

1 BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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3 IN THE MATTER OF:)
)
4 PROPOSED AMENDMENTS TO:)
 REGULATION OF PETROLEUM)
5 LEAKING UNDERGROUND) R04-22
 STORAGE TANKS (35 ILL.) (UST Rulemaking)
6 ADM. CODE 732))
)
7 _____)

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

12

13 Proceedings held on July 6, 2004, at 10:07 a.m., at the
14 Illinois Pollution Control Board, 1021 North Grand Avenue
15 East, Springfield, Illinois, before Marie E. Tipsord,
16 Hearing Officer.

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APPEARANCES

Board Members present:

Board Member G. Tanner Girard
Board Member Thomas E. Johnson

Board Staff Members present:

Erin Conley
John Knittle

Also present:

Anand Rao, Senior Environmental Scientist
Douglas W. Clay, IEPA, Manager, LUST Section
Gary King, IEPA, Manager, Division of Remediation
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PROCEEDINGS

(July 6, 2004; 10:07 a.m.)

HEARING OFFICER TIPSORD: I think we're ready to go on the record. Good morning. My name is Marie Tipsord, and I've been appointed by the Board to serve as hearing officer in these combined proceedings entitled "In the Matter of Proposed Amendments to Regulation of Petroleum Leaking Underground Storage Tanks," 35 Ill. Admin Code 732 and 734, docket numbers R04-22 and 23.

To my right is Dr. Tanner Girard, the board member assigned to this matter, and to his right is Board Member Thomas Johnson. Also with us today on my left is from our technical unit Mr. Anand Rao. Also present is Mr. John Knittle, who is Mr. Johnson's assistant, attorney assistant, and Ms. Erin Conley, our rulemaking coordinator.

This is our fourth hearing to be held in this proceeding. The purpose of today's hearing is to allow those persons who prefiled to testify and to allow questioning of the witnesses. At this time we only have two witnesses scheduled. If anyone else wishes to testify, they may sign up on the sheet and we will allow them to do so as time allows. We will take the testimony

1 as if read. I will mark the testimony as an exhibit and
2 the testifier may then summarize the testimony. After
3 that I will open the floor for questions.

4 We will begin with Daniel J. Goodwin and then
5 with Mr. Jarrett Thomas. Anyone may ask a question.
6 However, I do ask that you raise your hand, wait for me
7 to acknowledge you. After I have acknowledged you,
8 please state your name and who you represent before you
9 begin your questions. Please be advised that I will only
10 allow questions to be asked. If you begin to testify, I
11 will have you sworn in, but then I will politely ask you
12 to simply state the question. If you want to testify, as
13 I said, you may sign up to do so.

14 Please speak one at a time. If you're speaking
15 over each other, the court reporter will not be able to
16 get your questions on the record. Please note that any
17 questions asked by a board member or staff are intended
18 to help build a complete record for the Board's decision
19 and not to express any preconceived notions or bias.

20 At the back of the room there are also sign-up
21 sheets for the notice and service lists. If you wish to
22 be on the service list, you will receive all pleadings
23 and prefiled testimony in this proceeding. In addition,
24 you must serve all of your filings on the persons on the

1 service list. If you wish to be on the notice list, you
2 will receive just the board orders and hearing officer
3 orders. If you have any questions about which list you
4 may wish to sign up for, please see me at break.

5 Dr. Girard?

6 BOARD MEMBER GIRARD: Good morning. On
7 behalf of the Board I want to welcome everyone to the
8 fourth hearing on the proposal to amend the UST rules.
9 We appreciate the time and effort everyone is
10 contributing to this rulemaking. All this effort should
11 lead to a much better rule, and we look forward to the
12 testimony and questions today. Thank you.

13 HEARING OFFICER TIPSORD: At this time I'd
14 like Mr. Goodwin to be sworn in, please.

15 (Whereupon the witness was duly sworn.)

16 HEARING OFFICER TIPSORD: If there's no
17 objection, I will mark the prefiled testimony and
18 attachments of Mr. Goodwin as Exhibit 74. Seeing none,
19 it's so marked. Mr. Goodwin, go ahead.

20 MR. GOODWIN: Thank you. First of all, let
21 me just state for the record that I am here testifying in
22 my capacity as vice president of the American Consulting
23 Engineers Council of Illinois, formerly known as the
24 Consulting Engineers Council of Illinois. That name

1 change took place effective July 1, and we'd just like to
2 get that into the record.

3 I am the principal engineer with SECOR
4 International, Incorporated, a national environmental
5 consulting firm which does LUST work throughout the
6 country. Unless I explicitly indicate otherwise, you may
7 take my testimony today as being the position of the
8 American Consulting Engineers Council of Illinois.

9 Generally speaking, the ACECI is supportive of
10 the structure of the Agency's proposal both with regard
11 to the technical changes and the -- with regard to the
12 reimbursement changes. As a member of the -- of an ad
13 hoc work group that was formed by then CECI and the
14 Illinois Petroleum Marketers Association, we developed a
15 number of recommendations to the Agency, and most of
16 those recommendations have been reflected in the
17 structure of the proposal, but -- it may be a trite
18 saying, but the devil is in the detail, and the Agency's
19 proposal could benefit from a number of changes in the
20 details.

21 Attached to my prefiled testimony were several of
22 the work products of the ad hoc work group that I
23 participated in, and I would call the attention of the
24 Board to those attachments as a -- what I think would be

1 a useful starting point for developing some of the
2 additional detail and in some respects modifications of
3 present language for the Agency's proposal to make it
4 more satisfactory to the many interests that are being
5 represented in these hearings.

6 That's all I have.

7 HEARING OFFICER TIPSORD: Okay. Thank you.
8 Are there any questions for Mr. Goodwin?

9 MR. ROMINGER: No, we don't have any.

10 HEARING OFFICER TIPSORD: Anyone? Thank you
11 very much. Next we have Mr. Jarrett Thomas, and he is a
12 part of the Professionals of Illinois for the Protection
13 of the Environment -- PIPE -- group.

14 Also, Mr. Thomas, before you start, I would just
15 like to note that Ms. Manning, who represents PIPE, had
16 contacted me last week about the possibility of PIPE
17 giving additional testimony after the Agency's
18 presentations at the next hearing, and we'll address that
19 in the closing after we get done with the testimony.

20 Can we have Mr. Thomas sworn in, please?

21 (Whereupon the witness was duly sworn.)

22 MR. THOMAS: My name is Jarrett Thomas. I'm
23 vice president of Suburban Laboratories.

24 HEARING OFFICER TIPSORD: Excuse me, Mr.

1 Thomas. Let's take care of the housekeeping first. If
2 there's no objection, we'll admit Mr. Thomas' testimony
3 as Exhibit 75. Seeing none, it's so admitted.

4 MS. MANNING: Thank you.

5 HEARING OFFICER TIPSORD: Thank you.

6 MR. THOMAS: I am vice president of Suburban
7 Laboratories. We're an environmental testing laboratory.
8 Suburban Laboratories has been in business since 1936 and
9 we primarily provide environmental laboratory services,
10 drinking water, soil, groundwater, wastewater, those
11 types of analyses.

12 I sit on two different standing committees. One
13 is the Community Water Supply Testing Council. The other
14 is the Environmental Laboratory Certification Committee,
15 both of which I was appointed by the director of the EPA.
16 I'm a current board member of PIPE and I am a cofounder,
17 past president and current board member of the Illinois
18 Association of Environmental Laboratories, which we call
19 IAEL.

20 I'm here to provide testimony on behalf of PIPE
21 and IAEL. In 2002 I first became aware of an ad hoc --
22 the ad hoc work group that CECI was -- had going on to
23 address some of the proposals that EPA had, and I was
24 given a copy of the -- of a draft listing of fees, lab

1 fees, by one of those members, which I brought back to
2 our laboratory association. One of the first things that
3 we really were interested in was how those fees were
4 generated, and none of the members of our association
5 were contacted to participate in any kind of fee survey,
6 so we asked EPA to meet with us, which we did have a
7 meeting in November of 2002. The meeting was attended by
8 several people from EPA as well as several of our --
9 people of IAEL.

10 The meeting, I thought, was very, very good. It
11 was very interesting to hear the EPA's side of why they
12 wanted to standardize fees, and they also listed some
13 examples of problems they had with different rates of
14 things coming out of the laboratory industry, so it
15 really helped educate the -- educate me, for that matter,
16 on how -- some of the problems the Agency was having and
17 their need to control costs.

18 One of the questions that we had was exactly how
19 these fees came into existence, and we really didn't get
20 a good explanation of how the -- how they came up with
21 their fees, so what I did was I volunteered to do a
22 survey of IAEL members simply asking them for their rate
23 sheets, coordinating that data, providing it back to EPA
24 with a proposal for a standardized rate for lab analysis.

1 The -- I sent an e-mail out to the -- to all of
2 the IAEL members, and just for the record, there's
3 approximately 20 laboratories that are in the laboratory
4 association. We estimate that 90 percent of the LUST
5 analyses in the state are done by IAEL members. I sent
6 out the e-mail to the membership asking them to submit
7 rate sheets for LUST analysis. Mr. Chappel had given me
8 a copy or a spreadsheet to use to provide the data back
9 to EPA, and I sent that information out to the various
10 lab communities and asked them to respond back with their
11 pricing.

12 I -- There was no fancy survey done. It wasn't a
13 professional survey. I simply asked members, whoever was
14 interested, to submit their pricing to me and I was going
15 to coordinate that in the format the EPA asked. There
16 were five laboratories that submitted data that was used
17 in the survey. There were several labs that did not want
18 to participate in the survey, but ultimately we used
19 five -- the data from five laboratories to coordinate
20 these -- the data. No labs were excluded. Anyone that
21 submitted pricing was used in the survey. And that
22 information is provided in the -- I believe attachment B,
23 the original survey data.

24 Our membership wanted to -- was very concerned

1 about making a proposal to EPA. We had originally talked
2 about doing an average plus or minus several standard
3 deviations. Some of the labs objected to that because
4 that would exclude certain labs' pricing from the
5 proposal, so what we did, we simply went in and we
6 recommended to the Agency that they adopt the highest
7 price that was submitted through the survey.

8 Ultimately the EPA -- it appears that they used
9 the average pricing from the survey itself, and that's
10 what made its way into the proposal. IAEL objects to the
11 use of strictly an average for reasons that have been
12 provided in previous testimonies regarding the problem
13 with using the mean, that it excludes 50 percent of the
14 pricing, so what we were proposing in this testimony is
15 to use one standard deviation or the maximum rate,
16 whichever happens to be lower, from the original survey
17 data. There's several other recommendations that we
18 made. Some of them are very specific to the different
19 tests and analytes, and that's all reflected in the
20 testimony.

21 Finally, one other item I do want to mention with
22 regards to the costs. The costs that the laboratories
23 submitted were for LUST analyses, and one of the
24 issues -- and this was discussed with the Agency in our

1 October -- or November meeting -- one of the issues that
2 our industry faces every day is the payment terms
3 situation. For doing LUST analyses, many engineering
4 companies who contract directly with the labs have to
5 wait for reimbursement, and that -- and they push that
6 waiting period onto the laboratories and, for that
7 matter, I believe other subcontractors as well, so one of
8 the issues that -- one of the factors that our industry
9 takes into account when bidding out or when pricing out
10 LUST work is that the payment is usually going to be
11 longer than 30 days, which is most companies' standard
12 payment terms, and that's become one of the downfalls of
13 the LUST program, is that it's pushing payment terms.
14 Businesses are finding it harder and harder to operate
15 under that kind of -- those kinds of constraints. So
16 that's one of the issues that are reflected in the higher
17 pricing.

18 Finally, I just want to say that all in all,
19 again, the meeting that we had with the Agency was very
20 good. I actually applaud the Agency in coming up with
21 these rates, you know. I think that in terms of -- with
22 the exception of some minor changes, we're fairly close
23 to some type of a proposal that the laboratory
24 association can live with.

1 That's all. Thank you.

2 HEARING OFFICER TIPSORD: Thank you. Did
3 you --

4 MS. MANNING: Are there any questions?

5 HEARING OFFICER TIPSORD: I just was going
6 to ask if you had any additional questions you wanted to
7 ask, Ms. Manning.

8 MS. MANNING: Other than -- Mr. Thomas,
9 you've been working, have you not, with the PIPE board as
10 well as meeting -- continuing to meet with the Agency on
11 all of the issues relevant in the rulemaking?

12 MR. THOMAS: Yes.

13 MS. MANNING: And you've considered those
14 meetings to be positive?

15 MR. THOMAS: Oh, yes, very much.

16 MS. MANNING: Thank you.

17 HEARING OFFICER TIPSORD: Are there any
18 questions for Mr. Thomas?

19 MR. CLAY: Mr. Thomas, you -- I just want to
20 make sure this is clear. You said the labs voluntarily
21 agreed to wait for payment from the consultant? I mean,
22 it's not required. There's no requirement for that; is
23 that correct?

24 MR. THOMAS: Well, the customers will make

1 it a requirement. They'll either use you or not. You
2 either agree to it or they'll find another lab, which is
3 what they'll tell you to your face.

4 MR. CLAY: The consultants are getting
5 handling charges on your rates, I believe.

6 MR. THOMAS: Some do, some don't. I never
7 know when I'm doing work with someone whether or not
8 they're marking up my rates.

9 MR. CLAY: Okay. On attachment A to your
10 testimony, you have a rate sheet that I believe was early
11 on in our development of the rules. That's not currently
12 the proposal before the Board; is that correct?

13 MR. THOMAS: Yes.

14 MR. CLAY: Okay. How are samples typically
15 or usually delivered to a laboratory?

16 MR. THOMAS: It depends on the site. If the
17 site's going to be far away, they're usually Fed Exed,
18 packaged up in coolers and Fed Exed, or they're delivered
19 to the lab via either the customer's courier or some
20 laboratories have couriers.

21 MR. CLAY: Okay. And how long from the time
22 the samples are collected or delivered to the lab do they
23 have to run that analysis?

24 MR. THOMAS: Well, it's different for

1 different tests. Every test has a different holding time
2 associated with it. Some tests have to be performed
3 immediately, which is usually within the same day of
4 collection. Some tests have to be run within two days,
5 some within two weeks. Depends on the test.

6 MR. CLAY: But as far as Fed Exing it, you
7 have someone who Fed Exes it to the lab and have time to
8 run that test.

9 MR. THOMAS: Usually. There's -- The
10 problem comes up with, for example, if it's a sample --
11 if it's a water sample, if it's a groundwater sample
12 being collected for PNAs, there's a seven-day holding
13 time associated with that sample to get it extracted. If
14 the sample is collected and then it's -- assuming the
15 consultant Fed Exes it out the day they collect it --
16 which doesn't always happen -- the next day -- the
17 turnaround time then gets shortened. It may take -- You
18 may only have five days to run that sample once it gets
19 into the laboratory. And that is something that happens
20 occasionally, where samples will for whatever reason not
21 be sent the day that they're collected.

22 MR. CLAY: Okay. So basically, you -- from
23 any site in the state, you can probably ship to any
24 site -- any laboratory in the state, is that correct,

1 using Fed Ex or some other service?

2 MR. THOMAS: Yes.

3 MR. CLAY: And all labs are required to run
4 the same methods and to run their analysis in accordance
5 with SW-846?

6 MR. THOMAS: Yes.

7 MR. CLAY: Is that correct? I guess that
8 gets me to why should the Agency reimburse higher rates
9 when everyone is required to run the same analysis and
10 ship it to any lab in the state? Why shouldn't they run
11 the average or even the lowest cost analysis?

12 MR. THOMAS: Well, one of the things that
13 differentiates laboratories is the service they provide.
14 There's a lot more that goes into the analysis than just
15 running the test, being certified. All laboratories in
16 order to do LUST work have to be accredited by the State.
17 They have to go through an audit and have certain quality
18 control procedures in place. But the big thing that
19 differentiates laboratories is the service they provide.
20 For example, in my laboratory, we have technical staff
21 that is experienced in LUST work that understands the ins
22 and outs of the sites, works with engineering companies
23 on a variety of technical issues that go well beyond just
24 the running of the tests, and there's a benefit that goes

1 to that type of thing. Some laboratories are going to
2 provide more of that level of service assisting
3 engineering companies in getting the work cleaned up.

4 MS. MANNING: If I might interrupt and ask,
5 as a further development for that, Mr. Thomas, is there a
6 reason that certain remediation businesses would prefer
7 to work with certain laboratories, and if so, what's your
8 understanding as to why? Beyond just the quality of
9 work. You've mentioned the quality of work, but is
10 pricing a consideration in terms of volume and that sort
11 of thing as well?

12 MR. THOMAS: Sure. Pricing's always an
13 issue. Customers that give a laboratory a significant
14 amount of work are going to get discounts. They're going
15 to be considered ahead of other companies. I mean, this
16 is a service industry. One of the things that our
17 industry's trying to do is to try to get away from being
18 considered a commodity. The amount of overhead and the
19 accreditations, the technical aspect of our business is
20 extremely serious, and whenever things start becoming
21 based on price, you can immediately start to see an
22 erosion of the service and then eventually the quality
23 regardless of whether a laboratory is accredited.

24 But it's like any other service business. I

1 mean, I've heard people refer -- compare laboratories to
2 dry cleaners. I mean, if you go to a -- why would you go
3 to one dry cleaner over another if it -- if one guy does
4 a good job for you, you're going to go back to him, and
5 it's the same thing. It's a service business. The
6 better service we provide is really what comes down to
7 it. The end product should be the same. The analytical
8 results should be the same no matter what laboratory you
9 go to.

10 MR. CLAY: You said the volume -- you do a
11 volume with one laboratory and you may get discounts or
12 reduced rates. Those discounts or reduced rates aren't
13 reflected in the proposal that you're making; is that
14 correct?

15 MR. THOMAS: No. Well, I asked laboratories
16 to simply provide me with their list prices, their price
17 sheets for what they would charge for LUST work. I did
18 not ask them to give me a price list -- or a quote, I
19 guess I should say.

20 MR. CLAY: Okay. And at the end of your
21 testimony you said something about bidding. Did you say
22 that -- Do consultants typically bid laboratory work?
23 Are you aware of that?

24 MR. THOMAS: For LUST work? I never know if

1 I'm getting work bid out. I -- You know, I understand
2 that they may call one or two labs and check on
3 turnaround time. They may check on price. They may
4 check on a variety of things, but whether or not I'm
5 actually being -- you know, having to competitively bid
6 something, I never know that when I'm pricing out work.
7 We have a standard rate sheet that we use. We have some
8 customers that give us a large number of samples. In
9 that case we will offer discounts to them. We also have
10 a -- We also have companies that give us better payment
11 terms. We have some companies that take advantage of
12 cash discounts based on paying rapidly.

13 MR. KING: Mr. Thomas, I was just kind of
14 reflecting on the survey that the laboratory association
15 went out with. As I -- If I've got this right, you sent
16 the survey out to about 20 labs?

17 MR. THOMAS: Yes.

18 MR. KING: And you got responses from five
19 labs?

20 MR. THOMAS: Well, we had five labs respond
21 with data to use in the survey. There were I want to say
22 three or four labs that said they did not want to
23 participate in the survey that did LUST work, and then
24 there were others that simply don't do LUST work, that

1 maybe they're -- they primarily do wastewater or drinking
2 water analysis that are members of the association. A
3 small amount.

4 MR. KING: So it's not 20 members of the
5 association doing LUST work.

6 MR. THOMAS: Correct.

7 MR. KING: Okay.

8 MR. CLAY: One final question. The Agency
9 is proposing -- The Agency's proposal to the Board is
10 proposing that lien waivers or some type of proof of
11 payment or lien waivers be provided when seeking
12 reimbursement. Is that something that you would support,
13 Jarrett, or what are your thoughts on that?

14 MR. THOMAS: Well, that was -- the way that
15 the proposal deals with handling charges and requiring
16 proof of payment I consider a very positive thing for our
17 industry, lien waivers and so forth also. The problem is
18 is that there's still such a delay -- and this may be
19 strictly related to reimbursement or it may be just the
20 companies that you're doing business with. There's
21 usually a delay of -- in getting paid. That is
22 unfortunately more of a commonplace than not in this
23 business. Anything that the Agency can do to help
24 companies get paid I would be in favor of.

1 MR. CLAY: Okay. Thank you.

2 HEARING OFFICER TIPSORD: Anyone else?

3 MS. MANNING: Let me expand on that just a
4 little bit. What's your understanding from the
5 participation in PIPE as to the reasons for the lengthy
6 time in terms of payment of the costs that you -- that
7 the labs incur in the underground storage tank process?

8 MR. THOMAS: Well, to put it simply, it's
9 the time to get reimbursed from the State. It takes a
10 lot of time for that process to go through. I'm learning
11 more about that process every day, and that seems to be
12 the common excuse that's used, is that it just takes a
13 while to get paid. It takes a while. The engineering
14 companies themselves don't have money to just pay out of
15 pocket. The site owners most definitely don't have money
16 to pay out of pocket, and it comes back to trying to
17 spread those costs among subcontractors, and that's what
18 we end up seeing.

19 BOARD MEMBER GIRARD: Well, I have a
20 question. Mr. Thomas, if the rules were to establish
21 costs based on the average plus one standard deviation,
22 like in your proposal here, would any labs charge less
23 than that limit for any of their services?

24 MR. THOMAS: Yes, most definitely. The --

1 First off, again, the pricing doesn't include any kind of
2 discounts, so if -- again, if you have a large customer
3 and you're providing them a discount because of their
4 volume of business, they're going to be paying less or
5 the laboratory will be charging less. There's labs
6 that -- in the survey that charge less than that one
7 standard deviation. There's labs that have their set
8 rates and they say, "This is what we're going to charge,"
9 and that's it. I've had discussions with some of my
10 colleagues in the industry, "Here's our price, we don't
11 see any need to change that." So, yes, there's most
12 definitely going to be, as there is now, labs charging
13 less than whatever the maximum is.

14 BOARD MEMBER GIRARD: But what would be
15 their incentive for doing that if the State's going to
16 pay for that limit? Why would they charge less than what
17 the State's going to pay for that service?

18 MR. THOMAS: Well, that gets back to the
19 issue of competitiveness, and with -- and my knowledge of
20 exactly how the consultants go out and obtain their
21 customers is limited. I don't quite understand how they
22 can go to a site owner and attract that business given
23 that this program's supposed to be a level playing field.
24 I always imagine it has to do with service. But the

1 issue of discounting work, it is a question that we're
2 asked, you know, what's our price, you know, if they're a
3 large customer, you know, do they get a discount.

4 And in our laboratory, we have engineering
5 companies -- I mean, a lot -- just about every
6 engineering company that we have as a customer doesn't
7 just do LUST work, so we're doing work in other programs
8 as well, and we don't have a different price for LUST
9 than we do for RCRA or a groundwater site, landfill, you
10 know, monitoring. We have one price that that customer's
11 going to get, and it's usually tied to some type of
12 discount. So at that point it's more -- it's going to be
13 pricing that's customized per client, so there's always
14 going to be those cases where if you have -- some labs
15 are going to have clients that are at one rate and other
16 labs are going to have clients at another rate. That's
17 just the way that it's going to be, and it's going to be
18 like that for all the different programs.

19 BOARD MEMBER GIRARD: But, you know, let's
20 say that we do have a situation where the labs look at
21 the average plus one standard deviation as like the money
22 they can make out of doing particular tests and decide
23 there's no reason to go less on LUST and then you have --
24 twice a year you review the costs, and then if you take

1 average plus standard deviation, wouldn't that just
2 continue to escalate the costs because your average would
3 continue to move up?

4 MR. THOMAS: Well, I would expect that the
5 average is going to move up each year with a lot of --
6 for a lot of reasons. The issue of laboratories looking
7 at this pricing -- I mean, right now and before the Ayers
8 Oil case, I mean, the rates were known by the laboratory
9 industry and there wasn't any setting of prices at the
10 maximums at that point. There was still the
11 competitiveness in place even though there was a maximum.
12 There's still laboratories that are going to charge \$50
13 for something when the maximum's 100 because -- and
14 again, for whatever reason, that's an incentive to that
15 engineering company and that site.

16 BOARD MEMBER GIRARD: Well, you know, you
17 keep coming back to competitiveness. Is there a way to
18 make that more transparent, the whole process? I mean,
19 for instance, what if the Agency went out and said for
20 all UST lab work in 2005 we're going to take bids from
21 all the labs and see who's going to produce -- you know,
22 have a spec sheet and give us the lowest cost service?
23 If you're doing any UST work in 2005, you send it to that
24 lab and we'll reimburse 100 percent; if you want to go to

1 another lab who charges more, we reimburse the
2 differential. Is there a problem with that kind of a bid
3 process?

4 MR. THOMAS: Well, whenever you go to a
5 competitive bidding situation -- and I've seen this
6 happen in other states -- it completely erodes the
7 service in that industry. The -- What happens is the
8 laboratories start competing on price; customers start
9 only looking at price if there's a laboratory that's
10 going -- by using a -- you know, a certain laboratory
11 because they're likely to get reimbursed 100 percent
12 versus another laboratory.

13 Let's say there's laboratories in different parts
14 of the state and different costs of operating in
15 different parts of the state. If a laboratory in one
16 part of the state is able to do the work cheaper and that
17 results in 100 percent reimbursement to the site owner,
18 then there's a tremendous incentive for people to go use
19 that laboratory. It becomes a competitive disadvantage
20 to anyone else.

21 What happens in a competitive situation is why
22 our industry is so set against not making this a
23 commodity, is that it results in an erosion of the
24 industry. The -- Again, the technical experience that we

1 have to have, the overhead and equipment, it just does
2 not support a competitive business, and we've seen this
3 in -- on a national level with the U.S. contract
4 laboratory program. When that program originally started
5 up it was a -- very, very strict quality control
6 requirements, technical requirements, and they went to
7 competitive bidding, and now I think you can count on one
8 or two hands the number of labs in the entire country
9 that are in that program because it's just not worth
10 doing business.

11 There's been other states that have had -- that
12 have gone to competitive bidding, and the number of
13 laboratories in the state decreased. The -- Again, the
14 industry just eroded. Quality ended up suffering.
15 You're going to have pricing go down and then you're
16 going to have service go down, and eventually it's going
17 to lead to quality suffering. That's what happens when
18 everyone just focuses in on the price. There has to be
19 some level of pricing that is considered a maximum
20 that -- to say this is it, this is the max, this is as
21 much as can be reimbursed. Let the competitive nature of
22 the business the way it stands now flourish and let labs
23 compete on service, and we're going to have situations
24 where some labs charge less. You know, that -- the issue

1 of quality, a lot of laboratories -- once the Illinois
2 EPA instituted a laboratory certification program, we
3 were very optimistic that the level of quality in the
4 state was going to be considered very high, and that is
5 high, and right now it's a level playing field with
6 regards to quality. Service is something completely
7 different. If you go to competitive bidding, it's going
8 to erode the service.

9 BOARD MEMBER GIRARD: Thank you.

10 MR. KING: If I can just follow up on that.
11 I mean, the state EPA, for the laboratory work we do
12 outside of our own lab, we do a competitive process and
13 that seems like it's worked out well. I mean, do you
14 have any comments on that?

15 MR. THOMAS: If you say so. I don't -- If
16 it's worked out well. I believe there's three or four
17 labs that are accredited in the state or have a contract?

18 MR. KING: Yes.

19 HEARING OFFICER TIPSORD: Anything further?

20 MR. RAO: I have a question.

21 HEARING OFFICER TIPSORD: Go ahead.

22 MR. RAO: Mr. Thomas, you mentioned about
23 how you give discounts to some of your more regular
24 clients, and can you give us an idea of the magnitude of

1 this discount that, you know, maybe your lab gives to
2 your clients? What -- You know, just to get an idea as
3 to how it compares with what you propose and --

4 MS. MANNING: He whispered to me that it's a
5 competitive secret.

6 MR. THOMAS: Yeah. I have competitors in
7 the room. No, I'd be happy to share that. We have
8 discounts ranging from anywhere from 10 percent to 25
9 percent for large customers, and that's -- I think that's
10 fairly common throughout the industry. Again, when I
11 look at non-LUST work, our pricing is the same for a
12 hazardous waste sample as it is for LUST, and when I
13 get -- when we bid that work out -- and there are
14 different programs that different clients handle things
15 differently -- we'll go out and get three, four, five
16 bids, and I look at -- and I'm able to see how our
17 pricing fits in.

18 Ultimately people are discounting the work, and
19 that's how my laboratory does it as well. I don't have a
20 separate price sheet for LUST. I don't have a different
21 pricing. If a client of mine gives me a lot of work,
22 then they're going to get -- if -- in cases of 25 percent
23 discount, they're going to see that for LUST and they're
24 going to see that for everything else.

1 One other thing I would like to mention is that
2 one of the similarities between the laboratory running a
3 sample as the engineering company's collecting the
4 samples is that all samples are not the same. We do run
5 into samples that are much more difficult to work with.
6 If a sample comes in and it's extremely contaminated,
7 that could blow an instrument to the point where it costs
8 the laboratory hundreds of dollars to bring that
9 instrument up and days of down time, and so all samples
10 aren't treated the same way either. There are samples
11 that require dilutions, extra man time.

12 We have a lot of customers that ask us to rush
13 samples, which is a very common thing in the LUST
14 program. When they're mobilized on site and they have
15 drill rigs and staff there to collect samples, they want
16 those samples run as quickly as possible so that they can
17 minimize their cost in the field. That was a point that
18 we brought up to the Agency and asked to be considered in
19 this proposal, which they did not. Rushing samples and
20 at that point adding surcharges to the analysis is very
21 common, and it's always been portrayed to me by
22 engineering companies that if they rush an analysis where
23 normal turnaround time for a laboratory sample may be
24 seven days, seven work days, if they can rush it out in

1 three days, they can save themselves a lot of additional
2 costs in the field. So that's another fee that just goes
3 on top of this stuff that is a common part of the
4 laboratory industry.

5 MR. RAO: Thank you.

6 MS. MANNING: Mr. Thomas, if I might, as a
7 follow-up to Mr. King's question, just so that I
8 understand your answer, is it your experience that
9 government-mandated bidding either for government
10 enterprises or for others does not always result in the
11 lowest overall cost?

12 MR. THOMAS: Yeah, that's true.

13 MS. MANNING: Okay. Thanks.

14 HEARING OFFICER TIPSORD: Anything else?
15 Thank you very much, Mr. Thomas.

16 MR. JOHNSON: Marie, could I -- and not with
17 Mr. Thomas, but Mr. Goodwin was good enough to stick
18 around. Would it be appropriate -- You caught me
19 unawares, frankly. Nobody else asked you a question. I
20 did have a question.

21 HEARING OFFICER TIPSORD: Please go ahead.

22 MR. JOHNSON: You're still under oath, so --
23 With respect specifically to your atypical situations,
24 attachment D in your prefiled testimony, we've had some

1 substantial discussion, and I think Mr. Clay is trying to
2 decide whether he's going to have to establish an unusual
3 and extraordinary expense division, so I guess
4 specifically one question I had is I'm assuming now that
5 this owner/operator would be the individual to designate
6 whether or not this is an atypical situation.

7 MR. GOODWIN: Well, I think in practice it
8 would probably be the consultant that would make that
9 claim on behalf of the owner or operator.

10 MR. JOHNSON: Not the Agency, then.

11 MR. GOODWIN: Not the Agency, right.

12 MR. JOHNSON: And your suggestion is this
13 process for identifying a site as atypical would supplant
14 the Section -- what we've been calling the Section 855
15 situations; is that right?

16 MR. GOODWIN: Yeah, or supplement it.

17 MR. JOHNSON: Okay.

18 MR. GOODWIN: I think the concept here is
19 simply to provide additional guidance in the regulation
20 regarding kinds of situations that might be considered
21 atypical, and the way I see it working, it would come
22 into consideration only if the owner/operator or his
23 consultant claimed an atypical situation was present that
24 justified deviating from the standardized rates and then

1 provided specific justification as to what the
2 circumstances were that justified that.

3 This list in attachment D was developed not to be
4 all-inclusive but to provide illustrations of things that
5 could be foreseen that would arise fairly commonly that
6 would be -- that warrant a site being considered atypical
7 in some respect, and it would only change the
8 reimbursement limits for those things that were
9 specifically related to the atypical aspects of the site.
10 It wouldn't throw the whole site into atypical
11 classification for all purposes.

12 MR. JOHNSON: And so -- And that was my
13 other question, that this doesn't -- you didn't intend
14 this attachment D list to be exhaustive.

15 MR. GOODWIN: No. That's correct. That's
16 correct.

17 MS. MANNING: As a follow-up to that,
18 Mr. Goodwin, and as long as Member Johnson opened the
19 door to questioning of Mr. Goodwin, just in terms of --
20 you've been meeting, correct, on behalf of CECI with both
21 PIPE and the Illinois Environmental Protection Agency as
22 well as the Illinois Society of Professional Engineers --

23 MR. GOODWIN: Yes.

24 MS. MANNING: -- in meetings apart from this

1 rulemaking in an attempt to come closer together, if you
2 will, in terms of the issues in this proceeding?

3 MR. GOODWIN: That's correct.

4 MS. MANNING: Is one of PIPE's proposals or
5 one of the issues PIPE has raised the idea that the
6 better communication there is at the front end of the
7 process when the consultant applies to the Agency in a
8 consistent kind of fashion, the better off and the more
9 workable this process would be?

10 MR. GOODWIN: Yeah.

11 MS. MANNING: Is that correct?

12 MR. GOODWIN: I would agree with that.

13 MS. MANNING: And that's consistent with
14 your point, is it not, that the identification of the
15 atypical situation is really the consultant's
16 responsibility but it's the Agency's responsibility to
17 understand and have a depreciation for that atypical
18 situation?

19 MR. GOODWIN: Yes.

20 HEARING OFFICER TIPSORD: Anything
21 additional? Mr. Thomas, Mr. Goodwin, thank you very
22 much.

23 MR. GOODWIN: May I add something on --
24 going back to Mr. Thomas' testimony on the matter of

1 bidding out laboratory services? This wasn't something
2 that I touched on in my testimony, but I think it might
3 be helpful to the Board to have the perspective of a
4 consultant on that.

5 Mr. Thomas is absolutely right that service is an
6 important factor in the selection of a laboratory by a
7 consultant. Certainly we pay attention to prices, and we
8 do that whether or not reimbursement is a part of the
9 particular project that we're looking at, but in my
10 mind -- and this -- I'm speaking on my own behalf and on
11 behalf of SECOR, not necessarily CECI, because we haven't
12 really taken any kind of position on this -- but in my
13 experience, the number one factor in the selection of a
14 laboratory is previous experience with the laboratories.

15 If you have had a laboratory where you've had bad
16 results, results that for some reason you know aren't
17 valid results -- and this happens sometimes, and it can
18 happen with any laboratory once in a great while -- but
19 if you begin to see a pattern of questionable results
20 coming through, that laboratory goes off your list of
21 labs that you want to continue working with.

22 Another factor that is often an important
23 consideration is proximity to the site. If you have a
24 lab that is relatively close to the site so that you can

1 hand deliver samples each day as they're collected rather
2 than having to go through the time delay and effort and
3 expense of packaging them up and shipping them -- and I
4 imagine regarding that, there's always a hazard of broken
5 samples when you ship them, which is a real headache when
6 it happens. There are a large variety of factors that
7 are entered into the selection of laboratories. Price is
8 just one of them, and I think it would be a bad idea
9 indeed to force everybody into strictly a price
10 competition for selection of laboratories.

11 On the subject of discounting, that is done
12 commonly. Another thing that is done in our company as a
13 long practice is as often as possible we simply take the
14 lab bill, check it to make sure it's correct and pass it
15 along to our client for direct payment, and in that
16 situation we don't add a handling charge. We charge for
17 whatever time we spend reviewing the bill to make sure
18 it's correct, but that gets us out of the middle of the
19 cash flow problem and I think speeds up the time that the
20 labs get paid somewhat, at least, and I believe many
21 other consultants engage in this practice too. It's just
22 another way that the business arrangements can be set up
23 to reduce the impact of delays of reimbursement.

24 MS. MANNING: Mr. Goodwin, if I could follow

1 up with that, would your comments and questions against
2 competitive bidding vis-a-vis the consultant and the
3 laboratory be equally true regarding not just laboratory
4 costs but excavation costs, drilling costs, landfill
5 costs and those various items?

6 MR. GOODWIN: Well, I'm not sure I would
7 extend it to landfills, because usually service isn't
8 that much of a consideration with a landfill. I mean,
9 they either take it or they don't. With drillers, we
10 prefer to work with certain drillers that we've had
11 favorable experience with; we know they get out there to
12 the site with the proper equipment and the proper
13 personnel; we know -- and care about their safety
14 practices, because generally our clients are looking to
15 us to make sure that the work is all conducted in a safe
16 manner, and that's something that is very much emphasized
17 in my firm, and I would really prefer not to have to just
18 take the cheapest driller every time. But having said
19 that, I think pricing is a relevant consideration and I
20 would not be opposed to some mechanism to ensure that
21 some attention was being paid to pricing in the selection
22 of those kinds of subcontractors.

23 HEARING OFFICER TIPSORD: Anything further?
24 Thank you.

1 MS. MANNING: Thank you.

2 HEARING OFFICER TIPSORD: Let's go off the
3 record for just a second.

4 (Discussion held off the record.)

5 HEARING OFFICER TIPSORD: As I indicated
6 previously, Miss Manning had asked me in an e-mail about
7 the possibility of PIPE presenting responsive testimony
8 with regards to what the Agency may present at our next
9 hearing, and I think certainly as time allows we will do
10 that on August 9. We have the hearing room scheduled for
11 also the 10th if we need it. If we then need additional
12 hearing at that time, we'll address them at that time,
13 but --

14 MS. MANNING: Okay.

15 HEARING OFFICER TIPSORD: -- certainly PIPE
16 should be -- if they want to present additional testimony
17 after the Agency's presentation on the 9th and 10th, that
18 will be --

19 MS. MANNING: That's fine, and we discussed
20 with the Agency prior to these proceedings the idea of
21 meeting and actually communicating in terms of what their
22 proposal was going to be and what, if anything, you know,
23 that PIPE proposes as well, so that hopefully we'll both
24 be in good stead to present everything we need to present

1 on August 9 and 10, and if it becomes evident that we
2 can't, we appreciate discussing it at that time.

3 HEARING OFFICER TIPSORD: Thank you.

4 MS. MANNING: Thank you.

5 MR. JOHNSON: Are you going to attempt to
6 get it all done the first day and then just if you have
7 bleedover or -- I just want to know for purposes of my
8 schedule coming over here. I ought to count on the 10th
9 as well, it looks like.

10 MS. MANNING: I guess I didn't understand
11 how long it's going to take the Agency yet to --

12 HEARING OFFICER TIPSORD: Well, if I may,
13 the Agency's prefiling on August 2.

14 MR. ROMINGER: Right.

15 HEARING OFFICER TIPSORD: So on August 2
16 we'll know what the Agency actually has to present, and
17 that'll give us an idea of how much, I think, at that
18 point.

19 MR. KING: As Mr. Rominger said, I mean,
20 it's not -- our testimony is not what seems to take up a
21 long period of time. It's all the questions we get
22 afterwards.

23 HEARING OFFICER TIPSORD: Right.

24 MS. MANNING: Which --

1 MR. KING: If the questions are succinct and
2 we get to the point quickly, it won't take that long.

3 HEARING OFFICER TIPSORD: Mr. Goodwin?

4 MR. GOODWIN: I would like to reserve the
5 opportunity also for additional testimony on the -- at
6 that same hearing --

7 HEARING OFFICER TIPSORD: Absolutely.

8 MR. GOODWIN: -- on the 9th and 10th, and a
9 question. Will there be a requirement that that
10 testimony be prefiled?

11 HEARING OFFICER TIPSORD: No. Given that
12 the Agency's testimony wasn't going to be due until
13 August 2 -- partly that was because of the transcript
14 from the prior hearing, which is available. It came in
15 last week and it's on the Web already, so we weren't
16 really expecting it that quickly. So if the Agency's
17 testimony is not due until August 2, it will be very
18 difficult to get responses in before we proceed the
19 following Monday, so we will not require prefiling of
20 anyone but the Agency at the next hearing.

21 MS. MANNING: Thank you.

22 HEARING OFFICER TIPSORD: Mr. King, you had
23 something additional you'd like to add?

24 MR. KING: Yeah. We just --

1 HEARING OFFICER TIPSORD: Let's have you
2 sworn in just to be --

3 (Whereupon the witness was duly sworn.)

4 MR. KING: We just wanted to do -- submit a
5 document that gives an update on the financial status of
6 the LUST fund, and the only thing you'll see changed here
7 from the previous exhibit that we submitted is the --
8 we've got the fourth quarter information, which we now
9 know what it is, and then we've got the estimate for the
10 lapse period for -- for the ongoing lapse period that's
11 ongoing right now for the LUST fund.

12 One of the things that was fortunate was, as
13 you'll see in the income column, that the income to the
14 fund at the end of this last completed fiscal year was
15 over 78 million dollars, which was a substantial increase
16 from the previous fiscal year. Whether that trend will
17 continue, we'll have to monitor that. There was a --
18 Just to give you an idea, in June of '03, the amount of
19 revenue received into the tank fund was 4.4 million. The
20 revenue that was received during the month of June
21 of '04 -- the revenue received was 10.89 million, so it's
22 just a -- June was a lot -- this last June was an
23 unexpectedly high amount of revenue. So -- And you'll
24 see on the June 30, the close of business balance was

1 11.7. We've got the lab spending coming forward, and the
2 projected carry forward, then, into FY '05 is 6.45
3 million.

4 HEARING OFFICER TIPSORD: Thank you. Any
5 questions for Mr. King about --

6 MS. MANNING: I have a question just so that
7 I understand the document correctly, Mr. King. I'll try
8 to be as succinct as possible. The -- Looking at the
9 first, second, third and fourth quarters of '04 and the
10 reimbursement claims, those four figures then represent
11 the total of reimbursement claims paid to date in this
12 fiscal year; is that correct?

13 MR. KING: Well, there's the -- the four
14 quarters are listed under reimbursement claims.

15 MS. MANNING: The 13,886,000 --

16 MR. KING: Right.

17 MS. MANNING: -- and the 16,104,000 and the
18 other two figures as well --

19 MR. KING: Right.

20 MS. MANNING: -- those are the four
21 reimbursement dollars that have actually been spent this
22 fiscal year heretofore, right, because the lapse amount
23 of 5 million is just projected and estimated; is that
24 correct?

1 MR. KING: Right. That's -- Now, that is
2 stuff that is in process ready to get paid.

3 MS. MANNING: Okay.

4 MR. KING: So we're -- we don't know the
5 exact amount on that right now, but it looks like it's
6 going to be about 5 million.

7 MS. MANNING: Because we're approaching the
8 lapse period now as we -- of the fiscal year in June?

9 MR. KING: We're in the lapse right now.

10 MS. MANNING: That's right. That's right.

11 MR. KING: So we're projecting, then, that
12 with the lapse, the total will be the 64,841,000.

13 MS. MANNING: Which is substantially less
14 than the reimbursement claims from fiscal year '03
15 despite the fact that fiscal year '04 brought in much
16 more revenue in terms of the underground storage tank
17 fund; is that correct?

18 MR. KING: It is about 7 million dollars
19 less than the previous year, that's correct.

20 MS. MANNING: And the revenues taken into
21 the fund, I'm not especially good on math, but it looks
22 to me like it's about 13 million dollars more; is that
23 correct?

24 MR. KING: It's a little less than 12

1 million.

2 MS. MANNING: Thank you.

3 MR. KING: But again, you know, the fact
4 that there were a lot -- that there was a lot of money
5 that came in in June, you know, that may be money that's
6 coming ahead and July may not be nearly as high. I mean,
7 July of '03, which was the first month in the FY '04, was
8 11 million dollars. The previous year was only 3.7. So,
9 you know, how some of this stuff varies is hard to
10 predict, so -- but we have been taking the position that
11 we're watching this very closely so that we know we don't
12 get in a bad position.

13 MS. MANNING: Thank you.

14 HEARING OFFICER TIPSORD: If there's no
15 objection, we will admit the state underground storage
16 tank fund as Exhibit 76. Seeing none, it's admitted as
17 Exhibit 76.

18 MR. ROMINGER: Just for clarification for
19 the August 9 and 10 hearings, are -- is PIPE going to
20 prefile their alternative proposal prior to that date? I
21 think that would allow us to have a chance to look at it
22 and allow the hearings to go quicker.

23 MS. MANNING: If -- Exactly. We would, of
24 course.

1 MR. ROMINGER: Okay.

2 MS. MANNING: As I discussed with you prior
3 to the hearing, I think it would behoove us both to share
4 whatever information we're going to present to the Board
5 on August 9 and 10 prior to doing so.

6 MR. ROMINGER: Okay. So --

7 MS. MANNING: And we would commit to do so
8 just as you're committing to do so in terms of your
9 prefiled testimony.

10 MR. ROMINGER: So anything filed by the 2nd
11 that is going to be presented?

12 MS. MANNING: If we have anything to
13 present, we will do so in writing prior to the hearing.
14 We're not committed to the August 2 date necessarily. We
15 might need to respond to whatever it is we see from you.

16 HEARING OFFICER TIPSORD: I think what
17 Mr. Rominger -- and apparently you guys have had a
18 discussion off -- away from us which is now carried on
19 the record. You have an alternative proposal you may be
20 submitting, and I think his point is that if you plan to
21 present an alternative proposal on the 9th and 10th that
22 they would like to have that prefiled, and I agree. I
23 think that if -- I'm -- I want to encourage you guys to
24 continue to meet, but there are --

1 MS. MANNING: Thank you.

2 HEARING OFFICER TIPSORD: -- other people
3 involved, so I do think that if you have an alternative
4 proposal that you're sharing with the Agency that it
5 might behoove everyone if you were to prefile that also
6 on August 2 if at all possible.

7 MS. MANNING: We will do that. It has been
8 our hope -- and the reason I was a little reticent to
9 answer, it's been our hope that we can come together and
10 present a unified approach to the Board to make the
11 Board's job easier and everyone happy, so we will
12 continue on that course, and to the extent to which we
13 end up giving the Board divergent proposals --

14 HEARING OFFICER TIPSORD: Thank you.

15 MS. MANNING: -- we will present our
16 divergent proposal on August 2.

17 HEARING OFFICER TIPSORD: Thank you.

18 MS. MANNING: So long as the Agency makes
19 clear to me prior to that time what their proposal is and
20 we keep dialoguing about that.

21 MR. ROMINGER: Right. We've discussed
22 working on that, and we're hoping to come to as much
23 agreement as we can, but we were -- we're just concerned
24 about the hearings, keeping at it, and we prefer to have

1 the 9th and the 10th be the -- sort of the final
2 hearings; if we do have disagreement at that time, that
3 that's taken under advisement by the Board and not to,
4 you know, continue hearings based on further changes.

5 HEARING OFFICER TIPSORD: Thank you.

6 MS. MANNING: Thank you.

7 HEARING OFFICER TIPSORD: Is there anything
8 else? Dr. Girard, do you have anything to say?

9 BOARD MEMBER GIRARD: No. We look forward
10 to the hearing on the 9th and 10th.

11 HEARING OFFICER TIPSORD: Our next hearing
12 is scheduled for August 9 and 10, 2004, at the Illinois
13 Department of Natural Resources facility at the State
14 Fairgrounds. Those attending should enter by gate 7
15 on -- is it Taintor Road? -- and park in lot 21 on the
16 left after entering the State Fairgrounds. Driving
17 directions are available from the Illinois Department of
18 Agricultural's Web site at www.agr.state.il.us/ifs/maps.

19 At this time I want to thank everyone again,
20 Mr. Goodwin, Mr. Thomas. We appreciate your being here
21 today, and we are adjourned. Thank you.

22 (Hearing adjourned.)

23

24

1 STATE OF ILLINOIS)
2 COUNTY OF ST. CLAIR) SS
3)

4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of St. Clair,
6 State of Illinois, DO HEREBY CERTIFY that I was present
7 at the Illinois Pollution Control Board, Springfield,
8 Illinois, on June 25, 2004, and did record the aforesaid
9 Hearing; that same was taken down in shorthand by me and
10 afterwards transcribed, and that the above and foregoing
11 is a true and correct transcript of said Hearing.

12 IN WITNESS WHEREOF I have hereunto set my hand
13 and affixed my Notarial Seal this 13th day of July, 2004.

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Notary Public--CSR

#084-003688