

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WILLAREDT OIL COMPANY,)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY,)
)
 Respondent.)

PCB 04-72
(UST Appeal)

RECEIVED
JAN - 9 2004
STATE OF ILLINOIS
POLLUTION CONTROL BOARD

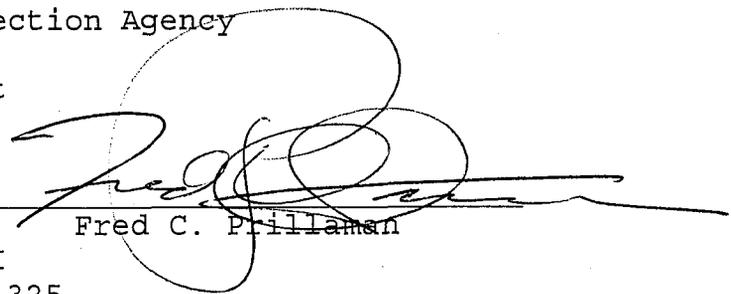
NOTICE OF FILING AND PROOF OF SERVICE

TO: Renee Cipriano, Director
Illinois Environmental
Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on January 7, 2004, we sent to the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via U.S. Mail, of Petition for Review of Underground Storage Tank Fund Reimbursement Determination, for filing in the above-entitled cause, copies of which are attached hereto.

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the Respondent by enclosing same in envelopes addressed to said Respondent, certified mail, return receipt requested, and by depositing said envelopes in a United States Post Office Mail Box at Springfield, Illinois, with postage fully prepaid, on the 7th of January, 2004, and that courtesy copies of same were sent on same date, by U.S. Mail, postage fully prepaid, to the attorney of record for Respondent, to-wit:

John J. Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276



Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

THIS FILING SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

RECEIVED

WILLAREDT OIL COMPANY,)
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Petitioner,)
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v.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

JAN - 9 2004

STATE OF ILLINOIS
POLUTION CONTROL BOARD
PCB 04072
(UST Appeal)

PETITION FOR REVIEW OF UNDERGROUND STORAGE TANK FUND
REIMBURSEMENT DETERMINATION

NOW COMES Petitioner, WILLAREDT OIL COMPANY, by its undersigned attorneys, and pursuant to 415 ILCS 5/40 and 57.7, and 35 Ill. Adm. Code 105.204, hereby petitions the Pollution Control Board for review of the final determination of Respondent, Illinois Environmental Protection Agency ("Agency"), with respect to the Agency's September 16, 2003, deductions from the Petitioner's reimbursement request for activities under the Illinois Underground Storage Tank Fund ("UST Fund"). In support, Petitioner states:

1. Petitioner is the owner of a gasoline service station located at 1000 U.S. Highway 121, Mt. Zion, Macon County, Illinois. This facility has been designated LPC #1150350004 by the Agency.

2. Petitioner notified the Illinois Emergency Management Agency ("IEMA") of a release of petroleum from an underground storage tank ("UST") at the facility, to which IEMA assigned Incident No. 980380.

3. On or about August 13, 2003, Petitioner filed an application for reimbursement for corrective action costs incurred to remediate the petroleum release.

4. On or about September 16, 2003, the Agency rendered its final determination on Petitioner's request for reimbursement. A true and correct copy of the subject Agency decision is attached hereto and made part hereof as Exhibit A.

5. On October 23, 2003, Petitioner and the Agency jointly filed for a 90-day extension of the time for appeal, which was granted by the Board on November 6, 2003.

6. Petitioner prays that the Board reverse the Agency's final determination with respect to the disallowed costs, and restore the cuts.

7. The Agency's rejection of such costs are contrary to both the law and Agency precedent, inasmuch as the costs are reasonable and necessary for the work to be performed.

8. Petitioner reserves the right to present additional grounds for reversal of the Agency's final reimbursement determination with respect to the disallowed costs, as they may appear during the course of this appeal.

WHEREFORE, Petitioner respectfully requests that this Board grant a hearing in this matter and reverse the Agency's September 16, 2003, deductions from the Petitioner's reimbursement request and remand this matter to the Agency with instructions to approve

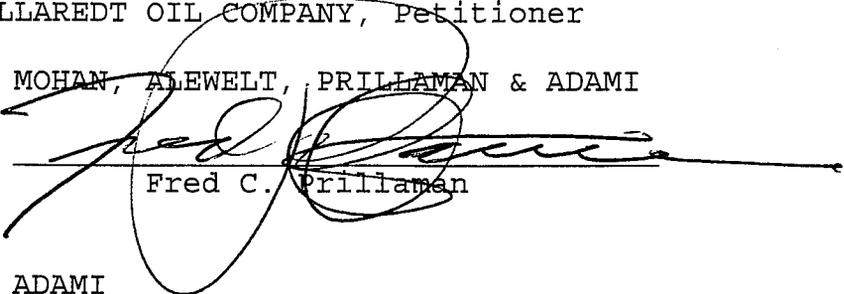
the proposed budget as submitted, and any other such relief as the Board deems appropriate.

Respectfully submitted,

WILLAREDT OIL COMPANY, Petitioner

By MOHAN, ALEWELT, PRILLAMAN & ADAMI

By


Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza
Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601

ROD R. BLAGOIEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

7002 3150 0000 1224 6153

SEP 16 2003

Willaredt Oil Company
Attention: Dean Willaredt
Post Office Box 1245
Mattoon, Illinois 61938

Re: LPC #1150350004 -- Macon County
 Mt. Zion/ Willaredt Oil Co., Inc.
 1000 U.S. Highway 121
 LUST Incident No. 980380
 LUST Technical File

Dear Mr. Willaredt:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Classification Work Plan (plan) submitted for the above-referenced incident. This plan, dated July 2003, was received by the Illinois EPA on August 13, 2003. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

The Illinois EPA requires modification of the plan; therefore, the plan is conditionally approved with the Illinois EPA's modifications. The Illinois EPA has determined that the modifications listed in Attachment A are necessary to demonstrate compliance with Title XVI of the Act and 35 Ill. Adm. Code 732 (Section 57.7(a)(1) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j)).

In addition, the budget is modified pursuant to Section 57.7(a)(1) of the Act and 35 Ill. Adm. Code 732.305(c) or 732.312(j). Based on the modifications listed in Section 2 of Attachment B, the amounts listed in Section 1 of Attachment B are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of reimbursement may be limited by Sections 57.8(e), 57.8(g), and 57.8(d) of the Act, as well as 35 Ill. Adm. Code 732.604, 732.606(s), and 732.611.

Please note that, if the owner or operator agrees with the Illinois EPA's modifications, submittal of an amended plan and/or budget, if applicable, is not required (Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.503(f)). Additionally, pursuant to Section 57.8(a)(5) of the Act and 35 Ill. Adm. Code 732.305(e) or 732.312(l), if reimbursement will be sought for any additional

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120

A

costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted.

NOTE: Amended plans and/or budgets must be submitted and approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be reimbursable.

Pursuant to 35 Ill. Adm. Code 732.301 a Site Classification Completion Report must be submitted within 90 days of the date of this letter to:

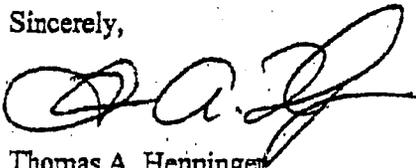
Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

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 need further assistance, please contact Donna Wallace at 217/ 524-1283.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:DW:dw\

Attachments: Attachment A and Attachment B

c: CSD Environmental Services, Inc.
Division File

Attachment A

Re: LPC #1150350004 -- Macon County
Mt. Zion/ Willaredt Oil Co., Inc.
1000 U.S. Highway 121
LUST Incident No. 980380
LUST Technical File

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

- A. The Agency will approve (2) soil samples from boring locations B-7 thru B-10 and from the borings at the locations for MW#7 and MW#8. The samples are to be tested for VOCs and PNAs. The remaining proposed boring locations appear to be excessive for the minor release reported at this tank field.
- B. It will not be necessary to sample the soils for lead; since your on site lead levels were below background levels of 36.0 ppm.
- C. The Agency will approve a groundwater sample from (4) monitoring wells. The Agency will approve exiting MW#2 and MW#3 as well as the proposed MW#7 and MW#8. Groundwater samples from these wells must be tested for VOCs, PNAs and Lead.

DW:dwl

Attachment B

Re: LPC # 1150350004 -- Macon County
Mt. Zion/ Willaredt Oil Co., Inc.
1000 U.S. Highway 121
LUST Incident No. 980380
LUST Technical File

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

SECTION 1

As a result of the Illinois EPA's modification(s) in Section 2 of this Attachment B, the following amounts are approved:

\$2,659.00	Investigation Costs
\$3,677.65	Analysis Costs
\$6,731.00	Personnel Costs
\$313.20	Equipment Costs
\$219.40	Field Purchases and Other Costs
\$743.67	Handling Charges

SECTION 2

- A. \$11,384.35 for an adjustment in the number of samples to be taken as well as the deduction of lead samples taken from the soil. These costs are for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act (Section 57.5(a) of the Act) and 35 Ill. Adm. Code 732 (Section 732.505(c)). Costs for corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for reimbursement from the Fund (35 Ill. Adm. Code 732.606(o)).

These adjustments were made as an adjustment in the modifications to the plan

- B. \$7,810.80 for an adjustment in drum charges, personnel hours previously approved, encore sampler charges, camera charges, mileage and shipment charges. The Illinois EPA has determined that these costs are not reasonable as submitted (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh)). One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are reasonable (35 Ill. Adm. Code 732.505(c)). Please note that additional information and/or supporting documentation may be provided to demonstrate the costs are reasonable.

- C. \$1,090.25 for an adjustment in handling charges. Handling charges are eligible for payment only if they are equal to or less than the amount determined by the following table (Section 57.8(g) of the Act and 35 Ill. Adm. Code 732.607):

Subcontract or Field Purchase Cost:	Eligible Handling Charges as a Percentage of Cost:
\$0 - \$5,000	12%
\$5,001 - \$15,000	\$600 plus 10% of amount over \$5,000
\$15,001 - \$50,000	\$1,600 plus 8% of amount over \$15,000
\$50,001 - \$100,000	\$4,400 plus 5% of amount over \$50,000
\$100,001 - \$1,000,000	\$6,900 plus 2% of amount over \$100,000

Handling charges were adjusted to meet budget modifications.

DW:dwa

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)(D) 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 of time 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:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois 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
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

MOHAN, ALEWELT, PRILLAMAN & ADAMI

LAWYERS

SUITE 325

1 NORTH OLD CAPITOL PLAZA
SPRINGFIELD, ILLINOIS 62701-1323

EDWARD J. ALEWELT
FRED C. PRILLAMAN
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PATRICK D. SHAW
JOEL A. BENOIT*
CHRISTOPHER D. OSWALD
*ALSO ADMITTED IN MISSOURI

JAMES T. MOHAN, OF COUNSEL

TELEPHONE
(217) 528-2517

FAX
(217) 528-2553

E-MAIL
mapa@family-net.net

October 16, 2003

John J. Kim
Special Assistant Attorney General
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Re: Request for 90-day extension in LPC #1150350004 -
Macon County (Willaredt Oil Company/Mt. Zion)

Dear Mr. Kim:

We are the attorneys for Willaredt Oil Company, Inc.. Pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act, 415 ILCS 5/40 (a)(1), and 35 Ill. Adm. Code Sec. 105.208, our client requests that the Pollution Control Board grant a 90-day extension of time to appeal the Agency's September 16, 2003, decision in this matter. A true and correct copy of the said decision letter is attached hereto as Exhibit A.

The Applicant requests such extension for a period of 90 days, for the reason that the Applicant, by and through its attorneys, intends to meet with appropriate Agency personnel in the near future with the hope and expectation of working out a fair and reasonable settlement of the issues, thereby obviating the need for a formal appeal and hearing. Such efforts are more likely to succeed if they are unencumbered with the litigation responsibilities and deadlines which would apply if an immediate appeal were taken.

The Applicant hereby requests the Agency to file its concurrence with the Board so that the statutory extension may be granted.

Your prompt attention to this request would be greatly appreciated.

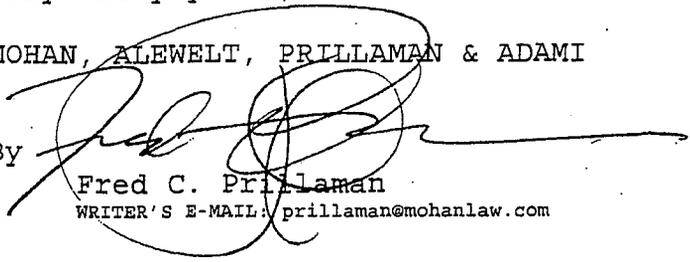
John J. Kim
October 16, 2003
Page 2

Thank you.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

By



Fred C. Prillaman
WRITER'S E-MAIL: prillaman@mohanlaw.com

FCP/sew
Enclosure

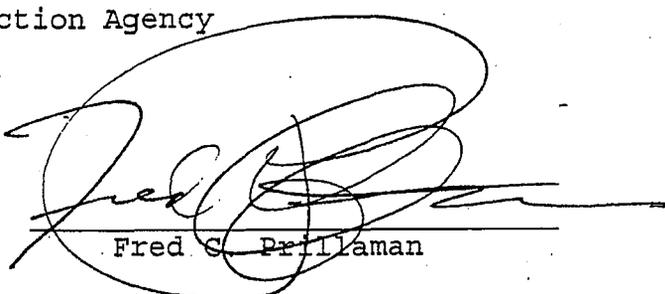
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John J. Kim
October 16, 2003
Page 3

Proof of Service

The undersigned certifies that a copy of the foregoing Letter of Request for Extension was served upon the following parties by enclosing the same in envelopes addressed to said parties with postage fully prepaid, and by depositing said envelope in a U.S. Post Office mail box in Springfield, Illinois on the 16th day of October, 2003:

John J. Kim
Special Assistant Attorney General
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276



Fred S. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza
Suite 325
Springfield, IL 62701
(217) 528-2517

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on October 21, 2003, I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, by placing true and correct copies in properly sealed and addressed envelopes and by depositing said sealed envelopes in a U.S. mail drop box located within Springfield, Illinois, with sufficient First Class Mail postage affixed thereto, upon the following named persons:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Fred C. Prillaman
Mohan, Alewelt, Prillaman & Adami
Suite 325
1 North Old Capitol Plaza
Springfield, IL 62701-1323

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



John J. Kim

Assistant Counsel
Special Assistant Attorney General
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)