

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

T-TOWN DRIVE THRU, INC.,)
Petitioner,)
)
v.) PCB 07-85
) (UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)
)

NOTICE

Dorothy Gunn
Clerk
Illinois Pollution Control Board
100 West Randolph Street,
Suite 11-500
Chicago, Illinois 60601-3218

Mandy L. Combs
The Sharp Law Firm, P.C.
P.O. Box 906
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Carol Webb
Hearing Officer
Illinois Pollution Control
Board
P.O. Box 19274
Springfield, Illinois 62794-
9274

PLEASE TAKE NOTICE that I have today caused to be filed a RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Assistant Counsel

Dated: September 27, 2007
1021 North Grand Avenue East
P.O. Box 19276
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THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

T-TOWN DRIVE THRU, INC.,)	
Petitioner,)	
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)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

**RESPONSE TO PETITIONER’S MOTION FOR SUMMARY JUDGMENT AND
RESPONDENT’S CROSS-MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, James G. Richardson, Assistant Counsel, and hereby submits to the Illinois Pollution Control Board (“Board”) its Response to Petitioner’s Motion for Summary Judgment and Respondent’s Cross-Motion for Summary Judgment. The Illinois EPA received Petitioner’s Motion for Summary Judgment (“Motion”) on September 13, 2007. The Illinois EPA respectfully requests that the Board deny Petitioner’s Motion and grant the Illinois EPA’s Cross-Motion for Summary Judgment.

I. LAW AND FACTS

The Illinois EPA has nothing to add to the legal provisions cited in the Motion. As for facts, portions of the Administrative Record (“Record” or “AR”) pertinent to this appeal, and cited by T-Town Drive Thru, Inc. (“T-Town”), are the Illinois EPA’s determination letter (AR, pp. 1-3), Analytical Cost Form (AR, pp. 24-25), two Stock Item Forms (AR, pp. 61, 140), and various results of analyses performed by Teklab, Inc. (“Teklab”).

II. ARGUMENT

The question presented in this appeal is whether the Illinois EPA can authorize payments for costs that lack supporting documentation. United Science Industries, Inc. (“USI”), the environmental consultant performing remediation activities at T-Town’s facility, sought reimbursement of \$8,109.02 for analyses performed by Teklab. But there was no invoice in the application indicating what Teklab had charged to perform these analyses or documenting that these costs had been billed to T-Town or USI. Instead USI treated the analyses as stock items in the application for reimbursement.

Costs lacking supporting documentation were at issue in Rezmar Corporation v. Illinois EPA, PCB 02-91 (April 17, 2003). There the Board stated as follows:

“Based on Board precedent, the burden is on applicants to demonstrate that incurred costs are related to corrective action, properly accounted for, and reasonable. Beverly Malkey, as Executor of the Estate of Roger Malkey d/b/a Malkey’s Mufflers v. IEPA, PCB 92-104 (Mar. 11, 1993) at 4. When requesting reimbursement from the fund, the owner or operator must provide an accounting of all costs.” p. 9

The need for supporting documentation is not only critical for reimbursement from the UST Fund but is a cornerstone for reimbursement in any institutional accounting situation. Receipts for relatively inexpensive and mundane costs as taxicab fares and parking garage fees are routinely required to process these expenses for reimbursement. Invoices indicate what services were provided by what entity at what time and for what cost. They also document the fact that the recipient of the services was in fact billed for them.

Although T-Town acknowledges that Teklab provided the analyses in question here, it maintains that it does not have to submit an invoice from Teklab to obtain reimbursement of the analysis costs. Motion at 20. T-Town first argues that the Illinois EPA’s action here was an attempt to reverse budget approvals through the application for payment process. Motion at 7. But many of the references it makes in support of this position indicate that supporting documentation and

generally accepted accounting practices are still essential to the reimbursement process. T-Town notes that Section 57.8(a)(1) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/57.8(a)(1), states “In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal.” Motion at 8. But the sentence previous to this one provides “The Agency’s review shall be limited to generally accepted auditing and accounting practices.” The importance of adequate documentation also appears in the May 25, 2004 testimony of Doug Clay, manager of the Illinois EPA’s LUST Section, and Doug Oakley, Manager of the LUST Claims Unit, cited by T-Town. Motion at 10. There it is noted that a claims reviewer has to “add up invoices” and look for “mandatory documents.”

T-Town next contends that this was an improper attempt by the Illinois EPA to reimburse only what Teklab charged and makes several references to the rulemaking history of the “lump sum” concept. Motion at 12. But the fact that the Illinois EPA would still need subcontractor invoices in this new system was clearly stated by Doug Clay in his August 9, 2004 testimony with the question and answer as follows:

- Q. So that’s true of all the lump sum and unit rates from your perspective, that you don’t go behind those once an invoice is submitted, saying that I’ve done that work?
- A. For subcontractors, you know, we have to have backup invoices for the subs. For example, if we’ve got a drilling subcontractor, you know, we’d want to have \$19 a foot, which is how many feet that were drilled, the dates. But that’s what we would expect from the subcontractor. It would be from the consultant. We have to have that invoice from the sub. But, yeah, for the lump sum and the unit rate, that’s what we would expect.

Transcript of Proceedings Held August 9, 2004, R04-22A (August 20, 2004) at 110-111.

T-Town’s final argument is that it submitted adequate documentation for reimbursement of the analysis costs. Motion at 17. Apparently the adequate documentation in T-Town’s view are two

invoices it received from USI. Motion at 2-3. But this is not an invoice by the subcontractor that performed the analyses documenting what was charged and that these charges were billed. T-Town additionally claims that “the usual function of subcontractor invoices was as evidence for a consultant’s handling charge.” Motion at 18. But a review of the cited text does not support the breadth of this conclusion.

The Act and regulations clearly prescribe that only actual costs be reimbursed and that generally accepted accounting practices be utilized in the review of applications for payment. Treating \$8,109.02 in analysis costs as stock items did not provide the Illinois EPA with sufficient information and documentation to authorize the reimbursement of these costs. As no invoice from Teklab for these costs was included in the application for payment, the Illinois EPA had no choice but to deny their payment in the March 2, 2007 decision letter.

III. CONCLUSION

For the reasons stated herein, the Illinois EPA respectfully requests that the Board deny Petitioner’s Motion for Summary Judgment and grant the Illinois EPA’s Cross-Motion for Summary Judgment, affirming the Illinois EPA’s denial of \$8,109.02 in analysis costs identified in the March 2, 2007 final decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson _____

James G. Richardson
Assistant Counsel

Dated: September 27, 2007

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 27, 2007 I served true and correct copies of a RESPONSE TO PETITIONER'S MOTION FOR SUMMARY JUDGMENT AND RESPONDENT'S CROSS-MOTION FOR SUMMARY JUDGMENT upon the persons and by the methods as follows:

[Electronic Filing]

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[1st Class U.S. Mail]

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