

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

ABEL INVESTMENTS, LLC,)	
Petitioner,)	
v.)	PCB 2016-108
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

TO:	Carol Webb, Hearing Officer Illinois Pollution Control Board 1021 N. Grand Avenue East P.O. Box 19274 Springfield, IL 62794-9274 (Carol.Webb@illinois.gov)	Melanie Jarvis Division of Legal Counsel 1021 North Grand Avenue East P.O. Box 19276 Springfield, IL 62794-9276 (Melanie.Jarvis@illinois.gov)
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PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, **Petitioner's Post-Hearing Brief**, copies of which are herewith served upon the above persons.

The undersigned hereby certifies that I have served this document by e-mail upon the above persons at the specified e-mail address before 5:00 p.m. on the 30th of September, 2016. The number of pages in the e-mail transmission is 19 pages.

ABEL INVESTMENTS, LLC,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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PETITIONER'S POST-HEARING BRIEF

NOW COMES Petitioner, ABEL INVESTMENTS, LLC (hereinafter "Abel"), by its undersigned counsel, for its post-hearing brief, states as follows:

STATEMENT OF FACTS

This appeal arises from a convenience store located in a mixed residential and commercial area of Carbondale, Illinois. (R.7 & R.11) The subject site is owned by Abel Investments, LLC, owned by Sarabrah Singh. (R.23) In 2013, a release was reported from underground storage tanks at the site, which was assigned Incident Number 2013-0781 by the Illinois Emergency Management Agency. (R.7) CW3M was engaged as the environmental consultant to perform the required reporting and response actions. (R.7)

Three tanks were determined to be leaking and were removed in August of 2013. (R.8) The 45-day report of early action activities was approved on July 10, 2014. (R.7) Thereafter, CW3M conducted Stage 1 Site investigation activities, and reported the results on January 8, 2016. (R.1 et seq.) This document which is the subject of this appeal contained not only a report of those activities, but the actual costs of performing them, as well as a plan and budget for Stage

2 Site investigation activities. (R.1)

The Agency project reviewer assigned to this project is Shirlene South. (R.127) On or about April 29, 2016, eleven days before the decision deadline, South called Rob Stanley, an employee of CW3M, to investigate the company's organizational structure. (R.132) On May 10, 2016, the Agency issued its decision in this matter. (R.118)

Petitioner timely appealed and herein challenges the cuts made in the Agency decision letter listed on the following page. Abel did not appeal the elimination of costs relating to Soil Boring-2 at Stage One, and at the outset of the hearing withdrew its appeal of the \$11.00 reduction in the costs for a PID. (Hrg. Trans. at p. 6)

SUMMARY OF AGENCY CUTS AND REDUCTIONS

Cut Number	Task/Justification for Cut	Amount Cut
Stage One, #3	Engineer III, "Stage I Budget Calculations/Preparation" (R.55)	\$984.24
	Justification: to be performed by Senior Account Technician (R.121)	
Stage One, #4	Senior Project Manger, "Technical oversight/ Compliance/ Reimbursement review" (R.55)	\$1,457.88
	Justification: to be performed by project manager assigned to the site (R.122)	
Stage One, #5	Measuring Wheel (R.57 - R.58)	\$54.00
	Justification: indirect cost (R.122)	
Stage Two, #1	Senior Project Manager, "Budget Technical Compliance and Oversight" (R.66)	\$991.28
	Justification: to be performed by project manager assigned to the site (R.122)	
Stage Two, #2	Professional Geologist, "Stage 2 Budget Preparation/ Calculations" (R.66)	\$660.52
	Justification: to be performed by Senior Account Technician (R.123)	
Stage Two, #3	Engineer III, "Stage 2 Budget Development" (R.66)	\$456.80
	Justification: to be performed by Senior Account Technician (R.123)	
Stage Two, #4	Professional Geologist, travel time (R.67)	\$797.93
	Justification: office located in the vicinity of the site (R.124)	
Stage Two, #5	Senior Project Manager, "SICR Technical Compliance / Oversight" (R.69)	\$743.46
	Justification: to be performed by project manager assigned to the site (R.124)	
Stage Two, #7	Measuring Wheel (R.70)	\$21.00
	Justification: indirect cost (R.125)	

LEGAL ARGUMENT

The bulk of this appeal involves cuts in consultant's personnel costs as a result of the Agency second-guessing the consultant's staffing and job assignments. Generally speaking, the consultant's approach to planning and performing the work does not differ greatly between Stage One and Stage Two of Site Investigation. However, the legal standards differ as issues regarding the budget are controlled by Section 57.7 of the Act (415 ILCS 5/57.7) and those regarding payment are controlled by Section 57.8 of the Act (415 ILCS 5/57.8). Consequently, the framing of the legal issues differ as the Stage One activities were already incurred without prior notice that the Agency objected to how the work was staffed, and the Stage Two budget involves an itemized estimate about future work.

CW3M has been performing underground storage tank work for over twenty-five years (Hrg. Trans. at p. 8), and its approach to staffing these jobs has been the same since the Part 734 regulations were implemented over ten years ago. (Hrg. Trans. at pp. 14-15) The staff works as a team with technical documentation prepared by people with technical backgrounds and oversight provided by the senior project manager. There is no project manager assigned to the site, providing technical oversight and compliance review. Numerous people are involved in a project using a method for calculating personnel time which has been approved in other incidents. (R.1) This approach is reasonable, particularly given that Board regulations do not define the scope of job titles or otherwise mandate how jobs are staffed.

I. STAGE ONE ACTUAL COSTS

The first set of issues relate to Petitioner's application for reimbursement of actual costs incurred performing Stage One Site Investigation. 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." (415 ILCS 5/57.8(a)) 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). 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)(emphasis added). The purpose of the documentation is to "demonstrat[e] that the costs were actually incurred for approved work." T-Town Drive Thru v. EPA, PCB 07-85, slip op. at 25 (Apr. 3, 2008) (requiring applicant to submit invoices).

Furthermore, Agency review for work already performed is limited:

When an application requests reimbursement for costs that are at or under the amounts of Subpart H 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 is reasonable. In fact, much of the "streamlining" anticipated in R04-22(A) was expected to occur precisely because the Agency would not be determining "reasonableness" on a case-by-case basis:

T-Town Drive Thru v. EPA, PCB 07-85, slip op. at 25 (Apr. 3, 2008).

The complication here is that the Agency approves the budget for Stage One Site Investigation Activities when it approves the 45-day report, which contains a certification in lieu of a longform budget:

A budget for a Stage 1 site investigation must consist of a certification signed by the owner or operator, and by a Licensed Professional Engineer or Licensed Professional Geologist, that the costs of the Stage 1 site investigation will not exceed the amounts set forth in Subpart H of this Part.

(35 Ill. Adm. Code § 734.310(b))

The Agency will not accept an itemized budget for Stage One work before the work is performed. (Pet's Ex. 1, at p. 2 & 5) As explained by the President of CW3M:

The activities for Stage 1 work are generally prescribed by the Act; what locations were to take soil samples, monitoring well locations are prescribed. In this case, we had some additional sampling work to do that was additionally requested, so, in general, there's not a budget that's approved prior to doing Stage 1 work. So these would be generally actual costs that were incurred and then you submit the actual costs as a budget.

(Hrg. Trans. at pp. 10-11)

The Board regulations provide somewhat a cookie-cutter standard for Stage 1 work, although the "Stage 1 site investigation must be designed." (35 Ill. Adm. Code § 734.315) The scope of the Agency's review of Stage One actual costs incurred on the basis of a professional engineer certification in lieu of an itemized proposed budget appears to be one of first impression, but based upon this background the intention of this approach was to further streamline the process for a relatively defined set of tasks and not to subject a budget for work already performed to second-guessing of "reasonableness" on a case-by-case basis.

The first two cuts of actual costs relate to reasonableness: the reviewer believes that work done by the Engineer III should have been performed by an Account Technician, and the work done by the Senior Project Manager should have been done by a Project Manager. There is no rate that was exceeded, or any other provision in the Board's regulations which specifically precludes these people from performing these tasks. The fundamental unfairness of this second-

guessing is that not only does it evade Petitioner's statutory appeal rights, but the job could have been tasked to those people and the hours required to actually perform those tasks would have been reported, including any additional oversight caused by reassignment to non-technical staff.

On the other hand, the Agency objected to a measuring wheel on the basis of it being an indirect cost. While Petitioner disputes this legal conclusion, it is tantamount to a claim that the costs include an item that is not reimbursable as a class, and not simply unreasonable on a case-by-case basis. Petitioner is not asserting that no review of the actual costs of the budget may take place.

In summary, the Board should rule that second-guessing personnel staffing for Stage One Site investigation activities should not be permitted in the review of actual costs.

A. Alternatively, Actual Costs of an Engineer III Should Not be Reimbursed as Senior Account Technician (\$984.24)

During Stage One, an Engineer III spent 18 hours preparing the budget for the work.

(R.55) The Agency does not challenge that the work was done, but decided that this work could have been done by an account technician, who could be reimbursed at a rate of \$66.81 per hour instead of \$121.49 per hour. (R.55) The Agency's justification is that reimbursing at the rate of the person doing the job would be unreasonable because "[p]ersonnel costs must be based upon the work being performed, regardless of the title of the person performing the work." (35 Ill. Adm. 734.850(b)) The Board has never promulgated rules defining the scope of work for the various job titles. All that can be said for certain is that an Engineer III is an unlicensed individual with a bachelor's in engineering and four years of experience, while a senior account technician need have no degree, but eight years of experience. (35 Ill. Adm. Code Part 734,

Appendix E)

Shirlene South testified as to her explanation for the cut:

A. It did not appear to me that an Engineer III should be doing the work of what I assumed to be an accountant tech job.

Q. And why did you feel that way?

A. In my opinion, a budget would be someone in accounting. An engineer does planning and drilling and that type of work.

(Hrg. Trans. at pp. 44-45)

South has never worked for a consulting firm (Hrg. Trans. at p. 50), but has twelve years experience as a project manager in which she reviews budgets. (Hrg. Trans. at pp. 49-50) While she reviews budgets, she does not consider herself an account technician. (Hrg. Trans. at p. 55) She reviews packages submitted to her in totality, and doesn't give the budget to someone else to review. (Hrg. Trans. at p. 56) The Agency itself apparently has one, maybe two, account technicians, none of which apparently were involved in reviewing the budget. (Hrg. Trans. at pp 56 & 68) That is, this arbitrary distinction between technical work and accounting work is not expressed in her own job, nor how the Agency staffs jobs.

Nor does this arbitrary distinction exist in the Board's regulations. "All investigations, plans, budgets, and reports conducted or prepared under this Part, excluding Corrective Action Completion Reports submitted pursuant to Section 734.345 of this Part, must be conducted or prepared under the supervision of a Licensed Professional Engineer or Licensed Professional Geologist." (35 Ill. Adm. Code § 734.310(b) (emphasis added)) A copy of an executed Budget Certification form was filed with the subject submittal herein. (R.42) Nor did the Agency cut the Senior Professional Engineer's time working on the budget, which belies the assumption that

engineers don't work on budgets. (R.55)

As the President of CW3M testified:

The Engineer III or the technical person would have been the person developing the budget that went along with the technical portion of the plan to present to the Agency, documenting not only the costs, but the work that was performed in a manner presentable to the Agency.

(Hrg. Trans. at pp. 11-12)

After performing the Stage One Site Investigation, the results of the Stage One Site Investigation must be reported to the Agency, along with the actual costs. (Pet's Ex. 1, at p. 2) The technical description of Site Investigation Results reported herein, includes a description of what actions were taken and why, and relate directly to the justification of the costs in the budget. (R.12 *et seq.*) Indeed, the Agency reviewer's own notes on the margins of the reporting indicate that reimbursement decisions relating to the budget were being made based upon the description of Stage One activities. (R.12) While CW3M does use an account technician when work can be done by a bookkeeper (R.56), packages submitted to the Agency are ultimately technical documents that need to be prepared by people with technical backgrounds, and are in fact reviewed by people who are not bookkeepers.

B. Alternatively, the Actual Costs of the Senior Project Manager Should Not be Eliminated Because of the Assumption that it is Project Manager's Duties. (\$1,457.88)

During Stage One Site Investigation Activities, the Senior Project Manager spent twelve hours providing technical oversight and review of the reimbursement aspect of the work. (R.55)

The denial letter explained:

Per phone conversation between the Illinois EPA and Rob Stanley of CWM Company, Inc. on April 29, 2016, it was explained that Carol Rowe of CWM or in some instances another person, reviewed ongoing work on a project to see if it was staying on track. The Illinois EPA would assume that these are the duties of the project manager assigned to the site.

(R.122)

The confusing part of this decision is there is no project manager assigned to the site, nor was a project manager identified in the budget as performing any oversight or compliance review tasks over the reimbursement issues. (R.55) This is made more problematic given that the Agency also concluded that the primary responsibility for preparing the budget should be a mere account technician while at the same time eliminating oversight and review. The denial reason does not claim that reviewing ongoing work on a project is not corrective action, nor claim the number of hours is necessarily unreasonable – it posits that this is work to be assigned to a project manager, not a senior project manager.

CW3M does not really assign a “project manager” to a job, but does assign a lead, who in this case was Robert Stanley, a professional geologist. (Hrg. Trans. at p. 28) CW3M operates more as a team, where someone different might be in charge of the field work than the person assigned to draft a document. (Hrg. Trans. at p. 28) If there are people grabbing samples in the vicinity, they may be tasked with sampling at another job simply because they are in the vicinity. (Hrg. Trans. At p. 34)¹ This is a more complicated arrangement than the Agency’s organizational structure, where a single project manager is assigned to a file and performs all of the work,

¹ As will be discussed later herein, the flexibility of this approach allows for cost-savings with respect to travel time since field work on a project does not need to be performed by a specific individual that has to travel from office to site. However, the fluidity of this approach and the absence of an assigned project manager means that the results from field work are reported back to the senior project manager. (Hrg. Trans. at p. 34)

subject only to supervision.

The actual costs of Stage One activities were broken out between field work and payment (budget) costs. (R.53 - R.56) The field costs included ten hours billed to a “project manager” for “Office Preparation, Scheduling / Drill / Groundwater Sampling Plans,” but there is no “project manager” billing beyond the field work. (R.55) The various payment tasks were performed by the Senior Professional Engineer, Engineer III, Senior Account Technician and Senior Administrative Assistant under the oversight of the Senior Project Manger. (R.55 - R.56) Again, there is no project manager performing these duties that South believes should be part of his responsibilities.

The President of CW3M, also a Senior Project Manager, explained her tasks regarding technical oversight and compliance/reimbursement review at various points in the hearing:

The senior project manager role throughout the whole budget process is working with in this case the professional geologists to not only review the budget when it's in its final form, but to develop the budget along the way and to refine that package as it's almost going out the door, so to speak. So it's not that it's, you know, eight hours at one time. It's a culmination of hours from, you know, from start to finish, and it's somewhat of an oversight, I guess, from start to finish.

(Hrg. Trans. at pp. 16-17)

In terms of compliance issues, the testimony indicated that this went beyond simply published rules, but Agency standards learned through letters and phonecalls. (Hrg. Trans. at pp. 24-25) Different Agency reviewers have personal preferences that differ from each other and need to be taken into consideration so that the process runs smoothly. (Hrg. Trans. at p. 25) This points to the problem the Board has previously alluded to:

The Agency interprets statutory language and applies it to a particular set of facts in determining which costs are eligible for reimbursement. When the Agency's decision is appealed to the Board, the Board determines whether the Agency's application of the statute was correct. The Board interprets the statutory language as it applies to the set of facts of the appealed case, i.e. adjudicating the contested case. While this is an acceptable procedure for interpreting the statute and establishing Agency policy, it places the applicant in the difficult position of working with a program that is not well defined and constantly changing. The applicant must depend on the statute, Agency personnel and, opinions from adjudicated cases to determine the policies relating to the UST program. The lack of specific guidelines for the UST fund increases the confusion of the applicant and complicates the reimbursement program.

Platolene 500 v. IEPA, PCB 92-9, slip op. at 7 (May 7, 1992) (holding, however, that the Agency cannot use contested cases to enforce unpromulgated rules)

By eschewing rules in favor of policies announced in closed meetings, implemented either consistently or inconsistently by Agency reviewers, regulatory compliance becomes very complicated and time-consuming. That itself is a policy choice made by the Agency.

Moreover, South also testified that while she does all of the work reviewing plans, reports and budgets herself, she receives oversight from her supervisor. (Hrg. Trans. at p. 56) Her supervisor, Mike Lowder, testified that he primarily provides oversight through reviewing letters South drafts for his signature and internal meetings (Hrg. Trans. at pp. 59-60) He testified it takes him about 10-15 minutes to review a letter. (Id. at pp. 59-60) While the basics of oversight are fairly comparable in terms of consistency and quality review and making sure that something that comes out with your name on it reflects well on yourself and your organization, the product produced by the Agency is a decision letter, the substance of which can usually be summarized in one page. Herein, the Agency decision letter was 9 pages long, while the submittal reviewed was 117 pages long, which is itself is a summation of even more information that has been reduced to

Agency forms to make it easier for them to review. While the Agency provides similar oversight, the difference in the nature of the work done make it impossible to make any quantitative comparison.

In summary, a senior project manager is a job description recognized by the Board's procedural rules and no Board regulations would be violated by having a Senior Project Manager perform oversight and compliance review. The complaint that these are the duties of the project manager assigned to the site makes no sense in the absence of a project manager being assigned to perform these duties.

C. The Actual Costs of the Measuring Wheel is not an Indirect Cost. (\$54.00)

The Agency deducted \$54.00 for a measuring wheel because “[t]he Illinois EPA considers a measuring wheel to be an indirect cost of doing business.” (R.122) Petitioner asserts this issue is resolved by application of the recent Board decision in Knapp Oil v. IEPA, PCB 16-103 (Sept. 22, 2016). There, the Board held that the cost of a camera was not an indirect cost, relying in part on Agency guidance that identified cameras and photo development as typical direct costs. That same guidance document was submitted into evidence herein, and it also identifies a measuring wheel as a typical direct cost. (Pet's Ex. 1, at p. 15) Therefore, this cut should be reversed.

II. STAGE TWO PROPOSED BUDGET

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)) 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))

Here many of the objections are similar in the sense that (a) certain Senior Project Manager tasks are assumed to the duties of a project manager, (b) budgets prepared by technical staff (Engineer III and Professional Geologist) must be performed by an Account Technician, and (c) measuring wheels are deemed to be an indirect cost. In addition, the Agency cut the travel time for an individual believed to be traveling to the site from a location in the vicinity.

Petitioner does not maintain the same objection to raising reasonableness concerns at the budget stage as it did for reimbursement of actual costs already incurred at Stage One. However, the alternative arguments made at Stage One as to reasonableness and indirect costs are reincorporated herein with respect to Stage Two.

A. The Proposed Budget for the Senior Project Manager to Perform Oversight and Compliance Review of the Stage Two budget Should Not be Eliminated because of the Assumption that it is Project Manager's Duties. (\$991.28)

Similar to the actual costs for the Stage One site investigation, the Agency cut the Senior Project Manager oversight and regulatory compliance duties regarding the Stage 2 Budget on the misassumption that these are the duties of a non-existent project manager. Accordingly, Petitioner realleges the arguments made in Section I.B. supra.

B. The Proposed Budget for a Professional Geologist to Prepare the Stage Two Budget Should Not be Reimbursed as Senior Account Technician (\$660.52)

Similar to the actual costs of for the Engineer III to prepare the Stage One budget, the

Agency changed the proposed budget for the Professional Geologist to that of a Senior Account Technician. Accordingly, Petitioner realles the arguments made in Section I.A. supra.

C. The Proposed Budget for an Engineer III to Help Develop the Stage Two Budget Should Not be Reimbursed as Senior Account Technician (\$456.80)

Similar to the actual costs of for the Engineer III to prepare the Stage One budget, the Agency changed the proposed budget for the Engineer III to help develop the Stage Two budget to that of a Senior Account Technician. Accordingly, Petitioner realles the arguments made in Section I.A. supra.

D. Proposed travel time is reasonable. (\$797.93)

In order to perform Stage 2 Site Investigation Field Work, a professional geologist was projected to need 23 hours for “on-site drilling / sampling and monitoring well sample / survey /perform slug test.” (R.67) These hours included travel time from Springfield to Carbondale and back, which the Agency estimated would take seven hours roundtrip. (Id.) Seven hours worth of the professional geologists time were cut because “there is an office located in the vicinity of the site.” (R.124)²

CW3M currently maintains offices in Springfield and Marion. (Hrg. Trans. at p. 9) Following layoffs, the Marion office is only staffed by a geologist. (Id.) CW3M always budgets assuming workers are coming from the main office in Springfield. (Id. at p. 22) As the President of CW3M explained:

² For the record, Petitioner does not agree that the travel time from Marion to the site is zero hours. It would appear to be about a one-hour round trip.

We always develop our travel time from the Springfield office. We typically dont know for certain who will be assigned to the task for certain, regardless of where the site might be located. If there's two people going out on a drilling job, for example, we don't know for certain who will go. If the site is in southern Illinois, it's – it's ideal if we can pull our person from the Marion office, but that can't always be the case because we only have one person there right now. He might be on another job, so we budget from the Marion or from the Springfield office, and if he's available, then he then he goes...

(Id.)

When it comes time to invoice the actual time and mileage, CW3M only bills for what actually happened, so if in fact a geologist from the Marion office goes to the site, then that is what is billed, even if the budget assumed Springfield. (Hrg. Trans. at pp. 22-23) If there are multiple sites on a single trip, then a single job might only have costs billed for a one-way trip.

(Id.) Actual mileage is taken from odometers and recorded on the personnel time sheets. (Id.)

In City of Roodhouse v. IEPA, PCB 92-31 (Sept. 17, 1992), the Board reversed the Agency's \$11,088.47 reduction in travel costs for a Kansas City consultant that the Agency believed were unreasonable because of the greater distance, including plane fares. (Id. at p. 8 & 11) The Board ultimately rejected the assertion that the owner/operator was precluded from engaging an out-of-state consultant simply because travel costs would be higher. (Id. at p. 18) While the program has changed since 1992, there remains no requirement that the closest personnel be used, and if Kansas City is a reasonable location, Springfield is no less.

The larger picture, however, is that CW3M's Marion office provides greater cost efficiencies than if it only had the main office and this benefits the LUST fund. But to inflexibly mandate the use of the Marion office in all circumstances reduces those efficiencies and the incentives to have an additional office. Budgeting for work to be performed from the main

office, where almost all of CW3M employees are located is a reasonable and fair approach, given that the actual costs ultimately billed may be reduced if a geologist from the Marion office does the work and flexibility allows for more trip-sharing. However, it would be extremely unlikely that the travel time to the site would be zero hours as assumed by the Agency.

E. The Proposed Budget for the Senior Project Manager Review of the Site Investigation Completion Report Should Not be Eliminated Because of the Assumption that it is Project Manager's Duties. (\$743.46)

Similar to the actual costs for the Stage One site investigation, the Agency cut the Senior Project Manager oversight and regulatory compliance for the site investigation completion report on the misassumption that these are the duties of a non-existent project manager. Accordingly, Petitioner realleges and incorporates the arguments made in Section I.B. supra.

F. The Proposed Budget for the Measuring Wheel is not an Indirect Cost. (\$21.00)

A measuring wheel is not an indirect cost for the reasons set forth in Section I.C. supra, which Petitioner hereby realleges and incorporates by reference.

CONCLUSION

The Agency's cuts and modifications of personnel staffing decisions go far beyond its core competency as an environmental organization and into the field of business organization and staffing. Petitioner does not demand that its consultant's practices be mirrored by any other organization, but it does insist that the record shows that the staffing decisions are serious and have implications beyond simply substituting personnel or removing oversight and review. More importantly, Petitioner prays that the Board find that these personnel staffing decisions were

reasonable and fair and therefore the Agency's decision relating to them and the measuring wheel was erroneous.

WHEREFORE, Petitioner, KNAPP OIL COMPANY, prays that: (a) the Board find the Agency erred in its decision with respect to the nine items identified herein, (b) the Board direct the Agency to approve the budgets accordingly, (c) the Board award payment of reasonable attorney's fees; and (d) the Board grant Petitioner such other and further relief as it deems meet and just.

Respectfully submitted,

ABEL INVESTMENTS, LLC
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

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