ILLINOIS POLLUTION CONTROL BOARD
August 8, 2013

BEVERLY POWERS, f/d/b/a DICK'S SUPER SERVICE,	)	
Petitioner,	)	
v.	)	PCB 11-63
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
Respondent.	)	

ROBERT M. RIFFLE, ELIAS, MEGINNES, RIFFLE & SEGHETTI, P.C., APPEARED ON BEHALF OF THE PETITIONER; and

SCOTT B. SIEVERS, SPECIAL ASSISTANT ATTORNEY GENERAL, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY, APPEARED ON BEHALF OF THE RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.D. O'Leary):

Beverly Powers, f/d/b/a Dick's Super Service (DSS) has appealed a February 17, 2011 determination of the Illinois Environmental Protection Agency (Agency). In the determination, the Agency denied the fourth Corrective Action Plan (CAP) budget amendment submitted by Ms. Powers' consultant, Midwest Environmental Consulting & Remediation Services, Inc. (Midwest), for the leaking underground storage tank (UST) site located at 500 South Locust Street, Delavan, Tazewell County (site).

The Agency denied the budget on three grounds: the application was not signed by Ms. Powers as site owner, certain specified costs were unreasonable, and such costs lacked supporting documentation. For the reasons below, the Board affirms the Agency's determination in all respects.

In this opinion, the Board first provides the procedural history of the case and then sets out the facts. Following a summary of the parties' arguments concerning the merits of the Agency's denial of the budget amendment, the Board renders its legal conclusions.

PROCEDURAL HISTORY

On March 28, 2011, then-petitioner DSS filed the petition for review (Pet.). By order of April 7, 2011, the Board accepted the petition for hearing. On April 11, 2011, the Agency filed the administrative record of its decision. The administrative record consists of 34 documents.

Ms. Powers filed, on June 13, 2011, a motion to be substituted as sole petitioner in DSS's place. The motion explained that she, and her deceased husband Richard Powers, had operated as joint tenants the service station doing business as DSS. The motion stated that, as surviving joint tenant, Ms. Powers should be personally named. By order of July 7, 2011, the Board granted the motion to substitute.

A hearing was held on February 26, 2013 in Springfield before Board Hearing Officer Carol Webb. The Board received the transcript on March 8, 2013 (Tr.). Mr. Allan Green of Midwest testified on behalf of Ms. Powers, and Mr. Michael Heaton testified on behalf of the Agency. The Agency offered six exhibits, all of which were admitted; Ms. Powers offered one exhibit, which was admitted.

As permitted by hearing officer order, Ms. Powers filed a post-hearing brief (Br.) on April 8, 2013, and the Agency filed a response brief (Resp. Br.) on May 8, 2013. On May 21, 2013, Ms. Powers filed a reply brief (Reply Br.).

Agency Motion to Strike Reply Brief and Exclude Newly-Submitted Document

On May 29, 2013, the Agency filed a motion to strike Ms. Powers' reply brief (Mot.). According to the Agency, the reply brief does not reply to anything in the Agency's response brief, but instead improperly "raises a new argument and submits a new document." Mot. at 1. The Agency explains that Exhibit A to the reply, a copy of an "Owner/Operator certification form" signed by Ms. Powers on May 15, 2013, was not before the Agency when it made the determination at issue on appeal; the Agency determination was based in part on the lack of the owner's, *i.e.*, Ms. Powers', signature on that form. Thus, according to the Agency, the form and reply brief arguments based on it should not be considered by the Board. *Id*. at 1-2, citing Freedom Oil Co. v. IEPA, PCB 10-46, slip op. at 13-14 (Nov. 1, 2012). Beyond that, the Agency argues that the reply brief improperly "replies to nothing" in the Agency's response brief and "instead only reargues [Ms. Powers'] case," and should be struck for that reason as well.

Ms. Powers did not file a response to the motion to strike, and thus has waived any objection to the granting of the motion. *See* 35 Ill. Adm. Code 101.500(d). But waiver does not bind the Board in ruling upon the motion to strike. As explained below, the Board grants the motion in part and denies the motion in part.

The Board finds that the new owner/operator certification form signed by "Beverly (Powers) Derry" on May 15, 2013, and the reply brief arguments based on it, are not properly before the Board. This version of the form was not before the Agency when it denied the budget amendment that precipitated this appeal. Reply Br. at 2 ("Beverly Powers has *now* signed a Certification Form in question") (emphasis added). The reply brief does not explain why this version of the form did not accompany the October 2010 budget amendment that the Agency rejected. Consequently, Ms. Powers is not entitled to rely on a document that was not before the Agency when it made its final decision. *See* Freedom Oil, PCB 10-46, slip op. at 14 ("[t]he Board will not consider new information that was not before the Agency prior to its final determination regarding the issues on appeal").

Accordingly, the Board strikes the form attached to Ms. Power's reply brief, as well as the arguments in the reply brief based on the form. The Board gives them no consideration or weight in resolving the merits of this appeal.

However, the remainder of the reply brief does not violate any of the Board's procedural rules. It is true that the balance of the reply brief merely re-argues points made in Ms. Powers' opening brief. While a reply brief that responded to arguments in the response brief might have been more helpful to resolution of the issues on appeal, there is nothing improper in the reply brief's reiterating arguments from the opening brief. The motion to strike is, therefore, denied to the extent it concerns portions of the reply brief other than those addressing the new form attached to the motion.

LEGAL BACKGROUND

Section 57.7(c)(4) of the Act, which concerns site investigation and corrective action plans and reports, allows an owner or operator to appeal Agency determinations pursuant to Section 40 of the Act. 415 ILCS 5/40, 57.8(i) (2010). The standard of review under Section 40 of the Act (415 ILCS 5/40 (2010)) is whether the submittal to the Agency demonstrated compliance with the Act and the Board's regulations. *See, e.g.*, Illinois Ayers Oil Co. v. IEPA, PCB 03-214, slip op. at 8 (Apr. 1, 2004); Kathe's Auto Service Center v. IEPA, PCB 95-43, slip op. at 13 (May 18, 1995). "The Board does not review the Agency's decision using a deferential manifest-weight of the evidence standard," but "[r]ather the Board reviews the entirety of the record to determine that the [submittal] as presented to the Agency demonstrates compliance with the Act." Illinois Ayers, PCB 03-214, slip op. at 15.

The Board's review is generally limited to the record before the Agency at the time of its determination. Freedom Oil, PCB 10-46, slip op. at 14. The Board will not consider new information that was not before the Agency prior to its final determination regarding the issues on appeal. Kathe's Auto, PCB 95-43, slip op. at 14. The Agency's denial letter frames the issues on appeal. Pulitzer Community Newspapers, Inc. v. IEPA, PCB 90-142 (Dec. 20, 1990).

The Board's procedural rules provide that, in appeals of final Agency determinations, "[t]he burden of proof shall be on the petitioner. . . ." 35 Ill. Adm. Code 105.112(a), citing 415 ILCS 5/40(a)(1), 40(b), 40(e)(3), 40.2(a). The standard of proof in UST appeals is the "preponderance of the evidence" standard. Freedom Oil Co. v. IEPA, PCB 03-54 (consolidated), slip op. at 59 (Feb. 2, 2006); *see also* McHenry County Landfill, Inc. v. County Bd. of McHenry County, PCB 85-56, 85-61, 85-62, 85-63, 85-64, 85-65, 85-66 (consolidated), slip op. at 3 (Sept. 20, 1985) ("A proposition is proved by a preponderance of the evidence when it is more probably true than not.").

THE DENIAL LETTER AT ISSUE HERE

On February 17, 2011, the Agency rejected the budget amendment. R. at 833. The Agency cited the following grounds for denial:

1. All budgets must be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.135(c).

   The budget was signed by the consultant and did not provide the owner's or operator's full name, address, and telephone number.

2. The budget includes site investigation or corrective action costs for Consulting Fees that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

   Costs associated with the CACR [Corrective Action Completion Report] preparation and TACO [Tiered Approach to Corrective Objectives] analysis were approved in a budget on July 8, 2004. There has been no justification as to why more hours were needed when an adequate amount was requested and approved previously.

3. The budget includes costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the [Agency] cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of [the Act] . . . .

   It is understood that invoices are present in the subject submittal, but what was not provided was justification with regard to the number of hours per task. Costs associated with the CACR preparation and TACO analysis were approved in a budget on July 8, 2004. There has been no justification as to why more hours were needed when an adequate amount was requested and approved previously. R. at 835.

FACTS

While the Board typically synopsizes hearing testimony in a separate section, the Board does not do so here as each party presented only a single witness. The facts as presented below are those as presented in the Agency record, the hearing, and exhibits. The history of past UST interactions between the Agency and petitioner is more extensively described than in most cases, as it more than usually informs the issues presented in the denial letter that is the subject of this appeal.

The Site and USTs

The site is located at 500 South Locust Street in Delavan, Tazewell County, at the southeast corner of the intersection of Locust and Fifth Streets. R. at 2; R. at 345; R. at 22, Fig. 1. The site is rectangular in shape. The northern boundary of the site faces Fifth Street; the western boundary faces Locust Street. R. at 22, Fig. 1. The site was formerly occupied by a

gasoline service station and automobile repair facility known as Dick's Super Service, owned by Richard Powers. R. at 2; R. 131; R. 345; Tr. at 31.

The site had three USTs, all formerly containing gasoline. R. at 28; R. at 131. The USTs had capacities of 5,000, 6,000, and 8,000 gallons. R. at 131.[1] The tanks were registered with the Office of the State Fire Marshal (OSFM), and were removed pursuant to an OSFM removal permit on December 15, 1998. R. at 71; R. at 88; R. at 94-97 (removal permit).

1998-99

Release Reporting and 20-Day Certification

On July 17, 1998, a petroleum release from the site's 8,000-gallon UST was reported to the Illinois Emergency Management Agency (IEMA). R. at 2; R. at 17. IEMA assigned Incident No. 981750 to the reported release. R. at 2; R. at 17. The release was reported by Mr. Green, president of Midwest, which DSS had retained to oversee the investigation and corrective action necessary to close the incident. R. at 2, 4; R. 71; Tr. at 7. Midwest agreed to await payment for its services from DSS until DSS, as UST owner, received reimbursement from the UST Fund. Tr. at 12.

On July 20, 1998, Midwest submitted a 20-day certification to the Agency on DSS' behalf. R. at 3-4. The certification was signed by Mr. Powers as "Owner," and by Mr. Green as "Consultant." R. at 4. No "Operator" was identified.

OSFM Eligibility/Deductibility Determination

On September 21, 1998, the OSFM issued a letter determining that DSS was eligible for UST Fund reimbursement of costs over $10,000 incurred "in response to the occurrence referenced above [No. 981750] and associated with" the three USTs. R. at 157.

45-Day Reporting

On September 1, 1998, Midwest submitted a 45-day report to the Agency. R. at 5. The cover letter noted that, "[d]ue to the backlog at the OSFM," a permit to remove the tanks had not yet been obtained and the tanks had not been removed. R. at 6. The letter requested an extension of the early action deadline, and stated that once the OSFM permit had been obtained, an amended 45-day report would be submitted. R. at 6. The 45-day report stated that a copy of the removal permit would be submitted with the "early action/amended" 45-day report. R. at 20. Mr. Powers signed the 45-day report as "Owner." R. at 14.

On September 15, 1998, the Agency issued a determination in response to a request to extend the period for early action and the deadline for filing the 45-day report. R. at 50-51. In

[1] The gallon capacity of the first two listed tanks varied to some extent between record documents; the above capacities reflect the environmental consultant's information in the final submittal that led to the Agency determination on appeal. *See* R. 813.

the determination, the Agency extended to November 30, 1998, the initial 45-day period for which early action costs "shall be considered reimbursable," but stated it could not extend the 45-day-report deadline. R. at 50. On December 22, 1998, the Agency granted a second request for an extension until January 15, 1999 of the period for early action activities. R. at 55. The Agency assigned the site number LPC #1790155008. R. 48.

On January 25, 1999, Midwest submitted a 45-day report addendum to the Agency. R. at 59. According to the addendum, the USTs were removed on December 15, 1998, under OSFM supervision. R. at 60. The addendum was signed by Mr. Powers as "Owner" and by Mr. Green as "Consultant." R. at 64, 68. The 45-day report addendum stated that the 5,000- and 6,000-gallon USTs were in "fair condition and had no apparent leaks," but that the 8,000-gallon UST had a "dime sized hole" in one end as well as "piping leaks and spills/overfills." R. at 71. The defects in the latter tank were believed to be the source of "[c]ontamination in the UST pit." R. at 71.

The 45-day report addendum added that the "city was notified in advance" that the tanks would be removed and asked to shut off the municipal water line near the UST excavation area. R. 71. Nevertheless, according to the addendum, the water line was "struck by the excavating equipment" during removal; although the city was notified immediately, there was no response "for some time," and a "significant amount of water entered the excavation from the north extent." R. at 71-72. In addition, "backfill along the gasoline product lines was grossly contaminated," discoloring the soil and producing a "strong odor." R. at 75. The 45-day report addendum concluded that samples taken from beneath the product line "show[ ] that contamination above the IEPA Generic Cleanup Standards remains on site," but that this contamination "does not appear to pose an imminent threat to human health or safety." R. at 72.

Site Classification

On March 18, 1999, Midwest submitted a site classification work plan and budget, signed by Mr. Powers as "Owner," to the Agency. R. at 105, 110, 115; R. 175 (Owner/Operator Certification Form). By letter of April 12, 1999, the Agency notified Mr. Powers that the plan had "not been selected for a full review," and was therefore "considered approved without review." R. at 177.

2000-02

First Budget Amendment

On October 5, 2000, Midwest submitted a site classification budget amendment to include costs of the disposal of 2,364 gallons of "UST wastes and petroleum contaminated water." R. at 181 (cover letter). Midwest explained that disposal of such material did not occur until after the early action extension had expired; cold weather had caused the contaminated liquid, held in "poly-tank" and two drums pending disposal, to freeze. R. at 181, 193. The budget amendment, which sought to increase the budget by $5,550.52, identified Mr. Powers as "Owner," but was signed by Beverly Powers. R. at 184, 186; R. at 194 (owner/operator and

budget certification form). On January 29, 2001, the Agency approved the proposed budget amendment. R. at 199.

By letter of February 20, 2001, Midwest informed the Agency that "[d]ue to the recent death of Mr. Richard Powers, the owner of the [UST] site, Beverly Powers, his widow, will be signing all relevant future correspondence." R. at 204.

Site Classification Completion

On March 26, 2001, Midwest submitted to the Agency a site classification completion report, stating that "[b]ased on site conditions, including contamination above IEPA Tier A cleanup objectives found at the property boundary, and the impact to groundwater, the site warrants classification as 'High Priority.'" R. at 206. Midwest and others advanced five borings and installed four groundwater monitoring wells to sample for benzene, toluene, ethylbenzene, and xylenes (BTEX). R. at 221-22. Concentrations of benzene above "IEPA cleanup objectives" were found in soil samples from borings at the property boundary, and also in groundwater samples from one of the monitoring wells. The report added that "[s]hallow groundwater has been impacted." R. at 229. The site classification completion report was signed by Ms. Powers, as "Owner" of "Former Dick's Super Service." R. at 218. On May 30, 2001, the Agency approved the "High Priority" classification with certain modifications. R. at 329.

First Corrective Action Plan and Budget

On October 10, 2001, Midwest submitted a corrective action plan (CAP) and budget to the Agency. Midwest proposed further investigation to "complete the vertical and horizontal definition of the soil and groundwater contamination," to be followed by submission of an amended CAP and budget. R. at 334. Midwest recommended advancing additional borings and installing additional wells to delineate the "offsite contaminant plume to the west" of the site. R. 347. Midwest anticipated conducting a TACO study of the site to "facilitate closure of the subject incident." R. at 334.[2] The proposed corrective action budget sought approval of $17,160 in personnel costs. R. at 411, 416. The submittal was signed by Ms. Powers as "Owner." R. at 339.

On February 8, 2002, the Agency modified the first CAP and budget. R. at 431-33. The Agency directed Ms. Powers to advance two borings in addition to the three Midwest had proposed, and to submit soil samples from the borings for BTEX analysis. R. at 431. The Agency also modified the budget, reducing personnel costs, among other costs, by $5,015 pursuant to Section 57.7(c)(4) of the Act (415 ILCS 5/57.7(c)(4) (2010)) and Section 732.606(hh) of the Board's UST regulations (35 Ill. Adm. Code 732.606(hh)); $12,145 in personnel costs was approved. R. at 432, 435-36. The letter stated that the Agency "believe[d] that the number of work hours proposed in the budget are [sic] excessive for the amount of work to be performed," adding that "additional information and/or supporting documentation may be provided to demonstrate the costs as submitted are reasonable." R. at 435. The letter listed, line-

[2] 35 Ill. Adm. Code 742.

by-line, the Agency's reductions to various personnel costs. R. at 435. The letter noted that the owner or operator could petition for a hearing before the Board to contest "this final decision." R. at 433.

First Amended Corrective Action Plan and Budget

On March 12, 2002, Midwest submitted an amended CAP and budget. Regarding personnel costs, Midwest stated that,

> Personnel time proposed in the budget was severely modified. [Midwest] has extensive experience performing the high priority site investigations. The personnel time that was proposed in the budget is necessary to complete the required and approved work that was originally outlined in the initial CAP and the additional work that is required by the agency. The original amounts have been added back into the budget addendum (attached). Additional time has also been added to the personnel section for the preparation of this CAP Amendment and budget addendum. R. at 443.

The amended budget sought approval of an additional $5,799 in personnel costs. R. at 453, 458. The amended CAP was signed by Ms. Powers as "Owner," as was the owner/operator budget certification form. R. at 445, 465.

The Agency modified the amended budget pursuant to Section 57.7(c)(4) of the Act (415 ILCS 57.7(c)(4) (2010)) and Section 732.606(hh) of the UST regulations (35 Ill. Adm. Code 732.606(hh)), approving an additional $559 in personnel costs. R. at 473-74. All proposed personnel costs were rejected other than those associated with preparation of the amended CAP and budget. R. at 474. The "remaining hours were determined to be unreasonable in the February 8, 2002 submittal and remain unreasonable," according to the Agency. R. at 474. The Agency explained that "additional information and/or supporting documentation" could be provided to "demonstrate the costs submitted are reasonable" (R. at 474), and that the owner or operator could appeal this "final decision" to the Board (R. at 471).

2004

Second Corrective Action Plan and Budget Amendment

On March 30, 2004, Midwest submitted a site investigation corrective action report and amended budget to the Agency, stating that

> Midwest . . . has completed the High Priority investigation approved by the IEPA. [Midwest] recommends that the second phase of corrective action consist of a Tier 2 TACO analysis and groundwater modeling to determine site specific cleanup objectives. It is anticipated that the Tier 2 calculations and modeling will assist in bringing this incident to closure. R. at 478.

The plan stated that final cleanup objectives would be based on a TACO evaluation of the site, and would "most likely make use of institutional controls (ELUCs & Highway Authority Agreement) and possibly engineered barriers (if necessary)." R. at 492. According to the plan, a report detailing the findings of the investigation and TACO modeling, along with further recommendations, would be submitted upon completion of these tasks. R. at 492. In addition, the Tier 2 TACO evaluation and modeling would be performed upon the Agency's approval of the associated budget. R. at 494. The amended budget consisted entirely of $9,223 in personnel costs, comprised of the following:

Title	**Budget Proposal**		**Tasks Performed**
	Hours	**$ Total**	
Sr. Project Manager	16	1, 568	CAP & budget amendment preparation
Env. Hydrogeologist	24	2, 352	Corrective action report preparation; budget
Sr. Env. Hydrogelogist/Sr. PM	6	588	Boring logs; CAD; soil & groundwater data
Sr. Env. Hydrogeologist	32	3, 136	Preliminary TACO calculations; groundwater modeling
Sr. Environmental Manager	6	660	Preliminary TACO calculations
Admin/Clerical	7	294	Report preparation (copies, binding); CAP, reimbursement, CAP amendment
Professional Engineer (P.E.)	5	625	Report review, CAP, reimbursement, CAP amendment

R. at 581. The report and budget amendment were signed by Ms. Powers as "Owner." R. at 486, 588. The Agency approved the plan and amended budget on July 8, 2004. R. at 597-98.

2008

Third Corrective Action Plan and Budget Amendment

On August 15, 2008, Midwest submitted a third CAP and amended budget to the Agency, stating it had completed "preliminary TACO modeling and calculations approved by the IEPA." R. at 602. The calculations indicated that "site closure may be warranted using a Tier 2 TACO model with the appropriate institutional controls." R. at 602. The TACO evaluation, according to Midwest, showed that "contamination is not present offsite above the calculated Tier 2 Objectives." R. at 622. The proposed budget amendment would cover the costs of the "Tier 2 analysis with groundwater modeling," as well as report-preparation costs. R. at 602. The amended budget sought approval of $22,101.80 in personnel costs. R. at 727. Ms. Powers signed the CAP and budget amendment as "Owner." R. at 610, 734.

On December 16, 2008, the Agency approved the plan but modified the amended budget, approving personnel costs of $4,383.74 out of the $22,101.80 requested. R. at 739. The specific reductions were as follows:

Title	Budget Proposal		IEPA Reductions		Tasks Performed
	Hours	$ Total	Hours	$ Total	
Sr. Project Manager	24	2,617.20	0	0	CAP and budget amendment preparation
Geologist III	48	4,606.08	48	4,606.08	CAP preparation; budget; slug test calculations
Geologist III	48	4,606.08	48	4,606.08	Detailed TACO calculations; groundwater modeling, exposure route elimination
Sr. Project Manager	24	2,617.20	24	2,617.20	Detailed TACO calculations; offsite; Billings
Engineer III	6	654.30	6	654.30	TACO calculations review; CAP and budget review and modifications
Sr. Administrative Assistant	10	490.70	0	0	Report prep (copies, binding); CAP, reimbursement, CAP amendment, CACR
Sr. Professional Engineer	5	708.80	0	0	Report review, CAP, reimbursement, CAP amendment
Sr. Project Manager	48	5,234.40	48	5,234.40	Obtain Highway Authority Agreements; CACR
Sr. Technician	8	567.04	0	0	Monitoring well abandonment

R. at 728; 742. Regarding the rejected personnel costs ($17,718.06), the Agency stated that these were for activities that exceeded the "minimum requirements necessary to comply with the Act" and they were, therefore, not "reasonable as submitted." R. at 742. The Agency added:

> costs associated with the TACO calculations, groundwater modeling, and corrective action completion report preparation were present in the budget approved on July 8, 2004. Personnel Costs may be submitted for review and approval with the work associated with TACO calculations, groundwater modeling, and corrective action completion report removed.

R. at 742. According to the Agency, "[i]n addition, the number of hours spent per task appear [sic] excessive." *Id*. The Agency's letter recited that the owner or operator could appeal "this final decision" to the Board. R. at 743. However, Ms. Powers did not do so. Tr. at 24.

2010-11

Fourth Corrective Action Budget Amendment

On October 18, 2010, Midwest submitted a fourth corrective action budget amendment to the Agency consisting entirely of $26,771.55 in personnel costs. R. at 747. The purpose of the submittal was to obtain reimbursement for personnel costs the Agency rejected but that Midwest

claimed were actually incurred on the site. Tr. at 15. Thus, the amended budget included personnel costs the Agency had previously denied, as well as projected costs for previously-approved work. Tr. at 24. Midwest asserted that:

> The personnel budget for this incident has been cut deeply by the IEPA. The personnel budget allotted by the IEPA is too restrictive and unreasonable. The following is a breakdown of the budgets proposed, the budgets approved and the actual personnel time accrued. We request approval of the personnel budget so that the Corrective Action Completion Report can be submitted. R. at 747.

Midwest recounted the history of CAPs and budgets for the site from 2001-08, identifying the tasks performed under each plan, the personnel costs proposed for inclusion in the budget and the amounts approved by the Agency, and the actual "personnel time" required for approved tasks. R. at 747-49. In support of the amended budget, Midwest provided invoices showing the "personnel time" required to perform the work approved by the Agency. R. at 747-48; R. at 751-810 (invoices). The proposed budget identified costs according to when they were incurred, as follows:

Time Period	Total Personnel Costs	Amount Approved by IEPA	Amount Sought in Budget Amendment
Apr. 2001-Apr. 2004	$21,879.52	$12,704.00	$9,175.52
Apr. 2001-Aug. 2004	$21,574.27	$9,223.00	$12,351.27
Feb. 2009-Sept. 2010	$9,628.50	$4,383.74	$5,244.76

R. at 815-17. The owner/operator and professional engineer budget certification form accompanying the amended budget identified Ms. Powers as "Owner," but was signed by Mr. Green, as "consultant." R. at 818; Tr. at 17-18. Neither Midwest nor Mr. Green is an owner or operator of the site. Tr. at 22.

Midwest concluded that, since it had obtained a highway authority agreement (HAA) and completed groundwater modeling, the site "meets the criteria for closure." R. 749. Midwest stated that the corrective action completion report had been prepared and would "be submitted to the IEPA upon resolution of the subject personnel budget issues." R. at 749.

Mr. Green testified that he submitted to the Agency documentation of Ms. Powers' authorization for him to sign UST submissions to the Agency for Ms. Powers. Tr. at 19-20. Mr. Heaton, the Agency's project manager for the site, testified that he never received anything in writing showing that Mr. Green was authorized to sign documents on Ms. Powers' behalf. Tr. at 39. The Agency would not have rejected the budget amendment based on the lack of Ms. Powers' signature if Midwest had submitted a document showing Mr. Green was authorized to sign submittals to the Agency on Ms. Powers' behalf. Tr. at 52-53.

The Denial Letter

As previously stated, on February 17, 2011, the Agency rejected the budget amendment. R. at 833. The Agency cited the following grounds for denial:

1. All budgets must be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number pursuant to Section 57.6(a) of the Act and 35 Ill. Adm. Code 734.135(c).

   The budget was signed by the consultant and did not provide the owner's or operator's full name, address, and telephone number.

2. The budget includes site investigation or corrective action costs for Consulting Fees that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd).

   Costs associated with the CACR preparation and TACO analysis were approved in a budget on July 8, 2004. There has been no justification as to why more hours were needed when an adequate amount was requested and approved previously.

3. The budget includes costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the [Agency] cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of [the Act] . . . .

   It is understood that invoices are present in the subject submittal, but what was not provided was justification with regard to the number of hours per task. Costs associated with the CACR preparation and TACO analysis were approved in a budget on July 8, 2004. There has been no justification as to why more hours were needed when an adequate amount was requested and approved previously. R. at 835.

The Agency's "technical review notes" noted that "[t]here have been six budget[s] approved or approved with modifications." R. at 822. The notes further stated that "[a] sufficient amount of personnel time was allotted for the tasks to be completed and note that the previous budgets were never appealed," and concluded that the "proposed charges" should be denied. R. at 822.

THE PARTIES' ARGUMENTS

Ms. Powers' Brief

According to Ms. Powers, the Agency would "reap a windfall, and avoid payment for remediation work that was actually performed" if the Board were to uphold the Agency's refusal to "honor the requests at issue in this case."[3] Br. at 4. Ms. Powers further argues that the

[3]Ms. Powers' briefs are purportedly submitted on her behalf as well as Midwest's. Br. at 1; Reply Br. at 1. However, Midwest is not a party to this proceeding. Accordingly, the Board refers to the petitioner's arguments solely as Ms. Powers' rather than "hers" and/or "Midwest's."

Agency, through Mr. Heaton's testimony, has admitted that all of the work "depicted in the budget amendment" and for which reimbursement from the UST Fund is sought, "has actually been performed." *Id.*, citing Tr. at 47. According to Ms. Powers, that "stark admission should end the inquiry on that issue." *Id.* Moreover, Ms. Powers adds, Mr. Green testified that all the work was necessary, and no contrary evidence was adduced. *Id.* at 5. Because the work was actually performed and was necessary, Ms. Powers asserts it "would be arbitrary and capricious to deny payment" for the work. *Id.*

Further, Ms. Powers maintains it "would be arbitrary and capricious" to deny reimbursement "just because Midwest, and not Beverly Powers, signed the documents in question." Br. at 5. On this point, Ms. Powers contends it is "very telling" that:

> 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. *Id.* at 5.

Agency's Response Brief

The Agency argues, first, that Ms. Powers failed to prove that the budget amendment would not violate Section 734.135(c) of the Board's UST regulations (35 Ill. Adm. Code 734.135(c)) because the application lacked the signature of the UST owner or operator. The Agency recites that although Ms. Powers was identified as "Owner/Operator" on the owner/operator and professional engineer budget certification form accompanying the October 2010 budget amendment, she did not actually sign the form, as Section 734.135(c) requires. Resp. Br. at 8. In addition, the Agency emphasizes that Mr. Heaton testified the Agency never received any documentation "showing that Green was the owner/operator of the site," and that Mr. Green admitted he was not the owner or operator of the site and that his "sole role" regarding the site was as a consultant. *Id.*

Mr. Green admitted he did not have Ms. Powers' "power of attorney," the Agency adds, but nonetheless claimed he had her "full, written authority to sign documents on her behalf." Resp. Br. at 8. Mr. Green testified that he had "something in writing" from Ms. Powers authorizing him to sign submissions to the Agency for Ms. Powers, and that he "submitted documentation" to that effect to the Agency. *Id.* at 9. However, the Agency continues, Mr. Green could not identify the date he submitted that documentation and did not explain why Ms. Powers failed to sign the budget certification form in the first place; nor did Ms. Powers herself "provide an answer to this question," the Agency adds. *Id.*

The Agency also states that Mr. Green admitted that if Mr. Heaton were to testify that he never received documentation from Mr. Green authorizing him to sign documents on Ms. Powers' behalf, he would be unable to point to any documents refuting such testimony. Resp. Br. at 9. And, the Agency adds, Mr. Heaton, testifying after Mr. Green, did ultimately testify

that he never received written authorization for Mr. Green to sign for Ms. Powers. *Id.* Mr. Green was asked on cross-examination to identify any document in the record authorizing him to sign for Ms. Powers, the Agency continues, but his attorney objected. The Agency adds that despite having "ample time" between the hearing and the filing of her brief, Ms. Powers still has not identified anything in the record reflecting the claimed authorization. *Id.* at 9-10.

Further, the Agency contends that Mr. Green's credibility regarding "the purported written authority to sign on behalf of Beverly Powers is dubious at best." *Id.* at 10. Regardless, the Agency adds, Ms. Powers points to no authority for the proposition that Section 734.135(c) of the UST regulations (35 Ill. Adm. Code 734.135(c)) permits "assignment or delegation" of the signature requirement by the UST owner or operator. *Id.* at 10. The Agency stresses that: Mr. Green rather than Ms. Powers signed the budget amendment; aside from Mr. Green's testimony there is no evidence he had authority to sign for her; and that there is no authority for an "assignment or delegation" exception to Section 734.135(c). The Agency therefore contends that Ms. Powers did not meet her burden of proof to show that the budget amendment would not violate the UST regulations. *Id.*

As for the remaining grounds for denial, the Agency argues that Ms. Powers failed to prove that the proposed budget would not violate Sections 734.630(cc) and (dd) of the UST regulations (35 Ill. Adm. Code 734.630(cc), (dd)) by "including costs that lacked supporting documentation and are unreasonable . . . ." Resp. Br. at 13-14. The Agency recites Mr. Heaton's testimony that the second CAP and budget amendment submitted in March 2004 included both CACR and TACO work, and that the Agency approved that budget without modification. Resp. Br. at 12. The Agency adds that the third CAP and budget amendment, submitted in August 2008, "again budgeted for CACR and TACO costs," that the Agency approved the budget with modifications, including "deductions" for CACR and TACO work, and that Ms. Powers did not appeal the modifications. *Id.* Costs "related to TACO calculations and CACR work" appeared again in the fourth corrective action budget amendment submitted in October 2010, the Agency continues, including costs Mr. Green admitted had previously been denied by the Agency. *Id.* Moreover, the Agency asserts it did not receive "any justification for additional CACR or TACO costs beyond those in the approved 2004 budget." *Id.*

Next, the Agency argues that Ms. Powers could have appealed the modifications of the 2008 corrective action budget amendment pursuant to Sections 57.7(c)(4) and 57.8(i) of the Act (415 ILCS 5/57.7(c)(4), 57.8(i) (2010). The Agency contends that, since she did not do so, the modifications are "final and cannot be revisited." *Id.* at 13, citing Evergreen FS, Inc. v. IEPA, PCB 11-51, slip op. at 14 (June 21, 2012). The Agency suggests that,

> [t]o condone the Petitioner's conduct would be to allow rolling budgets, where the same costs could be resubmitted endlessly in the hope that someday a reviewer's oversight might result in approval of costs that had been denied previously. In the instant action, the Petitioner should not be allowed to get a second bite at the apple by including previously denied costs in its October 2010 budget and then taking the denial of that budget up on appeal for possible reversal. *Id.*

Ms. Powers' Reply Brief

Ms. Powers reiterates that the Agency 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." Reply Br. at 1. Thus, Ms. Powers continues, it would be "arbitrary and capricious to deny reimbursement and payment just because Midwest, not Beverly Powers, signed the documents in question." *Id.* In addition, Ms. Powers asserts again that "it appears" no "established procedure" supported the denial. She complaints that "nobody called" Mr. Green to advise him of the deficiency, as the Agency would reasonably have been expected to do given the course of dealing between the Agency and Midwest regarding the site. *Id.* In any event, Ms. Powers continues, Midwest "performed the work, paid the subcontractors, and is entitled to be paid." *Id.*

The reply adds that Ms. Powers signed, on May 15, 2013, "a Certification Form in question," and that a copy of the newly signed form is attached to the reply brief as Exhibit A. Reply at 2. But, as the Board has previously stricken this document and arguments based on it, the Board does not relate them here.

BOARD DISCUSSION AND ANALYSIS

The Agency's February 17, 2011 denial letter provides three grounds for rejecting the October 2010 CAP budget amendment: (1) Ms. Powers failed to sign the owner/operator certification; (2) the budget amendment included costs that were not reasonable; and (3) the budget amendment included costs lacking supporting documentation. R at 835. Below, the Board analyzes and resolves Ms. Powers' challenge to each ground, addressing the second and third grounds together because they are closely intertwined.

Owner/Operator Signature

Section 734.135(c) of the Board's UST rules provides that all "plans, budgets, and reports" submitted to the Agency "must be signed by the owner or operator and list the owner's or operator's full name, address, and telephone number." 35 Ill. Adm. Code 734.135(c). The UST regulations define "owner" in pertinent part as follows:

> In the case of an underground storage tank in use on November 8, 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances;
>
> In the case of any underground storage tank in use before November 8, 1984, but no longer in use on that date, any person who owned such underground storage tank immediately before the discontinuation of its use . . . . *Id.* at 734.115.

The regulations define "regulated substance" to include petroleum. *Id.* Under the regulations, an "operator" is "any person in control of, or having responsibility for, the daily operation" of the UST. *Id.*

In this case, Mr. Powers was identified as "Owner" in DSS's submittals to the Agency beginning with the 20-day certification and continuing through the site classification plan and budget submitted in March 1999. Thereafter, beginning with the October 2000 site classification budget amendment, submittals to the Agency reflected Ms. Powers as "Owner," including the October 2010 budget amendment that Ms. Powers did not sign. In addition, the budget submittals during that period identified Ms. Powers as the person to whom any UST Fund reimbursement checks should be sent; and, as those forms stated, under Section 57.9(a) of the Act (415 ILCS 5/57.9(a)(2010)), only UST owners or operators may be eligible for such reimbursement. *See, e.g.*, R. at 452.

The Board finds that Ms. Powers is properly deemed the UST owner: she owned the site in joint tenancy with Mr. Powers, and the USTs were obviously part of the site. As far as the timing of her ownership, the record does not reveal when the USTs ceased being in use—before or after November 8, 1984. But, that does not matter because either way Ms. Powers, along with Mr. Powers prior to his death, owned the USTs before and after that date, and were therefore UST owners within the meaning of the UST regulations.

Under Section 734.135(c) of those regulations (35 Ill. Adm. Code 734.135(c)), a UST owner or operator has the unambiguous obligation to sign all plans, budgets, and reports submitted to the Agency. In violation of this requirement, the owner/operator certification form accompanying the October 2010 budget amendment was signed, not by Ms. Powers, but by Mr. Green, who identified himself as "consultant" alongside his signature.

The record is clear that Mr. Green is neither the owner nor operator of the site. The Act recognizes only UST owners or operators as eligible to access the UST Fund. The Act and Board rules do not permit the Agency to expand the class of eligible parties to include the owner or operator's environmental consultant. This is so even if, as alleged here, the consultant actually submits to the Agency, on the owner's behalf, the documents required under the Act and UST regulations for reimbursement from the UST Fund. In administering the Fund, the Agency must ensure strict compliance with the Act and the Board's UST regulations. The appellate court has emphasized that the UST Fund "does not have a broad remedial purpose, presumably due to its limited resources," and, therefore, "the rules and regulations administering it are not to be taken lightly and should not be ignored." Fed Ex Ground Packaging System, Inc. v. PCB, 382 Ill. App. 3d 1013, 1015-16, 889 N.E.2d 697, 699-700 (1st Dist. 2008), citing Strube v. PCB, 242 Ill. App. 3d 822, 610 N.E.2d 717, 720 (1993).

Examination of the facts of this case presents no compelling reason to hold these settled principles inapplicable here. Mr. Green's testimony was that he had Ms. Powers' written authorization to sign UST documents on her behalf. Mr. Green stated that he submitted to the Agency documentation of Ms. Powers' written authorization for him to sign submissions to the Agency for her. But, the Agency's Mr. Heaton testified that he never received anything along those lines. Mr. Green admitted he did not recall the date when he purportedly submitted such documentation and could not identify anything in the record to that effect. In addition, Mr. Green admitted that if Mr. Heaton were to testify that he received no such submission—as he ultimately did—Mr. Green could point to no document refuting such testimony. Tr. at 22. The Board finds that the record before the Agency at the time of its determination contained no

evidence that Mr. Green had authority to sign documents on Ms. Powers' behalf, or that such evidence was timely submitted to the Agency.

Midwest plainly recognized at the outset that it was not itself eligible to obtain reimbursement from the UST Fund: it agreed to accept payment for work on the site out of UST Fund reimbursements obtained by DSS. *See* Tr. 12. Thus, Midwest implicitly assumed the risk that some work might be deemed not reimbursable in whole or in part.

As for Midwest's complaints about the manner in which the Agency handled the signature deficiency, the Board is not persuaded that anything the Agency did constitutes a basis to reverse the determination rejecting the budget amendment. First, it is of no legal consequence that Mr. Heaton's supervisor rather than Mr. Heaton himself decided to treat the missing signature as a "denial point." Tr. at 45. Neither the Act nor the UST regulations specify that a particular Agency official must make such determinations, and the decision of the Agency as a whole is conveyed in the signed denial letter. Second, whatever the relationship between the Agency and Midwest, the Agency was not legally required to give Ms. Powers pre-denial notice of deficiencies in the October 2010 submittal or of its intent to reject the budget amendment. Rather, the Agency must notify the owner or operator in writing of its disapproval or modification of a "plan," including a CAP budget, within a specified period after Agency receipt of the plan. 415 ILCS 5/57(c)(4) (2010). Ms. Powers does not contend that the Agency failed to meet this requirement.

In sum, Ms. Powers did not carry her burden to demonstrate that the October 2010 CAP budget amendment complied with 35 Ill. Adm. Code 734.135(c). This alone is a sufficient ground for affirmance of the Agency denial of the budget amendment. However, the Board considers the remaining denial grounds because they were included in the Agency's denial letter and are addressed in the briefs.

Disputed Costs

Section 57.7(c)(3) of the Act provides that in approving a plan concerning a UST site, the Agency "shall determine" that the costs associated with the plan are "reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for . . . activities in excess of those required to meet the minimum requirements of this Title." 415 ILCS 5/57.7(c)(3) (2010). Under the Board's UST regulations, costs that are ineligible for reimbursement from the UST Fund include "[c]osts that lack supporting documentation," and "[c]osts proposed as part of a budget that are unreasonable." 35 Ill. Adm. Code 734.630(cc), (dd).

The record is clear that the October 2010 CAP budget amendment requested approval of costs the Agency had previously denied, in a handful of decisions from 2002 to 2008, none of which was appealed. Mr. Green testified that the October 2010 submittal sought to add to the personnel budget costs "cut from the original plans and budgets on the site, in an attempt to basically get reimbursed for the personnel time that was spent on the site." Tr. at 15. The Agency focused at the hearing, and continues to focus in its brief, on demonstrating that the additional costs for TACO evaluation and CACR preparation sought in the October 2010 budget

amendment in particular were duplicative, and thus unreasonable. The Agency explained that costs for such work were previously submitted to the Agency and approved in July 2004, and additional costs for these tasks were re-submitted to, and rejected by, the Agency in 2008. The Board finds that side-by-side comparison of the March 2004, August 2008, and October 2010 budget amendments indeed confirms that all three budgets sought approval of costs for TACO and CACR work. *See* R. at 581; R. at 728; R. at 817.

The Agency appears to argue that this appeal is in effect an impermissible collateral attack on the Agency's modification of the August 2008 budget amendment. The Board disagrees, as explained below.

The Agency stresses that Ms. Powers could have, but did not, appeal the Agency's modification of the August 2008 budget amendment, so the modified budget is final and cannot be revisited. Resp. Br. at 13. Under the Act, "[a]ny action by the Agency to disapprove or modify a [site investigation or corrective action] plan or report . . . submitted pursuant to this Title shall be subject to appeal to the Board in accordance with the procedures of Section 40 [governing permit appeals]." 415 ILCS 5/57.7(c)(4) (2010). Section 40(a)(1) of the Act (415 ILCS 5/40 (a)(1) (2010)) allows an applicant to file a petition for review of the Agency's decision within 35 days of the date the Agency decision is served. Consistent with these provisions, the Agency's December 2008 letter modifying the third CAP budget amendment advised that the decision was subject to appeal.

It is true that because that decision was not appealed, the Agency cannot revisit it and it is no longer subject to Board review. *See, e.g.*, Evergreen FS, Inc. v. IEPA, PCB 11-51, slip op. at 19 (June 21, 2012) (neither Board nor Agency could revisit final Agency reimbursement decision relating to prior UST release that owner or operator did not timely appeal); A&H Implement Co. v. IEPA, PCB 12-53, slip op. at 8 (May 17, 2012) (Board lacked jurisdiction to review Agency's denials of CAP and budget and subsequent revised submittal that were not timely appealed). But, the question is what significance, if any, that principle has for this appeal.

This depends on characterization of the Agency determination the Board is asked to review. The petition for review and Ms. Powers' briefs clearly challenge the Agency's February 17, 2011 denial of the fourth budget amendment, and not a prior, unappealed Agency decision. Had the October 2010 submittal simply amounted to a request for Agency reconsideration of a prior unappealed Agency decision such as the December 2008 budget modification, the Agency would have lacked authority to review it. *See, e.g.*, Reichhold Chemicals, Inc. v. PCB, 204 Ill. App. 3d 674, 677-78, 561 N.E.2d 1343, 1345-46 (3rd Dist. 1990) (Agency lacks statutory authority to reconsider prior final determinations); *see also, e.g.*, Evergreen FS, PCB 11-51, slip. op. at 19; A & H, PCB 12-53, slip op. at 7.

The October 2010 submittal was not, however, purely a request for Agency reconsideration, although it did re-present for Agency approval costs the Agency had previously rejected. Nevertheless, the submittal also includednew information not previously before the Agency, in the form of invoices for site-related work. Setting aside whether the new information warranted a different result from the prior determination—*i.e.*, approval rather than disapproval of the costs—the existence of the new information made the October 2010 submittal something

more than a mere request that the Agency reconsider a prior final determination. Indeed, Mr. Heaton viewed the submittal as Midwest's "attempt to explain why the additional costs [those exceeding previously-approved amounts] were incurred." Tr. at 40. Accordingly, the Board finds that the Agency's authority to act on the October 2010 budget amendment is not in question, and the Board may review the Agency determination on its merits.

This brings the Board to the central question with respect to costs in the October 2010 budget amendment: whether the Agency correctly determined that the submittal failed to provide justification for the additional costs. As discussed below, the Board finds the Agency's determination was proper.

According to the Agency, despite the invoices presented in the submittal, "what was not provided was justification with regard to the number of hours spent per task" or a demonstration that additional personnel time for TACO analysis and CACR preparation was required beyond what the Agency approved for such work in 2004. R. at 835. Ms. Powers, who had the burden to prove that the October 2010 budget amendment complied with the Act and the Board's regulations (*see, e.g.*, Illinois Ayers, PCB 03-214, slip op. at 8), offered no evidence at the hearing, and cites nothing in her brief, to counter the Agency's contention. In its review of this record, the Board finds that the only hint of any attempt to justify the additional costs is in the cross-examination of Mr. Heaton, in which he acknowledged that site-related "variables," such as the need for an HAA, can affect the level of actual corrective action costs incurred. Tr. at 40-41. However, this acknowledgement is not evidence that persuades the Board that variables encountered in the field drove actual costs to exceed projected costs in this case.

In her briefs, Ms. Powers argues the additional costs should be approved because the Agency admitted Midwest did all of the work identified in the October 2010 submittal and the Agency failed to show that the work was not "necessary." Br. at 4-5; Reply Br. at 1. The Board is not persuaded by either argument.

First, that the Agency does not dispute that the work recited in the budget amendment was actually done is beside the point; that the work was performed does not show that the work was necessary to meet the minimum requirements of the Act's UST provisions (Title XVI), or that the personnel costs tied to the work were reasonable. Second, it was not the Agency's burden to demonstrate that that work was not necessary to meet the Act's minimum requirements; rather, it was Ms. Powers' sole burden to establish that that submittal complied with the Act and the UST regulations. Thus, to prevail, Ms. Powers had to demonstrate to the Agency that the proposed costs were "reasonable, will be [or were] incurred in the performance of corrective action, and will not be [or were not] used for . . . corrective action activities in excess of those required to meet the minimum requirements" of Title XVI. 415 ILCS 5/57.7(c)(3); *see also* 35 Ill. Adm. Code 734.630(cc) (costs that lack supporting documentation are ineligible for payment from UST Fund); *id.* at 734.630(dd) ("unreasonable" costs are similarly ineligible). Midwest offered nothing other than invoices issued to DSS by Midwest to justify the additional costs; these show only that the costs were actually incurred—not that they were reasonable. Accordingly, the Board finds Ms. Powers did not meet her burden to demonstrate that the October 2010 budget amendment was reasonable and supported by sufficient documentation.

CONCLUSION

The Board affirms the Agency's denial of the October 2010 fourth CAP budget amendment on each of the three stated denial grounds: the request was not signed by the UST owner or operator and contained costs whose reasonableness was not proved and for which sufficient supporting documentary justification was not provided.

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

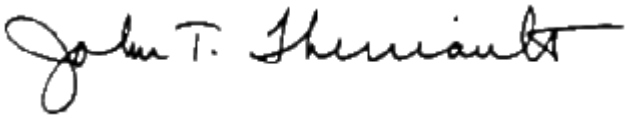
ORDER

The Board affirms the Agency's February 17, 2011 denial of Ms. Powers' requested fourth CAP budget amendment.

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) (2010); *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 Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion and order on August 8, 2013, by a vote of 4-0.



John Therriault, Clerk
Illinois Pollution Control Board