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MAY 15 2009

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

MERTZ MOTOR CO.)
)
) Petitioner,)
) v.)
) ILLINOIS ENVIRONMENTAL)
) PROTECTION AGENCY,)
) Respondent.)

PCB No. 09- 109
(LUST Appeal - Ninety Day Extension)

NOTICE

ORIGINAL

John Therriault, Acting Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

Mertz Motor Company
Attn: Don Mertz
5 East Washington Street
Millstadt, IL 62260

Jack W. Mutchler P.G.
Environmental Services Manager
Quality Testing and Engineering, Inc.
803 West State Street
O'Fallon, IL 62269

PLEASE TAKE NOTICE that I have today filed with the office of the Clerk of the Pollution Control Board a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD, copies of which are herewith served upon you.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent

Melanie A. Jarvis

Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: May 12, 2009

SERVED 4/18/09

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STATE OF ILLINOIS
Pollution Control Board

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

MERTZ MOTOR CO.)
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) Petitioner,)
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) ILLINOIS ENVIRONMENTAL)
) PROTECTION AGENCY,)
) Respondent.)

PCB No. 09- 109
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**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

ORIGINAL

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to August 21, 2009, or any other date not more than a total of one hundred twenty-five (125) days from the date of service of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

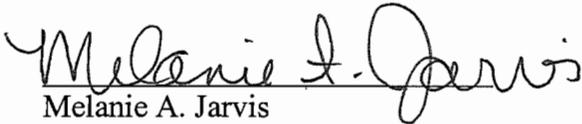
1. On April 16, 2009, the Illinois EPA issued a final decision to the Petitioner. (Exhibit A)
2. On May 6, 2009, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA join in requesting that the Board extend the thirty-five day period for filing a petition to ninety days. Tracking information from the Certified Mail number on the final decision indicates the final decision was received on April 18, 2009. (Exhibit B)

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,
Respondent



Melanie A. Jarvis
Assistant Counsel
Division of Legal Counsel
1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)
Dated: May 12, 2009

This filing submitted on recycled paper.



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

APR 16 2009

CERTIFIED MAIL #

7008 1140 0004 7344 0698

Mertz Motor Company
Attn: Don Mertz
5 East Washington Street
Millstadt, Illinois 62260

Re: LPC #1630855030 -- St. Clair County
Millstadt/Mertz Motor Co.
4 East Washignton St.
Incident-Claim No.: 20000564 -- 55853
Queue Date: December 23, 2008
Leaking UST FISCAL FILE

Dear Mr. Mertz:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated December 16, 2008 and was received by the Agency on December 23, 2008. The application for payment covers the period from August 1, 2007 to December 12, 2008. The amount requested is \$434,045.50.

The deductible amount for this claim is \$10,000.00, which was previously deducted from the billing submittal received by the Agency on May 11, 2007 for \$15,753.42. 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.

On December 23, 2008, the Agency received your application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$36,325.50 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete subsequent application for payment requests are received by the Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

Exhibit A

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) and Section 40 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 applicant 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 request for an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276
217/782-5544

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

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, Illinois 60601
312/814-3620

If you have any questions or require further assistance, please contact Niki Weller of my staff at 217/782-6762.

Sincerely,



John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS:NW:mls\092664.doc

Attachment

cc: Quality Testing and Engineering, Inc.
LCU File
Niki Weller

Attachment A
Accounting Deductions

Re: LPC #1630855030 -- St. Clair County
Millstadt/Mertz Motor Co.
4 East Washignton St.
Incident-Claim No.: 20000564 -- 55853
Queue Date: December 23, 2008
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$397,720.00, deduction for costs for Remediation and Disposal costs and Demolition costs, which lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since there is no supporting documentation of costs, the Illinois EPA cannot determine that costs will not be used for activities in excess of those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they may 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.

A deduction is being made in the amount of \$10,000.00 for the Demolition. A time and materials breakdown is needed for the demolition and disposal costs.

A deduction is being made in the amount of \$277,610.00 for the Excavation, Transportation and Disposal costs. An invoice from the landfills (Waste's Roxana Landfill and Waste Management's Milam Landfill) must be submitted with dates, cyds/tons and amount paid. Did Constructing and Environmental Services, LLC do the excavation and trucking, if another company was used for the trucking, an invoice from that trucking company would be necessary. Please explain.

A deduction is being made in the amount of \$97,382.00 Overburden (invoice states this amount is for overburden, the Agency forms state this is the amount for purchase, transporting and placement of clean backfill). Please clarify. If this is the amount for the purchase, transporting and placement of clean backfill an invoice must be submitted from the company where the backfill was purchased with dates, cyds/tons and amount paid. If the trucking was done by a different company, an invoice from that company must be provided.

A deduction is being made in the amount of \$12,728.00 for Purchase, Transport, and Place clean backfill (invoice states this is the purchase, transport, and placement of

the clean backfill amount, the Agency forms state this is the amount for Overburden). Please clarify. If another company did any of this work, invoices with dates and a description of the work with cyds/ton must be provided.

NW:mls\092621.doc



May 6, 2009

GEOTECHNICAL
ENVIRONMENTAL
CONSTRUCTION
MATERIAL
TESTING
CULTURAL
RESOURCES
NATURAL
RESOURCES

Mr. William D. Ingersoll
Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Springfield, Illinois 62794-9276

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Division of Legal Counsel

MAY 07 2009

RE: 90-Day Extension of Appeal Period
LPC#1630855030 – St. Clair County
Millstadt/Mertz Motor Co.
4 East Washington Street
Incident-Claim No. 20000564 – 55853
Queue Date December 23, 2008
Leaking UST FISCAL FILE

**Environmental Protection
Agency**

Dear Mr. Ingersoll:

Quality Testing and Engineering, Inc. (QTE) has prepared this letter to request a 90-Day Extension to the 35-Day Appeal Period for a reimbursement claim submitted for the referenced site. QTE submitted a claim for reimbursement of Corrective Action costs from the UST Fund, dated December 16, 2008 in the amount of \$434,045.50. In an April 16, 2009 correspondence, the IEPA approved \$36,325.50. The deduction of \$397,720.00 was made due to a "lack of supporting documentation" of these costs. Please note that QTE had an approved budget and an approved work plan based on Subpart H of 734. The IEPA is now requesting documentation to support the unit rates (IEPA approved) presented in our reimbursement claim. On May 4, 2009, QTE submitted the supplemental invoices requested by the IEPA. I was told the supplemental information would receive a new Queue Number and would take up to four months to review. Due to the substantial amount of money involved and the time it will take IEPA to review the supplemental information, we are requesting the 90-Day Extension. If a response is not received from the IEPA within the 90-Day Extension period, we may have to file an appeal regarding this claim.

If you have any questions or require further clarification, please do not hesitate to contact me at (618) 632-9900.

Sincerely,

QUALITY TESTING AND ENGINEERING, INC.


Jack W. Mutchler, P. G.
Environmental Services Manager

JWM/fjr

Attachment:

IEPA Determination Letter, April 16, 2009

C: Mr. Don Mertz – Mertz Motor Company

www.qteinc.com

Exhibit B

CORPORATE OFFICE:
REGIONAL OFFICE:

803 WEST STATE STREET, O'FALLON, IL 62269
206 SOUTH LINN AVENUE, WENTZVILLE, MO 63385

PHONE: 618-632-9900
PHONE: 636-332-1153

FAX: 618-632-9922
FAX: 636-332-5781

[Track & Confirm](#)

Track & Confirm

Search Results

Label/Receipt Number: **7008 1140 0004 7344 0698**
Status: **Delivered**

Your item was delivered at 10:20 AM on April 18, 2009 in MILLSTADT, IL 62260.

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Accessibility
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MAY 15 2009

STATE OF ILLINOIS
Pollution Control Board

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on May 12, 2009, 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 postage affixed thereto, upon the following named persons:

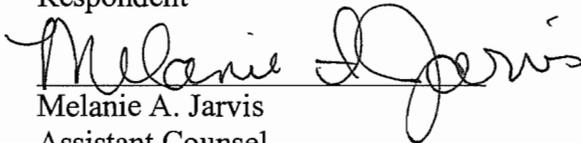
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