

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

WARSAW ITCO,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB No. 11-76
ILLINOIS ENVIRONMENTAL)	(UST Appeal)
PROTECTION AGENCY,)	
)	
Respondent.)	

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

NOW COMES WARSAW ITCO, by its attorneys, Elias, Meghinnes, Riffle & Seghetti, P.C., and as and for its Reply to Respondent's Post-Hearing Brief, states as follows:

INTRODUCTION AND FACTS

The facts of this case are very simple.

1. Petitioner, through its consultant, Midwest Environmental Consulting & Remediation Services, Inc. (Midwest) began to operate a groundwater remediation system at the subject property in October, 2003. This system was approved by the Illinois Environmental Protection Agency. (Tr.11).

2. Petitioner proposed certain enhancements to the groundwater remediation system, including enhanced bio-remediation and horizontal recovery wells for groundwater.

3. The enhancements to the groundwater remediation system were rejected.

4. Petitioner was never instructed to discontinue the originally implemented groundwater remediation system which was originally installed. (Tr. 15).

5. The funds which Petitioner seeks in this appeal relate to the operation of the original groundwater treatment system, not to the disapproved enhancements to the system, which were never implemented. (Tr. 14-15).

In 2005, IEPA rejected proposed enhancements to the system. At no time was Petitioner or its consultant instructed to discontinue the existing system. The only thing the IEPA can point to in support of their position in this case is a December 14, 2005 letter, in which IEPA denied approval of enhancements to the existing system. No reference to the existing system was made, and certainly no instructions were provided to discontinue operation of the existing system.

When questioned regarding the meaning of that letter, IEPA's witness claimed that he was referring to the existing system, and not the proposed system, even though the letter only referred to the "system proposed in the plan." The IEPA's claim that it instructed Petitioner to discontinue the operation of the existing system is disingenuous and not supported by the evidence.

ARGUMENT

As the testimony of Al Green, President of Midwest, attests, all costs and fees for which Petitioner seeks recovery in this appeal relate solely to the installation, permitting and operation of the originally approved groundwater remediation system. Most importantly, contrary to the Illinois EPA's stated position, Petitioner was never instructed to discontinue the originally implemented groundwater remediation system which was originally installed, and had no right to discontinue that system until its amended Corrective Action Plan was ultimately approved. The IEPA claims that it instructed Petitioner to discontinue the existing remediation system, relying solely upon a December 14, 2005 letter from IEPA. However, that letter stated no such thing. It is respectfully submitted that the Illinois EPA's stated position is not even a fair inference from that December 14, 2005 letter, much less a clear instruction. The IEPA relies solely on that December 14, 2005 letter. It simply does not support their position. Moreover, Petitioner expended \$5,900 for an Air Permit to the IEPA to operate the system, which it was told would be reimbursed. (TR21). It would be a travesty to induce Petitioner and its consultant to pay a

permit fee to the state under the premise that it would be reimbursed, and then disallow that expenditure.

Perhaps most importantly, Petitioner had no right to discontinue operation of the existing system. Contrary to IEPA's position, while the groundwater treatment system was not as effective in remediating groundwater as had been desired, it did serve the purpose of preventing further offsite migration of groundwater contamination, and was protective of the environment. (Tr. 31-32).

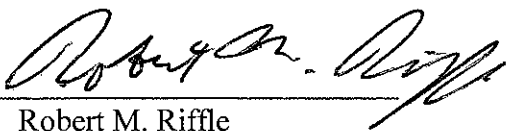
It is respectfully submitted that the costs and fees associated with permitting, installation, and ongoing operations of the originally approved groundwater treatment system were all reasonable and necessary, and should have been paid.

CONCLUSION

For all of the foregoing reasons, Petitioner respectfully requests that its appeal be granted, and that it be awarded the sum of \$42,590.00, consisting of \$34,790 of personnel costs, and \$7,800 in air permitting and related fees and costs.

Respectfully submitted,

WARSAW ITCO, Petitioner

By: 
Robert M. Riffle
Its Attorney

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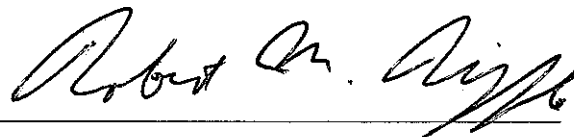
CERTIFICATE OF SERVICE

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 delivery and United States Mail at 5:00 p.m. on said date.

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A handwritten signature in cursive script, reading "Robert M. Riffle", is written over a horizontal line.

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