

ILLINOIS POLLUTION CONTROL BOARD
August 21, 2014

BROADUS OIL COMPANY,)	
)	
Petitioner,)	
)	
v.)	PCB 12-124
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ROBERT M. RIFFLE, LAW OFFICE OF ROBERT M. RIFFLE, APPEARED ON BEHALF OF PETITIONER; and

SCOTT B. SIEVERS, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF RESPONDENT.

OPINION AND ORDER OF THE BOARD (by J.A. Burke):

Broadus Oil Company (Broadus) asks the Board to review a determination of the Illinois Environmental Protection Agency (Agency) concerning Broadus' leaking underground storage tank (UST) site located at 1006 West Main Street, Streator, LaSalle County. A hearing was held on April 22, 2014. For the reasons below, the Board affirms the Agency's determination rejecting Broadus' November 9, 2011 corrective action plan budget amendment.

PROCEDURAL BACKGROUND

On July 24, 2012, Broadus filed a petition for review of a March 20, 2012 Agency determination. The Board accepted the petition for hearing on August 9, 2012. The Agency filed the administrative record (Rec.) on September 18, 2012.

Hearings were scheduled on May 7, 2013, July 25, 2013, and September 11, 2013, but were cancelled as the parties continued settlement discussions. *See, e.g.*, Hearing Officer Order (Sept. 10, 2013).

A hearing was held on April 22, 2014 in Springfield. The Board received the hearing transcript on April 29, 2014 (Tr.). Broadus called the following four witnesses: Allen Green, president of Midwest Environmental Consulting and Remediation Services (Midwest Environmental) in Tremont; Steven Broadus, president of Broadus Oil Corporation; Shirlene South, an employee in the Agency's UST section; and Brian Bauer, an employee in the Agency's UST section.

Two exhibits were admitted to facilitate testimony at hearing. Hearing exhibit A is Broadus' final corrective action report dated November 9, 2011. Hearing exhibit B is the Agency's March 20, 2012 determination letter. Both exhibits are part of the administrative record.

The Agency filed a motion to supplement the record on April 18, 2014, and the Board's hearing officer granted the motion at the April 22, 2014 hearing. The motion supplemented the record with the Agency's March 20, 2012 decision letter, which was inadvertently left out of the original filed record but was attached to the petition. Rec. at 1114.

The public comment period ended on May 6, 2014, and the Board did not receive any public comment. Broadus filed its post-hearing brief on June 2, 2014 (Br.). The Agency filed its post-hearing response on July 11, 2014 (Resp.), accompanied by a motion for leave to file the brief *instanter* (Mot.). The Agency states in its motion that Broadus does not object to the extension (Mot. at 2), and the Board accordingly grants the motion. Broadus filed its post-hearing reply (Reply) on July 30, 2014.

FACTS

Site

At all relevant times, Broadus owned a property commonly referred to as Pit Stop West located at 1006 West Main Street, Streator, LaSalle County. Rec. at 221. Midwest Environmental was retained by Broadus to complete corrective action activities at the site. *Id.* at 222. The activities included soil excavation and disposal. *Id.*

November 9, 2011 Budget Amendment

On November 9, 2011, Midwest Environmental submitted a high priority corrective action plan budget amendment to the Agency. Rec. at 267. The purpose of the budget amendment was "to provide justification for outstanding costs dating back to 2006 and for the additional costs anticipated for closing the site." *Id.* The budget amendment included seven requests for additional personnel time. *Id.* at 271-272. The budget amendment also included a request pertaining to transportation, disposal and back-filling of an additional five hundred tons of soil not included in the original budget. *Id.* at 272. Midwest Environmental sought a budget amendment of \$104,163.03, consisting of \$87,484.16 in personnel costs, \$14,891.84 in field purchases and other costs, and \$1,787.02 in handling charges.¹

March 20, 2012 Agency Determination

On March 20, 2012, the Agency denied the November 9, 2011 budget amendment. Rec. at 1114. The Agency's reason for the denial was that

[t]he budget includes costs that lack supporting documentation. Such costs are ineligible for payment from the [UST Fund (Fund)] pursuant to 35 Ill. Adm. Code

¹ The Board notes that the correct total sum of these three amounts is \$104,163.02.

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 Title XVI of the [Environmental Protection Act (Act)] therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Rec. at 1117.

The Agency denial letter specifically notes:

- The [Agency] requires justification for the increased hours and/or underestimation of the various tasks requested in this amended budget.
- Costs for the soil disposal increased yet there was not a similar reduction in the costs for clean overburden. Rec. at 1117.

HEARING SUMMARY

Allen Green Testimony

Allen Green is the president of Midwest Environmental. Tr. at 8. Mr. Green testified that Broadus originally hired another environmental consulting firm, Midwest Testing, to remediate the site. *Id.* at 10. Midwest Testing did some preliminary investigation through the Agency to determine the extent of contamination at the site and developed a corrective action plan to remediate the site. *Id.* Midwest Testing estimated the site work to be \$2.25 million. *Id.* at 10-11. Broadus then contacted Midwest Environmental to review the site files. *Id.* at 9.

Midwest Environmental prepared a budget and plan for the Agency. Tr. at 12. Midwest Environmental received approval for a corrective action plan and budget from the Agency for the site and to address contamination on a neighboring property (Stith property). *Id.*

Sam Hale was a project manager at the Agency assigned to the site. Tr. at 19. Mr. Hale was the direct contact at the Agency in charge of the site plans and budgets. *Id.* at 19-20. Midwest Environmental worked with Mr. Hale on fifteen to twenty previous projects, but in this instance Mr. Hale called and faxed Midwest Environmental often because of the pressures to get the work done. *Id.* at 21. Cliff Wheeler was Mr. Hale's supervisor at the Agency. *Id.* at 22. Mr. Wheeler also told Midwest Environmental that he wanted to expedite site work and get it done as soon as possible. *Id.* at 23. Midwest Environmental usually submitted an amendatory plan and budget in writing to get approval before initiating additional work or a change in work. *Id.* at 23. However, in this case, Midwest Environmental was told by Mr. Hale to send in the plan and budget for approval at the end of the process in order to expedite the work. *Id.* at 24. Midwest Environmental had similar conversations with Mr. Wheeler. *Id.*

No active remediation was required at the Broadus property. Tr. at 14. However, offsite active remediation was required at the insistence of a neighboring property owner. *Id.* Extensive excavation work was performed on the Stith property. *Id.* Additionally, a recovery trench was

installed along the property border to address any future contamination migrating from Broadus site to the Stith property. *Id.* at 14-15. The Stith property owner consistently pressured Midwest Environmental to complete the remediation work. *Id.* at 15. Midwest Environmental was also under pressure from city and state politicians as well as the United States Environmental Protection Agency. *Id.* at 16, 18. These contacts continued over a period of four years. *Id.* at 19.

Midwest Environmental proceeded with the site work. Tr. at 12. Sam Hale and Cliff Wheeler told Midwest Environmental “to expedite the process” rather than “[going] through the normal plan and budget amendments” due to political pressures at the Agency. *Id.* at 12-13. Midwest Environmental eventually completed the corrective action, with amendments along the way that were approved by project managers at the Agency. *Id.* at 13. Midwest Environmental submitted a corrective action completion report to the Agency, which was approved. *Id.* Midwest Environmental then submitted a corrective action plan based on the results of the completion report and additional work to close the incident, while waiting for agreements from the new property owners. *Id.*

At a meeting with the Agency in November 2011, Midwest Environmental learned that Mr. Hale and Mr. Wheeler had died. Tr. at 25. This meeting was Midwest Environmental’s only contact with Hernando Albarracin, who is in charge of the UST section at the Agency. *Id.* at 24, 26. Midwest Environmental informed Mr. Albarracin of the approach they were taking with Mr. Hale on the site cleanup. *Id.* at 25. Mr. Albarracin told Midwest Environmental at the meeting “that’s not normally the way we would do it, but that sounds like, you know, a decent approach,” and that someone at the Agency will review Midwest Environmental’s budget amendment. *Id.* at 26. Midwest Environmental’s budget amendment sought personnel costs of \$87,484.16 and third-party costs of \$14,891.84, for a total of \$104,163.03 including handling charges. *Id.* at 27-28.

Mr. Green acknowledged that the administrative record does not have any copies of writings from Mr. Hale or Mr. Wheeler about how to handle amendments at the end of the remedial work. Tr. at 30.

Steven Broadus Testimony

Steven Broadus is president of Broadus Oil Corporation. Tr. at 36. He has been involved in environmental remediation projects at four sites. *Id.* at 37. Mr. Broadus started working for his father’s company around 1977. *Id.* at 38. The site in question was bought by Mr. Broadus’ father in 1970, when he took over a service station on the property. *Id.* at 38. The property was converted to a convenience store in 1979. *Id.* at 39. Mr. Broadus then sold the convenience store to Mac’s Convenience Store in 2005. *Id.* Mr. Broadus was aware of the off-site contamination issue when the property was sold. *Id.* at 40.

Mr. Broadus was denied access to the neighboring Stith property for between ten and twelve years. Tr. at 40. Around 1989, Don Stith revealed that a 500-gallon below ground tank was leaking. *Id.* at 40-41. The tank was pulled and the basement of a building was covered with concrete to address subsurface vapors. *Id.* at 41. A tank on the Broadus site also had a leak. *Id.*

Mr. Broadus contacted Midwest Testing who said it would cost between \$2.25 and \$2.5 million to clean up. *Id.* at 42. Mr. Broadus then talked with Mr. Green who provided a less expensive clean-up alternative. *Id.* at 43.

Mr. Broadus retained the responsibility to remediate the site when it was sold in 2005. Tr. at 43. He could not determine the level of contamination on the Stith property because he was denied access. *Id.* at 44-45. He was eventually granted access, and Mr. Green was able to formulate a corrective action plan. *Id.* at 45. Mr. Broadus had been in contact with Mr. Hale and Mr. Wheeler on multiple occasions regarding the need to expedite remediation work at the Stith property. *Id.* at 47. Mr. Broadus encountered a number of issues with the owners of the Stith property, including delays to the remediation work and requests for payment for lost rent. *Id.* at 49. The remediation process was very difficult, including workers not wanting to appear for work because Mrs. Stith videotaped the workers. *Id.* at 52. Mr. Broadus spent numerous hours over nine years and a great deal of legal expense to resolve the remediation. *Id.* at 53.

Shirlene South Testimony

Shirlene South is an Environmental Protection Specialist III in the UST section at the Agency. Tr. at 56-57. She has been in that position since 2004. *Id.* at 56. She became project manager for the site after Mr. Hale passed away. *Id.* at 61.

Typically, when remediation work is greater than anticipated or costs are higher than expected, Ms. South requests that the party submit an amended budget for the work. Tr. at 65. For amounts under \$2,000, she usually requests a brief letter that she puts in the file, but for amounts greater than \$2,000 she asks for an amended plan and budget. *Id.* at 67. Ms. South testified that it was not common for her to receive budget amendments five years later and for over \$100,000 more in costs. *Id.* at 68. The costs in question here were incurred between 2004 and 2006. *Id.* at 69. Ms. South did not recall any budget amendments received by the Agency from Mr. Green between 2006 and 2011. *Id.*

Ms. South noted that the budget amendment did not contain any sample or test results showing that an additional 500 tons of soil removed was contaminated. Tr. at 70. The amendment also did not contain any documentation of the increased costs or scope of the work, or why the additional work was necessary. *Id.* at 70-71. There was no supplemental documentation on why the original budget amounts were insufficient. *Id.* at 71. There were also no manifests for truckloads, test samples, soil samples, or landfill receipts for 500 tons of soil mentioned in the amendment. *Id.* at 72. Following the denial letter, the Agency still did not receive any justification for increased hours or underestimation of the various tasks. *Id.* at 73.

Ms. South is unaware of any time the Agency has authorized work without first receiving a budget amendment or change in plan. Tr. at 74. However, Ms. South is aware of work being approved over the phone, but such work will usually have a brief written summary sent in that becomes part of the file. *Id.* at 75. Ms. South is unaware of a situation where the change is not incorporated into a budget for the next five years. *Id.* at 76.

Ms. South's first involvement in the site was when the Agency received the amendment request. Tr. at 77. She looked back at the file and budgets to see if she could find where Mr. Hale had approved the various budgets and costs. *Id.* at 78. She tried to call Mr. Green to let him know she was denying the request but did not reach him; instead leaving a voicemail asking for cost justification. *Id.* at 79.² Ms. South did not receive any further submittals even though she expected a response to the denial. *Id.* at 81, 84.

Ms. South did not contest whether the requested costs were incurred or whether the additional hours were spent. Tr. at 81. She was not able to determine from the record how many tons of contaminated soil were transported offsite because she never saw any transportation manifests. *Id.* at 83. There were no manifests attached to the budget amendment, and she was not aware of any in the file. *Id.* at 85.

Ms. South spoke with supervisors in the past about telephone approval policies for increased costs or increased scope of work, and stated that "if it's just one or two, we'll go ahead, or I will, to expedite things but not above that." Tr. at 86-87. Ms. South stated that, in the past, she has approved items such as wells and borings over the phone. *Id.* at 82. There is no set policy prohibiting oral approval of work, but Ms. South expects justification for the work in the next written submittal. *Id.* at 88. Ms. South testified that telephone approvals are not common. *Id.* at 91.

Brian Bauer Testimony

Brian Bauer works in the UST section of the Agency as a project manager. Tr. at 106. He was present at the November 8, 2011 meeting with Mr. Green and Mr. Broadus. *Id.* at 93-94. Mr. Green stated at the meeting that he had overruns in the budget and wanted to submit something to the Agency to obtain approval for the costs. *Id.* at 96.

Mr. Bauer did not see any justification for the additional costs in the submitted budget amendment. Tr. at 97. Pointing to a specific example in the amendment, Mr. Bauer did not understand the request for \$16,714 in personnel costs from January 16, 2009 to May 24, 2009. Tr. at 102. This work was done for a corrective action plan and budget dated May 28, 2009, and Mr. Bauer believes it should have been incorporated into that corrective action plan and budget, and not the 2011 submittal. *Id.* at 102-103.

Mr. Bauer has not approved more than \$8,000 in additional work over the phone. Tr. at 105. Mr. Bauer stated that he will do a phone approval if the person can support it with technical documentation, and the person later submits an amended corrective action plan and budget with the supporting technical documentation. *Id.*

² Mr. Green later testified that he never received a voicemail or any other response, and that the Agency denial letter was the first time he knew about the denial. Tr. at 113-114.

BOARD DISCUSSION

Legal Background

To seek reimbursement from the UST Fund, an owner or operator must submit to the Agency for approval a corrective action budget. 415 ILCS 5/57.7(b)(3) (2012). In reviewing a budget, the Agency must determine that the costs associated with the corrective action plan are reasonable, will be incurred in the performance of corrective action, and will not be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. 415 ILCS 5/57.7(c) (2012).

Section 57.7(c)(4) of the Act concerning site investigation and corrective action plans and reports allows an owner or operator to appeal Agency determinations pursuant to Section 40 of the Act. The burden of proof in an appeal of the Agency's rejection of a correction action budget is on the petitioner. 415 ILCS 5/57.7(c)(4) (2012); 415 ICLS 5/40(a)(1) (2012); 35 Ill. Adm. Code 105.112(a). The standard of review is whether the application, as submitted to the Agency, would violate the Act and Board regulations. Ted Harrison Oil Co. v. IEPA, PCB 99-127, slip op. at 5 (July 24, 2003), *citing* Browning Ferris Industries of Illinois v. PCB, 179 Ill. App. 3d 598, 534 N.E.2d 616 (2nd Dist. 1989).

The Board's review is generally limited to the record before the Agency at the time of its determination. Freedom Oil Co. v. IEPA, PCB 10-46, slip op. at 14 (Nov. 1, 2012). 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 Service Center v. IEPA, PCB 95-43, slip op. at 14 (May 18, 1995). Further, the Agency's denial letter frames the issues on appeal. Pulitzer Community Newspapers, Inc. v. IEPA, PCB 90-142 (Dec. 20, 1990).

Corrective Action Budget

Under Section 734.335(b) of the Board's regulations,

[a]ny owner or operator intending to seek payment from the Fund must, prior to conducting any corrective action activities beyond site investigation, submit to the Agency a corrective action budget with the corresponding corrective action plan. The budget must include, but is not limited to, a copy of the eligibility and deductibility determination of the OSFM and an estimate of all costs associated with the development, implementation, and completion of the corrective action plan, excluding handling charges. The budget should be consistent with the eligible and ineligible costs listed at Sections 734.625 and 734.630 of this Part and the maximum payment amounts set forth in Subpart H of this Part. As part of the budget the Agency may require a comparison between the costs of the proposed method of remediation and other methods of remediation. 35 Ill. Adm. Code 734.335(b).³

³ The Board notes that the parties do not dispute whether 35 Ill. Adm. Code Part 732 or 734 applies in this case. Because the relevant language is substantially similar, the Board cites to Part 734 throughout this order.

If, following approval of any plan or associated budget, an owner or operator determines that a revised plan or budget is necessary, the owner or operator must submit an amended plan or associated budget to the Agency for review. 35 Ill. Adm. Code 734.140(d). The Agency then reviews the amended plan or budget consistent with Subpart E of Section 734 of the Board's regulations. *Id.*

The original corrective action plan and budget is not at issue in this case. Rather, Broadus challenges an Agency determination letter rejecting Broadus' November 9, 2011 corrective action plan budget amendment. Therefore, the Board must determine whether the Agency acted appropriately in rejecting Broadus' budget amendment request.

Agency Determination Letter

The Agency "has the authority to review any plan, budget, or report, including any amended plan, budget, or report, submitted pursuant to" Part 734. 35 Ill. Adm. Code 734.500. Further, the Agency "has the authority to approve, deny or require modification of any plan, budget, or report it reviews." 35 Ill. Adm. Code 734.505(b). If the Agency rejects a plan, budget, or report, the written notification must contain the following information, as applicable:

- 1) An explanation of the specific type of information, if any, that the Agency needs to complete its review;
- 2) An explanation of the Sections of the Act or regulations that may be violated if the plan, budget, or report is approved; and
- 3) A statement of specific reasons why the cited Sections of the Act or regulations may be violated if the plan, budget, or report is approved. *Id.*

In this case, the Agency rejected a November 9, 2011 corrective action plan budget amendment. As noted by the Agency in attachment A to its denial letter,

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 Title XVI of the Act therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act. Rec. at 1117.

The Agency denial letter then specifies its reasons for denial:

- The [Agency] requires justification for the increased hours and/or underestimation of the various tasks requested in this amended budget.

- Costs for the soil disposal increased yet there was not a similar reduction in the costs for clean overburden. Rec. at 1117.

Broadus contends that the Agency wrongly rejected its budget amendment. Broadus states that it is undisputed that the personnel hours were actually expended, the expenses were actually incurred, Broadus paid the expenses, and the Agency witnesses had no reason to contend otherwise. Br. at 19, Reply at 4.

Broadus states that Mr. Green and Mr. Broadus were “specifically instructed and authorized by [Agency] officials to perform substantial services for which pre-approval was not provided.” Br. at 18, citing Tr. at 23-24, 45-46, 50, 51. The expenses in question were incurred “pursuant to the direction and instruction of” the Agency. *Id.* Broadus argues that the testimony of Mr. Broadus and Mr. Green stands un rebutted and that, in Illinois, “a finder of fact may not simply reject un rebutted testimony.” Br. at 17, citing 17, citing Sweilen v. Illinois Department of Revenue, 865 N.E.2d 459 (1st Dist. 2007) (citing Bucktown Partners v. Johnson, 119 Ill.App.3d 346, 353-55, 456 N.E.2d 703 (1983); People ex rel. Brown v. Baker, 88 Ill.2d 81, 85, 430 N.E.2d 1126 (1981)). Broadus argues that, accordingly, the testimony must be accepted as true. *Id.* at 18. Broadus states that this testimony “established that the additional costs were absolutely necessary to obtain closure of the incidents relating to the subject property, and were not in excess of minimum requirements.” Reply at 3.

The fact 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. *See Beverly Powers f/d/b/a Dick’s Super Service v. IEPA*, PCB 11-63, slip op. at 19 (Aug. 8, 2013). It is not relevant, therefore, that the Agency does not dispute that the work recited in the budget amendment was actually done. *Id.* Further, it is Broadus’ burden to demonstrate that the submittal complied with the Act and the UST regulations, and not the Agency’s burden to demonstrate that the work was not necessary to meet the Act’s minimum requirements.

Broadus states that it has met its burden of proof and contends that, but for the deaths of Mr. Hale and Mr. Wheeler, the budget amendment would have been approved. Reply at 1. Broadus states that the record at the time the budget amendment was submitted “included thousands of pages of documentation to establish that the project was unique and problematic.” *Id.* at 2. Broadus also contends that Agency project managers routinely orally approve changes that are not pre-approved as part of a corrective action plan and associated budget based on circumstances in the field. Br. at 18. Broadus argues that, just because the level of expenditures in this case exceeded levels encountered by Ms. South, it does not provide grounds for denial of reimbursement. *Id.* at 18-19.

The Agency concedes that Broadus may have faced daunting challenges during the site cleanup and that, were these challenges unforeseeable, it may provide the necessary justification for the requested budget amendment. Resp. at 9-10. However, the Agency argues that justification must be present in the written submittal, which it was not. *Id.* at 10. The Agency raises a number of questions regarding personnel costs and the additional costs relating to soil

removal, but states that no answers to these questions were set forth in Broadus' November 9, 2011 submittal. *Id.*

The Agency summarizes Broadus' argument as the submittal should be approved because "the work [Broadus] encountered was really hard, that [Broadus] really incurred the costs, and that two dead [Agency] employees who cannot testify to the contrary orally approved the additional scope of work and higher costs." Resp. at 9. However, the Agency argues that the record before it at the time of its decision does not support Broadus' arguments. *Id.* The Agency states that it rejected the corrective action plan budget amendment "because the budget included \$104,163.03 in costs that lacked supporting documentation." *Id.* The Agency further states that Broadus "does not contend that [the Agency] misread its submittal or overlooked submitted documentation." *Id.*

Under the Board's regulations, costs that may be eligible for payment from the Fund include reasonable costs for corrective action. 35 Ill. Adm. Code 734.625(a)(18). However, "[c]osts exceeding those contained in a budget or amended budget approved by the Agency" are ineligible for payment from the Fund. 35 Ill. Adm. Code 734.630(m). Further, "[c]osts that lack supporting documentation" are also ineligible for payment from the Fund. 35 Ill. Adm. Code 734.630(cc).

Broadus' November 9, 2011 corrective action plan budget amendment specified that the majority of the personnel costs were sought in relation to previously submitted corrective action plans and reimbursement requests. Rec. at 271-272. However, the budget amendment does not provide any explanation for why Broadus seeks these costs now rather than in earlier submittals during 2007 to 2010. *Id.* at 276-279. The submitted budget amendment also makes no reference to discussions between Broadus and Mr. Hale or Mr. Wheeler. The Agency record further does not include evidence from Mr. Hale or Mr. Wheeler pertaining to conversations with Broadus regarding oral authorization. Broadus notes repeatedly that the unrebutted testimony at hearing establishes that the costs "were absolutely necessary" and contradicts the Agency's position that the record was devoid of information regarding the agreement between the parties. Reply at 3, 4. Broadus specifically notes Mr. Green's testimony on the November 2011 meeting with Mr. Albarracin where Mr. Albarracin "informed Mr. Green that his [budget amendment] submittal 'sounds like a decent approach.'" *Id.* at 4, citing Tr. at 26. However, the standard of review is whether *the application, as submitted to the Agency*, would violate the Act and Board regulations. Without any explanation and supporting documentation for the increase in costs in the record before the Agency at the time of its decision, the Agency acted appropriately in denying Broadus' budget amendment request.

Similarly, the costs for increased soil disposal do not include any supporting documentation for the difference from the original budget. The Agency set forth both of these positions in its March 20, 2012 determination letter. Rec. at 1117.

Because the corrective action plan budget amendment includes costs exceeding those contained in the previous budget submittals to the Agency, and because neither the budget amendment nor the record includes supporting explanation or documentation for the increase, they are ineligible for payment from the UST Fund. *See* 35 Ill. Adm. Code 734.630(m), (cc); *See*

also Powers, PCB 11-63, slip op. at 19 (Petitioner's supporting documentation "show only that the costs were actually incurred – not that they were reasonable."). The Agency states as much in its March 20, 2012 determination letter. Rec. at 1117. The Agency was therefore correct in rejecting Broadus' November 9, 2011 corrective action plan budget amendment.

The Agency denial letter meets the requirements of 35 Ill. Adm. Code 734.505(b). The Board finds that Broadus has not met its burden of proving that the November 9, 2011 corrective action plan budget amendment would not violate the Act and Board regulations. The Board therefore affirms the Agency's March 20, 2012 denial letter. As stated by the Agency, these costs may be justified if the appropriate supporting documentation is provided with the budget amendment. The Board notes that Broadus may submit to the Agency a new budget amendment including the appropriate supporting documentation, if it so chooses.

ORDER

The Board affirms the Illinois Environmental Protection Agency's March 20, 2012 determination rejecting Broadus Oil Company's November 9, 2011 corrective action plan budget amendment.

IT IS SO ORDERED.

Section 41(a) of the 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) (2012); *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, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above opinion order on August 21, 2014, by a vote of 4-0.



John T. Therriault, Assistant Clerk
Illinois Pollution Control Board