

ILLINOIS POLLUTION CONTROL BOARD
July 12, 2007

VILLAGE OF WILMETTE,)
)
 Petitioner,)
)
 v.) PCB 07-27
) (UST Appeal)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

OPINION AND ORDER OF THE BOARD (by G.T. Girard):

In this appeal, the Village of Wilmette (Wilmette) challenges a decision by the Illinois Environmental Protection Agency (Agency) rejecting a request for a budget amendment. The budget amendment concerns corrective actions at Wilmette's leaking underground storage tank site at 710 Ridge Road in Cook County. The Agency denied the request on the grounds that the previous issuance of a No Further Remediation (NFR) letter barred Agency consideration of the request.

This matter is before the Board today on the parties' cross-motions for summary judgment. This opinion first reviews the procedural history and factual background of the case. The opinion then discusses and rules on the cross-motions for summary judgment. For the reasons discussed below, the Board finds that there are no genuine issues of material fact, and that the Agency is entitled to summary judgment as a matter of law. The Board accordingly grants summary judgment to the Agency, denies summary judgment to Wilmette, and closes this docket.

PROCEDURAL BACKGROUND

On October 23, 2006, Wilmette filed with the Board a petition to review an Agency decision in which the Agency rejected a High Priority Corrective Action Plan Budget amendment. The Board accepted the petition on November 2, 2006.

On November 22, 2006, the Agency filed the administrative record (R.) along with a motion for summary judgment (Mot.). On January 18, 2007, Wilmette filed a motion to consolidate this proceeding with PCB 07-48. On March 15, 2007, the Board denied the motion to consolidate.

On April 5, 2007, Wilmette filed a response to the Agency's motion for summary judgment and a cross motion for summary judgment (Resp.). On April 23, 2007, the Agency filed a motion for leave to reply and a response to the cross motion (Reply). The Board grants the motion for leave to file a reply.

STANDARD OF REVIEW FOR MOTIONS FOR SUMMARY JUDGMENT

Summary judgment is appropriate when the pleadings, deposition, admissions on file, and affidavits disclose that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E.2d 358, 370 (1998). In ruling on a motion for summary judgment, the Board “must consider the pleadings, depositions, and affidavits strictly against the movant and in favor of the opposing party.” *Id.* Summary judgment “is a drastic means of disposing of litigation,” and therefore it should be granted only when the movant’s right to relief “is clear and free from doubt.” Dowd & Dowd, Ltd. v. Gleason, 181 Ill. 2d 460, 483, 693 N.E. 2d 358, 370 (1998), citing Purtill v. Hess, 111 Ill. 2d 299, 240, 489 N.E.2d 867, 871 (1986). However, a party opposing a motion for summary judgment may not rest on its pleadings, but must “present a factual basis which would arguably entitle [it] to judgment.” Gauthier v. Westfall, 266 Ill. App. 3d 213, 219, 639 N.E.2d 994, 999 (2nd Dist. 1994).

Both the parties agree that the facts in this proceeding are not in dispute and summary judgment is appropriate. Mot. at 2-3; Resp. at 3. The parties argue that the issues involve only questions of law, specifically the applicability and interpretation of Section 732.405(d) of the Board’s rules (35 Ill. Adm. Code 732.405(d)). The Board has reviewed the filings and agrees with the parties that there are no issues of material fact and summary judgment is appropriate.

FACTS

On October 24, 2005, the Agency issued a NFR letter to Wilmette for Incident No. 982714. R. at 27. Revised letters were issued on November 29, 2005 and June 16, 2006. R. at 47. Wilmette recorded the NFR letter on July 7, 2006. R. at 44.

On August 4, 2006, MACTEC Engineering and Consulting, Inc., on behalf of Wilmette, submitted a High Priority Corrective Action Plan Budget amendment. R. at 6. The budget amendment included an increase in personnel costs and handling charges.

On September 14, 2006, the Agency issued a determination letter rejecting the amended budget. R. at 1. The denial letter states:

The budget is rejected for the reason listed below (Section 57.7(c) of the Act and 35 Ill. Adm. Code 732.405(c) and 732.503(b)).

The budget was submitted after the issuance of a No Further Remediation Letter. Pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 732.405(d), any corrective action plan or budget must be submitted to the Illinois EPA for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of 35 Ill. Adm. Code 732 prior to the issuance of a No Further Remediation Letter. R. at 1.

STATUTORY AND REGULATORY PROVISIONS

Sections 57.7(c)(1)(B) and (c)(2)(B) of the Environmental Protection Act (Act), 415 ILCS 5/57.7 (2006), require that if “the owner or operator intends to seek payment from the fund” a budget must be submitted which includes an accounting of all cost associated with the implementation of the corrective action plan.

Section 57.7(e) of the Act, as amended by Public Acts 92-574, 92-651, and 92-735, provides:

- (1) Notwithstanding the provisions of this Section, an owner or operator may proceed to conduct physical soil classification, groundwater investigation, site classification or other corrective action prior to the submittal or approval of an otherwise required plan. If the owner or operator elects to so proceed, an applicable plan shall be filed with the Agency at any time. Such plan shall detail the steps taken to determine the type of corrective action which was necessary at the site along with the corrective action taken or to be taken, in addition to costs associated with activities to date and anticipated costs.
- (2) Upon receipt of a plan submitted after activities have commenced at a site, the Agency shall proceed to review in the same manner as required under this Title. In the event the Agency disapproves all or part of the costs, the owner or operator may appeal such decision to the Board. The owner or operator shall not be eligible to be reimbursed for such disapproved costs unless and until the Board determines that such costs were eligible for payment. 415 ILCS 5/57.7(e) (2006).

Section 57.8 of the Act in pertinent part provides:

If an owner or operator is eligible to access the Underground Storage Tank Fund pursuant to an Office of State Fire Marshal eligibility/deductible final determination letter issued in accordance with Section 57.9, the owner or operator may submit a complete application for final or partial payment to the Agency for activities taken in response to a confirmed release. An owner or operator may submit a request for partial or final payment regarding a site no more frequently than once every 90 days.

- (a) Payment after completion of corrective action measures. The owner or operator may submit an application for payment for activities performed at a site after completion of the requirements of Sections 57.6 and 57.7 or after completion of any other required activities at the underground storage tank site.

* * *

- (5) In the event that costs are or will be incurred in addition to those approved by the Agency, or after payment, the owner or operator may submit successive plans containing amended budgets. The requirements of Section 57.7 shall apply to any amended plans. 415 ILCS 5/57.8 (2006)

Section 57.10(c)(1) of the Act provides:

- (c) The Agency's issuance of a no further remediation letter shall signify, based on the certification of the Licensed Professional Engineer, that:
- (1) all statutory and regulatory corrective action requirements applicable to the occurrence have been complied with. 415 ILCS 57.10(c)(1) (2006).

Section 732.405(d) of the Board's underground storage tank regulations, addressing releases reported between September 23, 1994 and June 23, 2002, provides:

- d) Notwithstanding subsections (a), (b), (e), and (f) of this Section and except as provided at Section 732.407 of this Part, an owner or operator may proceed to conduct Low Priority groundwater monitoring or High Priority corrective action activities in accordance with this Subpart D prior to the submittal or approval of an otherwise required groundwater monitoring plan or budget plan or corrective action plan or budget plan. However, any such plan and budget plan shall be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part. 35 Ill. Adm. Code 732.405(d).

Section 732.405(e) provides:

- e) If, following approval of any groundwater monitoring plan, corrective action plan or associated budget plan, an owner or operator determines that revised procedures or cost estimates are necessary in order to comply with the minimum required activities for the site, the owner or operator shall submit, as applicable, an amended groundwater monitoring plan, corrective action plan or associated budget plan for review by the Agency. The Agency shall review and approve, reject, or require modifications of the amended plan or budget plan in accordance with the procedures contained in Subpart E of this Part. 35 Ill. Adm. Code 732.405(e).

Section 732.702 sets forth the requirements for a No Further Remediation Letter and provides:

A No Further Remediation Letter issued pursuant to this Part shall include all of the following:

- a) An acknowledgment that the requirements of the applicable report were satisfied;
- b) A description of the location of the affected property by adequate legal description or by reference to a plat showing its boundaries, or, for purposes of Section 732.703(d) of this Part, other means sufficient to identify site location with particularity;
- c) A statement that the remediation objectives were determined in accordance with 35 Ill. Adm. Code 742, and the identification of any land use limitation, as applicable, required by 35 Ill. Adm. Code 742 as a condition of the remediation objectives;
- d) A statement that the Agency's issuance of the No Further Remediation Letter signifies that:
 - 1) *All corrective action requirements under Title XVI of the Act and this Part applicable to the occurrence have been complied with;*
 - 2) *All corrective action concerning the remediation of the occurrence has been completed; and*
 - 3) *No further corrective action concerning the occurrence is necessary for the protection of human health, safety and the environment [415 ILCS 5/57.10(c)(1)-(3)], or, if the No Further Remediation Letter is issued pursuant to Section 732.411(e) of this Part, that the owner or operator has demonstrated to the Agency's satisfaction an inability to obtain access to an off-site property despite best efforts and therefore is not required to perform corrective action on the off-site property in order to satisfy the corrective action requirements of this Part, but is not relieved of responsibility to clean up portions of the release that have migrated off-site;*
- e) The prohibition under Section 732.703(e) of this Part against the use of any site in a manner inconsistent with any applicable land

use limitation, without additional appropriate remedial activities;

- f) A description of any approved preventive, engineering, and institutional controls identified in the plan or report and notification that failure to manage the controls in full compliance with the terms of the plan or report may result in avoidance of the No Further Remediation Letter;
- g) The recording obligations pursuant to Section 732.703 of this Part;
- h) The opportunity to request a change in the recorded land use pursuant to Section 732.703(e) of this Part;
- i) Notification that further information regarding the site can be obtained from the Agency through a request under the Freedom of Information Act [5 ILCS 140]; and
- j) Any other provisions agreed to by the Agency and the owner or operator. 35 Ill. Adm. Code 732.702.

Section 734.335(d) of the Board's underground storage tank regulations, addressing releases reported on or after June 24, 2002, provides:

- d) Notwithstanding any requirement under this Part for the submission of a corrective action plan or corrective action budget, except as provided at Section 734.340 of this Part, an owner or operator may proceed to conduct corrective action activities in accordance with this Subpart C prior to the submittal or approval of an otherwise required corrective action plan or budget. However, any such plan and budget must be submitted to the Agency for review and approval, rejection, or modification in accordance with the procedures contained in Subpart E of this Part prior to payment for any related costs or the issuance of a No Further Remediation Letter.

BOARD NOTE: Owners or operators proceeding under subsection (d) of this Section are advised that they may not be entitled to full payment from the Fund. Furthermore, applications for payment must be submitted no later than one year after the date the Agency issues a No Further Remediation Letter. See Subpart F of this Part. 35 Ill. Adm. Code 734.335(d).

AGENCY'S MOTION FOR SUMMARY JUDGMENT

The Agency asserts that the question in this case is not one of fact but rather of law. Mot. at 6. The Agency claims that the question is whether the Agency can consider a High Priority Corrective Action Plan Budget amendment after the issuance of a NFR Letter. *Id.* The Agency emphasizes that Section 732.405(d) of the Board's regulations, 35 Ill. Adm. Code 732.405(d), clearly states that any such plan and budget plan shall be submitted to the Agency for review and

approval, rejection, or modification prior to the issuance of a NFR Letter. *Id.* The Agency issued Wilmette a NFR letter on October 24, 2005, and revised letters on November 29, 2005 and June 16, 2006. *Id.* Wilmette recorded the NFR letter on July 7, 2006. *Id.* The High Priority Corrective Action Plan Budget amendment was submitted on August 4, 2006. *Id.* The Agency asserts that the amendment was submitted after the issuance of a NFR letter. Therefore, the Agency maintains that the Agency is prohibited from reviewing the High Priority Corrective Action Plan Budget amendment pursuant to Section 732.405(d) of the Board's regulations. *Id.*

**VILLAGE'S RESPONSE TO AGENCY'S MOTION FOR SUMMARY JUDGMENT
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

The Village of Wilmette agrees that summary judgment is appropriate as there are no issues of fact in this proceeding. Resp. at 3. Wilmette emphasizes that certain facts are missing from the Agency's brief which demonstrate that the legal basis provided by the Agency does not support the denial of the budget amendment. *Id.* Wilmette asserts that this particular case differs from the previous cases of FedEx Ground Package System, Inc. v. IEPA, PCB 07-12 (Dec. 21, 2006), and Broadus Oil v. IEPA, PCB 04-31, 05-43 (consol.) (Dec. 21 2006), in that here Wilmette's final reimbursement request was less than the previously approved total budget. Resp. at 3, citing R. at 6-8. Wilmette states the budget amendment was filed because the amounts within the subcategories varied from the original budget amount. Resp. at 3. Wilmette asserts that the budget amendment at issue in this case only sought to reallocate costs among categories. Resp. at 4. Wilmette also states that it is undisputed that the budget amount was the proper accounting of the previously approved total budget amount. Resp. at 3.

Wilmette claims that the Agency's denial of the budget amendment and final request for reimbursement is not supported by the language of 35 Ill. Adm. Code 732.405(d) or the Board's interpretation thereof. Resp. at 5. Wilmette states that, in the recently decided Broadus Oil and FedEx cases, the Board ruled that subsection (d) "applies not only to those who proceed with no approved plan or budget, but also to those who go beyond an approved plan or budget." Resp. at 5, citing Slip. Op. at 10, Dec. 21, 2006. Wilmette asserts that it did not incur costs beyond the approved budget, and that the Agency does not dispute this fact. Resp. at 5. Wilmette maintains that the Board's decisions in Broadus Oil and FedEx held that subsection (d) applies to those who go beyond an approved budget and does not apply to reallocations within subcategories of an approved budget. Resp. at 5-6. Wilmette states that the budget amendment is simply Wilmette properly accounting for the corrective action costs, and that it is within the Board's purview to find that a final budget request approximately \$48,000 less than the previously approved budget is reasonable as a matter of law. Resp. at 6.

Wilmette states that Section 732.405(d) is not a sufficient basis for the Agency's denial because, as a matter of law, it does not apply to the Village in this case. Resp. at 6. Wilmette asserts that Section 732.405(d) applies "only to the right of owners/operators to proceed with remediation prior to submittal or approval of a corrective action plan or budget." *Id.* Wilmette claims that the Agency's interpretation of Section 732.405(d) does not comport with the regulatory and statutory scheme that this Board is bound to consider. Resp. at 7.

Wilmette claims that the Agency's interpretation of the second sentence of subsection (d) ignores the immediately preceding sentence of that subsection, ignores the entire section immediately following subsection 734.335(e), and ignores certain provisions of Section 57.8 of the Act. Resp. at 7. Wilmette states that, when interpreting a single sentence in a regulation, that sentence must be read as part of the whole regulation and in light of its overall purpose. Resp. at 8, citing County of Dupage v. E & F Hauling, AC 88-76, 88-77 (consol.) (Feb. 8, 1990). Wilmette argues that a reading of Section 734.335 shows that most subsections address situations where the owner submits a Corrective Action Plan (CAP) and Budget to the Agency for approval before conducting the corrective action. Resp. at 8. Wilmette asserts that subsection 734.335(d) is the only subsection that applies where an owner has elected to proceed with corrective action before submitting a CAP or budget, and that the subsection does not apply where an owner submits its plan and budget for approval before doing the work. *Id.* Wilmette states that amended budgets are addressed in subsection 734.335(e) and that there is no reference to amended budgets in the language of 734.335(d) at all. *Id.*¹

Wilmette states that the Board should interpret Section 732.405(d) within the entirety of that section, entitled "Plan Submittal and Review." Wilmette notes that subsection (a) concerns the requirement that remediation plans be submitted for Agency review prior to conducting any remediation activities. Wilmette also notes that subsection (b) provides that if an owner/operator intends to seek reimbursement for remediation, a budget plan shall also be submitted for the remediation proposed. Wilmette states that subsection (c) confirms the Agency's authority to review, approve, reject or require modification of any plans submitted to it. Wilmette further states that subsection (e) allows for submission of amended plans and budgets where an owner/operator realizes that modifications of an approved plan or budget are necessary to comply with the Act or this Board's regulations. Finally, Wilmette states that subsection (f) addresses the Agency's authority to require revised corrective action plans in the event an approved plan is not working as anticipated. Resp. at 8-9.

Wilmette argues that subsection (d) "concerns those instances where an owner/operator submits no remediation plan or budget for approval prior to conducting remedial activities, and the regulation allows the owner/operator to nevertheless proceed with that remediation." Resp. at 9. Wilmette believes the work can be completed without a remediation plan, but the plan must be submitted "before reimbursement can be obtained for that work, and/or before a NFR letter is issued as a result of that work." *Id.*

Wilmette asserts that nothing in the language of subsection (d) prohibits the Agency from considering Wilmette's budget amendment proposal. Wilmette states that nothing in subsections (b) or (e) require that such amendments be requested prior to issuance of a NFR letter, and that only subsection (d) has such a restriction. Resp. at 9. Wilmette believes that, where a site has already received Agency review and scrutiny including both for corrective action and for budget,

¹ Wilmette refers at times to Section 734.335 (35 Ill. Adm. Code 734.335), which is analogous to Section 732.405 (35 Ill. Adm. Code 732.405). These references appear to be inadvertent error. Part 734 addresses releases reported on or after June 24, 2002. Part 732 addresses releases reported on or after September 23, 1994, but prior to June 24, 2002. It is apparent from the record, including the Agency determination under appeal, that Section 732.405 is at issue here.

where the corrective action for which reimbursement is sought has been determined to have been effective, no reason exists limiting budgetary amendments only to those requested prior to issuance of the NFR letter. Resp. at 10.

Wilmette feels that the Agency lacks any statutory basis for its position. Resp. at 10. Wilmette argues that subsection (e) allows an owner/operator to elect to proceed with any corrective action prior to the submittal or approval of an otherwise required plan. Wilmette states that if an owner/operator chooses to proceed, an applicable plan shall be filed with the Agency at any time. *Id.* Wilmette further argues that neither Section 57.8 of the Act (415 ILCS 5/57.8 (2006)), dealing with the Underground Storage Tank Fund, nor Section 57.9 of the Act (415 ILCS 5/57.9 (2006)), dealing with eligibility for reimbursement from that fund, addresses ineligibility based upon an amended budget being submitted to approve payment for admittedly required corrective action subsequent to the issuance of the NFR letter. Resp. at 10-11.

Finally, Wilmette argues that the facts are undisputed and the Agency concedes that the work for which the amended budget and reimbursement are sought were corrective action activities eligible for reimbursement from the fund. Resp. at 11. Accordingly, Wilmette believes summary judgment should be entered in its favor and that it is entitled to this Board's judgment as a matter of law. *Id.*

AGENCY'S REPLY TO VILLAGE'S RESPONSE

The Agency reiterates that Section 732.405(d) prohibits it from reviewing a High Priority Corrective Action Plan Budget amendment submitted after the issuance of a NFR letter. The Agency states that the Board addressed this same issue on December 21, 2006, in the cases of Broadus Oil and FedEx. The Agency contends that many of Wilmette's arguments have already been presented to the Board in these previous cases and that the Board's decisions in those cases outline and analyze the arguments, as well as the Agency's arguments. The Agency therefore asks that the Board take judicial notice of these arguments and its analyses in Broadus Oil and FedEx and reach a similar conclusion in favor of the Agency in this case. Reply at 2.

The Agency claims Wilmette's other argument (that even though the costs in the budget amendment exceeded previously approved budget amounts in their subcategories, the budget amendment did not exceed the previously approved total budget as a whole) is not persuasive. Reply at 2. The Agency states that FedEx had a balance remaining in its approved total budget when its budget amendment was submitted, but that this fact did not play a part in the Board's analysis in FedEx nor did it result in FedEx partially prevailing on its budget amendment. *Id.* The Agency also states Wilmette's claim that the Agency does not dispute that the costs in question were related to corrective action, properly accounted for, and reasonable is mere conjecture since the Agency never completed a full review of the budget amendment. *Id.* The Agency argues that Wilmette's total budget surplus argument disregards the importance of budget subcategories, which the Agency states are critical for reviewing budgets and making reasonableness determinations. *Id.*

The Agency asks that the Board affirm its September 14, 2006 decision rejecting Wilmette's High Priority Corrective Action Plan Budget amendment and that Wilmette's cross motion for summary judgment be denied. Reply at 3.

DISCUSSION

The Board finds the parties have shown that there are no genuine issues of material fact and that summary judgment is appropriate. Wilmette maintains that, as a matter of law, Section 732.405(d) "applies only to the right of owners/operators to proceed with remediation prior to submittal or approval of a corrective action plan or budget." Resp. at 6. Wilmette therefore claims that Section 732.405(d) does not apply where an owner or operator submits a plan and budget for approval before doing the work. After careful consideration of subsection (d) within the full context of the UST rules, the Board disagrees.

The Board stated in Broadus Oil, "subsection (d) is not limited to sites where corrective action is performed before any corrective action plan or budget is submitted or approved." Broadus Oil, PCB 04-31, 05-43 (consol.), slip. op. at 10. Rather, subsection (d) applies "where any corrective action activities are performed or costs incurred for which there is no Agency pre-approval." *Id.* Section 732.405(d) applies:

to the extent that an owner or operator performs corrective action activities or incurs corrective action costs for which there is no Agency pre-approval. That is, subsection (d) applies to the extent that activities go beyond the scope of the approved corrective action plan or that costs go beyond the approved corrective action budget. FedEx, PCB 07-12, slip. op. at 18 (interpreting 35 Ill. Adm. Code 734.335(d), which is analogous to Section 732.405(d) but addresses releases reported on or after June 24, 2002).

Wilmette's argument that subsection (d) applies only where there was no approved plan or budget is rejected. Such an argument ignores that subsection (d) begins with "[n]otwithstanding subsection[] ... (e)." Broadus Oil, PCB 04-31, 05-43 (consol.), slip. op. at 10. Subsection (e) requires amendments to plans or budgets. Subsection (d) contemplates the already-existing and approved plan or budget. In this case, Wilmette proceeded under subsection (d) by incurring costs beyond the approved plan or budget without first getting the amended budget approved by the Agency. For the budget amendment to be reviewed by the Agency, such amendment must be submitted prior to the issuance of a NFR letter. The Board also stated in Broadus Oil that the Board note under subsection (d), which provides that owners or operators proceeding under subsection (d) may not be entitled to full payment from the Underground Storage Tank Fund, applies "not only to those who proceed with no approved plan or budget, but also to those who go beyond an approved plan or budget." *Id.*

The Board stated in Broadus Oil:

In relation to the UST rules, subsection (d) is an exception to the general rule that plans and budgets must be submitted to the Agency prior to performing the work. Subsection (e) clearly requires amendments to remediation plans or budgets. That

is why it is necessary for subsection (d) to specify that any such ‘after-the-fact’ plan or budget or amended plan or budget, must be submitted before the NFR letter issues. Broadus Oil, PCB 04-31, 05-43 (consol.), slip. op. at 10.

In addition, the second sentence of subsection (d) is not a “stand-alone” ban on all post-NFR plan or budget submittals. Broadus Oil, PCB 04-31, 05-43 (consol.), slip. op. at 10. There is no need for such a broad ban because normally remediation plans and budgets are submitted before corrective action commences. *Id.*

Wilmette also argues that the language in FedEx and Broadus Oil held that subsection (d) applies to those who go beyond an approved budget, and does not apply to reallocations within subcategories of an approved budget. Resp. at 5-6. After careful consideration of subsection (d) and the previous cases, the Board disagrees. The Board stated in Broadus Oil that subsection (d) applies “to the extent any corrective action activities are performed or costs are incurred for which there is no Agency pre-approval, *i.e.* to the extent the activities or costs go beyond the approved corrective action plan or budget.” Broadus Oil, PCB 04-31, 05-43 (consol.), slip. op. at 10. The changes within the budget amendment subcategories go beyond the previously approved budget amounts within those subcategories and are therefore costs incurred without Agency pre-approval. Accordingly, the Board finds Wilmette’s argument unpersuasive.

The Board finds that the Agency properly rejected Wilmette’s request for a budget amendment concerning corrective action at Wilmette’s site because the budget amendment was received after a NFR letter was issued for the site. The Board grants the Agency’s motion for summary judgment.

CONCLUSION

The Board finds that summary judgment is appropriate in this case as there are no issues of material fact and the Agency is entitled to judgment as a matter of law. The Board grants the Agency’s motion for summary judgment and rejects Wilmette’s cross-motion for summary judgment. The Board finds that the Agency properly rejected the amended budget pursuant to Section 732.405(d) of the Board’s regulations.

This opinion constitutes the Board’s findings of fact and conclusions of law.

ORDER

The Board grants the Agency’s motion for summary judgment and denies Wilmette’s motion for summary judgment. This docket is closed.

IT IS SO ORDERED.

Section 41(a) of the Environmental Protection Act provides that final Board orders may be appealed directly to the Illinois Appellate Court within 35 days after the Board serves the order. 415 ILCS 5/41(a) (2006); *see also* 35 Ill. Adm. Code 101.300(d)(2), 101.906, 102.706. Illinois Supreme Court Rule 335 establishes filing requirements that apply when the Illinois

Appellate Court, by statute, directly reviews administrative orders. 172 Ill. 2d R. 335. The Board's procedural rules provide that motions for the Board to reconsider or modify its final orders may be filed with the Board within 35 days after the order is received. 35 Ill. Adm. Code 101.520; *see also* 35 Ill. Adm. Code 101.902, 102.700, 102.702.

I, John T. Therriault, Assistant Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on July 12, 2007, by a vote of 3-1.

A handwritten signature in black ink, reading "John T. Therriault". The signature is written in a cursive style with a long horizontal stroke at the end.

John T. Therriault, Assistant Clerk
Illinois Pollution Control Board