

**BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS**

BROADUS OIL COMPANY,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB No. 10-48
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	
)	
Respondent.)	

POST-HEARING BRIEF OF PETITIONER

NOW COMES Broadus Oil Company, by its attorneys, Elias, Meginness, Riffle & Seghetti, P.C., and as and for its Post-Hearing Brief of Petitioner, states as follows:

INTRODUCTION

Broadus Oil Company ("Broadus") retained Midwest Environmental Consulting & Remediation Services, Inc. ("Midwest") to remediate a Leaking Underground Storage Tank Site. The property was remediated, despite numerous challenges, including dealings with a contentious neighbor.

The Illinois Environmental Protection Agency ("IEPA") rejected \$3,959.86 of personnel costs which were admittedly reasonably and necessarily incurred in connection with the project at issue. Respectfully, it was arbitrary and capricious to deny these personnel costs.

RELEVANT FACTS

Mr. Bauer of the IEPA testified as follows:

Q. And if you'd take a quick look at Exhibit B, page 1620, if you would, as you sit here today, do you have any reason to

believe that the hours that are listed on page 1620 of Exhibit B were not reasonably expended in connection with this project?

A. No.

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

A. No.

(p. 34, lines 8-17; Transcript of Proceedings)(Emphasis added).

Mr. Green of Midwest testified as follows:

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

A. Yes, they are.

(p. 14, lines 12-15; Transcript of Proceedings)

Mr. Bauer also testified as follows with respect to Exhibit A (the Denial Letter):

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 independent knowledge of how a determination was made whether to improve or reject this budget?

A. I've reviewed the file.

Q. Is that after the fact?

A. After the fact.

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

A. I don't recall.

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

A. More recent.

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

A. That is correct.

(p.32, lines 14-14; page 33, lines 1-11; Transcript of Proceedings).

ARGUMENT

It is undisputed that Petitioner reasonably and necessarily incurred the personnel costs which are at issue in the amount of \$3,959.86 in remediating the subject property and that these reasonably and necessarily incurred personnel costs have not been reimbursed. No valid ground has been articulated by the IEPA for denial of the personnel charges at issue in this case.

As the IEPA knows full well, this was a very difficult site, for technical and other reasons. Substantial off-site migration of contamination had occurred, and a neighboring property owner had pursued legal and political channels. (Tr. 9-10). Petitioner had hired a previous consultant, which had proposed remediation which would have cost in excess of \$1,500,000 cap. (Tr. 9). Petitioner's replacement consultant, Midwest, completed the remediation well within the cap, including substantial offsite remediation and complex agreements with the neighboring property owner. (Tr. 10). It appears that IEPA is taking the position that because one entry on the proposed budget (i.e., handling changes) should not have been included, it had the right to deny that budget in its entirety. (Tr. 34). IEPA, at hearing,

could not point to any rule that allowed such a blanket denial, (Tr. 35) and the person who appeared for the agency at hearing had no first-hand familiarity and/or personal involvement with the project. (Tr. 32-33; 35).

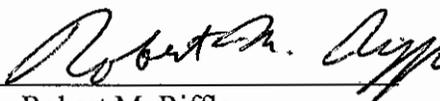
With all due respect, it has been difficult for small and medium sized remediation contractors to survive over the past decade in this economic environment with the Illinois Leaking Underground Storage Tank Fund's well-known solvency problems. The IEPA's failure or refusal to pay for personnel charges which they freely admit were reasonably and necessarily incurred is a source of great frustration to Petitioner and Midwest. The personnel costs were reasonably and necessarily expended, and should be paid.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests approval and reimbursement of \$3,959.86 of personnel costs which indisputably were reasonably and necessarily incurred.

Respectfully submitted,

BROADUS OIL COMPANY, Petitioner

By: 

Robert M. Riffle
Its Attorney

ROBERT M. RIFFLE
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
(309) 637-6000
613-291

CERTIFICATE OF SERVICE

The undersigned certifies that on April 8, 2013, a copy of the foregoing document was filed electronically with the Illinois Pollution Control Board and served upon each party to this case by

X Electronic delivery and United States Mail at 5:00 p.m. on said date.

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 N. Grand Avenue East
PO Box 19274
Springfield, IL 62794-9274

Scott B. Sievers
IEPA
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276



Robert M. Riffle
Elias, Meginnes, Riffle & Seghetti, P.C.
416 Main Street, Suite 1400
Peoria, IL 61602
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