

ILLINOIS POLLUTION CONTROL BOARD  
September 22, 2016

KNAPP OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 16-103
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

PATRICK D. SHAW, LAW OFFICE OF PATRICK D. SHAW, APPEARED ON BEHALF OF PETITIONER, and

MELANIE JARVIS, SPECIAL ASSISTANT ATTORNEY GENERAL, APPEARED ON BEHALF OF RESPONDENT.

INTERIM OPINION AND ORDER OF THE BOARD (by J.D. O’Leary):

Knapp Oil Company (Knapp) appeals a determination by the Illinois Environmental Protection Agency (Agency or IEPA) concerning Knapp’s leaking underground storage tank (UST) site in Metropolis, Massac County. The Agency modified Knapp’s site investigation budget by finding that some proposed costs were either not reimbursable from the State’s UST Fund or will require additional information at the reimbursement stage.

For the reasons below, the Board today reverses the Agency’s determination to modify the budget for costs associated with a camera. While indirect costs are not reimbursable from the UST Fund, the record demonstrates that a charge for use of a camera to document site investigation is not an indirect corrective action cost for equipment. The Board also finds that the determination did not properly modify the budget for costs associated with a bailer, survey equipment, and a sampling kit and deems the budget for those items to be approved. When reviewing a proposed budget, the Agency must either reject, modify or approve it. The Agency cannot extend its review by tentatively accepting proposed costs while requiring additional information at the reimbursement stage. The Board directs Knapp to submit a statement of legal fees that may be reimbursable and allows the Agency to respond.

The Board’s opinion first provides the procedural history and facts before setting forth the legal background. The Board then discusses the issues on appeal before reaching its conclusion and issuing its order.

## **PROCEDURAL HISTORY**

On April 14, 2016, Knapp Oil filed its petition for review (Pet.). On April 21, 2016, the Board accepted the petition for hearing. On June 6, 2016, the Agency filed the administrative record (R.).

The hearing took place on June 28, 2016, and the Board received the transcript (Tr.) on July 5, 2016. One witness testified at hearing on behalf of the Agency: James R. Malcolm III, an employee of the Agency's UST Section. Tr. at 8. The hearing officer admitted into the record two exhibits. Petitioner's Exhibit A (Pet. Exh. A) is the Agency's "Instructions for the Budget and Billing Forms" updated April 2009. See Tr. at 7. Agency Exhibit A (Agency Exh. A) is an excerpt from the 2014 10th Edition of Black's Law Dictionary including definitions of "direct cost" and "indirect cost." See Tr. at 11. Both are separately discussed below under "Board Discussion." The Agency submitted a second exhibit as an offer or proof after the hearing officer declined to admit it. Tr. at 14-16. The Agency has not filed a timely objection or addressed the admissibility of the exhibit in its brief, and the objection to the hearing officer is deemed to have been waived. 35 Ill. Adm. Code 101.502(b). Although the hearing officer set a deadline of July 12, 2016, to file public comments (Tr. at 20), the Board did not receive a public comment in this case.

On July 22, 2016, Knapp filed its post-hearing brief (Pet. Brief). On August 8, 2016, the Agency filed its response brief (Resp.). On August 18, 2016, Knapp filed its reply (Reply).

## **FACTS**

The following four subsections of the opinion provide facts pertaining to the reported release of gasoline at the site and early action there, Knapp's site investigation plan, Knapp's site investigation budget, and the Agency's determination.

### **Release and Early Action**

Knapp operates a convenience store at 1117 East 5th Street in Metropolis, Massac County. R. at 10; *see id.* at 36. In 1999, the Illinois Emergency Management Agency (IEMA) received a report of a release of gasoline at the site. IEMA also received a duplicate report of that release. R. at 9-10; *see id.* at 21, 36, 52. In October 2014, IEMA received a report of a release of gasoline from two 10,000-gallon USTs at the site.<sup>1</sup> R. at 8; *see id.* at 21, 36. IEPA requested that the three incidents at the site be addressed at the same time. *Id.* at 9.

On November 12, 2014, early action at the site included removing two tanks, affected backfill material, and affected groundwater contained in the backfill material. R. at 8, citing 35 Ill. Adm. Code 734.210(f). Laboratory analysis of soil samples collected during early action confirmed contaminant concentrations exceeding remediation objectives in the Tiered Approach to Corrective Action Objectives (TACO). R. at 8; *see id.* at 16, 18 (Table 1: Early Action Soil Analytical Summary), 19 (Site Map).

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<sup>1</sup> The Office of the Illinois State Fire Marshal determined that Knapp is eligible to seek payment of costs in excess of \$5,000. R. at 34.

Conditions at the site led the Agency to conclude that investigation beyond the tank excavation should be limited to areas from which product stored in the USTs was dispensed. R. at 9. On November 13, 2014, soil borings collected soil samples from near each of the four pump islands located south of the store building at the site. *Id.*; *see id.* at 19. In addition, a soil sample was collected from a fifth boring west of the former location of the USTs, toward the pump islands. R. at 9. For each of the nine samples collected from these five borings, laboratory analysis confirmed no contaminant concentrations exceeding TACO remediation objectives. *Id.*; *see id.* at 18.

### **Stage 1 Site Investigation Plan**

By letter dated February 25, 2016, Chase Environmental Group, Inc. submitted to the Agency on behalf of Knapp a Stage 1 site investigation plan and budget for the site. R at 1, 6-7. Because the 1999 incidents had progressed toward obtaining a No Further Remediation letter, Knapp submitted the plan and budget to ensure that investigation of the 2014 incident complies with the Agency's January 13, 2015 request to address the three incidents at the same time. *Id.* at 10.

The Stage 1 plan proposes installation of monitoring wells near the east, north, and west boundaries of the site. R. at 12; *see id.* at 11, 19. The plan also proposes to collect groundwater samples from monitoring wells installed in response to the previous incidents at the site. R. at 11. A site visit on January 12, 2016 located six of those monitoring wells. *Id.*; *see id.* at 19, 36, 45 (January 2003 site map). If two monitoring wells that had been installed along the north boundary cannot be located with a magnetometer during Stage 1 site investigation, then the plan proposes to install a monitoring well there. R. at 11. If samples from monitoring wells to the west of the tank excavation confirm contaminant concentrations exceeding standards, then the plan will include a monitoring well along the west boundary of the site. *Id.* at 13; *see id.* at 19. The plan will develop and recondition monitoring wells using disposable bailers. *Id.* at 13.

To define the extent of soil contamination, the Stage 1 plan proposes to advance two soil borings south of the removed tanks and one soil boring west of them. R. at 12; *see id.* at 19. If investigation locates monitoring wells installed along the north boundary, the plan proposes to advance a soil boring there. *Id.* at 12. If those monitoring wells cannot be located, this boring will be finished as a monitoring well. *Id.* at 12-13. The plan also proposes to collect soil samples from the boring on the east boundary of the site. *Id.* at 13. The boring will be finished as the proposed monitoring well at that boundary. *Id.*

On March 8, 2016, the Agency approved Knapp's site investigation plan. R. at 52; *see id.* at 37 (technical review notes).

### **Stage 1 Site Investigation Budget**

The Stage 1 Site Investigation Plan includes a budget of \$34,581.30 in estimated costs to perform the plan. R. at 20-33; *see id.* at 17. A number of these costs are not contested in this appeal.

Under the category of Analytical Costs, the budget proposes itemized laboratory analysis costs of \$5,298.57. R. at 22, 24-25. In addition to costs for Chemical Analysis, Geo-Technical Analysis, and Metals Analysis, the budget proposes “Other” items. *Id.* at 25. In this category under “EnCore© Sampler, purge-and-trap sampler, or equivalent sampling device,” the budget lists 30 samples at a cost of \$12.39 for a total budgeted amount of \$371.70. *Id.*

Under the category of Consultant’s Materials Costs, the budget proposes items under a number of listings with total costs of \$1,970.50. R. at 22, 31-32. Among those items, the budget lists “Digital Camera” to document Stage 1 site investigation activities. *Id.* at 31. At a rate of \$30.00 per day for one day, budgeted total cost for the camera is \$30.00. *Id.*; *see* Tr. at 11. The budget for these expenses also lists “Survey Equipment” to survey well risers. R. at 31. At a rate of \$150.00 per day for one day, budgeted total cost for this equipment is \$150.00. *Id.* The budget for these expenses also lists nine “Bailers” for well reconditioning, well development, and groundwater sample collection. R. at 31. At a cost \$25.00 each for nine used, the budgeted total cost for these items is \$225.00. *Id.*

### **Agency Determination**

In its March 8, 2016 determination, the Agency modified Knapp’s proposed Stage 1 site investigation budget. R. at 52; *see id.* at 37.

The listed budget modifications state that the camera cost is not reimbursable because it is an indirect cost billed as a direct cost. R. at 56; *see id.* at 31; Tr. at 9. The Agency made this determination because the cost for a camera was for film processing. Photos are now taken mostly on digital cameras. Tr. at 9-10. Because film is rarely used, Mr. Malcom, the Agency’s project manager for the site, determined that the proposed cost was indirect and not reimbursable. Tr. at 9-10.

The Agency’s determination letter identified three other “modifications.” R. at 56; *see* Tr. at 12. First, “[t]he rate proposed for the bailer will need supporting documentation as the proposed rate of \$25/bailer is deemed excessive at this time.” R. at 56; *see id.* at 31. Second, “[j]ustification is being requested in regard to the cost associated with the survey equipment. What type of survey equipment is being used?” *Id.* at 56; *see id.* at 31. As the third, the Agency states that “[a] breakdown of items associated with a sampling kit will need to be submitted to determine if this exceeds the minimum requirements to meet Title XVI.” *Id.* at 56; *see id.* at 31-32. Mr. Malcom described these three modifications as “asking for justification when the bills are submitted.” Tr. at 11-12. “[I]t wasn’t an actual cut. It was a suggestion that when the actual cost came through that I had documentation.” *Id.* at 13; *see id.* at 18.

### **LEGAL BACKGROUND**

#### **Title XVI of Act and Part 734 of Board’s Regulations**

The Act requires the Agency to determine whether budgeted costs are reasonable, will be incurred in performing site investigation, and will not exceed Title XVI’s minimum requirements

for site investigations. 415 ILCS 5/57/7(c)(3) (2014); *see* 35 Ill. Adm. Code 734.510(b) (requiring that budgeted costs also be consistent with associated technical plan and maximum payments in Subpart H of Part 734).

The Board's UST regulations provide that, if the Agency rejects a budget or requires modification, it must (1) explain the specific information needed to complete review; (2) explain sections of the Act or regulations that may be violated; and (3) specifically state why those sections may be violated if the request is approved. 35 Ill. Adm. Code 734.505(b).

The Board's UST regulations also provide that costs ineligible for payment from the UST Fund include purchase costs of non-expendable materials, supplies, equipment, or tools, except that a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools. 35 Ill. Adm. Code 734.630(h).

### **Standard of Review**

The standard of review under Section 40 of the Act (415 ILCS 5/40 (2014)) is whether Knapp's submissions to the Agency would not 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 Indus. of Ill. v. PCB, 534 N.E.2d 616 (2nd Dist. 1989). 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 Serv. Ctr. v. IEPA, PCB 95-43, slip op. at 14 (May 18, 1995). The Agency's denial letter frames the issues on appeal. Pulitzer Cmty. Newspapers, Inc. v. IEPA, PCB 90-142 (Dec. 20, 1990).

### **Burden of Proof**

The Board's procedural rules provide that, in appeals of final Agency determinations, "[t]he burden of proof shall be on the petitioner. . . ." 35 Ill. Adm. Code 105.112(a), citing 415 ILCS 5/40(a)(1), 40(b), 40(e)(3), 40.2(a) (2014). The standard of proof in UST appeals is the "preponderance of the evidence." Freedom Oil Co. v. IEPA, PCB 03-54, 03-56, 03-105, 03-179, 04-04 (cons.), slip op. at 59 (Feb. 2, 2006), citing McHenry County Landfill, Inc. v. County Bd. of McHenry County, PCB 85-56, 85-61, 85-62, 85-63, 85-64, 85-65, 85-66 (consol.), slip op. at 3 (Sept. 20, 1985) ("A proposition is proved by a preponderance of the evidence when it is more probably true than not.").

### **BOARD DISCUSSION**

The following four sections of the opinion discuss the Agency's argument regarding the burden of proof in UST appeals; the disputed camera costs; and the Agency's determination regarding costs for bailers, survey equipment, and sampling kits before turning to Knapp's request for reimbursement of legal fees.

### **Burden of Proof**

The Agency argues that recent Board decisions have in effect shifted the statutory burden of proof from UST petitioners to the Agency. Resp. at 5. The Agency asserts that, as a result of this shift, it “was forced” to present evidence and testimony. *Id.* The Agency emphasizes that Knapp presented no witness and submitted a single exhibit addressing only one of the budget modifications. *Id.* at 3, 5. The Agency suggests that a petitioner presenting this amount of evidence normally cannot meet its burden of proof. *See id.* at 5.

The Agency cites no case to support this claim. The Board is unpersuaded and will apply the burden of proof as stated above.

### **Camera**

Board regulations provide that “[i]ndirect corrective action costs for personnel, materials, service, or equipment charged as direct costs” are ineligible for reimbursement. 35 Ill. Adm. Code 734.630(v). The Agency determined that “[t]he cost associated with the camera will not be reimbursable as this is an indirect cost billed as a direct cost.” R. at 56. The question, then, is whether the cost for a camera is an indirect corrective action cost for equipment.

The Agency’s own forms consider a camera as a reimbursable cost. Its “Instructions for the Budget and Billing Forms” list “cameras/photo development” as equipment and supplies that can be included with the Consultant’s Materials Costs Form. Pet. Brief at 6, citing Pet. Exh. 1 at 15. The contents of this form have regulatory weight because the budget must be submitted to the Agency “on forms prescribed and provided by the Agency.” 35 Ill. Adm. Code 734.135(a). Though Agency forms do not supersede Board regulations when determining what costs may be reimbursed, the forms show what is typically considered a direct cost. Although the regulations do not define “indirect costs” or “direct costs,” they provide that costs ineligible for reimbursement include interest, finance or insurance costs charged as direct costs. 35 Ill. Adm. Code 734.630(t), (u). Therefore, the Board finds that the costs for a camera are reimbursable.

The Agency counter-argues that costs for a camera should not be reimbursable because a camera is “not used directly in the remediation of a leaking underground storage tank site.” Resp. at 6. The Agency argues that “[a] camera is a one-time purchase” and that use of a camera is merely a general or administrative activity taking place during remediation. Resp. at 6, citing Agency Exh. A (Black’s Law Dictionary).

Although the UST rules do not generally allow reimbursement of the purchase cost of non-expendable items, “a reasonable rate may be charged for the usage of such materials, supplies, equipment, or tools.” 35 Ill. Adm. Code 734.630(h). However, just because a camera is a one-time purchase and is non-consumable, this alone cannot make it ineligible for reimbursement. For example, Knapp also requested reimbursement for a photoionization detector (PID), as listed in the Agency’s form instructions. Pet. Exh. 1 at 15. A PID is non-consumable and non-disposable field equipment similar to a camera. The Agency rightly took no issue with the cost to use a PID. R. at 31, 56.

Lastly, the Agency argued that the costs for a camera should not be reimbursable because “[a] camera and film are rarely, if ever, used anymore.” Resp. at 6; *see* Tr. at 9-10. Instead, the Agency states that digital cameras are now normally used. Agency Resp. at 6. However, this argument has no basis in Board regulations. Even if camera and film costs are rarely incurred, that alone does not make them unreimbursable indirect costs.

The Board finds that Knapp has met its burden of proving that the proposed budget of \$30 in camera costs would not violate the Act and Board regulations. The Board reverses the Agency’s modification of this proposed cost.

### **Bailer, Survey Equipment, and Sampling Kit Material**

In several instances, the Agency appears to provisionally approve budgeted amounts, pending submission of additional documentation of these costs when Knapp submits them to the Agency for reimbursement. This approach is not permitted by Board regulations – the Agency must reject, modify, or approve the request. If the Agency rejects or modifies a budget, it must specify the specific information, if any, it needs to complete its review. Each budget request is separately addressed below, followed by a discussion.

#### **Bailer**

The Agency’s modification states that it “will need supporting documentation” for a budgeted rate “deemed excessive at this time.” R. at 56.

Knapp first argues that, because the Agency does not identify this supporting documentation, its determination letter violates the Act. Pet. Brief at 7, citing 415 ILCS 5/57.7(c)(4)(C) (2014).

The Agency’s “Instructions for the Budget and Billing Forms” lists “bailers” under the equipment and supplies that can be included on the Consultant’s Materials Costs Form. Pet. Brief at 8, citing Pet. Exh. 1 at 15. Knapp argues that its proposed budget describes and justifies the use of bailers and provides the rate at which they are to be charged. Pet. Brief at 8, citing R. at 31; Pet. Exh. 1 at 15. The Agency objects to the budgeted rate as excessive, but Knapp argues that “[n]o maximum rates have been set for bailers.” Pet. Brief at 9; *see* R. at 56. Knapp further argues that “the standard for the rate is whether it is a reasonable estimate. . .” Pet. Brief at 9. Knapp states that its budget was prepared with a professional consultant who knows likely rates for a bailer, and Knapp suggests that the Agency’s experience makes it familiar with these rates. *Id.* at 9-10.

#### **Survey Equipment**

The Agency’s modification states “justification is being requested” regarding costs for this equipment and asks “[w]hat type of survey equipment is being used?” R. at 56.

Knapp states that the Board’s regulations and the Agency’s form require only justification for the use of the equipment. Pet. Brief at 9. Knapp argues that it provides

sufficient explanation that this equipment will be used to “survey well risers.” R. at 31. Knapp adds that all points it made regarding bailers “are equally applicable to survey equipment.” Pet. Brief at 10.

### **Sampling Kit Materials**

The Agency’s modification states that “[a] breakdown of items associated with a sampling kit will need to be submitted to determine if this exceeds the minimum requirements to meet Title XVI.” R. at 56.

The Agency’s budget form for analytical costs<sup>2</sup> includes the item “EnCore© Sampler, purge-and-trap sampler, or equivalent sampling device.” R. at 25; *see* Pet. Brief at 10. Knapp states that the form requires only the number of devices and the cost per device to generate a total budgeted amount. Pet. Brief at 10; *see* R. at 25; Exh. A at 8. Knapp argues that “the sampling kit has a maximum payment rate set in Subpart H.” Pet. Brief at 10; *see* 35 Ill. Adm. Code 734.875 (Agency Review of Payment Amounts), 734.Appendix D (Sample Handling and Analysis). Knapp further argues that it supplied the information requested on the Agency form and that “[t]he rate charged is reasonable as it does not exceed Subpart H rates set for the sampling kit.” Pet. Brief at 11. Knapp stresses that that Agency has prepared budget forms and set reimbursement rates on a unit basis. *Id.* Knapp concludes that there is “no legal justification for requiring breakdowns of the sampling kit.” *Id.*

### **Discussion**

The Board concludes that the Agency has not properly modified the budget for these three items and that it has effectively extended review of the budget into the reimbursement stage. The Board deems the proposed budget for these three items to be approved.

The Agency argues that it “has the authority to put applicants on notice that requests in their budget may not be reimbursable.” Resp. at 5. The Agency states that the three disputed items “were not excluded from the budget, but were expressly identified by modification so that Petitioner is on notice that these items most likely would need additional supporting documentation at the reimbursement stage.” Resp. at 7; *see* Tr. at 12.

Knapp counters that, if the Agency’s determination did not actually modify the budget for the bailer, survey equipment, and sampling kit, then “they should be stricken as improper budget modifications.” Reply at 7. To address these three pieces of equipment, a brief summary of the general plan, budget, and reimbursement process is instructive.

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<sup>2</sup> Knapp requests that the Board take official notice of the Analytical Costs Form from the Agency’s website, a copy of which Knapp attached to its brief as Petitioner’s Exhibit B. Pet. Brief at 10, n.2, citing <http://epa.illinois.gov/topics/cleanup-programs/lust/budget-and-billing-forms/index> (last visited July 22, 2016); *see* R. at 24-25 (Analytical Costs Form). The Agency did not object to the request. The Board grants the request. *See* 35 Ill. Adm. Code 101.630 (Official Notice).



To approve a site investigation budget, the Agency must determine that the proposed costs are reasonable, will be incurred for site investigation, and are not for site investigation exceeding the minimum requirements of the Act. 415 ILCS 5/57.7(c)(3) (2014); *see* 35 Ill. Adm. Code 734.510(b). If the Agency disapproves or modifies a budget, it must provide a detailed statement in support of its determination. 415 ILCS 57.7(c)(4) (2014); *see* 35 Ill. Adm. Code 734.505(b). The Agency acknowledges that it has not excluded the proposed bailer, survey equipment, or sampling kit from the budget.

“Agency approval of any plan and associated budget . . . shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund if the costs associated with the completion of any such plan are less than or equal to the amount approved in such budget.” 415 ILCS 5/57.7(c)(1) (2014). However, this approval of the plan and budget does not end the Agency’s consideration. Section 57.8(a) of the Act provides that, after competing site investigation, an “owner or operator may submit an application for payment for activities performed at a site.” A complete application for payment includes “[a]n accounting of all costs, including but not limited to, invoices, receipts, and supporting documentation showing the dates and descriptions of the work performed.” 35 Ill. Adm. Code 734.605(b)(9). Although the Agency states that it provided notice that the bailer, survey equipment, and sampling kit “would most likely need supporting documentation at the reimbursement stage,” the regulations already provide notice that an application for payment must include that supporting documentation.

When it receives a request for payment, the Agency may review “supporting documentation relied upon by the owner or operator in developing the application for payment, including but not limited to a review of invoices or receipts supporting all claims. 35 Ill. Adm. Code 734.610(c). The Agency may also review documents to ensure that the application for payment is consistent with work proposed and actually performed. 35 Ill. Adm. Code 734.610(c). The Agency may only modify the proposed costs for the equipment when it considers the plan and budget, not at the payment stage. Evergreen FS v. IEPA, PCB 11-51, 12-61 (cons.), slip op. at 21 (June 21, 2012); *see* 415 ILCS 5/57.8(a)(1) (2014).

After approving a corrective action plan and budget, the Agency “cannot later reconsider the merits of the approved tasks and costs just because the reimbursement application is submitted.” T-Town Drive Thru v. EPA, PCB 07-85, slip op. at 24-25 (Apr. 3, 2008) (citations omitted). When an owner or operator requests reimbursement for an amount that is less than or equal to regulatory limits “and the approved budget, *and* provides documentation demonstrating that the costs were actually incurred for approved work, the Agency cannot ‘second-guess’ whether the requested reimbursement was reasonable.” *Id.* at 25 (emphasis in original).

The Agency may communicate with an owner or operator to address matters such as a proposed budget and documentation before approving. This did not take place. Instead of asking for more information or rejecting the budget, the Agency placed Knapp “on notice that these items most likely would need additional supporting documentation at the reimbursement stage.” Resp. at 7.

This improperly extends review of the budget into the reimbursement stage. *See* 415 ILCS 5/57.8(a)(1) (2014); Evergreen FS v. IEPA, PCB 11-51, 12-61 (cons.), slip op. at 20-21 (June 21, 2012). The Board also notes that the Agency has not identified the authorities that may be violated if the budget is approved or explained why those authorities might not be met, as required by the Act. 415 ILCS 5/57.7(c)(4) (2014). The Board finds that Knapp has met its burden of proving that its proposed budget for the bailer, survey equipment, and a sampling kit would not violate the Act or Board regulations. The Board deems the proposed budget for the bailer, survey equipment, and a sampling kit to be approved.

### **Legal Fees**

Section 57.8(l) of the Act addresses reimbursement from the UST Fund for activities responding to a confirmed release and provides that “[c]orrective action does not include legal defense costs. Legal defense costs include legal costs for seeking payment under this Title unless the owner or operator prevails before the Board in which case the Board may authorize payment of legal fees.” 415 ILCS 5/57.8(l) (2014); *see* 35 Ill. Adm. Code 734.630(g).

In its petition for review, Knapp requested that “the Board award payment of attorney’s fees.” Pet. at 8; *see* 415 ILCS 5/57.8(l) (2014). Knapp renewed this request in its post-hearing brief and its reply. Pet. Brief at 11; Reply at 7. The record does not now include the amount of these fees or Knapp’s arguments that they are reimbursable under Section 57.8(l) of the Act. In its order below, the Board directs Knapp to file a statement of legal fees that may be eligible for reimbursement and its arguments why the Board should exercise its discretion to direct the Agency to reimburse those fees from the UST Fund. Knapp must file its statement by October 24, 2016. The Agency may file a response within 14 days after being served with Knapp’s statement.

### **CONCLUSION**

On the issue of costs associated with a camera, the Board finds that Knapp has met its burden of proving that the costs are not unreimbursable indirect costs and that its proposed Stage 1 site investigation budget would not violate the Act or Board regulations. Accordingly, the Board reverses the Agency’s modification of budget for those costs.

On the issue of costs associated with a bailer, survey equipment, and a sampling kit, the Board finds that Knapp has met its burden of proving that the Agency’s determinations are not proper budget modifications and deems the budget for those three items to be approved.

The Board directs Knapp to submit a statement of legal fees that may be reimbursable and allows the Agency to respond.

This interim opinion and order constitutes the Board’s findings of fact and conclusions of law.

**ORDER**

1. The Board reverses the Agency's March 8, 2016 determination to modify Knapp's Stage 1 site investigations budget for costs associated with a camera and deems the camera costs approved.
2. The Board finds that the Agency's March 8, 2016 determination did not properly modify Knapp's Stage 1 site investigation budget for costs associated with a bailer, survey equipment, and a sampling kit and reverses the determination as to that equipment. The Board deems the budget for those items to be approved.
3. Knapp is directed to file a statement of legal fees that may be eligible for reimbursement and its arguments why the Board should exercise its discretion to reimburse those fees from the UST Fund under Section 57.8(l) of the Act. Knapp must file its statement and arguments by Monday, October 24, 2016, which is the first business day following the 30th day after the date of this order. The Agency may file a response within 14 days after being served with Knapp's statement and arguments.

IT IS SO ORDERED.

I, John T. Therriault, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above interim opinion and order on September 22, 2016, by a vote of 4-0.



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John T. Therriault, Clerk  
Illinois Pollution Control Board