

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WEEKE OIL COMPANY,	)	
Petitioner,	)	
	)	
v.	)	PCB No.
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

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

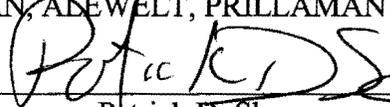
Division of Legal Counsel  
Illinois Attorney General  
Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed electronically with the Office of the Illinois Pollution Control Board, a Petition for Review of Agency LUST Decision, a copy of which is herewith served upon the attorney of record in this cause.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon the counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys at their business addresses as disclosed by the pleadings of record herein, with postage fully prepaid, and by depositing same in the U.S. Mail in Springfield, Illinois on the 1<sup>st</sup> day of July, 2009.

WEEKE OIL COMPANY, Petitioner

By its attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By:   
Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 N. Old Capitol Plaza, Ste. 325  
Springfield, IL 62701  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

WEEKE OIL COMPANY,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
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PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, Weeke Oil Company (“Weeke”), pursuant to Section 40 of the Illinois Environmental Protection Act, 415 ILCS 5/40, and Part 105 of the Illinois Pollution Control Board Rules, 35 Ill. Admin. Code Sections 105.400 through 105.412, and hereby appeals the LUST decision issued June 4, 2009, by Respondent Illinois Environmental Protection Agency (“Agency”), in which the Agency refuses to pay, and in support thereof states as follows:

1. Weeke is the owner or operator of underground storage tanks located in Nashville, Washington County, Illinois, and assigned LPC#1890305024.
2. In 1998, the tanks at the site were the subject of one or more releases, identified as LUST Incident No. 982004.
3. Clean-up activities were subsequently undertaken at the property and a “No Further Remediation” letter was issued on September 13, 2006.
4. During recent on-site construction activities, substantial free product was discovered on the site. The discovery was reported and assigned LUST Incident No. 20081597. Weeke submitted its 20-day report and 45-day report to the Agency. On December 8, 2008, a site investigation plan and budget were approved.
5. On February 4, 2009, the Agency received an application for payment for work

performed at the site.

6. On May 26, 2009, the Agency sent a letter, stating that there are no reporting requirements regarding this incident. "Leaking UST Incident No. 20081597 is associated with the same 4,000-gallon diesel UST, 4,000-gallon gasoline UST, and 6,000-gallon gasoline UST as Leaking UST Incident No. 982004, for which a No Further Remediation (NFR) Letter was issued on September 13, 2006." A true and correct copy of the "Non-LUST" letter is attached hereto as Exhibit A.

6. This letter does not appear to be appealable under the Act. (35 Ill. Admin. Code Part 104, App. A) However, in an abundance of caution, this appeal is being filed within 35 days of receipt of the Agency "Non-LUST" letter, in the event of contrary determination is made at some point.

7. On June 4, 2009, the Agency denied the application for payment because all of the costs "are associated with an incident for which neither the owner or operator nor his/her representative have confirmed a release." A true and correct copy of the Agency denial letter is attached hereto as Exhibit B.

8. The Agency's denial of payment is based on its own erroneous conclusion that there has been no release at the site and its erroneous, belated, efforts to prevent reporting of the release. The Agency's decision is inconsistent with the record and its own past determinations at the site.

WHEREFORE, Petitioner, Weeke, prays that: (a) the Agency produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in denying payment, (d) the Board direct the Agency to approve payment in full, (e) the Board award payment of attorney's fees; and (f) the Board grant Prime such other and further relief as it deems meet and just.

WEEKE OIL COMPANY,  
Petitioner

By its attorneys,  
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By:



Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 N. Old Capitol Plaza, Ste. 325  
Springfield, IL 62701  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

THIS FILING IS 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

**CERTIFIED MAIL**

**MAY 26 2009**

7008 1140 0004 7345 4015

James Weeke  
280 West 2<sup>nd</sup> Street  
Nashville, IL 62263

Re: LPC #1890305024 - Washington County  
Nashville/Weeke, James  
422 West St. Louis Street  
Leaking UST Incident No. 20081597  
Leaking UST Technical File

Dear Mr. Weeke:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the file for the above-referenced incident. Citations in this letter are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Based on the information currently in the Illinois EPA's possession, this incident is not subject to 35 Ill. Adm. Code 734, 732, or 731; therefore, the Illinois EPA Leaking Underground Storage Tank Program has no reporting requirements regarding this incident.

Leaking UST Incident No. 20081597 is associated with the same 4,000-gallon diesel UST, 4,000-gallon gasoline UST, and 6,000-gallon gasoline UST as Leaking UST Incident No. 982004, for which a No Further Remediation (NFR) Letter was issued on September 13, 2006; however, neither the owner or operator nor his/her representative have presented evidence of a new release. Specifically, none of the soil samples collected from the excavation following removal of the backfill material contained concentrations of BTEX, MTBE, or PNAs in excess of the most stringent Tier 1 remediation objectives. In addition, no laboratory samples were collected from the soil boring that was drilled adjacent to the pit.

If you have any questions or require assistance, please contact Trent Benanti at (217) 524-4649.

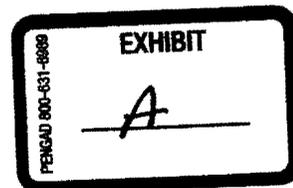
Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

MTL:TLB:H:\Projects2\Tim's Tire Time\Letters\Non-LUST.docx

c: Applied Environmental Technologies, Inc.  
BOL File





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

ROD R. BLAGOJEVICH, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

JUN 04 2009

CERTIFIED MAIL #

7007 0220 0000 0150 7632

Weeke Oil Company  
Attention: James Weeke  
280 West Second Street  
Nashville, Illinois 62263

Re: LPC #1890305024 -- Washington County  
Nashville/Weeke, James  
422 West St. Louis Street  
Incident-Claim No.: 20081597 -- 56127  
Queue Date: February 4, 2009  
Leaking UST FISCAL FILE

Dear Mr. Weeke:

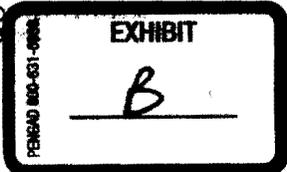
The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated February 2, 2009 and was received by the Agency on February 4, 2009. The application for payment covers the period from September 17, 2008 to February 11, 2009. The amount requested is \$50,973.41.

The deductible amount to be assessed on this claim is \$10,000.00, which is being deducted from this payment. In addition to the deductible, 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 February 4, 2009, 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 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 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.

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,

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  
COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120 · MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618)



Page 2

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 Doug Tolan of my staff and/or Trent Benanti at 217/782-6762.**

Sincerely,

Handwritten signature of John Sherrill in cursive, with the initials "JMT" written below the signature.

John Sherrill, Manager  
Financial Management Unit  
Bureau of Land

JS:DT:bjh\092117.doc

cc: Applied Environmental Technologies, Inc.  
LCU File  
Doug Tolan  
Trent Benanti

Attachment A  
Technical Deductions

Re: LPC #1890305024 - Washington County  
Nashville/Weeke, James  
422 West St. Louis Street  
Incident-Claim No.: 20081597 -- 56127  
Queue Date: February 4, 2009  
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. \$50,973.41 for costs that are associated with an incident for which neither the owner or operator nor his/her representative have confirmed a release. Pursuant to Section 57.9(a) of the Act, the Underground Storage Tank Fund shall be accessible by owners or operators who have a confirmed release from an underground storage tank (UST) or related tank system of a substance listed in said Section.

Leaking UST Incident No. 20081597 is associated with the same 4,000-gallon diesel UST, 4,000-gallon gasoline UST, and 6,000-gallon gasoline UST as Leaking UST Incident No. 982004, for which a No Further Remediation (NFR) Letter was issued on September 13, 2006; however, neither the owner or operator nor his/her representative have confirmed a new release. Specifically, none of the soil samples collected from the excavation following removal of the backfill material contained concentrations of BTEX, MTBE, or PNAs in excess of the most stringent Tier 1 remediation objectives. In addition, no laboratory samples were collected from the soil boring that was drilled adjacent to the pit.

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