

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PMA & ASSOCIATES, INC.,)	
Petitioner,)	
)	
v.)	PCB 07-63
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
Respondent.)	
)	

NOTICE

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

Mandy L. Combs
The Sharp Law Firm, P.C.
P.O. Box 906
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Carol Webb
Hearing Officer
Illinois Pollution Control
Board
P.O. Box 19274
Springfield, Illinois 62794-
9274

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson
James G. Richardson
Assistant Counsel

Dated: September 11, 2007
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

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

PMA & ASSOCIATES, INC.,)	
Petitioner,)	
)	
v.)	PCB 07-63
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
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**MOTION FOR LEAVE TO FILE REPLY TO PETITIONER'S
RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel, and pursuant to Section 101.500(e) of the Illinois Pollution Control Board's ("Board's") procedural rules, 35 Ill. Adm. Code 101.500(e), seeks leave to file a reply to Petitioner's Response to Respondent's Motion for Summary Judgment ("Response"). The Illinois EPA received the Response on August 29, 2007. In support of this motion, the Illinois EPA states as follows:

1. The Illinois EPA wishes to comment on certain characterizations and arguments in the Response.
2. Allowing the Illinois EPA to file a reply for this purpose is appropriate and would prevent the Illinois EPA from suffering any material prejudice.

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson

James G. Richardson
Assistant Counsel

Dated: September 11, 2007
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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**REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S
MOTION FOR SUMMARY JUDGMENT**

NOW COMES the Respondent, the Illinois Environmental Protection Agency ("Illinois EPA"), by one of its attorneys, James G. Richardson, Assistant Counsel, and hereby submits to the Illinois Pollution Control Board ("Board") its Reply to Petitioner's Response to Respondent's Motion for Summary Judgment. The Illinois EPA received Petitioner's Response to Respondent's Motion for Summary Judgment ("Response") on August 29, 2007.

I. ARGUMENT

PMA & Associates, Inc. ("PMA") claims that the Administrative Record ("Record" or "AR") is not complete because budget submittals were not included in it. It argues that the Illinois EPA "cannot be permitted to prevail by filing an incomplete record and then seeking judgment on the distorted record." Response at 2. LUST project managers review and approve budgets. Applications for payment are reviewed by personnel in the LUST Claims Unit. To perform his work, a claims reviewer can but usually does not perform a separate review of the budget submittals. Instead he examines the budget approval letter to determine what budget amounts have been authorized by the project manager. The budget approval letter applicable to this case was included in the Record. (AR, pp. 42-45) No distortion was intended by not including the budget submittals in

the Record.

Although PMA acknowledges that Prairie Analytical Systems, Inc. (“Prairie”) provided the BTEX analysis in question here, it maintains that it does not have to submit an invoice from Prairie to obtain reimbursement of the analysis costs. Response at 19. PMA first argues that the Illinois EPA’s action here was an attempt to reverse budget approvals through the application for payment process. Response at 6. But many of the references it makes in support of this position indicate that supporting documentation and generally accepted accounting practices are still essential to the reimbursement process. PMA notes that Section 57.8(a)(1) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/57.8(a)(1), states “In no case shall the Agency conduct additional review of any plan which was completed within the budget, beyond auditing for adherence to the corrective action measures in the proposal.” Response at 7. But the sentence previous to this one provides “The Agency’s review shall be limited to generally accepted auditing and accounting practices.” The importance of adequate documentation also appears in the May 25, 2004 testimony of Doug Clay, manager of the Illinois EPA’s LUST Section, and Doug Oakley, Manager of the LUST Claims Unit, cited by PMA. Response at 9. There it is noted that a claims reviewer has to “add up invoices” and look for “mandatory documents.”

PMA next contends that this was an improper attempt by the Illinois EPA to reimburse only what Prairie charged and makes several references to the rulemaking history of the “lump sum” concept. Response at 11. But the fact that the Illinois EPA would still need subcontractor invoices in this new system was clearly stated by Doug Clay in his August 9, 2004 testimony with the question and answer as follows:

Q. So that’s true of all the lump sum and unit rates from your perspective, that you don’t go behind those once an invoice is submitted, saying that I’ve done that work?

- A. For subcontractors, you know, we have to have backup invoices for the subs. For example, if we've got a drilling subcontractor, you know, we'd want to have \$19 a foot, which is how many feet that were drilled, the dates. But that's what we would expect from the subcontractor. It would be from the consultant. We have to have that invoice from the sub. But, yeah, for the lump sum and the unit rate, that's what we would expect.

Transcript of Proceedings Held August 9, 2004, R04-22A (August 20, 2004) at 110-111.

PMA's final argument is that it submitted adequate documentation for reimbursement of the BTEX analysis costs. Response at 16. Apparently the adequate documentation in PMA's view is the invoice it received from its environmental consultant, United Science Industries, Inc. Response at 2. But this is not an invoice by the subcontractor that performed the analysis documenting what was charged and that these charges were billed. PMA's claim that "the usual function of subcontractor invoices was as evidence for a consultant's handling charge" is a broad conclusion to draw from the text cited. Response at 17. PMA's statement that Rezmar Corporation v. Illinois EPA, PCB 02-91 (April 17, 2003), is no longer pertinent in a lump sum system is also questionable since the proper accounting referenced in that opinion should be a timeless standard.

II. CONCLUSION

For the reasons stated herein, as well as those previously presented by the Illinois EPA, the Illinois EPA respectfully requests that the Board grant summary judgment to the Illinois EPA and affirm the Illinois EPA's denial of costs identified in the December 11, 2006 final decision.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

/s/ James G. Richardson

James G. Richardson
Assistant Counsel

Dated: September 11, 2007

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on September 11, 2007 I served true and correct copies of a MOTION FOR LEAVE TO FILE REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT and REPLY TO PETITIONER'S RESPONSE TO RESPONDENT'S MOTION FOR SUMMARY JUDGMENT upon the persons and by the methods as follows:

[Electronic Filing]

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100 West Randolph Street, Suite 11-500
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[1st Class U.S. Mail]

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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