

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

BEVERLY POWERS, f/d/b/a	)	
DICK'S SUPER SERVICE,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	PCB No. 11-63
ILLINOIS ENVIRONMENTAL	)	(UST Appeal)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**REPLY TO RESPONDENT'S POST-HEARING BRIEF**

NOW COME Beverly Powers, f/d/b/a Dick's Super Service, and her Environmental Consultant, Midwest Environmental Consulting & Remediation Services, Inc. ("Midwest"), by their attorneys, Elias, Meginnis, Riffle & Seghetti, P.C., and as and for their Reply to Post-Hearing Brief of Respondent, states as follows:

The IEPA has acknowledged that all work for which reimbursement was requested was performed, that the expenses were all reasonably and necessarily incurred, and that Petitioner owes the funds in question to Midwest Environmental.

Moreover, it would be arbitrary and capricious to deny reimbursement and payment just because Midwest, and not Beverly Powers, signed the documents in question. The evidence in the record regarding how the decision was made to deny reimbursement on this ground is very telling. First, it appears that there was no established procedure in place which would support such a denial. (Tr. 45). Second, it appears that nobody called Al Green and told him of the decision to not allow Midwest to submit the documentation. (Tr. 45-46) Given the interaction between IEPA and Midwest on this Project, it would have been expected that such information would have been communicated to Midwest. Midwest performed the work, paid the subcontractors, and is entitled to be paid.

Moreover, Beverly Powers has now signed a Certification Form in question, a true and correct copy of which is attached hereto. It would be unreasonable, and a waste of resources, (of the Petitioner, its consultant, the IEPA, the Hearing Officer and the Pollution Control Board) to require a new budget to be processed, so that the entire process can begin again. Again, as testified to by the IEPA's representatives:

Q. Do you have any doubt that they've actually done the work that they claimed to have done in these submittals?

A. No. That's never been in question.

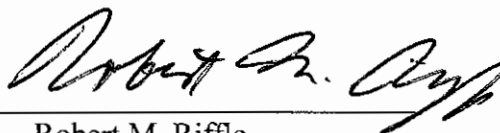
CONCLUSION

For the foregoing reasons, it is respectfully submitted that Petitioner and its consultant, Midwest, should be paid \$26,771.55, representing the amount of work actually performed for which approval has been arbitrarily withheld.

Respectfully submitted,

Beverly Powers f/d/b/a Dick's Super Service,  
Petitioner

By: \_\_\_\_\_



Robert M. Riffle  
Its Attorney

ROBERT M. RIFFLE  
Elias, Meginnes, Riffle & Seghetti, P.C.  
416 Main Street, Suite 1400  
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(309) 637-6000  
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CERTIFICATE OF SERVICE

The undersigned certifies that on May 21, 2013, a copy of the foregoing document was filed electronically with the Illinois Pollution Control Board and served upon each party to this case by

X Electronic mail with a copy via United States Mail at 5:00 p.m. on said date.

Carol Webb  
Hearing Officer  
Illinois Pollution Control Board  
1021 North Grand Ave. East  
Post Office Box 19274  
Springfield, IL 62794-9274

Scott B. Sievers  
Illinois Environmental Protection Agency  
Division of Legal Counsel  
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\_\_\_\_\_

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Illinois Environmental Protection Agency

Owner/Operator and Professional Engineer Budget Certification Form for Leaking Underground Storage Tanks Sites

In accordance with 415 ILCS 5/57, if an owner or operator intends to seek payment from the UST Fund, an owner or operator must submit to the Agency, for the Agency's approval or modification, a budget which includes an accounting of all costs associated with the implementation of the investigative, monitoring and/or corrective action plans.

I hereby certify that I intend to seek payment from the UST Fund for performing High Priority Corrective Action activities at Powers, Dick - Dick's Super Service

LUST site. I further certify that the costs set forth in this budget are necessary activities and are reasonable and accurate to the best of my knowledge and belief. I also certify that the costs included in this budget are not for corrective action in excess of the minimum requirements of 415 ILCS 5/57 and no costs are included in this budget which are not described in the corrective action plan. I further certify that costs ineligible for payment from the Fund pursuant to 35 Illinois Administrative Code Section 732.606 are not included in the budget proposal or amendment. Such ineligible costs include but are not limited to:

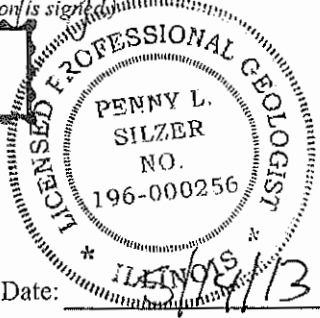
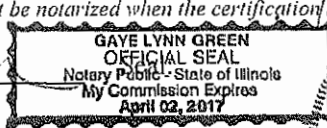
- Costs associated with ineligible tanks.
Costs associated with site restoration (e.g., pump islands, canopies).
Costs associated with utility replacement (e.g., sewers, electrical, telephone, etc.).
Costs incurred prior to IEMA notification.
Costs associated with planned tank pulls.
Legal defense costs.
Costs incurred prior to July 28, 1989.
Costs associated with installation of new USTs or the repair of existing USTs.

Owner/Operator: Beverly (Powers) Derry Title: Owner, Executor

Signature: Beverly (Powers) Derry Date: 5-15-13

Subscribed and sworn to before me the 15th day of May, 2013.

(Budget Proposals and Budget Amendments must be notarized when the certification is signed.)
Gaye Lynn Green (Notary Public)



P.E./P.G.: Penny Silzer Seal:

P.E./P.G. Signature: Penny Silzer Date: 5/15/13

Subscribed and sworn to before me the 14th day of May, 2013.

(Budget Proposals and Budget Amendments must be notarized when the certification is signed.)
Gaye Lynn Green (Notary Public)



The Agency is authorized to require this information under 415 ILCS 5/1. Disclosure of this information is required. Failure to do so may result in the delay or denial of any budget or payment requested hereunder. This form has been approved by the Forms Management Center.

