

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

BROADUS OIL COMPANY,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB No. 12-124
ILLINOIS ENVIRONMENTAL)	(UST Appeal – Petition for Review and
PROTECTION AGENCY,)	Hearing/Appeal)
)	
Respondent.)	

POST-HEARING BRIEF OF PETITIONER

NOW COMES Broadus Oil Company, by its attorney, Robert M. Riffle, Esq., and as and for the Post-Hearing Brief of Petitioner, states as follows:

INTRODUCTION

Broadus Oil Company (“Broadus”) retained Midwest Environmental Consulting & Remediation Services, Inc. (“Midwest”) to remediate a Leaking Underground Storage Tank Site. Midwest was the second engineering firm hired by Broadus. The first firm indicated that the site could not be remediated within the cap for expenditures at one site. The property was remediated. As part of that remediation project, the Illinois Environmental Protection Agency (“IEPA”) mandated that very substantial expenditures be incurred by Broadus to not only remediate the subject property (1006 West Main Street, Streator, Illinois) and an adjoining property, (and three (3) separate Incident Numbers) but also to satisfy a neighboring property owner, who had contacted politicians, the United States EPA, and various representations of the IEPA, and had made this project extremely difficult. After mandating that Broadus incur these extraordinary expenses, the two (2) individuals who were primarily responsible for managing this project for the IEPA both passed away. Subsequently, the IEPA rejected certain costs which were undisputedly

incurred and paid by Broadus in connection with the project at issue. At issue in this appeal is the propriety of the expense reimbursement request for \$87,484.16 of personnel time, and \$14,891.84 of Third Party expenses, and \$1,787.02 of handling charges for a total of \$104,163.03. There is no doubt or dispute that the personal time was mutually incurred. The testimony that the personnel time was incurred at IEPA's specific instructions stands un rebutted. Respectfully, these expenses should be reimbursed.

RELEVANT FACTS

Mr. Broadus, owner of Broadus, testified at the hearing. His testimony is found at Transcript pages 33-54.

Q. And, sir, what is your current occupation?

A. I still am president of Broadus Oil Corporation.

Q. And do you have any other positions or activities, board memberships, anything along those lines?

A. In the community, I chair the hospital board, have for a number of years, been involved with HSHS and the sisters here in Springfield for 23 years.

Q. And what is that entity exactly?

A. St. Mary's Hospital.

Q. St. Mary's hospital.

A. Also past president of the Chamber of Commerce and Industrial Development Group.

Q. And what city Chamber of Commerce is that?

A. Streator.

Q. So essentially you've been in the petroleum related businesses since approximately 1977 or so?

A. Yes.

Q. Do you have any significant experience dealing with environmental remediation projects?

A. I've gone through a few.

Q. Okay. Approximately how many sites have you been involved in environmental remediation?

A. Four sites.

(Transcript of Proceedings, pages 36, lines 6-24; page 37, lines 1-11).

I was using Midwest Testing to help us clean the site up, and they did approach me saying that it was going to be a cleanup in excess of \$2.2 million in the report. I was verbally told that it probably could exceed \$5 million which you can imagine the panic at that point in time, at. . . .

(Transcript of Proceedings, page 42, lines 1-6).

Q. So you've had four experiences with environmental remediation, is that correct?

A. Yes.

Q. And is this one unusual in your experience with those four sites? Is this unusual compared to those others?

A. I haven't had nearly as many as Mr. Green, but, yes, this is extremely unusual because it is our nature and it's always been our policy, we do the right thing for our company. We were making every effort to take care of this for a number of years, and because of the denial of not being able to get onto the property to address this, it drug on for a period of time. When the property exchanged hands from the father to the son, for whatever reason I do not know, this disagreed for us to come on site and do some further investigation. We had drilled monitoring wells everywhere on their site through Midwest Testing at that time and realized there had to be a contaminant on their property. At what level we didn't know because we were unable to test. We were denied access. When we were finally given access to the site, we found the level of contamination. Al was able to formulate a corrective action plan that we thought was appropriate and started to move forward.

Q. You heard Mr. Green's testimony regarding his interaction with the IEPA. Did you personally have any interaction with the IEPA regarding any desire to expedite the remediation of this property?

A. I did. 2004 or 5, we had already been in touch with Al through the normal processes of review, and I think it's 120 days if I remember correctly, the processes. There was a lull in action, and at that time, the Stiths became very adversarial

wondering why we weren't doing anything on this property, and we tried to explain to them that it's just the process. It has to be reviewed in Springfield. They had never been through it. I tried to tell them, you know, it just takes time. Shortly after that, I had three federal officials show up in my office from the EPA flashing their badges wanting to know why I had not done any cleanup at 1006 West Main when it was a known LUST site. Very intimidating. Never seen anything quite like that before when, in fact, I'd known that I had spent over ten years and tens of thousands of dollars and hours to address this issue that they were in my office, and I tried to explain to them, yes, I do, and I have been handling this, and I went to my file and I stacked documents this tall (indicating) on my desk to show them all the work we had done and the letters that had been returned to me that Stiths refused to sign to let us on the property all those years at which time he said we know...

MR. SIEVERS: Objection. Hearsay.

HEARING OFFICER WEBB: Well, what was your impression of the -- I'm not sure. What did you do then?

THE WITNESS: Well, he then revealed to me that we do know that you have been doing this. We had concerns that somebody at the IEPA was not following through, and we're here to investigate if they were, in fact, doing their work. Now, I understand that the Illinois EPA gets their money federally funded, and it's passed down and disseminated. So he said some congressman squeaked the wheel here. That's why we're in your office today. It became very adversarial at that point.

Q. Did you also have communications with the Illinois Environmental Protection Agency officials regarding the need to expedite remediation at the property?

A. Yes, I did. I visited with Cliff Wheeler. On at least three occasions he was at my office. Sam Hale was at the site on numerous occasions. In one instance, and again, technically, I may not have this exactly right, but we started this program under Title 16. As time went on, the rules had changed, and we were trying to close under TACO. One of the things that the City of Streator did not have was a groundwater exemption or monitoring.

Q. Groundwater use ordinance?

A. Use ordinance, and the city had a couple in sight that they were concerned about also. So in order for us to make this easy for everybody to get a site closure, we were able to work with the city and came up with a groundwater management ordinance to help us with the groundwater issue. That again created a little bit of a delay. Cliff and Sam were continually, when they were with me also speaking to the Stiths together, explaining to them the groundwater situation. Mrs. Stith, then understanding the rules of not having a LUST site within 500-foot of a potable water source I think is the number, I can't remember, a thousand foot, then must have scoured the neighborhood and summoned Cliff, myself and her and her

husband Bill to the cemetery behind the property, if you look at the maps, to point out a wellhead in a cemetery that she deemed to be potable water when, in fact, when we took the lid off, it was a wooden lid with a city water spigot sticking up out of the ground. It was not potable water.

Q. Did you view the Stiths' efforts as being efforts to delay the process?

A. I don't know why. I think there was some thought, as I think about this, they must have thought there was some monetary gain to be made here by doing, you know, what they were doing.

Q. Indeed did they ever seek monetary compensation from you?

A. Yes, they did on two different occasions. In fact, even after the cleanup was completed, she came to my office and insisted that I pay her \$50,000 for lost rent of the building which rented for \$200 a month. So I don't know how many decades that is of rent but it's substantial.

Q. So you viewed their motive at least in part as potentially monetary, that they were looking to extract compensation from you for all these different efforts?

A. Yes, I did, and Mr. Wheeler thought the same. After our meeting at the well, he took me up to my office, and he said, this is spiraling out of control. This is going to go to court. I do not want this to go to court. There's no reason for this to go to court. We need to cooperate. You need to cooperate, which I insisted I have been cooperating. I've been trying to clean this up for ten years. And from that point on, it just spiraled out of control with continued pressure from the Stiths on some political entity.

Q. You heard Mr. Green's testimony regarding the pressure was brought to bear on him and his company. Do you believe that his testimony in that regard was accurate?

A. Oh, I do, and I'd also like to testify to that trench. I was standing there the day Sam Hale approved that under the pressure of Mrs. Stith because she was concerned that the remaining contamination on our property was going to come across. He insisted that that wasn't possible because of the soils, that that wasn't going to be an issue, and because of the way they had remediated, she insisted that something had to be done, so we put in this trench with the PVC pipe and perforated PCV pipe in two extraction points. To this day, I've never seen water.

Q. And that was something that was expressly approved by the IEPA?

A. I was standing there when Sam said put it in. By the way, I wasn't allowed on the property. I was on my property. I had been banned from there property for

whatever reason. That's why it was adversarial. Again, I was as cooperative as possible through this whole process.

Q. Did you have any conversations with any -- so you've testified to your communications with the U.S. EPA. Any other particular communications with the IEPA that are important to this process?

A. No. I can't remember. A lot of the conversation after the site was closed and blacktopped continued on between Allen, Mr. Hale and Mr. Wheeler.

Q. Any other politicians that were directly involved in this process?

A. I have involved the politician here lately because I feel we were wronged in not being paid for this. We did exactly what we were asked to do. It was a very difficult situation. There wasn't a day when construction folks were on site that Mrs. Stith wasn't videotaping construction workers on site to the point where they were refusing to come to work because they didn't want to be videotaped constantly through the process. It got pretty tough at the end as time went on, and whatever has happened to cause this, I can tell you that we did everything possible to do this in an economic way. We tried TACO. There's extreme pressure put on the various parties that caused this to spiral out of control. We didn't want it. We did everything we could to stop it. We worked with our consultant, we worked with our attorney to try to bring some common sense to this, but it was a very fast moving situation, and a lot of decisions were being made on site, particularly that one, I remember that one specifically. That was made on site by Mr. Hale.

Q. So as I understand it, you're out \$104,000 on this particular project, is that correct?

A. That's correct.

Q. You feel like you did everything that you were supposed to do to make this project work efficiently, correct?

A. Beyond, beyond that, yes.

Q. And do you have quite a bit of your own time involved in this project?

A. Oh, hours. I have a tremendous amount of my own time involved in this, and it goes on today some nine years later and a great deal of legal expense during the process trying to protect ourselves.

(Transcript of Proceedings, pages 44, lines 5-24, page 45, lines 1-24; page 46, lines 1-24; page 47, lines 1-24; page 48, lines 1-24; page 49, lines 1-24; page 50, lines 1-24; page 51, lines 1-24; page 52, lines 1-24; page 53, lines 1-20).

Mr. Green of Midwest testified at the hearing. His testimony is found at Transcript pages 9-30.

Q. Can you approximate how many underground storage tank sites you've personal been involved in in your career?

A. 400 plus.

(Transcript of Proceedings, p. 9, lines 3-6).

Q. Mr. Green, at the time you were engaged by Broadus Oil Company, did you review any documents that were prepared by another environmental consulting firm?

A. Yes.

(Transcript of Proceedings, p. 9, lines 23-24, p. 10, lines 1-3)

Q. And from your review of that document, could you determine the estimate that they had prepared with respect to this particular site?

A. Yes.

Q. And what was that estimate?

A. Two and a quarter million dollars.

(Transcript of Proceedings, p. 10, lines 21-24; page 11, lines 1-2).

Q. What steps did you take after your initial review of the documents to determine whether or not you come remediate the site within the LUST fund cap?

A. We prepared basically a plan and a budget for the EPA to do a further investigation on the site, to gather the information we thought we required to develop a corrective action plan and a budget, and submitted that to the EPA.

(Transcript of Proceedings, p. 11, lines 23-24; page 12, lines 1-7).

Q. In the course of these approximately 400 sites that you've worked on, have you had other sites where you had neighbors involved?

A. Yes.

Q. And where would this rank in terms of the 400 or so that you worked on in terms of the difficulty in dealing with the neighbor?

A. It was the worst we've dealt with.

Q. The out of approximately 400?

A. Right.

Q. And can you give some insight as to the nature, detail the nature of the problems encountered with the neighbor on this particular property?

A. The neighboring property owner would call our office probably about every other day, if not every day, pressuring us to get this done, insisting on what they wanted done with the property, how they wanted it taken care of, how they wanted it paved, how they wanted this done and every other thing that we had phone calls from federal EPA officials stating that she was calling them and putting pressure on them. Local politicians, the city was involved in it heavily, and they owned the property next door to these people, and the city did have some contamination on their property but they were willing to sign off on that. We did not have to address the contamination on their property, but she was using the city to put pressure on too in order to get this resolved. We would get letters from this individual stating that she was taking legal action.

(Transcript of Proceedings, page 15, lines 6-24; page 16, lines 1-14).

Q. BY MR. RIFFLE: So you were receiving both letters and phone calls directly from the Stiths, is that correct?

A. Yes.

Q. And you were also receiving contact from the city, is that correct?

A. Yes.

Q. And at least on one occasion you received notifications from the U.S. EPA?

A. Yes.

Q. And what form did the contact from the politicians occur?

A. The local state representative contacted us and told us that he was aware of the situation.

BY MR. RIFFLE: And who was the local politician?

A. Frank Mautino.

Q. And what is his position?

A. He's the state representative.

Q. And can you approximate the timeframe over which these various contacts occurred?

A. Over the course of about four years.

Q. Pretty much the whole time you were actively working on the project?

A. And afterwards, yes.

Q. You had mentioned that you also received contact from EPA, and I want to get the names of the EPA personnel into the record and have you identify exactly who you were talking to. I understand you were talking to Sam Hale, is that correct?

A. Yes.

Q. And what was Sam Hale's position?

A. He was the project manager for the EPA assigned at the site.

Q. And let's talk about the contacts you had with him regarding this project, particularly as it related to the dealings with the neighboring landowner. Can you, for the record, identify those communications?

A. Sam was directly in charge of plans and the budgets, everything that was sent in to the EPA for approval.

(Transcript of Proceedings, page 17, lines 23-24, page 18, line 1-13; page 18, lines 19-24; page 19, lines 1-24; page 20, lines 1-20; page 22, lines 3-7)

Q. You also indicated that you had communication with Cliff Wheeler, is that correct?

A. Yes.

Q. And who was Cliff Wheeler?

A. It was Sam Hale's supervisor.

Q. And particularly with respect to the involvement with the neighboring landowner, what do you recall about your communications with Cliff Wheeler?

A. That he was aware of the political pressure that was taking place and told us directly that he wanted to expedite the project, do what needed to be done to resolve the situation as expeditiously as possible.

Q. Do you recall approximately how many times Mr. Wheeler made those statements to you as far as expediting the project?

A. Not exactly. Probably half a dozen times.

Q. Okay. And with respect to how that impacted the paperwork and the budgeting process on this particular project, how did Mr. Wheeler's comments to you impact that?

A. Normally if we ran into a situation on a project that would require a change or additional work, we would stop and submit in writing a plan and a budget to make those changes and get the approval before we initiated any of those changes.

In this case, we were told to inform. You know, by phone we would call Sam and say this is what we've run into. This is what we have. This is what we propose, and we were told we did not have to stop everything. Send in a plan and a budget that he could get approval from Cliff to proceed if they thought it was appropriate, and that it would be taken care of in the end in order to expedite things and get it done, and that's what we did.

Q. And these are the conversations you had with Sam Hale?

A. Yes.

Q. And did you also receive similar statements directly from Cliff Wheeler to that effect?

A. Yes.

Q. At some point in time, did you have any conversations with Hernando?
First, could you identify Hernando for the record?

A. Hernando Albarracin is in charge of the LUST section at the Illinois EPA.

MR. RIFFLE: I've got the spelling here. It's A-l-b-a-r-r-a-c-i-n, and the first name is H-e-r-n-a-n-d-o.

Q. At some point in time, did you have communications with Mr. Albarracin?

A. Yes.

Q. And what do you recall about those conversations?

A. In November of 2011, we had a meeting here at the Springfield office regarding several sites of which Broadus was one to try to resolve some issues that we had. At that time, we expected Sam and/or Cliff to be at the meeting. That is when we found out that they were no longer here. We talked to Hernando that we had sent previous of this meeting a corrective action plan and budget amendment. We had issues with time that was not taken care of in the original plan and budget over the course of the entire project. Rather than trying to tie all the individual pieces to all the individual plans and budgets and piece it together, we were told by Sam to submit a plan and budget amendment, to wrap up everything that was left on the site, break it down over the time periods and send it to him, and he would review it, and that's how we would tie all the loose ends together. We submitted that about a month before that meeting to the EPA, to Sam. When we came to the meeting, we found out that Sam wasn't here anymore, and neither was Cliff, and Hernando at the meeting said, well, that's not normally the way we would do it, but that sounds like, you know, a decent approach. I'll have somebody review it, and, you know, we'll get it resolved. And that's all we had as far as contact with Hernando Albarracin.

Q. The document you referred to, that's the high priority corrective action budget amendment, is that correct?

A. Yes.

Q. And that was submitted in November of 2011, is that correct?

A. Yes.

Q. And the amount that you were seeking in that document -- I just want to refer you to a document to make sure we're talking about the correct amount. Was there a total personnel amount that you were seeking in that document?

A. Yes.

Q. And could you recite that for the record?

A. \$87,484.16.

Q. And was there also a third-party cost involved in that submittal?

A. Yes.

Q. And could you recite that for the record?

A. \$14,891.84.

Q. And do you recall what that \$14,000 figure was for?

A. There was a discrepancy because we put the trench in along the property boundary in the proposed landfill amount versus what the actual was.

Q. And there is a figure mentioned in the appeal that you're seeking or Broadus is seeking in this particular appeal. Can you recite that number into the record?

A. \$104,163.03.

Q. And that's the sum of that \$87,000 number and the \$14,000 number?

(Transcript of Proceedings, page 22, lines 3-7; page 22, lines 22-24; page 23, lines 1-24; page 24, lines 1-24; page 25, lines 1-24; page 26, lines 1-24; page 27, lines 1-24).

Q. For the record, did Midwest Environmental perform all the services referenced in that personnel cost that is being sought here today?

A. Yes.

Q. And was the \$14,000 figure for the landfill actually incurred and paid in connection with this particular project?

A. Yes.

(Transcript of Proceedings, page 28, lines 5-12)

Q. So you're looking for \$104,000 of additional money, is that correct?

A. Right.

Q. On behalf of Mr. Broadus?

A. Yes.

Q. And if somebody had indicated to you that there was some deficiency in your submittal, what would you have done in response to that?

A. Worked with the person that was in charge or sent the denial letter to determine what it was they were lacking and what we could do to resolve the situation.

Q. And what was your first indication that there was some problem in that regard?

A. The letter that we received.

Q. The Exhibit B letter, is that correct?

A. Right.

(Transcript of Proceedings, page 113, lines 14-24; page 114, lines 1-7).

The IEPA called two witnesses, neither of whom were contemporaneously involved in the project during the time that remediation was underway.

Shirlene South testified as follows:

Q. How did you first become involved in this particular Broadus site?

A. I was assigned Exhibit A. That was my first involvement.

Q. And at that time, what did you know about the site?

A. Nothing until I reviewed it.

(Transcript of Proceedings, page 77, lines 13-19).

Q. Have you ever been to the site?

A. No.

Q. Do you know anything about the site?

A. I looked at it briefly.

Q. Okay. And in Exhibit A on page 2 of the budget amendment, the first two sentences of that state, "Corrective action at this site was complicated by offsite issues resulting in many personnel hours spent to meet the demands of the offsite property owners. The IEPA should be well aware of the complicated issues and the time required both on the part of IEPA personnel and Midwest personnel to keep the remedial activities moving forward." Do you see that reference there?

A. Yes.

Q. Did you undertake any analysis to determine whether those two sentences are accurate?

A. I reviewed the previous budgets and I cannot approve costs without justification.

Q. But specifically those two sentences -- let me ask it this way. Do you have any reason to believe those two sentences aren't accurate?

A. I don't know.

Q. You sat through Mr. Green's testimony here today, didn't you?

A. Yes.

Q. And you sat through Mr. Broadus's testimony here today?

A. Yes.

Q. Do you have any specific evidence to contradict any statements that either Mr. Green or Mr. Broadus made during their testimony?

A. No.

Q. Do you have any reason to believe that the costs incurred that are being sought in this case were not actually incurred?

A. I have no idea. I was never sent any further submittals.

(Transcript of Proceedings, page 79, lines 16-24; page 80, lines 1-24; page 81, lines 1-7)

Q. BY MR. RIFFLE: My question is do you have any evidence to contradict whether those hours were actually expended?

A. Once again, I have no idea.

(Transcript of Proceedings, page 80, lines 16-19)

Q. I want to make sure I understand your testimony as far as when something happens in the field necessitating a change. Are there circumstances where some consultant will call you and say I need to drill two more wells, something along those lines?

A. Uh-huh.

Q. And that's yes?

A. Yes, I have received such phone calls.

Q. And have you ever approved that type of a thing over the phone?

A. Yes.

(Transcript of Proceedings, page 81, lines 20-24, page 82, lines 1-8).

Q. Now, we've heard testimony here today⁸ that Mr. Hale approved the installation of, as I understand it, a trench.

20 A. I've heard that here.

21 Q. Do you have any reason to believe that that didn't occur?

A. This is the first I've heard of it.

(Transcript of Proceedings, page 82, lines 17-23).

Q Do you know if other project managers for instance approve orally things such as additional wells being installed?

A. I don't know what the other project managers do.

Q. Have you ever talked to Mr. Broadus?

A. No.

Q. Have you ever talked directly to Mr. Green?

A. No.

Q. With respect to this landfill disposal quantity, are you able to go back to the record and determine how many tons of contaminated soil were actually transported offsite?

A. No.

(Transcript of Proceedings, page 83, lines 7-21).

Q. Were you able to determine that anything was transported offsite?

A. I never saw any manifests.

(Transcript of Proceedings, page 83, lines 22-24).

IEPA employee Brian Bauer testified as follows:

Q. Have you ever reviewed the Broadus file?

A. Portions of it.

Q. And for what purpose?

A. For the previous appeal.

Q. Are you familiar with any of the issues related to the adjacent landowner?

A. Yeah. I'm aware that they had some excavations offsite, things like that.

Q. And how did you become aware of that?

A. By reviewing the file.

Q. Do you have any reason to believe that the hours that are requested in Exhibit A were not expended?

A. I do have some questions and concerns as to what those hours were for.

Q. But how about whether they were actually performed?

A. I don't know.

Q. And you obviously were not a party to any conversations between Mr. Green and Mr. Hale, correct?

A. Correct.

Q. And the same with respect to the conversations between Mr. Green and Mr. Wheeler?

A. That would be correct.

Q. And the same clearly with respect to any conversations that Mr. Broadus had with those gentleman?

A. Correct.

Q. And do you have any reason to dispute either the testimony of either Mr. Broadus or Mr. Green as they testified here today?

A. No.

(Transcript of Proceedings, page 100, lines 15-24; page 101, lines 1-24)

Q. Are you aware that EPA LUST project managers approve higher costs sometimes by a telephone call?

A. Yes.

(Transcript of Proceedings, page 104, lines 16-19).

ARGUMENT

1. The Testimony of Steve Broadus and Allen Green stands unrebutted, and must taken as True.

As the Court noted in **Sweilen v. Illinois Department of Revenue**, 865 N.E. 2d459 (1st Dist. 2007):

Our supreme court has clearly indicated that in Illinois a finder of fact may not simply reject unrebutted testimony. *Bucktown Partners v. Johnson*, 119 Ill.App.3d 346, 353-55, 75 Ill.Dec. 20, 456 N.E.2d 703 (1983), citing *People ex rel. Brown v. Baker*, 88 Ill.2d 81, 85, 58 Ill.Dec. 875, 430 N.E.2d 1126 (1981); *Bazydlo v. Volant*, 164 Ill.2d 207, 215, 207 Ill.Dec. 311, 647 N.E.2d 273 (1995). As the Illinois Supreme Court has explained, although "the credibility of witnesses and the weight to be accorded their testimony are typically jury considerations [citations], a jury cannot arbitrarily or capriciously reject the testimony of an unimpeached witness [citations]." *People ex. rel. Brown*, 88 Ill.2d at 85, 58 Ill.Dec. 875, 430 N.E.2d 1126. This is true even though the witness may be an interested party or an employee of one of the parties. *Chicago & Alton R.R. Co. v. Gretzner*, 46 Ill. 74, 80 (1867); *Bucktown Partners v. Johnson*, 119 Ill.App.3d at 352, 75 Ill.Dec. 20, 456 N.E.2d 703.

Under the standards announced in *Bucktown Partners* and *People ex rel. Brown*, a fact finder may not discount witness testimony unless it was impeached, contradicted by positive testimony or by circumstances, or found to be inherently improbable. *Bucktown Partners*, 119 Ill. App.3d at 353, 75 Ill.Dec. 20, 456 N.E.2d 703, citing *People ex rel. Brown*, 88 Ill.2d at 85, 58 Ill.Dec. 875, 430 N.E.2d 1126. "Under Illinois law, a witness' testimony is inherently improbable if it is 'contradictory of the laws of nature or universal human experience, so as to be incredible and beyond the limits of human belief, or if facts stated by the witness demonstrate the falsity of the testimony.'" *Bucktown Partners*, 119 Ill.App.3d at 354, 75 Ill.Dec. 20, 456 N.E.2d 703, quoting *Kelly v. Jones*, 290 Ill. 375, 378, 125 N.E. 334 (1919).

The testimony of Mr. Broadus and Mr. Green stands entirely unrebutted. They were not in any way impeached. In fact, when given an opportunity to rebut any portion of that testimony, Mr. Bauer, the senior IEPA employee who testified at the hearing, testified as follows:

Q. And do you have any reason to dispute either the testimony of either Mr. Broadus or Mr. Green as they testified here today?

A. No.

Under **Bucktown Partners** and **People ex rel. Brown**, the unrebutted testimony of Mr. Broadus and Mr. Green cannot be discounted, and must be accepted as true.

2. **Both Mr. Broadus and Mr. Green presented unrebutted testimony that they were instructed to perform remediation services outside the normal pre-approved process.**

As quoted in detail above, the unrebutted testimony of Mr. Green and Mr. Broadus establishes that they were specifically instructed and authorized by IEPA officials to perform substantial services for which pre-approval was not provided. (Transcript, pp 23-24; 45-46, 50, 51). While this was unusual, it was not unprecedented. (Transcript p. 82, lines 6-16). Moreover, both Mr. Green and Mr. Broadus explained, at length, the reasons for the unusual circumstances, particularly the political pressure and neighboring landowner involvement. The unrebutted testimony by Mr. Broadus and Mr. Green that the expenses in question in this case were incurred pursuant to the direction and instruction of the IEPA must be accepted.

3. **The IEPA has acknowledged that IEPA Project Managers make exceptions to the Pre-approval Requirements.**

Although the IEPA witnesses attempt to draw a distinction between this project and others based on the magnitude of the exceptions, it is clear that IEPA project managers routinely orally approve changes which are not pre-approved as part of Correction Action Plan and Budget based on circumstances encountered in the field. (Transcript pp. 81, 82, 87-89, 104). In this case, the magnitude of problems encountered in the field was incredible. Mr. Green testified that it was the worst case of neighboring property conflict he had encountered in the course of remediation over 400 sites. (Transcript p. 15, lines 10-15). By practice and procedure, IEPA Project Managers exercise discretion in dealing with site specific issues. Just because the magnitude of the problems and corresponding expenditures exceeded the level that had been encountered by Shirley South,

an individual who had no direct involvement in the site, provides no grounds for denial of reimbursement in this case.

4. It is undisputed that the hours in question were actually expended, and the costs in question were actually incurred.

Mr. Green testified that the hours were actually expended, and expenses actually incurred. (Transcript p. 28, lines 5-12)

Mr. Broadus testified that the expenses were paid, and that his company is “out” the \$104,163.03 at issue in this case. (Transcript p. 53, lines 6-13).

Ms. South acknowledged that she had no reason to believe that the hours were not actually expended, that evidence to contradict the testimony that the expenses were actually incurred. (Tr. pp. 80-82).

Similarly, Mr. Bauer had no reason to dispute the testimony of Mr. Broadus or Mr. Green. (Transcript p. 100, lines 15-24; p. 101, lines 21-24).

Again, the unrebutted testimony of Mr. Broadus and Mr. Green must be accepted as true, and not discounted. See e.g., **Sweilen, Bucktown Partners**, and **People ex. rel. Brown**, *supra*.

CONCLUSION

It is undisputed that Petitioner reasonably and necessarily incurred the personnel costs which are at issue in the amount of \$87,484.16, the third party costs, in the amount of \$14,891.84, and handling costs of \$1,787.02 in remediating the subject property, and that these reasonably and necessarily incurred personnel costs and third party costs have not been reimbursed. The undisputed testimony is that these expenses were verbally approved by IEPA Project Managers, and that Broadus and its consultant were instructed to incur these expenses. It is respectfully

submitted that there is no valid ground for denial of the personnel charges and third party expenses at issue in this case. The relevant testimony in support of Petitioner's claims stand un rebutted.

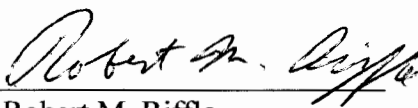
As the IEPA knows full well, this was a very difficult site, for technical and other reasons. Substantial off-site migration of contamination had occurred, and a neighboring property owner had pursued legal and political channels. Petitioner had hired a previous consultant, which had proposed remediation which would have cost well in excess of \$1,500,000 cap. Petitioner's replacement consultant, Midwest, with unprecedented oversight and instruction from IEPA Project Managers and Supervisors, completed the remediation well within the cap, including substantial offsite remediation and complex agreements with the neighboring property owner. The individuals who appeared for the IEPA at the hearing, had no first-hand familiarity and/or personal involvement with the project, and were not in a position to rebut the relevant testimony.

With all due respect, Broadus should not be denied reimbursement of substantial expenses which it has already paid, based on the subjective views of IEPA personnel who were not directly involved in this remediation project. Moreover, it has been difficult for small and medium sized remediation contractors to survive over the past decade in this economic environment with the Illinois Leaking Underground Storage Tank Fund's well-known solvency problems. The IEPA's failure or refusal to pay for personnel charges and third party expenses which they freely admit were reasonably and necessarily incurred is a source of great frustration to Petitioner and Midwest. The personnel costs and third party expenses were reasonably and necessarily expended, and should be paid.

For the foregoing reasons, Petitioner respectfully requests approval and reimbursement of costs which indisputably were necessarily incurred and paid by Broadus in connection with the remediation of the Subject Property, in the aggregate amount of \$104,163.03.

Respectfully submitted,

BROADUS OIL COMPANY, Petitioner

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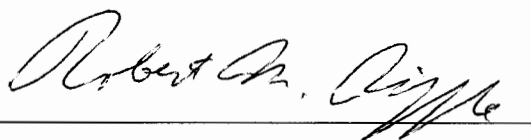
CERTIFICATE OF SERVICE

The undersigned certifies that on June 2, 2014, 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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