

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Steve and Jarilyn Stavropoulos)
)
 Petitioners,)
)
 v.) PCB 20-56
) (LUST Appeal)
 Illinois Environmental Protection)
 Agency)
)
 Respondent.)

NOTICE OF FILING

TO: Don Brown
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
(VIA ELECTRONIC MAIL)

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276
(VIA FIRST CLASS MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **AMENDED PETITION FOR REVIEW OF AGENCY DETERMINATION**, copies of which are herewith served upon you.

Respectfully submitted,

Steve and Jarilyn Stavropoulos
Petitioners,

DATE: March 6, 2020

By: /s/ Jennifer M. Martin
One of Its Attorneys

Jennifer M. Martin
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Jennifer.Martin@heplerbroom.com
(217) 528-3674

CERTIFICATE OF SERVICE

I, Jennifer M. Martin, the undersigned, hereby certify that I have served the attached

AMENDED PETITION FOR REVIEW OF AGENCY DETERMINATION upon:

Don Brown
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601

via electronic mail, on March 6, 2020; and upon:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois
on March 6, 2020.

/s/ Jennifer M. Martin
Jennifer M. Martin

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

Steve and Jarilyn Stavropoulos)	
)	
Petitioners,)	
)	
v.)	PCB 20-56
)	(LUST Appeal)
Illinois Environmental Protection)	
Agency)	
)	
Respondent.)	

AMENDED PETITION FOR REVIEW OF AGENCY LUST DETERMINATION

NOW COME Petitioners, Steve and Jarilyn Stavropoulos (“Petitioners”), by and through their attorneys, HEPLERBROOM, LLC, and, pursuant to Section 40(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/40(a), and Part 105 of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code Part 105, hereby petition the Illinois Pollution Control Board (“Board”) for review of the Illinois Environmental Protection Agency’s (“IEPA” or “Agency”) January 17, 2020 decision regarding Petitioners’ Application for payment from the Underground Storage Tank (“UST”) Fund. In support of its Amended Petition, Petitioners state as follows:

1. Petitioners were the owner of four (4) 4,000 gallon gasoline and one (1) 4,000 gallon diesel fuel underground storage tanks (“USTs”), formerly located at 2844 West 47th Street, Chicago, Cook County, Illinois (“the Site”). The Site has been assigned IEPA Bureau of Land Identification Number 0316585236. The USTs were removed on July 2-3, 2018.
2. A notification of release from the above-listed USTs was made to the Illinois Emergency Management Agency (“IEMA”) on May 31, 2018 (Incident No. 20180514). The Office of the Illinois State Fire Marshal (“OSFM”) issued an Eligibility and Deductibility

Determination on August 15, 2018, that the incident was eligible for reimbursement from the LUST Fund with a \$5,000 deductible.

3. On September 26, 2019, Petitioners submitted an Application for Payment from the Underground Storage Tank Fund to the Agency for soil excavation activities that occurred at the Site from July 2-July 24, 2018. According to the Agency, this submittal was received on October 1, 2019.

4. By letter dated January 17, 2020, the Agency issued its decision on the September 26, 2019 submittal. *See* Exhibit A, Letter from Gregory W. Dunn to Jarilyn Stavropoulos, dated January 17, 2020. The Agency's decision denied the September 26, 2019 Application for Payment. Petitioners were served with the Agency's decision on January 25, 2020, according to United States Postal Service records.

5. The original Petition for Review was filed timely on February 28, 2020, in accordance with Section 40 of the Act and 35 Ill. Admin. Code § 105.406.

6. On March 5, 2020, the Board directed the Petitioners to file an Amended Petition specifying the date of service of the Agency's final decision, which was inadvertently omitted from the original Petition for Review.

7. Attachment A of the Agency's January 17, 2020 decision includes the following bases for the Agency's denial of the costs sought in the September 26, 2019 Application for Payment:

1. \$139,770.91, deduction for costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in 35 Ill. Adm. Code 734. Appendix C, during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f), and/or costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734. Appendix C during early action activities

conducted pursuant to 35 Ill. Adm. Code 734.210(f). Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.630(a).

Also, these early action costs that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

In addition, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Code 734.630(o).

The deduction for costs associated with the treatment or disposal of soil that does not exceed the applicable remediation objectives for the release. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(tt). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective actions costs.

Also, for costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(aaa). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they will be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

In addition for costs due to no approved free product removal, site investigation, or corrective action budget. The Illinois EPA is unable to approve billings for free product removal conducted more than 45 days after the confirmation of the presence of free product, site investigation or corrective action activities without an approved budget pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.60(f).

Exhibit A, Att. A.

8. The supporting documentation and justification included in the September 26, 2019 Application for Payment (“Application”) demonstrate that the Site presented unusual and/or extraordinary circumstances that necessitated the removal, treatment, transportation and

disposal of more than four feet of fill material from the outside dimensions of the UST and the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734 App. C.

9. The supporting documentation included in the Application further demonstrates that the costs submitted in the Application were site investigation and/or corrective action costs and, therefore, were eligible for payment from the Fund.

10. The supporting documentation included in the Application also demonstrates that the costs submitted in the Application were reasonable as submitted and eligible for payment, and did not exceed the minimum requirements necessary to comply with the Act.

11. The Agency's denial of all costs in the Application was arbitrary and capricious and not supported by statutory or regulatory authority.

WHEREFORE, for the above reasons, Petitioners, Steve and Jarilyn Stavropoulos, respectfully request that the Illinois Pollution Control Board accept this Amended Petition and grant the following:

- a. Find that the Agency's January 17, 2020 final decision denying payment of costs is arbitrary, capricious and not supported by statutory or regulatory authority;
- b. Reverse the Agency's rejection of all costs sought in the September 26, 2019 Application for Payment and approve Petitioners' request for costs;
- c. Award Petitioners reasonable attorney's fees and expenses incurred in bringing this action; and



Electronic Filing: Received, Clerk's Office 03/06/2020
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL #

7017 2680 0001 0210 3749

JAN 17 2020

Jarilyn Stavropoulos
c/o Shawn Rodeck
PO Box 825
Warrenville, Illinois 60555-0825

Re: 0316585236 -- Cook County
Chicago / Steve and Jarilyn Stavropoulos
2844 West 47th Street
Incident-Claim No.: 20180514 -- 70656
Queue Date: October 1, 2019
Leaking UST Fiscal File

Dear Mrs. Stavropoulos:

The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated September 26, 2019 and was received by the Illinois EPA on October 1, 2019. The application for payment covers the period from July 5, 2018 to March 19, 2019. The amount requested is \$139,770.91.

On October 1, 2019, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date subsequent application for payment requests are received by the Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount for this claim is \$5,000.00, which was previously withheld from your payment(s). Pursuant to Section 57.8(a)(4) of the Act, any deductible, as determined pursuant to the Office of the State Fire Marshal's eligibility and deductibility final determination in accordance with Section 57.9 of the Act, shall be subtracted from any payment invoice paid to an eligible owner or operator.

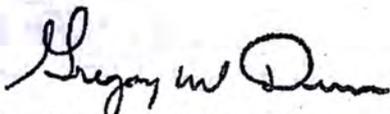
There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or require further assistance, please contact Christina Murphy of my staff at (217) 785-9351.

Sincerely,



Gregory W. Dunn, Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachments: Attachment A
Appeal rights

c: Steve and Jarilyn Stavropoulos
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 0316585236 -- Cook County
Chicago / Steve and Jarilyn Stavropoulos
2844 West 47th Street
Incident-Claim No.: 20180514 -- 70656
Queue Date: October 1, 2019
Leaking UST Fiscal File

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$139,770.91, deduction for costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in 35 Ill. Adm. Code 734.Appendix C, during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f), and/or costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734.Appendix C during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f). Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.630(a).

Also, these early action costs that are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(ee).

In addition, the costs exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

The deduction for costs associated with the treatment or disposal of soil that does not exceed the applicable remediation objectives for the release. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(tt). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

Also, for costs associated with on-site corrective action to achieve remediation objectives that are more stringent than the Tier 2 remediation objectives developed in accordance with 35 Ill. Adm. Code 742. Such costs are ineligible for payment from

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
(312) 814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544

the Fund pursuant to 35 Ill. Adm. Code 734.630(aaa). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they will be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

In addition for costs due to no approved free product removal, site investigation, or corrective action budget. The Illinois EPA is unable to approve billings for free product removal conducted more the 45 days after the confirmation of the presence of free product, site investigation or corrective action activities without an approved budget pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(f)).