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DEC 03 2009

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PRATHER OIL COMPANY,)
)
Petitioner,)
)
Vs.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB No.: 10-41
(LUST Reimbursement Appeal)

NOTICE OF FILING

To: John Therriault, Assistant Clerk Illinois Environmental Protection Agency
Illinois Pollution Control Board Division of Legal Counsel
State of Illinois Center 1021 North Grand Avenue, East
100 West Randolph Street P.O. Box 19276
Suite 11-500 Springfield, IL 62794-9276
Chicago, IL 60601

PLEASE TAKE NOTICE that I have on December 1, 2009 filed with the Office of the Clerk of the Pollution Control Board an original and nine (9) copies of an ENTRY OF APPEARANCE and PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION, copies of which are herewith served upon you.

Respectfully submitted,

PRATHER OIL COMPANY, Petitioner

BY: RAMMELKAMP BRADNEY, P.C.
its Attorneys

BY: 
Amy L. Jackson, Attorney

Attorneys for Petitioner:
Amy L. Jackson
Rammelkamp Bradney, P.C.
232 West State Street
P.O. Box 550
Jacksonville, IL 62650
Telephone: (217) 245-6177
Facsimile: (217) 243-7322
E-mail: ajackson@rblawyers.net

PROOF OF SERVICE

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause to each of the attorneys of record herein at their respective addresses disclosed on the pleadings on December 1, 2009, by:

<input checked="" type="checkbox"/> U.S. Mail	<input type="checkbox"/> FAX
<input type="checkbox"/> Hand Delivered	<input type="checkbox"/> Overnight Courier
<input type="checkbox"/> Federal Express	<input type="checkbox"/> Other:

Signature: Mary S. Ford

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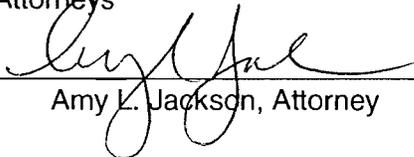
ENTRY OF APPEARANCE

COMES NOW the law firm of RAMMELKAMP BRADNEY, P.C., by attorney Amy L. Jackson, and enters its appearance on behalf of the Petitioner, PRATHER OIL COMPANY.

Respectfully submitted,

PRATHER OIL COMPANY, Petitioner

BY: RAMMELKAMP BRADNEY, P.C.
its Attorneys

BY: 

Amy L. Jackson, Attorney

Attorneys for Petitioner:
Amy L. Jackson
Rammelkamp Bradney, P.C.
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(LUST Reimbursement Appeal)

PETITION FOR REVIEW OF LUST FUND REIMBURSEMENT DECISION

COMES NOW the Petitioner, PRATHER OIL COMPANY, by and through its attorneys, RAMMELKAMP BRADNEY, P.C., and pursuant to Sections 40 and 57.7(c)(4) of the Illinois Environmental Protection Act ("the Act") (415 ILCS 5/40 and 5/57.7(c)(4)) and 35 Ill. Adm. Code 105, Subpart D, hereby requests review of the final decision of the Respondent, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY ("Agency") which denies Petitioner's request for reimbursement of certain indemnification costs incurred as a result of a release of petroleum from an underground storage tank ("UST") system. In support of this Petition for Review, the Petitioner states as follows:

1. At all times relevant to this Petition for Review, Petitioner was the owner of certain property located at 707 South State, Jerseyville, Jersey County, Illinois ("the site").
2. At all times relevant to this Petition for Review, Petitioner was the owner of the UST system formerly located at the site.
3. On May 24, 2000, the Illinois Emergency Management Agency ("IEMA") was notified of a release of petroleum product at the site.
4. Thereafter, Petitioner and those acting on Petitioner's behalf, performed corrective actions in response to the release and as approved by the

Agency, in accordance with applicable statutory and regulatory requirements.

5. In the course of corrective actions, Petitioner discovered that the release of petroleum product had migrated onto neighboring property located at 711 S. State Street, Jerseyville, Jersey County, Illinois, and owned by John Jones. Located on the property at 711 S. State Street is a retail business known as the Discount House.
6. Upon discovering the off-site impacts, and with the Agency's approval, Petitioner's corrective actions included the remediation of contamination at the 711 S. State Street property as well.
7. As a result of the off-site impact, John Jones and the Discount House filed a lawsuit against Prather Oil Company in the Circuit Court of Jersey County, Illinois. In their complaint, John Jones and the Discount House alleged various damages allegedly arising out of the release of petroleum product onto their property.
8. Litigation between Prather Oil Company and John Jones/Discount House ensued and ultimately resulted in a settlement agreement and entry of a Consent Judgment. Said Consent Judgment having been entered by the Jersey County Circuit Court, the Honorable Judge Lois Bell, on December 16, 2008.
9. That as part of the Settlement Agreement and Consent Judgment, Prather Oil Company was ordered to and did pay damages to John Jones and the Discount House.
10. On July 30, 2009, Petitioner submitted a request for reimbursement and indemnification to the Agency for these Court ordered damages that it was required to and did pay as a result of the aforementioned release.

11. On November 4, 2009, the Agency issued its final decision regarding the July 30, 2009 application for payment. The Agency's November 4, 2009 determination, a copy of which is attached hereto and incorporated herein by reference as Exhibit A, stated that, "a voucher cannot be prepared for submission to the Comptroller's office for payment" and also stated that this "constitutes the Illinois EPA's final action with regard to the above application(s) for payment."
12. Petitioner now seeks review of the Agency's denial of its request for reimbursement and indemnification because the stated reason for the Agency's denial is arbitrary, capricious and contrary to statutory authority.

WHEREFORE, for the above and foregoing reasons, Petitioner, PRATHER OIL COMPANY, respectfully requests that the Illinois Pollution Control Board grant the following relief:

- A. Find that the Agency's November 4, 2009 final decision is arbitrary and capricious and without statutory authority;
- B. Reverse the Agency's decision denying reimbursement and indemnification of Court ordered damages;
- C. Remand this matter to the Agency with instructions to process the indemnification request as provided by the Act and consistent with the Board's order; and

D. Award such further relief as deemed just and proper under these circumstances.

Respectfully submitted,

PRATHER OIL COMPANY, Petitioner

BY: RAMMELKAMP BRADNEY, P.C.
its Attorneys

BY:



Amy L. Jackson, Attorney

Attorneys for Petitioner:

Amy L. Jackson
Rammelkamp Bradney, P.C.
232 West State Street
P.O. Box 550
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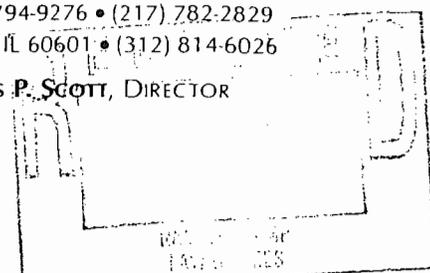


ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR



217/782-6762

CERTIFIED MAIL #

NOV 04 2009

7008 1830 0001 4720 6939

Prather Oil Company
Bruce Griffin
2 South Main
Winchester, Illinois 62694

Re: LPC 0830255048 -- Jersey County
Jerseyville / Prather Oil Company
707 S. State Street
Incident-Claim No.: 20000963 -- 57170
Queue Date: July 31, 2009
Leaking UST Fiscal File

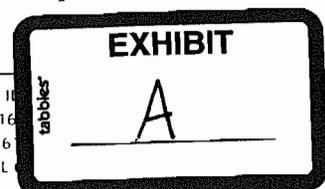
Dear Mr. Griffin:

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 Illinois Environmental Protection Act (Act) in effect prior to June 24, 2002 and 35 Illinois Administrative Code (35 Ill. Adm. Code) 732.Subpart F.

This information is dated July 30, 2009 and was received by the Illinois EPA on July 31, 2009. The application for payment requests costs for indemnification. The amount requested is \$40,000.00.

On July 31, 2009, the Illinois EPA received your complete 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 \$10,000.00, 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.



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This claim cannot be paid or processed. Listed in Attachment A are the reasons this claim cannot be paid and the additional information needed to process this claim.

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 Brian Bauer of my staff at 217/782-3335.

Sincerely,

Sincerely,



Hernando A. Albarracin, Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

HAA:BB

Attachment A

c: Rammelkamp Bradney – Amy Jackson
Leaking UST Claims Unit

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 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

ATTACHMENT A
Deductions

Re: LPC 0830255048 -- Jersey County
Jerseyville / Prather Oil Company
707 S. State Street
Incident-Claim No.: 20000963 -- 57170
Queue Date: July 31, 2009
Leaking UST Fiscal File

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. Costs associated with any corrective action activities, services, or materials that were not accompanied by a copy of the eligibility and deductibility decision(s) made for the above-referenced occurrence(s) for accessing the Fund pursuant to Section 57.8 of the Act and 35 Ill. Adm. Code 732.110(a), 732.601(b)(3), and 732.606(s).

A copy of the eligibility and deductibility decision(s) must be submitted to the Illinois EPA.

2. Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 732.606(gg). 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)(4)(C) of the Act because they may be used for corrective action activities in excess of those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to 35 Ill. Adm. Code 732.610(a)(1) the following information needs to be provided:

- a. A complete copy of the settlement agreement certified by the owner or operator as a true and correct copy. The settlement agreement must be submitted in its entirety with nothing redacted. A redacted version may be submitted in conjunction with the complete copy along with an explanation of why certain parts of the settlement agreement need to be redacted.
- b. Documentation that the settlement arises out of bodily injury or property damage suffered as a result of a release of petroleum from the UST for which the release was reported, and that the UST is owned or operated by the owner or operator.
- c. A copy of the OSFM or Agency eligibility and deductibility determination.
- d. A private insurance form and affidavit.