

April 22, 2014

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appearing on behalf of
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appearing on behalf of
Respondent.

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I N D E X

WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
ALLEN GREEN				
By Mr. Riffle	8			
By Mr. Sievers		28		
STEVEN BROADUS				
By Mr. Riffle	33			
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EXHIBITS

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1 HEARING OFFICER WEBB: Good morning.
2 My name is Carol Webb, and this is the hearing for
3 PCB 12-124, Broadus Oil versus IEPA. It is
4 April 22nd, and we are beginning at 10 o'clock.

5 For the record, although this
6 facility is located in LaSalle County, there was no
7 known public interest in this case so I granted the
8 parties' request to hold the hearing in Springfield.

9 I will note that there are no
10 members of the public present although we have
11 several people here from the Agency as well as
12 Connie Newman from the Pollution Control Board.

13 At issue in this case is the
14 amended budget for petitioner's corrective action
15 plan for a facility located at 1006 West Main Street
16 in Streator. The Pollution Control Board members
17 will make the final decision in this case. My
18 purpose is to conduct the hearing in a neutral and
19 orderly manner so that we have a clear record of the
20 proceedings.

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

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

4 MR. RIFFLE: Good morning, Your
5 Honor. Bob Riffle on behalf of Broadus.

6 MR. SIEVERS: Scott Sievers on behalf
7 of the respondent.

8 HEARING OFFICER WEBB: Thank you.

9 Before we begin with opening
10 statements, the Agency filed a motion for leave to
11 supplement the record which I understand is
12 unopposed by petitioner, correct?

13 MR. RIFFLE: That is correct.

14 HEARING OFFICER WEBB: Okay. So that
15 motion for leave to supplement the record is
16 granted.

17 Would petitioner like to give an
18 opening statement?

19 MR. RIFFLE: Very briefly, Your
20 Honor.

21 This is what I think is a very
22 unusual situation we have before you today. This is
23 a site that required much more than the usual amount
24 of scrutiny and effort on behalf of the petitioner,

1 and its contractor and what made this very difficult
2 is a neighboring landowner who availed itself of
3 every conceivable way to make this more difficult
4 for my client, for the IEPA, and for everybody
5 concerned.

6 There was a considerable amount
7 of pressure brought to bear at the political level.
8 They availed themselves of the opportunity to talk
9 to federal officials, state officials. It
10 essentially required a lot of extra work on this
11 site that wouldn't have otherwise been required.

12 That pressure would have been
13 brought to bear on the IEPA to the point where the
14 IEPA requested that my client take more immediate
15 action than otherwise would have been normal and to
16 expedite certain activities on the site, and they
17 were given assurances that everything was going to
18 be taken care of in due course and that they weren't
19 going to suffer financially for doing exactly what
20 the IEPA had told them to do.

21 At the end of the day, my client
22 did exactly what they were instructed to do. They
23 relied upon the IEPA's statements in connection with
24 what they did and ultimately to their detriment.

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1 Again, we believe the evidence
2 is going to show there are exigent and unusual
3 circumstances that warrant the payments that are
4 being requested here.

5 We have two witnesses who will
6 testify here today, Steve Broadus and Al Green.
7 Mr. Broadus is the owner of the petitioner, and
8 Mr. Green is the president of Midwest Environmental,
9 the consultant who was involved in this project,
10 both of whom had direct interaction with the various
11 officials and can testify in a firsthand manner as
12 to the unusual circumstances that bring us here
13 today on this appeal.

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

16 MR. SIEVERS: No, not at this time.

17 HEARING OFFICER WEBB: Okay. You may
18 call your first witness.

19 MR. RIFFLE: Our first witness will
20 be Al Green.

21 HEARING OFFICER WEBB: Would the
22 court reporter please swear in the witness?

23 (Whereupon the witness was sworn
24 by the reporter.)

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ALLEN GREEN

called as a witness herein, on behalf of the
Petitioner, having been first duly sworn on his
oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIFFLE:

**Q. Mr. Green, please state your name for
the record.**

A. Allen Green.

Q. And what is your current occupation?

A. I'm the president of Midwest
Environmental Consulting and Remediation Services in
Tremont, Illinois.

**Q. For the record, if you would please
previously describe your educational background.**

A. I have a bachelor's degree in prelaw
and a bachelor's degree in civil engineering.

**Q. And very briefly, would you give an
overview of your professional career?**

A. I started out as soon as I graduated
as a -- I started in the environmental section for a
firm in Bloomington, Illinois specializing in
underground storage tank testing and cleanup. Did

1 that for two and a half years before starting
2 Midwest Environmental in 1991.

3 Q. Can you approximate how many
4 underground storage tank sites you've personal been
5 involved in in your career?

6 A. 400 plus.

7 Q. And how many of those have involved
8 reimbursement issues related to the Illinois
9 Environmental Protection Agency?

10 A. The vast majority.

11 Q. It would be in excess of 300 then?

12 A. Yes.

13 Q. Can you provide an overview of your
14 involvement with respect to the Broadus Oil Company
15 site that brings us here today?

16 A. I was contacted by Mr. Broadus to
17 review some files for a site that he had in
18 Streator, Illinois that he was involved with another
19 environmental firm who was telling him that based
20 upon the information they had, the testing they'd
21 done...

22 MR. SIEVERS: Objection. Hearsay.

23 Q. Mr. Green, at the time you were
24 engaged by Broadus Oil Company, did you review any

1 documents that were prepared by another
2 environmental consulting firm?

3 A. Yes.

4 Q. And do you recall the name of that
5 other environmental consulting firm?

6 A. It was Midwest Testing.

7 Q. And what do you recall about your
8 review of those documents?

9 A. They had done some preliminary
10 investigation through the EPA to determine
11 contamination extents and try to develop a
12 corrective action plan to remediate the site.

13 Q. And do you recall anything about the
14 budget that had been proposed or discussed by that
15 prior environmental contractor?

16 A. The statement they had made that it
17 could not be --

18 MR. SIEVERS: Objection. Hearsay.

19 Q. Was this a written statement?

20 A. It was a written report.

21 Q. And from your review of that
22 document, could you determine the estimate that they
23 had prepared with respect to this particular site?

24 A. Yes.

1 Q. And what was that estimate?

2 A. Two and a quarter million dollars.

3 Q. And was there a concern expressed in
4 those documents that this site could not be
5 remediated within the then existing cap on
6 reimbursement under the Illinois LUST fund?

7 A. I saw that in a letter that they had
8 written, yes.

9 Q. Did you have conversations with
10 Mr. Broadus regarding the site at this time?

11 A. Yes.

12 Q. And based on your review, what were
13 your next actions with respect to this particular
14 site?

15 A. We basically reviewed the files, the
16 reports that had been filed, and developed a
17 corrective action plan that we felt would address
18 the site basically to figure out if we could take
19 the site and meet the cleanup objectives or close
20 the site within the reimbursement guidelines.

21 Q. And based upon the initial -- strike
22 that.

23 What steps did you take after
24 your initial review of the documents to determine

1 **whether or not you come remediate the site within**
2 **the LUST fund cap?**

3 A. We prepared basically a plan and a
4 budget for the EPA to do a further investigation on
5 the site, to gather the information we thought we
6 required to develop a corrective action plan and a
7 budget, and submitted that to the EPA.

8 **Q. Can you then explain how this project**
9 **progressed from that point?**

10 A. We received approval for a corrective
11 action plan and a budget from the EPA to address the
12 site. Mainly the contamination on the neighboring
13 property was the concern, and I got approval for
14 that.

15 We proceeded to do the
16 remediation work on that property. Basically, the
17 people we were dealing with at the EPA were getting
18 a lot of political pressure and told us that they
19 were getting a lot of pressure to get this done, so
20 as we were going on with the remediation, as things
21 came up that we needed to address, rather than stop
22 the project, we were told don't stop the project and
23 go through the normal plan and budget amendments to
24 coordinate with them, telephone, fax, whatever, and

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1 we did that with Sam Hale and Cliff Wheeler who were
2 the project supervisors at the time to expedite the
3 process, and we did that. They assured us that, you
4 know, it would all be taken care of in the end. I
5 had no reason to doubt that.

6 So we completed the corrective
7 action, and we had to make some changes along the
8 way. There were some additions that were made along
9 the way that were taken care of and approved by the
10 project managers.

11 That action was completed. A
12 corrective action completion report was sent to the
13 EPA and approved, and then, based upon the results
14 of that and some additional work that was done, we
15 sent in a corrective action plan to basically close
16 the incident based upon the work that had been done
17 and some additional investigation that had been done
18 as part of that and received approval for that, and
19 basically, now all we are waiting for to close the
20 site is the land, the agreements from the new
21 property owners signed to come back, and then we're
22 ready to close the site.

23 **Q. Can you just provide a little bit of**
24 **insight as to exactly what remediation occurred both**

1 **onsite and offsite at this particular property?**

2 A. Onsite it was determined that there
3 was no active remediation required. The offsite
4 active remediation was required at the insistence of
5 the property owner.

6 Originally, the investigation
7 showed that the site could have TACO'd out, tiered
8 approach to cleanup objective, without an active
9 remediation, but because the property owner was
10 actively pursuing getting her site cleaned up, we
11 had to do the active remediation on their property.

12 There was an extensive
13 excavation of the neighboring property. There was
14 an existing building on the property that we
15 addressed the contamination underneath the small
16 building using an enhanced biodegradation. It's a
17 RegenOx that we inject into the ground, and the site
18 was repaved, and that was an active remediation on
19 that property.

20 The concern was that the
21 contamination from the Broadus property could still
22 migrate over and recontaminate their property so a
23 part of that plan that Sam had approved was we put a
24 recovery trench along the property border while we

1 had the excavation open in the event that down the
2 road we would have to recover anything
3 contamination-wise in the groundwater that was
4 migrating from the Broadus property over towards the
5 Stiths property, the neighboring property owner.

6 **Q. In the course of these approximately**
7 **400 sites that you've worked on, have you had other**
8 **sites where you had neighbors involved?**

9 A. Yes.

10 **Q. And where would this rank in terms of**
11 **the 400 or so that you worked on in terms of the**
12 **difficulty in dealing with the neighbor?**

13 A. It was the worst we've dealt with.

14 **Q. The out of approximately 400?**

15 A. Right.

16 **Q. And can you give some insight as to**
17 **the nature, detail the nature of the problems**
18 **encountered with the neighbor on this particular**
19 **property?**

20 A. The neighboring property owner would
21 call our office probably about every other day, if
22 not every day, pressuring us to get this done,
23 insisting on what they wanted done with the
24 property, how they wanted it taken care of, how they

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1 wanted it paved, how they wanted this done and every
2 other thing that we had phone calls from federal EPA
3 officials stating that she was calling them and
4 putting pressure on them.

5 Local politicians, the city was
6 involved in it heavily, and they owned the property
7 next door to these people, and the city did have
8 some contamination on their property but they were
9 willing to sign off on that. We did not have to
10 address the contamination on their property, but she
11 was using the city to put pressure on too in order
12 to get this resolved.

13 We would get letters from this
14 individual stating that she was taking legal action.

15 MR. SIEVERS: Objection. Hearsay.
16 It's an out-of-court statement offered for the truth
17 of the matter asserted.

18 HEARING OFFICER WEBB: "We were
19 getting letters"?

20 MR. SIEVERS: He was about to say
21 what they were saying.

22 THE WITNESS: We were getting phone
23 calls.

24 HEARING OFFICER WEBB: Oh, phone

1 calls?

2 THE WITNESS: Yes.

3 MR. RIFFLE: The fact that he
4 received them, I don't see how that's hearsay.

5 MR. SIEVERS: I don't disagree with
6 that, but he was about to testify as to what they
7 said.

8 That's not a fair statement
9 offered for the truth of the matter asserted.

10 HEARING OFFICER WEBB: Well, I'm
11 going to allow it.

12 THE WITNESS: Well, we were getting
13 written letters from the Stiths signed by the
14 Stiths' attorney. I mean, there was no name or
15 anything on there, so we had no contact as far as an
16 attorney goes. They just signed it Stiths'
17 attorney.

18 But that's what we were dealing
19 with, you know, with these individuals and the
20 pressure they were putting on, not just us but the
21 project managers at the EPA to resolve the
22 situation.

23 Q. BY MR. RIFFLE: So you were receiving
24 both letters and phone calls directly from the

1 **Stiths, is that correct?**

2 A. Yes.

3 **Q. And you were also receiving contact**
4 **from the city, is that correct?**

5 A. Yes.

6 **Q. And at least on one occasion you**
7 **received notifications from the U.S. EPA?**

8 A. Yes.

9 **Q. And what form did the contact from**
10 **the politicians occur?**

11 A. The local state representative
12 contacted us and told us that he was aware of the
13 situation.

14 MR. SIEVERS: Objection. Hearsay.

15 HEARING OFFICER WEBB: I think this
16 is just background information. I'm not sure where
17 it's going or what it's being offered to prove so
18 I'll allow it.

19 **Q. BY MR. RIFFLE: And who was the local**
20 **politician?**

21 A. Frank Mautino.

22 **Q. And what is his position?**

23 A. He's the state representative.

24 **Q. And can you approximate the timeframe**

1 **over which these various contacts occurred?**

2 A. Over the course of about four years.

3 **Q. Pretty much the whole time you were**
4 **actively working on the project?**

5 A. And afterwards, yes.

6 **Q. You had mentioned that you also**
7 **received contact from EPA, and I want to get the**
8 **names of the EPA personnel into the record and have**
9 **you identify exactly who you were talking to.**

10 **I understand you were talking to**
11 **Sam Hale, is that correct?**

12 A. Yes.

13 **Q. And what was Sam Hale's position?**

14 A. He was the project manager for the
15 EPA assigned at the site.

16 **Q. And let's talk about the contacts you**
17 **had with him regarding this project, particularly as**
18 **it related to the dealings with the neighboring**
19 **landowner.**

20 **Can you, for the record,**
21 **identify those communications?**

22 A. Sam was directly in charge of plans
23 and the budgets, everything that was sent in to the
24 EPA for approval.

1 He was our direct contact at the
2 EPA for any problems that came up, any questions.

3 I mean, he basically was the one
4 that, him and his supervisor were the ones that were
5 our contact at the EPA and gave us approval over the
6 course of the project to either proceed to change
7 plans, inform us as to, you know, where things stood
8 as far as reimbursements, the technical plans.

9 **Q. And did Mr. Hale indicate to you that**
10 **he had received pressure from the neighboring**
11 **landowners?**

12 A. He would call us when she would call
13 him and inform us that she had called him, and it
14 was basically to let us know that he did receive a
15 contact and that he just was looking for updates on
16 where things stood as to how things were moving.

17 **Q. And did he indicate to you that he**
18 **was receiving pressure from the neighboring**
19 **landowners?**

20 A. Yes.

21 **Q. And on how frequent an occasion did**
22 **that type of communication occur?**

23 A. I'm not aware of exactly how many
24 times, you know, she called him or, you know, what

1 kind of pressure he was getting directly, but he was
2 in contact with us on a fairly continual basis once
3 this project got started and made us aware of the
4 fact that it needed to be done in a timely fashion
5 because of the pressure that he was receiving.

6 **Q. And did you receive more contact from**
7 **Mr. Hale on this particular project -- strike that.**

8 **Had you previously worked with**
9 **Mr. Hale on any other projects?**

10 A. Yes.

11 **Q. And approximately how many?**

12 A. 15, 20 maybe.

13 **Q. Was there anything unusual about his**
14 **level of contact with you on this project compared**
15 **to other projects on which you had worked?**

16 A. On the other projects, Sam was fairly
17 attentive to details, and he liked to use electronic
18 communication, so he keeps in touch on all of the
19 projects, but on this one, because of the complexity
20 involved, there was a lot more contact directly with
21 Sam than there would have normally been.

22 **Q. Would these be by phone primarily?**

23 A. He would phone and faxed a lot. It
24 wasn't so much phone but he e-mailed and faxed back

1 and forth. He was one that always seemed to steer
2 towards the electronic communications.

3 **Q. You also indicated that you had**
4 **communication with Cliff Wheeler, is that correct?**

5 A. Yes.

6 **Q. And who was Cliff Wheeler?**

7 A. It was Sam Hale's supervisor.

8 **Q. And could you discuss for the record**
9 **the nature of your communications with Cliff Wheeler**
10 **related to this particular project?**

11 A. We didn't have near the contact with
12 Cliff as with Sam but Cliff kept in contact with us,
13 and if we had problems that Sam couldn't answer
14 directly, then we could talk to Cliff directly on
15 the site.

16 There's certainly things that
17 Sam said he couldn't approve or do without Cliff's
18 approval or review, so therefore, we would deal with
19 Cliff directly; not nearly on the level of what Sam
20 was but, you know, in the course of the project,
21 maybe 15, 20 times we had direct contact with Cliff.

22 **Q. And particularly with respect to the**
23 **involvement with the neighboring landowner, what do**
24 **you recall about your communications with Cliff**

1 **Wheeler?**

2 A. That he was aware of the political
3 pressure that was taking place and told us directly
4 that he wanted to expedite the project, do what
5 needed to be done to resolve the situation as
6 expeditiously as possible.

7 **Q. Do you recall approximately how many**
8 **times Mr. Wheeler made those statements to you as**
9 **far as expediting the project?**

10 A. Not exactly. Probably half a dozen
11 times.

12 **Q. Okay. And with respect to how that**
13 **impacted the paperwork and the budgeting process on**
14 **this particular project, how did Mr. Wheeler's**
15 **comments to you impact that?**

16 A. Normally if we ran into a situation
17 on a project that would require a change or
18 additional work, we would stop and submit in writing
19 a plan and a budget to make those changes and get
20 the approval before we initiated any of those
21 changes.

22 In this case, we were told to
23 inform. You know, by phone we would call Sam and
24 say this is what we've run into. This is what we

1 have. This is what we propose, and we were told we
2 did not have to stop everything. Send in a plan and
3 a budget that he could get approval from Cliff to
4 proceed if they thought it was appropriate, and that
5 it would be taken care of in the end in order to
6 expedite things and get it done, and that's what we
7 did.

8 **Q. And these are the conversations you**
9 **had with Sam Hale?**

10 A. Yes.

11 **Q. And did you also receive similar**
12 **statements directly from Cliff Wheeler to that**
13 **effect?**

14 A. Yes.

15 **Q. At some point in time, did you have**
16 **any conversations with Hernando?**

17 **First, could you identify**
18 **Hernando for the record?**

19 A. Hernando Albarracin is in charge of
20 the LUST section at the Illinois EPA.

21 MR. RIFFLE: I've got the spelling
22 here. It's A-l-b-a-r-r-a-c-i-n, and the first name
23 is H-e-r-n-a-n-d-o.

24 **Q. At some point in time, did you have**

1 **communications with Mr. Albarracin?**

2 A. Yes.

3 **Q. And what do you recall about those**
4 **conversations?**

5 A. In November of 2011, we had a meeting
6 here at the Springfield office regarding several
7 sites of which Broadus was one to try to resolve
8 some issues that we had.

9 At that time, we expected Sam
10 and/or Cliff to be at the meeting. That is when we
11 found out that they were no longer here.

12 We talked to Hernando that we
13 had sent previous of this meeting a corrective
14 action plan and budget amendment.

15 We had issues with time that was
16 not taken care of in the original plan and budget
17 over the course of the entire project.

18 Rather than trying to tie all
19 the individual pieces to all the individual plans
20 and budgets and piece it together, we were told by
21 Sam to submit a plan and budget amendment, to wrap
22 up everything that was left on the site, break it
23 down over the time periods and send it to him, and
24 he would review it, and that's how we would tie all

1 the loose ends together.

2 We submitted that about a month
3 before that meeting to the EPA, to Sam.

4 When we came to the meeting, we
5 found out that Sam wasn't here anymore, and neither
6 was Cliff, and Hernando at the meeting said, well,
7 that's not normally the way we would do it, but that
8 sounds like, you know, a decent approach. I'll have
9 somebody review it, and, you know, we'll get it
10 resolved.

11 And that's all we had as far as
12 contact with Hernando Albarracin.

13 **Q. The document you referred to, that's**
14 **the high priority corrective action budget**
15 **amendment, is that correct?**

16 A. Yes.

17 **Q. And that was submitted in November of**
18 **2011, is that correct?**

19 A. Yes.

20 **Q. And the amount that you were seeking**
21 **in that document -- I just want to refer you to a**
22 **document to make sure we're talking about the**
23 **correct amount.**

24 **Was there a total personnel**

1 **amount that you were seeking in that document?**

2 A. Yes.

3 **Q. And could you recite that for the**
4 **record?**

5 A. \$87,484.16.

6 **Q. And was there also a third-party cost**
7 **involved in that submittal?**

8 A. Yes.

9 **Q. And could you recite that for the**
10 **record?**

11 A. \$14,891.84.

12 **Q. And do you recall what that \$14,000**
13 **figure was for?**

14 A. There was a discrepancy because we
15 put the trench in along the property boundary in the
16 proposed landfill amount versus what the actual was.

17 **Q. And there is a figure mentioned in**
18 **the appeal that you're seeking or Broadus is seeking**
19 **in this particular appeal.**

20 **Can you recite that number into**
21 **the record?**

22 A. \$104,163.03.

23 **Q. And that's the sum of that \$87,000**
24 **number and the \$14,000 number?**

1 A. Yes.

2 Q. Plus some handling charges, is that
3 correct?

4 A. Yes.

5 Q. For the record, did Midwest
6 Environmental perform all the services referenced in
7 that personnel cost that is being sought here today?

8 A. Yes.

9 Q. And was the \$14,000 figure for the
10 landfill actually incurred and paid in connection
11 with this particular project?

12 A. Yes.

13 MR. RIFFLE: No further questions at
14 this time. Thank you.

15

16 CROSS-EXAMINATION

17 BY MR. SIEVERS:

18 Q. Mr. Green, I'm handing you what has
19 been previously marked by your counsel as Exhibit A.
20 I believe that's attached to the petition for review
21 and appeal.

22 Do you recognize Exhibit A?

23 A. Yes.

24 Q. And what do you recognize Exhibit A

1 **to be?**

2 A. It's a letter that was sent to Sam
3 Hale regarding the final corrective action report
4 for the Broadus project.

5 **Q. Would Exhibit A be the submittal that**
6 **is at issue today in this hearing?**

7 A. Yes.

8 **Q. I call your attention to I believe**
9 **it's page 4 of Exhibit A. It has a heading at the**
10 **top. It says, "Section 1 work completed to date."**

11 A. Yes.

12 **Q. The very last paragraph speaks of a**
13 **contamination reception trench.**

14 **Is that the trench you just**
15 **testified about?**

16 A. Yes.

17 **Q. Now, you testified here that Cliff**
18 **Wheeler and Sam Hale both expressed to you that they**
19 **were feeling political pressure, is that correct?**

20 A. Yes.

21 **Q. They both were being told they needed**
22 **to expedite this site?**

23 A. Yes, sir.

24 **Q. To go ahead. Don't stop and submit**

1 **budgets or plans. We'll take care of it in the end.**

2 A. Yes, sir.

3 **Q. Do you have any of that in writing**
4 **from Cliff Wheeler or from Sam Hale?**

5 A. Without going through the file, I'll
6 say no, not those direct statements, but there's
7 going to be e-mail or whatever communications
8 between Sam regarding the different changes and that
9 that were made as we went along.

10 **Q. But they're not in the administrative**
11 **record here, are they?**

12 A. I don't know, sir.

13 **Q. You don't have copies of them with**
14 **you here today, do you?**

15 A. No, sir.

16 **Q. And Mr. Wheeler is not able to be**
17 **here to testify to the contrary, is he?**

18 A. No, sir.

19 **Q. Nor is Mr. Hale, is he?**

20 A. No, sir.

21 **Q. So it's just your word against two**
22 **dead men's word?**

23 MR. RIFFLE: Object to the form.

24 HEARING OFFICER WEBB: Sustained.

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1 Mr. Sievers, I apologize for
2 interrupting you, but this Exhibit A, is this called
3 Exhibit A in the administrative record?

4 I have it as Exhibit A to the
5 petition for review, but there's also an Exhibit A
6 to your motion to supplement the record.

7 So I want to make sure that we
8 understand, that the Board knows which Exhibit A...

9 MR. SIEVERS: Your Honor, the Exhibit
10 A that I just handed to Mr. Green is Exhibit A to
11 petitioner's petition for review and appeal.

12 HEARING OFFICER WEBB: Okay. Thank
13 you.

14 MR. SIEVERS: And the Exhibit A for
15 the motion for leave to supplement I have numbered
16 as a different letter that I'll introduce later on
17 in the hearing.

18 HEARING OFFICER WEBB: Okay. Thank
19 you.

20 MR. SIEVERS: Sorry for the
21 confusion.

22 HEARING OFFICER WEBB: That's okay.

23 MR. SIEVERS: I have nothing further.

24 HEARING OFFICER WEBB: Anything

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1 further?

2 MR. RIFFLE: No.

3 HEARING OFFICER WEBB: Okay. Thank
4 you, Mr. Green.

5 (Witness excused.)

6 MR. SIEVERS: I renew for Exhibit A
7 to be admitted into the record as evidence.

8 MR. RIFFLE: No objection.

9 HEARING OFFICER WEBB: Exhibit A is
10 admitted. I believe it's part of the record anyway
11 but I'll admit it just to make sure.

12 (Whereupon Exhibit A was admitted
13 into evidence at this time.)

14 HEARING OFFICER WEBB: Mr. Riffle,
15 you may call your next witness.

16 MR. RIFFLE: Thank you.

17 Steve Broadus, please.

18 HEARING OFFICER WEBB: Would the
19 court reporter please swear in the witness?

20 (Whereupon the witness was sworn
21 by the reporter.)

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STEVEN BROADUS

called as a witness herein, on behalf of the
Petitioner, having been first duly sworn on his
oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. RIFFLE:

Q. Good morning, Mr. Broadus.

A. Good morning.

**Q. State your name, please, for the
record.**

A. Steven Broadus (B-r-o-a-d-u-s).

**Q. And would you briefly describe your
educational background?**

A. Attended Western Illinois University
with an emphasis in pre dental before changing to
business.

**Q. And I don't want you to go into
great, great detail but if you could just for the
record provide a little context as to your
background particularly as it relates to the
petroleum business and such.**

A. My father was involved in the service
station and oil business, so I grew up in it. It

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1 was in my family. I used to say I grew up in a gas
2 station for all intents and purposes, so I have a
3 long history of being in the oil business.

4 Came home from school and joined
5 the family business and that was in 1977, and I
6 still operate the family business too.

7 **Q. And if you could provide a little**
8 **more detail as to what that family business has**
9 **involved over the various years in fairly general**
10 **terms.**

11 A. It evolved initially with a single
12 service station that my dad operated; then a bulk
13 business that took care of agriculture in the area,
14 small trucks made deliveries to agricultural
15 accounts and commercial businesses throughout our
16 hometown, and we did that for a number of years.

17 When I came home from school, we
18 began to acquire additional locations, and at that
19 point in time, we were selling gasoline and tires,
20 and then later on into the late '70s and early '80s
21 as industry trends changed, we converted those tire
22 stores to convenience stores, and we continued to
23 operate convenience stores up until 2005.

24 We also had an extensive

1 lubricant wholesale business that covered the top
2 two-thirds of the state, and we also maintain a
3 transport fleet to haul fuel to our customers.

4 **Q. And Broadus Oil Company is the**
5 **petitioner in this particular case.**

6 **Which of those activities have**
7 **been under the Broadus Oil Company entity?**

8 A. I didn't quite follow your question.

9 **Q. I'm sorry. So Broadus Oil Company,**
10 **the entity, which of those activities you just**
11 **described were within the Broadus Oil Company**
12 **entity?**

13 A. The C stores.

14 **Q. And at the maximum, how many C stores**
15 **did Broadus Oil Company have?**

16 A. We operated five directly and
17 supplied ten others.

18 **Q. And with respect to the lubricant**
19 **business, how many customers did you have?**

20 A. Several hundred. We were about a
21 600,000 gallon a year lubricant distributor which
22 was substantial.

23 **Q. And Broadus transport, what is that**
24 **company?**

1 A. Broadus transport was formed in 2005
2 after I sold the C stores to Mac's Convenience
3 Stores, and what I basically did was take the
4 transportation division out from under the umbrella
5 Broadus Oil and created a separate entity.

6 **Q. And, sir, what is your current**
7 **occupation?**

8 A. I still am president of Broadus Oil
9 Corporation.

10 **Q. And do you have any other positions**
11 **or activities, board memberships, anything along**
12 **those lines?**

13 A. In the community, I chair the
14 hospital board, have for a number of years, been
15 involved with HSHS and the sisters here in
16 Springfield for 23 years.

17 **Q. And what is that entity exactly?**

18 A. St. Mary's Hospital.

19 **Q. St. Mary's hospital.**

20 A. Also past president of the Chamber of
21 Commerce and Industrial Development Group.

22 **Q. And what city Chamber of Commerce is**
23 **that?**

24 A. Streator.

1 Q. So essentially you've been in the
2 petroleum related businesses since approximately
3 1977 or so?

4 A. Yes.

5 Q. Do you have any significant
6 experience dealing with environmental remediation
7 projects?

8 A. I've gone through a few.

9 Q. Okay. Approximately how many sites
10 have you been involved in environmental remediation?

11 A. Four sites.

12 Q. The property we're dealing with here
13 today is 1006 West Main Street in Streator, is that
14 correct?

15 A. Yes, it is.

16 Q. I want you to, for the record,
17 explain the history of ownership of that property to
18 the best of your recollection as to how it was
19 originally acquired and your involvement with that
20 particular site.

21 MR. SIEVERS: Objection. Relevance.

22 HEARING OFFICER WEBB: I'll allow it.

23 Go ahead.

24 THE WITNESS: I believe it was

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1 originally constructed by City Service Oil Company
2 in 1949 along with the bulk storage facility and
3 bulk plant behind it.

4 It was purchased by my father I
5 believe in 1970 directly from City Service Oil
6 Company.

7 He at that point took over the
8 bulk plant and the service station that was in front
9 which is still there today.

10 **Q. BY MR. RIFFLE: And the bulk plant**
11 **would have been used to provide services to these**
12 **agricultural customers, is that correct?**

13 A. Correct.

14 **Q. And about how many agricultural**
15 **customers would Broadus Oil Company have had?**

16 A. I'm sure it was over a hundred to my
17 memory.

18 **Q. And so the bulk facility was used to**
19 **service that, and then you had the gas station**
20 **facility adjacent to it, is that correct?**

21 A. Directly in front of it, yes.

22 **Q. And that was owned by Broadus Oil**
23 **Company when you came to work for the company in**
24 **1977 or so?**

1 A. Sure.

2 **Q. And take us forward from that 1977**
3 **timeframe in terms of this particular property.**

4 A. We continued to operate it. Had a
5 restaurant in it at one time, truck repair, and as
6 time went on, we converted it over to a full-fledged
7 convenience store.

8 **Q. Do you know approximately when that**
9 **would have been?**

10 A. I'd say 1979.

11 **Q. So you would have been directly**
12 **involved in that project?**

13 A. Yes.

14 **Q. And then carry us forward to anything**
15 **else that occurred with respect to that property.**

16 A. We continued to operate it up until
17 2005 as a convenience store, and at that point, I
18 elected to sell our convenience store business to
19 Mac's Convenience Stores which is Circle K in this
20 area.

21 **Q. And what, if any, involvement did you**
22 **maintain or did Broadus Oil Company maintain after**
23 **2005 when that C store was sold with respect to this**
24 **property?**

1 A. Well, when we sold the properties,
2 there was the issue of contamination, and we knew
3 that it was offsite and we needed to address that,
4 and for a number of years, the Stiths, Mr. Stith,
5 Don Stith, the father of Bill, we had a very good
6 neighborly relationship for 30 years, and he was ill
7 and had passed the property to his child Bill as an
8 RV business.

9 We continued to try to get
10 access to the property for ten years, twelve years,
11 and were denied.

12 The reason he continually denied
13 us access to the property was because in 1989, there
14 was some instance of vapor, gasoline smell in the
15 sewer, and an investigation ensued. It was because
16 of some sewer work being done by the city.

17 We being a gas station,
18 naturally we were looking to see if there was a
19 release there.

20 At that time, Don then
21 revealed -- and this was about the time tank
22 registrations were taking place. You had to
23 register tanks. If you did not register the tank,
24 there was a fine from the State Fire Marshal's

1 Office I think it was.

2 He had a 500-gallon below ground
3 tank that he was aware was leaking that we used to
4 fill, and he used to complain to me that the kids
5 were stealing gasoline from the tank when, in fact,
6 it had been leaking.

7 So when it was determined it was
8 leaking, he pulled it. He was well aware of the
9 regs at that time. He had vapor in what was the old
10 Dog & Suds building which was on the property coming
11 through the sewer, so he was afraid of the
12 implications of the tank and leak, so he filled the
13 basement of the building full of pea gravel and
14 concreted it over in his mind to alleviate the vapor
15 problem.

16 And we identified at that time
17 several sources of where the fuel could have been
18 coming from, either him, our tank. We did find out
19 that one of our tanks did have a leak. And there
20 were other locations directly west of our location
21 that were service stations where we still found fill
22 and vent pipes in the ground, and through the
23 assistance of Kenny Jackson who was then part of the
24 city, he helped us do that.

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1 I was using Midwest Testing to
2 help us clean the site up, and they did approach me
3 saying that it was going to be a cleanup in excess
4 of \$2.2 million in the report. I was verbally told
5 that it probably could exceed \$5 million which you
6 can imagine the panic at that point in time, at
7 which I contacted my friend, Steve Meyers, an
8 attorney, plus another friend in the business, and
9 we just sat down on a Saturday morning just
10 wondering what are we going to do here and through a
11 mutual friend met you, and you referred me to Al to
12 try to see if there wasn't a way to take a look at
13 this.

14 Because at that point in time, I
15 had never heard of a cleanup to that level. I knew
16 there was a million dollar cap, and it certainly
17 would have been devastating to us financially
18 personally if it would have gone to \$5 million.

19 So I was looking for help, and
20 Bob was able to put me on to Mr. Green and his firm
21 of which we then started down the process of
22 cleaning up the property. Al was able to show me
23 that there's another way to do this.

24 There was at that time some

1 suspicion in dealing with contractors because it was
2 based on a payment, a percentage basis. Obviously,
3 the bigger the cleanup, the more they made. You
4 know, I wasn't, you know, ignorant to that fact. I
5 knew that that could have been the possibility, and
6 through Al's help and Mr. Riffle's help, we were
7 able to come to a better conclusion on cleaning this
8 property up.

9 **Q. So when you sold the property in**
10 **2005, did you retain the responsibility to remediate**
11 **the property?**

12 A. Yes, we did.

13 **Q. Okay.**

14 A. And it was a very difficult
15 negotiation because of this particular site, and the
16 Circle K management was aware of the adversity that
17 had been involved there.

18 Typically, in closing a site
19 like this, a real estate transaction, I would
20 anticipate no more than a 5 or \$10,000 escrow being
21 required for closure of the site.

22 Because of the high priorities
23 and the litigious atmosphere with our neighbors,
24 they insisted that I escrow a hundred thousand

1 dollars until the site is cleaned up, which we
2 haven't collected yet today. We're still trying to
3 get that. That's in a bank in Indianapolis. That
4 still hangs out there.

5 **Q. So you've had four experiences with**
6 **environmental remediation, is that correct?**

7 A. Yes.

8 **Q. And is this one unusual in your**
9 **experience with those four sites? Is this unusual**
10 **compared to those others?**

11 A. I haven't had nearly as many as
12 Mr. Green, but, yes, this is extremely unusual
13 because it is our nature and it's always been our
14 policy, we do the right thing for our company. We
15 were making every effort to take care of this for a
16 number of years, and because of the denial of not
17 being able to get onto the property to address this,
18 it drug on for a period of time.

19 When the property exchanged
20 hands from the father to the son, for whatever
21 reason I do not know, this disagreed for us to come
22 on site and do some further investigation.

23 We had drilled monitoring wells
24 everywhere on their site through Midwest Testing at

1 that time and realized there had to be a contaminant
2 on their property. At what level we didn't know
3 because we were unable to test. We were denied
4 access.

5 When we were finally given
6 access to the site, we found the level of
7 contamination. Al was able to formulate a
8 corrective action plan that we thought was
9 appropriate and started to move forward.

10 **Q. You heard Mr. Green's testimony**
11 **regarding his interaction with the IEPA.**

12 **Did you personally have any**
13 **interaction with the IEPA regarding any desire to**
14 **expedite the remediation of this property?**

15 A. I did. 2004 or 5, we had already
16 been in touch with Al through the normal processes
17 of review, and I think it's 120 days if I remember
18 correctly, the processes. There was a lull in
19 action, and at that time, the Stiths became very
20 adversarial wondering why we weren't doing anything
21 on this property, and we tried to explain to them
22 that it's just the process. It has to be reviewed
23 in Springfield. They had never been through it. I
24 tried to tell them, you know, it just takes time.

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1 Shortly after that, I had three
2 federal officials show up in my office from the EPA
3 flashing their badges wanting to know why I had not
4 done any cleanup at 1006 West Main when it was a
5 known LUST site.

6 Very intimidating. Never seen
7 anything quite like that before when, in fact, I'd
8 known that I had spent over ten years and tens of
9 thousands of dollars and hours to address this issue
10 that they were in my office, and I tried to explain
11 to them, yes, I do, and I have been handling this,
12 and I went to my file and I stacked documents this
13 tall (indicating) on my desk to show them all the
14 work we had done and the letters that had been
15 returned to me that Stiths refused to sign to let us
16 on the property all those years at which time he
17 said we know...

18 MR. SIEVERS: Objection. Hearsay.

19 HEARING OFFICER WEBB: Well, what was
20 your impression of the -- I'm not sure. What did
21 you do then?

22 THE WITNESS: Well, he then revealed
23 to me that we do know that you have been doing this.
24 We had concerns that somebody at the IEPA was not

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1 following through, and we're here to investigate if
2 they were, in fact, doing their work.

3 Now, I understand that the
4 Illinois EPA gets their money federally funded, and
5 it's passed down and disseminated. So he said some
6 congressman squeaked the wheel here. That's why
7 we're in your office today.

8 It became very adversarial at
9 that point.

10 **Q. Did you also have communications with**
11 **the Illinois Environmental Protection Agency**
12 **officials regarding the need to expedite remediation**
13 **at the property?**

14 A. Yes, I did. I visited with Cliff
15 Wheeler. On at least three occasions he was at my
16 office. Sam Hale was at the site on numerous
17 occasions.

18 In one instance, and again,
19 technically, I may not have this exactly right, but
20 we started this program under Title 16. As time
21 went on, the rules had changed, and we were trying
22 to close under TACO.

23 One of the things that the City
24 of Streator did not have was a groundwater exemption

1 or monitoring.

2 **Q. Groundwater use ordinance?**

3 A. Use ordinance, and the city had a
4 couple in sight that they were concerned about also.

5 So in order for us to make this
6 easy for everybody to get a site closure, we were
7 able to work with the city and came up with a
8 groundwater management ordinance to help us with the
9 groundwater issue.

10 That again created a little bit
11 of a delay.

12 Cliff and Sam were continually,
13 when they were with me also speaking to the Stiths
14 together, explaining to them the groundwater
15 situation.

16 Mrs. Stith, then understanding
17 the rules of not having a LUST site within 500-foot
18 of a potable water source I think is the number, I
19 can't remember, a thousand foot, then must have
20 scoured the neighborhood and summoned Cliff, myself
21 and her and her husband Bill to the cemetery behind
22 the property, if you look at the maps, to point out
23 a wellhead in a cemetery that she deemed to be
24 potable water when, in fact, when we took the lid

1 off, it was a wooden lid with a city water spigot
2 sticking up out of the ground. It was not potable
3 water.

4 **Q. Did you view the Stiths' efforts as**
5 **being efforts to delay the process?**

6 A. I don't know why. I think there was
7 some thought, as I think about this, they must have
8 thought there was some monetary gain to be made here
9 by doing, you know, what they were doing.

10 **Q. Indeed did they ever seek monetary**
11 **compensation from you?**

12 A. Yes, they did on two different
13 occasions. In fact, even after the cleanup was
14 completed, she came to my office and insisted that I
15 pay her \$50,000 for lost rent of the building which
16 rented for \$200 a month.

17 So I don't know how many decades
18 that is of rent but it's substantial.

19 **Q. So you viewed their motive at least**
20 **in part as potentially monetary, that they were**
21 **looking to extract compensation from you for all**
22 **these different efforts?**

23 A. Yes, I did, and Mr. Wheeler thought
24 the same.

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1 After our meeting at the well,
2 he took me up to my office, and he said, this is
3 spiraling out of control. This is going to go to
4 court. I do not want this to go to court. There's
5 no reason for this to go to court. We need to
6 cooperate. You need to cooperate, which I insisted
7 I have been cooperating. I've been trying to clean
8 this up for ten years.

9 And from that point on, it just
10 spiraled out of control with continued pressure from
11 the Stiths on some political entity.

12 **Q. You heard Mr. Green's testimony**
13 **regarding the pressure was brought to bear on him**
14 **and his company.**

15 **Do you believe that his**
16 **testimony in that regard was accurate?**

17 A. Oh, I do, and I'd also like to
18 testify to that trench.

19 I was standing there the day Sam
20 Hale approved that under the pressure of Mrs. Stith
21 because she was concerned that the remaining
22 contamination on our property was going to come
23 across. He insisted that that wasn't possible
24 because of the soils, that that wasn't going to be

1 an issue, and because of the way they had
2 remediated, she insisted that something had to be
3 done, so we put in this trench with the PVC pipe and
4 perforated PCV pipe in two extraction points.

5 To this day, I've never seen
6 water.

7 **Q. And that was something that was**
8 **expressly approved by the IEPA?**

9 A. I was standing there when Sam said
10 put it in.

11 By the way, I wasn't allowed on
12 the property. I was on my property. I had been
13 banned from there property for whatever reason.
14 That's why it was adversarial.

15 Again, I was as cooperative as
16 possible through this whole process.

17 **Q. Did you have any conversations with**
18 **any -- so you've testified to your communications**
19 **with the U.S. EPA.**

20 **Any other particular**
21 **communications with the IEPA that are important to**
22 **this process?**

23 A. No. I can't remember.

24 A lot of the conversation after

1 the site was closed and blacktopped continued on
2 between Allen, Mr. Hale and Mr. Wheeler.

3 **Q. Any other politicians that were**
4 **directly involved in this process?**

5 A. I have involved the politician here
6 lately because I feel we were wronged in not being
7 paid for this. We did exactly what we were asked to
8 do.

9 It was a very difficult
10 situation. There wasn't a day when construction
11 folks were on site that Mrs. Stith wasn't
12 videotaping construction workers on site to the
13 point where they were refusing to come to work
14 because they didn't want to be videotaped constantly
15 through the process.

16 It got pretty tough at the end
17 as time went on, and whatever has happened to cause
18 this, I can tell you that we did everything possible
19 to do this in an economic way. We tried TACO.
20 There's extreme pressure put on the various parties
21 that caused this to spiral out of control.

22 We didn't want it. We did
23 everything we could to stop it. We worked with our
24 consultant, we worked with our attorney to try to

1 bring some common sense to this, but it was a very
2 fast moving situation, and a lot of decisions were
3 being made on site, particularly that one, I
4 remember that one specifically. That was made on
5 site by Mr. Hale.

6 **Q. So as I understand it, you're out**
7 **\$104,000 on this particular project, is that**
8 **correct?**

9 A. That's correct.

10 **Q. You feel like you did everything that**
11 **you were supposed to do to make this project work**
12 **efficiently, correct?**

13 A. Beyond, beyond that, yes.

14 **Q. And do you have quite a bit of your**
15 **own time involved in this project?**

16 A. Oh, hours. I have a tremendous
17 amount of my own time involved in this, and it goes
18 on today some nine years later and a great deal of
19 legal expense during the process trying to protect
20 ourselves.

21 MR. RIFFLE: I have no further
22 questions. Thank you very much.

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CROSS-EXAMINATION

BY MR. SIEVERS:

Q. Do you know the Stiths to be employees of the Illinois Environmental Protection Agency?

A. Are they employees?

Q. I'm asking you. Do you know whether they are employees?

A. I don't know.

Q. You have no reason to believe they are employees of the Illinois Environmental Protection Agency, do you?

A. No.

Q. You have no reason to believe they're officers or agents of the Illinois Environmental Protection Agency?

A. No, I do not.

MR. SIEVERS: Nothing further.

MR. RIFFLE: Nothing further.

HEARING OFFICER WEBB: Thank you, Mr. Broadus.

(Witness excused.)

HEARING OFFICER WEBB: Are you calling any other witnesses?

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1 MR. RIFFLE: No.

2 HEARING OFFICER WEBB: Do you have
3 anything else you'd like to present in your case?

4 MR. RIFFLE: Nothing at this time.

5 HEARING OFFICER WEBB: Okay. Thank
6 you very much.

7 MR. SIEVERS: Your Honor, could we
8 have a brief recess.

9 HEARING OFFICER WEBB: Yes. Let's go
10 ahead and take five.

11 We're off the record.

12 (Recess taken.)

13 HEARING OFFICER WEBB: We'll go back
14 on the record, and we are picking up with the
15 Agency's first witness.

16 MR. SIEVERS: Your Honor, the Agency
17 calls Shirlene South.

18 HEARING OFFICER WEBB: Would the
19 court reporter please swear in the witness?

20 (Whereupon the witness was sworn
21 by the reporter.)

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SHIRLENE SOUTH

called as a witness herein, on behalf of the Respondent, having been first duly sworn on her oath, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SIEVERS:

Q. Shirlene, are you employed?

A. Yes.

Q. Where are you employed?

A. Illinois EPA.

Q. And how long have you been employed at Illinois EPA?

A. Since 1992.

Q. Have you done the same thing the entire time since 1992?

A. No. I was a chemist at the lab until 2004.

Q. And then what happened?

A. I moved over here and became an EPS III.

Q. Okay. What is an EPS III?

A. Environmental protection specialist.

Q. And what was your title before that?

1 A. Chemist.

2 Q. Okay. What's your highest level of
3 education?

4 A. Bachelor's.

5 Q. In what?

6 A. Chemistry.

7 Q. Where is that from?

8 A. SIU-E.

9 Q. Now, in your current work at Illinois
10 EPA, do you work in a particular unit?

11 A. The LUST section.

12 Q. And what does LUST stand for?

13 A. Leaking underground storage tank
14 section.

15 Q. How long have you worked in that
16 section?

17 A. Since 2004.

18 Q. Do your duties include reviewing LUST
19 budgets and plans?

20 A. Yes.

21 Q. How many budgets and/or plans do you
22 review in a typical month?

23 A. Four to five.

24 Q. How long does each one take?

1 A. Anywhere from two days to two weeks.

2 Q. So they vary widely?

3 A. Yes.

4 Q. Now, do you act on those budget plans
5 that are submitted?

6 A. Yes.

7 Q. So in what way would you act on them?

8 A. Review, decide whether the work is
9 appropriate, possibly do modifications and see that
10 the plan is appropriate, the budget is appropriate
11 to the plan.

12 Q. So are there times that you approve
13 budgets or plans?

14 A. Yes.

15 Q. Are there times you deny them?

16 A. Yes.

17 Q. Are there times where you deny them
18 only partially?

19 A. Yes.

20 Q. Would that be called a modification?

21 A. Yes.

22 Q. Now, would those be the three ways
23 that you would handle dealing with the budget
24 submittal or a plan submittal, either approving it

1 **or denying it or modifying it?**

2 A. Yes.

3 **Q. Is one of those responses easier on**
4 **you than another?**

5 A. Approvals.

6 **Q. Why is that?**

7 A. An approval is much easier.

8 **Q. And why is that?**

9 A. Because if you deny, you have to
10 state every reason of why you're denying it per the
11 regulations.

12 **Q. Okay. For your decisions to approve,**
13 **do you need your supervisor's approval?**

14 A. He has final...he signs the letter.

15 **Q. For approval?**

16 A. Yes.

17 **Q. Okay. How about for modifications**
18 **and denials?**

19 A. Those also.

20 **Q. Now, besides the supervisor, does**
21 **anybody beyond the supervisor weigh in on any of**
22 **those three decisions?**

23 A. Can you restate that?

24 **Q. Are you familiar with the term**

1 **post-ops?**

2 A. Yes.

3 **Q. What is post-ops?**

4 A. Post-ops is if there's a denial, it
5 goes through post-ops, and they can either agree or
6 modify it.

7 **Q. And for the benefit of the court**
8 **reporter, we're saying post-ops (o-p-s).**

9 **Would that be like post**
10 **operations?**

11 A. Yes.

12 **Q. Is that a meeting after the**
13 **operations meeting?**

14 A. No. It's just a meeting of the
15 supervisors normally.

16 **Q. Supervisors from what area?**

17 A. The LUST section.

18 **Q. The LUST section. Okay.**

19 **And they weigh in on denials, is**
20 **that correct?**

21 A. Correct.

22 **Q. Do they weigh in on modifications?**

23 A. Sometimes.

24 **Q. How about approvals?**

1 A. No.

2 Q. So an approval gets the least
3 scrutiny?

4 A. Correct.

5 Q. Are you familiar with the Broadus Oil
6 site in Streator, Illinois?

7 A. Yes.

8 Q. And you understand that site to be
9 the subject of this hearing today?

10 A. Yes.

11 Q. Now, who is the project manager of
12 the site?

13 A. I am.

14 Q. Have you always been?

15 A. No.

16 Q. Who was before you?

17 A. Sam Hale.

18 Q. And he passed away, is that correct?

19 A. Correct.

20 Q. I'm going to hand you what has been
21 previously marked as Exhibit B.

22 Do you recognize Exhibit B?

23 A. Yes.

24 Q. What do you recognize Exhibit B to

1 **be?**

2 A. The letter I wrote in response to the
3 corrective action plan that was sent.

4 **Q. Okay. So Exhibit B, is it correct**
5 **that this is Illinois Environmental Protection**
6 **Agency's letter denying the corrective action plan**
7 **budget that was submitted?**

8 A. Correct.

9 **Q. Now, it's signed by who?**

10 A. Harry Chappel.

11 **Q. But was this decision yours?**

12 A. Yes.

13 **Q. Now I'm handing you what has been**
14 **previously marked as Exhibit A.**

15 **Would you review that?**

16 **(Pause)**

17 **Q. Do you recognize Exhibit A?**

18 A. Yes.

19 **Q. What do you recognize Exhibit A to**
20 **be?**

21 A. To be the corrective action plan that
22 I received.

23 **Q. Is Exhibit A the plan that is the**
24 **subject of the denial in Exhibit B?**

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1 A. Yes.

2 Q. Now, in your denial letter in Exhibit
3 B which for the benefit of the board and of the
4 hearing officer was attached as Exhibit A to our
5 motion for leave to supplement the record, in that
6 decision, how many points did you base your denial
7 upon?

8 A. Basically two.

9 Q. Let's talk about the first point.
10 What did you write there?

11 A. The budget is rejected for the
12 reasons listed in Attachment A.

13 Q. And what does Attachment A say was
14 the first justification or reason?

15 A. The budget includes costs that lack
16 supporting documentation such as --

17 Q. Actually, I'm going to call your
18 attention to the bullet on that page.

19 A. Oh, the bullet. The Illinois EPA
20 requires justification for the increased hours
21 and/or underestimation of the various tasks
22 requested in this amended budget.

23 Q. So it would be accurate that your
24 denial is in part because of a lack of supporting

1 **documentation and justification?**

2 A. Correct.

3 MR. RIFFLE: Object to the form.

4 HEARING OFFICER WEBB: Pardon me?

5 MR. RIFFLE: Object to the form.

6 HEARING OFFICER WEBB: To the form?

7 MR. SIEVERS: And what about the
8 form?

9 MR. RIFFLE: Essentially, he's
10 leading the witness, testifying as to what her
11 intent is in that sentence. I think the document
12 speaks for itself.

13 HEARING OFFICER WEBB: Would you like
14 to rephrase your question?

15 MR. SIEVERS: No. I'll withdraw.

16 **Q. As to your duties, in the course of**
17 **those duties, do you have communications from**
18 **environmental consultants?**

19 A. Yes.

20 **Q. Do you receive phone calls from them?**

21 A. Yes.

22 **Q. E-mails?**

23 A. Yes.

24 **Q. Letters?**

1 A. Yes.

2 Q. Do you get communications from
3 environmental consultants regarding costs that have
4 exceeded what was anticipated?

5 A. Yes.

6 Q. Do you get calls from them or
7 communications from them where work turns out to be
8 greater than was anticipated?

9 A. Yes.

10 Q. When the work is greater than
11 anticipated or when the costs are higher than
12 expected, is there a typical response that you
13 receive from the environmental consultants
14 concerning those situations?

15 MR. RIFFLE: Objection. Lack of
16 foundation.

17 HEARING OFFICER WEBB: Overruled.

18 THE WITNESS: Normally I request that
19 they send in an amended budget for that work and
20 then approve it.

21 Q. BY MR. SIEVERS: Would that also
22 apply if the scope of the work changed would you ask
23 them to do that?

24 A. Yes, I would request that.

1 **Q. Would you ask them for a budget or**
2 **plan or both?**

3 A. If the work was much greater...if it
4 was just one or two additional wells or a soil
5 boring, I would probably just ask for an amended
6 budget.

7 If the scope of the work was to
8 be much larger than that, then I would ask for a
9 plan.

10 **Q. Now, when you get those calls about**
11 **higher costs than anticipated, what kind of dollar**
12 **figures are they typically?**

13 MR. RIFFLE: I'm going to object to
14 relevance and foundation.

15 HEARING OFFICER WEBB: Well, maybe we
16 could make it more case specific.

17 MR. SIEVERS: Your Honor, we've heard
18 the entire Broadus family history on things here. I
19 think we can actually probably get to the specific
20 issue on how things are normally processed by the
21 EPA on LUST fields.

22 HEARING OFFICER WEBB: Okay. Well, I
23 mean are you objecting to -- well, I don't know, I
24 mean, if there is an average dollar figure. I mean,

1 go ahead and give the procedure.

2 Ask the question again.

3 MR. SIEVERS: Sure.

4 Q. When you get calls about higher than
5 anticipated costs from a consultant and looking for
6 some sort of direction, what kind of dollar figures
7 are we talking about?

8 A. Usually 1- to \$2,000.

9 Q. And if it's that kind of amount, how
10 do you respond to that?

11 A. Many times I'll ask them to send in a
12 brief letter and then put it in the file.

13 Q. Would that be sufficient
14 justification in your mind to address those costs?

15 A. For that small figure, yes, I would.

16 Q. For greater figures than that, what
17 would you --

18 A. I would want a plan and a budget.

19 Q. And typically when you do get a call
20 from an environmental consultant concerning higher
21 than anticipated costs or greater than anticipated
22 scope of work, how quickly do you get that call
23 after the scope of work has been identified to be
24 greater than anticipated or the costs are higher

1 **than anticipated?**

2 MR. RIFFLE: I'm going to object on
3 relevancy. I don't know if there's even a call at
4 issue in this case. I'm not sure I understand the
5 relevance of the question.

6 HEARING OFFICER WEBB: I'll allow it.

7 THE WITNESS: If the consultant needs
8 to go out and do more work, then I usually get the
9 call fairly quickly because they're wanting to move
10 on and seek approval before going further with the
11 work so that they can get paid.

12 **Q. BY MR. SIEVERS: Is it common for you**
13 **to receive a budget amendment for costs that were**
14 **incurred as many as five years earlier?**

15 A. Not usually, no.

16 **Q. Is it common for you to receive a**
17 **budget amendment for a dollar figure in excess of a**
18 **hundred thousand dollars?**

19 A. No.

20 **Q. Looking at Exhibit A, how does that**
21 **budget amendment compare to budget amendments you**
22 **typically receive from environmental consultants?**

23 A. Very unusual.

24 **Q. And why is that?**

1 A. The large amount would state that
2 they're previously not approved.

3 **Q. Now, does that budget, Exhibit A,**
4 **indicate a timeframe for the costs?**

5 A. They stated from 2004 to 2005 I
6 believe. I may be wrong.

7 **Q. Does the --**

8 A. Dating back to 2006.

9 **Q. I'm sorry. What was that?**

10 A. It states here outstanding costs
11 dating back to 2006.

12 **Q. Now, between 2006 and 2011, to your**
13 **knowledge, did the Illinois EPA receive various**
14 **submittals on this particular site from Mr. Green?**

15 A. Not that I'm aware of.

16 **Q. Had you ever received a budget**
17 **amendment for costs dating back at least five years**
18 **or as many as five years ago?**

19 A. Not that I recall.

20 **Q. I call your attention to page 3 of**
21 **that Exhibit A.**

22 **Do you see the paragraphs**
23 **numbered 5, 6 and 7 at the top of that page?**

24 A. Yes.

1 Q. Read to yourself the paragraph below
2 that begins "in addition." Let me know when you're
3 finished.

4 (Pause)

5 A. Okay.

6 Q. Now, from this, was it your
7 understanding that the petitioner had additional
8 cost for transporting and disposing 500 tons of
9 soil?

10 A. Correct.

11 Q. Did Exhibit A, the corrective action
12 plan budget amendment, provide Illinois EPA with any
13 sample or test results showing that that 500 tons of
14 soil was contaminated?

15 A. No.

16 Q. I'd ask you to turn the page back to
17 page 2.

18 Now, concerning Section 2 titled
19 "Budget Amendment for Costs Not Previously
20 Approved," that spans two pages here.

21 Now, did this Exhibit A, the
22 corrective action plan budget amendment, include any
23 documentation of the increased costs or scope of the
24 work?

1 A. No.

2 **Q. Did it ever explain why the costs**
3 **that they received recovery for here in Exhibit A**
4 **are beyond the original budget amount?**

5 A. No.

6 **Q. Explain why they were necessary?**

7 A. No.

8 **Q. Did the Exhibit A, the corrective**
9 **action plan budget, ever explain why the original**
10 **budgeted amounts were insufficient?**

11 A. No.

12 MR. RIFFLE: Objection. Document
13 speaks for itself.

14 **Q. Did you ever receive any supplemental**
15 **information from the petitioner to explain why the**
16 **original budgeted amounts were insufficient?**

17 A. No.

18 **Q. Did you ever receive any supplemental**
19 **documentation from petitioner why the original**
20 **budgeted amounts were not sufficient or necessary?**

21 A. No.

22 **Q. Now, for transportation and disposal**
23 **costs, what sort of documents would you anticipate**
24 **receiving to support those costs?**

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1 A. The forms from the trucking company
2 showing --

3 **Q. Manifests?**

4 A. Yes, the manifests.

5 **Q. If soil is contaminated, would you**
6 **expect records documenting that?**

7 A. Yes.

8 **Q. Would that be like boring sample**
9 **records?**

10 A. Lab samples.

11 **Q. If the soil was disposed of, would**
12 **you anticipate landfill receipts?**

13 A. Yes, I would.

14 **Q. Did you receive as part of Exhibit A,**
15 **the corrective action plan budget amendment, any**
16 **manifests for truckloads, any test samples, soil**
17 **samples, or landfill receipts for the 500 tons of**
18 **soil that's mentioned on page 3 of the budget**
19 **amendment?**

20 A. No, I did not.

21 **Q. Now, I call your attention back to**
22 **Exhibit B, and back to Attachment A, the bullet item**
23 **talking about justification for the increased hours**
24 **and underestimation of the various tasks.**

1 **When you made that decision, did**
2 **you expect to subsequently receive justification for**
3 **those increased hours or underestimation of the**
4 **various tasks?**

5 A. Yes, I did.

6 **Q. Did you ever receive justification**
7 **from the petitioner?**

8 A. No.

9 **Q. Now, had you received justification**
10 **for those costs, would you have approved this CAP**
11 **budget amendment?**

12 A. After removing it and if it had been
13 possible, yes.

14 **Q. Have you ever, in the course of your**
15 **working in the LUST section, felt political pressure**
16 **in dealing with a particular site?**

17 A. Yes.

18 **Q. And what site would that be?**

19 A. One in Orion, Illinois.

20 **Q. Is that a high profile site?**

21 A. Yes.

22 **Q. What makes it high profile?**

23 A. The vapor is bothering the
24 neighborhood surrounding the site.

1 Q. Now, has that site ever sought
2 additional costs or to increase the scope of work?

3 A. Yes.

4 Q. And when the consultant in that
5 situation sought increased costs or to expand the
6 scope of work, how was that dealt with?

7 A. They called me, talked to me about
8 what they wanted to do, and I asked them to send in
9 a CAP and budget.

10 Q. Did you tell them go ahead with the
11 work, go ahead with the costs, we'll worry about it
12 later on?

13 A. No.

14 Q. Was it we'll settle up years in the
15 future?

16 A. No.

17 Q. So the idea was not to -- strike
18 that.

19 In your time in the LUST
20 section, have you ever heard any employee in the
21 Illinois Environmental Protection Agency tell
22 somebody to go ahead and incur costs, expand the
23 scope of work without first submitting a budget or a
24 plan?

1 A. No.

2 MR. RIFFLE: Objection. Hearsay and
3 foundation.

4 MR. SIEVERS: I'll rephrase.

5 HEARING OFFICER WEBB: Okay.

6 Q. BY MR. SIEVERS: In your entire time
7 in the LUST section, are you aware of the Illinois
8 EPA ever authorizing someone to go ahead and incur
9 costs or expand the scope of work without first
10 submitting a budget amendment or a change in a plan?

11 A. No, I have not.

12 Q. Now, are there times when Illinois
13 EPA will approve of a cost to be incurred or a step
14 to be taken that was not part of a budget or not
15 part of a plan and do that by telephone?

16 A. Yes.

17 Q. Now, if that's the case, how is that
18 handled? How are those increased costs or that
19 scope of work handled in the future, if in any way?

20 A. Usually they will send in a brief
21 summary of what they're going to do and what those
22 costs are going to be so they're logged in and can
23 be approved.

24 Q. Are they made part of the next

1 **submittal?**

2 A. Sometimes they do that.

3 **Q. Do you know of any situation where**
4 **there has been -- strike that.**

5 **Are you aware of any situation**
6 **dealing with a site in the LUST section in which**
7 **there has been an oral or telephone approval for a**
8 **higher cost or a change in the scope of work that is**
9 **not subsequently incorporated in a budget amendment**
10 **or an amendment to a plan for as many as five years?**

11 A. No.

12 MR. RIFFLE: Object to the form.
13 Compound.

14 HEARING OFFICER WEBB: Pardon me?

15 MR. RIFFLE: Object to the form. I'm
16 not sure I understood the question.

17 HEARING OFFICER WEBB: Do you want to
18 repeat the question?

19 MR. SIEVERS: I don't think it's
20 compound.

21 Maybe the court reporter can
22 read it back.

23 (The reporter read back the last
24 question.)

1 THE WITNESS: No.

2 MR. RIFFLE: Same objection.

3 HEARING OFFICER WEBB: Overruled.

4 MR. SIEVERS: Your Honor, I have
5 nothing further.

6 MR. RIFFLE: Good morning.

7 THE WITNESS: Good morning.

8 MR. RIFFLE: I have just a few
9 questions for you.

10

11

CROSS-EXAMINATION

12

BY MR. RIFFLE:

13

**Q. How did you first become involved in
14 this particular Broadus site?**

15

A. I was assigned Exhibit A. That was
16 my first involvement.

17

**Q. And at that time, what did you know
18 about the site?**

19

A. Nothing until I reviewed it.

20

**Q. And when you say you reviewed it,
21 just that one document?**

22

A. I went back and tried to find
23 documentation from the previous submittals.

24

Q. And how extensive was the file at

1 **that time?**

2 A. Large.

3 **Q. And can you give any quantification**
4 **as to how large it was?**

5 A. Quite large.

6 **Q. You can't give a volume of what it**
7 **was?**

8 A. No.

9 **Q. Was it in the thousands of pages?**

10 A. I really can't say.

11 **Q. What did you review at that time in**
12 **addition to Exhibit A?**

13 A. I tried looking back at all the
14 budgets and seeing if I could find where Sam had
15 approved these various budgets or various costs.

16 **Q. Did you notify Broadus that you had**
17 **become the project manager?**

18 A. I believe I called Mr. Green and told
19 him that I was denying it.

20 **Q. Do you recall that conversation**
21 **specifically?**

22 A. It's normal policy to call and give
23 another person a chance to explain or, you know,
24 leave him a message at least saying these are the

1 reasons, and hopefully they can do something to
2 justify it.

3 Q. Do you recall if you did that?

4 A. I did call.

5 Q. And do you remember if you talked to
6 Mr. Green?

7 A. No. I believe I left a message.

8 Q. And do you recall what the message
9 would have been?

10 A. I'm having to deny this. Could you
11 please send me justification for these costs.

12 Q. Do you have a specific recollection
13 that you did that?

14 A. Yes, because I was very surprised by
15 the amount.

16 Q. Have you ever been to the site?

17 A. No.

18 Q. Do you know anything about the site?

19 A. I looked at it briefly.

20 Q. Okay. And in Exhibit A on page 2 of
21 the budget amendment, the first two sentences of
22 that state, "Corrective action at this site was
23 complicated by offsite issues resulting in many
24 personnel hours spent to meet the demands of the

1 **offsite property owners. The IEPA should be well**
2 **aware of the complicated issues and the time**
3 **required both on the part of IEPA personnel and**
4 **Midwest personnel to keep the remedial activities**
5 **moving forward."**

6 **Do you see that reference there?**

7 A. Yes.

8 **Q. Did you undertake any analysis to**
9 **determine whether those two sentences are accurate?**

10 A. I reviewed the previous budgets and I
11 cannot approve costs without justification.

12 **Q. But specifically those two**
13 **sentences -- let me ask it this way.**

14 **Do you have any reason to**
15 **believe those two sentences aren't accurate?**

16 A. I don't know.

17 **Q. You sat through Mr. Green's testimony**
18 **here today, didn't you?**

19 A. Yes.

20 **Q. And you sat through Mr. Broadus's**
21 **testimony here today?**

22 A. Yes.

23 **Q. Do you have any specific evidence to**
24 **contradict any statements that either Mr. Green or**

1 **Mr. Broadus made during their testimony?**

2 A. No.

3 **Q. Do you have any reason to believe**
4 **that the costs incurred that are being sought in**
5 **this case were not actually incurred?**

6 A. I have no idea. I was never sent any
7 further submittals.

8 **Q. But you have no reason to believe**
9 **that those hours weren't spent for instance?**

10 MR. SIEVERS: Objection. Asked and
11 answered.

12 HEARING OFFICER WEBB: You can answer
13 it.

14 THE WITNESS: All I can say again is
15 I was given no further information.

16 **Q. BY MR. RIFFLE: My question is do you**
17 **have any evidence to contradict whether those hours**
18 **were actually expended?**

19 A. Once again, I have no idea.

20 **Q. I want to make sure I understand your**
21 **testimony as far as when something happens in the**
22 **field necessitating a change.**

23 **Are there circumstances where**
24 **some consultant will call you and say I need to**

1 **drill two more wells, something along those lines?**

2 A. Uh-huh.

3 **Q. And that's yes?**

4 A. Yes, I have received such phone
5 calls.

6 **Q. And have you ever approved that type
7 of a thing over the phone?**

8 A. Yes.

9 **Q. Have you ever approved other changes
10 in scope over the phone?**

11 A. I would not say much larger than
12 that.

13 **Q. What types of things have you
14 approved over the phone?**

15 A. A few additional borings, monitoring
16 wells, things along that line.

17 **Q. Now, we've heard testimony here today
18 that Mr. Hale approved the installation of, as I
19 understand it, a trench.**

20 A. I've heard that here.

21 **Q. Do you have any reason to believe
22 that that didn't occur?**

23 A. This is the first I've heard of it.

24 **Q. Do you know exactly how other project**

1 **managers deal with their particular sites?**

2 A. I would think they'd follow
3 regulations.

4 I don't really understand your
5 question.

6 **Q. Sure. That's fair.**

7 **Do you know if other project**
8 **managers for instance approve orally things such as**
9 **additional wells being installed?**

10 A. I don't know what the other project
11 managers do.

12 **Q. Have you ever talked to Mr. Broadus?**

13 A. No.

14 **Q. Have you ever talked directly to**
15 **Mr. Green?**

16 A. No.

17 **Q. With respect to this landfill**
18 **disposal quantity, are you able to go back to the**
19 **record and determine how many tons of contaminated**
20 **soil were actually transported offsite?**

21 A. No.

22 **Q. Were you able to determine that**
23 **anything was transported offsite?**

24 A. I never saw any manifests.

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1 Q. Do you know whether manifests are in
2 the record?

3 A. Offhand, no.

4 Q. As I understand it, there was a
5 discussion as to whether it was 9,000 or 9,500 tons,
6 is that correct?

7 A. I did question that in my letter.

8 Q. Are you saying you don't know as you
9 sit here today whether there were any manifests in
10 the IEPA file regarding transportation of
11 contaminated soil from this site?

12 A. I am not aware of them, no.

13 Q. Other than this one letter that you
14 drafted in your review of Exhibit A, did you do
15 anything else in connection with this particular
16 site?

17 A. I made every attempt to review the
18 previous letters.

19 Q. Okay. But from an involvement
20 standpoint, your involvement really related entirely
21 to this one denial, is that correct?

22 A. Correct, and I expected a response.

23 MR. RIFFLE: That's all the questions
24 I have. Thank you very much.

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REDIRECT EXAMINATION

BY MR. SIEVERS:

Q. Shirlene, when you received Exhibit A, the corrective action plan budget amendment, were there any trucking manifests attached to it?

A. No.

Q. Were there any manifests submitted along with it?

A. No.

Q. Now, if a manifest exists elsewhere in Illinois EPA files, you're not aware of that, is that correct?

A. No, I'm not.

Q. They could have been submitted another way?

A. Yes.

Q. But they were not in the corrective action plan budget amendment that you were asked to review and you decided on that are the subject of Exhibit B, is that correct?

A. Correct.

Q. Now, you testified in addressing Exhibit A, corrective action plan budget amendment, that you looked back at the Sam Hale file.

1 A. Correct.

2 **Q. Were you able to make a determination**
3 **whether some of the costs of the subject of Exhibit**
4 **A, the corrective action plan budget amendment, had**
5 **previously been submitted and addressed by Sam Hale?**

6 A. No.

7 **Q. And have you ever had communications**
8 **with any supervisors about a policy or practice**
9 **dealing with telephone approvals of increased costs**
10 **or increase in the scope of work?**

11 MR. RIFFLE: Objection. Hearsay.

12 MR. SIEVERS: I'm not asking the
13 content of the communication.

14 HEARING OFFICER WEBB: I'll allow it.

15 THE WITNESS: Have I ever discussed
16 it with the supervisor?

17 MR. SIEVERS: Yes.

18 THE WITNESS: Yes.

19 **Q. You have?**

20 **(Witness nodded head up and**
21 **down.)**

22 **Q. That's a yes?**

23 A. Yes.

24 **Q. What is your understanding is the**

1 **policy and practice of Illinois EPA concerning**
2 **approving telephone requests or increased costs or**
3 **increased scope of work on LUST sites?**

4 A. Not normally, but, like I said, if
5 it's just one or two, we'll go ahead, or I will, to
6 expedite things but not above that.

7 **Q. And you understand that to be a**
8 **policy or practice used in the LUST section**
9 **generally?**

10 A. I don't feel comfortable answering
11 that for someone else.

12 MR. SIEVERS: Okay. I have nothing
13 further of this witness.

14 MR. RIFFLE: Just briefly I want to
15 follow up on this.

16
17 REXCROSS-EXAMINATION

18 BY MR. RIFFLE:

19 **Q. You essentially follow, if I**
20 **understand your testimony correctly, a policy that**
21 **allows you to approve what you consider to be**
22 **relatively small things such as a couple additional**
23 **wells, correct?**

24 A. Correct.

1 **Q. And what could a couple of additional**
2 **wells cost -- a few thousand dollars?**

3 A. Probably.

4 **Q. But you're uncomfortable testifying**
5 **as to what other project managers might think is**
6 **appropriate, correct?**

7 A. I don't think I have a right to speak
8 for someone else.

9 **Q. So am I understanding correctly,**
10 **there's no hard and fast IEPA policy that prohibits**
11 **an oral approval of an additional scope of work,**
12 **correct?**

13 A. But I expect it in the next
14 submittal.

15 **Q. But you feel comfortable going a**
16 **certain limit of what you're going to approve for a**
17 **field change so to speak, correct?**

18 A. A very small field change.

19 **Q. A few thousand dollars?**

20 A. It is cheaper to have someone go out
21 and do one additional well while they're mobilized
22 than to call for an entire mobilization.

23 **Q. Okay. So there are circumstances**
24 **under which practicalities prevail, and you think**

1 **it's appropriate to allow some additional scope of**
2 **work because it's just more efficient that way?**

3 A. Very small and submitted in the next
4 submittal, yes.

5 **Q. And that really is your own personal**
6 **view on things, correct, as opposed to an official**
7 **IEPA policy?**

8 A. Correct.

9 **Q. Nobody has ever said that's something**
10 **you're authorized to do?**

11 A. Have I ever done it without approval,
12 no.

13 **Q. No. But you were asked before if**
14 **there's some policy or something formalized as to**
15 **what you can and can't do, and it sounds like there**
16 **isn't, is that correct?**

17 A. We try hard to work with a
18 consultant. That's our job, to work with a
19 consultant.

20 **Q. And your testimony is that you placed**
21 **a call to Mr. Green in that regard, is that correct?**

22 A. I informed him that it was being
23 denied and the reason why. I did not receive a
24 phone call back that I can recall, and I did not

1 receive a submittal with the justification.

2 Q. Have you worked with Mr. Green on any
3 other projects?

4 A. Not that I can recall.

5 Q. So other than that one -- you say you
6 try to work hard with consultants, but this
7 particular consultant you've really had no direct
8 involvement with at all, correct?

9 A. No.

10 MR. RIFFLE: That's all I have.

11 Thank you.

12 MR. SIEVERS: One quick follow-up.

13 HEARING OFFICER WEBB: Yes.

14

15 REDIRECT EXAMINATION

16 BY MR. SIEVERS:

17 Q. The general rule though as I
18 understand it for Illinois EPA is that if there is
19 a -- strike that.

20 Illinois EPA approves budget
21 amendments, correct?

22 A. Correct.

23 Q. If a consultant has higher than
24 anticipated costs or has a greater scope of work,

1 **how is that type of addressed?**

2 A. They send in a new CAP and budget or
3 site investigation plan.

4 **Q. So it's in writing?**

5 A. Right.

6 **Q. And it goes through the submittal
7 process?**

8 A. Correct.

9 **Q. Would then a telephone approval be
10 the exception to that rule?**

11 A. Yes.

12 **Q. Not common?**

13 A. No, it's not common.

14 MR. SIEVERS: All right. I have
15 nothing further.

16 MR. RIFFLE: I have one more.

17

18 RE CROSS-EXAMINATION

19 BY MR. RIFFLE:

20 **Q. Would you agree that this wasn't a
21 common site?**

22 A. From what I'm hearing today, it
23 sounds like it possibly was not.

24 MR. RIFFLE: Okay. No further

1 questions. Thank you.

2 MR. SIEVERS: Nothing further.

3 HEARING OFFICER WEBB: Okay. Thank
4 you, Ms. South.

5 (Witness excused.)

6 HEARING OFFICER WEBB: You may call
7 your next witness.

8 MR. SIEVERS: The respondent calls
9 Brian Bauer.

10 (Whereupon the witness was sworn
11 by the reporter.)

12

13

BRIAN BAUER

14

called as a witness herein, on behalf of the

15

Respondent, having been first duly sworn on his

16

oath, was examined and testified as follows:

17

18

DIRECT EXAMINATION

19

BY MR. SIEVERS:

20

Q. Mr. Bauer, will you state your name

21

and spell 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. I am.

1 Q. Where you employed?

2 A. Illinois EPA.

3 Q. How long have you been so employed?

4 A. Over 22 years.

5 Q. And what positions have you held?

6 A. I've been in the LUST section all 22
7 years.

8 Q. And have you had involvement --
9 strike that.

10 Are you aware of the Broadus
11 site in Streator?

12 A. I am.

13 Q. You have some familiarity with that
14 site?

15 A. I do.

16 Q. And how did you acquire that
17 familiarity?

18 A. I believe it was from a previous
19 appeal that I worked on.

20 Q. Okay. That would be Broadus 1048, do
21 you know?

22 A. If you say so on the number.

23 Q. You testified at a previous Broadus
24 hearing, correct?

1 A. That's correct.

2 Q. You heard Mr. Green's testimony, is
3 that right?

4 A. I did.

5 Q. And you heard Mr. Broadus's
6 testimony?

7 A. I did.

8 Q. Now, there was talk of a November 8,
9 2011 meeting.

10 A. Yes.

11 Q. Do you recall that?

12 A. I do recall that.

13 Q. Were you present at that meeting?

14 A. I believe so, yes.

15 Q. Okay. Where was that meeting?

16 A. Here at the Illinois EPA.

17 Q. Who was in attendance, if you recall?

18 A. Myself, Hernando, I believe it was
19 Greg Richardson, EPA legal counsel, Al, Tom
20 Hedinger, and Mr. Riffle was there too.

21 Q. Do you recall Mr. Green speaking at
22 all about costs incurred in the Broadus site?

23 A. Yes.

24 Q. And what do you recall him saying?

1 A. That he had cost overruns, and he had
2 indicated that if he had say plan A, budget A, he
3 had an overrun and then he had a budget B, that he
4 submitted those costs as part of budget B, and
5 worked his way up to the numerous things and
6 questioned about how to receive approval for those
7 costs.

8 **Q. So did Mr. Green say during that**
9 **meeting that if he had a cost overrun for one**
10 **particular aspect of the project, he would roll that**
11 **over to the next budget or plan submittal?**

12 A. I don't know if he rolled it over to
13 the plan submittal but he billed. There's two
14 separate aspects of the thing, the reimbursement
15 section and the budget submittal, and the
16 reimbursement, he indicated I thought that the
17 reimbursement was for the overruns, and he was using
18 proposed budgets for down the line.

19 **Q. So when he spoke at that meeting, did**
20 **he indicate that the various budgets that were**
21 **submitted in this case were budgets that reflected**
22 **not only work going forward but including costs from**
23 **previously incurred?**

24 A. No. I think that the new, like the

1 second budget would be new costs, but the
2 reimbursement was -- we're overlapping, and he had
3 overruns in the first budget so it overlapped a
4 couple thousand dollars into the second budget.

5 And then he just kept playing
6 that catch-up game all the way through. That's the
7 way I understood it.

8 **Q. Do you recall any discussion in that**
9 **meeting about the notion of incurring costs or**
10 **expanding the scope of work without having first**
11 **submitted a budget amendment or revised plan?**

12 A. Would you rephrase that? I'm kind of
13 confused.

14 **Q. Do you recall Mr. Green at any time**
15 **expressing an intent to seek to recover costs that**
16 **had already been incurred?**

17 A. Yes.

18 **Q. And what do you recall him saying?**

19 A. That he had overruns in the budget
20 and that he wanted to submit something to the Agency
21 to get it approved.

22 **Q. Have you seen the corrective action**
23 **plan budget amendment that is the subject of this**
24 **appeal?**

1 A. I have.

2 **Q. Is that what you understood Mr. Green**
3 **to submit to capture those overruns?**

4 A. What was submitted and what I would
5 have expected are two different things.

6 **Q. And how is that?**

7 A. That there would have been
8 justification for those costs, additional
9 justification. Justification just wasn't there.

10 **Q. What justification would you have**
11 **expected?**

12 A. If you have a corrective action plan
13 and you have additional costs, you should go back
14 and be specific as to why you're asking for it. You
15 know, what caused it, what did you do specifically
16 that was more so than the original scope of work,
17 and that wasn't there.

18 **Q. Now, didn't the budget actually say**
19 **that he had more personnel costs, he had more**
20 **equipment costs?**

21 A. Yeah, it said personnel costs were
22 over for I think seven or eight different points.

23 **Q. Is it your view that wasn't**
24 **sufficient?**

1 A. Yes.

2 MR. RIFFLE: Objection to the
3 foundation.

4 This witness hasn't been tied
5 into this project at all. All we know is he works
6 for the EPA LUST division.

7 HEARING OFFICER WEBB: That's a good
8 idea. Why don't you go ahead and further tie him
9 into this project.

10 MR. SIEVERS: Okay.

11 **Q. Mr. Bauer, have you worked with**
12 **Shirlene South in the past?**

13 A. Yes, I have.

14 **Q. Have you worked with her specifically**
15 **on the Broadus Oil site in Streator, Illinois?**

16 A. Yes, we discussed the project.

17 **Q. Did you specifically discuss this**
18 **corrective action plan budget amendment that is the**
19 **subject of this appeal?**

20 A. Yes, we did.

21 **Q. And you discussed Ms. South's**
22 **decision to deny the CAP budget amendment?**

23 A. Yes, we did.

24 MR. RIFFLE: Your Honor, may I voir

1 dire in regard to this line of questioning?

2 HEARING OFFICER WEBB: May you do
3 what?

4 MR. RIFFLE: Voir dire.

5 HEARING OFFICER WEBB: Oh, yes, yes.

6

7 VOIR DIRE EXAMINATION

8 BY MR. RIFFLE:

9 **Q. Are you directly involved in this**
10 **appeal denial in terms of having any supervisory**
11 **involvement in this?**

12 A. I am not her supervisor.

13 **Q. Did you talk to her before she denied**
14 **this particular appeal?**

15 A. Yes, I did.

16 **Q. And how did you come to be in the**
17 **loop on that?**

18 A. Because I had the, she knew I had
19 worked with the reimbursement appeal from the
20 previous thing that was going on about the same time
21 she was reviewing that letter, and I had discussions
22 with Al in the meeting back in November concerning
23 this particular site and all the other appeals that
24 were pending.

1 **Q. And who is her supervisor?**

2 A. Harry Chappel.

3 **Q. So you're not in the direct chain of**
4 **this denial, correct?**

5 MR. SIEVERS: I'm going to object.
6 He has testified that he has consulted and he
7 communicated with her about it.

8 MR. RIFFLE: That's okay. I'll
9 withdraw it.

10 MR. SIEVERS: I have nothing further
11 of this witness.

12
13 CROSS-EXAMINATION

14 BY MR. RIFFLE:

15 **Q. Have you ever reviewed the Broadus**
16 **file?**

17 A. Portions of it.

18 **Q. And for what purpose?**

19 A. For the previous appeal.

20 **Q. Are you familiar with any of the**
21 **issues related to the adjacent landowner?**

22 A. Yeah. I'm aware that they had some
23 excavations offsite, things like that.

24 **Q. And how did you become aware of that?**

1 A. By reviewing the file.

2 Q. Do you have any reason to believe
3 that the hours that are requested in Exhibit A were
4 not expended?

5 A. I do have some questions and concerns
6 as to what those hours were for.

7 Q. But how about whether they were
8 actually performed?

9 A. I don't know.

10 Q. And you obviously were not a party to
11 any conversations between Mr. Green and Mr. Hale,
12 correct?

13 A. Correct.

14 Q. And the same with respect to the
15 conversations between Mr. Green and Mr. Wheeler?

16 A. That would be correct.

17 Q. And the same clearly with respect to
18 any conversations that Mr. Broadus had with those
19 gentleman?

20 A. Correct.

21 Q. And do you have any reason to dispute
22 either the testimony of either Mr. Broadus or
23 Mr. Green as they testified here today?

24 A. No.

1 MR. RIFFLE: Okay. Very good. No
2 further questions. Thank you.

3
4 REDIRECT EXAMINATION

5 BY MR. SIEVERS:

6 Q. To follow up, you said you had some
7 questions/concerns with the corrective action plan
8 budget amendment, the costs that were set forth in
9 there.

10 A. Yes.

11 Q. What were your questions and
12 concerns?

13 A. Can I refer to the exhibit?

14 Q. I'll hand you Exhibit A.

15 A. Well, as an example, on I guess it
16 would be, I don't know what page it is but it's page
17 3 of the letter, No. 5 reads January 16, 2009 to
18 May 24, 2009, preparation of a CAP and budget dated
19 5-28-09, an additional \$16,714 in personnel time for
20 that period is requested.

21 Why would you ask for \$16,000,
22 \$16,714 in personnel time for the preparation of a
23 CAP and budget when you're submitting it right
24 before that? I don't understand that. It doesn't

1 make any sense to me.

2 And it goes on in other ones
3 like that too. If you're going to submit CAP and
4 budget, you would include all costs associated with
5 that CAP and budget at that period of time.

6 **Q. So is it your understanding then that**
7 **this -- strike that.**

8 **On item No. 5 on page 3 of**
9 **Exhibit A, is it your thought that that should have**
10 **been incorporated in a prior submittal?**

11 A. It should have been incorporated in
12 that CAP and budget dated 5-28-09.

13 **Q. And not in this submittal in 2011?**

14 A. That's correct, yes.

15 **Q. Do you have any other questions or**
16 **concerns about this submittal?**

17 A. Yeah, some of the similar issues with
18 some of the other numbered points and the soil
19 removal amount too.

20 **Q. Let me ask you this.**

21 **Some of these questions or**
22 **concerns that you had about Exhibit A, did you**
23 **express those to Shirlene South?**

24 A. Yes.

1 Q. And were some of those questions or
2 concerns based in part on the lack of justification
3 and documentation submitted with Exhibit A?

4 A. Yes, exactly.

5 Q. Do you recall in that meeting with
6 Allen Green in November 2011 any Illinois EPA
7 employee saying go right ahead and you can incur
8 higher costs. You can expand the scope of work.
9 You don't need to submit a budget amendment or a
10 change in a plan now. We'll catch it all at the
11 very end.

12 A. I do not recall that.

13 Q. Do you recall any communication of
14 the sort during the course of that meeting?

15 A. Not of that sort, no.

16 Q. Are you aware that EPA LUST project
17 managers approve higher costs sometimes by a
18 telephone call?

19 A. Yes.

20 Q. Now, you heard Ms. South testify as
21 to what her practice is concerning that.

22 Is that consistent with what
23 your understanding is of how other project managers
24 handle telephone approval of costs, higher costs or

1 **change in scope of work?**

2 A. All I can testify is as to how I
3 handled those types of issues when I was doing plans
4 and budgets.

5 **Q. And how is that?**

6 A. If someone called in and they needed
7 some additional work, we basically say, yes, you
8 know, if you think you need the work and you can
9 support it by technical documentation, go ahead and
10 do that work.

11 And then basically the next
12 submittal over you submit your amended CAP and
13 budget with your technical documentation to support
14 that.

15 MR. SIEVERS: I have nothing further.

16

17 RE-CROSS-EXAMINATION

18 BY MR. RIFFLE:

19 **Q. Sir, what's the largest oral approval**
20 **for a scope modification you've ever provided?**

21 A. I don't recall an exact figure. If I
22 had to guess, I would probably say maybe tops
23 \$8,000, something like that maybe.

24 **Q. And how many years did you do that**

1 **kind of review?**

2 A. Well, I mean, I kind of just, I've
3 been in the LUST Section 22 years as the project
4 manager, and I've been kind of being, since say like
5 2009, I've been weaned away and doing more of the
6 reimbursement aspect, managing that portion of the
7 program.

8 **Q. So this would really come up when you**
9 **were wearing the project manager hat, correct, as**
10 **opposed to the reimbursement side?**

11 A. Yeah. I work with some consultants
12 now with certain things if they have oddball
13 questions about reimbursement stuff still though too
14 to get that through, take through post-op, stuff
15 like that.

16 **Q. This \$8,000 situation, do you recall**
17 **what that was?**

18 A. It might have been, you know, a
19 couple more wells drilled and stuff like that,
20 something that they can justify this boring is
21 dirty. I need to go out. You know, pretty cut and
22 dry.

23 **Q. You can't think of any other oddball**
24 **situations where you would approve some change**

1 **because of unusual circumstances?**

2 A. Not offhand.

3 **Q. Can you rule out the possibility that**
4 **it has happened and you don't recall it?**

5 A. I cannot rule out.

6 **Q. So you saw this document, Exhibit A,**
7 **and you thought that wasn't what you'd expected, is**
8 **that correct?**

9 A. That is correct.

10 **Q. Have you worked with Mr. Green on**
11 **various projects?**

12 A. Yeah.

13 **Q. Did you give Mr. Green a call and**
14 **indicate to him that you thought that wasn't what**
15 **you expected?**

16 A. No, I did not.

17 **Q. And do you know what, if any, effort**
18 **was made to circle back with Mr. Green in regard to**
19 **Exhibit A?**

20 A. No, I don't.

21 MR. RIFFLE: Okay. No further
22 questions. Thank you.

23 MR. SIEVERS: No further questions.

24 HEARING OFFICER WEBB: Thank you,

1 Mr. Bauer.

2 (Witness excused.)

3 MR. SIEVERS: Your Honor, I just want
4 to make sure we moved Exhibit A and B into evidence.
5 I believe they're attached anyhow so it shouldn't be
6 much of an issue.

7 HEARING OFFICER WEBB: I just want to
8 clarify, for the purposes of this hearing, Exhibit A
9 refers to the petition for review, and Exhibit B
10 refers to the letter and the motion to supplement.

11 MR. SIEVERS: Actually, Exhibit A
12 refers to, today the Exhibit A refers to the
13 corrective action plan budget amendment that is
14 attached to the petitioner's petition and for review
15 and appeal as Exhibit A.

16 HEARING OFFICER WEBB: Okay.

17 MR. SIEVERS: The two exhibits,
18 Exhibits A and B are Exhibit A and B to the petition
19 for review and appeal.

20 HEARING OFFICER WEBB: Okay.
21 Counselor, would you come help me, come show me what
22 you're referring to?

23 You can go off the record for a
24 minute.

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1 (Whereupon an off-the-record
2 discussion transpired at this
3 time.)

4 HEARING OFFICER WEBB: All right.
5 We'll go back on the record.

6 Okay. So we have Exhibit A and
7 Exhibit B.

8 Exhibit A is the November 9,
9 2011 letter to Mr. Hale.

10 MR. SIEVERS: It's the corrective
11 action --

12 HEARING OFFICER WEBB: Or that's the
13 cover page.

14 MR. SIEVERS: The cover page for the
15 corrective action plan budget amendment.

16 HEARING OFFICER WEBB: And Exhibit B
17 is the March 20th letter to Broadus from the Agency?

18 MR. SIEVERS: That's correct.

19 HEARING OFFICER WEBB: Okay. Those
20 are both admitted.

21 (Whereupon Exhibit B was admitted
22 into evidence at this time;
23 Exhibit A having been previously
24 admitted.)

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1 HEARING OFFICER WEBB: And the Agency
2 has nothing further to present today?

3 MR. SIEVERS: That's correct.

4 HEARING OFFICER WEBB: Okay. The
5 transcript in this case --

6 MR. RIFFLE: I'm sorry. I did want
7 to call Mr. Green.

8 HEARING OFFICER WEBB: Oh, I'm sorry.

9 MR. RIFFLE: I apologize. I should
10 have interrupted you earlier.

11 HEARING OFFICER WEBB: No, that's
12 okay. I'm glad you spoke up.

13 MR. RIFFLE: Just very briefly I want
14 bring Mr. Green back up.

15 HEARING OFFICER WEBB: Okay.
16 Mr. Green, you're still under oath.

17

18 ALLEN GREEN
19 recalled as a witness herein, on behalf of
20 Petitioner, having been previously sworn on his
21 oath, was examined and testified as follows:

22 DIRECT EXAMINATION

23 BY MR. RIFFLE: (on rebuttal)

24 Q. Mr. Green, we heard testimony both in

1 **your original testimony and also with Mr. Bauer**
2 **about a meeting that occurred in late 2011.**

3 **Do you recall that meeting?**

4 A. Yes.

5 **Q. And who do you recall being in**
6 **attendance at that meeting?**

7 A. Brian Bauer was there. Hernando was
8 there. Tom Hedinger was there, well, another site.
9 EPA, I think it was political liaison or legal. I
10 don't recall everybody that was there, and some of
11 the project managers kind of came in and out, and
12 myself and you were there. That's all I recall at
13 this time.

14 **Q. Okay. And I have a timing issue that**
15 **I wanted to make sure was clear in the record.**

16 **Had you submitted Exhibit A**
17 **before that meeting?**

18 A. Yes.

19 **Q. Okay. So you were explaining --**
20 **well, what did you say about Exhibit A while you**
21 **were at that meeting?**

22 A. Basically, since we didn't know Sam
23 was gone until we went to that meeting, I talked to
24 Hernando and told him that we had already submitted

1 this plan amendment and budget as per Sam's request
2 and that it had already been sent out, and Hernando
3 just responded that he would have somebody look at
4 it, you know, and it would be taken care of.

5 Normally that's the way he said
6 they wouldn't do it but it sounded like it was
7 acceptable and he would have somebody look at it and
8 it would be resolved is what he said.

9 **Q. And according to Exhibit B, that**
10 **document was received by the IEPA on November 17 of**
11 **2011, correct?**

12 A. Yes.

13 **Q. And just for the record, I would note**
14 **I think that's 123 days after the...the denial**
15 **letter was 123 days after the receipt.**

16 **You're quite certain that the**
17 **meeting occurred after this November 17, 2011 date?**

18 A. Yes, it was shortly thereafter
19 because we had already sent it and said that if it
20 hasn't already been there that it would be there.
21 It was probably there. Just hadn't been sent to
22 whoever yet.

23 **Q. Between the time of the submittal and**
24 **the time of receipt of Exhibit B, the denial letter,**

1 **did you ever hear from anybody at IEPA in response**
2 **to Exhibit A?**

3 A. No.

4 **Q. Did you ever receive a voicemail**
5 **message, e-mail, anything?**

6 A. No.

7 **Q. You're quite certain of that?**

8 A. Yes.

9 **Q. What would you have done if you had**
10 **received such an inquiry?**

11 A. Contacted that person and determined
12 what needed to be done to resolve the issues that
13 were standing.

14 **Q. So you're looking for \$104,000 of**
15 **additional money, is that correct?**

16 A. Right.

17 **Q. On behalf of Mr. Broadus?**

18 A. Yes.

19 **Q. And if somebody had indicated to you**
20 **that there was some deficiency in your submittal,**
21 **what would you have done in response to that?**

22 A. Worked with the person that was in
23 charge or sent the denial letter to determine what
24 it was they were lacking and what we could do to

1 resolve the situation.

2 Q. And what was your first indication
3 that there was some problem in that regard?

4 A. The letter that we received.

5 Q. The Exhibit B letter, is that
6 correct?

7 A. Right.

8 MR. RIFFLE: No further questions.

9 Thank you.

10 MR. SIEVERS: Nothing further.

11 HEARING OFFICER WEBB: Okay. Thank
12 you, Mr. Green.

13 (Witness excused.)

14 HEARING OFFICER WEBB: Do you have
15 anything else?

16 MR. RIFFLE: We rest.

17 HEARING OFFICER WEBB: Okay.

18 Mr. Sievers, anything else for
19 the Agency?

20 MR. SIEVERS: No. We rest as well.

21 HEARING OFFICER WEBB: Okay. The
22 transcript is due by May 2nd and will be posted on
23 the Board's website.

24 The public comment deadline is

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1 May 6. Public comment must be filed in accordance
2 with Section 101.628 of the Board's procedural
3 rules.

4 Petitioner's brief is due by
5 June 2nd and respondent's brief is due by July 2nd,
6 and petitioner's reply is due by July 16th.

7 Would petitioner like to make
8 any closing argument today?

9 MR. RIFFLE: No, not at this time.

10 HEARING OFFICER WEBB: Would the
11 Agency like to make any closing argument today?

12 MR. SIEVERS: No, Your Honor.

13 HEARING OFFICER WEBB: Okay. At this
14 time I will conclude the proceedings.

15 We stand adjourned, and I thank
16 you for your participation.

17 (Which were all of the
18 proceedings held at this time.)

19
20
21
22
23
24

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1 STATE OF ILLINOIS)
) SS.
2 COUNTY OF SANGAMON)

3
4 CERTIFICATE

5 I, Laurel A. Patkes, Certified Shorthand
6 Reporter in and for said County and State, do hereby
7 certify that I reported in shorthand the foregoing
8 proceedings and that the foregoing is a true and
9 correct transcript of my shorthand notes so taken as
10 aforesaid.

11 I further certify that I am in no way
12 associated with or related to any of the parties or
13 attorneys involved herein, nor am I financially
14 interested in this action.

15 Dated April 28, 2014.

16
17
18 Certified Shorthand Reporter
19
20
21
22
23
24

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