

BEFORE THE POLLUTION CONTROL BOARD

CHATHAM BP, LLC,)
)
 Petitioner,)
)
 vs.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

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STATE OF ILLINOIS
Pollution Control Board

No. PCB 14-1

TRANSCRIPT OF THE PROCEEDINGS

taken before HEARING OFFICER CAROL WEBB by Carla J.

Boehl, Reporter, at the Illinois Environmental

Agency, Illinois Pollution Control Board Room, 1021

North Grand Avenue East, Springfield, Illinois, on

the 29th day of July 2014, at 10:00 a.m.

1 APPEARANCES:

2 ILLINOIS POLLUTION CONTROL BOARD
3 1021 North Grand Avenue East
4 Springfield, Illinois
5 BY: Ms. Carol Webb, Hearing Officer

6 BROWN, HAY & STEPHENS, LLP
7 205 South Fifth Street
8 Suite 700
9 Springfield, Illinois 62705
10 Ph. (217) 241-6829
11 BY: Mr. William D. Ingersoll

12 Appeared on behalf of the Petitioner

13 ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
14 1021 North Grand Avenue East
15 Springfield, Illinois 62794-9276
16 Ph. (217) 558-3959

17 Appeared on behalf of the Respondent

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EXHIBITS IDENTIFIED
(None)

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PROCEEDINGS

HEARING OFFICER WEBB: Good morning. My name is Carol Webb. This is the hearing for PCB 14-1 Chatham BP, LLC, versus IEPA. It is July 29 and we are beginning at about ten o'clock a.m. There are no members of the public present.

In this case the Board has already granted petitioner's motion for summary judgment on the issue of the Stage II site investigation plan. However, the Board found an issue of material fact regarding petitioner's drum disposal costs which are the subject of today's hearing.

The Pollution Control Board members will make the final decision in this case. My purpose is to conduct the hearing in a neutral and orderly manner so that we have a clear record of the proceedings. This hearing was noticed pursuant to the Act and the Board's rules and will be conducted pursuant to Sections 101.600 through 101.632 of the Board's procedural rules.

At this time I will ask the parties to, please, make their appearances on the record.

MR. INGERSOLL: William D. Ingersoll, Brown,

1 Hay and Stephens for the petitioner Chatham BP, LLC.

2 MR. SIEVERS: Scott Sievers on behalf of the
3 respondent Illinois Environmental Protection Agency.

4 HEARING OFFICER WEBB: Okay. Any preliminary
5 matters to discuss on the record?

6 MR. SIEVERS: No.

7 MR. INGERSOLL: No.

8 HEARING OFFICER WEBB: Okay. Mr. Ingersoll,
9 would you like to make an opening statement?

10 MR. INGERSOLL: Yes, please, very briefly,
11 just to set the stage for why we are here.

12 This matter began at a May 28, 2013,
13 decision by the Illinois EPA that petitioner
14 challenged by petition filed on July 1, I think, of
15 2013. There were two main issues. One of them was
16 about a Stage II plan that was rejected, and Madame
17 Hearing Officer mentioned that. The other part was
18 about a deduction for certain costs of disposal of
19 solid waste in drums that the Board determined in its
20 decision on our cross motions for summary judgment
21 that there did, indeed -- they did find that there
22 was an issue of material fact and that we should go
23 to hearing on that.

24 So that brings us to where we are today.

1 Thank you.

2 HEARING OFFICER WEBB: Okay. Mr. Sievers,
3 would you like to make an opening statement?

4 MR. SIEVERS: No.

5 HEARING OFFICER WEBB: Okay. You may call
6 your first witness.

7 MR. INGERSOLL: Carol Rowe, please.

8 HEARING OFFICER WEBB: Ms. Rowe, if you will
9 come around and have a seat over here. Will the
10 court reporter, please, swear in the witness?

11 (Whereupon the witness was duly
12 sworn by the Reporter.)

13 CAROL LYNN ROWE
14 called as a witness on behalf of Petitioner, having
15 been first duly sworn, was examined and testified as
16 follows:

17 DIRECT EXAMINATION

18 BY MR. INGERSOLL:

19 **Q. Could you state your name, please.**

20 A. Carol Lynn Rowe, R-O-W-E.

21 **Q. Thank you. And where are you employed?**

22 A. CWM Company.

23 **Q. Could you give us a brief outline of your**
24 **education?**

1 A. I have a Bachelor of Science in Geology
2 from Southern Illinois University in Carbondale and a
3 Masters in Environmental Studies from the University
4 of Illinois in Springfield.

5 **Q. And could you give us a brief description**
6 **of your employment history?**

7 A. I started out at the Illinois
8 Environmental Protection Agency, and then I worked
9 for Old Ben Coal Company in southern Illinois, then
10 Department of Energy -- Department of Agriculture and
11 Department of Energy, and then I have been with CWM
12 Company since about 1990, 1991.

13 **Q. And do you hold any registrations or**
14 **certifications?**

15 A. Yes, I am a registered professional
16 geologist, multiple states.

17 **Q. Okay. Illinois?**

18 A. Illinois, yes. Illinois, absolutely.

19 **Q. Thank you. Have you been involved with**
20 **underground storage tank remediation projects?**

21 A. Yes. I started working on underground
22 storage tanks with the State Fire Marshal when the
23 Groundwater Protection Act was first written, and
24 then I worked on them with Old Ben Coal Company in

1 southern Illinois, and then with CWM Company since we
2 founded the company, so since its inception.

3 **Q. Okay. Are you familiar with the issues**
4 **of the drum disposal costs that we are discussing**
5 **here today?**

6 A. Yes, sir.

7 **Q. Could you describe for us generally what**
8 **kind of material lines up -- well, first of all, what**
9 **creates the waste that needs to be disposed in these**
10 **drums, at least in our case?**

11 A. The drill cuttings that come up from the
12 ground are the primary material that goes into the
13 drums. And they come up typically in ribbons which
14 are not like neat, flowing sand that you can just
15 pour into a drum. They are huge curly ribbons that
16 sometimes are unwieldy. They are clay, which is
17 typical Illinois. Sometimes they are pliable;
18 sometimes they are not. Sometimes they break.
19 Sometimes you have to force them. So you have a lot
20 of voids in the drum. And then we also have our
21 decontamination materials that we place into the
22 drum.

23 **Q. Such as?**

24 A. Gloves, liners that we have from

1 examining the soil, borings. We have like the
2 five-foot liners that are probed down into the ground
3 that we examine the soil borings, and the materials
4 that we use to install the wells and so forth. So we
5 usually throw those into the drums. And then if
6 there is not trash receptacles available or whatever,
7 we can't haul back. We try to load those into the
8 drums as well. But anything we have to decon with,
9 we throw into the drums.

10 **Q. Okay. Now, are you familiar with the**
11 **decision letter that was issued on May 28 of 2013?**

12 A. Yes, sir.

13 **Q. And it says, according to the IEPA's**
14 **calculations, four of the eight drums listed for**
15 **solid waste disposal exceed the minimum requirements,**
16 **etcetera, etcetera. Do you have an opinion as to**
17 **whether or not the number of drums necessary for**
18 **disposal is consistent from site to site?**

19 A. Not typically. When we write a plan or a
20 budget, we try to look at kind of an ordinary number
21 and then, when we prepare an actual budget, the
22 number just kind of is what it is. Some sites are a
23 little higher; some sites are a little lower. It is
24 just dependent on what kind of material we encounter

1 at the site, whether it was easier to get into drums
2 or it was harder, whether it was wet, whether it was
3 dryer at the time of year that we drilled. Those
4 kind of factors come into play. So sometimes it is
5 up from what we expected; sometimes it is at what we
6 expected, so.

7 **Q. So, do you have an opinion as to whether**
8 **or not the number of drums is something that's**
9 **amenable to being calculated by a routine formula?**

10 A. I wouldn't think a routine formula would
11 be that easy to predict because your voids are harder
12 to predict, the way the material comes up out of the
13 ground. It is hard to describe it with a
14 stenographer and everybody sitting here, but if you
15 can imagine these big curly ribbons coming up out of
16 the ground, and not every driller uses the exact same
17 equipment. Like right now we are using three to four
18 different drillers. We used to do some ourselves.
19 We don't any more.

20 **Q. Drillers, you mean subcontractors?**

21 A. Subcontractors, correct. So they all
22 have different augers that they use. Some only have
23 one set. Some have one or two. And then the type of
24 material, too, dictates what type of auger that you

1 want to use. And the monitoring well that you
2 install is one size of pipe and then the bore hole is
3 an entirely different size of hole, so that you can
4 get your annular material surrounding that pipe. You
5 don't want it to collapse on you before you are able
6 to get the pipe in the ground. So depending on the
7 stability of the hole, you may have to over-drill it
8 in order to get your pipe in there in time, so.

9 MR. INGERSOLL: Okay, thank you. Nothing
10 further.

11 MR. SIEVERS: Nothing, Your Honor.

12 HEARING OFFICER WEBB: Okay, thank you.

13 You may call your next witness.

14 MR. INGERSOLL: Matthew Rives.

15 HEARING OFFICER WEBB: Would the court
16 reporter, please, swear in the witness?

17 (Whereupon the witness was duly
18 sworn by the Reporter.)

19 THE WITNESS: Do you want me to state what
20 this is?

21 MR. INGERSOLL: No, no. If we need to refer
22 to it, we will hand it to you and then we can direct
23 the court reporter what we need.

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MATTHEW DALE EUGENE RIVES

called as a witness on behalf of Petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. INGERSOLL:

Q. Would you state your name, please.

A. My name is Matthew Dale Eugene Rives.

Q. Would you spell your last name?

A. Rives is spelled R-I-V-E-S.

Q. Thank you. Could you give us a brief description of your education?

A. I graduated from Southern Illinois with a Masters -- or with a Bachelors in Civil Engineering and minors in mathematics and physics.

Q. And could you give us a brief description of your employment history since that time?

A. During that time I worked for IDOT as an intern on some civil engineering projects, and after graduation I have worked for CWM.

Q. Do you know approximately how many underground storage tank cleanups you have worked?

A. Total projects, probably under -- right under 100.

1 **Q. Okay. Are you familiar with the drum**
2 **disposal that occurred at Chatham BP?**

3 A. Yes, I was there.

4 **Q. Okay. And you were the project manager**
5 **for this site?**

6 A. Correct.

7 **Q. And how was the material generated or how**
8 **was it created, the material that you put into the**
9 **drums?**

10 A. When we auger down, the clay that does
11 come out, as stated before, is the ribbons. And
12 after we pull that out, it just comes out in kind of
13 like a pigtail, and we scoop that up and put that
14 into the -- or the drilling company, excuse me,
15 scoops that up and puts it into the drum.

16 **Q. Does that description cover the material**
17 **that you encountered at this site?**

18 A. Yes, it was, I believe, a gray, silty
19 clay.

20 **Q. And how many drums did you fill with**
21 **waste material at this --**

22 A. Eight drums.

23 MR. INGERSOLL: Eight drums. Okay, thank
24 you. I have nothing further.

1 MR. SIEVERS: Nothing, Your Honor.

2 HEARING OFFICER WEBB: All right. Thank you.

3 Mr. Ingersoll, do you have anything
4 further you would like to present?

5 MR. INGERSOLL: No more witnesses. Thank
6 you. No more evidence.

7 HEARING OFFICER WEBB: Okay. Mr. Sievers?

8 MR. SIEVERS: Nothing, Your Honor.

9 HEARING OFFICER WEBB: Nothing. Okay. Well,
10 I guess this is it. Wow, it is a short hearing.

11 MR. INGERSOLL: Could we make a short
12 statement?

13 HEARING OFFICER WEBB: Oh, yeah, you mean a
14 closing statement?

15 MR. INGERSOLL: Yeah.

16 HEARING OFFICER WEBB: I guess we should --

17 MR. INGERSOLL: The briefing issue?

18 HEARING OFFICER WEBB: Yeah, yeah. I was
19 just about to get to that. Let's go off the record
20 for a moment while we discuss a briefing schedule.

21 (Whereupon there was then had an
22 off-the-record discussion.)

23 HEARING OFFICER WEBB: All right. We'll go
24 back on the record.

1 The EPA has nothing they would like to
2 present in this case, so I will conclude the hearing
3 by saying that the transcript is due by August 8 and
4 will be posted on the Board's website.

5 The public comment deadline is August 12.
6 Any public comment must be filed in accordance with
7 Section 101.628 of the Board's procedural rules.

8 The parties have both decided that, in
9 lieu of a briefing schedule, they would like to give
10 a closing argument. So I will go ahead and call on
11 petitioner to make his closing statement.

12 MR. INGERSOLL: Okay. Just very briefly,
13 just to bring the thoughts together, it seems clear
14 that the type of material that goes in these drums is
15 not uniform from one site to the next. And, in fact,
16 in this particular situation it was clay type soil
17 that produced the ribbons that -- ribbons of clay
18 that come out of the drilling. And, therefore, it
19 seems, at least based on what we have heard today,
20 that making a calculation by assuming facts that
21 would be consistent from one site to the next don't
22 really work for this kind of -- to predict or
23 evaluate how many drums of solid waste would be
24 generated in a particular drilling event.

1 So we ask for the Board's order giving us
2 the -- or reinstating the amount that was deducted
3 from the request for reimbursement. I think the
4 amount was \$1,145.92.

5 Thank you.

6 HEARING OFFICER WEBB: Mr. Sievers?

7 MR. SIEVERS: The Agency, along with the
8 petitioner, counsel for the petitioner, filed a joint
9 motion in this case to have judgment entered against
10 the Agency. That was declined by the Board. We
11 recognize the petition does seek 1149 -- I'm sorry,
12 1145.

13 MR. INGERSOLL: 1145.92.

14 MR. SIEVERS: Yeah, \$1,145.92 in costs for
15 drum disposal. It is the hope of the Agency that we
16 minimize the attorney's fees and the court reporter
17 costs that are imposed upon the underground storage
18 tank fund as a result of this proceeding.

19 Thank you.

20 HEARING OFFICER WEBB: At this time I will
21 conclude the proceedings. We stand adjourned. I
22 thank you all for your participation.

23 ADJOURNED AT 10:20 A.M.

24

1 STATE OF ILLINOIS)
) SS
2 COUNTY OF MACOUPIN)

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C E R T I F I C A T E

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I, Carla J. Boehl, a Certified Shorthand
Reporter and Notary Public in and for said County and
State, do hereby certify that the foregoing
transcript contains a true and accurate translation
of my shorthand notes referred to.

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Given under my hand and seal this 6th day of
August, A.D., 2014.

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My commission expires April 13, 2015.

Carla J. Boehl

Certified Shorthand Reporter
Lic. # 084-002710
Notary Public

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