

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF WILMETTE,)	
Petitioner,)	
)	
v.)	PCB 07-48
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
Respondent.)	
)	

NOTICE

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

Mary Beth Cyze
Village of Wilmette
1200 Wilmette Avenue
Wilmette, Illinois 60091

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control
Board
100 West Randolph Street,
Suite 11-500
Chicago, Illinois 60601-3218

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Special Assistant Attorney General

Dated: May 10, 2007
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

**THIS FILING IS SUBMITTED ON RECYCLED PAPER
BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

VILLAGE OF WILMETTE,)
Petitioner,)
)
v.) PCB 07-48
) (UST Appeal)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

**MOTION FOR LEAVE TO FILE REPLY/RESPONSE TO PETITIONER'S
RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS
MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel and Special Assistant Attorney General, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board's") procedural rules, 35 Ill. Adm. Code 101.500(e), seeks leave to file a reply to Petitioner's Response to IEPA's Motion for Summary Judgment and Cross Motion for Summary Judgment ("Response/Cross Motion"). The Illinois EPA received the Response/Cross Motion on April 30, 2007. In support of this motion, the Illinois EPA states as follows:

1. The Response/Cross Motion extensively references the Board's December 21, 2006 decisions in Broadus Oil v. IEPA, PCB 04-31, 05-43 (cons.) and FedEx Ground Package System, Inc. v. IEPA, PCB 07-12.

2. The Illinois EPA's Motion for Summary Judgment primarily focused on the question of whether payments can be authorized if they exceed approved budget amounts, not the issue of whether a budget amendment can be considered after the issuance of a No Further Remediation Letter. This latter question, directly addressed in Broadus and FedEx, is the subject of Petitioner's pending appeal in Village of Wilmette v. IEPA, PCB 07-27.

3. Allowing the Illinois EPA to file a reply in this case to provide its perspective on Broadus and FedEx will ensure that the record of the proceedings in the instant case is complete and prevent the Illinois EPA from suffering any material prejudice.

For the reasons stated herein, the Illinois EPA respectfully requests that the Board allow the Illinois EPA to file a reply to the Response/Cross Motion to prevent material prejudice.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Special Assistant Attorney General

Dated: May 10, 2007
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

VILLAGE OF WILMETTE,)
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REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel and Special Assistant Attorney General, and hereby submits to the Illinois Pollution Control Board ("Board") its Reply/Response to Petitioner's Response to IEPA's Motion for Summary Judgment and Cross Motion for Summary Judgment. The Illinois EPA received Petitioner's Response to IEPA's Motion for Summary Judgment and Cross Motion for Summary Judgment ("Response/Cross Motion") on April 30, 2007. It is the Illinois EPA's position that its November 13, 2006 decision denying payment of \$12,108.50 in personnel costs and \$2,728.31 in handling charges be affirmed and that the Village of Wilmette's ("Wilmette's") Cross Motion for Summary Judgment be denied.

I. ARGUMENT

On December 21, 2006, the Board for the first time addressed the issue of whether a budget amendment can be considered after the issuance of a No Further Remediation Letter. In Broadus Oil v. IEPA, PCB 04-31, 05-43 (cons.) and FedEx Ground Package System, Inc. v. IEPA, PCB 07-12, the Board upheld the Illinois EPA's rejection of budget amendments submitted after the issuance of No Further Remediation Letters. Most of the arguments in Wilmette's Response/Cross Motion have already been presented to the Board by the petitioners in Broadus and FedEx. The Board's

December 21, 2006 decisions outline and analyze these arguments as well as those presented by the Illinois EPA, making it unnecessary to repeat them here. Instead, the Illinois EPA requests that the Board take judicial notice of these arguments and its analyses in Broadus and FedEx and reach a conclusion consistent with these decisions in the instant case.

Wilmette's other arguments attempt to distinguish its situation from Broadus and FedEx. Wilmette places significance on the fact that the costs in its budget amendment, even though they did exceed previously approved budget amounts for their subcategories, did not exceed the previously approved total budget as a whole. However it appears that FedEx had a balance remaining in its approved total budget when its budget amendment was submitted, but this fact neither played a role in the Board's analysis in FedEx nor did it result in FedEx partially prevailing on its budget amendment. FedEx Ground Package System, Inc. v. IEPA, PCB 07-12, slip op. at 3 (December 21, 2006). Further, Wilmette's total budget surplus argument today basically repudiates its earlier actions in this matter. If it truly believed this concept, why did it bother to submit High Priority Corrective Action Plan Budget Amendment No. 3 on August 4, 2006? It could have just submitted its August 2, 2006 application for payment and suggested that the personnel costs and handling charges sought be paid from its total budget surplus. It is clear that Wilmette submitted Budget Amendment No. 3 to increase certain budget subcategories and thereby comply with the laws and regulations requiring that costs must fall within approved budget amounts before their payment can be authorized by the Illinois EPA. Unfortunately for Wilmette, it did not comply with *all* of the applicable legal requirements since it submitted Budget Amendment No. 3 after the issuance of the No Further Remediation Letter.

II. CONCLUSION

For the reasons stated herein, as well as those previously presented by the Illinois EPA, the Illinois EPA respectfully requests that the Board affirm its November 13, 2006 decision denying payment of \$12,108.50 in personnel costs and \$2,728.31 in handling charges and deny Wilmette's Cross Motion for Summary Judgment.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Special Assistant Attorney General

Dated: May 10, 2007

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 10, 2007 I served true and correct copies of a MOTION FOR LEAVE TO FILE A REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT and REPLY/RESPONSE TO PETITIONER'S RESPONSE TO IEPA'S MOTION FOR SUMMARY JUDGMENT AND CROSS MOTION FOR SUMMARY JUDGMENT upon the persons and by the methods as follows:

[Electronic Filing]

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

[1st Class U.S. Mail]

Mary Beth Cyze
Village of Wilmette
1200 Wilmette Avenue
Wilmette, Illinois 60091

Bradley P. Halloran
Hearing Officer
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson

James G. Richardson
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)