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APPEARANCES

Board Members present:

Board Member G. Tanner Girard
Board Member Thomas E. Johnson
Alisa Liu, Environmental Scientist

Board Staff Members present:

Erin Conley

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PROCEEDINGS

(March 23, 2006; 9:59 a.m.)

HEARING OFFICER TIPSORD: Good morning. My name is Marie Tipsord, and we are going on the record at 10 a.m. this morning. Due to a typographical error in the hearing officer order setting this matter for hearing, two different times were listed and one was public noticed, so we're going to open now and we will recess until 1 o'clock, which is the other start time in the hearing officer order, and we'll see you at 1. Thank you.

(On March 23, 2006, at 10:01 a.m., the hearing was recessed, and after such recess the following proceedings were had on March 23, 2006, commencing at 1:10 p.m.)

HEARING OFFICER TIPSORD: Good afternoon. 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, 734. This is docket number R04-22 and 23. This is subdocket B. We are reconvening this hearing, having opened the proceeding at 10 a.m. and recessing until 1. This was

1 necessitated by the fact that there was a typographical
2 error in the hearing officer notice of hearing, and so we
3 had one time noticed and one time in the hearing officer
4 order, so there was no one here at 10 so we just recessed
5 until now.

6 To my left is Dr. Tanner Girard, the presiding
7 board member assigned to this matter. To my right is
8 Board Member Thomas Johnson. From our technical staff to
9 his right is Alisa Liu, and Erin Conley is trying to hide
10 in the back.

11 The purpose of today's hearing is to hear the
12 testimony from the Illinois Environmental Protection
13 Agency, CW3M, CSD Environmental Services and United
14 Science Industries. I will swear in the testifiers and
15 mark the prefiled testimony as an exhibit. We will take
16 all the testimony as if read. We will begin in the order
17 of which they basically ended up on my desk. First was
18 IEPA, then CW3M, then CSD, and finally USI. Oh, wait.
19 PIPE was before USI. I apologize. PIPE and then USI.
20 If times permits, I will then allow anyone else who has
21 not prefiled to testify. After entering the prefiled
22 testimony as an exhibit, I will allow for questions to be
23 asked. Anyone may ask a question. However, I do ask
24 that you raise your hand, wait for me to acknowledge you.

1 After I have acknowledged you, please state your name and
2 who you represent before you begin your question. Please
3 be advised that I will allow only questions to be asked.
4 If you begin to testify, I will have you sworn in, but
5 then I will politely ask you to simply state your
6 question. I will ask that you speak one at a time. If
7 you speak over each other, the court reporter will not be
8 able to get your questions on the record.

9 Please note that any question asked by a board
10 member or staff are intended to help build a complete
11 record for the Board's decision and not to express any
12 preconceived notions or bias. I will also remind you
13 that as this is a rulemaking proceeding, testimony which
14 is relevant and not repetitious will be allowed, and I
15 think that's all I have right now. The current
16 up-to-date notice and service list are available on the
17 Web under R04-22, 23, subdocket B. Dr. Girard?

18 BOARD MEMBER GIRARD: Thank you. Good
19 afternoon. On behalf of the Board, I welcome everyone to
20 the docket B hearing in this UST rulemaking. We
21 appreciate the time and effort that went into the
22 prefiled testimony and we look forward to further
23 testimony and questioning today. Thank you.

24 HEARING OFFICER TIPSORD: Okay. With that,

1 as I said, I think we will begin with the Agency, who I
2 received their prefiled testimony first.

3 MR. ROMINGER: Okay. Go ahead and swear
4 them in?

5 HEARING OFFICER TIPSORD: Yeah.

6 (Witnesses sworn.)

7 MR. ROMINGER: Okay. Here for the Agency we
8 have Doug Clay, the manager of the LUST section; Brian
9 Bauer, one of the senior project managers in the LUST
10 section; and Gary King, the manager of the division of
11 remediation management; and we -- Doug Clay prefiled his
12 testimony that I ask just be entered as read as an
13 exhibit.

14 HEARING OFFICER TIPSORD: Okay. Do you have
15 a copy of that?

16 MR. ROMINGER: Yes, I do.

17 HEARING OFFICER TIPSORD: If at any time any
18 of you have trouble hearing, please just raise your hand
19 and -- or throw something at me or something like that
20 and -- Thanks. If there's no objection, we will enter
21 the testimony of Douglas Clay as Exhibit No. 116. Seeing
22 none, it is admitted as Exhibit No. 116.

23 MR. ROMINGER: Okay. And then we have
24 revisions to the attachments to his prefiled testimony,

1 and I've given each of the board members a copy of that,
2 and there are copies on the table back here, and it might
3 be easiest if we just enter each of those as a separate
4 exhibit just for future reference to the documents. The
5 first one is a revised Attachment 1, which is a
6 spreadsheet of the scopes of work for part 732.

7 HEARING OFFICER TIPSORD: Is there any
8 objection to admitting this revised? Seeing none, that
9 will be Exhibit No. 117.

10 MR. ROMINGER: The second one is revised
11 Attachment 2, which is scopes of work for part 734.

12 HEARING OFFICER TIPSORD: Any objection to
13 admitting that as Exhibit No. 118? Seeing none, we'll
14 mark that. Give me a second to catch up, Kyle.

15 MR. ROMINGER: Okay.

16 HEARING OFFICER TIPSORD: Okay. Go ahead.

17 MR. ROMINGER: Okay. The next one is
18 revised Attachment 3, a summary of professional
19 consulting services lump sums for part 732.

20 HEARING OFFICER TIPSORD: Any objection?
21 Seeing none, we'll mark this as Exhibit 19. 119. I'm
22 sorry.

23 MR. ROMINGER: Okay. The next one is
24 revised Attachment 4, summary of professional consulting

1 services lump sums for part 734.

2 HEARING OFFICER TIPSORD: If there's no
3 objection, we'll enter this as Exhibit No. 120. Seeing
4 none, it's Exhibit No. 120.

5 MR. ROMINGER: Okay. Then we have two
6 documents that were not part of Doug's prefiled
7 testimony, but we're submitting it as proposed amendments
8 to Sections 732.845 and 734.845, and then the --

9 HEARING OFFICER TIPSORD: If there's no
10 objection, we'll admit 732.845 as Exhibit 121. Seeing
11 none, we'll mark that Exhibit 121. And 734.845 will be
12 Exhibit No. 122, if there's no objection. Seeing none,
13 it's Exhibit No. 122.

14 MR. ROMINGER: And then Doug Clay can
15 explain the differences between what was originally
16 submitted and these revised documents. We have just some
17 minor changes that we made.

18 HEARING OFFICER TIPSORD: Okay. Go ahead,
19 Doug.

20 MR. CLAY: The changes that we're filing
21 today are as a result of the Agency reviewing the
22 prefiled testimony of the other parties and making
23 changes in response to those prefiled comments. Exhibit
24 117, the -- which is a spreadsheet for the 732 scope of

1 work, on page 1 we reduced the number of hours for task
2 B, entitled "Prepare waste profile and arrange for
3 landfill approval," because the addition of unit rates
4 for early action fieldwork was added elsewhere. On page
5 2 we deleted task 5c, entitled "Site visit for
6 preparation of 20-day and 45-day reports," which the
7 Agency added from the Board's proposed task list because
8 of the addition of unit rates in early action fieldwork.

9 On page 7 and page 11 we deleted the scope of
10 work related to classification by exposure pathway
11 because this is no longer an option under part 732. On
12 page 19 we moved the scope of work for off-site access to
13 its own section. This scope of work was previously
14 included under the scopes of work for preparation and
15 investigation plans for off-site contamination for sites
16 classified pursuant to 732.307.

17 For the spreadsheet for 734, scopes of work, the
18 changes are similar to 732. This is -- was marked
19 Exhibit 118. Page 1, same change was made as in 732. On
20 page 2, the same change was made as 732. On page 6,
21 added a clarifying note that for the preparation of the
22 stage 1 plan, which is merely a certification including
23 the 45-day report, is included under the personnel time
24 and the preparation and submission of a 20-day and 45-day

1 report. On page 11, moved the scope of work for off-site
2 access to its own section. This scope of work was
3 previously included under the scope of work entitled
4 "Preparation and submission of stage 3 site investigation
5 plan."

6 On the summaries for lump sums for both 732 and
7 734, they were marked Exhibits 119 and 120. The changes
8 were the same. We amended the lump sums in the first two
9 lines due to the addition of unit rates for early action
10 fieldwork and field oversight. We moved the off-site
11 property access from site investigation to its own line.

12 The proposed amendments to Sections 732.845 and
13 734.845, which were marked as Exhibits 121 and 122, the
14 base text for these sections includes the changes
15 proposed by the Board in its January 5, 2006, order. The
16 Agency's proposed amendments are shown in double
17 strike-through and double underline. To summarize those,
18 the included lump sum amounts are amended to reflect the
19 amounts derived from the Agency's analysis of scopes of
20 work. These are lump sums shown as -- on the summary
21 sheets.

22 Three site visits were added under Section A2 for
23 each section of the early action fieldwork and field
24 oversight. These unit rates expressly exclude fieldwork

1 and site oversight for the mitigation and monitoring of
2 fire, explosion or vapor hazard required under early
3 action. Subsection A3 is amended to reflect the addition
4 of unit rates for early action fieldwork and field
5 oversight. Subsection A4 is added to clarify that the
6 mitigation and monitoring of fire, explosion or vapor
7 hazards required under early action is to be reimbursed
8 on a time and material basis.

9 Under Section 734.845, the Agency has added back
10 in a lump sum for the preparation and submission of the
11 stage 3 site investigation plan. The Agency believes
12 that the lump sum is appropriate for preparation of the
13 stage 3 plan because it is still going to be based on
14 results similar to stage 2 and will be contingent upon
15 those results. The variables will be the fieldwork and
16 the off-site access that is required as part of the stage
17 3 plan, which the Agency has broken out into separate
18 line items. This change still allows that variability in
19 stage 3 for fieldwork based on site-specific
20 circumstances encountered in the field. That work is
21 reimbursed in accordance with unit rates. A lump sum is
22 added for off-site access. The lump sum is applied per
23 off-site property and is for the best efforts under the
24 rules to obtain off-site access.

1 That concludes the summary of the changes we're
2 proposing today.

3 HEARING OFFICER TIPSORD: Thank you. Any
4 questions?

5 MR. ROMINGER: That's all we have, and we're
6 ready for questions.

7 HEARING OFFICER TIPSORD: Are there any
8 questions for the Agency today?

9 MR. KOCH: Jay Koch, United Science
10 Industries. I have a question with regard to moving the
11 preparation -- the time necessary for the preparation of
12 the stage 1 plan to the portion -- or to the task
13 associated with preparation of 20- and 45-day reports.
14 What was the rationale for that move?

15 MR. BAUER: The -- I don't know if you've
16 seen the new 45-day report forms that are on the Internet
17 that we developed for the 734 regulations. The
18 certification for the stage 1 is included on that form,
19 and that was -- when you certify the 45-day report, you
20 also have to certify the stage 1 at the same time, and
21 that's all that it requires.

22 MR. KOCH: So even though the requirement
23 for the stage 1 plan is part of the site investigation
24 portion, do you feel it's appropriate to include that

1 cost during the early action period?

2 MR. BAUER: The rule -- Basically, the rules
3 just require a certification. That's all it requires for
4 the plan. It's just that there is costs associated with
5 stage 1 also. I mean, we didn't eliminate those costs,
6 but the costs for the certification portion of it has
7 been put in as part of the form.

8 MR. KOCH: I'm glad that you provided that
9 clarification, because without that clarification, we
10 wouldn't know logically that that cost should be
11 allocated to that particular phase of the project. I
12 would have thought that it would have been more logical
13 for that to continue to be included under the
14 investigation phase, but as long as each activity is
15 specifically allocated, that's fine. I'm just curious
16 why you moved it.

17 MR. BAUER: Yeah, there's still a lump sum
18 for stage 1, but there is not -- the certification is
19 included as part of the 45-day report.

20 HEARING OFFICER TIPSORD: Anything further?

21 MS. MANNING: Claire Manning on behalf of
22 PIPE, Doug. We had several questions just geared toward
23 how you arrived at the specific figures that are -- let's
24 just look at 732.845. A1, there was an original figure

1 of 960. Now it's 1,095. How did you come up with either
2 of those? Could you just explain in more detail how you
3 arrived at those figures?

4 MR. CLAY: If you look at the summary sheet,
5 which is identified as Attachment 3, which was over at
6 the table here, that's a summary of going through the
7 spreadsheets, as I believe the Board had requested,
8 assigning hours for different tasks. Then what we did
9 was we looked at the high and low range for the type of
10 person that would be performing those tasks and, you
11 know, multiplied the number of hours, and then we
12 summarized those on Attachment 3. For example, this is
13 for the -- in the larger group such as preparation for
14 abandonment or removal of USTs, and as you can see under
15 732.845 A1, where we changed the figure from 960 to
16 1,095, that corresponds with the high range on this
17 summary table. I think in all cases where we inserted a
18 new number as a result of the spreadsheet, we went with a
19 high number instead of a, you know, middle number or an
20 average or low number.

21 I'd also like to point out, though, that in most
22 cases we assigned in the spreadsheet a project manager to
23 do the majority of the tasks. In reality and what we see
24 in practice is that a lot of times the project manager is

1 not doing those tasks. A lot of times it's a person at a
2 lower salary such as a scientist or technician. So, you
3 know, the numbers that we assigned were actually the high
4 end of not only the salaries but the types of person who
5 would be doing those tasks. It wouldn't be required that
6 a project manager perform those tasks, but we tried to
7 err on the most senior person doing it with the highest
8 salary.

9 MS. MANNING: When you refer to the
10 spreadsheet, is the spreadsheet in evidence or is that
11 something you guys worked with?

12 MR. CLAY: No, that's -- it was attached to
13 my prefiled testimony as Attachment 1, and it was also --
14 the revised Attachment 1 is over on the table.

15 MS. MANNING: Okay. And the revised
16 attachment, is that also what you filed on March 20 with
17 the Board?

18 MR. CLAY: No. This is -- We -- This -- The
19 revised attachment is what I filed -- we filed today with
20 minor changes as I described earlier.

21 MS. MANNING: Right. So the spreadsheet
22 that you're referring to is in fact the one you filed.
23 There's not another spreadsheet.

24 MR. CLAY: No. The -- Just amendments to

1 the one I filed, yes.

2 MS. MANNING: Okay.

3 HEARING OFFICER TIPSORD: Did you have a
4 follow-up on that or --

5 MR. WIENHOFF: Yes. Jeff Wienhoff from CW3M
6 Company. When you -- You say you assigned people and
7 hours, and your -- I think in your testimony you
8 described the group of people, 140 years of experience or
9 whatever. Was that -- Were you all sitting in a room
10 talking it over? Did everybody fill it out once and then
11 you take, you know, the consensus of what each individual
12 person chose? I mean, how did that -- I guess the
13 process work?

14 MR. CLAY: We convened everybody in a
15 conference room, and like I said, there were a total of I
16 think it was 12 or 13 of us in the room. It's in my
17 prefiled testimony. Convened everybody in a room,
18 discussed each task as given to us in the -- by the
19 Pollution Control Board in their order, went through each
20 one, talked about what type of person, such as an --
21 would an accountant be doing this work, would a project
22 manager -- could a project manager be doing this work, a
23 technician; what -- you know, what normally -- who
24 normally would be doing that work, or at least who have

1 we seen do that work. And like I said, if we assigned a
2 project manager, a lot of times we'll see technicians
3 doing that work, but we went ahead and -- if we seen a
4 project manager doing it, we went ahead and assigned a
5 project manager doing that. We reached consensus in the
6 group and then we went -- then I had one of my staff go
7 through and do the high and low calculations based on the
8 type of person, if it was a project manager or
9 technician, whoever was assigned to -- whoever we
10 identified under the personnel column.

11 MR. WIENHOFF: And then just about how long
12 did it take in that conference room? Are we talking a
13 week? Are we talking a half a day? Do you have any
14 recollection?

15 MR. CLAY: We -- What we did was we first
16 distributed the spreadsheet, and then when we met, I
17 think we met two or three times, and, I mean, the first
18 meeting was --

19 MR. BAUER: Long. It was almost --

20 MR. CLAY: Yeah, it was probably a full day,
21 and then we had I think one or two subsequent meetings,
22 but, I mean, the people that were in that meeting also
23 had an opportunity to look at it before the meeting.

24 MR. WIENHOFF: So they weren't coming in not

1 having a clue. They had prepared for it.

2 MR. CLAY: Right.

3 MS. MANNING: Did you actually draw from
4 submittals that were submitted to you in terms of
5 documents submitted by companies that you pulled data out
6 of, or was it basically what everybody was thinking about
7 in terms of what they've reviewed?

8 MR. CLAY: Well, we thought we were asked to
9 look at it from what would go into that task. If you
10 recall, our previous submittal to the Board in Subpart H
11 drew from actual plans and reports submitted, so I think
12 we were asked to look at it from a different point of
13 view, and so we did not necessarily go back to individual
14 plans and reports like we had done in our first
15 submittal, but we basically relied on the 140 years or so
16 experience of those 12 to 13 people.

17 MS. MANNING: So is it safe to say the
18 experience is the experience based on reviewing that but
19 not necessarily being out in the field doing the actual
20 work?

21 MR. CLAY: It's based on the review --
22 reviewing what we have seen from -- submitted from
23 consultants in plans and reports, budgets, reimbursement
24 submittals --

1 MS. MANNING: Again, without actually -- go
2 ahead.

3 MR. CLAY: -- for thousands of plans and
4 reports over the ten or fifteen years that covers the
5 experience of the people that were in that room.

6 MS. MANNING: But it really -- was it -- let
7 me just ask you, the workgroup was really the reviewers.
8 That's pretty correct, isn't it? And --

9 MR. CLAY: The workgroup was five senior
10 project managers that do the direct review, five unit
11 managers that oversee all of the LUST staff, myself and
12 two LUST claims unit -- well, senior reviewers.

13 MS. MANNING: But in terms of field
14 experience, maybe one or two of those people or less
15 would have actual field experience being out there
16 actually conducting a remediation of an underground
17 storage tank site; is that right?

18 MR. CLAY: They didn't have field
19 experience, but they reviewed literally thousands of
20 plans and reports and --

21 MS. MANNING: Right.

22 MR. CLAY: -- claim submittals from
23 consultants throughout the state to -- you know, to
24 develop their experience in these reviews.

1 HEARING OFFICER TIPSORD: Miss Manning,
2 before you move on, did you have a question?

3 MR. GOODIEL: I have -- Russ Goodiel of
4 Chase Environmental. Just to follow up kind of what
5 Claire was talking about, that was my question, is your
6 consensus is reached, but basically it's not through
7 field experience and your project managers being out
8 there to know what it really takes in the real world to
9 actually accrue that information, put that information
10 together, the contacts to be made, everything that you
11 have to do. I mean, they're simply reviewing previous
12 reports that were selected by whomever at some point in
13 time and putting that information together and then
14 making an assumption that it takes this many hours to do
15 this specific task rather than having someone who knows
16 what it takes out in the field to actually from scratch,
17 if you will, assemble that information.

18 HEARING OFFICER TIPSORD: Mr. -- I think
19 that's been asked and answered several times. And the
20 answer is project managers, very little field experience,
21 correct?

22 MR. CLAY: That's correct.

23 HEARING OFFICER TIPSORD: Thank you.
24 Mr. Koch, you had a follow-up with that?

1 MR. KOCH: Yes, I had a follow-up question
2 on the 140 combined years of experience. I believe your
3 testimony says that the workgroup consisted of yourself,
4 your five unit managers, one of which is Mr. Chappel,
5 who's here today, and I would like to ask, since you've
6 been the UST section manager since '94, I believe
7 Mr. Chappel was the UST section manager prior to that,
8 and I'm -- I can't recall right off the top of my head
9 when Mr. Chappel's tenure started as the section manager,
10 but I believe it was back in the late '80s. Is it a fair
11 characterization to say that this workgroup convening,
12 including yourself and Mr. Chappel, represents the
13 Agency's chain of -- management chain of authority and
14 control over the UST program essentially since its
15 inception? Is that a fair characterization?

16 MR. CLAY: There was one other manager. As
17 far as I know, the -- there's been three managers of the
18 LUST unit or section since its inception, but I think
19 that's correct in that between Harry Chappel and myself,
20 that's certainly the large majority of the time.

21 MR. KOCH: And so it's that workgroup that's
22 been convened that would have also been the group that
23 would have had direct oversight or supervisory
24 responsibility over the actual reimbursement -- budgeting

1 and reimbursement decisions that were made since, say,
2 1993?

3 MR. CLAY: The -- It would be the -- over
4 the budgeting. The reimbursement, at least as long as
5 I've been there, I don't believe -- maybe Gary can answer
6 this -- at any point has been under the LUST section
7 manager. The reimbursement has always been under a
8 different group at the Agency. So the budgeting
9 since '93, yes, but not the reimbursement.

10 MR. KOCH: The -- Just to clarify, the
11 process that any claim goes through is both a technical
12 review and a financial review, correct?

13 MR. CLAY: Well, there's a -- 732 or the
14 public act, which is now 734, there would be a budget
15 associated with a portion of that. Early action, for
16 example, does not go through the technical portion.

17 MR. KOCH: Sure, but generally speaking, you
18 will have a technical review or review claims to make
19 sure that the work that was performed was necessary, and
20 then once that claim has been reviewed and approved by
21 the technical person, it will go on to the fiscal unit
22 and the fiscal unit will deal with it, correct?

23 MR. CLAY: No, that's not true.

24 MR. KOCH: All right. So you -- can you

1 describe the process that you go through?

2 MR. CLAY: Right. If -- For -- Let's break
3 it down into the things that have budgets and don't. A
4 site investigation plan, site classification plan,
5 corrective action plan, either 732 or 734, would require
6 a budget. That would be reviewed by technical staff.
7 Usually associated with the technical plan, the budget
8 would be associated with the technical plan, but for
9 things like early action under 732 or 734, unless there's
10 a specific technical question, we don't see most of those
11 at all. No technical staff will look at those.

12 MR. KOCH: Just to clarify, Doug, who does
13 see those?

14 MR. CLAY: It would be Doug Oakley and his
15 staff.

16 MR. KOCH: So the accounting group only.

17 MR. CLAY: Correct.

18 MR. KOCH: Okay.

19 MR. CLAY: Under 732 and 734, there's
20 approved budget. Unless there is a specific technical
21 question when the claims come in, they rely on what we
22 approved in the budget and that's what they would review
23 it against, and so in a large majority of cases we
24 don't -- wouldn't see those claims again once we've

1 approved the budget.

2 MR. KOCH: So just to clarify the process,
3 during the budgeting process, technical review or review
4 of the work plan and the budget identifies the number of
5 hours, as an example, for professional services that
6 might be suggested in that budget and makes a
7 determination as to whether those hours are reasonable
8 and consistent with the plan and also whether the plan is
9 a reasonable plan to meet the minimum requirements of the
10 regulations.

11 MR. CLAY: That's true.

12 MR. KOCH: Okay. So getting back to the
13 workgroup, then, that was convened, that workgroup would
14 have been the group that would have been responsible for
15 reviewing the plans and reports and budgets that came in?

16 MR. CLAY: There was also two members of the
17 LUST claims unit as part of that, so it would -- we tried
18 to convene a group that included people -- all the people
19 that were involved in the budget and reimbursement
20 process.

21 MR. KOCH: And that group, like you
22 testified, has got 140 years' combined experience. Do
23 you have an estimate of the actual number of professional
24 consulting hours that that group may have reviewed and

1 approved since 1993?

2 MR. CLAY: Professional consulting hours?
3 What do you mean? The hours that added up in budgets?

4 MR. KOCH: The total number of professional
5 consulting hours that the Agency may have reviewed
6 since '93.

7 MR. CLAY: I don't have a -- wouldn't have a
8 clue on that.

9 MR. KOCH: Just a ball-park. Do you think
10 it's tens of thousands, hundreds of thousands, millions
11 of hours?

12 MR. CLAY: I mean, I would -- I don't know.
13 I'm going to have to think about it, but, I mean, it
14 would be six or seven figures, I would think.

15 MR. KOCH: Okay. And were you aware that --
16 or have you added together by phase all of the hours for
17 professional services that that workgroup has proposed as
18 part of its subdocket B testimony?

19 MR. CLAY: Have we looked at those? Yeah.
20 I mean, yeah. They're included in the spreadsheet.

21 MR. KOCH: Are you aware that the hours --
22 the total number of hours per phase that were proposed as
23 part of your subdocket B testimony are actually less than
24 what was proposed under docket A?

1 MR. CLAY: We looked at it a different way.
2 We looked at it the way the Board -- We approached it the
3 way the Board asked us to approach it, assigning hours
4 per task, as opposed to the way we did it before, and we
5 didn't look at what we had proposed in the original rule
6 of the hours until after we had compiled the spreadsheet,
7 so, I mean, until we put together this summary, we
8 weren't looking at how we had done it before or the
9 number of hours that were associated with that. This was
10 a different approach by looking at the task, number of
11 hours to perform that task and who would perform that
12 task. There's some higher and there's some lower.

13 MR. KOCH: But going back to the question,
14 in the aggregate per phase, are you aware that these
15 docket B numbers were less than what was proposed by the
16 Agency under docket A?

17 MR. CLAY: I am aware now. I mean, we
18 weren't aware as we were going through it --

19 MR. KOCH: Okay.

20 MR. CLAY: -- but we're -- I mean, that's
21 why we put together the summary sheet in Attachment 3 and
22 the corresponding one for 734, is to compare what we had
23 proposed in docket A and what came out in the spreadsheet
24 and how -- you know, and then we obviously -- we put

1 those into a -- the -- we put that into the 732.845 and
2 are proposing that today in Exhibits 121 and 122.

3 MR. KOCH: Considering that this workgroup
4 has -- and I agree -- has probably seen seven figures'
5 worth of hours for professional services over the last
6 thirteen years or so and the fact that the Board's order
7 in docket A for final ruling under docket A recognized
8 that the hours proposed by the Agency under docket A were
9 nowhere near the historical reimbursement rates, how do
10 you -- and the fact that this same workgroup was the one
11 that actually made those reimbursement decisions that
12 were the subject of the Board's ruling under docket A
13 where they determined that the hours weren't appropriate
14 to historical reimbursements, how do you reconcile the
15 difference between what this group actually reimbursed
16 and what they've now proposed twice, once under docket A
17 and once under docket B?

18 MR. CLAY: I mean, I have to go back and
19 look at the Board order, but I don't recall the Board
20 order drawing that conclusion. I thought the Board order
21 just felt like there needed to be additional testimony
22 regarding the lump sum rates for professional services.
23 I didn't recall them drawing the conclusion that you
24 drew.

1 MR. KOCH: Well, specifically -- and I
2 believe it's on page 6 in the Board's -- the December 1,
3 '05, testimony -- the Board states that this rule under
4 docket B should include rates for professional services
5 that more accurately reflect historical reimbursements,
6 so that was I guess part of the testimony.

7 MR. CLAY: I don't think that was testimony.
8 That wasn't testimony, was it?

9 MR. KOCH: The order I mean, yes.

10 MR. CLAY: Okay. I read it. I didn't
11 recall that, but I'm not sure that, again, that draws the
12 same conclusion that you just drew, that it was much
13 lower than historical rates, whatever you said.

14 MR. KOCH: Is it different in your opinion
15 than what that same workgroup had the responsibility to
16 oversee in terms of administering the UST program for the
17 last 13 years? Were those estimates different?

18 MR. CLAY: What estimates?

19 MR. KOCH: Your estimate of the number of
20 hours that's needed -- professional service hours that
21 are needed to perform corrective actions.

22 MR. CLAY: Like I said before, what we did
23 was what we thought were -- we were asked to do by the
24 Board, which is go through each task, assign the number

1 of hours and the type of personnel that would perform
2 that task, and it came out what it came out. I mean,
3 some were lower, some were higher. You know, in the
4 original docket A, our original proposal, what we did was
5 we did go back and look at historic tasks. This is
6 basically relying on the 140 years or so experience to
7 assign the number of hours and the type of person that
8 would perform that. I mean, it was just a different
9 approach to the same end, and the numbers came out where
10 they came out. I mean --

11 MR. KOCH: And the numbers under docket B
12 are less than those proposed by the Agency in docket A.

13 MR. CLAY: Some are less and some are
14 higher.

15 MR. KOCH: In the aggregate at the phase
16 level, they're all less.

17 HEARING OFFICER TIPSORD: Is that a
18 question?

19 MR. KOCH: Yes. Are they all less at the
20 phase level?

21 MR. CLAY: At the phase level? What's the
22 phase level?

23 MR. KOCH: Early action, corrective action,
24 site investigation.

1 MR. CLAY: We've got the summary here that
2 has what we proposed in the original Subpart H and the
3 high and low from the task breakdown. I mean, just the
4 first one that I look at, the preparation for abandonment
5 or removal of USTs, is higher.

6 MR. KOCH: That's a specific task. The
7 question was at the phase level.

8 MR. CLAY: Yeah. I'm --

9 MR. BAUER: Are you talking about the phase
10 level like the site investigation?

11 MR. KOCH: Yes.

12 MR. BAUER: If you look at the site
13 investigation one, the evaluation, it came up that the
14 total phased approach, it is much higher than what we --
15 in subdocket B than subdocket A.

16 MR. CLAY: Yeah. If you look at, like, for
17 preparation and submission of the stage 2 site
18 investigation --

19 HEARING OFFICER TIPSORD: Excuse me,
20 Mr. Clay. Let's specify what exhibit you guys are
21 looking at for purposes of the record.

22 MR. CLAY: I'm sorry. Attachment 4, 734
23 summary, which would be Attachment -- or Exhibit 120.

24 HEARING OFFICER TIPSORD: Thanks.

1 MR. CLAY: If you look at the -- about
2 halfway down the page, the preparation and submission of
3 stage 2 site investigation plan, and in Subpart H we had
4 \$3200 for that task or phase or whatever your terminology
5 is, and what we're proposing now is \$4,090, so that one
6 went up. Stage 3, preparation and submission of a stage
7 3 site investigation plan also went up. Stage 1,
8 preparation and submission of a stage 1 site
9 investigation plan also went up. No, I'm sorry. That
10 one went down, and the site investigation completion
11 report went up.

12 MR. KOCH: The -- Those are individual tasks
13 or line items, whatever they may be called. At the phase
14 level, at least the information that was filed on --

15 HEARING OFFICER TIPSORD: Excuse me,
16 Mr. Koch. I think there's a -- I'm also finding some
17 confusion as to phase level. I think you need to explain
18 more clearly what you meant by phase level, because I
19 thought they just answered that question.

20 MR. KOCH: Well, these items -- there are
21 multiple items on this sheet -- I'm looking at Attachment
22 4 -- that could be considered to be included in a certain
23 phase of the project.

24 HEARING OFFICER TIPSORD: Okay.

1 MR. KOCH: And so you would have to add
2 multiple items together from the sheet to determine the
3 total per-phase cost, per-phase professional service
4 hours.

5 HEARING OFFICER TIPSORD: Okay. Thank you
6 for that clarification.

7 MR. CLAY: We didn't calculate it based on
8 what you're referring to as a phase level. You know, we
9 didn't calculate or group it into whatever phase is, but
10 there's other things that are variable too from one site
11 to another. For example, the off-site property access,
12 you may have that cost in a plan or report or you may
13 not. You may have it in there 20 times if you have to do
14 an off-site access. So we didn't include that.

15 MR. KOCH: And just to --

16 MR. CLAY: Plus none of the fieldwork was
17 included in this. This is just the -- really the office
18 time for the consultant.

19 MR. KOCH: In summary, Doug, would you say
20 that the subdocket A number of hours and subdocket B
21 number of hours are -- even though I believe that the
22 docket B is lower in terms of hours, they're pretty close
23 to one another?

24 MR. CLAY: I didn't compare the hours. We

1 just looked at this summary sheet and compared it to the
2 original Subpart H for the similar task or group of
3 tasks, so I didn't look at the total number of hours.

4 MR. KOCH: Okay.

5 HEARING OFFICER TIPSORD: Mr. Truesdale, you
6 had your --

7 MR. TRUESDALE: My name's Joe Truesdale.
8 I'm with CSD Environmental Services.

9 HEARING OFFICER TIPSORD: Mr. Truesdale,
10 slow down and speak up.

11 MR. TRUESDALE: My name is Joe Truesdale.
12 I'm with CSD Environmental Services. In the group that
13 you convened, the workgroup, Doug, you said that it was a
14 joint meeting of several unit managers. Were you a part
15 of that workgroup?

16 MR. CLAY: Yes.

17 MR. TRUESDALE: Were any other members of
18 the IEPA staff in this proceeding today in that
19 workgroup?

20 MR. CLAY: And just to correct your -- part
21 of your question, it was all the unit managers, not some
22 of the unit managers.

23 MR. TRUESDALE: All the unit managers.

24 MR. CLAY: If you were referring to people

1 at the table, Brian Bauer was part of that workgroup and
2 I was part of that workgroup.

3 MR. TRUESDALE: And this workgroup made
4 decisions based on your aggregate 140 years of
5 experience; is that correct?

6 MR. CLAY: That's correct.

7 MR. TRUESDALE: Based on your best
8 recollection from reviewing reports over this 140 years
9 of experience.

10 MR. CLAY: Correct.

11 MR. TRUESDALE: In your experience, what was
12 the cost for preparation of a low-priority groundwater
13 monitoring plan from the last review that you conducted?

14 MR. CLAY: I don't conduct those reviews.

15 MR. TRUESDALE: Mr. Bauer, then, what was --
16 what is your recollection of the cost for preparation of
17 a low-priority groundwater monitoring plan the last you
18 reviewed?

19 MR. BAUER: From a -- Basically, I can't
20 tell you I remember the last groundwater monitoring plan
21 I received.

22 MR. TRUESDALE: Any of the last five?

23 MR. BAUER: You know, we don't see
24 groundwater monitoring plans. We didn't evaluate this

1 on -- based on the total dollar amount or anything like
2 that that came in. We looked at it as a task.

3 MR. TRUESDALE: It was based on your
4 experience in reviewing these types of reports, correct?

5 MR. CLAY: What we did was, as I said, we
6 looked at the tasks that were identified by the Board.
7 We did add some tasks that -- and we assigned hours and
8 the type of person that would do that, so we didn't look
9 at a cost for a groundwater monitoring plan.

10 MR. TRUESDALE: But based on your experience
11 from reviewing these types of submittals, your
12 recollection from reviewing these types of submittals for
13 specific tasks that you outlined, correct?

14 MR. CLAY: It's based on what we -- our
15 experience, what we felt went into that, what we saw in
16 the past of other people billing what went into that.

17 MR. TRUESDALE: Your recollection of what
18 other people billed, yet you cannot tell me what you
19 recall the last amount you approved for the last
20 low-priority groundwater monitoring plan you reviewed,
21 yet you've assigned hours to that.

22 MR. CLAY: We did it based on the 13 people
23 in the room. We assigned hours and the type of person
24 that would do that, that's correct.

1 MR. TRUESDALE: Are there any of these on
2 here, Mr. Bauer, that you can recall any of the last five
3 costs from a submittal in any of these tasks?

4 MR. CLAY: Once again, we did not do it
5 based on a total amount --

6 MR. TRUESDALE: Number of hours, then,
7 instead of total amount of dollars. Number of hours of
8 professional consulting time.

9 MR. CLAY: Part of the problem in answering
10 that question, Joe, is, you know, we don't get it
11 necessarily broken down by that task, so what we do is --
12 and we get it -- you know, the consultants in this room
13 all do it a different way.

14 MR. TRUESDALE: Right.

15 MR. CLAY: So -- You know, so we don't get
16 it in, you know, what did the individual, the consultant,
17 do for that specific task.

18 MR. TRUESDALE: Yet based on your
19 experience, you were able to break it down in this
20 format.

21 MR. CLAY: Uh-huh. Based on what we see
22 goes into the plans and reports and based on our
23 experience, this is what we -- this was our best effort
24 to break it down.

1 MR. TRUESDALE: But based on your
2 experience, you don't recall the amount of hours that
3 went into any of these items from the last actual
4 submittal.

5 MR. CLAY: As I said, they don't -- the
6 consultants don't usually break it down in those tasks.

7 MR. TRUESDALE: So how were you able to
8 divide it into these tasks?

9 MR. CLAY: We didn't divide it into tasks.
10 The tasks were given to us and we were asked to assign
11 the hours, and we did it to the best of our ability based
12 on our professional -- or based on our experience.

13 MR. TRUESDALE: All right. So it's based on
14 your recollection and not on actual submittals to the
15 Agency in the past or currently.

16 MR. CLAY: No, we did the actual submittals
17 in our original Subpart H proposal. We were asked to
18 look at it differently this time.

19 MR. TRUESDALE: How many -- One last
20 question. How many stage 3 site investigation plans have
21 been reviewed by the Agency under the 734 rule currently?

22 MR. CLAY: None that I'm aware of.

23 MR. TRUESDALE: Okay.

24 MR. CLAY: We developed those numbers based

1 on the rules and what goes into a stage 3 plan.

2 MR. TRUESDALE: So the 140 years of
3 experience in that particular task is null and void?

4 MR. CLAY: Well, I don't think, you know,
5 any -- since the rules were just passed last month, I'm
6 not sure that anybody's done a stage 3.

7 MR. TRUESDALE: We've submitted some. I've
8 done three.

9 MR. CLAY: Yeah. I mean, I -- it's just --
10 an off-site site investigation plan, I mean, just because
11 you -- we've labeled it now with the new rules as stage
12 3, I'm not sure, you know, it's something all that
13 different.

14 MR. TRUESDALE: Okay.

15 HEARING OFFICER TIPSORD: Did you have a
16 follow-up? Your hand was up for --

17 MS. ROWE: Carol Rowe, CW3M. It's kind of a
18 follow-up to a couple of questions. We're trying to
19 figure out how the actual hours were estimated by task.
20 If you don't see everybody submit these in the same
21 format right now, how do you assign an hour for a small
22 task? How do you figure that out? How did you guys
23 deliberate that?

24 MR. CLAY: We again did it based on our best

1 professional judgment. I mean, you guys --

2 MS. ROWE: Well --

3 MR. CLAY: -- you guys estimate this on
4 every project you submit because you do it on -- you
5 submit a budget to us.

6 MS. ROWE: Correct. Well, for example, on a
7 45-day report, did you establish any benchmarks for what
8 might be in that report? Was it two tanks? Was it
9 twelve tanks? When you estimated hours to tabulate
10 results, was it five samples? Was it BTEX only? Was it
11 thirty samples? Was it P&A? Was it -- Did you put any
12 benchmarks for how you might estimate those hours?

13 MR. CLAY: No. We didn't assign number of
14 tanks or I guess the size of the release. A lot of that
15 is dependent upon the fieldwork portion of it as far as
16 the number of borings that have to be drilled, the number
17 of tanks that are removed. You know, if you're
18 scheduling a tank removal, whether there's one tank or
19 five tanks, I think it's still one, you know, phone call.

20 MS. ROWE: Well, and when we do our
21 estimating -- maybe this is testimony. I'm not sure.

22 HEARING OFFICER TIPSORD: If it's not a
23 question, it's testimony.

24 MS. ROWE: Swear me in?

1 HEARING OFFICER TIPSORD: Okay. But make it
2 brief, please.

3 MS. ROWE: Yeah, I --

4 HEARING OFFICER TIPSORD: You have -- You'll
5 have your opportunity. Could you swear her in, please?

6 (Witness sworn.)

7 MS. ROWE: When we prepare a budget for a
8 site investigation completion report, for example, we're
9 going to look at what we expect to be the total number of
10 things that we're going to be reporting on, tabulating,
11 describing and so forth, so one with two borings is less
12 than one with thirty, for example. Did you build that in
13 in any way into these, or how did you come up with the
14 hour? Did you -- Was it just a guess or did you say,
15 well -- or did you try one? Did you say, okay, I'm going
16 to write one of these plans myself and Brian's going to
17 sit down at the typewriter and type an OSFM form or he's
18 going to sit down and do a 45-day report based on some
19 certain information? Did you try anything like that?

20 MR. CLAY: Well, not for the majority of it.
21 There was -- We did have a -- We had a staff member do
22 the well survey, for example, and sit down and do it, and
23 so, I mean, we did do that for that portion, but for most
24 of it we didn't.

1 MS. ROWE: Did you do one? Did you try
2 several that came up with different -- you know, one with
3 one well, one with more, or did you see any variability
4 there?

5 MR. CLAY: Well, I mean, there is going to
6 be variability, but -- and we didn't assign -- say, okay,
7 we're going to assign these numbers based on two wells or
8 twenty wells. Again, it's a -- that variability is taken
9 into account in the fieldwork. The plan for -- The
10 writing of the plan, I'm not sure is that variable based
11 on -- because it's -- you're describing what you're going
12 to do. I mean, it's -- like, for a site investigation
13 plan, I would think you would write for a stage 2 if --
14 and it would be the same for all of them if you get --
15 you're going to go out so many feet, and if you get a
16 sample above tier 1 objectives, you're going to go out
17 further so many feet. I mean, that doesn't change
18 because you end up doing one boring or twenty borings.

19 MS. ROWE: Well, I --

20 MR. CLAY: So the plan I don't believe
21 changes, you know, and as far as the completion report,
22 again, it's summarizing the information, and we did take
23 into account variability there. I mean, sometimes you're
24 going to have to look at, you know, twenty analytical

1 samples, the results of twenty analytical samples, and
2 others you may look at results of five, but we took that
3 variability into account. We didn't say, this is for
4 eighteen samples, this is how long it's going to take
5 someone to look at that, but, you know, I think if you
6 had something that was just, you know, ridiculously high
7 where you had 100 borings and all the analytical work
8 from that, that may be something that would be an
9 extraordinary circumstance because that's, you know, not
10 what you would normally see.

11 MS. ROWE: Well, if a stage 3 plan is
12 submitted, is the Agency going to expect to see bore logs
13 and well completion reports and all of those pieces at
14 that point for the work that's already done? Those are
15 the kinds of things that are going to -- the fieldwork is
16 going to drive up report cost time beyond your stage --
17 your stage 1 is pretty much said and done and that's the
18 same, but on the others, all of your field time is going
19 to elevate that.

20 MR. CLAY: I think that was taken into
21 account in our estimate of numbers for hours.

22 MS. ROWE: Can you describe how you did the
23 variability? Did you -- Could you estimate, well, if
24 they had this many, it would be this many hours, and if

1 it were twice that it would be this many hours, or --

2 MR. CLAY: You know, I think going into the
3 discussion in the workgroup, we didn't talk specifically
4 about number of borings or number of hours, but, you
5 know, we also wanted to make sure that it wasn't, you
6 know, the simplest site you've seen or the most
7 complicated. You know, we went something in the middle.
8 So, I mean, we didn't talk about -- we didn't draw up a
9 scenario and then assign hours based on that scenario
10 with the number of wells and number of borings and number
11 of cubic yards to be excavated, so --

12 MS. ROWE: So it was based on a very
13 generalized scope of work and not a detailed or
14 well-defined scope of work. It was broad, I guess.

15 MR. CLAY: It wasn't based on a specific
16 site. It was based on the specific tasks that we looked
17 at or that the Board had listed in their order.

18 MS. ROWE: Then one final question. This
19 goes a little bit back to what Jay was talking about. In
20 the Board's December 1 order and opinion, the Board
21 discussed USI's 69 randomly selected sites and stated
22 convinced the rates needed to be adjusted to reflect
23 actual scope of work and current market rates, and
24 further in here they talk about a need to be reflective

1 of historical reimbursement amounts. You guys have said
2 that you tried to take a different tact to come up with
3 hours. Given that that's what we would have expected,
4 how can you reconcile the latest proposal with historical
5 and current market conditions and those kinds of things?

6 MR. CLAY: I'm not sure that I understand
7 the question, but what I said before was we looked at the
8 historical records and the historical bills when we
9 developed the original Subpart H. We believe that we
10 were asked to look at this from a different -- in a
11 different way from the Board by looking at the hours with
12 tasks broken down to follow the outline of the
13 regulations and our forms, so, I mean, we basically took
14 what the Board had broken down into tasks, and, you know,
15 I think they did, you know, follow our forms and
16 regulations very closely. We added a couple things such
17 as preparation of the reimbursement package to the tasks,
18 but it was a different approach to look at those than
19 looking at historical records because, like I said, we
20 don't have historical records that break things down in
21 those details.

22 MS. ROWE: Right. I guess I -- just
23 fundamentally, if the rates that were originally proposed
24 in Subpart H did not come up to the level that was

1 historically reimbursed and a lot of the rates that
2 you've come up with now are even less, it seems like
3 we're farther apart than where we were. Any thoughts on
4 that?

5 MR. CLAY: Is that a question?

6 MS. ROWE: Yeah. It seems like it's -- I
7 mean, what can the Agency do to bring that closer to
8 historical? I mean, if the original ones didn't meet
9 historical payment levels and coming -- and doing the
10 hourly approach comes up even less, what can the Agency
11 do or assist to get those closer to current market rates
12 or historical amounts?

13 MR. CLAY: I believe the statute and the
14 regulations require that we reimburse reasonable amounts,
15 not historical amounts, so, I mean, we did our best to
16 determine what the original amounts were.

17 MS. ROWE: Well, if they were already deemed
18 reasonable and that was a decision that was already made,
19 that those were reasonable rates, why would they go down
20 to this kind of level from where they were?

21 MR. CLAY: I mean, we made the determine
22 reasonable based on the tools we had available to us at
23 the time, and this is what our proposal is and our best
24 effort to determine or to decide what's reasonable.

1 HEARING OFFICER TIPSORD: Okay.

2 MS. MANNING: I'm just going to ask --

3 HEARING OFFICER TIPSORD: I was going to
4 say, I had Miss Manning, then Mr. Koch and then
5 Miss Davis.

6 MS. MANNING: Just so that I understand,
7 then, Doug, when the Agency was first before the Board,
8 you believed your proposal was based on real data,
9 reports, that sort of thing. Is that -- That's a pretty
10 fair characterization?

11 MR. CLAY: For the most part, yeah. That's
12 all in our testimony, but for the most part, that was
13 based on actual --

14 MS. MANNING: So you're reading the Board's
15 ruling to bring this into docket B to suggest that --
16 correct me if I'm wrong -- that since you didn't have the
17 correct data, you don't need to use any data now?

18 MR. CLAY: Well, I'm not sure that anyone
19 said we didn't have the correct data, but we were asked
20 to look at the hours for the task breakdown that was
21 given us and who would perform that. I think that's what
22 we were asked, and that's what we did.

23 MS. MANNING: Well, what -- in -- on January
24 5, in the Board's opinion, what they really said --

1 obviously it's up to the Board. They know what they
2 want, and it'll be their call ultimately, but just so I
3 understand how the Agency really responded to whatever
4 the Board was asking for, the Board said that they
5 believed that additional substantive input was necessary
6 from the Agency, and I guess my question, then, is do you
7 believe -- is the Agency asserting that your workgroup
8 that lasted for a couple of days with the people you
9 designated and the sort of dialogue you had based on
10 memory of what hours and -- you know, plugging hours into
11 the tasks assigned by the Board, that that is the
12 substantive input that the Board was requesting in this
13 proceeding?

14 MR. CLAY: Well, it was more than a couple
15 days, first of all. I mean, that's the time -- the
16 actual meeting time, and we felt like that's the -- all
17 the information or the -- what we could draw from to gain
18 what we believed the Board asked us to do, which is to
19 look at each task and what it would take to do that task,
20 and we don't have historical data based on that breakdown
21 of each task to --

22 MS. MANNING: Right.

23 MR. CLAY: -- to rely on.

24 MS. MANNING: Right, and you said that on

1 page 3 of your testimony, the database does not contain
2 adequate information to determine lump sum payments for
3 professional services. I have a question, then, about
4 what you said next, and that is you don't believe that
5 it's necessary and/or wise -- I'm paraphrasing -- you do
6 not believe that lump sum payment amounts for
7 professional consulting services should be determined
8 from future reimbursement submissions over the next
9 years. Could I ask you why? Could you explain why the
10 Agency has a position that you don't want to collect
11 data? I've never quite understood why you don't want to
12 collect the data that you admit you don't have which
13 would be helpful to all of us in this proceeding to make
14 sure that the costs that are reimbursed are reasonable
15 costs.

16 MR. CLAY: Well, first of all, it's not that
17 we don't want to collect data. To collect the data in
18 the way and the breakdown that has been proposed by the
19 participants in this rulemaking, it is very
20 resource-intensive for the Agency, not to mention the
21 other consultants. I think we -- the cost for
22 preparation of a budget and a reimbursement package would
23 increase significantly to provide the information
24 certainly in the detail that USI had proposed.

1 Secondly, the proposal is to -- that I understand
2 is to collect data, put it in a database and use that to
3 establish reasonable amounts when none of that data has
4 gone through a reasonableness determination, and so if
5 you're collecting data without a determination of
6 reasonableness, putting it into a database, coming up
7 with a -- I think someone in the proceedings said that --
8 in their prefiled testimony that everything should fall
9 within the 90 to 95 percentile to establish the lump
10 sums. I think you're putting in unreasonable -- you
11 could be putting in unreasonable data to generate
12 reasonable numbers. There's been no quality control --
13 What I -- The way I understand it, there's been no
14 proposal for any quality control, any reasonableness
15 determination on what's submitted, and if there is, what
16 is that based on? What is the reasonableness
17 determination based on? That is why we are in this
18 proceeding now.

19 MS. MANNING: And I guess my question would
20 be, why does the Agency not consider it its
21 responsibility regardless of what's been proposed in
22 terms of how data should be collected or when it should
23 be collected? Correct me if I'm wrong, but you as a
24 state agency could collect that data and just determine

1 as you pay what's reasonable what data sets go into that
2 determination of reasonableness. I'm not following why
3 you think a collection of data is necessarily collecting
4 data that you haven't approved. You can collect data any
5 way you want to collect data and you can do it in any
6 economic -- you can do it from an electronic database
7 should you choose to establish it that way. Doesn't have
8 to be one that's been proposed to you. My question is,
9 why is the Agency so opposed to collecting data that
10 would be helpful in this proceeding so that we would all
11 understand what it costs to do an underground storage
12 tank reimbursement?

13 MR. CLAY: The Agency has collected data,
14 not in the way that you would have liked, but has
15 collected data, and we presented that in testimony. Now,
16 what you're saying is you collect data, do a
17 reasonableness determination; if it's reasonable, you put
18 it in the database. Well, if you -- if we have something
19 to do a reasonableness determination, what are we
20 collecting the data -- what are we putting that in the
21 database to determine reasonableness down the road for?
22 All that's going to do is drive costs down. It would
23 never drive costs up.

24 BOARD MEMBER JOHNSON: Let me ask --

1 MS. MANNING: The fact of the matter is
2 you're getting different kinds of reporting systems from
3 everybody out there, from all of the companies that are
4 doing underground storage tank reimbursements, and I
5 don't understand how you can even figure out what hours
6 to attach to what tasks without having a delineation of
7 how each company does this and how they factor in their
8 hours and who's doing what for what services, not to
9 mention not even understanding or knowing what kind of
10 site is out there when you're just discussing this based
11 on your memory and not any real data.

12 MR. CLAY: Well, that's not true. We told
13 you we did the real data when we proposed our original
14 Subpart H. Now, we didn't do it in the breakdown that
15 has been proposed in the proceedings, but we have used
16 data, we've used historical numbers, we've looked at
17 historical numbers, we've looked at experience. We've
18 looked at all those things. We've looked at other
19 states. Other states have found that this is reasonable
20 to put these types of numbers into regulations. We've
21 provided, you know, those references as well. So we do
22 feel like this is a reasonable approach, other states
23 have felt it's a reasonable approach, and I don't think
24 we need to do a massive data collection, you know,

1 process for the next five years to establish these rates.
2 I think that we have the data to, you know, put these
3 into rules right now.

4 BOARD MEMBER JOHNSON: Your testimony, Doug,
5 said that you -- that -- specifically said that that data
6 collection as suggested would require significant
7 resources of the Agency that you just don't have to
8 devote to it. I guess the logical question for me from
9 there is what are those resources that you don't have? I
10 mean, what is it that's going to -- that you have to
11 provide for this data collection by way of resources
12 that's unavailable?

13 MR. CLAY: Well, one, the computer technical
14 support, the software. The -- I think the number of
15 reviewers to review the quality control, what goes in
16 that, would be significantly higher. Just -- I mean, the
17 proposal of the task sheet from USI was about a half-inch
18 thick; education of consultants throughout the state on
19 how to use that. I just see this as a huge -- not only a
20 huge resource there; then you've got the resource of the
21 consulting industry, who I believe to prepare a budget or
22 a reimbursement package using the data collection system
23 that's being proposed is going to take a lot more time to
24 put together and submit to the Agency than a

1 reimbursement package has in the past.

2 BOARD MEMBER JOHNSON: Okay.

3 BOARD MEMBER GIRARD: I have a -- Let me
4 just follow up on that. You mentioned earlier that
5 you're developing forms for the submission of, say,
6 45-day reports. Is it your goal to have electronic forms
7 for all the different stages of this process?

8 MR. CLAY: I mean, Brian, maybe you can talk
9 about the forms that -- and the -- what's available now
10 on the Internet and how you fill those out.

11 MR. BAUER: Yeah. All of our budget and
12 reimbursement forms are on the Internet in a PDF format,
13 and they can fill it in on the computer and print it out
14 and mail it in to us. We don't have the capability to
15 receive it or send it electronically or anything like
16 that, but they all are on the computer on our Web page.

17 BOARD MEMBER GIRARD: Do you intend to work
18 toward having electronic forms where they can submit the
19 information electronically?

20 MR. CLAY: I mean, I'd say yes, we could
21 work towards that, but I'm not sure when we're going to
22 get the IT support to do that at this point. I mean,
23 right now, the way I understand it, their plate is full,
24 and, I mean, I would like to see that at some point, but

1 I just don't -- I mean, I -- I'd like to say yes, we can
2 work towards that, but I don't know if it's two years
3 away or ten years away. I just don't know what the
4 resource is going to be down the road.

5 BOARD MEMBER GIRARD: But at the stage where
6 you can work toward it, couldn't that form be devised in
7 a way that it would be gathering the kind of data that
8 people are asking for?

9 MR. CLAY: Yes. I mean, I think we -- the
10 forms that we've developed right now, you know, it's not
11 going to be for the breakdown of the specific tasks, but
12 I think it will give us a good indication of, you know,
13 the cost for those unit rates. You know, for example,
14 we've got a specific bid form, so it should be easy for
15 us to see what type of tasks are being bid and how many
16 times those tasks are actually above the Subpart H
17 numbers that are currently in the rules to give us an
18 indication of, you know, are these numbers that need to
19 be adjusted.

20 BOARD MEMBER GIRARD: So you actually are
21 going to start collecting some of the information even
22 though it's on a paper form that someone has printed out.
23 It's just a matter of having the staff resources in the
24 future to go through and actually tabulate and analyze

1 what's being collected.

2 MR. CLAY: Correct.

3 BOARD MEMBER GIRARD: Thank you. Sorry,
4 Claire.

5 MS. MANNING: That's all right.

6 HEARING OFFICER TIPSORD: Go back.

7 MS. MANNING: Just to reiterate testimony in
8 terms of resources available to the Agency under the
9 underground storage tank fund, I recall the number of
10 being, like, you guys -- it was about 7 million dollars a
11 year in staff resources that are available to you through
12 the underground storage tank fund. Is that about right?

13 MR. CLAY: No. We get 1.7 million dollars
14 from USEPA -- that's not the underground storage tank
15 fund -- and then I don't recall the exact amount for
16 the -- I think it was 4 point something million for the
17 rest of the staff from the underground storage tank fund,
18 the EPA staff, and, you know, that goes for -- you know,
19 that's not just people sitting and doing LUST reviews.
20 It's also, you know, people for -- like, in our
21 administrative office and in our file room and that type
22 of thing, so, you know, there's those indirect staff too.

23 MS. MANNING: You mean on the underground --
24 out of the underground storage tank fund.

1 MR. CLAY: Correct.

2 MS. MANNING: I -- We can check the record
3 from before, but my recollect is it's about 7 million
4 that is directed to the Agency for resources, servicing
5 the fund as well, and certainly if the Agency wanted to
6 do data collection or hire an IT person to help you, that
7 person would in fact correctly and appropriately be paid
8 out of the underground storage tank fund and not any
9 general revenue fund anyway, wouldn't they?

10 MR. CLAY: If we could hire a person, I
11 would assume they would be paid out of the underground
12 storage tank fund. One thing you might be mixing up is
13 the Office of the State Fire Marshal also has staff out
14 of the underground storage tank fund --

15 MS. MANNING: I understand.

16 MR. CLAY: -- and the Department of
17 Revenue has staff --

18 MS. MANNING: I understand. And that was at
19 a much lesser level than you -- again, we can look, you
20 know, but my point only is and my question is certainly
21 if you wanted to devote those resources, there -- you
22 could use underground storage tank fund money to do that.

23 MR. CLAY: If we could get approval to do
24 that.

1 MS. MANNING: Okay.

2 MR. G. KING: But under the current scheme,
3 that would mean personnel are not doing what their
4 current jobs are.

5 MS. MANNING: It's a matter of your division
6 of resources, right, based on the money you access from
7 the underground storage tank fund, correct?

8 MR. CLAY: Yes.

9 MS. MANNING: Okay. Thanks.

10 HEARING OFFICER TIPSORD: You know what? I
11 know you all have several more questions still, but it's
12 2:30. We've been at it for about an hour and a half.
13 Let's take about a ten-minute break and come back on the
14 record then, get up and stretch our legs and stuff.

15 (Brief recess taken.)

16 HEARING OFFICER TIPSORD: All right. I
17 think we're ready to begin again, and I think that I had
18 Mr. Koch next with questions?

19 MR. KOCH: Yes. Thank you. I've got a
20 couple questions for Mr. Clay. Doug, in your earlier
21 testimony today you mentioned the difference between
22 historical and reasonable, and I wanted to see what you
23 meant by that, the difference between historical and
24 reasonable.

1 MR. CLAY: Well, I think the point that --
2 Ms. Rowe was asking the question at the time that our
3 numbers -- comparing them to reasonable -- or comparing
4 them to historical, and the statute and the regulations
5 require that -- the number to be reasonable and not
6 necessarily compared to historical.

7 MR. KOCH: Okay. So you didn't mean that
8 what you had historically reimbursed for professional
9 services was -- that you'd ever reimbursed any known
10 unreasonable cost historically. That's not what you
11 meant.

12 MR. CLAY: Based on the information at the
13 time, no, we felt like it was reasonable.

14 MR. KOCH: Today you feel like what you've
15 reimbursed historically is unreasonable?

16 MR. CLAY: I don't know. I would have to
17 re-review those, and we simply don't have the time to do
18 that. I mean, on an individual claim or something, I
19 can't say whether it was reasonable or not. I'm just
20 saying that based on the time -- at the time we made
21 those, we felt like they were reasonable.

22 MR. KOCH: Okay. You mentioned as you
23 reviewed the claim, so earlier you testified today that
24 you reviewed the budget packages and the work plans and

1 made a determination as to the reasonableness of the plan
2 and the number of hours associated with that plan, and
3 you've also stated that there has not historically been a
4 standardized breakdown of tasks, so I suppose that
5 means -- and I'd just like clarity on this -- that each
6 individual reviewer takes a look at the plan and reviews
7 the plans based on the merits of the plan. Is that
8 correct?

9 MR. CLAY: Well, I mean, we look at the plan
10 and review it based on the merits of the plan. The
11 associated budget, without going into a lot of history,
12 as you know, we usually have a rate sheet which we used
13 in our review as one of our tools for review, which
14 subsequently the courts ruled that we could not use that
15 any longer, and so that was one tool that we no longer
16 have at our disposal to look at reasonableness and to be
17 consistent.

18 MR. KOCH: For professional services, did
19 that rate sheet include prices per task?

20 MR. CLAY: No.

21 MR. KOCH: Or prices per hour?

22 MR. CLAY: It was dollars per hour for the
23 different job titles for the professional services.

24 MR. KOCH: And the reason for that is

1 historically the -- you mentioned earlier in your
2 testimony today that the different consultants all submit
3 different information and different task groupings of
4 work into tasks, so it's very difficult to discern from
5 consultant A to consultant B -- there's no standard
6 between the consultants currently.

7 MR. CLAY: Other than the forms that we
8 provide.

9 MR. KOCH: Then again, your testimony shows
10 that the database -- current database won't allow that
11 determination to be made, so is that the reason, then,
12 when you prepared your new forms for subdocket A that you
13 included these standard remediation categories? Is that
14 to help get a -- gain a better understanding on a
15 standardized basis the cost for those services?

16 MR. CLAY: The forms follow the regulations.

17 MR. KOCH: I don't believe anywhere in the
18 current regulations there's a requirement that a standard
19 remediation category be included in the reimbursement
20 form, but I noticed in the new reimbursement forms that
21 were printed on March 1 of this year that there is a
22 field in that form entitled standard reimbursement
23 category and now all consultants across the state need to
24 complete that form and enter a value from the

1 standardized list of remediation categories.

2 MR. BAUER: You're talking about the -- on
3 the personnel?

4 MR. KOCH: On the -- On personnel, right,
5 the professional consulting personnel sheets.

6 MR. BAUER: Why we went to that, it wasn't
7 for record-keeping or anything like that. Why we went to
8 that is because we -- previously we testified about
9 contingency plans, you know, and -- that if this boring's
10 dirty, you move out another 15 feet or 20 feet or what
11 have you and do another boring, and we needed that in
12 order to approve contingency plans and keep that type of
13 remediation open, because the lump sum stuff was not
14 available to us as we originally proposed, so we had to
15 figure out a way to track that, and that's why that was
16 put in.

17 MR. KOCH: Brian, I'm sorry, but I -- in the
18 context of this remediation list, standard remediation
19 category list, which I believe is on, like, pages 36, 37
20 of those new forms, I don't understand your answer in
21 that context, because this particular remediation list,
22 it covers all aspects from early action work through
23 corrective action work.

24 MR. BAUER: Right. Well, I mean, the reason

1 why it was really put in there was for the staged
2 approach, the stage 1 and stage 2, and to figure out --
3 try to figure out some way to be able to do a contingency
4 plan where they were doing multiple borings at a site and
5 being able to figure out how to approve that budget with
6 the contingencies, so --

7 MR. KOCH: So it's a tool, then, to help you
8 analyze cost to determine if that budget is appropriate
9 or not. And let me say this. I applaud the Agency. I
10 commend the Agency for developing this list. I think
11 it's great. But you're using this as a tool to help you
12 manage the program; is that right?

13 MR. BAUER: Sure.

14 MR. KOCH: Okay. And again, I want to just
15 say that I think this is great. I think it's a positive
16 step forward in the right direction, and I also think --
17 and I want to ask this. Doug, you testified in -- on
18 your March 1 testimony that collecting data, breaking it
19 down into great detail as has been proposed in previous
20 hearings would require significant resources by the IEPA
21 you don't have, and you just testified to that again
22 today. You also said that submitting -- accepting costs
23 submitted without review, without quality control, would
24 result in inflated amounts and would require that every

1 consultant who does work in the state adopt essentially
2 an accounting system, and I --

3 MR. CLAY: The same accounting system.

4 MR. KOCH: This is what we have with the
5 standard remediation category list, is essentially an
6 accounting system.

7 MR. CLAY: I mean, it's -- yeah. I mean,
8 it's not in nearly the detail.

9 MR. KOCH: I think that's great. That's all
10 I wanted to establish. Wouldn't this also serve as a
11 great basis for a database, a standard task list and a
12 database?

13 MR. CLAY: It could be put into a database.

14 MR. KOCH: And haven't you implemented this
15 with your existing resources?

16 MR. CLAY: We don't put that in a database.

17 MR. KOCH: But this format you've
18 implemented with your --

19 MR. CLAY: We've developed a two-page form
20 with our resources, that's correct.

21 MR. KOCH: Okay. Great. I want to give you
22 credit where credit's due, and I think you guys are
23 headed in the right direction with this, and that's the
24 only reason I bring it up. I'm not trying to be

1 argumentive. I like this, so thank you.

2 MR. CLAY: Yeah. I mean, we will use that
3 as a tool, and -- but I think there's a big step from
4 saying, okay, here's, you know, a two-page form to we're
5 going to put this in the database and design the
6 reimbursement program based on that in the future.

7 MS. MANNING: I just wanted to clarify
8 something.

9 HEARING OFFICER TIPSORD: Okay.

10 MS. MANNING: The document that I think
11 Mr. Koch was referring to is not -- I don't think it's
12 technically in the record, so I don't know whether you
13 want it in the record, but it's -- I think it's available
14 on the Internet, is it not?

15 MR. KOCH: Yes.

16 HEARING OFFICER TIPSORD: Actually, I wasn't
17 sure what the relevance was to the scope of work and
18 stuff, and, I mean, it wasn't really clear what the
19 relevance was to the hearing. That's why I didn't go --
20 until he got to the end, and apparently it's to commend,
21 but, yes, we will need to put that in the record.

22 MR. KOCH: Do you want the copy of it?

23 HEARING OFFICER TIPSORD: Yes, please. Yes.

24 MR. CLAY: I just wanted to clarify

1 something that we talked about before the break. For
2 fiscal year '06, the Agency's operation cost in the --
3 for IEPA was 1.22 -- or I'm sorry -- 4.122 million
4 dollars -- so it's slightly over 4 million dollars --
5 for -- from the UST fund, then plus the 1.7 million that
6 we get in the federal grant.

7 MS. MANNING: Thank you.

8 HEARING OFFICER TIPSORD: If there's no
9 objection, we will mark remediation categories list,
10 pages 36 and 37, as Exhibit 123. Seeing none, it's so
11 marked. Okay. Actually, I think Miss Davis was next,
12 and then Mr. Truesdale and then back to Mr. --

13 MS. DAVIS: Cindy Davis with CSD
14 Environmental Services. I just got to ask, I'm confused
15 by the forms. What was the purpose of these forms that
16 have gone out that we're collecting all -- it's a
17 tremendous amount of effort on the environmental firms,
18 but I'm willing to do it. I'm with Jay, I like it, but
19 what is the purpose of those forms?

20 MR. CLAY: The purpose of the forms is to
21 standardize the way we're getting information, to
22 summarize that information. The purpose was to just --
23 like any of our forms, are to identify what the Agency
24 expects to see in a submittal.

1 MS. DAVIS: Okay. There were some codes on
2 those forms, correct, about early action, site
3 classification? Is that so you can keep track at phase
4 levels? Is that --

5 MR. CLAY: I mean, it was just to identify
6 where that work is -- what portion -- what area of
7 remediation that work is for.

8 MS. DAVIS: Can the consultants convert
9 those forms to an Excel spreadsheet and submit them
10 electronically to the Agency?

11 MR. CLAY: We are not prepared to receive
12 anything electronically in the LUST program.

13 MS. DAVIS: And what would it take to be
14 prepared?

15 MR. CLAY: I don't know. I know we receive
16 I believe groundwater monitoring reports and permits, and
17 I think -- that's the only one I'm aware of. As far as I
18 know, no other -- the Agency doesn't -- or I should say
19 the Bureau of Land doesn't receive any types of forms or
20 permit applications electronically that I'm aware of.

21 MS. DAVIS: And you said the groundwater
22 forms for, like, permits for landfills. Is that the
23 groundwater analysis that -- currently that landfills
24 have to conduct?

1 MR. CLAY: I believe so.

2 MS. DAVIS: And what happens to that data
3 when it's submitted electronically? Does the Agency keep
4 that data, tabulate that data? What do they do with it?

5 MR. CLAY: I assume we do. I assume we keep
6 it. I don't know what -- I don't -- no longer work in
7 permits.

8 MS. DAVIS: But it's part of the Division of
9 Land.

10 MR. CLAY: It's part of the Bureau of Land.

11 MS. DAVIS: And so they own a computer that
12 would keep track of all that stuff. I assume they have
13 those resources.

14 MR. CLAY: I'm sure we're storing it. I'm
15 not sure what analysis is done on it or what we do with
16 that data.

17 MS. DAVIS: Okay. Did you testify
18 previously in the other hearings that when you -- by
19 going to standardized forms and prices that you would see
20 a reduction in personnel time being spent on budgets by
21 50 percent?

22 MR. CLAY: I don't know by -- I don't recall
23 saying 50 percent, but we did expect to see a reduction.

24 MS. DAVIS: And do you conceivably think

1 that once we standardize as we're going through these
2 procedures that these people will need some additional
3 work to do?

4 MR. CLAY: I don't think they will need any
5 additional work to do. I mean, is -- there's nearly
6 10,000 open sites that still require remediation. I
7 think that by doing this we will hopefully reduce the
8 turnaround time on plans from employers, and we may also
9 be able to do more call-ins where sites that haven't been
10 active for a while, contacting them and saying, hey, you
11 know, where you been, what are you doing, you know, send
12 us a corrective action plan in 60 days, so, I mean, we'll
13 be able to do more of that probably, but, I mean, there
14 will not be a lack of work --

15 MS. DAVIS: And that's on your technical
16 staff.

17 MR. CLAY: -- in the foreseeable future. I
18 think we've established that.

19 MS. DAVIS: What about the --

20 MR. ROMINGER: I think we're getting out of
21 the scope of --

22 HEARING OFFICER TIPSORD: Yeah, we -- I
23 agree.

24 MR. ROMINGER: -- questioning here.

1 HEARING OFFICER TIPSORD: I think we need to
2 keep in mind that this is only to look at the scope of
3 work. If you had other questions about --

4 MS. DAVIS: All right. I'm done.

5 HEARING OFFICER TIPSORD: That should be
6 done at another time. Mr. Truesdale, did you have a
7 follow-up or some additional questions?

8 MR. TRUESDALE: No, that's all right.

9 HEARING OFFICER TIPSORD: All right. And
10 Miss Rowe?

11 MR. WIENHOFF: I guess -- well, one
12 question.

13 HEARING OFFICER TIPSORD: Could you state
14 your name again?

15 MR. WIENHOFF: I'm sorry. Jeff Wienhoff
16 with CW3M Company. I believe with regards to these
17 remediation categories, there's approximately -- I don't
18 know -- I don't have that form in front of me, but, like,
19 40 of them maybe in there. I believe in previous
20 testimony it was stated that about -- you received about
21 200 reimbursement packages a month? I don't know if you
22 know that, but that -- it's equivalent to about ten a
23 day. If your forms -- Do you think -- If your forms had
24 a summary, if we could summarize by those remediation

1 categories the cost, how long do you think it would take
2 for someone to enter into an Excel spreadsheet ten
3 reports a day?

4 MR. ROMINGER: I think we're still outside
5 the scope of our testimony. I mean --

6 MS. ROWE: It goes to scope of work, I
7 think.

8 HEARING OFFICER TIPSORD: Wait. Hang on.
9 Let's hear argument for why this discussion is not
10 outside.

11 MR. WIENHOFF: I guess I -- it's going to
12 the resources he had in his testimony, because he's
13 saying it takes a massive amount of resources.

14 HEARING OFFICER TIPSORD: To do database
15 collection.

16 MR. WIENHOFF: To do database collection.
17 I'm saying if you only get ten a day --

18 MR. G. KING: Excuse me. There's no --
19 nothing in evidence about this ten per day. That was --
20 The questioner just made his own assumption as to what's
21 been provided.

22 MR. WIENHOFF: That's --

23 MS. MANNING: If I might input on this too,
24 I think the concern is -- and the relevance of the form

1 Mr. Koch put into evidence is that the Agency is
2 suggesting that it can't collect data, yet it's
3 developing tools that allow them to do that very thing,
4 which is responsive and positively responsive to what the
5 consultants have been asking for through this whole
6 proceeding, and we're -- everyone's happy about that, so
7 the point is, the Board has asked the Agency to not only
8 come up with the scope of work, but my understanding is
9 to attach numbers that fit that scope of work.

10 HEARING OFFICER TIPSORD: Actually, I
11 believe the Board provided the scope of work and said
12 that could be an extra comment on that, not asking the
13 Agency to develop a scope of work.

14 MS. MANNING: Okay.

15 HEARING OFFICER TIPSORD: I also would note
16 that the Board has in two prior opinions, I believe, in
17 both our prior -- in two prior opinions in subdocket A
18 stated unequivocally we will not direct the Agency to do
19 a database collection, so --

20 MS. MANNING: Right, and I don't think
21 anybody's asking for the database collection so much as
22 they're wondering where the data's coming from. Okay.

23 MR. ROMINGER: Well, I think that's two
24 completely different things. I mean, we've answered

1 where our data came from, and whether we have a data
2 collection system is an entirely different matter.

3 HEARING OFFICER TIPSORD: All right.
4 Mr. Wienhoff, we'll let you finish up briefly, but then
5 we need to move on.

6 MR. WIENHOFF: Okay. It was just the
7 resources, I -- the ten per day was from previous
8 testimony, but if that number's incorrect, please correct
9 me, but how long would it take one person if there was a
10 summary sheet by those remediation categories to enter
11 data for ten site -- ten packages per day?

12 MR. CLAY: Well, I mean, I don't know how
13 long it would take to do that, and I'm not sure that the
14 ten per day is accurate, but the Agency isn't opposed
15 fundamentally to collecting data. It's just whether or
16 not we'll have the resources to do it, and there's a
17 difference in collecting data based on a two-page form
18 that we've provided on our Web site versus what has been
19 proposed in collecting in minute detail these tasks in
20 the past, I mean, so, I mean, there's a difference there,
21 and I think what the -- several of the participants have
22 asked the Board to do is to mandate us to do that, and
23 the Board has said that they will not do that. I'm not
24 saying that we won't be collecting data in the future.

1 I'm just saying that right now we do not have the
2 resources to do that. I'm not saying it's a bad idea,
3 but I do not think what has been proposed by several of
4 the groups that have testified in the past that detail
5 and to that -- you know, I think that would be very
6 painstaking for consultants throughout the state, not
7 only -- plus the Agency, it would be very painstaking to
8 collect that kind of detail, and I don't think that it
9 would serve any purpose, but I'm not -- we're not opposed
10 to collecting data. It's just that if we have the
11 resources, we can do that, and we can do it based on
12 that -- I think it's a two-page form. You know, that may
13 be something that we'll start doing in the future, but we
14 don't want to be collecting data for five years and then
15 proceed with the rulemaking.

16 MR. WIENHOFF: I have a -- several questions
17 regarding Attachments 1 and 2 of your testimony.

18 HEARING OFFICER TIPSORD: I'm sorry. I
19 didn't get that.

20 MR. WIENHOFF: I have a question regarding
21 Attachment 1 and Attachment 2 of the testimony.

22 HEARING OFFICER TIPSORD: Thank you.

23 MR. WIENHOFF: For the task that was in the
24 Board's opinion that was listed as corresponding and

1 updating the client, it's consistently listed in your
2 testimony as not corrective action. On what basis have
3 you determined that -- for example, if I am preparing a
4 corrective action plan and, you know, I have three
5 options of ways to clean up the site or close the site,
6 you know, engineered barriers, excavation, and I need to
7 present those options to my client and give him the
8 option since he is the property owner, why is that task
9 not considered corrective action?

10 MR. CLAY: Are you referring to a specific
11 page?

12 MS. ROWE: On page 1, I think it is.

13 MR. WIENHOFF: Well, I think each time that
14 the task of corresponding with and update client was
15 listed, which was several times throughout, each time,
16 the comment in your far right column was not corrective
17 action, and I'm just curious.

18 MR. CLAY: I guess we did not see anywhere
19 in the statute or the regulations that that was required.

20 MR. WIENHOFF: So I -- So you don't think I
21 need to get -- well, it isn't specific that says I have
22 to get the property owner's approval to do an excavation
23 on his property. Don't you think that part of doing an
24 excavation is talking to that person to make sure they're

1 going to let you do it before you write a plan to do it?

2 MR. CLAY: Well, I mean, how long does that
3 take to do?

4 MR. WIENHOFF: Well, I mean, it's not just
5 you call and say, "Can I dig," and they say yes.

6 MR. CLAY: Right, but how long does that
7 take?

8 MR. WIENHOFF: It's going to take at least a
9 couple hours. I mean, if you need to call and say,
10 here's your option, I've done this modeling, I've done
11 this, I can put concrete barrier here, that's going to
12 leave this potential problem for you in the long-term, we
13 can -- you know, it may affect your neighbor's property
14 if we leave this in place, which, you know, they -- you
15 know, if in the long-term they may come and ask for you
16 to clean that up and you'll be out of the LUST fund, or I
17 can excavate this or I can do an in-situ treatment so it
18 doesn't interrupt your business and that's going to take
19 three years, it's going to take one year, these are the
20 costs associated with it, and it's not a five-minute
21 conversation with a client. It's, you know --

22 MR. CLAY: Sure, I understand, and, I mean,
23 we didn't think that should be included, but as I said,
24 you know, we went through the tasks, assigned the hours

1 and the type of person that would be doing that, and, I
2 mean, I just -- I didn't see that from any other one who
3 prefiled testimony, and if you think that's appropriate,
4 I don't see why you couldn't propose that.

5 MR. WIENHOFF: Okay.

6 MS. HESSE: Just to follow up on that line
7 of questioning --

8 HEARING OFFICER TIPSORD: You need to
9 identify yourself.

10 MS. HESSE: I'm Carolyn Hesse. I'm with the
11 law firm Barnes & Thornburg and I represent CW3M. Are
12 you aware of some Board decisions that have held that
13 even where an attorney is consulting with -- and if you
14 need the case -- it's City of Roodhouse -- I will
15 double-check -- I will submit that as a comment to the
16 Board -- where the Board has held that an attorney who is
17 advising a city council regarding its options for
18 remediation was included as corrective action costs and
19 found to be reimbursable? Are you aware of --

20 MR. CLAY: I'm not aware of that.

21 MS. HESSE: -- any such cases?

22 MR. CLAY: I'm not aware of the specific
23 case.

24 HEARING OFFICER TIPSORD: Let's go back over

1 here.

2 MR. GOODIEL: Russ Goodiel of Chase
3 Environmental. Doug, you had said that you had a project
4 manager sit down and look at the well surveys, and
5 basically, I noticed on your attachments that that price,
6 that specific lump sum, had increased. What other
7 specific tasks did you have your project managers sit
8 down and do? I mean, to me that would, you know,
9 indicate that if your project manager increases, what,
10 150 percent that maybe some of these other tasks need to
11 be examined a little more thoroughly.

12 MR. CLAY: Are you referring to the summary
13 page on Attachments 3 and 4?

14 MR. GOODIEL: Yeah, Attachments 3 and 4,
15 734.845(8)(a), where you -- initially in the proposed
16 Subpart H you had allotted 160, and instead you have a
17 project manager sit down and do that and it's increased
18 to \$400 an hour.

19 MR. CLAY: Just a second.

20 MS. MANNING: Exhibit 120 is --

21 MR. CLAY: Okay. The initial well survey is
22 part of the stage 2. What we're referring to here is the
23 extended well survey. If you have contamination in
24 groundwater, measure a mile to go off-site, and so you

1 would need to extend that well survey. You know, we
2 actually put in -- I had the person do the well survey
3 and just got that data back this morning, so this wasn't
4 developed as a result of that, but what she did -- what
5 she didn't do was the phone call part of it where you
6 contact the utilities and see who may or may not be
7 served in that area, but she did the where you go to the
8 Agency Web site, identify the potable wells, a few large
9 supply wells, print the table, print the map, and, you
10 know, she did it in 17 minutes, she said, you know, but,
11 you know, she had -- she's done it before, so, you know,
12 maybe an hour, you know, for someone who hadn't done it
13 before. So that four hours would then give plenty of
14 extra time for incorporating that into your report or
15 whatever else you're going to do, making the phone calls,
16 documenting those phone calls, the phone call to the
17 utility, that type of thing.

18 MR. GOODIEL: And then specifically, I mean,
19 what other tasks did you have a specific project manager
20 do to ensure that your numbers are reasonable here?

21 MR. CLAY: That's the only one that we
22 actually had somebody do. Again, we based it on our
23 experience and our best professional judgment.

24 MR. GOODIEL: But you found as opposed to

1 your proposed Subpart H that it did take a little more
2 than the 160 to do that and with the research that you
3 had the project manager do?

4 MR. CLAY: Well, like I said, we estimated
5 it more the actual -- what the project manager did,
6 actually it would be an argument to reduce that number,
7 but, I mean, this is what our estimate was because of
8 the -- not knowing how far you have to expand that well
9 survey, you know, taking that into account that it may be
10 quite a distance rather than just one or two properties,
11 the \$400 would, you know, account for that. That's
12 another point that he just pointed out to me, that the
13 rate on the more recent breakdown or the more recent rate
14 is based on a different formula in that we allowed the
15 highest rate for the -- for a project manager doing it as
16 opposed to \$80 in our original proposal.

17 MR. GOODIEL: And again, this was the only
18 task that you actually did do the research and have
19 someone do? Is that what you said?

20 MR. CLAY: Yes.

21 MR. GOODIEL: Okay.

22 HEARING OFFICER TIPSORD: Mr. Truesdale?

23 MR. TRUESDALE: A couple of questions. This
24 is a follow-up to what Russ just asked. In response to

1 the water well survey, you mentioned that they used the
2 Agency's database. Is that to indicate to the consulting
3 community that we are not required to obtain this
4 information from the Illinois State Geological Survey and
5 Illinois State Water Survey and Illinois Department of
6 Public Health as referenced in 734.445(a)(2) and make
7 those appropriate contacts in addition to the phone calls
8 to the municipalities and contacting the Agency's
9 division of public water supplies?

10 MR. CLAY: What was the reference again?

11 MR. TRUESDALE: 734.445(a)(2).

12 MR. CLAY: I don't have the previous
13 wording, but I think if you'll look back to the previous
14 wording, it talked about contacting ISGS. The wording
15 has been changed to using current information from, and
16 that information is on the Agency's Web site.

17 MR. TRUESDALE: That's not indicated as a
18 change in this second notice or final notice from the
19 Board.

20 MR. CLAY: Well, 734's brand new. There are
21 no changes. It's brand new. But the 732 wording --

22 MR. TRUESDALE: Oh, sorry about that. 732.
23 So is that question correct, then? Are we -- As I
24 understand it, we are not required to contact and obtain

1 that information from those entities any longer?

2 MR. CLAY: That's correct.

3 MR. TRUESDALE: Thank you. One other
4 question regarding -- oh, professional oversight, you've
5 allocated a number of hours for professional engineer,
6 professional geologist for review and certification of
7 plans required under this part, and the regulation
8 specified that all plans submitted must be completed
9 under the supervision of a licensed professional engineer
10 or a licensed professional geologist. My question is,
11 what was the Agency's justification in determining the
12 number of hours for oversight? Was there a percentage
13 applied to the amount of resources expended by staff that
14 that professional was in fact overseeing the progress of
15 or was a number applied irrespective of the amount of
16 staff and the amount of time expended that that
17 professional must oversee?

18 MR. CLAY: It was not based on a percentage.
19 It was based on an estimate of what -- you know, what we
20 felt the time to review the plan or report before it's
21 submitted and oversight. We didn't look at oversight of
22 how many people or anything like that.

23 MR. TRUESDALE: So it would just be for
24 reviewing a document and preparing a certification, not

1 necessarily providing professional oversight during the
2 course of completing that report; just for review and
3 certification.

4 MR. CLAY: Well, I mean, I think there would
5 be some professional oversight, but I'm not sure what
6 you're referring to as professional oversight.

7 MR. TRUESDALE: Well, for instance, there's
8 one hour of professional oversight time allocated to
9 preparation of a 45-day report, which includes upwards of
10 30 some odd hours, 40 some odd hours of other staff, so
11 it's a 40 to 1 ratio of oversight to actual time expended
12 in preparation of that particular document?

13 MR. CLAY: That's correct.

14 MR. TRUESDALE: And does that seem -- as a
15 professional, when you -- as you understand the
16 Professional Engineering Act as a professional engineer,
17 do you think that satisfies the requirements of the
18 Professional Engineers Act?

19 MR. CLAY: To the best of my knowledge, it
20 does. I don't think anywhere in the Professional
21 Engineers Act it talks about percentages or -- that I'm
22 aware of.

23 MR. TRUESDALE: You're correct. You are
24 correct. In your time as overseeing the LUST program,

1 about what percentage of time do you expend as a
2 professional in charge of oversight of this program in
3 comparison to the amount of time expended?

4 MR. CLAY: I don't have any specific
5 numbers, but I would venture that I probably -- oversight
6 of direct reviews is probably less than this percentage
7 of time.

8 MR. TRUESDALE: But you're not responsible
9 for the direct reviews. There would be another
10 professional that's responsible for oversight of direct
11 reviews.

12 MR. CLAY: Correct.

13 HEARING OFFICER TIPSORD: Miss Rowe.

14 MS. ROWE: Carol Rowe, CW3M. This is a
15 little follow-up on Joe's question. Doug, do you have
16 any data or information on how long it takes your project
17 managers to do review of a 45-day report or a work plan
18 and a budget and so forth? Does it take two hours or
19 four hours or ten?

20 MR. CLAY: I mean, it varies. I mean, it
21 varies based on -- well, first of all, they don't review
22 45-day reports -- or they don't review the budgets for
23 45-day reports. The 45-day report is more of a
24 screening. Brian does a lot of that. But, I mean, it

1 varies a lot depending on the quality of the report and
2 the experience of the project manager.

3 MS. ROWE: Brian, I guess since you've done
4 several of these, do you have any range of hours for,
5 say, a corrective action plan, review time, budget,
6 technical plan?

7 MR. BAUER: Well, I know I look at 45-day
8 reports all the time, and we -- and I can go through
9 probably about a dozen in a half an hour for --

10 MR. CLAY: You know, that's for screening
11 purposes.

12 MS. ROWE: That's a screening?

13 MR. BAUER: Yeah, a screening. A corrective
14 action plan would take a little bit longer. If there was
15 TACO involved, we do the TACO calculations, but --

16 MR. CLAY: That would depend on whether it's
17 an alternative technology.

18 MS. ROWE: That was what I was trying to get
19 after, was the -- our professional oversight review and
20 certification of a plan is going to be probably to the
21 level that a project manager is going to look at. You're
22 going to check equations, you're going to go through that
23 thing, and these hours seemed less. I wondered if the
24 project managers have any idea what their time frame

1 would be to look at the same kind of report.

2 MR. CLAY: Yeah, I mean, we really didn't --
3 you know, there is a range and it does vary, but we
4 didn't look at it from that standpoint.

5 MS. ROWE: Thank you.

6 HEARING OFFICER TIPSORD: Mr. Koch?

7 MR. KOCH: I have a quick couple of
8 questions. From the beginning of these proceedings
9 there's several different terms that have been used, and
10 I'd like to get, Doug, your definition or the Agency's
11 definition of what these terms actually mean. It appears
12 that they're used by different parties in different
13 contexts, and I think it would help to provide some
14 clarity. The first is -- I'll just read the list, and
15 then if you want to address each one. The term task, the
16 term activity, the term phase, the term deliverable, the
17 term scope of work and the term specification. Seems
18 that many of those are used interchangeably, and I'm
19 curious if that's how the Agency interprets those.

20 MR. CLAY: Well, I mean, I -- they may have
21 been used interchangeably. I mean, that -- I would think
22 they were --

23 HEARING OFFICER TIPSORD: Doug, you need to
24 speak up a little bit. We're losing you.

1 MR. CLAY: Okay. I -- They may very well
2 have been used interchangeably by different people from
3 the Agency, by the same person from the Agency. I'm sure
4 I've used several of those interchangeably.

5 MR. KOCH: In your personal opinion, is
6 there a difference between those terms?

7 MR. CLAY: Could you read them again?

8 MR. KOCH: Task, activity, phase,
9 deliverable, scope of work, specification.

10 MR. CLAY: There's -- Yeah, there's a
11 difference. I'd probably use task and activity
12 interchangeably. Deliverable, that's a -- I don't use
13 that term. That's a consulting term. That sounds more
14 like a -- Deliverable means a plan or report --

15 HEARING OFFICER TIPSORD: We're losing you
16 again, Doug. You turned away. We can't hear you.

17 MR. CLAY: Deliverable for me would be a
18 plan or report that's, you know, the final document.
19 What were some of the other terms used?

20 MR. KOCH: Scope of work.

21 MR. CLAY: Scope of work probably is several
22 tasks or more than one task. And there's another term in
23 there.

24 MR. KOCH: Specification.

1 MR. CLAY: I'm not sure that specification
2 would be any -- I would use those similar to any of those
3 or use those interchangeably with any of the other terms.

4 MR. KOCH: Okay. Second question I have is
5 that the -- you just testified earlier that you
6 previously had a rate sheet that you -- that the Agency
7 used to help it make reasonableness determinations, and
8 you testified that with regard to professional consulting
9 services that that rate sheet did not include a number of
10 hours per task nor a standard task list because you just
11 haven't had that historically, but it did include prices,
12 appropriate prices per hour for each professional
13 classification; is that correct?

14 MR. CLAY: That's correct. I -- It may have
15 included lump sums for, like, site classification too,
16 but generally it was a unit rate for professional
17 services.

18 MR. KOCH: Per hour.

19 MR. CLAY: Right.

20 MR. KOCH: Okay. And you've testified that
21 you needed a tool like that to help make reasonableness
22 determinations. The ruling under docket A included
23 prices per hour for professional services and standard
24 labor classifications, so don't you now have the tool

1 under docket A that will allow you to make reasonableness
2 determinations for professional consulting services in a
3 fashion consistent with the way that you have for many,
4 many years?

5 MR. CLAY: We've found that --

6 MR. KOCH: And let me clarify. Prior to the
7 elimination of your ability by the courts to be able to
8 use the rate sheet.

9 MR. CLAY: Now, we started drafting of these
10 rules and working on these rules prior to that case ever
11 coming forward, because we had seen a need to have cost
12 controls not only on the rates but also on the time it
13 took to perform certain tasks or activities.

14 MR. KOCH: What about the completed
15 deliverable?

16 MR. CLAY: Again, that's just a grouping of
17 tasks, I believe. My term of deliverable is a plan or
18 report. That all goes into the task -- The tasks all go
19 in to establish -- or to completing that deliverable.

20 MR. KOCH: So just so I'm clear, per your
21 definition, deliverable is comprised of many tasks.

22 MR. CLAY: That would be my definition.

23 MR. KOCH: Okay. Just trying to clarify. I
24 don't know that that's the definition that we've all

1 used, but --

2 HEARING OFFICER TIPSORD: Anything further?

3 MS. HESSE: I want to follow up. Carolyn
4 Hesse. I want to follow up on something Miss Rowe was
5 asking about. Now, I just want to make sure I have this
6 clear. There was this workgroup that was made up of five
7 section managers, five unit managers, five project
8 managers, two claims unit reviewers and Mr. Clay, and
9 based on all your years of experience of reviewing
10 reports, you came up with a certain number of hours it
11 would take to do specific tasks, correct?

12 MR. CLAY: Based on our experience dealing
13 with LUST-related plans and reports, yes, we came up with
14 the hours to do those tasks.

15 MS. HESSE: For example, you came up with
16 the number of hours for various people to prepare and
17 submit corrective action completion reports, correct?

18 MR. CLAY: Correct.

19 MS. HESSE: And yet you just testified a
20 couple minutes ago when one of your project managers was
21 asked a specific question as to how long it would take
22 him to review such a report, you couldn't answer the
23 question, could you?

24 MR. CLAY: We provided estimates for --

1 based on our best professional judgment and our
2 experience how long it could -- how long it should
3 reasonably take to do those.

4 MS. HESSE: But your experience is based on
5 reviewing reports. Of your experience, of all the
6 people's experience, how many have had experience and how
7 many hours of experience in actually writing corrective
8 action completion reports?

9 MR. CLAY: Very few hours -- or years
10 writing completion reports, but we have seen literally
11 thousands submitted by other consultants telling us how
12 much time it has taken them to write these reports.

13 MS. HESSE: I think we all understand that,
14 but the second part of my question was you were asked how
15 long does it take -- Mr. Bauer was asked this question,
16 how long does it take him to review a corrective action
17 completion report, and correct me if I'm wrong, but he
18 wasn't able to answer that question. He mentioned a
19 number of different variables in there, some things that
20 could take longer, if there's TACO going on, if there's
21 some kind of engineered barrier in there; isn't that
22 correct?

23 MR. CLAY: Yeah. I mean, it is variable. I
24 mean, he's not -- he can't say specifically exactly how

1 much a corrective action plan every time takes, but we've
2 allowed for those variables in the time that we've
3 allotted or we've estimated in our spreadsheet.

4 MS. HESSE: And I don't see an indication
5 here -- perhaps you can point it out -- of how you've
6 allowed for variables.

7 MR. CLAY: Well, we discussed the times for
8 the different tasks, different parts of the plan,
9 preparation. We've also included costs for gaining
10 off-site access, for a TACO evaluation. We've included
11 those. In some cases you may be doing those and in some
12 cases you may not, so we've allowed that as variables in
13 there.

14 MS. HESSE: Nothing else right now.

15 HEARING OFFICER TIPSORD: Anything else?
16 All right. I do have a couple of quick questions. One
17 of the things the Board asked specifically was whether or
18 not these should be -- a scope of work should be in the
19 Board rules or in Agency rules, and you indicated that
20 you don't believe that it needs to be a part of the
21 rules. Could you envision -- explain to us how you would
22 envision the scope of work being put together and used?

23 MR. CLAY: We just didn't think it needed to
24 be in the rules because it -- the task as outlined by the

1 Board and what we had testified to in the past is that it
2 really follows the regulations and the forms. I don't
3 think we -- I mean, we wouldn't object to it being put in
4 there, but we just didn't feel like it was needed to be
5 put in there.

6 HEARING OFFICER TIPSORD: The other question
7 I have, as you may know, the Board received a
8 recommendation from the Joint Committee on Administrative
9 Rules in subdocket A asking us to gather further
10 information concerning two specific items, the use of the
11 groundwater ordinance and the tier 2 TACO, and at this
12 time do you have anything additional that you would like
13 to add on those two issues?

14 MR. CLAY: No. I think we fully supported
15 our position on those and believe that the Board was --
16 by including those, you know, we would hope that they
17 would continue to include those as they have written in
18 subdocket A. We fully support those two provisions
19 requiring use of a groundwater ordinance if one is
20 already in place and can be utilized and requiring tier 2
21 soil numbers on site.

22 HEARING OFFICER TIPSORD: Anything else for
23 the Agency?

24 MR. DOTY: Duane Doty of United Science

1 Industries, and it's on this topic right here. Do you
2 know how many NFR letters out there right now are
3 supported by groundwater ordinances? Just -- I don't.
4 I'm just curious. There's bound to be several. Do you
5 have any idea how many are out there?

6 MR. CLAY: Well, it's utilized --
7 groundwater ordinances are utilized in the RCRA Subtitle
8 C program, site mediation program and the LUST program.
9 It's available on our database.

10 MR. DOTY: Is it?

11 MR. CLAY: I don't have it off the top of my
12 head.

13 MR. DOTY: If an ordinance like that is
14 removed from the book, will it void that letter? An NFR
15 letter is based on the existing ordinance, but that
16 community later pulls that ordinance, what happens to
17 that NFR letter?

18 MR. G. KING: Those NFR letters would be
19 voidable. Doesn't automatically void them.

20 MR. DOTY: Well, how would that
21 determination be made?

22 MR. G. KING: We would have to go through
23 a -- the procedures -- I believe TACO sets that out, the
24 procedures to be followed to void an NFR letter that has

1 been issued. We follow those procedures.

2 MR. DOTY: If that determines that that
3 letter should be void and there's corrective actions for
4 that tank owner to have to perform and costs to be
5 incurred, is that owner going to have the benefit of
6 being reimbursed from the fund?

7 MR. G. KING: I don't think we addressed
8 that. I don't think we addressed that issue in the
9 rules.

10 MR. CLAY: We've never seen -- had a
11 community other than -- We've never had an ordinance that
12 wasn't -- didn't remain in place. There was one that was
13 I think accidentally --

14 MR. G. KING: Yeah.

15 MR. CLAY: -- they deleted one portion of
16 the ordinance and it happened to include the portion of
17 the city ordinance regarding --

18 MR. DOTY: I guess it could happen, though,
19 couldn't it?

20 MR. CLAY: Conceivably it could --

21 MR. DOTY: I'm afraid this might encourage
22 exactly that, is my concern.

23 MR. CLAY: What's that?

24 MR. DOTY: I'm afraid that this -- these

1 provisions could encourage exactly that, tank owners in
2 areas of -- ordinance areas, groundwater ordinance areas.
3 We've worked with -- Am I testifying?

4 HEARING OFFICER TIPSORD: Yes, you are.

5 Well, I guess before I swear you in, I --

6 MR. DOTY: My concern is there are a lot of
7 letters out there that are supported by ordinances.

8 HEARING OFFICER TIPSORD: All right. Let's
9 swear you in, but please make it brief.

10 MR. DOTY: I will.

11 HEARING OFFICER TIPSORD: Okay.

12 MR. DOTY: I'll make it very brief.

13 HEARING OFFICER TIPSORD: Because you will
14 have an opportunity to testify later.

15 MR. DOTY: Okay.

16 (Witness sworn.)

17 MR. DOTY: Very quickly, just what I was
18 trying to get at is we have worked with tank owners who
19 have asked their communities for ordinances because it
20 would help support closure and get them to the end, you
21 know, and they've been supported by their communities
22 because they're supporting their business owner, their --
23 in their community. I'm afraid that a business owner
24 could just as easily walk to a city government and ask

1 that it be removed, because he could prefer to remediate
2 his property instead of being strapped -- being forced to
3 use that ordinance or his reimbursement limited by that
4 ordinance, and we haven't seen it yet, but I'm concerned
5 that you -- we could be promoting exactly that. In that
6 case, what would happen?

7 MR. G. KING: Let me comment. I mean, one
8 can always theorize on possibilities of things that could
9 happen. In the nine years now that we've been
10 administering the TACO rules, we've never seen that
11 situation occur. Out of thousands of situations we've
12 had to deal with across all our programs, nobody has ever
13 even remotely suggested that item, so to try to gear a
14 program off of a remote theorization of something that
15 may happen, I just -- I don't see the real point in it.

16 MR. DOTY: All right. This is a totally
17 different situation. They've not -- This revision was
18 not -- This wasn't the case nine years ago. There would
19 be no reason for someone to request it. It's always been
20 you want to benefit from it, it's the tank owner's
21 election. It's not anymore. That changes what's been
22 occurring over the last nine years or so.

23 MR. CLAY: But, I mean, in those situations
24 where there's ordinances, in most cases there's more than

1 one person relying on that ordinance, so I think --

2 MR. DOTY: And I think that's right.

3 MR. CLAY: So for a community to change that
4 ordinance based on a station owner's argument that should
5 be -- I mean, I think they would be opening themselves up
6 for not only criticism but maybe --

7 MR. DOTY: Right.

8 MR. CLAY: -- liability if they, you know,
9 approved and offered that as a way for someone to close
10 these sites and then rescinded that at some point in the
11 future because one person wanted that when fifty people
12 already rely on that ordinance.

13 MR. DOTY: I've seen exactly the opposite.
14 I've seen one person request it but I can see fifty
15 people asking to be removed.

16 HEARING OFFICER TIPSORD: Okay. Mr. Doty,
17 we -- we're going to let -- you will be testifying and I
18 will be asking the same questions since you guys were
19 directly responsible, I believe, helped to get the JCAR
20 recommendation, and I want to hear your thoughts on it.

21 MR. DOTY: Okay.

22 HEARING OFFICER TIPSORD: Mr. Truesdale, you
23 have a question?

24 MR. TRUESDALE: I think this is related to

1 Duane's questions about the ordinances.

2 HEARING OFFICER TIPSORD: And again, keep in
3 mind that you are going to be testifying later, so please
4 keep your own opinions to that point in time. Thank you.

5 MR. TRUESDALE: I intend to ask questions
6 explicitly.

7 HEARING OFFICER TIPSORD: Thank you.

8 MR. TRUESDALE: But you know how that goes.

9 HEARING OFFICER TIPSORD: Exactly.

10 MR. TRUESDALE: And the question I have with
11 regard to the ordinance and how it applies within TACO,
12 as you're aware, as you may be aware, TACO is currently
13 going through rulemaking revisions, and in testimony,
14 Mr. King stated that another rulemaking -- proposed
15 rulemaking revision to TACO will be on the calendar for
16 this year to address the vapor intrusion pathway, which
17 is addition of a new pathway. How would ordinances that
18 are used to address the groundwater ingestion exposure
19 route and achieve an NFR letter now, which then would be
20 subject to potential vapor intrusion pathway exposure
21 routes in the future when TACO's changed, how would those
22 be addressed? Would they be allowed back into the
23 program, and closing the sites currently under that
24 ordinance that only addresses the groundwater ingestion

1 pathway, do you feel that that -- what would the
2 ramifications be if in fact the vapor intrusion pathway
3 becomes an issue after the revisions to TACO in the
4 future?

5 MR. G. KING: Well, I hate to -- I mean, at
6 the last TACO hearing I just discussed the fact that --
7 in response to your questions, Mr. Truesdale, I responded
8 to the fact that we were in the early stages of
9 developing a regulatory proposal to deal with the vapor
10 intrusion pathway. We're still proceeding along with
11 that. There's a lot of issues to be addressed. We will
12 go through our internal process of developing a proposal
13 and then we will certainly seek a peer review from those
14 outside of the Agency with regards to the nature of that
15 proposal and things we haven't thought of with regards to
16 what -- the proposal.

17 MR. TRUESDALE: I guess a follow-up
18 question, do you think it's wise to tie this regulatory
19 program to a parallel regulatory program that could
20 change with time and then force subsequent changes to one
21 rulemaking as a result of changes within another
22 rulemaking? Specifically tier 2 evaluation. If there's
23 a price tied to tier 2 evaluation and a TACO order
24 changed to add a pathway and those costs increased, that

1 would necessitate rulemaking changes under LUST that may
2 not be necessary otherwise, especially in the context of
3 the LUST programs already stated, shortcomings and staff
4 and resources?

5 MR. G. KING: I think it's highly
6 speculative to be debating about a rulemaking that we
7 haven't even developed when we have something before us
8 right now. We'll have to -- I mean, the questions you've
9 raised, I certainly expect that they will be raised in
10 the context of developing the vapor intrusion rule. I
11 think that's -- we'll -- we will respond to those then.

12 MR. CLAY: Yeah. I mean, if something like
13 that happens where, you know, there's an impact on
14 eligibility and reimbursement, I'm sure that we would
15 consider something along the vapor intrusion as an
16 extraordinary and unusual circumstance.

17 MR. TRUESDALE: So that would relate to the
18 MTBE provision?

19 MR. CLAY: Yeah, similar to MTBE, but, I
20 mean, before it could actually be changed in the rules,
21 we could address that through unusual and extraordinary
22 circumstances.

23 HEARING OFFICER TIPSORD: Miss Davis next.

24 MS. DAVIS: Okay. Just a question. So am I

1 understanding that if we closed a site now using the
2 groundwater ordinance and that site -- and we get an NFR
3 letter and that site develops a vapor problem, are -- can
4 they come back into the fund, or what happens? I'm
5 confused about what happens at that point.

6 MR. CLAY: Well, not right now. I mean, I
7 think that's what Joe's referring to. I mean, right now,
8 if you have -- if you close the site and you have MTBE
9 and groundwater going off-site or going off-site at both
10 60 parts per -- 70 parts per billion of the remediation
11 objective, that would -- you could allow that back in.
12 Joe was asking whether or not there'd be a parallel
13 situation for vapor intrusion, and I think in the interim
14 we could -- if something is passed in TACO that we could
15 address that through the unusual and extraordinary
16 circumstance, we could potentially go back into the LUST
17 rules and amend that to allow that as an opener, if you
18 will, to let somebody back in, but it would be very
19 premature to do that when we're years out from doing
20 something with vapor intrusion.

21 HEARING OFFICER TIPSORD: Miss Rowe?

22 MS. ROWE: Follow-up to that. If that
23 situation were to happen tomorrow -- and we provided in
24 our testimony an example -- but groundwater contamination

1 is severe enough that it causes a vapor problem in a
2 neighboring building, if that -- if there was an
3 ordinance that covered that area, how would that
4 situation be handled?

5 MR. CLAY: Well --

6 MS. ROWE: It wouldn't be eligible for
7 corrective action.

8 MR. CLAY: Right, but I believe the example
9 you gave was free product, wasn't it?

10 MS. ROWE: (Shakes head back and forth.)

11 MR. CLAY: Not free product?

12 MS. ROWE: No.

13 MR. CLAY: That would be eligible because it
14 would be --

15 MR. BAUER: Yeah, the vapors.

16 MR. CLAY: You've got the vapors in the
17 basement. We've reimbursed it, right? I mean, I --

18 MS. ROWE: Yeah, but if you were to try to
19 mitigate -- how would you mitigate -- if you had to
20 remediate the groundwater to attack that pathway, that
21 would be groundwater remediation in an area covered by an
22 ordinance, which would be ineligible.

23 MR. G. KING: If I can just -- again, we're
24 trying to -- we're -- at this point we're speculating on

1 what a potential TACO rule is going to say that we
2 haven't even --

3 MS. ROWE: This isn't about the TACO.

4 MR. G. KING: -- developed a proposal.

5 MR. CLAY: This is about vapor intrusion.

6 MS. ROWE: But this would be a situation
7 that would happen tomorrow. It's not something that
8 we're waiting for the TACO rule to address. It's a
9 groundwater contamination issue that's causing a vapor
10 issue. How would it be eligible for reimbursement?

11 MR. CLAY: As of right now, I mean, I think
12 it would be reimbursed, and I don't think this changes
13 that, the proposal.

14 MS. ROWE: But if groundwater remediation in
15 an area covered by an ordinance is an ineligible cost,
16 what mechanism is there for that site to seek
17 reimbursement?

18 HEARING OFFICER TIPSORD: Can I ask
19 something here? Let me insert a question here. Every --
20 Whatever you guys ask a question -- and by you guys, I
21 mean the consultants -- ask a question of the Agency, you
22 talk about groundwater -- if there's a groundwater
23 ordinance in place, remediation is not available, but is
24 my understanding -- am I correct or am I incorrect that

1 you have to meet certain criteria before you're even
2 eligible to use the institutional control of the
3 groundwater ordinance? Simply because there's a
4 groundwater ordinance in the community you're in does not
5 mean there's necessarily automatically no remediation; is
6 that correct?

7 MR. CLAY: That's correct.

8 MR. G. KING: That's correct.

9 HEARING OFFICER TIPSORD: Thank you. I just
10 wanted to clarify that point. I think they're looking
11 for an answer to this question, your question.

12 MS. ROWE: Okay.

13 MR. CLAY: Under early action, if you look
14 at -- under 734.210(a)(3), it says identify and mitigate
15 fire, explosion and vapor hazards, and then under (b)(3)
16 it says continue to monitor and mitigate fire, explosion
17 and safety hazards posed by vapors.

18 MS. ROWE: If the situation happens after
19 early action or becomes apparent after early action?

20 MR. CLAY: I think you just continue to do
21 that. I mean, it's -- I mean, you've got a -- you've got
22 an isolated case. I mean, we don't see a lot of --

23 MS. ROWE: No.

24 MR. CLAY: -- vapor issues when someone

1 is -- has closed a site. I mean, it's usually a free
2 product in most cases. I mean, in that case, I mean, I
3 think under those provisions you would be eligible to use
4 a vapor hazard, a health hazard due to those vapors.

5 HEARING OFFICER TIPSORD: Okay. I'm willing
6 to continue along this path and ask these questions, but
7 we're not going to keep asking hypotheticals, folks. We
8 need to talk about why you specifically -- we can address
9 the information, but we could spend all night tonight
10 talking about potential hypotheticals, so could we please
11 keep it to either questions -- if you want to offer
12 hypotheticals and do that in your testimony and then --
13 but, please, let's try and keep it to questions. Miss
14 Hesse, did you have a follow-up?

15 MS. HESSE: Yeah. I wanted -- I'm trying to
16 get an understanding also of how this is going to work.
17 And I'm sorry. This is not a hypothetical.

18 HEARING OFFICER TIPSORD: It's quite all
19 right.

20 MS. HESSE: These are real world cases. Say
21 there's a municipality with a groundwater ordinance and
22 there's free product. The free product -- I'm trying to
23 take this back to the elemental level so we can all
24 understand what's going on. Is it the Agency's position

1 even if the groundwater ordinance is there, the free
2 product needs to be remediated?

3 MR. CLAY: Yes. You cannot utilize a
4 groundwater ordinance to address free product.

5 MS. HESSE: If there's a situation where
6 there's not free product -- again, it's not a
7 hypothetical.

8 HEARING OFFICER TIPSORD: But I must caution
9 you also about asking questions about real world cases
10 that could end up before the Board.

11 MS. HESSE: Which is why there are no names
12 given. If there's -- And it's framed as a hypothetical.
13 But if -- given the situation where there's not free
14 product but there's enough dissolved petroleum or
15 whatever in the groundwater that it creates a hazard next
16 door due to vapors that migrated there, regardless of the
17 status of TACO now, is remediation still required under
18 the underground storage tank program as it's written --
19 as things are written now?

20 MR. CLAY: Restate that, please.

21 MS. HESSE: If there's gasoline dissolved in
22 the water so next door there's an exposure hazard to
23 benzene, would TACO require -- I'm sorry -- would the
24 underground storage tank program require remediation?

1 MR. CLAY: Not if there was an ordinance or
2 an ELUC in place on that property.

3 MS. HESSE: But doesn't the ordinance only
4 apply to drinking water, not to benzene that might have
5 evaporated into the air?

6 MR. CLAY: The ordinance applies to drinking
7 water.

8 MS. HESSE: And isn't the groundwater
9 ordinance solely to rule out the exposure route of
10 ingestion of groundwater?

11 MR. CLAY: Yes, but there's also an
12 inhalation and ingestion route that has to be addressed
13 in all cases.

14 MS. HESSE: But the groundwater ordinance
15 does not address the inhalation routes, correct?

16 MR. CLAY: That's correct.

17 MS. HESSE: There's a separate part of TACO
18 that goes to inhalation routes, correct?

19 MR. CLAY: Correct.

20 MS. HESSE: So the question is, even if a
21 groundwater ordinance is in place, if there's an issue
22 with migration of contaminated groundwater beneath under
23 buildings that creates an inhalation exposure route in
24 those buildings, what is the Agency's position on whether

1 that groundwater needs to be cleaned up?

2 MR. G. KING: I mean, that's the -- I think
3 you're asking for what is our proposal relative to the
4 vapor intrusion pathway under TACO. Seems to me that's
5 exactly what you're asking us to say, what our position
6 is. I mean, I can tell you what the petroleum industry
7 from -- on a nationwide basis is saying, but I -- you
8 know, I don't know that that's particularly relevant.

9 MS. HESSE: But we still have this interim
10 time before any TACO amendments are passed, and the
11 question is, what is going to happen next week as soon as
12 the underground storage tank rules are completely
13 finalized with respect to contaminated groundwater
14 migrating off-site?

15 MR. G. KING: The way TACO is currently
16 structured, if a person meets the requirements of TACO,
17 they are entitled to get an NFR letter.

18 MR. CLAY: And I would -- I think there
19 are -- I'm sure there are hundreds -- I don't know the
20 exact number -- that have relied on a groundwater
21 ordinance. In fact, the company that you represent has
22 utilized groundwater ordinances and ELUCs for
23 contaminated groundwater that goes off-site.

24 MS. HESSE: I still don't think I have an

1 answer to my question, which is before the NFR letter is
2 issued, if there's an ordinance in place, what
3 remediation -- would the Agency automatically say you
4 don't have to do remediation of groundwater just because
5 there's an ordinance or are you saying that you still
6 have to do enough remediation to meet all the TACO
7 criteria? That's what I'm trying to find out.

8 MR. CLAY: If you want to utilize an
9 ordinance, you have to model the groundwater
10 contamination. Soil contamination is going to be left in
11 the soil to groundwater and then model the groundwater
12 contamination to ensure that the ordinance covers that
13 entire area, and as long as it's not free product and the
14 ordinance area covers that measured model extent of
15 groundwater contamination, it could be utilized as an
16 institutional control to eliminate the groundwater
17 ingestion pathway.

18 MS. HESSE: That's one exposure pathway.
19 What about eliminating the pathway from exposure to
20 vapors that are coming off the groundwater?

21 MR. CLAY: There is no remediation objective
22 for that. There's an inhalation -- a soil inhalation
23 number and there's a soil ingestion number, but under the
24 current TACO rules, there is no pathway in any of our

1 cleanup programs for that scenario.

2 MS. HESSE: But hasn't the Agency issued
3 some NFR letters where they did take into account vapors
4 coming off groundwater and intrusion into buildings where
5 they've required certain construction practices be put
6 into place on any new construction in that area?

7 MR. CLAY: I'm not -- I don't know of any
8 specific -- There may have been -- As part of a tier 3,
9 it may have been a condition under tier 3 for an SRP
10 site. I'm not -- I don't -- I'm not -- Are you aware of
11 any?

12 MS. HESSE: Yes.

13 MR. CLAY: Okay. What site would that be?

14 MS. HESSE: I will send you the information.
15 It's in East Moline.

16 MR. CLAY: Okay.

17 HEARING OFFICER TIPSORD: Anything else?

18 MS. HESSE: No.

19 HEARING OFFICER TIPSORD: Mr. Truesdale.

20 MR. TRUESDALE: Very brief.

21 HEARING OFFICER TIPSORD: Please.

22 MR. TRUESDALE: Under the 732.734
23 regulations there is a requirement to identify and
24 mitigate fire, explosion and vapor hazards, and the

1 Agency has provided some language in part of these
2 revisions to address that in other parts of the
3 regulations. Couldn't this be addressed by adding some
4 similar language to the eligibility provisions for
5 groundwater remediation in areas covered by an ordinance?

6 MR. CLAY: Well, part of the problem is --
7 with that is what -- I'm not sure what level it is. I
8 mean, that's what --

9 MR. TRUESDALE: Irrespective of an
10 objective, it's -- the only requirements are to identify
11 and mitigate fire, explosion or vapor hazards. There are
12 NIOSH guidelines for indoor vapors, there are LEL ratings
13 for explosive limits, and we are required to monitor and
14 mitigate those as part of 732 and 734 regulations
15 irrespective of what a vapor intrusion objective would be
16 under TACO, and you, you know, identified other parts in
17 the regulations where you've realized that mitigation of
18 fire, explosion and vapor hazards would be an exception
19 to some provisions of these proposed regulations.
20 Couldn't you add similar provisions to the eligibility
21 under the groundwater ordinance restriction?

22 MR. CLAY: As we stated, I mean, and as we
23 proposed to clarify in our draft submitted today, you
24 know, that is a reimbursable item and it should be

1 reimbursed on a time and materials basis. I guess my
2 only question is what is the -- the explosion hazard
3 is -- fire is obvious, but I want to avoid someone
4 monitoring the basement of a house for the next 20 years
5 while their pump and treat continues to run.

6 MR. TRUESDALE: Absolutely. That's -- It
7 would require active remediation of groundwater in an
8 area that would otherwise be ordinances in order to
9 address --

10 MR. CLAY: It's not required now. You
11 have -- All the consultants in this room have closed
12 sites using groundwater ordinances, and I would venture
13 to say they do not monitor those buildings in those
14 areas.

15 MR. TRUESDALE: But they're required to
16 identify if that was a problem initially if it were
17 identified to be a problem, and we've --

18 MR. CLAY: Right, but why would that change
19 with -- we're talking about reimbursement issues here,
20 not, you know, what we utilized as the groundwater
21 ordinance.

22 MR. TRUESDALE: Right, but the groundwater
23 ordinance addresses the ingestion of groundwater, and the
24 way it's written in the rule now, if there's a

1 groundwater ordinance in place, no remediation of
2 groundwater is eligible. However, if you're continuing
3 to conduct activities under 732, part --

4 MR. CLAY: 210, I think.

5 MR. TRUESDALE: Yeah, whatever it is. I'll
6 take your word for it. To identify and mitigate risks
7 associated with fire, explosion or vapor hazards, that
8 would require -- that would potentially require
9 remediation in an area that's otherwise covered by an
10 ordinance.

11 MR. CLAY: Right. I mean, I think if you're
12 doing remediation in accordance with 210, 734.210, you're
13 not going to get your NFR letter until you've addressed
14 that issue.

15 MR. TRUESDALE: Correct. Correct.

16 MR. CLAY: And that would continue to be
17 eligible for reimbursement.

18 MR. TRUESDALE: Even if it's in an
19 ordinated area.

20 MR. CLAY: Yes.

21 HEARING OFFICER TIPSORD: Quickly, Mr. Koch.

22 MR. KOCH: I'll keep it quick. This is a
23 really fundamental question. I'm looking at the Agency's
24 mission statement from your Web site, and amongst other

1 things, the mission is to protect health, welfare, and I
2 want to emphasize property and the quality of life. In
3 support of that mission, there are several program goals.
4 Number four of those programs goals is to enhance the
5 capability to fund environmental cleanup. I'd just like
6 to know how this particular requirement, tier 2 and TACO
7 and the use of groundwater ordinances, is consistent with
8 the protection of property, quality of life and enhancing
9 cleanups.

10 MR. CLAY: I mean, I think you could review
11 the TACO testimony from 1975 and '76 -- or '97 and '96
12 because it goes into the protection of the environment
13 and --

14 MR. KOCH: Doug, isn't it true, though, that
15 those were intended -- originally intended to be site
16 specific?

17 MR. CLAY: What was intended to be site
18 specific?

19 MR. KOCH: The TACO regulations were
20 intended to be site specific.

21 MR. G. KING: No, they weren't. They were
22 intended -- As I've testified many times on that, they
23 were intended to set up a system through which owners
24 could develop remediation objectives for their sites.

1 MR. KOCH: And as it stands today or prior
2 to this last ruling, the owner had the option to select
3 whatever tier within TACO it -- he or she may desire to
4 select and as a practical matter be reimbursed for
5 that -- those remediation costs.

6 MR. G. KING: I'm not sure I understand the
7 question. What --

8 MR. KOCH: The -- As a practical matter, the
9 owner prior to the implementation of docket A had the
10 ability to select any tier within TACO that the owner
11 felt was appropriate for his or her situation and to
12 realize full reimbursement for the remedial costs that
13 were incurred -- the reasonable remedial costs that were
14 incurred as necessary to be at that particular tier that
15 was selected.

16 MR. G. KING: That's correct.

17 MR. KOCH: And in this instance that will no
18 longer happen, so some property values will not be
19 protected as much as they would have in the past; is that
20 correct? Do you share that opinion?

21 MR. G. KING: I really can't comment on the
22 property value issue.

23 MR. CLAY: I might also point out that just
24 because someone went to tier 3 doesn't mean that all

1 costs are reimbursed. If someone is doing what I would
2 characterize as a superfund type risk assessment, we
3 would not reimburse that. That's typically six figures.
4 We would say that's unreasonable and goes beyond the
5 minimum requirements.

6 MR. KOCH: To the extent that those -- that
7 tier was applicable to their site and they developed a
8 plan, submitted that plan to the Agency following that
9 tier, wouldn't they be reimbursed?

10 MR. CLAY: Not necessarily.

11 MR. KOCH: Well, if the Agency preapproved
12 the plan and the budget, wouldn't they be reimbursed for
13 those costs?

14 MR. CLAY: If we preapproved it, yes.

15 MR. KOCH: And then I'm interested in your
16 program goal number four, which is to enhance capability
17 to fund environmental cleanup. How is this consistent
18 with that program goal?

19 HEARING OFFICER TIPSORD: I think he --
20 Excuse me, but I think he already answered that. He
21 answered that at the beginning and suggested that we go
22 back to TACO testimony and explained it. I'm not sure
23 we're getting anywhere by repeating the question, and I
24 think it's time to take a short break again, a very short

1 break, and come back on the record in just a couple of
2 minutes.

3 (Brief recess taken.)

4 HEARING OFFICER TIPSORD: I think we're
5 ready to go back on the record. Are there any additional
6 questions for the Agency at this time? Okay. Seeing
7 none, we're switching up the order a little bit and we're
8 going to go to the PIPE testifiers. Could we have them
9 sworn in?

10 (Witnesses sworn.)

11 MS. MANNING: For purposes of the record,
12 I'm Claire Manning. I've been representing the
13 Professionals of Illinois for the Protection of the
14 Environment, PIPE, and if you'd each introduce yourself
15 for purposes of the record.

16 MS. ROWE: Carol Rowe, CW3M.

17 MS. DAVIS: Cindy Davis, CSD Environmental.

18 MR. KOCH: Jay Koch, United Science
19 Industries.

20 MS. MANNING: Okay. And just a couple of
21 preliminary questions for the three of you. You've seen
22 what I've marked --

23 HEARING OFFICER TIPSORD: Let's go ahead and
24 just mark it as an exhibit. You don't have to verify --

1 MS. MANNING: Exhibit 124? You don't care
2 about that?

3 HEARING OFFICER TIPSORD: Yeah. That's
4 fine, yeah.

5 MS. MANNING: Okay.

6 HEARING OFFICER TIPSORD: Save us some time.

7 MS. MANNING: Good.

8 HEARING OFFICER TIPSORD: I have PIPE's
9 prefiled testimony. If there's no objection, we'll mark
10 that as Exhibit 124. Seeing none, it's marked as Exhibit
11 124.

12 MS. MANNING: Just to -- And again, I hope
13 to be very brief with this, but just some preliminary
14 comments. While this is in the nature of prefiled
15 testimony, it also basically represents the position of
16 PIPE in terms of how to come up with numbers and what
17 kind of system to be utilized, you know, in attaching
18 numbers to a task-based scope of work system. These
19 three individuals as well as other individuals on behalf
20 of PIPE participated in the document that I have attached
21 to the prefiling that I made, and they are here
22 available. I would ask that the Board just admit that
23 as if read into the record. It is a compilation of a
24 workgroup of PIPE, and they're here, able and ready to

1 answer any questions on behalf of the Association.

2 HEARING OFFICER TIPSORD: Are there any
3 questions for PIPE?

4 MR. ROMINGER: No, I don't think so.

5 HEARING OFFICER TIPSORD: All right. I have
6 one brief one. In your prefiled testimony you've listed
7 criteria for developing scopes of work. In this regard,
8 have you had an opportunity to review USI's alternative
9 approach to establishing tasks and scopes of work, and if
10 so, do you believe that USI's approach satisfies PIPE's
11 criteria for developing scopes of work?

12 MS. MANNING: That's an easy answer for Jay.

13 HEARING OFFICER TIPSORD: Tell me the truth.

14 MR. KOCH: Yes.

15 MS. MANNING: No, but Carol and Cindy should
16 probably answer that too.

17 MS. ROWE: Honestly, I haven't gone through
18 it in total detail yet, so --

19 MS. DAVIS: I've read most of Jay's, and I
20 would have to say that, yes, I agree, it does.

21 HEARING OFFICER TIPSORD: Any other
22 questions? Okay. We're going to get out of here at
23 6:15.

24 MS. DAVIS: One down.

1 HEARING OFFICER TIPSORD: Thank you very
2 much.

3 MS. MANNING: Thank you for doing that.

4 HEARING OFFICER TIPSORD: Let's move on to
5 CW3M, and note that Carol is already sworn in, and do you
6 have a clean copy for me, Carolyn?

7 MS. HESSE: For the record, I'm Carolyn
8 Hesse. I'm with the law firm of Barnes & Thornburg, and
9 CW3M is my client in this proceeding, and I'll let them
10 each introduce themselves.

11 MS. ROWE: Carol Rowe, CW3M.

12 MR. SMITH: Vince Smith, CW3M.

13 MR. WIENHOFF: Jeff Wienhoff, CW3M.

14 HEARING OFFICER TIPSORD: And could we have
15 Jeff and -- I'm so sorry.

16 MR. SMITH: Vince. That's okay.

17 HEARING OFFICER TIPSORD: -- Vince be sworn
18 in? Carol's already sworn in.

19 (Witnesses sworn.)

20 HEARING OFFICER TIPSORD: Okay. If there's
21 no objection, then we'll enter your prefiled testimony as
22 Exhibit No. 125.

23 MS. HESSE: And here is a copy.

24 HEARING OFFICER TIPSORD: Great. Thank you.

1 Seeing none, it's marked as Exhibit No. 125. Are there
2 any questions for CW --

3 MS. HESSE: Excuse me. CW3M has prepared
4 some additional testimony that they would like to present
5 today. It's a shortened version of what was prefiled,
6 plus it's some additional comments in response to the
7 Agency's prefiled testimony that they did not have an
8 opportunity to comment on when their prefiled was due.

9 HEARING OFFICER TIPSORD: All right. Go
10 ahead.

11 MS. HESSE: And we would like them to read
12 that into the record.

13 MS. ROWE: It's brief.

14 HEARING OFFICER TIPSORD: Great. Go ahead.

15 MR. SMITH: First of all, we'd like to thank
16 the Board for the opportunity to present this today.
17 With regard to the eligibility of groundwater remediation
18 within an area governed by a groundwater ordinance, we
19 ask the Board to reconsider this issue. Additional
20 testimony has been offered and included scenarios where
21 some exposure pathways would be neglected by boring
22 groundwater contamination. I would like to point out
23 that none of our clients that have relied on a
24 groundwater ordinance in order to obtain an NFR have ever

1 left groundwater to remain in place that would be
2 considered an explosion or inhalation hazard, but we
3 believe that the long-term effects of leaving groundwater
4 contamination unremediated deserves more careful
5 consideration.

6 In the December 1, 2005, opinion and order,
7 second notice, the Board was convinced that the maximum
8 payment rates for professional services needed to be
9 adjusted to reflect actual scope of work and current
10 market rates. The Board stated that lump sum rates
11 should accurately reflect current and historical
12 reimbursement rates. The Board also agreed with the
13 participants that well-defined scopes of work would be an
14 integral component regarding payment of professional
15 services. The Agency's latest proposal does not attempt
16 to address the inadequacy of the previously proposed lump
17 sum rates for professional services. The prefiled
18 testimony is merely a more detailed version of guessing
19 used to try to create rates.

20 The Board and Agency attempted to create scopes
21 of work for various LUST-related tasks; however, the
22 scopes are generalized and broad. We think it is
23 important to first clarify the meaning of the
24 well-defined scope of work and discuss the differences

1 between general and detailed scopes of work. The scopes
2 presented by the Board, the Agency and by our company in
3 prefiled testimony are general in nature and list the
4 required components of each phase or task. A detailed,
5 well-defined scope of work quantifies deliverables. For
6 this reason, CW3M as well as the other participants did
7 not provide estimates of the number of hours to complete
8 each task. It is not possible without the quantities or
9 defined typical situation to estimate the hours to
10 prepare a 45-day report, for example. Additional
11 information is needed. The size of the site, the number,
12 size of stored product of the tanks, the number and
13 analytical parameter of the samples collected are a few
14 variables which affect the number of hours necessary to
15 complete the report.

16 In the consulting arena, we are accustomed to
17 providing cost estimates and bids based upon well-defined
18 scopes and deliverables. When scopes are vague, our cost
19 estimates typically include contingencies or change
20 orders for work not clearly specified. As the Board
21 indicated in the December 1, 2005, opinion and order, it
22 is difficult for consultants to demonstrate higher costs
23 as a result of unusual or extraordinary circumstances
24 when typical is not defined. However, without collection

1 of cost data, it would be impossible for the Agency or
2 the participants to define typical, thus limiting the
3 scopes of work to generalized tasks.

4 It's clear that the Agency doesn't wish to
5 undertake a data collection effort and that the Board's
6 not going to force the Agency to do so. After reviewing
7 the Agency's new reimbursement claim forms, we believe
8 that the collection of data may not be as daunting a task
9 as previously testified to. However, if data collection
10 is not a part of the process to define reasonableness of
11 rates and typical circumstances, the only feasible
12 alternative is to continue reimbursement of professional
13 services on a time and materials basis.

14 The Agency implied in its prefiled testimony that
15 one of the reasons against data collection is that the
16 cost could be inflated during the data collection time
17 frame. This is a serious allegation that consultants
18 within the state would commit fraud in order to elevate
19 rates. Contrary to the Agency's belief, we are
20 professionals who take our reputation and integrity very
21 seriously. The Agency also contended that there would be
22 no quality control or review during the data collection.
23 We do not believe it was ever suggested that no review
24 could occur during data collection. Currently the Agency

1 reviews all budgets, including time and material costs,
2 and requests additional or supporting justification if
3 any of the costs even appear to be excessive.

4 MR. WIENHOFF: I'd like to respond to a
5 couple of the comments made in Doug Clay's prefiled
6 testimony. First statement -- and they're all from page
7 2 of his testimony. First statement is that the Agency
8 does not believe that the lump sum payment amount should
9 be determined from future reimbursement submissions over
10 the next few years, and I believe he said today a couple
11 times in his testimony five years, mentioned five years.
12 We believe this is an exaggeration as to the length of
13 time over which data would need to be collected. We feel
14 six months to maybe a year at the maximum would be more
15 than an adequate sample size based on previous testimony
16 that approximately 200 submittals are received every
17 month, and then as more data would be collected over the
18 years, the numbers could easily be adjusted as time went
19 by.

20 The second statement is collecting the data,
21 breaking it down in great detail as has been proposed at
22 previous hearings would require significant resources by
23 the Illinois EPA which we simply do not have. We again
24 believe this is overstating what would be required, and

1 in CW3M's proposal there are 31 items for which
2 professional consulting tasks can be requested
3 reimbursement. That in addition to a few site parameters
4 such as number of boring samples, tanks, number of
5 contaminants, would be all that would be required of the
6 EPA to track.

7 Based on the estimate of receiving 200
8 reimbursement submittals a month, that is roughly ten a
9 day. With at most forty different pay items in each
10 submittal but on the average more like ten to fifteen
11 items, you know, corrective action costs would not be
12 listed in early action package. We're talking about
13 logging 100 to 150 numbers maybe into an Excel
14 spreadsheet on a daily basis. We believe a single person
15 could accomplish this task in a couple hours a day once a
16 spreadsheet is appropriately set up. We believe this
17 would hardly be considered significant resources for a
18 department with that number of people working for it.

19 Also, the third statement is that also this would
20 require that every consultant that does LUST work in the
21 state of Illinois adopt a complicated, confusing and
22 overly burdensome reimbursement accounting system that
23 has been designed and proposed by just a few consulting
24 firms. This type of system would undoubtedly increase

1 the cost of preparation of budgets and reimbursement
2 packages, thus increasing overall corrective action cost
3 for each site.

4 Again, CW3M believes that the Agency has
5 overstated what the participants in this hearing are
6 looking for. First, the reimbursement system proposed by
7 USI we believe in the long run would be of great benefit
8 to the LUST program. However, it is not the only way to
9 accomplish what we are looking for. The standardization
10 of Agency forms so that consultants bill in the same
11 terms is the most important part of this process, and the
12 Agency has already begun to do this with the new forms
13 they issued in their associated reimbursement categories
14 list. All that we need to adjust through this rulemaking
15 would be to agree on an appropriate remediation
16 categories list and then add a cover sheet to their forms
17 which would simply summarize the consultant costs into
18 the approved remediation categories so that the Illinois
19 EPA could easily input the data when submitted.

20 As for requiring that every consultant has to
21 redo their entire accounting system with these new rules
22 and new forms and the new remediation categories list,
23 the Agency is already requiring that we have to do that
24 because we have to track the cost in those categories, so

1 it was a little late to make -- to use that as a reason
2 that we can't make changes, and while redoing forms and
3 budgets do increase costs and overhead for us in the
4 short-term during a period of adjustment, as long as it
5 is done appropriately, the costs should be greatly
6 decreased in the long-term.

7 So in summary, what we are proposing is that we
8 believe that the rules already in place which provide for
9 payment of consultants on a time and material basis
10 supplemented by scopes of work similar to the ones we
11 have presented are all that are required for this program
12 to be run effectively. These scopes of work with
13 standardized reimbursement submittals from consultants
14 that the Agency would be easily -- would be able to
15 easily track costs in a consistent format, then we
16 believe lump sums would neither be required or advisable.
17 One, as previously discussed, lump sums could just as
18 easily overpay sums as underpay. Second, lump sums set
19 in rules will be very difficult to adjust on the fly.
20 However, if the Agency simply had in its possession a
21 spreadsheet which indicated a typical range of hours
22 that's used for a 45-day report is between for example 40
23 and 60 or the typical cost is between 4,000 and 6,000, if
24 it received a reimbursement request for \$8,000, then the

1 Agency could review the technical aspects of that report,
2 and if nothing extraordinary is noted, it could request
3 additional justification of the consultant as to why the
4 number is higher than what it typically sees or it could
5 simply reject that request.

6 To conclude, it is impossible to proceed with
7 lump sum costs for professional services without some
8 collection to define typical circumstances to correlate
9 statistical costs for each task and for the scope of each
10 task. The reimbursement history, the Board's review of
11 the records and the data evaluation conducted by USI
12 strongly support the position that the Agency's lump sum
13 rates are not adequate to fairly compensate professional
14 service costs. Accordingly, we urge the Board to
15 continue to retain the current practice of reimbursing
16 professional services on a time and material basis.
17 Again, we thank the Board for this opportunity to
18 testify.

19 MS. HESSE: Okay. That's the conclusion to
20 the testimony. If there's any questions.

21 HEARING OFFICER TIPSORD: Are there any
22 questions for CW3M? I just have one very minor question.
23 I noted that you commented on DCEO's determination not to
24 form an economic impact statement, and I just wondered if

1 you have anything more you'd like to add on that. I just
2 would like to see somebody actually comment on it.

3 MR. WIENHOFF: No, I guess our -- just our
4 main comment is, you know, the costs of reimbursement are
5 the biggest contention in this rulemaking, and having a
6 third party's evaluation of those costs when, you know,
7 it's one side versus the other at this point we think
8 is -- would be an invaluable tool if they could do that.

9 HEARING OFFICER TIPSORD: Thank you.

10 MR. G. KING: Jeff, I'm a little confused
11 about what you were saying, because you're talking about
12 a range of costs that the Agency would have. You gave
13 the example as 4,000 to 6,000.

14 MR. WIENHOFF: Say, you know, on your new
15 remediation categories list, one of the categories is
16 45-day report forms, and if you began collecting that
17 data and you saw that it was typical, you know, you could
18 have it -- set a limit of what -- you know, what the
19 bottom and top end is, and most would come in between
20 \$4,000 and \$6,000. Well, then if you saw one for \$8,000,
21 you know, if that information was available to your
22 reviewer, it'd be very easy for them to identify that as
23 something that was out of line with what you guys
24 typically see.

1 MR. G. KING: How is that not a rate sheet,
2 an unpublished rate sheet?

3 MR. WIENHOFF: But this -- I mean, these
4 rulemakings could provide you with the ability to do
5 that. Before you didn't have -- that was not --

6 MR. G. KING: So you're suggesting that the
7 Board adopt a rule that would allow us to have a rate
8 sheet that would not be available to the general public?

9 MR. WIENHOFF: No, it's not a rate sheet.
10 It's not a set rule. It's not a set number. It's you
11 guys have a range, and if you're starting to see that
12 range go up, then you can continue. It's not a --

13 MR. G. KING: Where would we put that range?
14 We would write that down somewhere, correct?

15 MR. WIENHOFF: Right. I mean --

16 MR. G. KING: Okay. Would -- Then would
17 people on the outside be entitled to see that?

18 MR. WIENHOFF: No, not necessarily.

19 MS. HESSE: Or another option is to have the
20 Board promulgate a procedure for doing calculations,
21 things like that, and for the Agency to put on its Web
22 site what the range is, where the range is based on the
23 size of the project or --

24 HEARING OFFICER TIPSORD: I don't think we

1 had you sworn in.

2 MS. HESSE: Oh, I'm sorry.

3 HEARING OFFICER TIPSORD: Can we have her
4 sworn in, please?

5 (Witness sworn.)

6 MR. WIENHOFF: I guess my answer is at least
7 the problem from my perspective that we had with the rate
8 sheet originally was that no one knew how it was set up,
9 no one knew, you know -- not that you don't know what it
10 is, but that we felt the rates were unfair because they
11 were -- we don't know how they were listed, and as long
12 as they're done in a fair and meaningful way, I think --

13 MS. ROWE: Well, they were also absolute, so
14 there wasn't much opportunity to provide -- if you had a
15 situation that would have been unusual or extraordinary
16 to provide justification to say, well, this site warrants
17 additional costs or another one wouldn't.

18 MR. G. KING: Thank you. I have -- don't
19 have anything further.

20 HEARING OFFICER TIPSORD: Anything else?
21 Mr. Koch.

22 MR. KOCH: I've got a question for Jeff.
23 Jeff, to clarify this range of costs, you see that each
24 hour would still have to be determined reasonable and

1 necessary, each hour of cost incurred against that
2 particular task is going to be reasonable or necessary in
3 order to be reimbursed, but that range just serves as a
4 barometer to help guide the thought process of the
5 reviewer that's evaluating the cost incurred against that
6 task. Is that how you see that?

7 MR. WIENHOFF: Yes.

8 MR. KOCH: Okay. Thank you.

9 HEARING OFFICER TIPSORD: Anything else?

10 Thank you very much. Miss Davis, it's you and
11 Mr. Truesdale next. Just off the record.

12 (Discussion held off the record.)

13 (Witness sworn.)

14 HEARING OFFICER TIPSORD: And if there's no
15 objection, we will mark the prefiled testimony of CSD
16 Environmental Services, Joe Truesdale and Cindy S. Davis,
17 as Exhibit No. 126. Seeing none, we'll mark it as
18 Exhibit 126.

19 MS. DAVIS: We have no additional testimony.

20 HEARING OFFICER TIPSORD: You weren't going
21 to add -- You had noted in your prefiled testimony that
22 you had something else you wanted to comment on.

23 MR. TRUESDALE: Oh, about --

24 MS. DAVIS: The scopes.

1 MR. TRUESDALE: Right, the scope of work for
2 alternative technology plan submittals. I'm sorry. My
3 mind is somewhere else. I have several copies. This is
4 from Texas Department of Natural -- or Texas Natural
5 Resource Conservation, and it is a form that they use for
6 evaluating alternative technology submittals. It's the
7 initial form they require. They have similar provisions
8 requiring comparing alternative technologies to other
9 technologies. This is the first step in their screening
10 program. This is a feasibility type evaluation. After
11 that's completed, if any of those technologies are
12 identified as not -- inappropriate for the site, then
13 they're excluded from further consideration. Any of
14 those potential alternatives that are identified as
15 applicable go into a preliminary design phase, which
16 entails essentially the same kind of cost comparison that
17 the Agency is proposing in their rulemaking, and then the
18 final step is selection of the desired alternative
19 technology and detailed design, cost estimates, followed
20 by implementation.

21 This is the type of phased approach to
22 alternative technology that we envisioned in our previous
23 testimony that the Agency did not respond to, and in
24 light of the subdocket B, we feel that it's probably

1 relevant to incorporate some type of phased approach in
2 this subdocket to address submittal of alternative
3 technology corrective action plans and address the
4 problems that Doug Clay brought to light in his testimony
5 associated with alternative technology.

6 HEARING OFFICER TIPSORD: If there's no
7 objection, I'll mark this --

8 MR. ROMINGER: I think it's kind of outside
9 the scope of what we're talking about, because this is
10 reimbursed on a time and materials basis, alternative
11 technologies.

12 MS. DAVIS: But it's also scope of work. We
13 were asked -- It's providing a scope of work for
14 alternative technology, how you go about conducting an
15 alternative technology plan.

16 MR. ROMINGER: Okay. Yeah, if we're just
17 talking about scopes of work, I guess that's fine.

18 MS. DAVIS: Yeah.

19 HEARING OFFICER TIPSORD: All right. We'll
20 admit this as Exhibit No. 127.

21 BOARD MEMBER JOHNSON: This is from Texas?

22 MR. TRUESDALE: Yeah.

23 BOARD MEMBER JOHNSON: You couldn't find
24 anything in the United States?

1 MS. DAVIS: I think I explained earlier why
2 we would like to do a phased approach, why we think
3 that's a good idea with alternative technology, and
4 that's because in terms of cost, if things are done in
5 phases and the Agency can review our proposed cost per
6 phase, they can keep a better control on the cost, plus
7 on our side, I don't like to have a lot of money laid out
8 in a design fee to -- only to find out that the Agency
9 doesn't want me to do that type of design. I would
10 rather be working together and knowing that -- you know,
11 if they're looking for us to go get ELUCs or if they're
12 looking -- you know, and I think if we break it down into
13 phases, it helps the communication between the two
14 parties and also helps control costs. That's where I was
15 coming from with the phases of alternative tech.

16 HEARING OFFICER TIPSORD: Was there anything
17 else?

18 MS. DAVIS: No.

19 HEARING OFFICER TIPSORD: Any questions? Go
20 ahead.

21 MR. G. KING: I just want to make sure, this
22 is the current TNRCC form that they use? Because it
23 looks like the date on it is November 1 of 1996.

24 MR. TRUESDALE: It's the current one that's

1 on the database. They've actually changed the name of
2 the organization also, but that's the current form.

3 MR. G. KING: So they have not updated their
4 form in ten years is what you're saying.

5 MR. TRUESDALE: No, not that particular one.
6 They have an updated form for tier 2 evaluations and
7 pricing associated with tier 2 evaluation. They've
8 updated several portions of their forms, but that's one
9 particular form that's worked for them apparently for
10 several years and have had no need to change.

11 HEARING OFFICER TIPSORD: On page 3 of your
12 testimony you talk about the Board's request for
13 reasonable personnel time estimates for the tasks for
14 which we've provided scopes of work are not really
15 detailed enough for you to be able to provide any time
16 estimates. How much more detailed do you think it would
17 take to be able to achieve something useful that you
18 could do estimates on?

19 MS. DAVIS: I think it's going to take a lot
20 more detail, because what happens is we have to design
21 the typical site again. I have to know if I'm going to
22 provide an estimate how many USTs, how many contaminants,
23 is it BTEX, is it P&A. You know, there's so many
24 unknowns that I can't -- you know, when I go -- it was

1 sort of like Jeff testified. When I'm going to do an
2 estimate, I have a defined scope of work; I have a gas
3 station with four USTs, two are gasoline, one waste oil,
4 one diesel. I know what my parameters are. I know how
5 many samples I'm going to take based upon the size of the
6 site and based on the size of the excavation and based on
7 the size of tanks. Without these specific details, I
8 can't ball-park how many hours it's going to take for me
9 to do that project, and that's -- it's going to take
10 quite a bit of time to come down to what is the average
11 site that we're bidding on, more or less, to get these
12 numbers, and then whatever's not average is
13 extraordinary, and we're back to that whole same thing
14 that we went through in September.

15 HEARING OFFICER TIPSORD: Okay.

16 MR. TRUESDALE: I think in addition, I mean,
17 just in general, the work breakdown, when we went through
18 it, the Agency has corrected some of the deficiencies in
19 their new language changes, but just going through it,
20 comparing the regulatory language to the proposed work
21 items, we found several deficiencies that were noted in
22 professional consulting time, so, I mean, first and
23 foremost, we felt before we put time estimates on
24 anything we needed to have a list of tasks that was

1 complete and the associated scopes of work with those
2 tasks that would be agreed upon by a majority so we're
3 not arbitrarily assigning numbers to something that may
4 change in the future as we attempted to do earlier in
5 this rulemaking.

6 HEARING OFFICER TIPSORD: As -- And I'll --
7 I would also like to ask, Mr. Truesdale, you had several
8 questions of the Agency when I asked them the question
9 about commenting on the information that JCAR asked us to
10 continue to uncover regarding tier 2 TACO and groundwater
11 ordinances. Do you have anything further you would like
12 to add at this point on those issues?

13 MR. TRUESDALE: I think I asked questions
14 regarding anything that I had any questions about or
15 comments about.

16 MS. DAVIS: I think my only concerns are
17 with the groundwater ordinance, when we're closing a
18 site, if there's a groundwater ordinance, we don't have
19 to look at the groundwater contamination as a pathway
20 anymore, but I'm concerned that that aquifer itself may
21 be connected to a deeper aquifer that supplies public
22 water supply, and I don't see anywhere where that
23 question is asked of us, and it just seems irresponsible
24 to know there's contamination at a shallow level and to

1 close our eyes to it, knowing it's hydraulically
2 connected and maybe there's MTBE, which tends to sink in
3 the aquifer down to a deeper well, which has happened at
4 one of our sites, to close our eyes to that. That -- I'm
5 just -- ethically I'm having a problem with that.

6 MR. TRUESDALE: I guess as a comment in
7 regard to the vapor pathway, based on my review of
8 several states and our work in Wisconsin, Indiana, a few
9 other states that have vapor intrusion pathway
10 provisions -- Missouri is another one -- has vapor
11 intrusion pathway provisions in their LUST regulations,
12 in many cases the vapor intrusion pathway is the driving
13 force for remediation under those programs, and in my
14 experience, I would think that closing these sites with
15 the ordinance addressing the groundwater ingestion
16 pathway alone is also not the appropriate course of
17 action from an environmental health and safety
18 standpoint.

19 In addition to that, I think that the -- in our
20 experience, we get vastly more calls regarding emergency
21 response for vapor issues as compared to potable water
22 issues. I mean, I can't think of a single time that
23 I've -- in my career as an environmental engineer that
24 I've had a call regarding a potable water issue, but I

1 can count dozen at least issues where we've been called
2 regarding vapor accumulation in a subsurface structure,
3 in a basement, in a sanitary sewer, storm sewer, and in
4 many of those cases there have been -- there has been no
5 free product present. As a matter of fact, I can only
6 think of one where there was free product present.

7 HEARING OFFICER TIPSORD: Are there any
8 other questions? Mr. Clay?

9 MR. CLAY: I have a question. Have you --
10 your company closed sites using ordinances, groundwater
11 ordinances?

12 MR. TRUESDALE: Well, the only one I can
13 think of that we've requested closure for using an
14 ordinance, I can only think of one that we've requested
15 closure for. I've identified ordinances in another two
16 sites and presented them to the Agency and they were not
17 approved by the Agency because of whatever provisions. I
18 think one of them there were actually industrial wells
19 that were used in the municipality, although there was a
20 current prohibition to installation of new wells, so that
21 one was denied. I think that was in Gibson City. And
22 off the top of my head, there is another one. I can't
23 think of the municipality. It's been quite a while.

24 MR. CLAY: When you say you proposed it,

1 does that mean --

2 MR. TRUESDALE: We proposed --

3 MR. CLAY: -- an NFR letter was issued?

4 MR. TRUESDALE: An NFR letter was not issued
5 because the Agency did not accept that ordinance for that
6 site. There's another one that has an active ordinance
7 in place that is accepted by -- that is approved by the
8 Agency and we've submitted for closure under that.

9 MR. CLAY: Just haven't been issued an NFR
10 letter yet?

11 MR. TRUESDALE: Correct.

12 MS. DAVIS: Most of our sites are downstate
13 and aren't really in areas that have groundwater
14 ordinances yet.

15 MR. TRUESDALE: And in my professional
16 judgment, in order to propose an ordinance for use as an
17 institutional control, I'd have to feel comfortable that
18 the vapor pathway even though it's not regulated isn't
19 going to be an issue for my client.

20 MR. CLAY: So you did a vapor intrusion --

21 MR. TRUESDALE: We look at vapor intrusion
22 on occasion.

23 MR. CLAY: And what did you do on that one
24 site that you submitted for approval?

1 MR. TRUESDALE: That we submitted? If --
2 I've used guidance from other states for first screening
3 values, and we also looked to see if there was subsurface
4 structure, if there was -- if construction was all slab
5 on grade, if there were any basements in the area.
6 That's generally what we look at when we do a conceptual
7 model of the site also, is just -- you know, it's from an
8 exposure standpoint, what type of structures do you have
9 around there, is it residential, commercial, do they have
10 basements, you know, are there subsurface structures
11 that -- from a -- from the exposure route, when you're
12 looking at migratory pathways, you have to look at that
13 too; was there a sanitary sewer that's crossed the plume.
14 If not, then I wouldn't have as much concern. If there
15 was a sanitary sewer that crossed the plume, I'd have
16 more concern. In that one particular case I didn't have
17 any concern.

18 MR. G. KING: And you're not saying that the
19 proposal here is prohibiting you from doing that.

20 MR. TRUESDALE: If there's an ordinance in
21 place, it prohibits us from --

22 MR. G. KING: It prohibits you from
23 exercising your professional responsibilities to
24 determine whether there is a risk to people --

1 MR. TRUESDALE: No, absolutely not. It just
2 prohibits us from proposing any corrective action to
3 mitigate what we perceive to be an environmental health
4 and safety risk.

5 MR. G. KING: Even considering what Section
6 734.210 says?

7 MR. TRUESDALE: In light of what testimony
8 was earlier, if the Agency's position is that in those
9 cases they would be -- that would be an allowable
10 expense, then no. I would personally like to see that
11 exception provided in the regulatory language, as I
12 suggested, but if that is in fact the Agency's position
13 and what they intend to enforce, then no.

14 HEARING OFFICER TIPSORD: Anything further?

15 MR. G. KING: No.

16 HEARING OFFICER TIPSORD: Thank you very
17 much. We'll go on to USI. Let's start with your
18 prefiled -- 140 pages of prefiled and mark that as an
19 exhibit. Let's get you all sworn in first.

20 MR. KOCH: Okay.

21 HEARING OFFICER TIPSORD: Let's get
22 everybody sworn in.

23 (Witnesses sworn.)

24 HEARING OFFICER TIPSORD: All right. And

1 then we will mark your prefiled testimony as an exhibit
2 first, and then we'll go from there. And we'll mark that
3 as Exhibit No. 128, if there's no objection, and you have
4 a copy for me of your prefiled testimony? Sorry. I take
5 notes on my prefiled testimony when I read it. Thanks.
6 We'll mark this as Exhibit 128 if there's no objection.
7 Seeing none, it's marked as Exhibit 128. Okay. Go
8 ahead, Jay.

9 MR. KOCH: The -- What we'd like to do is
10 field any questions with regard to the prefiled, and then
11 I've got additional testimony that deals with additional
12 information that's come to our attention since March 1,
13 and we'd like to go ahead and file that with the Court
14 now as well. If there's any questions on our prefiled,
15 we'd be happy to answer those.

16 HEARING OFFICER TIPSORD: Are there any
17 questions on the prefiled testimony? My question is that
18 you didn't address the tier 2 issue or the groundwater
19 ordinance issue in your prefiled testimony at all, and I
20 know that those were issues that you raised with
21 legislators, and so I'm wondering, are you covering that
22 in your supplemental testimony?

23 MR. KOCH: Yes.

24 HEARING OFFICER TIPSORD: All right. Good.

1 Then I'll wait till I hear that.

2 MR. KOCH: Okay.

3 HEARING OFFICER TIPSORD: Then do you have
4 copies of the supplemental testimony for us too?

5 MR. KOCH: Yes, we do.

6 HEARING OFFICER TIPSORD: Okay. Jay, is it
7 your intent to read this into the record?

8 MR. KOCH: Yes, it is.

9 HEARING OFFICER TIPSORD: All right. Then
10 let's take care of a couple of housekeeping things before
11 we even get there. You have attachments, I see?

12 MR. KOCH: Yes, we do.

13 HEARING OFFICER TIPSORD: How many
14 attachments do you have?

15 MR. KOCH: Attachments A through G.

16 HEARING OFFICER TIPSORD: Okay. There's 14
17 pages that we'll let you read into the record, and then
18 we're going to mark each of the attachments, A through G,
19 as separate exhibits.

20 MR. KOCH: That's fine.

21 HEARING OFFICER TIPSORD: Okay? Are they
22 referred -- Although before I do that, are they referred
23 to in your -- in what you read as Attachments A through G
24 in --

1 MR. KOCH: Yes, they're referred to in the
2 text of the testimony as Attachments A through G.

3 HEARING OFFICER TIPSORD: All right. Then
4 instead of all of them being separate, we're going to
5 enter them as one exhibit, and so we'll just call them
6 all uniformly Exhibit No. 129 if there's no objection.
7 Okay. Seeing none, they'll be marked as Exhibit 129.
8 Okay. Go ahead whenever you're ready.

9 MR. KOCH: Okay. This additional testimony
10 is offered by USI to elaborate on information that has
11 come to USI's attention after USI submitted its subdocket
12 B testimony to the Board on March 1, 2006. Since March
13 1, USI has had an opportunity to review the Agency's
14 March 1 testimony in this proceeding, and the Agency has
15 also issued its new reimbursement forms. USI believes
16 that the Agency's introduction of its new budget proposal
17 and reimbursement forms on or around March 1, 2006, along
18 with USI's additional testimony provided today both help
19 to establish a clearer path for the Board to make a
20 well-informed decision in this matter. USI will discuss
21 the implications of the Agency's new forms first and will
22 then discuss other information regarding the Agency's
23 testimony.

24 New reimbursement forms. USI was not familiar

1 with the Agency's new forms when USI prepared and
2 submitted its March 1, 2006, testimony. These new forms
3 and the administrative requirements created through their
4 implementation create a requirement for all consultants
5 across the state of Illinois to post their time to
6 specific standardized remediation categories that are
7 provided in the Agency's new forms. USI applauds the
8 Agency's creation and implementation of these standard
9 remediation categories and notes that they are incredibly
10 similar to the task list proposed by USI in both its July
11 27, 2005, and March 1, 2006, testimonies.

12 The list of remediation categories is clearly
13 based upon the IEPA's technical regulations. Attachment
14 A provides a list of the Agency's standard remediation
15 categories which are found on pages 36 and 37 of the
16 Agency's new reimbursement forms package. Attachment B
17 provides a list comparing the Agency's remediation
18 categories to the task list proposed by USI in its March
19 1, 2006, testimony. And if you look at that list, those
20 categories are very -- categories and our task list are
21 very, very similar, and I won't go through that in
22 detail. There are very few differences in the two lists,
23 and USI believes that if the Agency's remediation
24 categories list were adopted as the basic task list for

1 professional consulting services for Subpart H, any
2 discrepancies between the two -- between the Agency's
3 proposed list and the task list proposed by USI in its
4 March 1 testimony could be reconciled fairly easily.

5 Supporting the notion of adopting the Agency's
6 existing remediation categories as the basis for the task
7 list for Subpart H are the new forms that the Agency
8 proposes to use for reimbursement of professional
9 consulting costs under the subdocket A rule. Included at
10 pages 16 through 19 of the Agency's new reimbursement
11 forms package are the consulting fees forms. Page 16 is
12 a summary sheet for professional consulting services,
13 page 17 provides instructions for completing that section
14 of the forms, and pages 18 and 19 provide worksheets for
15 proposing/claiming consulting personnel time costs and
16 consultants materials costs respectively.

17 It is notable that the consulting personnel time
18 costs form found at page 18 of the new forms package
19 includes, amongst other fields, two fields that must be
20 completed by the consultant in order to identify the work
21 being performed. The first of these fields is the
22 remediation category field and the second is the task
23 field. On page 17 of the new forms, the instructions for
24 the completion of the first field is as follows:

1 "Remediation Category: Enter the appropriate remediation
2 category abbreviation from the remediation categories
3 list document that is applicable to each phase of
4 corrective action that has or is proposed to be
5 performed." The instructions for the completion of the
6 task field is as follows: "Task: A personnel line item
7 must be completed for each task conducted. The following
8 are some examples of tasks: Operation and maintenance,
9 alternative technology oversight or alternative
10 technology remediation design. Additional information
11 should be provided to supplement this information; for
12 example, this information may include number of trips for
13 operation and maintenance, number of hours for each trip
14 and how often trips are proposed."

15 The new consultants materials costs sheet
16 includes the remediation category field but does not
17 include the task field. The absence of the task field on
18 the consultants materials costs sheet and the inclusion
19 of the remediation category field on both forms broadens
20 the utility of the remediation categories as the most
21 workable basis for a sound task list.

22 Again, USI applauds the Agency and notes that
23 although the Agency has used the phrase remediation
24 category rather than the phrase task, the practical

1 effect is that the Agency has already, A, developed a
2 standardized task list for professional services that
3 generally tracks with the regulations; B, set forth and
4 implemented a requirement that all consultants in the
5 state report professional consulting costs pursuant to a
6 standardized task list, or in this case they're calling
7 it a remediation categories list; C, established the
8 basis for an accounting and database system that will
9 facilitate tracking costs at the task level; D, laid out
10 a broad framework through standardization for ensuring
11 that quality control is achieved and that costs will be
12 reviewed and monitored, and the -- a footnote to that,
13 the only logical reason to develop a standardized list of
14 remediation categories is to facilitate uniform cost
15 reporting so that costs can be more accurately accounted
16 for and tracked on a per-category or per-task basis; and
17 then finally, E, proven that it is capable of performing
18 all of the above with its existing resources.

19 What the Agency has accomplished in its new
20 reimbursement forms seems a bit contrary to the Agency's
21 March 1, 2006, testimony that reads: "Collecting data,
22 breaking it down in great detail, as has been proposed at
23 previous hearings, would require significant resources by
24 the Illinois EPA which we simply do not have. In

1 addition, accepting the costs as submitted without
2 review -- i.e., no quality control -- would invite
3 inflated amounts knowing that these will be used to set
4 future acceptable costs. Also this would require that
5 every consultant that does LUST work in the state of
6 Illinois adopt a complicated, confusing and overly
7 burdensome reimbursement accounting system for seeking
8 corrective action costs that has been proposed and
9 designed by just a few consulting firms. This type of
10 system would undoubtedly increase the costs for
11 preparation of budgets and reimbursement packages, thus
12 increasing overall corrective action costs for each
13 site."

14 And just as a side note, I agree with CW3M that I
15 believe that the burden with regard to the collection of
16 the data has been completely overstated. I think that
17 the proposed forms that have already been -- I shouldn't
18 say proposed -- these are forms that have already been
19 adopted -- take this program several steps down the road
20 to accomplishing that goal, and I don't see that there's
21 a lot of work left to at least establish a standard task
22 list and be able to collect that data in some form.

23 However, USI is in favor of using with a few
24 modifications and suggestions the Agency's new

1 remediation categories list as the basic list of task for
2 professional consulting services under Subpart H docket
3 B. Consolidating the current remediation category and
4 task fields on page 18 of the Agency's new forms into a
5 single field would also help to minimize entry and review
6 time and would help to streamline the budgeting and
7 reimbursement processes. USI is in favor of making the
8 consolidation on page 18 of the Agency's new form and
9 adding a description/justification field to the
10 consulting personnel time costs form, which would make it
11 nearly identical to the new consultants materials costs
12 form.

13 Entries in the description/justification field,
14 when considered in conjunction with the entry in the
15 remediation category field, would serve to provide
16 detailed information that would help the Agency reviewers
17 and the Board in determining whether or not a specific
18 activity was necessary/justified in order to meet the
19 minimum requirements of the regulations. The newly
20 amended form would serve as the basis for reporting
21 professional consulting costs pursuant to a subdocket B
22 rule. USI also believes that after adopting the
23 remediation categories as the basis for its task list,
24 the Agency should apply the remediation category field to

1 the forms on pages 8 through 15 of the new reimbursement
2 forms; so in other words, extend that standard through
3 the reporting of all costs. Doing so would provide a
4 comprehensive list of remediation categories that would
5 facilitate simple and efficient tracking of remedial
6 costs at the task level for both professional consulting
7 services and other services that are necessary in order
8 to complete a remediation project.

9 Although the Agency's development of a standard
10 list of remediation categories is a very positive event,
11 USI believes that it is absolutely imperative to the
12 development of a workable subdocket B rule that the basic
13 task list used by the Agency as its remediation
14 categories be supported by other key standards presented
15 in PIPE's and USI's recent testimonies. These include
16 but are not limited to standards that would require that,
17 one, each of the IEPA's technical regulations be
18 explicitly allocated to one of the standardized
19 remediation categories/tasks, and I might mention that in
20 USI's initial filing on March 1 we allocated every
21 subtier regulation to a specific major task, and so
22 that's how we would envision that that could be done very
23 easily. Item two, then, task should be based on
24 deliverables, and each deliverable should be clearly

1 defined from both qualitative and quantitative
2 perspectives so that both consultants and Agency
3 reviewers clearly understand the specifications and can
4 communicate the requirements of the deliverable.

5 A professional consulting services rule based
6 upon the standards set forth above and in USI and PIPE's
7 March 1, 2006, respective testimonies will provide a
8 clearly defined standard benchmark for consultants to
9 meet when preparing and submitting work plans and
10 reports. If this rule yields, as I hope it will, a
11 clearly defined set of deliverables for each task in the
12 standard task list, consultants should use this as an
13 opportunity to improve their work plan approval rating in
14 the future.

15 It is equally imperative to the development of a
16 workable rule that a plainly specified scope of work be
17 clearly understood and uniformly and consistently applied
18 without bias by Agency reviewers. Even if the scope of
19 work is clearly defined and the deliverables are well
20 established, individual reviewers that apply the rules on
21 an inconsistent or biased basis can and will have a
22 dramatic impact on the level of professional consulting
23 costs that are incurred on sites that they review.

24 The Agency should use this rulemaking as an

1 opportunity to improve, and the Board should be cognizant
2 of the fact that until the Agency's review practices are
3 more uniform and consistent, it is entirely inappropriate
4 to convert professional consulting services to lump sum
5 payment amounts. Taken in the right context, this
6 rulemaking is an opportunity for all parties to coalesce
7 and make the Illinois UST program better. USI is
8 committed to improving its performance by working to
9 increase its incidence of approval of plans and reports
10 upon first submission to the Agency. The Agency should
11 commit to clarifying its standards and communicating its
12 requirements and standards to both internal and external
13 parties so that approvals on first submission are more
14 common and consistent across the UST section and the
15 consulting community.

16 USI provides as Attachment C a list of historical
17 modification and denial rates for reports and plans
18 submitted to the Agency by consultants across the state.
19 USI is committed to improving its performance against
20 this benchmark -- this current benchmark and USI
21 encourages the Agency to help raise the bar by improving
22 the standards of review and the consistency of review
23 within the UST section. Provided in Attachment D is a
24 table graph that depicts the historical levels of

1 variability in Agency reviews.

2 A workable rule, one based upon the regulations
3 and clearly defined and explicitly stated objective
4 deliverables, will help to set a standard of review that
5 will permit a dramatic reduction in this variability.
6 USI offers the information in Attachment D not as a
7 criticism of the Agency. Instead we offer it as a point
8 of reference from which the Agency can measure
9 improvements in its performance if it desires to do so.

10 In regard to the Agency's March 1, 2006,
11 testimony, in the Agency's March 1, 2006, testimony, they
12 explain that they convened a workgroup to study the
13 issues of scope of work and to develop estimates of the
14 hours that they believe are necessary to complete the
15 various tasks. According to the Agency's testimony, the
16 personnel and hours assigned to each scope of work
17 represents what the Agency believes to be a reasonable
18 amount of time for the identified personnel to perform
19 the work. The Agency also testified that the workgroup
20 was made up of five LUST section unit managers, five
21 senior LUST section project managers, two senior LUST
22 claims unit reviewers and Doug Clay as the head of the
23 section. Furthermore, the testimony provided that this
24 workgroup has a combined 140 years of experience in

1 reviewing and evaluating LUST sites.

2 Finally, in the Agency's testimony, Mr. Clay
3 states that "I have been in my current position as the
4 manager of the leaking underground storage tank section
5 within the Bureau of Land since September of 1994."
6 Prior to Mr. Clay assuming this position, this position
7 was held by Mr. Harry Chappel, who is now one of the five
8 unit managers within the LUST section. Mr. Chappel's
9 tenure as manager of the leaking underground storage tank
10 section was submitted as testimony early in the subdocket
11 A proceedings.

12 Taking into consideration that, one, Mr. Clay has
13 managed the program for eleven years, two, that
14 Mr. Chappel served as the manager of the leaking
15 underground storage tank section for several years before
16 Mr. Clay assumed the position, and three, that the
17 various other members of the workgroup that contributed
18 to the combined 140 years of experience claimed by the
19 Agency also have long tenures with the Agency's UST
20 section, then it is indisputable that the members of this
21 workgroup represent the UST section's management chain of
22 authority and control since at least the early 1990s.
23 Therefore, it is also indisputable that in one form or
24 another, members of this workgroup were responsible for

1 the review and the evaluation of the more than
2 \$881,757,380.02 submitted to the Agency's UST fund
3 program for review since 1993.

4 It is also indisputable that members of this
5 workgroup in one form or another would have been directly
6 responsible for determining that of the amount that was
7 submitted for review and reimbursement, \$61,470,126.19 or
8 6.97 percent was not eligible for reimbursement for
9 various reasons. It was therefore members of this same
10 workgroup that refused to pay costs that they or those
11 that were under their direct supervision or control were
12 able to determine were ineligible, unnecessary or
13 unreasonable. It is indisputable that of the total
14 amount reviewed by members of this workgroup that
15 \$719,315,049.03 was judged to be allowable costs and was
16 therefore authorized either directly or indirectly by
17 members of this workgroup or those under their direct
18 supervision or control to be paid from the UST fund.

19 It is a fact based upon USI's analysis of the
20 cost data related to the 69 sites that it reviewed in the
21 summer of 2005 that historical costs of professional
22 consulting services averages approximately 28 percent of
23 the total amount reimbursed per site. Therefore, of the
24 \$719,315,049.03 costs allowed and authorized to be paid

1 by members of the Agency's workgroup since 1993,
2 approximately \$201,408,213.73 would have been associated
3 with professional consulting services. Utilizing the
4 Agency's average hourly wage for professional services of
5 \$80 per hour without in any way acquiescing to the same,
6 this would result in the Agency reviewing and approving
7 approximately 2,500,000 man-hours of professional
8 consulting services since 1993.

9 Obviously, this workgroup has significant
10 experience in reviewing and evaluating professional
11 service cost submissions in both budgets and
12 reimbursement applications and in making determinations
13 as to what is reasonable. This workgroup, however, has
14 also clearly demonstrated that there is a huge difference
15 between merely having experience reviewing and evaluating
16 LUST claims from an observatory or oversight perspective
17 versus actually having the knowledge and experience of
18 drudging through the details that are necessary to
19 actually plan, execute and oversee the work. Things
20 always seem easier from a distance, and until one has
21 attempted to do something themselves, one cannot fully
22 appreciate the level of effort required to complete the
23 deliverable.

24 The record in this proceeding shows that the only

1 member of the Agency that has actual experience in
2 authoring plans and reports is Mr. Harry Chappel. USI
3 has reviewed reimbursement applications certified by
4 Mr. Chappel when he was in private practice and have
5 found that he is well aware from personal experience that
6 it takes a greater level of effort to complete the work
7 at a UST site than what the Agency is proposing in its
8 subdocket B testimony.

9 Provided in Attachment E is a listing summarizing
10 professional services hours certified by Mr. Chappel as
11 reasonable and necessary in budgets and billing packages
12 prepared under his direction or supervision when he was
13 in private practice, and if I could, I would like to
14 refer everyone now to Attachment E and review that. That
15 top section of the three sections there is for a budget
16 package that Mr. Chappel certified for a corrective
17 action project, and you can see that the number of hours
18 that he certified -- and I will say that this was just a
19 budget package -- but certified 410 hours, which is
20 within the range of cost that USI reported last July.
21 Then if you move to the billing packages that were
22 actually certified by Mr. Chappel, you'll see in the
23 first instance we have an early action billing package,
24 for instance, number 981263 -- it's a site in Normal,

1 Illinois -- and in that instance he certified 822 hours
2 as being reasonable and necessary to complete that work.
3 Our 90th percentile that we found in our random sampling
4 of those 69 incidents indicated that 219 hours would have
5 covered the 90th percentile, so as you can see, this is
6 significantly more. Likewise, for the corrective action
7 phase of that project, 609 hours were certified as
8 reasonable and necessary. With regard to project 981263
9 and project 960101, I would also note that when we
10 reviewed the Agency's Web site for those two incidents
11 yesterday, we found that those two incidents still remain
12 open, so neither of those incidents have achieved closure
13 per that Web site.

14 The Chappel certified hours are significantly
15 greater than the hours proposed by the Agency in dockets
16 A and B, and some of them even exceed the 90th percentile
17 of hours found by USI in its review of 69 randomly
18 selected incidents. The workgroup convened by the Agency
19 has obviously not taken into account or considered the
20 actual number of hours that they have historically
21 reimbursed on a per-site basis when developing their
22 estimate or the experience of Mr. Chappel as documented
23 by his actual certifications when he was in private
24 practice. In fact, the time estimates prepared by this

1 workgroup and submitted to the Board in the Agency's
2 March 1, 2006, testimony are actually less than those
3 provided to the Board by the Agency in subdocket A during
4 2004. Please see Attachment F for a summary of the hours
5 proposed by the Agency workgroup in docket B. Attachment
6 F also provides a comparison of the Agency's docket B
7 workgroup's estimated hours per phase of remediation to
8 the estimates provided by the Agency, PIPE and the ad hoc
9 workgroup in the -- in docket A and the actual
10 reimbursement statistics reviewed by USI in its sample of
11 69 randomly selected LUST incidents.

12 The Board has already found in its December 1,
13 2005, opinion and order that given the evidence provided
14 by USI's review of 69 randomly selected sites, the Board
15 is convinced that the rates need to be adjusted to
16 reflect the actual scopes of work and current market
17 rates. Additionally and of equal importance is that in
18 that same ruling, the Board provided that the rule must
19 include a scope of work for the tasks for which the rules
20 specify lump sum payment amounts and lump sum rates which
21 more accurately reflect current and, emphasis added,
22 historical reimbursement rates. As previously stated,
23 the Agency's most recent estimates of hours that were
24 provided in its March 1, 2006, testimony are less

1 reflective of historical reimbursement rates than those
2 that were already rejected by the Board under the
3 subdocket A proceedings on December 1, 2005.

4 The Board should consider that the Agency has
5 acknowledged on the record that their database does not
6 contain adequate information to determine lump sum
7 payments for professional consulting services. This
8 leaves the Agency only to estimations and speculations to
9 attempt to set maximum payment amounts, and I believe
10 that statement in our testimony is consistent with
11 Mr. Clay's testimony earlier today. To this regard, the
12 record now shows that the Agency's estimates for
13 professional consulting hours in both dockets A and B are
14 highly inaccurate when compared to the Agency's own
15 record of processing actual reimbursement claims at
16 thousands of sites in Illinois and are inconsistent with
17 the actions of the only Agency employee that has
18 experience in private practice.

19 It is inconceivable that the Agency could think
20 that the reimbursements that they have made historically
21 since 1993 were excessive. For the Agency to state that
22 their historical reimbursements were excessive would be
23 in direct violation of their statutory mandate to only
24 reimburse reasonable costs, and it would also be contrary

1 to their previous testimony in this proceeding. A
2 problem throughout these proceedings and continuing to
3 this date is that the Agency's proposed estimates of the
4 time that is needed to complete professional service
5 tasks is simply not consistent with their historical
6 reimbursement actions. Considering that the docket B
7 estimated hours provided by the workgroup were
8 approximately 50 percent lower than the actual hours
9 observed to be necessary and reimbursed by the Agency
10 from an historical perspective and then applying the
11 Agency's workgroup estimates to the historical
12 reimbursement applications that members of the Agency
13 workgroup have been responsible for processing, one could
14 expect that the Agency would have historically reimbursed
15 around \$100,704,106 less for professional consulting
16 services than they actually did reimburse.

17 Obviously, when processing historical
18 reimbursement claims, the Agency did not overpay for
19 professional consulting services by more than \$100
20 million. Instead, just as they have testified in the
21 docket A proceedings, they reimbursed the amounts that
22 they did because they recognized them as being reasonable
23 costs incurred during each detailed review of payment
24 applications sent to them previously, and also in

1 accordance with today's testimony consistent with the
2 budgets that they also approved. The Agency's estimates
3 in both dockets A and B are highly inaccurate and cannot
4 be used as the basis for a workable rule.

5 The Board should consider that the Agency has now
6 by virtue of implementing its new forms pursuant to the
7 docket A rule provided the Board and the consulting
8 community with the first tangible steps down the path
9 that leads to a workable rule. The path to a workable
10 rule is to collect actual cost data pursuant to a
11 well-defined standardized task list that provides clearly
12 defined deliverables so that maximum lump sum payment
13 amounts can be based upon fact and administered uniformly
14 and consistently. The first step down that path has
15 already been taken by the Agency. This step was to adopt
16 the standard remediation categories list. Additional
17 steps that are necessary to complete this process have
18 already been outlined by PIPE, USI and others and are
19 easily implemented.

20 During the interim data collection period, the
21 Agency can and should continue to review claims on their
22 merits. Any professional consulting cost that the Agency
23 finds is not reasonable or necessary simply should not be
24 allowed by the Agency. The Agency has already

1 demonstrated through their review of the approximately
2 two and a half million man-hours worth of professional
3 consulting costs that they have approved in the past that
4 they have the capacity to make these reviews. Once the
5 data is collected, maximum lump sum payment amounts can
6 be created as appropriate.

7 Use of tier 2 and groundwater ordinances as
8 reimbursement limitations. JCAR has asked that the Board
9 continue to hear testimony with regard to the Agency's
10 proposal in the third errata sheet under docket A to
11 limit reimbursement by tier 2 objectives and through the
12 use of groundwater ordinances. USI has provided in the
13 past through its attorney, John Hundley, significant
14 testimony on this matter. USI believes that this is a
15 serious matter and one that has far-reaching consequences
16 and one that deserves considerable additional debate.

17 Finally, USI calls to the Board's attention the
18 mission statement of the Illinois EPA that is posted on
19 the IEP's Web site. The mission statement provides that
20 the mission of the IEPA is to safeguard environmental
21 quality consistent with the social and economic needs of
22 the State so as to protect health, welfare, property,
23 emphasis added, and the quality of life. The Web site
24 goes on to state that in support of this mission

1 statement, the following program goals have been adopted.
2 One of these goals is to enhance the capability to fund
3 environmental cleanup. The Agency proposal to limit
4 reimbursement through the use of tier 2 objectives and
5 the use of groundwater ordinances is inconsistent with
6 its mission -- the Agency's mission and goals. The
7 Agency should request that the Board rescind this
8 provision. A copy of that portion of the Agency's Web
9 site that provides its mission statement and goals is
10 provided as Attachment G.

11 USI again thanks the Board for the opportunity to
12 provide input in these proceedings, and we'd be happy to
13 entertain any questions that you might have.

14 HEARING OFFICER TIPSORD: Let's go off the
15 record, let the -- give the court reporter just a second
16 to catch up and to rest her fingers.

17 (Brief recess taken.)

18 HEARING OFFICER TIPSORD: Are there any
19 questions for USI? Mr. Clay.

20 MR. CLAY: Mr. --

21 HEARING OFFICER TIPSORD: Excuse me. Before
22 you do that, I don't believe you introduced yourselves
23 all the way across the board, so could we start down
24 here?

1 MR. D. KING: Daniel King.

2 MR. DOTY: Duane Doty.

3 MR. KOCH: Jay Koch.

4 MR. BUNTON: Ross Bunton.

5 HEARING OFFICER TIPSORD: Thank you. Okay.

6 Go ahead.

7 MR. CLAY: Mr. Koch, directing your
8 attention to your supplemental testimony on page 9 of 14,
9 you talked about \$61 million of 881 million cut, which is
10 about 7 percent. That only reflects what is cut from a
11 reimbursement package; is that correct? It doesn't
12 reflect the millions of dollars that could have been cut
13 from budgets upfront.

14 MR. KOCH: I believe that's correct. That
15 came from your -- the Agency's Web site.

16 MR. CLAY: Right, and on the Agency Web
17 site, it's not available on the -- on what was cut from
18 budgets, which could be significantly more.

19 MR. KOCH: That's correct.

20 MR. CLAY: Okay. Another question on the --
21 let me look at your attachment here. On -- When
22 you're -- I'm not sure what attachment it is. Wait a
23 second. Attachment C and Attachment D. On Attachment C
24 you're treating a modification as a denial, is that

1 right, in the percentages? I mean, we would always
2 consider that an approval since we're approving work to
3 be done. We just may have modified a plan or budget.

4 MR. KOCH: We have included modifications
5 and denials in the same category, and the reason for that
6 is that if a consultant receives a modification or
7 denial, it's highly likely, if not an absolute, that
8 additional work will be required on the part of that
9 consultant in order to respond to the modification or
10 denial point, so it in effect increases the scope of work
11 and the number of hours that are required, so that's why
12 those two have been categorized together.

13 MR. CLAY: In looking at Attachment C and D
14 together --

15 MR. KOCH: C and D?

16 MR. CLAY: Yeah. The -- Was there any
17 review of the plans or reports that were denied or
18 modified to -- looking at the quality of those reports or
19 was there any evaluation on whether appeals went forward
20 with those, or were those justified denials and
21 modifications?

22 MR. KOCH: These were -- This was data that
23 was taken from the Agency's Web site indicating
24 modification or denial. With regard -- And that's

1 actually a very good question, Doug, because I think the
2 answer to that is going to help illustrate the
3 inconsistency of reviews. If you would -- Let me back up
4 for a minute. You would expect that if you had a plan or
5 report that was inadequate that that would be somewhat
6 consistent, so you would expect that this would be
7 represented by a normal bell-shaped curve, but in this
8 instance what we see is there's not a bell-shaped curve
9 here. Some Agency reviewers actually reject or modify
10 the majority of the reports that they receive. And,
11 Brian, I don't mean to pick on you, but I have to comment
12 on your earlier testimony today. When you said earlier
13 that you could probably review, what was it, 12
14 reports --

15 MR. BAUER: Twelve 45-day reports.

16 MR. KOCH: Twelve 45-day reports in, what,
17 half an hour?

18 MR. BAUER: Sure.

19 MR. KOCH: Well, just an observation here is
20 that I would think you could review a very high volume of
21 reports in a very short period of time because over 70
22 percent of the reports that you deal with you modify or
23 deny, and to reject something is a fairly easy
24 proposition. There's not much time required to reject

1 something. Now --

2 MR. BAUER: The 45-day reports aren't even
3 logged in as my projects, though.

4 MR. CLAY: He screens those for basically
5 completeness or to see if -- to make sure that the
6 ongoing release has been addressed or prevent an ongoing
7 release, so, I mean, he's screening those for
8 completeness. It's not a review in terms of sending out
9 a denial and it would not be reflected in these numbers
10 because it's not tracked that way, and as he said, it's
11 not assigned his project, so --

12 MR. KOCH: The Agency receives a universe of
13 reports, and that universe represents a database
14 population of reports, and you would expect within that
15 population that there are those that are of poor quality;
16 you would expect that there are those that are of
17 exceptional quality and that there's a grouping in the
18 middle and a normal bell-shaped curve. If there was
19 consistency of Agency review of these work plans and
20 budgets, you would also think that the Agency reviewers'
21 actions would track pretty closely with the quality of
22 the report, and that's not what this shows. In fact,
23 this shows just the opposite of that.

24 BOARD MEMBER GIRARD: Can I ask a quick

1 question about bell-shaped curves? Doesn't your
2 statement depend on an assumption that the reports as
3 they come in are randomly assigned to Agency reviewers?

4 MR. KOCH: Yes. That's what we were told.
5 That's how they assign their reports, is randomly, or the
6 incidents. Pardon me. The incidents are assigned
7 randomly.

8 MR. CLAY: The incidents are rotated, but
9 then -- so the same -- or the different units get the
10 same number of projects. However -- and I don't assign
11 them -- the unit manager assigns them -- but my
12 understanding is that the unit managers will normally
13 give the more complicated projects to the more senior
14 people, and in this case, I mean, Brian is a more senior
15 person and he probably gets more complicated sites than
16 maybe other staff that are least senior or maybe don't
17 have the expertise that Brian does, so that would be one
18 reason.

19 The other thing is I have always preached to my
20 staff that if we can modify something and approve it and
21 allow consultants and owners and operators to go in on
22 that work, do it, if there's any way you can modify that,
23 approve it, so when I look at this as modifications, I --
24 a modification to me is an approval and wouldn't

1 necessarily require a resubmittal, so it may in some
2 instances if you don't agree with it, but that -- and
3 that's why I asked about the quality of these reports and
4 how many had actually been appealed where the consultant
5 just couldn't live with that modification, but I have
6 encouraged my staff to approve it if at all possible,
7 meaning approve but with modifications, so that the owner
8 and the operator and the consultant can get going with
9 that work and they don't have to wait another -- you
10 know, resubmit it and then wait for us to review it again
11 and get back in line.

12 MR. KOCH: If this report was modified to
13 show simply denials, it would still show a significant
14 number of denials and significant variability in review,
15 and we provide this really -- there's two sides to this
16 equation. You brought this up repeatedly in these
17 proceedings, and is that the consultant should work to
18 improve their quality. I don't disagree with that. We
19 should all -- Any businessperson should work to improve
20 their operations, but that's a two-sided coin. The
21 Agency should also work to improve its operations, and to
22 the extent that we're able to communicate,
23 communication's critical to the understanding of the
24 scope of work. If we can communicate that, then we can

1 improve, and I think you'll see the statistics on both
2 sides of the coin, the consulting side and the Agency
3 side, improve.

4 MR. CLAY: I would agree. Both sides need
5 to work on that, and I think you said something in your
6 testimony about the Agency commitment to improve
7 consistency, and we do have that. I mean, we're
8 continually working to improve consistency. You're
9 right, it's not perfect, but it is a two-sided coin,
10 because, I mean, I think we could look at your staff as
11 well and see what the -- I'm sure that some of your
12 project managers have a much higher denial rate than
13 others.

14 MR. KOCH: Internally?

15 MR. CLAY: Yes.

16 MR. KOCH: Absolutely.

17 MR. CLAY: So --

18 MR. KOCH: But we work every day to try to
19 improve that as an organization.

20 MR. CLAY: Right. We are committed to
21 working to improve consistency, working to improve review
22 times, and we will continue to work to do that.

23 MR. G. KING: One comment before I ask a
24 question. If you look at Attachment C, when looking

1 at -- if you look up in the corner, it says, "Data is
2 taken directly from the IEPA downloadable database,
3 2-27-06." What -- One of the things that I think is
4 important about these two attachments is they show
5 incredible transparency with which the LUST program
6 operates. If you went and looked at any other program in
7 state government and you expected to go on the Internet
8 and find information about what the specific work
9 productivity of individuals is at, you won't find it, I
10 mean, so, I mean, I just want to point that out. I know
11 it's something the Board knows, but I just want to point
12 it out, that this really is a demonstration of the
13 transparency with which this program operates.

14 MR. KOCH: I'd like to comment to that. I
15 think that this is great. This is transparent
16 information. We've had this now for a few years. This
17 rule, the subdocket B rule, the professional services
18 rule, needs to be equally if not more transparent. If we
19 have the well-defined scope of work, well-defined
20 deliverables, and that's published and available to
21 everyone, we can ask appropriate and intelligent
22 questions, we can work to improve our approval rates, and
23 it's just so imperative that this be -- this rule be
24 transparent as well.

1 MR. G. KING: And one question. Jay, you
2 made the statement -- this is starting at the bottom of
3 page 12. You say, "Obviously, when processing historical
4 reimbursement claims, the Agency did not overpay for
5 professional consulting services by more than \$100
6 million." Do you see that sentence?

7 MR. KOCH: Uh-huh.

8 MR. G. KING: And I guess what you're saying
9 is that your basis for that is because we paid it, we did
10 not overpay.

11 MR. KOCH: The basis for the \$100 million in
12 overpayment is that your Subpart H, the number of hours
13 that you've proposed under docket A and docket B for
14 Subpart H are approximately 50 percent of what it would
15 take to meet the 90th percentile, and I use that figure,
16 the 90th percentile of costs, because that's what you
17 came to docket A stating that your maximum payment
18 amounts would do, that they would cover 90 percent of the
19 costs, so if you take what you actually reimbursed for
20 professional services or an approximation of that, which
21 is around \$200 million, and you multiply that times what
22 you're now proposing under Subpart H for professional
23 service hours, that means that you -- in hindsight you
24 would have only reimbursed half of what you reimbursed

1 before, and I just don't believe that that's how the
2 Agency feels. I think that this is all about trying to
3 cut costs today and not using a scientific approach to
4 develop those numbers. I don't think any of us are
5 necessarily opposed to trying to expand the universe of
6 sites that could be positively impacted by LUST fund
7 moneys. I just don't think that we want to see it done
8 arbitrarily and at the expense of owners and operators
9 and consultants, and that's -- your numbers are sort of
10 reckless in that fashion.

11 MR. G. KING: So -- I want to make sure I'm
12 understanding this sentence correctly, then. So, I mean,
13 is it -- and the following sentence. So it's your
14 position that we have never overpaid for any consulting
15 services?

16 MR. KOCH: I didn't make that opinion.
17 You've testified to that on numerous occasions. In fact,
18 I believe you individually testified that you've never
19 run what you refer to as a giveaway program, and I took
20 that to mean that -- and I think you've also testified
21 that you reviewed the budgets and the work plans and the
22 reimbursement applications, and we see that every day.
23 We see that you scrutinize plans and reports, and that's
24 great. That's what your job is. I don't think that

1 you've overpaid, and I don't think you do either.

2 MR. G. KING: Well, that was my testimony
3 when we first started this proceeding, but that would not
4 be my testimony today.

5 MR. KOCH: You think you did overpay?

6 MR. G. KING: I think I have -- I think we
7 have seen overpayments particularly over the last two
8 years because of the fact that we have not had the legal
9 tools to control the costs that were being paid.

10 MR. KOCH: Gary, I guess -- you said you've
11 overpaid the last two years. What about the -- from '93
12 through '04? Because the cost has not gone down.

13 MR. G. KING: I testified that we didn't
14 give -- run a giveaway program. I testified to that two
15 years ago. It's not the same as testifying that we have
16 never overpaid people, and I think over the last two
17 years, because of the fact we have not had legal tools in
18 place, there's been overpayment.

19 MR. KOCH: The -- Doug testified earlier
20 that your rate sheet from -- that you lost two years ago
21 was only inclusive of rates per hour. You have that tool
22 back today. You had it back on March 1.

23 HEARING OFFICER TIPSORD: Do we have any
24 other questions?

1 MR. G. KING: No.

2 HEARING OFFICER TIPSORD: I do have a
3 question. You stated on page 14 of your additional
4 testimony that the tier 2 and groundwater ordinance
5 issues have far-reaching consequences and deserve
6 considerable additional debate, but you really don't
7 offer any more information. You refer back to
8 Mr. Hundley's testimony, which I believe the Board
9 addressed pretty extensively in our second notice opinion
10 and order. Now's your time for significant more debate,
11 I guess.

12 MR. KOCH: Well, I feel that, going back to
13 something that Cindy said earlier, in many instances the
14 pathways to groundwater and the effect on aquifers are
15 not necessarily well known. Those are very complicated
16 issues that deserve a lot of attention. In addition,
17 those response relationships are not necessarily set in
18 stone, as typically as technology in medicine improves,
19 cleanup standards will change. In some instances cleanup
20 standards change simply because of the method of
21 quantification for analytical procedure changes or
22 because of medicine, science determined that different
23 levels are appropriate. So I think that this rule has
24 far-reaching consequences in that it will leave --

1 certainly leave a higher level of contamination in the
2 environment than what we would have experienced in the
3 past.

4 HEARING OFFICER TIPSORD: Would you agree
5 that this program, the underground storage tank LUST
6 reimbursement program, is by statute reasonable
7 reimbursement for corrective action?

8 MR. KOCH: By statute?

9 HEARING OFFICER TIPSORD: Yeah. Isn't that
10 the statutory language, is a reasonable -- reimbursement
11 for reasonable -- reasonable reimbursement for corrective
12 action?

13 MR. KOCH: Yes, I would agree with that.

14 HEARING OFFICER TIPSORD: Thank you. Are
15 there any other questions for USI?

16 MR. ROMINGER: Mr. Koch, if they -- if a
17 site closes using tier 2 objectives, does that meet the
18 requirements of TACO?

19 MR. KOCH: If a site closes using tier 2
20 objectives --

21 MR. ROMINGER: Yeah. If these tier 2
22 objectives to close under TACO, that meets the
23 requirements of the LUST program, does it not?

24 MR. KOCH: Well, yes, it would meet the --

1 you mean the needs to -- or the requirements to obtain an
2 NFR letter?

3 MR. ROMINGER: Yeah.

4 MR. KOCH: Yes.

5 MR. ROMINGER: Okay.

6 HEARING OFFICER TIPSORD: Anything else?

7 All right. Thank you very much. You're going to get
8 home in time for the Bradley game. Okay. Ladies and
9 gentlemen, before we adjourn, some last-minute business
10 to be taken care of. First off, as I did in July I want
11 to do again today. There's some faces that weren't there
12 in July at the end of the hearing. I want to thank all
13 of you from the Agency and all of you from industry who
14 have prepared substantial testimony, spent considerable
15 number of man-hours here before us and in preparing to
16 deliver information to us, and thank you very much for
17 that information. I think we have with what the Board
18 adopted in subdocket A an excellent rule, and I think we
19 have the beginnings to continue to look at this scope of
20 work issue here. With that, I'm going to say that we
21 will take comments on the subdocket B until May 8, 2006,
22 and at that point the Board will make a decision about
23 where to go from there, so you -- any additional comments
24 you would like to file, please do so by May 8, 2006.

1 Dr. Girard, anything to add?

2 BOARD MEMBER GIRARD: No. Just thank you
3 all for the good hard work, and we look forward to the
4 final comments, and we'll let you know what happens after
5 that.

6 HEARING OFFICER TIPSORD: Thank you very
7 much. We're adjourned.

8 (Hearing adjourned.)

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

4 I, KAREN WAUGH, a Notary Public and Certified
5 Shorthand Reporter in and for the County of St. Claire,
6 State of Illinois , DO HEREBY CERTIFY that I was present
7 at Illinois Pollution Control Board, Springfield,
8 Illinois, on March 23, 2006, 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 1st day of April, 2006.

14

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Notary Public--CSR

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#084-003688

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