

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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BROADUS OIL,

Petitioner,

v.

ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

STATE OF ILLINOIS
Pollution Control Board

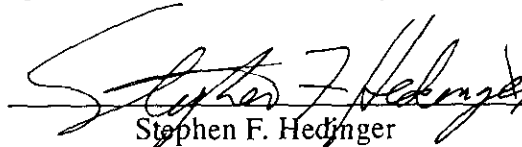
PCB 04-31
PCB 05-43
(UST Appeal)

NOTICE OF FILING AND PROOF OF SERVICE

To: Bradley Halloran, Hearing Officer
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

Melanie Jarvis
Division of Legal Counsel
IL Environmental Protection Agency
1021 N. Grand Ave. East
P.O. Box 19276
Springfield, IL 62794-9276

The undersigned certifies that an original and nine copies of Petitioner's Motion for Reconsideration were served upon the Clerk of the Illinois Pollution Control Board, and one copy was served upon the hearing officer and the above party of record in this case by enclosing same in envelopes with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mail Box before 5:30 p.m. in Springfield, Illinois on the 31st day of January, 2007.


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STATE OF ILLINOIS
Pollution Control Board

MOTION FOR RECONSIDERATION

NOW COMES Petitioner, BROADUS OIL, through its undersigned attorney, and pursuant to this Board's Procedural Rules 101.520 and 101.902, 35 Ill. Adm. Code 101.520 and 101.902, moves this Board to reconsider its Opinion and Order of the Board dated December 21, 2006. In support of this motion, Petitioner states as follows:

1. Petitioner received this Board's Opinion and Order of the Board on January 3, 2007. Accordingly, this motion to reconsider, brought pursuant to 35 Ill. Adm. Code 101.520 and 101.902, is timely.
2. Petitioner respectfully submits that this Board's interpretation of its own regulations was in error, and that no provision of Part 732 prohibits the Illinois EPA from approving the budget amendment submitted by Petitioner, and therefore reimbursing Petitioner for the expended necessary costs of remediation incurred, as set forth in the record in this case, would be in accord with this Board's Part 732 regulations.
3. In addition, Petitioner respectfully submits that this Board, in ruling on the cross motions for summary judgment in this case, overlooked the dispositive consideration raised in Petitioner's response and cross motion for summary judgment that the Illinois EPA's interpretation of this

Board's Part 732 regulations is contrary to the requirements and provisions of the Illinois Environmental Protection Act. In adopting the Illinois EPA's interpretation, this Board has also acted in violation of the statute.

4. The Illinois Environmental Protection Act specifically and expressly allows a leaking underground storage tank fund applicant to submit any applicable budget amendments "at any time." See 415 ILCS 5/57.7(e)(1). Nothing in Section 57.7, or any other provision of the Illinois Environmental Protection Act, limits the time within which such an amendment proposal can be submitted to the Illinois EPA to prior to issuance of a No Further Remediation letter.
5. Despite the issue having been raised directly by Petitioner's response and cross motion, this Board did not address the statutory issue in its final opinion and order.
6. The Illinois EPA was granted leave to file a reply, in which it asserted that the Licensed Professional Engineer or Licensed Professional Geologist certification of remediation completion set forth in 415 ILCS 5/57.10(c)(1) that "all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with," signifies that all budget approvals have been sought. This assertion is erroneous.
7. The Illinois Environmental Protection Act does not require that remediation costs be reimbursed for leaking underground storage tank corrective action, and accordingly budget plans are not a "corrective action requirement applicable to the occurrence." Such budget plans are optional, and again, the Illinois Environmental Protection Act expressly

provides that such plans can be submitted to the Illinois EPA "at any time."

8. Accordingly, the interpretation of the regulations adopted by this Board contravene the express provisions of the Illinois Environmental Protection Act, and this Board, for that reason, should reconsider that interpretation, and instead apply the interpretation suggested by Petitioner herein, which would avoid the statutory conflict.

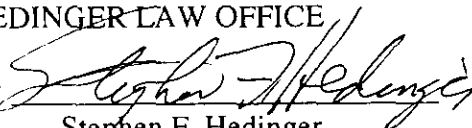
WHEREFORE Petitioner, BROADUS OIL, requests that this Board reconsider its Opinion and Order of the Board dated December 21, 2006, and instead enter an order directing the Illinois EPA to approve Broadus Oil's proposed amended budget and to approve reimbursement of an additional \$24,289.70 in corrective action costs, and award to Broadus Oil all such other and further relief as is within this Board's authority and jurisdiction.

Respectfully submitted,

BROADUS OIL,
Petitioner,

By its attorney,

HEDINGER LAW OFFICE

By 
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