in 2001 or 2002?

22 A. That's correct.

23 MS. MANNING: I have no further follow-up on  
24 that. And I don't need you to read the testimony that

1 you've already read.

2 Does anybody else have any follow-up?

3 HEARING OFFICER TIPSORD: Ms. Hesse, go  
4 ahead.

5 QUESTIONS BY MS. HESSE:

6 Q. Mr. Bauer, the 57 sites that you selected,  
7 were they basically just reports you grabbed? Or did  
8 you try to do some statistical random sampling?

9 A. There was no statistical random sampling.

10 Q. And to follow up on what Ms. Manning was  
11 asking, how large of a time frame was included with  
12 these 57 sites?

13 A. I don't know. I didn't record that data.

14 Q. And during what time frame did you pull the  
15 various reports you looked at?

16 A. When were they physically pulled and looked  
17 at it?

18 Q. Yes. When did you pull the information from  
19 the reports? Did you do it last week? Did you do it  
20 last year? Did you do it five years ago?

21 A. I don't know offhand. I think what we had  
22 done is we collected data over a period of time. And  
23 it wasn't like today I'm going to go in there and  
24 collect how many sites I can on free product. We just

1 had a spreadsheet where we just entered this data in.

2 Q. Is this the spreadsheet that was used to form  
3 the basis of rate sheets that the Agency used to use?

4 A. No. This one was not.

5 Q. So this was a different spreadsheet?

6 A. Yes, it was.

7 Q. Do you recall when this spreadsheet was  
8 developed? Was it something that was in there a year  
9 ago? Or longer in amount of time?

10 A. I think it's from -- it's part of our  
11 historical spreadsheets.

12 Q. So it could have been around for a couple  
13 years?

14 A. Yes.

15 Q. Has that been updated? Was it? In other  
16 words, was it updated to come up with the 68 cents per  
17 gallon for these proposed rules?

18 A. I don't think it was updated for that, no.

19 Q. So this was around then some time, correct?

20 A. Yeah. Maybe a year or two.

21 MS. HESSE: Thank you.

22 HEARING OFFICER TIPSORD: Do you have a  
23 follow-up? We're ready for question number 15.

24 QUESTIONS BY MS. MANNING:

1 Q. In Section 734.815, drilling, well  
2 installation, abandonment, how were the rates, quote,  
3 greater of \$23 a foot or \$1,500 derived for  
4 hollow-stem auger soil sampling and greater of \$18 a  
5 foot or \$1,200 derived for direct-push soil sampling?  
6 And what specific tasks/work were included in each  
7 rate?

8 A. (BY MR. BAUER) To shorten it up, I'll just  
9 say that we looked at -- we calculated an average for  
10 the linear foot drilled.

11 Q. I guess what I'm asking is, what sites you  
12 used.

13 A. What sites?

14 Q. Yes. And from what time frame?

15 A. Well, these specific numbers --

16 Q. Go ahead.

17 A. The drilling for the hollow-stem auger can be  
18 traced back to the spreadsheet that was provided to  
19 CW3M in this case, and that was submitted as part of  
20 their testimony.

21 HEARING OFFICER TIPSORD: Excuse me. As part  
22 of their testimony in this case?

23 MR. BAUER: In this case, correct.

24 Q. (BY MS. MANNING) Do you plan on presenting

1 that?

2 A. I did not plan on presenting that.

3 Q. In this proceeding, does the Agency plan on  
4 presenting that spreadsheet in this proceeding since  
5 it --

6 HEARING OFFICER TIPSORD: Ms. Manning, it's  
7 already been pre-filed as part of CW3M's.

8 MS. MANNING: Okay. I have no further  
9 questions on that one.

10 HEARING OFFICER TIPSORD: Anyone else?  
11 Question 16.

12 QUESTIONS BY MS. MANNING:

13 Q. In Section 734.820, drilling, well  
14 installation, well abandonment. And how was the rate  
15 of 16.50 per foot, basically how were those rates  
16 derived?

17 A. (BY MR. BAUER) Again, probably going right  
18 from the same spreadsheet.

19 Q. Okay.

20 A. We did do a analysis of present-day sites to  
21 see that our rates were consistent with what were in  
22 our -- in that spreadsheet. And we found they were  
23 still consistent numbers.

24 HEARING OFFICER TIPSORD: I have a quick

1 follow-up, just so I'm clear.

2 QUESTIONS BY HEARING OFFICER TIPSORD:

3 Q. The spreadsheet that you keep referring to,  
4 Mr. Bauer, is a spreadsheet of historical data that  
5 you've put together over the last couple of years,  
6 listing these costs? And that's what you use to  
7 derive the rate sheet?

8 A. (BY MR. BAUER) Yeah, correct.

9 Q. That's in this rule?

10 A. Yeah. We didn't use it for everything. We  
11 just used it for some parts of our -- --.

12 Q. And the numbers you took were from budgets  
13 that were reimbursed or approved or work that was  
14 actually approved and paid out?

15 A. Yeah, they were from budgets that were  
16 approved.

17 HEARING OFFICER TIPSORD: Okay.

18 MS. MANNING: Thank you. And that rate  
19 sheet, as the hearing officer pointed out is --

20 HEARING OFFICER TIPSORD: What's being  
21 proposed in this rule-making.

22 MS. MANNING: Okay, thank you.

23 HEARING OFFICER TIPSORD: Anything else?

24 We're ready for question 17 then.

1 MS. MANNING: Thank you.

2 QUESTIONS BY MS. MANNING:

3 Q. 734.820. Drilling, \$10.50 cents a foot of  
4 well for well abandonment developed and what specific  
5 tasks/work were included? Again, what site did you  
6 use to develop that particular rate?

7 A. (BY MR. BAUER) It was based on some  
8 historical data that we had before, but you can  
9 correlate it. I think it's on that -- there's some  
10 information that backs it up on that spreadsheet.

11 HEARING OFFICER TIPSORD: Anyone else?

12 QUESTIONS BY MS. MANNING:

13 Q. 734.825 (a), soil removal and disposal, the  
14 rate was \$57 a cubic yard for excavation,  
15 transportation and disposal of soil of developed.  
16 What specific tasks/work were included in that rate?  
17 Actually, on that question, we're really just most  
18 interested in what sites you used, and are they on the  
19 spreadsheet that we're talking about?

20 A. (BY MR. CHAPPEL) Some of it may be on that  
21 spreadsheet. Most of it was based on the Agency's  
22 historical data that Doug Oakley had put together in  
23 terms of billing packages he received and costs, and  
24 costs involved there.

1           And then to support it, we have prepared, I  
2 believe, attachment 9 to see if it really was in  
3 keeping with what we were seeing these days in keeping  
4 with a budget. And that included the cost of  
5 excavation, transportation and disposal.

6           Q.   Attachment 9? What are you referring to,  
7 Harry, with attachment 9?

8           A.   Wasn't attachment 9 my original testimony?

9           MR. CLAY: It's attachment A to the errata.

10          MS. MANNING: Thank you.

11          MR. CHAPPEL: I'm living in the past.

12          Q.   (BY MS. MANNING) That's all right. I  
13 thought that's what you were referring to. You were  
14 referring to attachment A in the errata?

15          A.   Correct. That was just a check of bills that  
16 were available when we did that check of things that  
17 were within the Agency that we reviewed to see if it  
18 was in line with what we might be proposing based on  
19 our old rate sheets of \$57.

20          Q.   And the historical data that you're referring  
21 to with Doug Oakley, is that in evidence in the record  
22 in this proceeding as well?

23          A.   I don't believe so, no, unless it's been  
24 submitted by someone else as part of their pre-file

1 testimony. It may be. I don't know.

2 Q. Mr. Oakley, do you have a document that you  
3 prepared that --

4 A. (BY MR. OAKLEY) No, not with me. I mean,  
5 you know, I don't, no.

6 MS. MANNING: Okay.

7 HEARING OFFICER TIPSORD: Before we go on,  
8 Ms. Moore, I think, has a follow-up.

9 MS. MOORE: Well, it's just kind of a common  
10 sense question, in that if we have the incident  
11 numbers that we keep referring to on attachment A, I  
12 would like you to please submit where those incidents  
13 took place in this tank. That would make some of this  
14 a lot clearer to me. I'm the new kid on the block  
15 here. So I'm just having trouble. But if we knew  
16 what the other 25 of them were -- and we keep  
17 referring to them over and over again -- it would  
18 really be helpful if we knew where they were located.  
19 Thank you.

20 HEARING OFFICER TIPSORD: Mr. Cook?

21 QUESTIONS BY MR. COOK:

22 Q. Just as point of clarification. Attachment A  
23 to the second errata sheet, it shows an average at the  
24 bottom for the -- bottom of the E T and D column, an

1 average of 47.58, and then a standard deviation of  
2 16.60. So is that where you were referring to  
3 earlier, Harry, with the math, with the calculation  
4 error and spreadsheet?

5 A. (BY MR. CHAPPEL) The original -- my original  
6 attachment 9 had some errors in it when you looked at  
7 totalling. I think it only added the first 23 entries  
8 or the last 23, whatever the situation may be. It  
9 left two out. So I just went through using Excel and  
10 told it to sum all 25. And this should be the total  
11 of all 25 above, divided by 25. Well, for the first  
12 three, there's some missing. So it would have been  
13 divided by 25, I hope. I could have that wrong still.

14 Q. The intent was that the rate should be the  
15 average plus the standard deviation?

16 A. No. It has nothing to do with the rate.  
17 This is just a summary table of these 25, what costs  
18 we found in those applications. I summed them up to  
19 get a total. I figured out what the average is, based  
20 on the number of entries above it, and that gives you  
21 an average. The standard deviation -- I'm not a  
22 statistician. I don't know what Excel did in arriving  
23 at those standard deviations.

24 MR. CLAY: But to answer your question, the

1 rate that we are proposing on the rules is not  
2 intended to be an average plus the standard deviation.

3 MR. CHAPPEL: If that's the question, he's  
4 correct.

5 Q. (BY MR. COOK) Just as a point of  
6 clarification then, Doug. We've got 47.58. Then I  
7 assume the standard deviation would be 16.60. That's  
8 what's presented at the bottom of that sheet. That  
9 would total \$64, I think, and 18 cents. But the  
10 proposal in the rules is 57 and does not take into  
11 consideration -- or it's not -- it's 57.

12 A. (BY MR. CLAY) It's 57, correct. It's not  
13 intended to include the average plus the standard  
14 deviation. These 25 sites are just to confirm that  
15 that number isn't way out of whack.

16 Q. And the same would hold true for the backfill  
17 number? The number -- I don't recall what that number  
18 is off the top of my head, but the number that was  
19 proposed in the regulations is still the number that's  
20 being proposed? It's not the average plus that?

21 A. That's correct, and that was \$20.

22 MR. COOK: Thank you.

23 HEARING OFFICER TIPSORD: Any further  
24 follow-up? Ms. Hesse?

1                                   QUESTIONS BY MS. HESSE:

2           Q.    You had mentioned that the number was  
3           consistent with historic numbers that you received.  
4           How were those -- and I'm talking about the \$57 a  
5           cubic yard for excavation, transportation and  
6           disposal.  How was that historic information  
7           developed?

8           A.    (BY MR. CHAPPEL)  I'm thinking.  I'm  
9           preparing my answer.

10                           It was based -- as I recall, it was based on  
11           information received in billing packages by the Agency  
12           over time.

13           Q.    What time period would that information have  
14           been received?

15           A.    Since the doom or the dawn of the program  
16           until it stopped being accumulated, and I don't know  
17           when that end date was.

18           Q.    Okay.  Was this number recorded somehow, or  
19           was it just by memory?  Or how did you figure out that  
20           would be the right number?

21           A.    I think we had information where we recorded  
22           the amount on the application, and it was kept in a  
23           summary database where the total amount was recorded  
24           for each individual billing application.  So if you

1 had one site, you could have had six entries for that  
2 site. They had six different packages for that type  
3 of activity, as I recall.

4 Q. Now, if a site submitted information or  
5 information was submitted on a site to you that, for  
6 example -- and I'm just going to make up an example  
7 here.

8 For example, say so many hours were spent  
9 where a backhoe is used for excavation activities, and  
10 then there was so many miles to a landfill. You would  
11 charge so much money per mile? And then there was the  
12 disposal cost of the landfill. Did you make any  
13 effort to use that information and try to calculate  
14 from a per cubic yard rate would be for that project?

15 A. I do not believe so. I think we used the  
16 packages that gave us a rate of cost to excavate,  
17 transport, dispose and the cost for the backhoe.

18 Q. So if a site might have broken down the  
19 various unit costs, because it was a more expensive  
20 site, that would not be included in this \$57 per cubic  
21 yard rate?

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

23 Q. So that was just where the project already  
24 kind of gave you the total package; is that correct?

1 A. Correct.

2 Q. How was this number communicated to various  
3 people within the Agency? I mean, was it on a rate  
4 sheet that you had somewhere?

5 A. Yes.

6 MS. HESSE: Thank you. Claire has a  
7 follow-up to that.

8 QUESTIONS BY MS. MANNING:

9 Q. Surely you didn't mean to suggest that from  
10 the dawn of time or whatever, the dawn of this program  
11 until today, you looked at a hundred percent of the  
12 billing requests for excavation costs?

13 A. (BY MR. CHAPPEL) Well, since the dawn until  
14 the time we stopped, I think accumulating that  
15 information, didn't we look at every one that had for  
16 that specific type of activity, didn't we record that?

17 MR. OAKLEY: Every single --

18 MR. CHAPPEL: I don't know. I'm asking. I'm  
19 not sure.

20 Q. (BY MS. MANNING) You have used a select  
21 sampling?

22 A. (BY MR. OAKLEY) Yes.

23 MR. CHAPPEL: Correct.

24 Q. Okay. And can you identify that sampling?

1 Or how you arrived at that sampling?

2 A. (BY MR. OAKLEY) Traditionally what we did on  
3 our side, on the LUST claims unit, we did the same  
4 thing. We took a random sample, fed them into a  
5 computer, calculated one standard of deviation. And  
6 then that's when we used that number. If you billed  
7 it as a cubic yard rate, then if it was at or below  
8 that number, billed as a cubic yard rate, then we  
9 deemed it reasonable. However, if that number, if you  
10 could justify a higher number by breaking it out for  
11 all your excavation costs, transportation costs and  
12 disposal costs, we would, in the old days, would allow  
13 that. Now, that's how we did it.

14 MR. CHAPPEL: Which is really no different  
15 than what's proposed in the current rules. We're  
16 telling you what that number is; 57. And we have a  
17 specific rule that says if you can justify a higher  
18 number based on your site-specific conditions, the  
19 Agency can consider it.

20 Q. Mr. Oakley, what do you mean when you  
21 referred to the "old days"?

22 A. Good old days. No.

23 MR. CLAY: Doug and Brian, if you guys could  
24 clarify, why do we go to the cubic yards instead of

1 allowing a breakdown like Doug talked about?

2           You know, we started seeing some issues with  
3 people using extremely small trucks, using excessive  
4 amounts of trips to the landfill where, yeah, you can  
5 show a receipt that we went -- you know, we used so  
6 many trips to the landfill and so many trucks, but do  
7 one of you guys want to comment on that?

8           MR. BAUER: We've also seen, like, excavation  
9 rates. I think a lot of it when you're loading up  
10 trucks, you know, you're trying to get truck after  
11 truck, one behind each other. If you have one truck  
12 that's gone for an hour at the landfill, they're not  
13 excavating during that time. So your excavation rate  
14 goes up. We have seen all kinds of really  
15 off-the-wall stuff. When they're able to break it  
16 out, that you could end up with an outrageous cubic  
17 yard -- you know, per cubic yard rate.

18          Q. Did you communicate your feeling about the  
19 off-the-wall stuff with the applicant so that that  
20 applicant had an opportunity to explain to you why it  
21 did what it did?

22          A. (BY MR. BAUER) I guess what I'm talking  
23 about, what I'm looking at, those probably were paid.  
24 I mean, I'm looking at something that's already gone

1 through the process. Or maybe they weren't paid, but,  
2 I mean, you know, I'm looking at it after the fact. I  
3 didn't review the same person.

4 MR. CLAY: The issue was people weren't doing  
5 things as efficiently as they could have because they  
6 wanted to use their own equipment or their own  
7 people. And as a result, the time was increased  
8 significantly, where had they done it in an efficient  
9 manner, it would have been within these regs.

10 Q. And the Agency, in looking at the paper  
11 product, determined that it could have been done more  
12 efficiently without communicating with the applicant  
13 in terms of whether they believe that they did it as  
14 efficiently as possible?

15 A. Well, I mean, I wouldn't say that. I don't  
16 know the specific cases, but a number of times, even  
17 if we didn't communicate with them by phone, people  
18 would come back and then try to justify whatever was  
19 being charged and provide this kind of dialogue and  
20 detailed explanation. And in some cases, we accepted  
21 it, and in some cases, we didn't.

22 Q. And those were the "old days" that Mr. Oakley  
23 was referring to?

24 A. (BY MR. OAKLEY) That's correct.

1 Q. In the new days, there are no communication  
2 except the letters?

3 A. (BY MR. CLAY) That is not a fair statement.

4 Q. There are still communications, just not as  
5 much as there was in the old days?

6 A. There is communication.

7 QUESTIONS BY MR. COOK:

8 Q. I've got a question about the amount of the  
9 data. It would appear that this particular area, the  
10 excavation, transportation and disposal area, that the  
11 per cubic yard pricing is something that's been around  
12 for quite some time. It's pretty quantifiable. And  
13 that you probably have more data that was more easily  
14 correlated to this specific task -- excavation,  
15 transportation disposal -- than other things like  
16 that.

17 As an example, the preparation of a  
18 corrective action completion report, where you might  
19 have to make more broad-based assumptions to determine  
20 number of hours and that sort of thing?

21 A. (BY MR. OAKLEY) Right.

22 Q. In fact, Mr. Bauer testified that he doesn't  
23 really have a database of hours that he takes to  
24 prepare a specific report.

1           So just as a broad categorization, Doug,  
2 would you say that this particular rate, you're more  
3 or less comfortable with it than some of the other  
4 rates that might be proposed in this Subpart?

5           A.    Me personally?

6           Q.    Yes.

7           A.    Yes, I would say.

8           Q.    And it's because there was a specific billing  
9 methodology that was fairly consistently adhered to by  
10 the contracting and consulting community for years?  
11 You've got quite a bit of data there to support it?

12          A.    Yes.

13                   MR. COOK: All right. Thank you.

14                   HEARING OFFICER TIPSORD: Mr. Goodiel, yeah,  
15 go ahead.

16                                QUESTIONS BY MR. GOODIEL:

17          Q.    I guess my question is, you know, per cubic  
18 yard pricing is quantifiable, but then it's open for  
19 interpretation. Why doesn't the Agency consider going  
20 to a per ton price and everything is per ton? The  
21 landfill is billed per ton, the backfill per ton,  
22 you've got weight tickets billing per ton. That's our  
23 data.

24                                And when you talk on a cubic yard average,

1 you know, assuming that there are abuses, if you've  
2 got an hour downtime on the site, well, there are  
3 other things going on at that site. Preparing trucks  
4 to come back, prepare loads, that type of thing.

5 But I guess my main question is, why hasn't  
6 the Agency looked at doing it on a per ton price? And  
7 that's hard data and it's not open for  
8 interpretation.

9 A. (BY MR. CHAPPEL) Well, I think part of the  
10 problem is the Agency is reviewing these in a budget  
11 up front, where we don't know how much it's going to  
12 weigh by the time it gets to the landfill and if it's  
13 going to get weighed. It's too late.

14 The budgets that we're reviewing are based on  
15 plans that are based on a in-place soil. We're  
16 developing a plan to dig up a certain amount of soil  
17 to take it to a landfill. We can't try to guesstimate  
18 how much that soil is going to weigh when it gets to  
19 the landfill for purposes of a budget.

20 Q. But we, as consultants, are forced to make  
21 that guess?

22 A. No, sir. You're being given a number and a  
23 weight to calculate the amount of volume that we will  
24 allow on a per cubic yard basis. And we're giving you

1 a conversion factor for the weight back to a cubic  
2 yard number.

3 Q. And that conversion factor is fair?

4 A. It's what we're proposing is one and a half  
5 based on normal -- the two references that I've cited  
6 and normal Illinois soils, the one and a half we feel  
7 is reasonable, yes.

8 HEARING OFFICER TIPSORD: Any further  
9 follow-up? Ms. Manning?

10 MS. MANNING: You want to keep going? Are we  
11 on 19?

12 HEARING OFFICER TIPSORD: 19.

13 QUESTIONS BY MS. MANNING:

14 Q. 19 isn't a whole lot different than 18.

15 In Section 734.825(b), how is the \$20 cubic  
16 yard for backfill developed and what specific  
17 tasks/work were included for \$20 a yard?

18 A. (BY MR. CHAPPEL) The backfill cost included  
19 the cost to buy the backfill, haul it to the site and  
20 put it in the hole. The background information is the  
21 same we just went through for landfill disposal.

22 Q. So your answer is basically the same for 19  
23 as it is for 18?

24 A. Yes.

1 MS. MANNING: Any follow-up to that?

2 QUESTIONS BY MS. HESSE:

3 Q. Just to kind of follow up for both 18 and  
4 19.

5 In the question that was asked about why not  
6 just use a per ton charge, when you're expressing  
7 concerns about the conversion factors and going into  
8 what's in the hole to a per cubic yard or per ton  
9 charge, aren't you using some of the same conversion  
10 factors when you extrapolate to come up as this being  
11 a fair number when it's based on a per ton disposal  
12 charges of the landfill?

13 A. (BY MR. CHAPPEL) We're talking about  
14 backfill costs of \$20 a cubic yard. What does this  
15 have to do with landfill costs?

16 Q. But I also mentioned my question goes to 18  
17 as well. And it's a related question because they  
18 both go to the issue of, either way, aren't you using  
19 a conversion factor?

20 A. \$20 a cubic yard is based on the volume of  
21 in-place soil removed and a factor of, I believe,  
22 1.05. And in the case of backfill, that 1.05 takes  
23 into account some degree of settling of that  
24 backfill. I don't -- maybe I don't understand your

1 question.

2 Q. But isn't backfill usually purchased on a per  
3 ton basis?

4 A. It could be. I mean --

5 MR. GOODIEL: Always.

6 MR. CHAPPEL: There's no reason why it can't  
7 be.

8 Q. Okay.

9 A. But we're filling -- we're looking at a  
10 plan. Nothing has been removed yet. Nothing has been  
11 brought back in. We're looking at a plan that has a  
12 budget that we're approving a certain amount for a  
13 certain activity. That hole is a certain size, and  
14 you can't calculate the volume of the backfill.  
15 You're going to need to put in that hole on a plan  
16 basis, unless you take the volume in place that's  
17 removed, and you do the conversion factor if you want  
18 to use it, of one and a half, to try to calculate how  
19 much backfill you're going to need to put in there per  
20 ton.

21 Q. And the conversion factor is to go in from  
22 what to what?

23 A. In this case, you would be having the volume  
24 of soil removed. You take that times one and a half

1 to calculate tons of backfill to put back in that hole  
2 times 1.05, which allows for some settling.

3 Q. And my basic question is, whether you're  
4 converting -- one way or the other way, you're still  
5 converting, correct?

6 A. Yes.

7 Q. You mentioned that you were looking at these  
8 numbers when you were approving a budget and a plan.  
9 Don't you also use these same numbers when you approve  
10 a reimbursement request, whether it's action or a 732  
11 site?

12 A. I thought your questions were involved with  
13 734, which is the proposed rules. So we wouldn't have  
14 any of those yet. These are proposed rules. We  
15 wouldn't have any billing packages under those yet.

16 Q. Well, I understand, but at some point you  
17 probably will, correct?

18 A. Yes.

19 MS. HESSE: No further questions.

20 HEARING OFFICER TIPSORD: Any follow-up?

21 MR. KELLY: Joe Kelly with the United Science  
22 Industries.

23 QUESTIONS BY MR. KELLY:

24 Q. I think as a follow-up to Ms. Hesse's

1 questioning, I think the implication is that --

2 HEARING OFFICER TIPSORD: Mr. Kelly, you need  
3 to ask a question.

4 MR. KELLY: I'm asking a question. I'm  
5 leading up to a question.

6 Q. Would it be a fair statement to  
7 say that would it not be more accurate to have a  
8 conversion in the budget, which all that is, is a  
9 budget. You take the yardage and convert it to tons  
10 in a budget, so that the Agency can review and say,  
11 well, we think that's a reasonable number of tons.  
12 Because it is only a budget, rather than taking the  
13 accurate number, which is precise on the landfill or  
14 backfill ticket, and using a conversion to come up  
15 with a actual, actual quote, unquote cost per yard,  
16 which could have inherent errors in it because it is  
17 just that, a conversion of a actual number to a  
18 estimated number. And I think that's the question.

19 Would it not be more accurate to do that on  
20 the front end on the budget process and convert it to  
21 tons, using tons as your measurement rather than  
22 yards?

23 A. (BY MR. CHAPPEL) My argument would be that  
24 in a plan, the Agency is approving for purposes of

1 excavation and disposal a certain volume of soil to be  
2 removed. I cannot calculate based on that plan how  
3 much that soil is going to weigh when it goes to the  
4 landfill. You're asking us to accept whatever that  
5 landfill receives in terms of weight as the approved  
6 excavation amount at that site. That's after the  
7 fact. 95 percent of the time after the fact, the  
8 weight received at the landfill will be more probably  
9 than what was supposed to be excavated at that site in  
10 our approved plan.

11 This is an up-front calculation of how much  
12 soil is being removed. You know, the volume. The  
13 Agency has approved your plan. You know the length,  
14 the width and the depth that's being approved for  
15 disposal. That has to be approved up front. I don't  
16 know how much it's going to weigh.

17 The same way with the backfill. I don't know  
18 how much that backfill is going to weigh when it comes  
19 in, but I know what volume that backfill has to fill  
20 when it gets to the site for purposes of approving  
21 that budget.

22 I don't know why that conversion is so much  
23 different than what you're trying to describe, except  
24 what you're saying is trust us, we'll send you a bill

1 for how much it weighs, and you can just pay it at the  
2 back end, and use the conversion of one and a half or  
3 1.68 or whatever you want to use.

4 Q. I think the point is, that the number that  
5 goes with the landfill or the amount of volume that's  
6 received from the backfill source is an accurate  
7 weight. And you're asking the owner/operator to  
8 convert that number, use your conversion or mine or  
9 someone else's, to come up with a volume in yards,  
10 which is really an estimate of what the volume of  
11 yards that was removed from the site. Why is that put  
12 on the owner/operator at the tail end? Where the  
13 budget is that, just that, an estimate. And using  
14 your same conversion numbers, and said this is the  
15 number of yards times your conversion rate, here's how  
16 many tons we think it's going to weigh. But you'll  
17 have an actual number at the end of that project; it  
18 will show this is what it actually weighed. You put  
19 it in the truck, they took it there, went on the  
20 scale, and you had an actual number. I think that's  
21 the intent of the question here.

22 A. You can certainly do that at the back end of  
23 your proposal if you find out that the volume of soil  
24 that you took to that landfill, based on your plan,

1 weighed more than what it should have weighed. You  
2 can make a budget adjustment to increase the volume  
3 that was approved. I mean, it's using the same  
4 conversion factor.

5           It's just we're saying up front in the plan  
6 and budget, you have to calculate those numbers so  
7 that we can say for purposes of the budget, you're  
8 approved for this amount.

9           QUESTIONS BY MS. MANNING:

10          Q. Harry, budgets are one of those things that  
11 are signed off by an LPE or an LPG?

12          A. (BY MR. CHAPPEL) No.

13          Q. Yes, they are.

14          A. Are we talking all LPEs, LPGs?

15          Q. I'm talking about the person who submitted  
16 the plan or submitted the budget.

17          A. Yes.

18          Q. They have signed off that plan or that budget  
19 certified by an LPG or LPE?

20          A. I believe under these proposed rules, yes,  
21 they will have to certify that plan and budget.

22          Q. Actually by virtue of the statute -- correct  
23 me if I'm wrong --

24          A. No. I think the current statute only

1 requires the completion report to be certified.

2 MR. CLAY: And the budget.

3 Q. By either an LPG or an LPE, correct?

4 A. (BY MR. CLAY) Correct.

5 MS. MANNING: Thank you, Doug.

6 MR. CHAPPEL: But that doesn't include the  
7 plan. The plans are not certified.

8 MR. CLAY: The plans themselves are not  
9 required by statute to be certified. The form  
10 requires the consultant to sign off on them, right.

11 MS. MANNING: Thank you.

12 HEARING OFFICER TIPSORD: Mr. Cook?

13 QUESTIONS BY MR. COOK:

14 Q. I've got a question about the calculation of  
15 the \$57 per yard and the \$20, for that matter.

16 The way that the volume of material that is  
17 able to be transported in a single truck is different  
18 by weight due to load limit restrictions on the  
19 roads. Was there any consideration given for soil  
20 densities if you were excavating, as an example, a  
21 very heavy material? And any consideration given for  
22 that in the development of this \$57 a yard? If you  
23 were working at a site where the material was very  
24 heavy, and therefore you couldn't load that truck to

1 the volume that that truck was capable of hauling?

2 You had a weight consideration to follow.

3 A. (BY MR. CHAPPEL) It was considered to this  
4 extent. For most of what we conducted in Illinois, we  
5 feel these numbers, based on our records and past  
6 experience, are reasonable. That's not to say there  
7 are not going to be situations where higher rates may  
8 be allowed.

9 And we provided for in the rules for that  
10 type of instance where there are some circumstances  
11 that because of a road weight limit or a bridge weight  
12 limit, you have to drive over that, we have to  
13 consider, you know, different volumes in a truck or  
14 something to that extent.

15 Q. So in those situations, you would consider  
16 that to be an extraneous circumstance that the  
17 owner/operator could present information outlining why  
18 that cost might be incurred?

19 A. That's correct.

20 MR. COOK: All right. Thank you.

21 HEARING OFFICER TIPSORD: Any other  
22 follow-ups? Let's try and do question 20 then before  
23 we take a break.

24

1                                   QUESTIONS BY MS. MANNING:

2           Q.    Question 20 deals with Section 734.825, soil  
3   removal and disposal.  The rate that's proposed by the  
4   Agency is \$6.50 a cubic yard for overburden removal  
5   and backfill.  What specific tasks and work were  
6   included in that number?  And what specific sites  
7   might you have relied upon to come up with that  
8   number?

9           A.    (BY MR. CHAPPEL)  The 6.50 is the cost to  
10   physically remove the overburden stored on site and  
11   place it back in as part of the backfill.  The number  
12   was taken from the Construction Estimator 2003.

13                   MR. BAUER:  Correct.

14                   MR. CHAPPEL:  That's where we got it from.

15                   HEARING OFFICER TIPSORD:  Any follow-up?

16   Mr. Cook?

17                   MR. COOK:  I just have a quick point in  
18   clarification.

19                                   QUESTIONS BY MR. COOK:

20           Q.    You just mentioned that was for on-site  
21   staging of the soils.  And I would assume that if  
22   there's not room on the site to stage the soils, that  
23   the Agency would prefer that those soils be staged  
24   somewhere else?  They're clean soil, clean

1 overburdened.

2 A. (BY MR. CHAPPEL) I wouldn't say the Agency  
3 prefers anything, but go ahead.

4 Q. Okay. Well, let me just ask then how would  
5 that be handled if that cannot be addressed? Those  
6 soils, there was no room to stage those soils on site,  
7 how would that need to be addressed?

8 A. It would need to be addressed as part of the  
9 plan and budget in terms of what you propose to do in  
10 lieu of storing it on site. And the Agency could  
11 consider that as an additional cost that would be -- I  
12 forget. Do we still use the word "extraordinary" in  
13 our rules? Extraordinary costs provisions?

14 Q. And so can you give me an example of what you  
15 might expect to see in that type of a plan?

16 A. Well, the plan would discuss why you could  
17 not store this excavated soil on site prior to putting  
18 it back in the hole. But the plan would also have to  
19 describe that this is the cheapest option for or the  
20 least expensive option for handling that soil versus  
21 putting it in a landfill.

22 I mean, that's not to say it may not be cost  
23 effective to put clean soil or take clean soil to a  
24 landfill and use it for daily cover, rather than pay

1 the price to have to store it off site at some  
2 location, which may cost two, three times as much.

3 MR. COOK: Okay. I don't have any further  
4 question.

5 HEARING OFFICER TIPSORD: Anything else?  
6 Okay. It's reached 1 o'clock. So I think we'll go  
7 off the record and take a short lunch break. We'll  
8 come back at 2:00.

9 Anyone who wants to sit in on the next set of  
10 hearings and when they're going to be scheduled,  
11 please be back at 5 until 2:00. I will be here with  
12 some dates, and we'll try and get some dates set up  
13 for the next set of hearings.

14 [Lunch break.]

15 HEARING OFFICER TIPSORD: Good afternoon.  
16 And we're ready to start and hopefully kill off about  
17 50 questions this afternoon.

18 Mr. Clay, you had some additional information  
19 worked up over your lunch hour.

20 MR. CLAY: This is some information that was  
21 requested, I think, by Ms. Manning as far as the  
22 number reported in closed incidents.

23 So far in 2004, this calendar year 2004,  
24 there's been 220 new incidents reported and 304

1 incidents closed.

2 As far as head count supported in the LUST  
3 program -- and that would be both federal and state  
4 head count, I can break it down if you'd like, but  
5 I'll give you the totals first.

6 In 2000, 75 agency staff. 2001, 76 agency  
7 staff. 2002, 73 agency staff. 2003, 75 agency  
8 staff. And 2004, 74 agency staff.

9 Did you want me to break it down federal and  
10 state?

11 MS. MANNING: That's fine.

12 HEARING OFFICER TIPSORD: Go ahead.

13 QUESTIONS BY MS. MANNING:

14 Q. I would simply ask Mr. Clay, are those people  
15 a hundred percent devoted to the underground storage  
16 tank fund? Or might like Gary King be part of that?  
17 He has a lot of other responsibilities as well.

18 A. (BY MR. CLAY) That includes all the support  
19 staff as well. So that would include people in our  
20 file room. That would include potentially people in  
21 our fiscal, fiscal department, the process invoices  
22 and vouchers. It could be people in our director's  
23 office. It could be attorneys. It could be people  
24 like Gary King that are, you know, overall managers.

1 So, yeah, the 75 or so include primarily LUST  
2 technical staff and LUST claims unit, but there are  
3 also support staff in there.

4 Q. And the support staff might not be devoted a  
5 hundred percent to the underground storage tank  
6 program certainly if they're in the director's office  
7 or something like that, correct?

8 A. That would be true.

9 Q. And earlier you testified -- I think the  
10 number was in the 40s, persons who are directly  
11 working in the underground storage tank unit as  
12 project manager, reviewing claims. You're talking  
13 more about 40 some employees, correct? Not 75?

14 A. There's 34 LUST section project managers,  
15 five unit managers and myself. So that would be 40,  
16 what we call direct technical staff in the LUST  
17 section. We also have administrative support, and I  
18 have someone that's technical advisor that maintains  
19 the database and that type of thing.

20 As Mr. Oakley had said before, he's got 13  
21 staff. 10 of those are directly related to claims  
22 review and processing. So roughly 50 directly related  
23 to the technical and reimbursement reviewing and  
24 processing.

1 Q. Out of the 75 supported by the underground  
2 storage tank program?

3 A. Correct.

4 MS. MANNING: Thank you.

5 HEARING OFFICER TIPSORD: I think we're ready  
6 to proceed again with the pre-filed questions.  
7 Question number 21, Ms. Manning.

8 MS. MANNING: Weren't we at 20, Ms. Hearing  
9 Officer?

10 HEARING OFFICER TIPSORD: I thought we  
11 finished 20 before we went to break.

12 MS. MANNING: 21, thank you.

13 QUESTIONS BY MS. MANNING:

14 Q. Section 734.830, drum disposal. The disposal  
15 rates listed were \$250 per drum of solid waste, \$150  
16 per drum of liquid waste or \$500, whichever is  
17 greater. I assume that \$500 is for either the liquid  
18 waste or the solid waste. How were those rates  
19 developed and what specific tasks or work were  
20 included in the development of those particular rates?

21 A. (BY MR. BAUER) The Agency conducted a phone  
22 survey of contractors that removed drums, site liquid,  
23 solids.

24 Q. And who was called?

1 A. Pardon?

2 Q. Who was called?

3 A. Contractors, subcontractors, whatever the  
4 ones that do that business.

5 Q. What kind of contractors?

6 A. Drum removal subcontractors.

7 Q. Over what period of time?

8 A. Over a couple days.

9 Q. Do you have any notes or any documentation of  
10 who you talked to and what areas of the state they  
11 might have been from?

12 A. I would add what we did and why we did that,  
13 that way, is our historical rate for that particular  
14 activity, based on our experience, was low. Our  
15 historical rate per drum was \$165. So we proposed a  
16 little bit higher rate based on calling around some  
17 contractors and asking them.

18 Q. And you don't remember who you called? Who  
19 called?

20 A. I called some and Harry called some.

21 MR. CHAPPEL: We talked to EnviroVac (sp) who  
22 I believe is out of Chicago. Chicago RS Used Oil.  
23 US Waste out of Indiana. I talked to a couple  
24 drillers who had dealt with also getting stuff hauled

1 away in drums. Western Asphalt, who is out of  
2 Jacksonville; and Advanced Environmental, who is out  
3 of Springfield on their costs of picking up liquids  
4 and picking up drums, drum soil.

5 Q. And when did you call?

6 A. (BY MR. BAUER) 10-3. So I would assume that  
7 would be about 10-3-03. It would have been last year,  
8 10-3-03.

9 Q. The \$500, whichever is greater, I assume it's  
10 whichever is greater for the 150 or the 250, correct?  
11 It's not \$500 combined?

12 A. I'm not sure. It was basically -- yeah, it  
13 was a minimum charge. They're not going to do it for  
14 one drum. So you have to have a minimum drum. They  
15 won't pick up one drum for \$250.

16 MR. CLAY: If I could add, Brian, wasn't this  
17 issue brought up in our meetings with the CECI, the  
18 Consulting Engineers of Illinois? And they pointed  
19 out that they wouldn't come out and pick up one drum?  
20 And there should be a minimum charge.

21 So, for example, if they came out and picked  
22 up one drum of solids and one drum of liquids, we  
23 would pay \$500?

24 MR. BAUER: That's correct.

1 MS. MANNING: Okay, thank you. I have no  
2 follow-up questions. Does anybody else on this one?

3 HEARING OFFICER TIPSORD: Let's move on to 22  
4 then.

5 MS. MANNING: Thank you.

6 QUESTIONS BY MS. MANNING:

7 Q. In Section 737.835, sample handling and  
8 analysis, the rate of \$20 for En-Core sampler  
9 purge-and-trap sampler, or equivalent device  
10 determined? How was the shipping rate of \$50 a  
11 calendar day determined?

12 We'll take the first one first. The En-Core  
13 sampler, purge-and-trap sampler or the equivalent  
14 device?

15 A. (BY MR. BAUER) Based on historical data.

16 Q. Could you be a little more specific?

17 A. Based on what the Agency has collected over  
18 the years. And for En-Core, we also looked at the Web  
19 site, En-Core's Web site.

20 MS. MANNING: Does anybody have any follow-up  
21 questions on that?

22 Q. How about the shipping rate of \$50  
23 a calendar day?

24 A. The shipping rate was based on some

1 conversations I had with a sub group of CECI. They  
2 expressed to me that that was about the going rate for  
3 the shipping. We did not have it broken down. So we  
4 added in an additional cost.

5 Q. What kinds of things were you thinking about  
6 being shipped?

7 A. Samples.

8 Q. Okay. Shipped to the lab?

9 A. Correct.

10 MS. MANNING: Any further questions on that?

11 Q. And in Section 734.840(a),  
12 replacement of concrete, asphalt or paving, how are  
13 the rates of \$1.50 a foot for 2 inches of asphalt or  
14 paving, \$1.70 per foot for 3 inches of asphalt or  
15 paving, or \$2.18 a foot for 4 inches of concrete,  
16 asphalt or paving developed, and what tasks or work  
17 were included to arrive at these rates?

18 A. Well, the rates were taken from the 2003  
19 National Construction Estimator. It was basically the  
20 rate for the installation. We did propose some  
21 additional adjustments to those rates in the errata  
22 sheet.

23 Q. Okay.

24 A. The second errata.

1 Q. The original proposal, you use -- correct me  
2 if I'm wrong. You used actually residential rates.  
3 And does the errata sheet now use commercial rates for  
4 concrete?

5 A. No. Actually, it doesn't. It still  
6 uses the residential rates.

7 Q. Pardon?

8 A. It still uses the residential rates. The  
9 commercial rate in that book is for a large -- I can't  
10 remember. It only quotes a rate for a large parking  
11 lot, like a shopping center parking lot, like a  
12 Wal-Mart or a Kmart. And we don't typically see that  
13 at your corner gas station, those types of extensive  
14 parking lots.

15 Q. Could you just cite that construction book  
16 again, just so we're clear and the record is clear as  
17 to what construction guide you're using?

18 A. The 2003 National Construction Guide.

19 HEARING OFFICER TIPSORD: Ms. Hesse?

20 QUESTIONS BY MS. HESSE:

21 Q. The underground storage tanks that are  
22 located, for example, at a gas station or service  
23 station, aren't those technically considered  
24 commercial sites, if you, for example, look at zoning

1 or if you look in the TACO rules, those kind of things  
2 would apply to them?

3 A. (MR. BAUER) I would imagine so, yes.

4 Q. But you still use residential rates for those  
5 sites for the asphalt estimating numbers; is that  
6 correct?

7 A. Yes.

8 QUESTIONS BY MS. MANNING:

9 Q. And even in the new numbers, you propose you  
10 still use the residential rate in your testimony, and  
11 that is you don't use commercial rates because that's  
12 for a large Wal-Mart parking lot?

13 A. Yeah. For the rate it would apply to -- it  
14 had a minimum. I can't remember the minimum offhand.  
15 It was something like 1,800 square feet or something.  
16 I mean, I don't know. I'm guessing there, but -- --.

17 HEARING OFFICER TIPSORD: Anything further?

18 MR. ROMINGER: Just for clarification.

19 QUESTIONS BY MR. ROMINGER:

20 Q. Is it the book that makes the distinction  
21 between residential and commercial? That was one of  
22 the distinctions you're making? Or does the book that  
23 you were using define what is residential and what is  
24 commercial based on that?

1           A.    (BY MR. BAUER) Yeah. I guess it would be  
2 the book that makes that distinction.

3           HEARING OFFICER TIPSORD: Anything further?

4           BOARD MEMBER GIRARD: I have a quick  
5 question.

6           QUESTIONS BY BOARD MEMBER GIRARD:

7           Q.    I mean, did you just happen to remember  
8 whether the residential rates were higher than the  
9 commercial rates?

10          A.    (BY MR. BAUER) They only gave one rate for  
11 the commercial. You know, it was for what they  
12 refer -- it's for 6 inches of asphalt. And they call  
13 it 3 on 3, where they put 3 inches of base coat over 3  
14 inches of top coat. And there was a little bit more  
15 process involved with putting it the way that they  
16 laid it. And I believe it was a little bit more  
17 expensive if you compared the 6 inches of commercial  
18 with the 6 inches of so-called asphalt residential.

19          BOARD MEMBER GIRARD: Thank you.

20          HEARING OFFICER TIPSORD: Anything else?

21          QUESTIONS BY MS. MANNING:

22          Q.    But you didn't look at actual costs on this  
23 particular one? You looked at this construction  
24 guide, correct?

1 A. Correct.

2 HEARING OFFICER TIPSORD: Ms. Hesse?

3 QUESTIONS BY MS. HESSE:

4 Q. Just one quick follow-up.

5 As far as traffic that would be using  
6 something, would you expect there to be more traffic  
7 or heavier traffic, so that would be more analogous to  
8 having something like a big parking lot being  
9 analogous to a service station? As opposed to a  
10 residential driveway being analogous to a service  
11 station?

12 A. I would assume they might have the same  
13 amount of traffic.

14 Q. Do you have a driveway at your house?

15 A. Yes.

16 Q. Do you have any big trucks that typically use  
17 your driveway?

18 A. No.

19 Q. Would you expect trucks to be using service  
20 stations, if nothing else, to deliver fuel?

21 A. Yes.

22 Q. And you'd expect big trucks might use  
23 something like a big Wal-Mart parking lot, right?

24 A. Yes.

1 MS. HESSE: Okay.

2 MS. MANNING: Thank you.

3 HEARING OFFICER TIPSORD: Anything else?

4 QUESTIONS BY MS. MANNING:

5 Q. A follow-up to question 23.

6 Is there any reason why the Agency doesn't  
7 have any proposed rate beyond 4 inches of concrete?  
8 It's my understanding that there are times where  
9 concrete or asphalt requires more than 4 inches.

10 A. It would be 8 inches of concrete.

11 Q. It is in the errata sheet, the new proposal?

12 A. (BY MR. CLAY) Yes.

13 MS. MANNING: Okay, thank you.

14 That's a change from the original proposal we  
15 just got this morning?

16 MR. ROMINGER: Yes.

17 MS. MANNING: Okay. Thank you. 24?

18 HEARING OFFICER TIPSORD: Yes.

19 MS. MANNING: Thank you.

20 QUESTIONS BY MS. MANNING:

21 Q. Section 734.840(a), replacement of the  
22 concrete, asphalt paving, destruction or dismantling  
23 and reassembly of above-grade structures. How is the  
24 rate of \$10,000 per site for the destruction or

1 dismantling and reassembly of above-grade structures  
2 determined and what tasks/work were included?

3 A. (BY MR. CLAY) The \$10,000 figure is based on  
4 what was historically used as reasonable. You know,  
5 the Agency believes there needs to be a limit on it,  
6 you know. There is a question to some -- I mean,  
7 there's a argument to some degree whether or not it's  
8 corrective action, but we definitely felt that there  
9 needed to be a limit on your -- if you're tearing down  
10 a building, what should be reimbursed from the fund.  
11 I mean, the UST fund should be paying for corrective  
12 action and not demolition work.

13 Q. What's the argument that destruction of a  
14 building isn't corrective action? And in your  
15 judgment, Doug, when would it be and when wouldn't it  
16 be?

17 A. Well, for one thing, the building can be left  
18 in place and be used as an engineered barrier. Now,  
19 sometimes, you know, the owner or operator wants to  
20 remove that for the future use of the property. So we  
21 did allow some for the dismantling of canopies and  
22 that type of thing or for the demolition of that.

23 But, again, we felt like we needed to limit  
24 it. You know, the UST fund was intended to be used to

1 remediate soil and groundwater and not for demolition  
2 work.

3 I mean, you know, if someone in Chicago wants  
4 to demolish a building, downtown Chicago, you know,  
5 you're talking millions of dollars. You know, it's  
6 not something that was intended for the UST fund. So  
7 we limited it to 10,000. We historically limited it  
8 to that, and we're proposing to put that figure in the  
9 rules.

10 Q. Historically you limited that for how many  
11 years? Since the inception of the fund? Or has this  
12 ever been greater than 10,000, less than 10,000?

13 A. (BY MR. OAKLEY) I think it's always been  
14 10,000.

15 MR. CLAY: That I'm aware of.

16 MR. KING: As I recall, we had this debate in  
17 the rule-making in 1994 when we had the same  
18 argument. And it was the issue, from our standpoint,  
19 the UST fund should not be used to tear down and  
20 rebuild permanent buildings. It's not a construction  
21 works project.

22 Q. But you're not making that argument today?  
23 You're basically just capping it at a \$10,000 fee?  
24 That's your proposal, Doug?

1           A.    (BY MR. CLAY)  Correct.

2           Q.    Thank you.  In Section 734.845 (a)(1),  
3 professional consulting services, how was the rate of  
4 \$960 per payment of costs associated with the  
5 preparation for the abandonment of USTs developed and  
6 what tasks/work were included?

7           A.    (BY MR. CHAPPEL)  That's based on 12 hours of  
8 consulting office work at \$80 an hour, which is \$960.

9           Q.    And how did you include that 12 -- that that  
10 was the correct number of hours?

11          A.    It was an estimate based on our experience.

12          Q.    Which was again?

13          A.    And it may -- Brian corrected me.  It may  
14 have been in the CECI information, Consulting  
15 Engineers Council of Illinois.  They may have provided  
16 us with an estimate of the amount of time.  Yeah, for  
17 early action UST removal, excavation tasks, the ad hoc  
18 committee estimated 12 hours.  And this commission, I  
19 believe, has been filed with Dan Goodwin's pre-filed  
20 testimony, the estimated hours for these and what  
21 tasks are involved.

22                MS. MANNING:  At this point, I have no  
23 further questions on that rate.  Does anybody else?

24                HEARING OFFICER TIPSORD:  Question 26 then.

1 MS. MANNING: Thank you.

2 QUESTIONS BY MS. MANNING:

3 Q. In Section 734.845 (a)(2), (a)(5), (b)(3),  
4 (b)(5), professional consulting service, how is the  
5 \$500 per half-day rate for professional oversight  
6 developed? And what tasks/work were included in this  
7 development? Secondly, was overtime pay for nonexempt  
8 employees per Department of Labor's per hour greater  
9 than 8 per day factored into any half-day rate?

10 A. (BY MR. BAUER) The half-day rate is 5 hours  
11 times 80 bucks an hour. We also added in \$30 for  
12 vehicle or mileage. \$50 for a half day of  
13 PID or other equipment and an additional \$20 for  
14 miscellaneous supplies. I do not believe that  
15 overtime was factored into that, that figure. I don't  
16 think it's really applicable.

17 Q. Pardon?

18 A. I don't think the overtime would be  
19 applicable.

20 Q. And that's because?

21 A. Well, the half-day rate is like Harry says.  
22 Also I looked at the -- and you know, I could be  
23 mistaken, but I looked at, I think, the Department of  
24 Labor's exemption for overtime requirements. And an

1 employee cannot earn more than \$450 per week as a  
2 salaried employee. I think that any rate at \$8 an  
3 hour is going to cover someone's rate over that.

4 Q. You consulted the Department of Labor's  
5 exemptions?

6 A. I looked at their Web site.

7 Q. They're pretty complicated.

8 A. Yeah, I know. That's why I said I'm not a  
9 hundred percent clear.

10 Q. Basically the basic question is, how did you  
11 decide to limit it to just a half day of work? And  
12 the limitation is for the various different categories  
13 that are here in this particular section, not just for  
14 early action oversight, but you decided and plugged  
15 into a figure of just a half a day rate that would be  
16 sufficient for any of those services; is that correct?

17 A. For what service?

18 Q. Well, it would be (a)(2), which is a  
19 \$500 -- in (a)(2), that's 960, correct? And (a)(5),  
20 \$500, payment for cost associated with the field work  
21 and field oversight for product removal.

22 A. (BY MR. CLAY) Can I clarify something? This  
23 is a half-day rate.

24 If you look at like, for example, (a)(5), it

1 talks about the number of half days will be determined  
2 on a site-specific basis. And the same thing with  
3 (a)(2) (A). I mean, it talks about a half a day for  
4 oversight of excavation activity or UST tank  
5 removals. Let's see. I think that is limited to a  
6 half day. But, again, this is a half-day rate.

7 So in some instances, we limit to half days,  
8 and in other instances, you know, it's based on how  
9 much soil you're removing, how many wells you're  
10 sampling or you're installing, how many soil borings  
11 you're taking. So all the functions aren't just  
12 limited to a half day. It's a half-day rate, okay?

13 Q. Okay.

14 A. I didn't know if that was confusing.

15 Q. Why did you decide to go with the half-day  
16 rate for these particular functions and these  
17 particular tasks? That's the basic question.

18 A. (BY MR. BAUER) It was something --

19 Q. Pardon?

20 A. CECI kind of gave us that proposal. They  
21 were the ones that, I guess, put the notion in our  
22 head.

23 MR. CLAY: I mean, we looked at half day or  
24 day, and we figured, well, you know, maybe the day is

1 too much. Let's break it down to a half a day instead  
2 of an hourly rate. And, you know, like Brian said,  
3 the suggestion was made as part of the CECI group that  
4 we consider a half a day rate.

5 Q. Now, the CECI group, just so I understand who  
6 that is -- because we'll obviously be asking questions  
7 of whoever else testified -- the only person I am  
8 familiar with that's testifying on behalf of  
9 CECI -- and that's the consulting engineers group, I  
10 think, you're talking about when you're referring to  
11 them? Am I correct?

12 A. (BY MR. BAUER) Correct.

13 Q. And Dan Goodwin will be testifying for CECI?  
14 He's already filed pre-filed testimony.

15 A. (BY MR. CHAPPEL) I thought that was for the  
16 Illinois Society of Professional Engineers. Am I  
17 wrong?

18 MR. CLAY: I think it's CECI.

19 MR. CHAPPEL: Okay, good.

20 MR. CLAY: Well, no. He's not the only one,  
21 because Cindy Davis from CSD was an integral part of  
22 that group, and I believe was at every meeting, and I  
23 believe she's one of the founding members of PIPE.

24 HEARING OFFICER TIPSORD: Can I interrupt for

1 just a second? We do have a copy of Dan Goodwin's  
2 testimony as the Consulting Engineer's Council of  
3 Illinois. And that is the only pre-filed testimony we  
4 have right now.

5 MS. MANNING: Thank you.

6 Q. My understanding -- and  
7 correct me if I'm wrong -- is that it was really the  
8 Agency's impetus to restrict periods of time spent in  
9 oversight and that kind of thing, and CECI and or the  
10 work group may have presented you a proposal, but the  
11 impetus for the proposal really came from the Agency?

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

13 HEARING OFFICER TIPSORD: Any follow-up?

14 MR. RENGUSO: Rob Renguso with Marlin  
15 Environmental.

16 QUESTIONS BY MR. RENGUSO:

17 Q. My question is, is that half-day rate for UST  
18 pertaining to per site?

19 A. (BY MR. BAUER) It was per site.

20 Q. Per site? I think the Agency should consider  
21 possibly changing that to per tank or coming up with  
22 some type of unit rate per tank.

23 But my question would be if the fire marshal  
24 schedules a full day on site, why would you disallow

1 the consultant from being there all day to support the  
2 owner/operator in calling in an incident number at the  
3 end of the day? Would you consider basing it upon the  
4 amount of time that the fire marshal schedules that  
5 tank removal time to occur? If the fire marshal  
6 schedules it two days, would that not be considered  
7 four half days?

8 A. (BY MR. CHAPPEL) I don't know what the fire  
9 marshal's schedule is, but my experience with the fire  
10 marshal is they show up, they say the tank is properly  
11 evacuated, and they're allowed to remove it from the  
12 ground. I mean, that doesn't take two days.

13 And, secondly, there are no regulatory  
14 requirements that consultants have a representative  
15 there doing a tank removal. Those people are all  
16 licensed by OSFM to do those tank removals. And it's  
17 their responsibility to take care of that. There are  
18 no regulatory requirements for consultant oversight of  
19 tank removal.

20 Q. That is correct.

21 A. So we allow one-half day and we allow  
22 one-half day, I think --

23 MR. BAUER: Yes, yes.

24 MR. CHAPPEL: -- for consultant oversight of

1 the actual tank removal, which really isn't  
2 regulatorily required.

3 Q. But the purpose of the consultant being there  
4 on that day at all would be to assist the  
5 owner/operator in calling and beginning the process  
6 of --

7 A. We allow 960.

8 Q. So actually for showing up on that day, what  
9 time of the day would they need to arrive then?

10 A. Whenever they want.

11 Q. But the main purpose would be --

12 A. There is no regulatory requirement that they  
13 be there at any time. So they can show up whenever  
14 they want.

15 QUESTIONS BY MS. MANNING:

16 Q. Obviously the gas station owner doesn't pull  
17 the tank, though?

18 A. (BY MR. CHAPPEL) No, but the person pulling  
19 the tank is registered with the fire marshal and is  
20 certified and gets a permit from the fire marshal to  
21 remove those tanks. They're the ones that are  
22 responsible for doing it properly.

23 Q. And they work for a business?

24 A. Yes, they do.

1 MS. MANNING: Thank you.

2 QUESTIONS BY MR. RENGUSO:

3 Q. I would just ask the Agency to reconsider  
4 that if they do not want the consultant there during  
5 the tank removal, or if they do, that there is a  
6 certain amount of time that's required. And to base  
7 it upon what the state fire marshal -- the amount of  
8 time needed to do that project would be so they could  
9 be there to represent the owner/operator, or for the  
10 Agency to decide that they do not want the consultant  
11 or any representative there during the actual UST  
12 removal process. Thank you.

13 A. (BY MR. CHAPPEL) I don't think that it's the  
14 Agency's decision to make in the case. That's up to  
15 the owner and operator who they wish to be present  
16 whatever work they are having done.

17 Q. Other than that automatically limits the  
18 owner/operator from having a consultant available.

19 A. No, it doesn't, not at all.

20 Q. I don't know what part of the half day to  
21 show up at.

22 A. The owner/operator can have anybody he wants  
23 at his site to do the work that he wants. This  
24 doesn't in any way limit that.

1           HEARING OFFICER TIPSORD:  Another follow-up?  
2    Could you identify yourself?

3           MR. DOTY:  Duante Doty with Environmental  
4    Management Technologies.

5                            QUESTIONS BY MR. DOTY:

6           Q.  Is it not the consultant's role to gather  
7    data for preparation of a 45-day report, thus needing  
8    to know when they actually do the tank removals?  How  
9    they are doing it, etcetera?  Isn't that information  
10   required in the 45-day report, especially abatement  
11   measures, etcetera?

12          A.  (BY MR. CHAPPEL)  Yes, that's part of the  
13   early action.  That's part of the early action cost.  
14   The 960 covers those other costs that you've  
15   described.

16          Q.  The \$960 covers --

17          A.  Covers finding out when they're going to  
18   remove the tanks, what time they need to be there, all  
19   the office work to prepare for it, yes.

20          Q.  But that also includes for the consultant to  
21   be there during the time, during the actual tank  
22   removal?

23          A.  No.  That's part of your 20- and 45-day early  
24   action cost.

1 Q. Is that not supposed to be just for  
2 preparation of the 45-day report in the office?

3 A. No.

4 There's field time allowed for that, isn't  
5 there?

6 MR. BAUER: I think so.

7 MR. CHAPPEL: Sure there is.

8 MR. DOTY: That should be clarified.

9 HEARING OFFICER TIPSORD: Ms. Hesse?

10 MS. MANNING: Are you looking to clarify that  
11 right now?

12 MR. CHAPPEL: I'm looking to clarify it at  
13 the present time.

14 Early action and free product removal under  
15 734.845 (a), it allows for the rates based on the  
16 number of UST removed and the amount of soil.

17 So I mean, that's all early action costs.  
18 That's not part of the preparing to have the tank  
19 removed and finding out what day they are going to  
20 actually get the permit and remove it and all that  
21 stuff. That's what the 960 totals.

22 HEARING OFFICER TIPSORD: Ms. Hesse had a  
23 question, unless Mr. Cook, did you have a  
24 clarification?

1 MS. HESSE: I do have a question.

2 QUESTIONS BY MS. HESSE:

3 Q. Whose responsibility is it to remove the  
4 underground fuel lines?

5 A. (BY MR. CHAPPEL) The underground what?

6 Q. The pipe.

7 A. I believe it's the UST removal contractor.

8 Q. Whose responsibility is it to collect samples  
9 after the tank has been pulled to check releases?

10 A. Whose responsibility? Owner and operators.

11 Q. You expect the owner/operator to get down in  
12 the excavation and know how to collect samples?

13 A. Regulations say the owner and operator is  
14 responsible for collecting samples.

15 Q. But don't owners and operators typically hire  
16 consultants to do that work for them?

17 A. Well, sure.

18 Q. So --

19 A. But you asked me who was responsible.

20 Q. I'll rephrase my question.

21 Typically on the site, who collects the  
22 samples?

23 A. Pardon me? Who normally collects them?

24 Q. Who normally collects them?

1           A.    It can be consultant personnel.  It could be  
2   somebody from the tank removal contractor.  I don't  
3   know.  There's all kinds of possibilities who collects  
4   samples.

5                    HEARING OFFICER TIPSORD:  Do you have  
6   follow-up on that?  Because Mr. Cook was next.

7                            QUESTIONS BY MR. COOK:

8           Q.    To follow along this line of questioning.

9                    Have you seen instances where a consultant is  
10   hired directly by the owner/operator to sample either  
11   the excavation after the tank was removed or sample a  
12   product line after the product lines were removed?

13          A.    (BY MR. CHAPPEL)  Yes.

14          Q.    Have you seen instances where a separate  
15   contract was let by the owner/operator for the tank  
16   removal contractor to remove the tank?

17          A.    Well, yes.

18          Q.    You've been in private practice yourself.  If  
19   the tank removal contractor who was contracted  
20   separately from the consultant -- let's just assume he  
21   had some problem.  His tire went flat on his backhoe,  
22   something was wrong with his excavator.  These are all  
23   real, real problems that we all encounter every day.  
24   Would you expect that that consultant should be

1 penalized or that owner/operator should be penalized  
2 because of the productivity which was -- as was  
3 written in the regulation? If those tanks are not  
4 removed, then that rate will not be paid out? That  
5 consultant has no control over that type of  
6 situation.

7 A. I did not understand that question at all.  
8 There's too many "what ifs" and "maybes" in there. I  
9 don't know what you're trying to get at.

10 Q. Simply you've got one party in this. The  
11 contractor removes the tanks, party A. Party B is  
12 simply contracted to provide consulting on sample  
13 collection.

14 A. Okay.

15 Q. Party A's excavator breaks. Party A is  
16 unable to remove the tanks from the excavation. As I  
17 read these regulations or proposed regulations, party  
18 B, the owner/operator, would not be eligible for  
19 reimbursement for party B's services because party A  
20 failed to get the tanks out of the ground on that  
21 day.

22 A. Why is that? I don't understand why that is.

23 Q. Isn't this based upon the amount of tanks  
24 that were actually removed that day? Isn't that the

1 maximum amount that's reimbursable?

2 A. I see what you're getting at. We never  
3 envisioned that question. I understand what you're  
4 saying now. That, you know, because they only took  
5 three tanks out that day instead of four, somebody is  
6 getting penalized?

7 MR. CLAY: I think you could make that  
8 argument, but these are circumstances beyond my  
9 control.

10 QUESTIONS BY MS. MANNING:

11 Q. And how is that made?

12 A. (BY MR. CLAY) Through the extraordinary  
13 circumstances, that can be presented to the Agency. I  
14 mean, right.

15 MR. CHAPPEL: It's still getting the half-day  
16 rate because they have to come back out another half  
17 day to do the fourth removal and sample, right? So,  
18 really, if there is a penalty, the penalty is that  
19 somebody went out there and spent 15 minutes and left  
20 the site. That's the only penalty.

21 QUESTIONS BY MR. COOK:

22 Q. Potentially? And it depends on how much  
23 actual work they got done the first day?

24 A. (BY MR. CHAPPEL) Rather, pick up the phone

1 and say the tanks got done today, which is included in  
2 the 960.

3 I mean, the only thing I envision, whether  
4 you're taking -- for some reason there are supposed to  
5 be four contractors that come out today. And based on  
6 four tanks that are budgeted for the certain amount of  
7 money that's payable, but only three came out. Well,  
8 that doesn't mean that they don't get that fourth tank  
9 out when they finally take it out, right? So they're  
10 still getting four tanks, just like it was originally  
11 budgeted. The only penalty is they may have only had  
12 one half day originally budgeted to remove all four  
13 tanks, when really they had to come out twice. Three  
14 on one day and a fourth one on the second day. Am I  
15 understanding you correctly?

16 Q. It's my understanding that certain  
17 productivity rates must be met in order for an  
18 owner/operator to be eligible for any type of  
19 reimbursement. And that those two -- those  
20 productivity rates, call it contractor based  
21 productivity, which the consultant in some instances  
22 has little or no control over that level of  
23 productivity?

24 A. Right.

1 Q. And is completely at the mercy of the  
2 contractor who could be hired directly by the  
3 owner/operator, and not in all situations is that  
4 relevant, but I think it very well could be.

5 A. Well, I guess I would agree to a certain  
6 extent, but I don't see where the penalty is if that  
7 situation occurs to the owner and operator. Where's  
8 the penalty?

9 Q. Well, let's assume that on day one, no tanks  
10 were removed. Mobilization took place, but none of  
11 the tanks were able to be removed that day.

12 A. Okay.

13 Q. And it could be because the state fire  
14 marshal just simply got called to a situation, wasn't  
15 able to show up. There's a whole variety of "real  
16 world" reasons why that could happen.

17 A. Okay.

18 Q. So that day there's no eligibility, correct?  
19 There's no --

20 A. What do you mean by no eligibility?

21 Q. No eligibility for reimbursement.

22 A. There's no payment because no tanks came out  
23 of the ground, right. But when they come out of the  
24 ground, you get paid for them.

1 Q. So what happens to the consultants going to  
2 charge the owner/operator for that day? They showed  
3 up. The owner/operator called the consultant and  
4 asked the consultant to show up that day because the  
5 tanks were supposed to be removed.

6 A. Okay.

7 Q. All right?

8 A. So what's the cost?

9 MR. CLAY: Harry, what he's asking is the  
10 half-day rate for oversight by the consultant, are we  
11 going to pay that? Or are we not going to pay for  
12 that because they didn't remove the tanks? He's not  
13 asking about the removal of the -- he's asking about  
14 the half day for the consultant.

15 And I think if that's the situation, you need  
16 to document that to us there should have been a fire  
17 marshal on site, and we can say, yep, the equipment  
18 broke down, we can confirm that, and you get another  
19 half day. But I mean, you've got to demonstrate that  
20 to us. I mean, that's, you know, extenuating  
21 circumstances.

22 Now, Jay, when you started this, you said  
23 this happens every day. I think you need to talk to  
24 your contractor because equipment breaks down every

1 day? I don't think it happens every day. It  
2 shouldn't happen every day.

3 MR. COOK: It could happen. It could very  
4 easily happen, and there could be other instances,  
5 where a similar type situation would take place.

6 An example is the number of feet bored. You  
7 could have a drilling contractor that's contracted  
8 directly to the owner/operator. They're at the mercy  
9 of the productivity of the drilling contractor, so.

10 MS. MANNING: Just to clarify as well. I  
11 don't believe that he said -- and the transcript will  
12 relay that -- that these happen every day. I think  
13 the words he used were "real life" examples.

14 MR. COOK: Right. "Real world" examples.

15 HEARING OFFICER TIPSORD: Ma'am, did you have  
16 something?

17 MS. BANOVER: I think I'll pass.

18 HEARING OFFICER TIPSORD: Could you give us  
19 your name please?

20 MS. BANOVER: Judy Banover.

21 MS. MANNING: I'm ready to move on to 27.

22 HEARING OFFICER TIPSORD: Okay.

23

24 QUESTIONS BY MS. MANNING:

1 Q. In Section 734.845(a)(2) (A), professional  
2 consulting service, how is it determined that one-half  
3 day would be sufficient for professional oversight  
4 during tank pull activities?

5 A. (BY MR. BAUER) I spoke with the consultants.  
6 Not with consultants, but some tank removal  
7 contractors.

8 Q. I'm sorry. I can't hear you.

9 A. When I talked to some tank removal  
10 contractors, they had indicated to us that  
11 they -- that consultants were not present during the  
12 actual tank removal. That they might show up at the  
13 end of it, or what have you. There is no requirement,  
14 as Harry said, for them to be there to oversee the  
15 removal of underground storage tanks. So we thought  
16 we would allow one half day for them to come in there  
17 and do the sampling of the tank pit.

18 MS. MANNING: Go ahead.

19 MS. BANOVER: Judy Banover.

20 HEARING OFFICER TIPSORD: I am sorry. Could  
21 you repeat that?

22 MS. BANOVER: Judy Banover from Concord  
23 Engineering.

24 QUESTIONS BY MS. BANOVER:

1           Q.    I have several different sites I'm the  
2   project manager.  Some of my sites have like two  
3   tanks.  I have major truck stops that have 10 tanks in  
4   two different tank fields.  I know that the EPA  
5   requires field sampling, some proof given to them at  
6   the removal of the tank to show that you're justified  
7   to go along the tank.  I believe Mr. Chappel mentioned  
8   that it doesn't matter who takes those samples.  It  
9   can be the owner.  It's the owner's responsibility,  
10  but he thought that the tank removal contractor could  
11  probably take those samples.

12                My question, I guess, first to Harry is, has  
13  it been your experience that tank removal contractors  
14  are usually trained and know the method 5035?

15           A.    I have no experience in that.

16           Q.    And so has it been your experience when  
17  you've been reviewing, that it's the consultants that  
18  usually do that and provide that information to the  
19  EPA?

20           A.    Normally it is a consultant's representative  
21  doing the early action sampling.

22           Q.    And do you think that it may take more time  
23  if there is two tanks involved or 10 tanks that have  
24  been involved to excavations?

1           A.    More time in terms of taking the samples?

2           Q.    Taking the samples.

3           A.    Obviously.

4           Q.    Making observations of the tanks, the piping,  
5 taking photographic evidence of those points of  
6 release and those kinds of things, can you see that  
7 maybe a half a day for documenting that kind of field  
8 work may not be adequate when there is situations  
9 where you have 10 tanks versus 2 tanks to be able to  
10 do all the skilled work activity?

11          A.    (BY MR. BAUER) The one thing, too, is the  
12 half day would also -- you know, you'd also apply the  
13 half-day rate, which I always assumed would coincide  
14 with the tank removal and the removal of the 4 feet of  
15 backfill material. And we allow for that additional  
16 half a day for 250 cubic yards of backfill removal at  
17 the same time. So I don't think that we're actually  
18 limiting it to one-half day for all this. If you have  
19 all those tanks, you're going to be digging out a lot  
20 of 4-foot backfill material, correct?

21          Q.    Yeah. Later on, right. I mean, the tank  
22 removal is not necessarily at the same time as you're  
23 digging 4 feet out, and generally it's not,  
24 particularly, in a situation where you have 10 tanks.

1 That's a full day if you're lucky.

2 HEARING OFFICER TIPSORD: I'm going to have  
3 to have you sworn in. He asked you a question and  
4 you're just responding.

5 [Witness sworn.]

6 MR. CHAPPEL: There's nothing that says you  
7 have to sample the tank, just like you don't have to  
8 remove your 4 foot of soil the day you remove your  
9 tanks.

10 Q. (BY MS. BANOVER) There are times where, you  
11 know, you have groundwater problems, you have rain.  
12 This is one of these "real world" issues. You know,  
13 rain, like we've been having cats and dogs here  
14 lately. Groundwater that builds up in excavation. If  
15 you want floor samples, you certainly have to be there  
16 right off the bat when those tanks are pulled up so  
17 you can get, you know, soil samples off the floor  
18 before those kinds of things fill up.

19 A. (BY MR. BAUER) Would you collect them after  
20 your excavation instead?

21 Q. It's been my experience that the EPA has  
22 required samples taken when the tanks are taken out to  
23 give them some sort of documentation that you are  
24 justified in going ahead and digging 4 feet out. You

1 know, you have to be able to be there to say I have  
2 olfactory and visual proof that -- or not proof, but  
3 evidence that there's been a release. Those soil  
4 samples that you can take and PID screen gave you  
5 further proof of that. And that's always another  
6 reason to justify their excavation.

7 A. (BY MR. CHAPPEL) You have to have evidence  
8 that you've had a release, yes, to be subject to the  
9 program, just like you have to be determined to be  
10 eligible to access the fund to get reimbursement, but  
11 I mean, once you've determined that you have had a  
12 release and you have recorded it, the regulations  
13 don't require that you sample before you remove the  
14 4 feet of excavation. It's allowed for in the rules.

15 Q. And it's been in my experience, my personal  
16 experience, that that has been requested, you know,  
17 that we have had to provide soil screening sample to  
18 show that we're justified in doing that additional --

19 A. (BY MR. CLAY) I think the soil screening, I  
20 believe, is required by the owner and operator -- I  
21 mean by the fire marshal, because I believe they are  
22 starting to require, especially if there doesn't  
23 appear to be release samples being taken. So they  
24 have analytical data that shows there has been no

1 release. But the only thing in our regulation and the  
2 only thing I'm aware of is the sampling around the pit  
3 after the 4 feet have been removed.

4 Q. That's as closure sampling the earth?

5 A. (BY MR. CLAY) Not closure sampling. It's  
6 just sampling after the fourth foot has been removed.

7 MR. BAUER: Because if you're sampling after  
8 you remove the tank to prove you've had a release, you  
9 haven't called in the release yet, have you?

10 Q. If that changes. There's changes on a  
11 site-by-site basis, whether you're basing your release  
12 on doing those samples, you know, when the fire  
13 marshal, you know, has been on site and says, you  
14 know, if he sees signs of a release, or if you found  
15 the release before you would have went and took the  
16 tanks out. There's a lot of different scenarios that  
17 would lead to that release.

18 A. (BY MR. BAUER) But if you haven't reported a  
19 release, then those costs wouldn't be eligible, would  
20 they?

21 Q. Oh, yeah.

22 A. So then once you reported your incident, then  
23 you would be eligible. And that's kind of how we  
24 based this on, is, you know, that that's a release,

1 they remove the tanks, the tanks are gone, you show up  
2 and you take your samples at the end of the process  
3 and oversee the excavation of the backfill material.

4 Q. I think going back to what was  
5 originally -- the original issue was the amount of  
6 time it would take to be on site during the tank  
7 removal, to be able to provide the Agency with the  
8 details that they require in their 40-day report or  
9 amended activities report, how much that varies,  
10 depending on the number of tanks taken out, the sizes  
11 of the excavation and that kind of thing. And that  
12 you're digging -- that you're going to allow as the  
13 time for, doesn't account for that time when it's  
14 simply the tank removal and that time frame, that  
15 activity.

16 I just think there -- what I'm recommending  
17 or asking is that the EPA consider the number of tanks  
18 that you're removing for the amount of time that you  
19 need on site to cover that particular activity  
20 adequately.

21 HEARING OFFICER TIPSORD: Mr. Cook, did you  
22 have a question?

23 MR. COOK: Yes, I did.

24 QUESTIONS BY MR. COOK:

1 Q. And, Mr. Chappel, this question is for you.

2 Assuming you have a site that has a 10,000  
3 gallon tank containing gasoline, can you give us an  
4 idea about how long that should take to vapor free  
5 that tank?

6 A. (BY MR. CHAPPEL) No.

7 Q. Is it reasonable for a consultant to be on  
8 site while the tank is being vapor freed?

9 A. Certainly it's reasonable.

10 Q. So have you heard of situations where maybe  
11 there is a significant amount of sludge in the bottom  
12 of the tank, and it may take longer to vapor free that  
13 tank? Have you heard of that kind of a situation?

14 A. No, not that situation, but I can understand  
15 that being a problem.

16 Q. And have you heard of instances or have you  
17 experienced any instances -- I know you've done tank  
18 removals or oversight. Have you seen any instance  
19 where it may take hours to vapor free a tank because  
20 of some residue that was left in the tank or dumped in  
21 the tank?

22 A. Yes.

23 Q. And in that instance, would it be more  
24 reasonable to have the consultant on site for a longer

1 period of time because that condition may not have  
2 been known prior to the tank removal activity?

3 A. I still don't understand. It is the tank  
4 remover's responsibility to clean that tank before he  
5 removes it. It has nothing to do with the consultant  
6 being there, whether it takes a day or 30 days to get  
7 the fumes out of that tank. It has nothing to do with  
8 the consultant's responsibility.

9 Q. So from a practical, and again, "real word"  
10 perspective, from a scheduling standpoint, if you were  
11 the owner/operator, would you call that consultant and  
12 have him prepared to be on site to do the sampling  
13 because it could potentially only take an hour to  
14 vapor free the tank? Or it might take, as you pointed  
15 out, it could take much longer than that?

16 A. If you're calling on my experience, we would  
17 call the contractor and ask him when the fire marshal  
18 is going to be there. And we wouldn't leave the  
19 office until we knew the fire marshal was on site. I  
20 mean, that's my "real life" experience, so.

21 MS. MANNING: And what is?

22 A. So I would -- you know, I never had a  
23 situation where we went out there, and we sat and  
24 waited for them to get the tank cleaned, and found out

1 that it's going to be another day or so before they  
2 could get it cleaned out because we never showed up  
3 until we knew the tank was coming out. And we called  
4 from the office and confirmed that.

5 Q. That the fire marshal would be on site?

6 A. That the fire marshal is there and the tank  
7 is ready to come out.

8 Q. How long is the fire marshal typically on  
9 site?

10 A. Long enough to take a measurement and say the  
11 tank is clean and watch them pull it out of the  
12 ground. And that varies depending on the size of the  
13 tank or how many.

14 MR. COOK: That is correct.

15 MS. MANNING: I have two follow-up questions  
16 as a result of the last two questioners.

17 QUESTIONS BY MS. MANNING:

18 Q. The first one, Harry, you mentioned several  
19 times your experience. Do you want to let us know  
20 then what experience you have as a consultant please?

21 A. Well, I was part-owner in a private  
22 consulting firm for five years. And I worked full  
23 time out of my house with, I guess, part-ownership of  
24 my own company for two years.

1 Q. And which company?

2 A. For about four to six years, I guess, total  
3 experience.

4 Q. Could you name those companies for us?

5 A. SCD Environmental was the one I was  
6 part-owner in for five years, and then Inland Chappel  
7 Environmental was the last two.

8 Q. And how many sites did you go to personally  
9 where the fire marshal was or wasn't there?

10 A. 5 to 10.

11 MS. MANNING: Thank you.

12 HEARING OFFICER TIPSORD: Ms. Hesse?

13 QUESTIONS BY MS. HESSE:

14 Q. Besides your own experience, Mr. Chappel, did  
15 you consult with any others regarding whether a half  
16 day would be an appropriate amount of time for tank  
17 activities for a consultant?

18 A. Yes. We consulted with the CECI who provided  
19 us with information as to what types of activities  
20 would be involved in early action LUST removal.

21 Q. Did you consult with anyone else?

22 A. We consulted with -- what was the name of the  
23 other one?

24 MR. BAUER: IPEC, the Illinois Petroleum

1 Contractors.

2 MR. CHAPPEL: We had a meeting with them.  
3 Accurate Tank Technologies, WJ Scott, an IPEC  
4 representative themselves. These were UST removal.  
5 As we understood it, this was a group representing UST  
6 removal contractors.

7 Q. As opposed to consultants?

8 A. I don't know if these people also did  
9 consulting work, but the specific purpose of the  
10 meeting was to meet with the UST removal contractor.

11 QUESTIONS BY MS. MANNING:

12 Q. And when was that meeting?

13 A. 12-5-02.

14 MS. MANNING: Thank you.

15 HEARING OFFICER TIPSORD: Mr. Goodiel?

16 QUESTIONS BY MR. GOODIEL:

17 Q. What UST activities were occurring,  
18 particularly on the overburden on those USTs,  
19 exposing -- in case that material was contaminated as  
20 well, consultants typically are on site to manifest,  
21 document the excavation, disposal of those materials  
22 as well, while UST contractors are verifying tanks and  
23 doing what's necessary to do that. How then is the  
24 consultant's time reimbursed to the owner when he is

1 doing that?

2 That being, if you've got five tanks, and  
3 you're removing the overburden on the tank that is  
4 contaminated, your lines are contaminated, the  
5 consultant geologist, whatever you want to call them,  
6 is on site and manifesting and getting rid of the  
7 soil. And a lot of times when you're doing that, the  
8 250 cubic yard magic number is very difficult to  
9 achieve, simply because there's so many other  
10 activities going on.

11 And I think that's a concern of everyone is,  
12 it's not an activity a contractor goes out and does by  
13 himself anymore. There are numerous requirements of  
14 the owner/operator to provide documentation to the  
15 Agency. And that's where it's getting kind of  
16 confusing, to make sure that the consultant is  
17 reimbursed or that owner is reimbursed for the  
18 consultant's time during those activities.

19 HEARING OFFICER TIPSORD: Mr. Goodiel, we are  
20 going to have you sworn in.

21 [Witness sworn.]

22 HEARING OFFICER TIPSORD: Do you have a  
23 follow-up?

24 MS. MANNING: I had a follow-up to the

1 question earlier about the office of state fire  
2 marshal requirements vis-a-vis the Illinois EPA  
3 requirements and reimbursement, and just to clarify  
4 for purposes of the record, so.

5 QUESTIONS BY MS. MANNING:

6 Q. Doug, it's my understanding -- and correct me  
7 if I'm wrong -- that while there may be certain  
8 requirements of the office of state fire marshal  
9 regarding the underground storage tank program,  
10 there's no reimbursement through the office of state  
11 fire marshal. The state reimbursement is all through  
12 the Environmental Protection Agency; is that correct?

13 A. (BY MR. CLAY) That is correct.

14 MS. MANNING: Thank you.

15 HEARING OFFICER TIPSORD: Anything further?  
16 Let's move on to question number 28.

17 QUESTIONS BY MS. MANNING:

18 Q. In section 734.845(a)(2)(B), professional  
19 consulting services, how was it determined that one  
20 half day would be sufficient for professional  
21 oversight drilling of four soil borings?

22 A. (BY MR. BAUER) We talked with the Agency.  
23 Well, former members of the Agency's drill rig team.  
24 And they indicated to us that they could perform 8 to

1 10 water soil borings to adopt to 20 feet within a  
2 1-day period for 8 hours. So we said --

3 Q. You said former employees?

4 A. Former members of the Agency's drill rig  
5 team.

6 Q. What is that?

7 A. The Agency formally had a drill rig team and  
8 drill rig crew.

9 Q. And what question did you ask these guys from  
10 the Agency's drill rig team?

11 A. I asked them how long it would take to do  
12 borings.

13 Q. Do what?

14 A. How many borings could you do in a 1-day  
15 time, an 8-hour period of time. And they told me they  
16 could do 8 to 10 borings within 20 feet within that  
17 8 hours of time. I used 8 hours, figuring on a  
18 conservative side for a half day.

19 MS. MANNING: Any follow-up question?

20 HEARING OFFICER TIPSORD: Question 29.

21 MS. MANNING: Ms. Hesse has a follow-up.

22 HEARING OFFICER TIPSORD: Okay.

23 QUESTIONS BY MS. HESSE:

24 Q. Does that time period allow travel to get to

1 the site and to return?

2 A. (BY MR. BAUER) Well, I would assume so. The  
3 half-day rates were 5 hours. And saying they could  
4 drill 8 borings in 8 hours, 8 to 10 borings in 8  
5 hours.

6 QUESTIONS BY MS. MANNING:

7 Q. Did you ask them that question? I mean, as  
8 opposed to just assuming what it did or it didn't  
9 cover? What specific question did you ask, and who  
10 did you ask the question to in order to get this  
11 answer that's being proposed to the Board as a  
12 regulation?

13 A. (BY MR. BAUER) I asked them how many borings  
14 they could do within an eight-hour time frame.

15 Q. And you didn't give them a scenario as to  
16 they have to go 30 miles to perform the borings or  
17 where the borings would be placed?

18 A. No. I did not make all kinds of assumptions  
19 like that. I asked straight-out questions.

20 QUESTIONS BY MS. HESSE:

21 Q. Just to follow up then. This number for half  
22 day for four soil borings really does not cover travel  
23 time then, does it?

24 A. (BY MR. BAUER) I would say it does.

1 Q. What if it takes two hours each way to get to  
2 a site?

3 A. That would be a business decision that the  
4 consultant would have to consider when they took the  
5 job.

6 Q. Would you like to explain that one?

7 A. I mean, it would just have to be -- if you  
8 knew the rates. They were out there. They were  
9 published. You would have to make that determination  
10 if you were the consultant if you accepted the job.  
11 Should we hire -- should people in Cairo be working in  
12 Chicago? Should we pay for that additional travel  
13 time?

14 Q. Well, it seems to me a couple months ago you  
15 traveled from Springfield to Chicago for a hearing in  
16 this matter, correct?

17 A. Yes.

18 Q. Did you take into account the business  
19 decision of whether you wanted to do that travel?

20 A. I didn't have a choice, I guess.

21 MR. CLAY: I think that's an issue on  
22 drilling and how long a time, and then you're talking  
23 about travel. I think aren't we mixing apples and  
24 oranges here?

1 MS. MANNING: Well, I'm not sure what apples  
2 and oranges we have, because I still don't believe  
3 that we've got a clear answer in terms of whether  
4 travel was included or wasn't included. It looks like  
5 it's just to perform four borings at a rate of 20  
6 feet. It takes you four hours.

7 MR. BAUER: Right, what our half-day rates  
8 are based on.

9 MS. MANNING: That's the answer and that's  
10 the rate. That's my understanding of the proposal,  
11 and that's all it's included.

12 MR. KING: Are we on the professional  
13 consulting services? Or are we talking about drilling  
14 rates here?

15 MS. MANNING: We're still on question 29. I  
16 mean, I'm sorry. 28.

17 MR. BAUER: It's consulting services for the  
18 consultant's oversight of the drilling.

19 MR. KING: So when you asked our drill rate,  
20 you're saying how many borings can you drill in a day?

21 MR. BAUER: Right.

22 MR. KING: When you asked him that question,  
23 you were not asking about professional consultant  
24 oversight of their drilling?

1 MR. BAUER: That's correct, too.

2 MS. MANNING: But that's how you got the  
3 figure? By asking -- that was your testimony as to  
4 how you got the figure by asking --

5 MR. BAUER: Yeah. They said they do four  
6 borings in four hours.

7 HEARING OFFICER TIPSORD: Excuse me. Let me  
8 try and clarify, and Mr. King and Mr. Clay can  
9 certainly help me out here.

10 What we're talking about here is a consultant  
11 being on site to observe four borings or to oversight  
12 of the four borings. We're not talking about how much  
13 time it takes to get the drill rig there, to set up  
14 the borings, etcetera, correct?

15 MR. CLAY: That's correct.

16 HEARING OFFICER TIPSORD: We're only talking  
17 how much time it takes a consultant to perform the  
18 duties. And Mr. Bauer's response is if it takes more  
19 than half a day, that's a business decision he's  
20 made. And if a consultant from Cairo takes on a job  
21 in Chicago and knows they're only going to get  
22 reimbursed for half a day, that's something they've  
23 considered.

24 MR. CLAY: Yes, that's correct.

1           HEARING OFFICER TIPSORD: Okay. I was  
2 getting a little confused. I'm sorry.

3           Mr. Cook?

4                       QUESTIONS BY MR. COOK:

5           Q. When you talked to the former drill crew of  
6 the EPA, did you ask them what size drill rig they  
7 were using to advance those four borings?

8           A. (BY MR. BAUER) It was full size.

9           Q. Full size? Is that like super size? Could  
10 you explain that?

11          A. It was a full-size auger drill.

12          Q. Can you tell me how much horsepower the rig  
13 might have?

14          A. I didn't ask them that.

15          Q. Can you tell me what type of material they  
16 were drilling through? What was it in relation to?  
17 Was it sand?

18          A. I asked them in a typical location in  
19 Illinois.

20          Q. Can you characterize what you meant by  
21 typical?

22          A. No.

23          Q. Are you familiar with the Berg (sp) map?

24          A. Yes.

1 Q. Can you give me an idea of how many different  
2 geology types are shown on that?

3 A. No.

4 Q. Okay. Did you ask how many feet of concrete  
5 and or asphalt they might need to core through before  
6 they could start advancing that particular boring?

7 A. No.

8 Q. Did you happen to ask about the number of  
9 overhead utilities that they might have to work around  
10 with their maps before they could advance that boring?

11 A. No.

12 MR. COOK: Okay. Thank you.

13 HEARING OFFICER TIPSORD: Any further  
14 follow-up on question number 28? All right. Let's go  
15 on to question 29.

16 QUESTIONS BY MS. MANNING:

17 Q. Section 734.845(a)(2)(A), how was it  
18 determined that one-half day would be sufficient for  
19 professional oversight of professional consulting  
20 services during release repair activities?

21 A. (BY MR. BAUER) Originally we didn't consider  
22 this at all. And we talked with the CECI. They  
23 indicated that, I think, more -- the releases that  
24 they're saying these days aren't from line releases.

1 So we just estimated that that would be a sufficient  
2 amount of time for them to sample as someone was  
3 repairing a line release. An actual repair portion of  
4 a line is not an eligible cost.

5 MS. MANNING: I have no follow-up to that.  
6 Does anybody else?

7 HEARING OFFICER TIPSORD: Could you identify  
8 yourself?

9 MR. DOTY: Duane Doty with United Science  
10 Industries.

11 QUESTIONS BY MR. DOTY:

12 Q. You're talking about a professional  
13 overseeing a line repair, right? As a half a day, the  
14 actual repairing this line? But earlier didn't we  
15 have a concern with you don't necessarily need to be  
16 there to watch the removal of tanks?

17 A. (BY MR. CHAPPEL) I didn't say that this was  
18 something necessarily required by the regulation.  
19 However, we have allowed a half a day for this  
20 activity.

21 Q. Of watching the line be repaired?

22 A. (BY MR. BAUER) I don't necessarily think it  
23 was meant to be for them to oversee that the line was  
24 being repaired. It's more a consultant to come in

1     there after it's been repaired.  I mean, doesn't the  
2     line repair contractor have to be licensed with the  
3     fire marshal?  Don't they have to be to do that?  
4     Correct?

5             So after they've repaired it, you come in  
6     there, and you're allowed to come in there and take a  
7     half day to come in there and take a soil sample if  
8     necessary.

9             Q.  After the repair?

10            A.  Yeah, while it's open.  You come in, and you  
11     show up, and that's it.

12            HEARING OFFICER TIPSORD:  Mr. Cook, did you  
13     have a follow-up?

14            MR. COOK:  I think he just answered it.  Let  
15     me go ahead and ask anyway.

16            QUESTIONS BY MR. COOK:

17            Q.  Line repair, the act of repairing the line  
18     itself, you wouldn't consider to be an eligible cost;  
19     is that correct?

20            A.  (BY MR. CHAPPEL)  That it's not eligible.

21            Q.  So this is only as it relates to sampling?

22            A.  Yes.

23            Q.  So this is an investigative component only?

24            A.  (BY MR. BAUER)  Right, in the early action

1 stage.

2 HEARING OFFICER TIPSORD: Any other follow-up  
3 on question number 29? Question number 30.

4 QUESTIONS BY MS. MANNING:

5 Q. In Section 734.835(a)(3), professional  
6 consulting services, how was the rate of \$4,800 a day  
7 for the 20-day certification and a 45-day report  
8 determined? And what tasks/work were included in  
9 this?

10 A. (BY MR. CHAPPEL) It was based on an  
11 allowance of 60 hours at \$80 an hour. And the 60  
12 hours were based on conversations with the Consulting  
13 Engineer's Council.

14 Q. Okay. Just to clarify for purposes of the  
15 record. When you say the Consulting Engineers  
16 Council, you're referring to CECI?

17 A. Yes, ma'am. And the list of the tasks  
18 included, I believe, are part of Mr. Goodwin's  
19 testimony again.

20 HEARING OFFICER TIPSORD: Do you have another  
21 follow-up?

22 QUESTIONS BY MR. DOTY:

23 Q. How did you come up with the \$80 an hour?

24 A. (BY MR. CHAPPEL) Just based on an average of

1 personnel costs for purposes of taking it times an  
2 hour, number of hours to get a lump sum.

3 Q. So then in this scenario, how many jobs  
4 classifications was that? It's several, correct?

5 A. Roughly. I used \$80 an hour because that's  
6 what I always used in private practice when I was  
7 estimating jobs.

8 Q. But that always assumes that all personnel  
9 are dedicating the same number of hours?

10 A. How do you know? I'm answering the  
11 question. I'm going to answer the question, if you'll  
12 let me.

13 Q. Go ahead.

14 A. We used \$80 an hour for perhaps of estimating  
15 when I was in private practice. As part of that task  
16 in developing a lump sum amount for a given activity,  
17 you had to estimate the number of hours to complete an  
18 activity, and you had to estimate a dollar per hour  
19 cost average for doing all those different tasks. We  
20 came up with an average amount of \$80 an hour for  
21 personnel, including all the work the PE does and  
22 including all the work the administrative clerk does,  
23 typing it.

24 As an average, we used 80. Could it have

1     been 85?   Well, it could have been.   Could it have  
2     been 79?   I mean, it's the number that we used.   And  
3     my testimony explains how we arrived at it.

4                   HEARING OFFICER TIPSORD:   Mr. Cook?

5                   QUESTIONS BY MR. COOK:

6           Q.    Just a point of clarification, just so I make  
7     sure.

8                   That particular cost then was determined by  
9     you, based on your experience in private practice?

10          A.    That's not what I said.

11          Q.    I thought that's what you just said.

12          A.    Okay.

13                   MR. CLAY:   All the costs are proposed by the  
14     Agency being --

15                   MR. COOK:   Can I ask the court reporter to  
16     read that back?

17                   HEARING OFFICER TIPSORD:   I was ready to ask  
18     Mr. Chappel the very same question, as to I don't  
19     think we need to have it read back.

20                   Mr. Chappel did talk about his private  
21     practice.   I think he also went on to discuss the fact  
22     that how they came up with the cost was in his  
23     original testimony.

24                   MR. CHAPPEL:   Right.   It's in my original

1 testimony the numbers that we used and how we  
2 calculated it.

3 And is this in the record?

4 MR. BAUER: Well, yeah. Errata 2, attachment  
5 B.

6 MR. CHAPPEL: Personnel cost of how many  
7 sites are on here? 20 sites. Is this attachment 12?

8 MR. COOK: I want to clarify, because you  
9 just answered Duane that this \$80 an hour rate was  
10 based on your experience in private practice. That's  
11 what you just told him.

12 MR. CHAPPEL: That is not what I just told  
13 him.

14 HEARING OFFICER TIPSORD: Time out. Time  
15 out. Let's go off the record.

16 [Off-the-record discussion.]

17 HEARING OFFICER TIPSORD: Let's go back on  
18 the record.

19 QUESTIONS BY MR. COOK:

20 Q. So the \$80 an hour was used to calculate the  
21 \$4,800 total?

22 A. (BY MR. CHAPPEL) Yes.

23 MR. COOK: That's all.

24 QUESTIONS BY MR. ROMINGER:

1 Q. When you say \$80 an hour, which \$80 an hour  
2 are you talking about?

3 MR. COOK: Duane, you asked 734 --

4 HEARING OFFICER TIPSORD: Off the record.

5 [Off-the-record discussion.]

6 MS. MANNING: I can clarify this was his  
7 response to question number 28. I'm sorry to 30. His  
8 response to question 30.

9 QUESTIONS BY MS. MANNING:

10 Q. And if I might, just to attempt to clarify  
11 this.

12 Mr. Chappel, again, when you testified that  
13 when you were in private practice, you billed an \$80  
14 an hour?

15 A. No, that's not what I said. I said I used  
16 \$80 an hour for estimate.

17 Q. For an estimate? To estimate the job?

18 A. Correct.

19 Q. Again, the years you were in private practice  
20 were from when to when?

21 A. '94 to '97, '98.

22 Q. Thank you.

23 A. '99. I'm sorry.

24 Q. And you were with what company?

1           A.    CSD Environmental and Inland Chappel  
2    Environmental.  CSD Environmental was in Springfield  
3    and so was Inland Chappel.

4           MS. MANNING:  Thank you.

5           HEARING OFFICER TIPSORD:  Ms. Hesse?  Oh, I'm  
6    sorry.

7                            QUESTIONS BY MR. ROMINGER:

8           Q.    Just for the \$80 an hour that you used in  
9    estimating when you were in private practice, is that  
10   your basis for the \$80 an hour rate personnel that  
11   were used in developing Subpart H?

12          A.    No.  It was a starting point.

13          Q.    Okay.  So the \$80 an hour used to develop  
14   Subpart H was developed after reviewing costs that we  
15   had other --

16          A.    I believe attachment 12 has some of the  
17   instances that we looked at in terms of hours and  
18   number of hours and dollars per hour.  There's  
19   information there.  You just look at the straight  
20   personnel chart that's proposed in appendix E, I  
21   believe, and just take the average of the top rates  
22   there.  I mean, it's supposed to be a middle range  
23   average of people working on a job.

24          MR. ROMINGER:  Okay.

1 HEARING OFFICER TIPSORD: Ms. Hesse?

2 QUESTIONS BY MS. HESSE:

3 Q. Mr. Chappel, we've been talking about a rate  
4 of \$4,800 for preparation and submission of 20 days  
5 certification of 45-day reports. And yet earlier  
6 today you handed out an errata sheet, an attachment  
7 B. And on the attachment B, doesn't your calculated  
8 average come out to be \$5,538.88 as the average cost  
9 for those two reports?

10 A. (BY MR. CHAPPEL) The average of those  
11 incidents listed on here is 5,538, that's correct.

12 Q. And the average amount of time to prepare the  
13 reports was 71 and a quarter hours; is that correct?

14 A. That's correct.

15 Brian would like to point out that the  
16 average was \$77.67, a lot lower than the \$80 one.

17 Q. That's \$2.35.

18 But still isn't the total dollar amount  
19 significantly higher than what you have in the  
20 proposed rules?

21 A. The purpose of this tabulation and how I used  
22 it was to determine an average dollars per hour. I  
23 did not consider this in arriving at the lump sum of  
24 \$48.

1 Q. When you prepared the original -- which chart  
2 was it? Appendix 12 or appendix 12? Appendix 9.  
3 No. 9 or 12 originally. Didn't you at that point use  
4 the numbers that were in that table, to justify your  
5 60 hours and your \$80 an hour?

6 A. Well, it's used as backup information based  
7 on these number of sites for the \$80 an hour, yes.  
8 It's additional information to justify that \$80 within  
9 a reasonable range.

10 Q. So did you first come up with the \$80 an hour  
11 and the 60 hours, and then you came up with -- if it  
12 was appendix 9 or 12 before, I forgot which number it  
13 was. I think it was appendix 12 before.

14 A. We came up with the 60 hours from CECI. In  
15 order to assign a lump sum amount to those amount of  
16 hours, we had to develop a dollars per hour cost,  
17 which CECI was not willing to provide to us because of  
18 implications that I couldn't explain. They were  
19 unwilling to give us a dollars per hour average. So  
20 we developed our own.

21 The purpose of appendix 12 was just to show  
22 that for these given sites, the number of hours, the  
23 amount of work done, it works out to an average of \$77  
24 per hour for preparing a 20- and 45-day report. That

1 was the only purpose of that.

2 Q. So then for the majority of these sites, if  
3 the average for these sites was above your allowed  
4 number, they would have had --

5 A. Pardon me?

6 Q. For the sites that you have listed here in  
7 your attachment B, there's a number of sites here, and  
8 they've not added them up, but it looks like if you  
9 were only going to allow \$4,800 for the two reports,  
10 that for a large number of sites they would have  
11 significantly over cost? Isn't that true?

12 A. I guess it depends on what you mean by a  
13 large number of sites. I guess we could add them up.  
14 There's one, two, three, four, five, six -- I see 10  
15 of them that are under 4,800.

16 Q. And then the rest are open, right?

17 A. I see six of them are over. So out of 16, 10  
18 of them are under the \$4,800, but that was not the  
19 purpose of this chart.

20 Q. When you came up with the cost to prepare the  
21 20- and 45-day report, does that just count the time  
22 in the office to prepare the reports? Or does that  
23 count the field work to take documentation to prepare  
24 the reports?

1           A.    No.  This is just the office portion.

2                   MR. BAUER:  It did include the initial site  
3 visit.  From CECI, it did include an investigation  
4 site visit by PM or the senior staff and another site  
5 visit with technician.

6           Q.    Is that your interpretation of what CECI  
7 provided?

8           A.    (BY MR. BAUER)  I've read it, from what they  
9 told us.

10                   HEARING OFFICER TIPSORD:  Any more follow-up  
11 on question number 30?  I'm sorry.  We have --

12                                QUESTIONS BY MS. MANNING:

13           Q.    Mr. Chappel, when you first introduced this  
14 average dollars per hour cost personnel spreadsheet to  
15 us, didn't you tell us that these were the approved  
16 costs the EPA approved?

17           A.    (BY MR. CHAPPEL)  I think these were the  
18 costs that were on the budget that we looked at, what  
19 we had done with these cost nets.

20           Q.    So that was a suggestion that was proposed?  
21 It wasn't --

22           A.    (BY MR. BAUER)  Correct.  It was an actual  
23 application for payment.  It was the actual cost  
24 incurred.  Never in any time that we have recorded

1 numbers for purposes of rate sheets, or what have you,  
2 spreadsheets -- wherever we did it, we always recorded  
3 the cost that was submitted, not what it was modified  
4 down to. There seems to be a confusion -- just to  
5 clarify that. It was what was submitted to us or  
6 actually billed to us.

7 QUESTIONS BY MS. BANOVER:

8 Q. So we don't know really what was actually  
9 reimbursed for all these 25- and 40-day reports?

10 A. Right, right. We did not record that.

11 MS. BANOVER: Thank you.

12 QUESTIONS BY MS. MANNING:

13 Q. I have a follow-up to that line of  
14 questioning on attachment B, as well as to the errata  
15 sheet.

16 And I think this kind of goes toward  
17 Ms. Hesse's questions. You have two columns there  
18 that you record the number of hours that it took for  
19 the 20- to 45-day report. And then you have number of  
20 hours, the oversight dollars and the number of hours.

21 Correct me if I'm wrong, but there's nothing  
22 that was reported in terms of number of hours that you  
23 would have been able to extrapolate those hours from  
24 in terms of documents given to you in those reports?

1 How did you arrive at the column that's labeled  
2 hours?

3 A. (BY MR. BAUER) Those were number of hours  
4 that they were billed as for preparation of the 20-  
5 and 45-day report.

6 Q. And in each of those incident numbers when  
7 you looked at the amount paid out, those were the  
8 hours -- and they vary. You know, some of them are as  
9 little as \$28, \$29. And then one is 164, I think. In  
10 terms of hours, not dollars, but hours.

11 A. Yes.

12 Q. So those were listed on documents themselves?  
13 Not on the 20- and 45-day report, but you extrapolated  
14 information from the request that said this is what  
15 they requested in terms of hours for the 20- and  
16 45-day report?

17 A. Correct, in the billing manager. From the  
18 personnel hours on the billing package.

19 MR. CHAPPEL: So it includes -- and correct  
20 me if I'm wrong. This 138 hours includes all the  
21 hours of the engineer, of the clerk to draft it, of  
22 the person to Auto Cad it, of the person, whatever  
23 they did out in the field, all those hours are lumped  
24 in there. This is not a specific title. This is

1 total hours.

2 MR. COOK: I've just got a question.

3 QUESTIONS BY MR. COOK:

4 Q. You just mentioned that those are field  
5 hours, and I thought that was 20- and 45-day report  
6 preparation versus field oversight.

7 A. (BY MR. BAUER) The oversight is the column.

8 MR. CHAPPEL: There's a second column here,  
9 oversight, which is field.

10 MR. BAUER: Oversight, and when they remove  
11 the tank.

12 Q. Does that include project management?

13 A. (BY MR. CHAPPEL) Oversight doesn't -- no,  
14 that's field work.

15 MR. BAUER: The 20-, 45-day report, I guess,  
16 probably would. It had fallen into one of the two.

17 Q. On the current forms that's used for both  
18 budgets and applications for reimbursement, can you  
19 describe how you would go about pulling this  
20 information off to be able to subcategorize it towards  
21 these specific tasks, those tasks being the 20- and  
22 45-day report and field oversight?

23 A. Typically it's on the invoice.

24 MR. CHAPPEL: He's talking in the budget, how

1 we would do it on a budget.

2 Q. If it's on an invoice. The last hearing you  
3 testified that everybody, consultant -- or many, many  
4 consultants bill differently. So you had a hard time  
5 pulling data and allocating that data to specific  
6 tasks because of the variety of billing formats that  
7 you received.

8 A. (BY MR. BAUER) Right. This took a long time  
9 to go through and do. And that's why it was limited  
10 to so few sites.

11 Q. That's why it was limited to so few sites?

12 A. It took a long time to go through each and  
13 every individual billing package and pull out that  
14 information.

15 Q. So was the process then that you found  
16 bill -- you went through as many billing packages as  
17 you could until you found ones that you could easily  
18 pull the data for 20- and 45-day report preparation  
19 and put that into this column?

20 A. I wouldn't start going through drawers. But,  
21 yeah, there could have been a case where it  
22 wasn't --

23 Q. If it was difficult or if it wasn't readily  
24 apparent, whether that task was -- or the charge was

1 for the 20- or 45-day report preparation, what would  
2 you do with that particular billing package? Would  
3 you include that data or would you exclude that data?

4 A. If I couldn't legitimately put it through  
5 that, I probably would have to exclude it. I mean,  
6 you're talking this is a little while ago, too. You  
7 know --

8 Q. And you said you had to go through a lot of  
9 data to come up with these examples?

10 A. (BY MR. CHAPPEL) Well, in the billing  
11 package, he had to go through each person's time sheet  
12 and each person's work on that day to determine  
13 whether it was an office activity or a field  
14 activity. So we had to do that for every person,  
15 every hour in that billing package. That's why he was  
16 saying it took a long time.

17 QUESTIONS BY MS. MANNING:

18 Q. In addition to that, he would have made a  
19 judgment, correct? I mean, if I'm wrong as to this is  
20 appropriately categorized as in this particular  
21 column?

22 A. (BY MR. CHAPPEL) Well, yeah.

23 MR. BAUER: We were just looking at trying to  
24 figure out a hourly rate, and the field oversight rate

1 and the 45-day report rate are pretty similar. The  
2 17592 and the other one is 17765. So you added them  
3 together and averaged them, you know.

4 MR. CHAPPEL: Even if he left all the costs  
5 all lumped together, you come out with \$76 per hour.

6 MS. MANNING: In order to clarify all of  
7 this, I'm going to make a suggestion that the Agency  
8 produce whatever documentation you all relied on in  
9 terms of the billing documents that got you to these  
10 figures. I think it would be helpful to all of us if  
11 not only would you identify where these sites are, but  
12 whether the Board and or the Agency would consider  
13 giving the information as well in terms of how the  
14 numbers were extrapolated.

15 MR. CHAPPEL: We're going to have to wait  
16 until Mr. Clay to return.

17 MR. KING: I mean, are you looking for all of  
18 our notes, our internal notes that we used to develop  
19 these things?

20 MS. MANNING: No. Just basically the billing  
21 information upon which the two gentlemen over there  
22 used to extrapolate the data.

23 MR. KING: So you want us to pull the billing  
24 packages for those sites? Is that what you're

1 saying?

2 MS. MANNING: Yes, whatever information you  
3 relied on in those sites.

4 MR. KING: I mean, is that possible for us to  
5 get those billing packages?

6 MR. CHAPPEL: We can do that, yes.

7 MR. BAUER: I don't know. I have no idea  
8 what it is going to prove. We used it to show the  
9 rates.

10 MR. CHAPPEL: The dollars per hour rate is  
11 all that was used. So when we pull these out, we're  
12 going to make copies of -- I don't know how many early  
13 action billing packages that somebody else is going to  
14 have to check.

15 MR. KING: I mean, is that the point? Is  
16 that somebody wants us to turn over thousands of pages  
17 of documents?

18 MS. MANNING: No, no. Of course that's not  
19 the point.

20 MR. KING: I mean, well, what we've tried to  
21 do is do an analysis as best we can of a very  
22 complicated subject matter, very complicated data, and  
23 give our best estimate of how things, you know, what  
24 kind of rates should apply. I mean --

1           MR. CHAPPEL: Yes, we can do it. And I mean,  
2 we can provide it. It's going to be a little bit of  
3 information. And I mean, I guess if somebody wants to  
4 rebut it and go through there and re-add all those  
5 numbers and show that it doesn't come out to \$76 an  
6 hour, that's fine with me.

7           MR. KING: I mean, in my mind, it would be  
8 rather than the Agency producing all these documents,  
9 it would be much more useful to hear what other  
10 people's experiences are at other hearings.

11          MS. MANNING: And we will be doing that.

12          MR. KING: Rather than consume lots and lots  
13 of time on our part and then the Board's part, going  
14 through these documents at hearing. I think it would  
15 be much more useful to hear other people's views. I  
16 mean, we took a shot at things with using the best  
17 methodology we could come up with, and that's what we  
18 have come up with.

19          HEARING OFFICER TIPSORD: Why don't we do  
20 this then. We'll wait. We have five days of hearings  
21 scheduled later on. We'll allow your opportunity for  
22 rebuttal. And if you still feel you need the  
23 information, you can renew the request then.

24          MS. MANNING: Okay. Thank you.

1                   QUESTIONS BY BOARD MEMBER JOHNSON:

2           Q.    It seems to me like the one unasked question  
3 here, especially of Harry, and there seems to be an  
4 implication, anyway, that somehow when you went  
5 through and gathered this historical data, what you  
6 did is you looked and if you found low figures, well,  
7 you kept them.  And if you found high figures, you  
8 threw them in the scrap heap.

9                   You've testified that that's not the case.  
10 You worked with the figures that you had available to  
11 you for each of these different amendments or each of  
12 these different attachments to the errata sheet.  Is  
13 that what you testified?

14           A.    (BY MR. CHAPPEL)  That's correct.

15                   BOARD MEMBER JOHNSON:  Okay.

16                   QUESTIONS BY MS. MANNING:

17           Q.    You used those incident reports, those  
18 incident reports that are listed?

19           A.    (BY MR. CHAPPEL)  We used those -- those are  
20 the incidents for which we may have used a report, our  
21 budget or our billing package or whatever we were  
22 testifying to in that attachment.

23                   HEARING OFFICER TIPSORD:  Anything further on  
24 question 30?

1 MS. MANNING: No.

2 MR. DOTY: I have a question.

3 QUESTIONS BY MR. DOTY:

4 Q. I want to make sure I understand this, this  
5 attachment B correctly.

6 The oversight dollars, there's about 12 of  
7 these sites listed that's got some numbers listed over  
8 here. You said that was field oversight. Is that  
9 overseeing the tank removal? What activities are  
10 those?

11 A. (BY MR. BAUER) It would be early action  
12 activities.

13 Q. Tank removal?

14 A. Tank removal.

15 Q. Or line repair?

16 A. Backfill.

17 Q. Thanks. About \$4,300 across those 12 or 13  
18 sites? Is that what you're proposing to reimburse  
19 \$500 for now?

20 A. (BY MR. BAUER) No, not at all.

21 Q. What's the difference?

22 A. It's \$500 per 250 cubic yards of soil.

23 HEARING OFFICER TIPSORD: Let him finish his  
24 answer.

1           MR. BAUER: \$500 for the per 250 yards of  
2 soil and an additional \$500.

3           Q.    So it's not just tank removal activities?  
4 It's the removal of that backfill material also?

5           A.    Right, because we weren't trying to look and  
6 come up with a number, a rate or anything out of there  
7 for oversight or anything like that. It would be too  
8 complex from these bills.

9           HEARING OFFICER TIPSORD: Are we ready for  
10 question number 31?

11          MS. MANNING: In order to expedite things,  
12 Madam Hearing Officer, may I suggest we just take a  
13 five-minute break? And I'll talk to my people to see  
14 if we can get rid of some of these questions.

15          HEARING OFFICER TIPSORD: Well, actually,  
16 since we're going to be finishing at 4 o'clock --

17          MS. MANNING: Oh, we're finishing at  
18 4 o'clock?

19          HEARING OFFICER TIPSORD: We have to be out  
20 of this building by 4:30, so.

21          MS. MANNING: Okay. I was just trying to  
22 eliminate some of these questions.

23          HEARING OFFICER TIPSORD: Hang on just a  
24 minute. We'll go off the record for a couple of

1 minutes, Ms. Manning.

2 [Brief break.]

3 HEARING OFFICER TIPSORD: Let's go back on  
4 the record.

5 MS. MANNING: Madam Hearing Officer, we're  
6 ready to move on to question number 38.

7 HEARING OFFICER TIPSORD: Okay.

8 MS. MANNING: And we may revise some of these  
9 professional service costs, but not today. Let's just  
10 move on to question number 38.

11 HEARING OFFICER TIPSORD: Great.

12 QUESTIONS BY MS. MANNING:

13 Q. In Section 734.845(b)(1), again, the  
14 professional consulting services, a rate of \$1,600 was  
15 established for the preparation of site investigation  
16 completion report, which it's my understanding is a  
17 rather intense technical report. How was the \$1,600  
18 figure arrived at? And what kinds of tasks and work  
19 were contemplated in the preparation of the site  
20 investigation completion report?

21 A. (BY MR. CHAPPEL) The \$1,600 is based on 20  
22 hours at \$80 an hour. The task involved, as I recall,  
23 were summarizing the results of the stage 3 and  
24 preparing, I think, to PE certification.

1           Isn't that what we've got in stage 3? Where  
2 did Hernando go?

3           I think in stage 3 is the final report, and  
4 it is just summarizing your information and preparing  
5 a PE report. That's all that is involved.

6           Q. And we're talking 734.845(b), correct?

7           A. Yes.

8           Q. And it says payment of costs for professional  
9 consulting services associated with site investigation  
10 activities conducted pursuant to Subpart C of this  
11 part?

12          A. I'm sorry. Maybe I'm on the wrong one.  
13 Which one was it again?

14          Q. I assume it's B.

15           BOARD MEMBER JOHNSON: (b)(1).

16           MR. BAUER: (b)(1) has a sum of \$3,200 on  
17 it.

18           BOARD MEMBER JOHNSON: Stage 1.

19           MR. CHAPPEL: Oh, we're on stage 1. I'm  
20 sorry. I think I thought we were on question 38.

21          Q. We are. 734.845(b)(1).

22          A. And it refers to the preparation of a  
23 site -- (b)(1) is not a site investigation completion  
24 report. That's the first problem.

1 Q. Okay.

2 A. (b)(1) is a stage site investigation. Again,  
3 that's based on 20 hours at \$80 an hour. That is  
4 preparing the driller and doing the field oversight of  
5 the drilling and sampling for stage one.

6 Q. Okay. Just to clarify this question. I'll  
7 make a clarification of this question because I think  
8 we might simplify it here.

9 Section 734.851(b)(1) actually refers -- has  
10 an amount of \$3,200 for a stage one site  
11 investigation?

12 A. But we changed that in errata 1, didn't we?

13 Q. To what amount?

14 MR. CHAPPEL: Didn't we change that to \$1,600  
15 and a half-day rate for the field work in errata 1?

16 MR. ALBARRACIN: Yes.

17 MR. CHAPPEL: That's what my note says. So  
18 the \$1,600, if you'll look at errata 1, \$1,600 is the  
19 office work to prepare for the stage 1 site  
20 investigation activity. The actual field activities  
21 for stage 1, there is a field half-day rate in there,  
22 depending on the amount of work to be involved.

23 MR. CLAY: I might add, Harry, I remember the  
24 stage 1. There's nothing that needs to be submitted

1 to the Agency. So there's no plan submitted to the  
2 Agency that needs to be prepared as part of stage 1.

3 MR. CHAPPEL: That's correct.

4 Q. (BY MS. MANNING) So I think that we really  
5 intended in question 38 is (b)(6), not (b)(1).

6 So in (b)(6), how was the rate of \$1,600 --

7 A. (b)(6) is the site investigation completion  
8 report?

9 Q. That's correct.

10 A. 20 hours at \$80 an hour, and it's summarizing  
11 the stage 3 info and preparing a PE cert. You asked  
12 what activities. That's what it is.

13 Q. And you think that it takes only 20 hours of  
14 an engineer's time to sign off on a site investigation  
15 completion report?

16 A. It was the Agency's estimate that 20 hours  
17 was a reasonable amount of time to summarize the  
18 stage 3 information and prepare a PE cert.

19 Q. We'll have testimony on this. I don't know  
20 that I have any follow-up question, but it's 20 hours  
21 is the answer, correct?

22 A. That's correct.

23 Q. In 39, Section 734.845 (c)(1), the rate is  
24 \$5,120 for the preparation of a corrective action

1 plan. Again, what number of hours did you extrapolate  
2 for this? And what tasks and work were included in  
3 your estimate of what it should cost to complete a  
4 corrective action plan?

5 A. (BY MR. CHAPPEL) Corrective action plan  
6 (c)(1), 5,120 is based on preparing a plan at 64 hours  
7 at \$80 an hour.

8 Q. 64 hours?

9 A. 64 hours. Again, that was based on the CECI  
10 ad hoc committee's recommendation.

11 MS. MANNING: Any follow-up?

12 Q. Question 40. In Section 734.845,  
13 professional consulting services, how was the rate of  
14 \$800 for the preparation of remediation objectives?  
15 That's 10 hours? I can guess that one, right?

16 A. [Witness nodded head "yes."]

17 Q. Thank you.

18 HEARING OFFICER TIPSORD: We'll indicate that  
19 Mr. Chappel noted "yes."

20 MR. CHAPPEL: I did that.

21 Q. (BY MS. MANNING) That's true of number 41 as  
22 well? You think it takes 10 hours to do that as well?

23 A. Yes, ma'am.

24 Q. Again, we'll have testimony on all of this on

1 the business perspective, from our perspective what  
2 these items actually cost.

3 42. In Section 734.845 (c)(5), professional  
4 consulting services, how was the rate of \$5,120 for  
5 the preparation of corrective action completion report  
6 determined? That's the one I think -- we haven't  
7 discussed this one yet.

8 A. (BY MR. CHAPPEL) No. This is the corrective  
9 action completion report.

10 Q. Right.

11 A. That's 64 hours at \$80 an hour based on the  
12 CECI list of activities conducted.

13 MS. MANNING: I have no follow-up questions.  
14 Does anybody else?

15 HEARING OFFICER TIPSORD: Ms. Hesse?

16 QUESTIONS BY MS. HESSE:

17 Q. I just have a brief follow-up question on  
18 this. I assume they'll be presenting testimony on  
19 it.

20 Would the Agency consider allowing latitude,  
21 for example, in any of these reports, whether it's a  
22 corrective action plan or a corrective action  
23 completion report, if it's a more complex site? In  
24 other words, what kind of information would you need

1 if the site was more complex to allow more time than  
2 the specified amounts of time to do the work?

3 A. (BY MR. BAUER) The point of clarification, I  
4 guess, for the corrective action plan portion is the  
5 limit is for conventional technology, which is  
6 basically digging all -- anything that would be more  
7 complex. Say, like an alternate technology would be a  
8 time and material basis. It would not fall under that  
9 5,120 rate.

10 QUESTIONS BY MR. DOTY:

11 Q. Even the preparation of the planning would  
12 be -- preparation of the plan itself would be a time  
13 and material basis?

14 A. (BY MR. BAUER) Yes.

15 HEARING OFFICER TIPSORD: I'm sorry. I  
16 couldn't tell who was asking that question.

17 MR. DOTY: Oh, it was me.

18 QUESTIONS BY MS. MANNING:

19 Q. So the preparation of the time and the  
20 document is not guided then by the figures in here,  
21 but it's guided by time and materials?

22 A. (BY MR. BAUER) For an alternate technology.

23 MS. MANNING: I have no further questions on  
24 that. I'm ready to move on. Anybody else?

1 HEARING OFFICER TIPSORD: Let's go on. 43.

2 QUESTIONS BY MS. MANNING:

3 Q. In Section 734.825 (a)(1) and (b)(1), soil  
4 removal and disposal. How was the swell factor of  
5 5 percent determined? Why was the rule of thumb that  
6 calls for a 15 to 20 percent expansion of swell factor  
7 depending on soil type not utilized?

8 A. (BY MR. CHAPPEL) Yeah, I'll answer it.

9 We used the swell factor of 20 percent.  
10 However, when you're looking at the cost of doing  
11 excavation, transportation and disposal, we allowed  
12 for a rate of \$57 a cubic yard. Now, if you break  
13 that down, roughly 25 percent of that cost is  
14 excavation, 25 percent is transportation, 50 percent  
15 is disposal costs.

16 So if you were to allow just the swell factor  
17 of 20 percent on the transportation and apply that  
18 across the whole \$57 a cubic yard, it works out to a  
19 figure of 1.05 for all three. So since we're applying  
20 it to the \$57 a cubic yard, we decided to use the  
21 1.05, which we believe equated to a swell factor of  
22 20 percent for purposes of transportation.

23 Pretty clear, huh? And I believe this was  
24 further explained in my testimony. But the intent is

1 to allow a 20 percent swell factor for transportation  
2 costs.

3 MS. MANNING: We'll have testimony on this as  
4 well. And I'm not going to ask any follow-up  
5 questions, but I would refer to any of my colleagues  
6 if you'd like to.

7 HEARING OFFICER TIPSORD: Mr. Cook?

8 QUESTIONS BY MR. COOK:

9 Q. I've got a question. It's on question number  
10 42.

11 You testified that alternative technology  
12 would be handled on a time and materials basis?

13 A. (BY MR. BAUER) For the plan.

14 Q. For the plan. So where in Subpart H, what  
15 rates in Subpart H would guide the Agency in their  
16 review of the time and materials approach to the scope  
17 of work?

18 A. (BY MR. CLAY) I'll answer that one. In 734,  
19 it's appendix E, which was the personnel rates.

20 Q. Okay.

21 A. And the amount of time to prepare that plan  
22 would be based on the presentation by the consultant  
23 for the Agency, and it would be on a case-by-case  
24 basis.

1           MR. COOK: All right. And I won't go into  
2 the actual performance of the alternative remediation  
3 because I don't think that's applicable in that  
4 question, but I'll have another question about that  
5 later.

6           MS. MANNING: Thank you.

7           HEARING OFFICER TIPSORD: Any follow-up?  
8 Excuse me. We'll go on to question 44 then.

9           QUESTIONS BY MS. MANNING:

10          Q. Who specifically at the Agency participated  
11 in the development of Subpart H?

12          A. (BY MR. CLAY) To the best that I can recall,  
13 Gary King, Harry Chappel, Brian Bauer, Valerie Davis,  
14 Hernando Albarracin, Pat Lehman (sp), Doug Oakley,  
15 Bill Richards, Richard Ameko (sp), Kyle Rominger, Bill  
16 Radlinski and myself.

17          Q. Thank you. As a follow-up to my question, I  
18 know you did it -- that was nicely detailed. It's  
19 actually a question that I haven't asked that I'd like  
20 to -- that kind of segues your whole process. And  
21 who, of those members you list or employees that you  
22 listed, are also part of the Agency's BAG committee?  
23 And could you explain for us what the BAG committee  
24 is?

1           A.    (BY MR. CLAY) Well, the BAG -- I think it's  
2 budget analysis group. And we had set that up as not  
3 too long ago. I would say less than a year ago. And  
4 it no longer meets.

5                    But this group was formed with managers and  
6 project managers to evaluate reimbursement and budget  
7 issues that seemed outside the rate sheet or the frame  
8 work that we -- for reasonable costs. As I say, we no  
9 longer use it any more after the air decision and  
10 since we stopped using the rate sheet.

11                   People on that group are myself, Hernando  
12 Albarracin, Tom Heninger (sp), Cliff Wheeler, Harry  
13 Chappel, Mike Lauder, which are all the managers in  
14 the LUST section. Doug Oakley, the manager of the  
15 LUST claims unit. Bill Richards in LUST claims unit.  
16 Brian Bauer from the LUST section. And who else?

17                   MR. CHAPPEL: Laura.

18                   MR. CLAY: Laura Hackman.

19                   MR. CHAPPEL: And Dave Meyers.

20                   MR. CLAY: And Dave Meyers.

21           Q.    And the purpose was sort of to discuss  
22 internally the budgets and the various applications  
23 that were presented, issues that might be raised with  
24 them?

1           A.    (BY MR. CLAY) Yeah. The purpose was to draw  
2   on the experience of this group, discuss those issues  
3   and come to consistent decisions.

4           MS. MANNING: Mr. Cook?

5                    QUESTIONS BY MR. COOK:

6           Q.    If I could ask, do you have an idea of about  
7   how long, how much time might be spent on a given  
8   budget in the review of that budget by this group?

9           A.    (BY MR. CLAY) I mean, it varied. You know,  
10 we started, and we have anywhere from 10 to 20 budgets  
11 a week that we look at, and it would run from one to  
12 two hours.

13          Q.    Total or per budget?

14          A.    Total.

15          Q.    Total?

16          A.    Total.

17          Q.    So a few minutes per budget?

18          A.    Yeah.

19          MR. CHAPPEL: Could I add to that?

20          MR. CLAY: Go ahead.

21          MR. CHAPPEL: These were passed out three  
22 days before we had the meeting, and everyone was  
23 expected to look at them and review them before they  
24 came to the meeting. So it's not just what we did

1 that day.

2 MR. CLAY: Good point.

3 Q. So typically how much time might it take,  
4 Harry, to --

5 A. (BY MR. CHAPPEL) Myself, I might spend 10,  
6 15 minutes, each one, preparing for the meeting.

7 MR. COOK: Okay, all right.

8 QUESTIONS BY MS. MANNING:

9 Q. And as a follow-up to that. Correct me if  
10 I'm wrong, but the dialogue was simply Agency dialogue  
11 based on information that was submitted to you on  
12 paper?

13 A. (BY MR. CLAY) From the consultant, correct.

14 Q. Right. In other words, there was no  
15 opportunity for the consultant to perhaps discuss any  
16 issues that you might be discussing in terms of having  
17 a letter submitted to you that responds to a  
18 particular action you may or may not have been  
19 willing -- interested in taking?

20 A. Well, some of the things that were brought to  
21 BAG was after a denial was made, and the consultant  
22 had responded to that denial in an attempt to justify  
23 those costs. So some of it was after an opportunity  
24 for the consultant to justify the costs.

1           In other situations, the project manager who  
2 presented the issue may have talked with the  
3 consultant on the phone as well.

4           HEARING OFFICER TIPSORD: Is there any  
5 additional follow-up?

6           Okay. I think this probably presents us with  
7 a pretty good stopping point. It is 5 after 4:00. We  
8 are continuing this hearing on the record, and we will  
9 reconvene at 9:00 a.m. at the Lincoln Library, 326  
10 South 2nd Street, Springfield, in the Carnegie north  
11 room on the first floor.

12          BOARD MEMBER JOHNSON: What's the address  
13 again?

14          HEARING OFFICER TIPSORD: 7th. I've even got  
15 it highlighted that it's 7th Street. 326 South 7th  
16 Street. It's on the corner of 7th and Capitol.

17          BOARD MEMBER JOHNSON: Okay.

18          HEARING OFFICER TIPSORD: I want to thank all  
19 of for your comments and testimony. I also want to  
20 thank all of you, for the most part, sticking with  
21 questions and not veering off into testimony.

22           I want to thank McLean County, and Don Newby,  
23 particularly, for their assistance today. I think  
24 they did a good job of hosting us.

          And I will see all of you tomorrow. Thank  
24 you. We're recessed.

[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 25, 2004, at the McLean County Law and Justice Center, Room 700, Bloomington, 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