

ILLINOIS POLLUTION CONTROL BOARD
December 21, 2006

FEDEX GROUND PACKAGE SYSTEM,)	
INC.,)	
)	
Petitioner,)	
)	
v.)	PCB 07-12
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

DISSENTING OPINION (by T.E. Johnson):

I respectfully dissent with the majority opinion. In the majority opinion, the Board grants the motion for summary judgment filed by the Illinois Environmental Protection Agency (Agency), and denies the cross-motion for summary judgment filed by Fedex Ground Package System, Inc. (Fedex), finding that the Agency properly rejected requests for budget amendments regarding corrective action at Fedex's site because the Agency received the budget amendment after it issued an No Further Remediation (NFR) letter for the site.

The crux of both motions for summary judgment is the meaning of 35 Ill. Adm. Code 734.335. Section 734.335(d) provides that a corrective action budget must be submitted to the Agency prior to the issuance of a NFR letter. However, this sentence must be read in light of the overall purpose of the regulation. I feel that this regulation is intended to address cases in which the owner has proceeded with corrective action before submitting a corrective action plan or budget. In this case, the record is clear that the respondent first submitted the corrective action plan and the budget, and received approval from the Agency before beginning corrective action. The amended budget was submitted after the issuance of the NFR letter, but seeks reimbursement only for any work specifically identified and approved by the Agency in the corrective action plan and the original budget – both filed before corrective action commenced and well before the issuance of the NFR letter. Thus, the respondent has followed the requirements of Section 734.335 and the Agency should consider the amended budget.

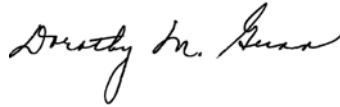
Accordingly, I feel the proper course of action in this case is to grant FedEx's motion for summary judgment and deny the motion filed by the Agency. This matter should be remanded to the Agency with instructions to consider whether the proposed budget amendment covers the actual costs of implementing the corrective action plan previously approved by Agency.

For these reasons, I respectfully dissent.

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long, horizontal stroke that tapers to the right.

Thomas E. Johnson

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the above dissenting opinion was submitted on January 8, 2007.

A handwritten signature in black ink, written in a cursive style, appearing to read "Dorothy M. Gunn".

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board