

## THE ILLINOIS POLLUTION CONTROL BOARD

BROADUS OIL COMPANY, )  
 )  
Petitioner, )  
 )  
vs. )  
 )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
 )  
Respondent. )

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STATE OF ILLINOIS  
Pollution Control Board

PCB 10-48

TRANSCRIPT FROM THE PROCEEDINGS taken before  
HEARING OFFICER CAROL WEBB, by LISA K. HAHN, CSR, RMR, a  
notary public within and for the County of Macon and  
State of Illinois, at the Illinois Pollution Control  
Board, 1021 North Grand Avenue East (North Entrance),  
Springfield, Illinois, on the 26th day of February 2013,  
A.D., at 1:00 p.m.

1 A P P E A R A N C E S:

2 ILLINOIS POLLUTION CONTROL BOARD,  
3 1021 North Grand Avenue East  
4 North Entrance  
5 Springfield, Illinois 60601  
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8 BY: MS. CAROL WEBB, HEARING OFFICER;

9 ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C.  
10 416 Main Street  
11 Suite 1400  
12 Peoria, Illinois 61602  
13 309-637-6000  
14 rriffle@emrslaw.com

15 BY: ROBERT M. RIFFLE,

16 Appeared on behalf of the Petitioner;

17 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY  
18 1021 North Grand Avenue East  
19 P.O. Box 19276  
20 Springfield, Illinois 62794-9276  
21 217-524-3332  
22 scott.sievers@illinois.gov

23 BY: MR. SCOTT B. SIEVERS,

24 Appeared on behalf of the Respondent.

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1 HEARING OFFICER WEBB: We'll go ahead and  
2 begin.

3 Good afternoon. My name is Carol Webb, and  
4 this is the hearing for PCB 10-48, Broadus Oil Company  
5 versus IEPA, and it's February 26, and we are beginning at  
6 1 o'clock p.m.

7 For the record, although the Petitioner is  
8 located in LaSalle County, there was no known public  
9 interest in this case. Thus, I granted the parties'  
10 request to hold the hearing in Springfield.

11 I'll note for the record that there are no  
12 members of the public present. Members of the public may  
13 provide public comment, if they so choose.

14 At issue in this case is Petitioner's high  
15 priority corrective action plan budget. The decision  
16 deadline in this case is August 22nd. The Pollution  
17 Control Board Members will make the final decision in this  
18 case. My purpose is to conduct the hearing in a neutral  
19 and orderly manner so that we have a clear record of the  
20 proceedings.

21 This hearing was noticed pursuant to the  
22 Act and the Board's rules and will be conducted pursuant  
23 to Sections 101.600 through 101.632 of the Board's  
24 procedural rules.

1                   At this time, I'll ask the parties to  
2   please make their appearances on the record.

3 MR. RIFFLE: Robert Riffle, Your Honor, on  
4 behalf of Broadus Oil Company and Midwest Environmental.

5 MR. SIEVERS: Scott Sievers on behalf of  
6 the Respondent Illinois EPA.

7 HEARING OFFICER WEBB: Okay.

8 Any preliminary matters to discuss on the  
9 record?

10                   Mr. Riffle, would you like to make an  
11   opening statement.

12 MR. RIFFLE: Sure. And this may actually  
13 be a preliminary matter, as well as an opening statement,  
14 but just for clarification, we originally submitted this  
15 Petition for Review and Hearing seeking, I believe,  
16 \$88,754.98. Subsequent to that time, there was a  
17 re-submittal, I think, by negotiation and further  
18 proceedings that dealt with, really, the majority of that  
19 claim. So today, and I'll allow counsel to correct me if  
20 he thinks that I'm inaccurate in this regard, but I  
21 believe what is at issue in this particular appeal for  
22 this particular setting is personnel costs of \$3,959.86  
23 and also handling charges of \$5,847.39.

24 So, again, the original appeal has been

1 reduced to these two items, the rest of which have been  
2 dealt with elsewhere.

3 I will note for the record, there's another  
4 Broadus appeal, and by making that comment, I don't want  
5 to in any way impact that. That stands on its own. But,  
6 at any rate, for purposes of today, I believe that's  
7 what's at issue.

8 HEARING OFFICER WEBB: Okay. Mr. Sievers,  
9 would you like to make any opening statement?

10 Oh, I'm sorry. Were you not done? I'm  
11 sorry. Was that just a pause?

12 MR. RIFFLE: That was my preliminary  
13 matter.

14 HEARING OFFICER WEBB: Oh, okay. My  
15 apologies. Go ahead.

16 MR. RIFFLE: Does that accurately state, I  
17 guess, as the -- is that your understanding of where  
18 we're --

19 MR. SIEVERS: I think that's correct, Your  
20 Honor. I think we are down to those two figures. I don't  
21 know the exact numbers at this point, but I'd have to look  
22 back, but I'll reserve that for our closing arguments or  
23 closing briefs.

24 MR. RIFFLE: Sure.

1                   Just very briefly. This is a very, very  
2 complicated site, complicated by a very persistent  
3 neighbor, who insisted upon certain things that were sort  
4 of above and beyond the call of duty. It made it a very  
5 difficult project, I believe, for the Broadus Oil Company,  
6 for Midwest Environmental, and for the Illinois  
7 Environmental Protection Agency, and I believe the  
8 testimony will bear out that there were some extenuating  
9 and unusual circumstances here, and that the personnel  
10 cost and handling charges that were incurred that we're  
11 seeking here today were certainly reasonable and necessary  
12 under the totality of the circumstances.

13                   HEARING OFFICER WEBB: Now, Mr. Sievers,  
14 would you like to make any opening statement?

15                   MR. SIEVERS: No, Your Honor.

16                   MR. RIFFLE: Okay. Mr. Riffle, you may  
17 call your witness.

18                   MR. RIFFLE: Thank you. We call Allan  
19 Green.

20                   HEARING OFFICER WEBB: Okay. Mr. Green,  
21 since again, this is a new proceeding, I'll ask the court  
22 reporter to please swear you in again.

23                   (Witness sworn.)

24

1           ALLAN GREEN, produced, sworn and examined on  
2   behalf of the Petitioner, testified as follows:

3                           DIRECT EXAMINATION

4           BY MR. RIFFLE:

5           Q.   Mr. Green, please state your name and  
6   affiliation for the record.

7           A.   Allan Green, President of Midwest Environmental  
8   Consulting and Remediation Services.

9           Q.   And what is your relationship to Broadus Oil  
10   Company?

11          A.   We were contracted by Broadus Oil Company to  
12   oversee investigation/remediation of an existing LUST site  
13   in Streator, Illinois.

14          Q.   Okay. And did -- did you perform services in  
15   connection with that site?

16          A.   Yes, we did.

17          Q.   Can you give us just a very brief overview of  
18   the scope of that project and what Midwest actually did on  
19   site in that regard?

20          A.   We were called onto the site by Steve Broadus,  
21   who's the owner of Broadus Oil Company, who had a gas  
22   station with an existing LUST incident on the property  
23   that had impacted a neighboring property, or several, and  
24   he was wanting our opinion.



1           He had an existing consultant who had done  
2 preliminary investigation work on the site and submitted  
3 reports to the EPA regarding the required remediation or  
4 what they thought was a required remediation of the site.

5           Mr. Broadus wanted our opinion on this because  
6 his consultant said that there was -- I stated to him that  
7 there was no way this incident could be closed anywhere  
8 near the reimbursement cap.

9           Q.   Do you recall what that reimbursement cap was at  
10 that time?

11          A.   1.5 million.

12          Q.   Okay.

13          A.   And we basically looked at the project, saw that  
14 there were some other avenues that could be taken  
15 regarding the closure of the incident, were hired by  
16 Broadus Oil Company, at which time we submitted a -- based  
17 upon the information we had -- previously had been  
18 submitted to the EPA, a corrective action plan, to  
19 remediate the neighboring property, who the individual was  
20 basically suing Broadus Oil Company, requesting large sums  
21 of money and/or wanted the site cleaned up to Tier 1  
22 standards.

23               We basically submitted a plan and budget to the  
24 state. Mr. Sam Hale was the project manager assigned to

1 the project.

2 We had a plan approved. We went in, basically  
3 excavated the neighboring property and part of the city  
4 property on the other side, had to leave contaminated soil  
5 below the existing building, the neighboring building.

6 The entire time, we had a lot of trouble with  
7 the property owner, basically had gone political, was  
8 contacting Sam and his boss, Cliff, there at the EPA.

9 We went in and remediated that site, repaved the  
10 existing contamination under the little building that was  
11 there was still too high, so we had to submit another plan  
12 to do enhancement by remediation underneath the building.  
13 That was completed. The results came back satisfactory  
14 after a period of time, and basically we finished our work  
15 on the neighboring property and on the city property and  
16 proposed TACO closure for the contamination on the site  
17 itself, which was approved, and we had to get a highway  
18 authority agreement from the IDOT for the highway in front  
19 of the station and ground water use restriction from the  
20 town, environmental land use restrictions on the  
21 neighboring property and the city property, and basically,  
22 then, TACO the site up for closure.

23 Q. Now, Exhibit A to our Petition for Review and  
24 Hearing in this case is a corrective action budget

1 amendment dated November 10 of 2009. Do you recognize  
2 that document?

3 A. Yes.

4 Q. And is that a document you submitted to the  
5 IEPA?

6 A. Yes.

7 Q. Page B-1 of that document, the heading on that  
8 is proposed budget summary and budget total. Do you see  
9 that entry?

10 A. Yes.

11 Q. You heard in my opening statement my comment  
12 about a re-submittal in connection with this particular  
13 matter. Can you explain for the record what occurred  
14 there?

15 A. Basically, we -- to my memory, we resubmitted  
16 another budget addendum for this site with more detailed  
17 information as to what was requested by the EPA.

18 Q. And did that address and particularly field  
19 purchase and other costs?

20 A. Yes.

21 Q. And did that leave open the personnel cost and  
22 handling charges that are at issue here today?

23 A. Yes.

24 Q. Okay. Particularly with respect to the

1 personnel costs with reference to Exhibit A to the  
 2 Petition, can you explain in some detail the work that was  
 3 actually performed by Midwest Environmental in connection  
 4 with that 3,900 or so dollars of personnel costs?

5 A. Basically, it entailed the time that was spent  
 6 between the city, their attorneys, the off-site property  
 7 owner, and their attorneys, and then the IDOT for their  
 8 highway authority agreement, and then reimbursement time  
 9 and certification on that issue.

10 Q. And do those entries on page G-1 of Exhibit A to  
 11 the Petition in this case accurately depict work that was  
 12 actually done by Midwest Environmental?

13 A. Yes.

14 Q. And what is the total personnel cost that's  
 15 depicted on that document?

16 A. \$3,959.86.

17 Q. Did you have any conversations with the IEPA  
 18 regarding the need to negotiate a site access agreement?

19 A. Because of the nature of the project and the  
 20 neighboring property owner, we were basically, if not  
 21 every other day, then close to that, in communication with  
 22 the project manager and with his supervisor.

23 Q. And who was that at the time?

24 A. Sam Hale was the project manager and Cliff

1 Wheeler was his supervisor.

2 Q. Did they give you any instructions in connection  
3 with this project?

4 A. Basically -- not to quote them -- basically was,  
5 do what you need to do to get this site closed and get  
6 this individual out of our hair.

7 Q. And your understanding was that -- the  
8 individual you're talking about is the neighboring  
9 landowner?

10 A. Yes.

11 Q. And were they making contact directly with IEPA  
12 at the time?

13 A. Yes, they were.

14 Q. And also with legislators and such?

15 A. Yes, they were.

16 Q. And did you also have to negotiate a highway  
17 authority agreement?

18 A. Yes.

19 Q. And were there any other particular things that  
20 are included at page G-1 of Exhibit A of note in terms of  
21 what all you did in terms of the scope of work?

22 A. There's time there for basically those issues  
23 and the reimbursement submittals and such for that -- for  
24 that time.

1 Q. Okay. And the other thing that was at issue  
2 here today is the handling charges. Can you just briefly  
3 describe what that entails?

4 A. It entails the handling charges put on the  
5 subcontractor invoices, once proof of payment's been  
6 shown. It's for us -- it's the money markup allows to the  
7 individuals for basically paying subcontractors.

8 Q. Okay. And again, all of your purchase costs and  
9 all were amicably resolved in that other submittal; is  
10 that correct?

11 A. Yes.

12 Q. Okay. And was it your testimony that those are  
13 reasonable and actual charges incurred in connection with  
14 this project?

15 A. Yes, they are.

16 MR. RIFFLE: No further questions. Thank  
17 you.

18 CROSS EXAMINATION

19 BY MR. SIEVERS:

20 Q. Mr. Green, I'm going to be asking you about a  
21 document that looks an awful lot like the one attached to  
22 your Petition, so I apologize.

23 But I'm handing you what has been previously  
24 marked as Respondent's Exhibit B and you recognize that to

1 be the budget that you submitted that is the subject of  
2 this case; correct?

3 (Respondent's Exhibit B was previously marked  
4 for identification.)

5 A. Yes.

6 Q. Okay. And I'm handing you what has been  
7 previously marked as Respondent Exhibit E. Do you  
8 recognize that to be the budget that was subsequently  
9 submitted after the budget that is the subject of this  
10 case; correct?

11 (Respondent's Exhibit E was marked for  
12 identification.)

13 A. Yes.

14 Q. Okay. And this budget, the one set forth in  
15 Respondent's Exhibit E, that was paid in full, isn't that  
16 correct, or was approved in full?

17 A. I mean, yeah, if we get an approval letter from  
18 the EPA, then yes.

19 Q. I'm sorry. Let me restate that. You have had  
20 Respondent's Exhibit E approved at least in part by  
21 Illinois EPA; isn't that correct?

22 A. Yes.

23 Q. Now, I'm going to call your attention to that  
24 exhibit, pages 1637 through 1638, and that's your

1 signature on page 1638; correct?

2 A. Yes.

3 Q. And would it be fair to say that you wrote this  
4 two-page letter that accompanied the rest of Respondent's  
5 Exhibit E to address a mathematical error?

6 A. Yes.

7 Q. And this was written concerning an error that  
8 occurred related to a 2007 submittal; is that right?

9 A. Yes.

10 Q. And this budget that is set forth in here in  
11 Respondent's Exhibit E on page 1641 in the amount of  
12 \$64,007.48, that dollar figure was approved in full; is  
13 that correct?

14 A. I believe so. I mean, without being able to  
15 look at the record, yes.

16 Q. Now, on this page, page 1641, in this submittal,  
17 you did not seek personnel costs; correct?

18 A. No.

19 Q. And you did not seek handling costs; correct?

20 A. No.

21 Q. Okay. In fact, handling costs is not even found  
22 on page 1641 as a line item, is it?

23 A. No.

24 Q. Now, the previous budget that is the subject of



1 this appeal, that's contained in Respondent's Exhibit B;  
2 correct? Do you have that before you?

3 A. Yes.

4 Q. I'll call your attention to page 1622 of that,  
5 Respondent's Exhibit B.

6 Now, that budget that sought costs for  
7 excavation and transportation, disposal of soil,  
8 backfilling, removal of clean overburden and so forth;  
9 correct?

10 A. Yes.

11 Q. Okay. And let me go back to Respondent's  
12 Exhibit E, pages 1637, 1638. That's the letter you wrote  
13 about that mathematical error. Would it be fair to say  
14 that that letter explains that the budget that accompanies  
15 it was for the same work that excavation, transportation,  
16 disposal of soil, backfill, clean overburden, and it  
17 should be for approximately \$64,000.

18 MR. RIFFLE: I'm going to object to the  
19 form of the question. I'm not sure I understand what  
20 you're asking there.

21 MR. SIEVERS: I'll rephrase.

22 BY MR. SIEVERS:

23 Q. Is it accurate that this letter on pages 1637  
24 and 1638 of Respondent's Exhibit E is addressing work that

1 is also addressed in Respondent's Exhibit B that is the  
2 same excavation, transportation, disposal, backfill,  
3 removal of clean overburden?

4 MR. RIFFLE: Are you asking if it's the  
5 same soil?

6 MR. SIEVERS: The same work.

7 A. Yeah, I believe so. Yeah.

8 Q. Okay.

9 A. Okay. This was done in a couple different  
10 phases, so that's why I'm looking to see the dates because  
11 there was the major excavation, and then this was a  
12 separate deal that was done at the time the excavation was  
13 done, so I'm just making sure that one is not interacting  
14 with the other one.

15 Q. And I think at the outset of the hearing today,  
16 your attorney acknowledged that these costs, the \$64,000  
17 worth of costs arising from that excavation,  
18 transportation, and disposal somewhere, those have been  
19 approved by the Illinois EPA; isn't that correct?

20 A. Yes.

21 Q. And so we're down to, at least as far as  
22 Respondent's Exhibit E is concerned -- I'm sorry --  
23 Respondent's Exhibit B is concerned, B as in boy, we're  
24 down to handling charges and personnel costs; correct?

1           A.    Yes.

2                   MR. SIEVERS:  Nothing further of this  
3   witness, Your Honor.

4                   MR. RIFFLE:  No further questions.

5                   HEARING OFFICER WEBB:  All right.  Thank  
6   you, Mr. Green.

7                   Mr. Riffle, do you have anything further?

8                   MR. RIFFLE:  I do not.

9                   HEARING OFFICER WEBB:  Okay.  Mr. Sievers,  
10   you may call your witness.

11                   MR. SIEVERS:  Your Honor, I call Mr. Brian  
12   Bauer.

13                   HEARING OFFICER WEBB:  Is it B-A-U-E-R?

14                               (Witness sworn.)

15  
16                   BRIAN BAUER, produced, sworn and examined on  
17   behalf of the Respondent, testified as follows:

18                               EXAMINATION

19           BY MR. SIEVERS:

20           Q.    Mr. Bauer, could you state your name and spell  
21   it for the court reporter?

22           A.    Brian Bauer, B-R-I-A-N, B-A-U-E-R.

23           Q.    Are you employed?

24           A.    Yes, I am.

1 Q. Where are you employed?

2 A. At Illinois Environmental Protection Agency.

3 Q. Any particular unit within that agency?

4 A. The LUST section.

5 Q. When you say LUST, do you mean leaking  
6 underground storage tank?

7 A. I do.

8 Q. How long have you been so employed?

9 A. Over 20 years.

10 Q. Did you attend college?

11 A. Yes.

12 Q. Where?

13 A. I went to Northland College.

14 Q. Did you earn a degree?

15 A. A Bachelor's degree in biology.

16 Q. Did you attend graduate school?

17 A. Yes, I did.

18 Q. Where?

19 A. University of Illinois in Springfield.

20 Q. Did you get a degree?

21 A. A Master's degree in environmental studies.

22 Q. What's your present title at Illinois EPA?

23 A. Well, I'm a project manager, I guess.

24 Q. And what are the job duties of a project

1 manager?

2 A. Of a project manager in particular?

3 Q. Well, in the LUST program.

4 A. In the LUST program is to oversee the approval  
5 and remediation of corrective action plans and site  
6 investigation plans and completion reports and things like  
7 that.

8 Q. What are your job duties in particular?

9 A. My job duties are to -- I kind of quasi oversee  
10 the reimbursement portion of the underground storage tank  
11 program.

12 Q. And how long have you had that role?

13 A. Over three years; three or four years.

14 Q. And before that, you were project manager in the  
15 LUST program; correct?

16 A. That's correct, yes.

17 Q. So you would review budgets and plans and so  
18 forth, submittals?

19 A. That's correct, yes.

20 Q. Now, so would it be fair to say that for the  
21 last two decades you've been working with the LUST program  
22 and -- well, it's correct that you've been working for the  
23 LUST program for the last two decades dealing with plans  
24 and budgets and so forth?

1 A. That's correct.

2 Q. Would it be fair to say you've reviewed hundreds  
3 of plans and budgets?

4 A. That would be fair to say.

5 Q. Now, this case involved a December 8th, 2009  
6 decision of Illinois EPA to reject a corrective action  
7 plan budget. Are you familiar with that decision?

8 A. Yes.

9 Q. Okay. I'm handing you what has been previously  
10 marked as Respondent's Exhibit A. Do you recognize that?

11 (Respondent's Exhibit A was previously marked  
12 for identification.)

13 A. I do.

14 Q. What do you recognize that to be?

15 A. It is a denial letter of the corrective action  
16 budget's plan budget that was -- that the Agency issued.

17 Q. And you understand that to be the basis for the  
18 hearing today?

19 A. I do.

20 Q. On the second page of Respondent's Exhibit A, is  
21 the name Sam Hale -- who is or was Sam Hale?

22 A. Sam Hale was a project manager in the LUST  
23 section.

24 Q. Is he still with Illinois EPA?

1 A. He is not.

2 Q. And why not?

3 A. He is deceased.

4 Q. And does the name Clifford Wheeler on that page  
5 as well, who is or was Clifford Wheeler?

6 A. Cliff was a unit manager over Sam Hale.

7 Q. Okay. And is he still with the Illinois EPA?

8 A. He retired.

9 Q. Okay. And has he since passed away?

10 A. He has since passed away, yes.

11 Q. Okay. Now, Attachment A to Respondent's Exhibit  
12 A had two numbered paragraphs. Does that set forth as you  
13 understand it the reason for the denial of the submittal  
14 in this case?

15 MR. RIFFLE: I'm going to object on the  
16 lack of foundation.

17 A. Yes.

18 Q. Are you familiar with the basis of the denial of  
19 the submittal in this case?

20 A. Yes.

21 Q. Okay. And is it set forth on page 1643 of  
22 Respondent's Exhibit A?

23 A. It is.

24 Q. I'm going to hand you what has been marked as

1 Respondent's Exhibit B. Do you recognize that document?

2 A. Yes.

3 Q. And what do you recognize that document to be?

4 A. The Corrective Action Budget Amendment that was  
5 denied on the December 8, 2009 letter.

6 Q. So you understand Respondent's Exhibit B to be  
7 the submittal that was rejected in your Respondent's  
8 Exhibit A?

9 A. Yes.

10 Q. Now, I'll call your attention on page 1619 of  
11 Respondent's Exhibit B. Do you see the six numbered line  
12 items?

13 A. I do.

14 Q. Now, there are three entries there; correct?  
15 One for personal costs, one for field purchases and other  
16 costs, and one for handling charges; correct?

17 A. Correct.

18 Q. Let me ask you about handling charges. Does  
19 Illinois EPA approve handling charges in a budget  
20 submittal?

21 A. No, we do not.

22 Q. Why not?

23 A. They are approved, but they are based upon what  
24 you submit in your reimbursement at the time you submit



1 the bills.

2 Q. Now, is this -- on page 1619, was that an  
3 Illinois EPA form, to your knowledge?

4 A. Yes, I believe it was.

5 Q. Was it a form that was current when it was  
6 submitted, do you know? Well, let me ask you this. Has  
7 the form for budget submittals changed over the years?

8 A. Yes.

9 Q. And does the form currently include handling  
10 charges?

11 A. For budgets, no.

12 Q. Mr. Bauer, I'm handing you what has been  
13 previously marked as Respondent's Exhibit C. Will you  
14 take a moment to review that? Do you recognize  
15 Respondent's Exhibit C?

16 (Respondent's Exhibit C was previously marked  
17 for identification.)

18 A. Yeah. It's the regulations.

19 Q. Are these regulations that you rely upon in your  
20 job?

21 A. It is.

22 Q. Let me call your attention to the third page,  
23 paragraph B. Have you relied upon this provision at all  
24 in dealing with handling charges?

1 A. Yes.

2 Q. And in particular, what portion of paragraph B?

3 A. Can I read the sentence?

4 Q. Yes.

5 A. The budget must include, but is not limited to,  
6 a copy of the eligibility/deductibility termination of the  
7 OSFM and an estimated of all costs associated with the  
8 development, implementation, and completion of corrective  
9 action plan, excluding handling charges.

10 Q. And do you understand that to be the basis for  
11 Illinois EPA's denial of request for handling charges in  
12 budget submittals, at least the approval of budgets?

13 A. Yeah, approval of the dollar amount.

14 Q. Okay. So it's not that you won't -- Illinois  
15 EPA won't pay them later on, is that correct?

16 A. That's correct. We will pay them later on.

17 Q. You just don't approve the handling charges in  
18 the budget itself.

19 A. Correct.

20 Q. Mr. Bauer, I'm calling your attention to what  
21 has been previously marked as Respondent's Exhibit D. Do  
22 you recognize that document?

23 (Respondent's Exhibit Number D was previously  
24 marked for identification.)

1           A.    Yes.  That's another portion of the regulations.

2           Q.    And is that a -- are those regulations materials  
3   you rely upon in the course of your job?

4           A.    It is.

5           Q.    And do you understand from those regulations  
6   that various costs are not approved for reimbursement  
7   under the LUST program?

8           A.    Correct.

9           Q.    Do you understand, based on these regulations  
10   and your understanding of them, does Illinois EPA approve  
11   reimbursement for excavation, disposal, backfill and so  
12   forth?

13                   Let me strike that.  Does Illinois EPA approve  
14   budgets seeking reimbursement for excavation, disposal and  
15   backfill?

16           A.    Yes.

17           Q.    Now, does Illinois EPA approve budgets that  
18   include restoration of water or restoration of electric  
19   compactors or pre-create cost figures?

20           A.    No, we do not.

21           Q.    And does the basis for that denial include  
22   Respondent's Exhibit D?

23           A.    Yes.

24           Q.    Could a budget submitted to Illinois EPA be

1 denied in whole, even though part of it would be  
2 acceptable?

3 A. Yes.

4 Q. So if one part of a budget was violated or  
5 conflicted with the regulations, the whole budget could be  
6 denied or rejected?

7 A. Yes.

8 Q. I'm handing you what has been previously marked  
9 as Respondent's Exhibit E. Can you take a look at that  
10 for a moment? Do you recognize that?

11 A. Yes.

12 Q. What do you recognize that to be?

13 A. A corrective action plan budget amendment and  
14 justification.

15 Q. Let me call your attention to 1643, page 1643 of  
16 that exhibit. Now, does this budget address excavating  
17 and transportation, disposal, backfill, overburden?

18 A. It does.

19 Q. Now, have -- I'll have you go back to another  
20 exhibit here, and that is Respondent's Exhibit B. Do you  
21 have it?

22 A. Yes.

23 Q. Okay. And page 1622.

24 A. Okay.

1 Q. Now, this page -- this also includes on  
2 Respondent's Exhibit B, page 1622, that also includes  
3 costs for excavation, transportation, disposal, backfill,  
4 and overburden; correct?

5 A. Correct.

6 Q. Now, have you had the opportunity to add  
7 together the figures on page 1622 for the trench backfill,  
8 that 166.7 yards to the 1,494.23 yards, and compare them  
9 to the figures in the other exhibit, Respondent's Exhibit  
10 E on page 1643?

11 A. Yes.

12 Q. And how do they compare?

13 A. They're the same totals.

14 Q. Okay. So we're talking -- it appears to be the  
15 same amount of yardage of excavation for transportation,  
16 disposal, backfill, and clean overburden?

17 A. Yes.

18 Q. And again, I'll call your attention to  
19 Respondent's Exhibit E, and do you understand -- are you  
20 aware of the status of this budget submittal?

21 A. I believe it's been approved.

22 Q. Okay. And was it approved for the full amount  
23 on page 1641 of \$64,007.48?

24 A. I believe so, yes.

1 Q. Now, this budget did not include handling  
2 charges; correct?

3 A. Correct.

4 Q. It didn't include personnel costs; correct?

5 A. It did not.

6 Q. Had this budget included the personnel costs  
7 that had been set forth in Respondent's Exhibit B, is it  
8 possible they might have been paid?

9 A. It is possible.

10 Q. Is page 1641 the current form, or was it the  
11 current form at the time that this budget was submitted,  
12 the current Illinois EPA form? That is a form that lacks  
13 an entry for handling charges.

14 A. Yes.

15 Q. Okay. In looking at Respondent's Exhibit B on  
16 page 1619, do you know whether that form at the time it  
17 was submitted was the correct form for submitting a  
18 proposed budget summary and budget total?

19 A. I do not believe it was the form that we had out  
20 at that time to be used.

21 Q. The form that you did have out, that you had  
22 when approved? Illinois EPA had approved a form at that  
23 time? Would that be correctly said?

24 Well, does Illinois EPA provide forms for

1     submittal of various LUST documentations, including  
2     budget?

3             A.     Yes, we do.

4             Q.     At the time this proposed budget summary and  
5     budget total were submitted, did the form Illinois EPA had  
6     include handling charges as a line item?

7             A.     No.

8             Q.     But it's fair to say that handling charges,  
9     although not approved as part of a budget, are approved by  
10    Illinois EPA separately.

11            A.     Yes. We don't approve a dollar amount in the  
12    budget for handling charges.

13            Q.     And upon what do you base the handling charges?

14            A.     There's a couple things governing handling  
15    charges on the reimbursement side, but it would be --  
16    there's a sliding scale.

17            Q.     Is it in the regulations?

18            A.     It's in the regulations, yes.

19                    MR. SIEVERS: Okay. I have nothing  
20    further.

21                    MR. RIFFLE: Thank you.

22

23

24

CROSS EXAMINATION

BY MR. RIFFLE:

Q. I'd ask you to briefly look at Exhibit A. It should be in front of you there. Now, this is signed off on by Clifford Wheeler; correct?

A. That's correct.

Q. And then Sam Hale was also probably involved in the drafting of this; is that correct?

A. Yes.

Q. And I'm noting at the bottom there, you've got the initials of Mr. Wheeler and Mr. Hale right under Mr. Wheeler's signature block; correct?

A. Correct.

Q. What involvement did you personally have in the drafting of Exhibit A?

A. None.

Q. And were you personally involved in the process of denying this budget?

A. No.

Q. Aside from Attachment A to Exhibit A, do you have any independent knowledge of how a determination was made whether to approve or reject this budget?

A. I've reviewed the file.

Q. Is that after the fact?



1 A. After the fact.

2 Q. How recent? When was the first time you  
3 reviewed the file in that connection?

4 A. I don't recall.

5 Q. Was it within a few months of this December '09  
6 date, or was it more recent?

7 A. More recent.

8 Q. So your entire understanding of the  
9 decision-making process here is based on a file review; is  
10 that correct?

11 A. That is correct.

12 Q. Attachment A to Exhibit A, I believe it's the  
13 last page of Exhibit A, if you could turn to that. It  
14 states two -- my understanding correctly, those are  
15 essentially the grounds for denial of the budget?

16 A. Yes.

17 Q. And do either of those address personnel charges  
18 at all?

19 MR. SIEVERS: I'm going to object as vague  
20 as to what address means.

21 HEARING OFFICER WEBB: Well, I don't know  
22 if he understands the question or not. Maybe you could  
23 rephrase it so that we all know what you're asking.

24 MR. RIFFLE: Sure.

1           Q.    There are two grounds stated in Exhibit A,  
2   Attachment A to Exhibit A, which we're interpreting as  
3   grounds for a denial of the budget; is that correct?

4           A.    That's correct.

5           Q.    Is there any mention of personnel costs in  
6   either of those two grounds?

7           A.    No.

8           Q.    And if you'd take a quick look at Exhibit B,  
9   page 1620, if you would, as you sit here today, do you  
10   have any reason to believe that the hours that are listed  
11   on page 1620 of Exhibit B were not reasonably expended in  
12   connection with this project?

13          A.    No.

14          Q.    And do you have any reason to believe that the  
15   hourly rates listed in that page 1620 are not reasonable  
16   and proper reimbursement rates?

17          A.    No.

18          Q.    You stated earlier that a whole budget could be  
19   rejected based on one particular deficiency; is that  
20   correct?

21          A.    Yes.

22          Q.    And what do you base that statement on?

23          A.    I would say based upon my experience of denying  
24   budgets over the years.

1 Q. Is there any law that you're aware of that  
2 provides for that particular course of action?

3 A. I don't understand the question.

4 Q. Are you aware of any law, either a statute or  
5 administrative regulation, that allows the EPA to deny a  
6 budget entirely based on one deficiency?

7 MR. SIEVERS: I'm going to object. It  
8 calls for a legal conclusion.

9 MR. RIFFLE: I'm asking if he's aware.

10 HEARING OFFICER WEBB: You can answer.

11 A. I believe the regulations allow us to do that.

12 Q. Do you know what provision of the regulations?

13 A. Not offhand.

14 Q. Is it in any of the ones that you were  
15 previously shown, Exhibit C or D?

16 A. I don't know.

17 Q. Did you have any personal involvement in the  
18 Broadus project?

19 MR. SIEVERS: Objection, vague. What does  
20 personal involvement mean?

21 BY MR. RIFFLE:

22 Q. What, if any, involvement did you have in the  
23 Broadus project other than your testimony here today?

24 A. Just to review everything for the case.

1 MR. RIFFLE: No further questions. Thank  
2 you.

3 REDIRECT EXAMINATION

4 BY MR. SIEVERS:

5 Q. Mr. Bauer, let me call your attention to  
6 Respondent's Exhibit A, page 1633, with those two reasons.  
7 Paragraph 2 says the budget includes costs for corrective  
8 action that are inconsistent with the associated technical  
9 plan; is that correct?

10 A. That's correct.

11 Q. And would it be correct that when -- in your  
12 experience when a budget is denied in whole or in part  
13 that the explanation set forth for its rejection may not  
14 be necessarily detailed to every particular line of that  
15 budget?

16 A. Yes.

17 Q. Maybe a generalized statement as to the basis  
18 for the rejection; correct?

19 A. That would be correct, yes.

20 Q. So when it says a budget includes costs for  
21 corrective action, those costs can be a number of costs;  
22 correct?

23 A. That's correct; yes, sir.

24 Q. Including personnel costs?

1 A. Yes.

2 Q. Including handling charges?

3 A. Yes.

4 HEARING OFFICER WEBB: Nothing further.

5 RECROSS EXAMINATION

6 BY MR. RIFFLE:

7 Q. Sir, as you sit here today, do you know of any  
8 personnel costs that would have been included within  
9 paragraph 2 of Attachment A to Exhibit A?

10 A. Can you repeat that, please?

11 Q. Sure. Are you aware specifically of any  
12 personnel costs that are being specifically denied by  
13 reference in that statement in paragraph 2?

14 A. I would believe that all the personnel costs  
15 were being referenced in there.

16 Q. And on what do you base that conclusion?

17 A. If he's denying a budget for excavation,  
18 transportation, disposal, the cost to prepare that budget  
19 and everything else would be all-inclusive of what he was  
20 denying.

21 Q. If you look back at Exhibit B, page 1620, there  
22 are, for instance, hours for off-site access negotiation.  
23 Do you see that?

24 A. I do.

1 Q. Does that have anything to do with the  
2 excavation?

3 A. I believe so.

4 Q. And how would that be?

5 A. I think the excavation was on off-site property.

6 Q. Do you know for sure whether there was  
7 excavation off site in this particular project?

8 A. I'm pretty sure it was.

9 Q. Okay. But again, you weren't personally  
10 involved in the decision to deny this particular budget,  
11 Exhibit B?

12 A. That's correct. I was not.

13 MR. RIFFLE: Nothing further.

14 MR. SIEVERS: Nothing further, Judge.

15 HEARING OFFICER WEBB: Okay. Thank you,  
16 Mr. Bauer.

17 Mr. Sievers, do you have -- are you going  
18 to introduce your --

19 MR. SIEVERS: Yes. We'd move for admission  
20 of Respondent's Exhibits A through E, I believe.

21 HEARING OFFICER WEBB: And these are all  
22 part of the record, right?

23 MR. SIEVERS: They are, Your Honor.

24 HEARING OFFICER WEBB: Yeah. So we will go

1 ahead and admit all of these exhibits.

2 (Respondent's Exhibits A through E were  
3 admitted into evidence.)

4 And do you have anything else to present  
5 today, Mr. Sievers?

6 MR. SIEVERS: I do not, Your Honor.

7 HEARING OFFICER WEBB: We'll just wrap up.

8 The transcript is due on March 8th and will  
9 be posted on the Board's website. The public comment  
10 deadline is March 12. Public comments must be filed in  
11 accordance with Section 101.628 of the Board's procedural  
12 rules. Petitioner's brief is due by April 8th, and  
13 Respondent's brief is due by May 8th. Petitioner's reply,  
14 if any, is due by May 22nd.

15 There are no members of the public to  
16 present any comment today, so at this time I will conclude  
17 the proceeding.

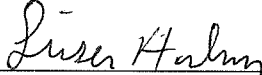
18 We stand adjourned. Thank you very much.

19 (Whereupon, the above-entitled  
20 proceedings were concluded at 1:50  
21 p.m., February 26, 2013.)  
22  
23  
24

1 STATE OF ILLINOIS)  
2 ) SS  
3 COUNTY OF MACON )  
4

5 I, LISA K. HAHN, CSR, RMR, do hereby state  
6 that I am a court reporter doing business in the City of  
7 Decatur, County of Macon, and State of Illinois; that I  
8 reported by means of machine shorthand the proceedings  
9 held in the foregoing cause, and that the foregoing is a  
10 true and correct transcript of my shorthand notes so taken  
11 as aforesaid.  
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Lisa K. Hahn, CSR, RMR  
Notary Public, Macon County, Illinois  
CSR #84-2149



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