

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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FEB 24 2010

STATE OF ILLINOIS
Pollution Control Board

DONALD KOCH, d/b/a LLAD ENTERPRISES,)
Petitioner,)
)
v.)
ILLINOIS ENVIRONMENTAL PROTECTION)
AGENCY,)
Respondent.)

PCB 10-10-65
(LUST Appeal – Ninety Day
Extension)

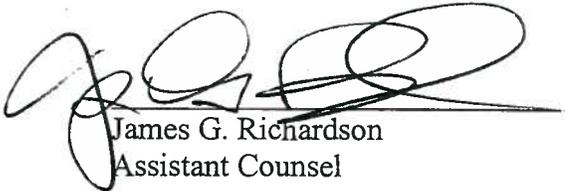
NOTICE

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

James E. Mitchell
Brown, Udell, Pomerantz & Delrahim, Ltd.
430 Park Avenue, Suite 3A
Highland Park, Illinois 60035

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

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



James G. Richardson
Assistant Counsel

Dated: February 22, 2010
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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STATE OF ILLINOIS
Pollution Control Board

DONALD KOCH, d/b/a LLAD)
ENTERPRISES,)
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v.)
)
ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
Respondent.)

PCB No. 10-10-65
(LUST Appeal – Ninety Day Extension)

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, James G. Richardson, 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 May 21, 2010, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

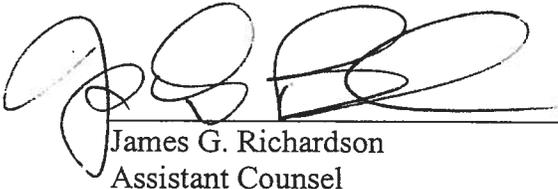
1. On January 12, 2010, the Illinois EPA issued a final decision to the Petitioner.
2. On February 19, 2010, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief the Petitioner did receive the final decision on January 16, 2010.

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



James G. Richardson
Assistant Counsel

Dated: February 22, 2010

1021 North Grand Avenue, East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
217/782-9143 (TDD)

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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

JAN 12 2010

CERTIFIED MAIL #

7008 1830 0001 4720 0814

Donald Koch d/b/a/ LLAD Enterprises
Attn: Adam Koch
3925 Medford Circle
Northbrook, IL. 60062

Re: LPC #0970055059 -- Lake County
Antioch / Antioch Mobil
1180 South Main Street
Incident-Claim No.: 20080287 -- 57571
Queue Date: October 8, 2009
Leaking UST Fiscal File

Dear Mr. Koch:

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), as amended by Public Act 92-0554 on June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated October 5, 2009 and was received by the Illinois EPA on October 8, 2009. The application for payment covers the period from April 14, 2008 to July 16, 2008. The amount requested is \$148,668.73.

On October 8, 2009, the Illinois EPA received your complete application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$84,796.63 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA 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 Illinois EPA. This constitutes the Illinois EPA's final action with regard to the above application(s) for payment.

The deductible amount of \$10,000.00 was withheld from your payment. 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

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760
Elgin • 595 S. State, Elgin, IL 60123 • (847) 600-3131
Bureau of Land - Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-8120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-8463
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 278-8800
Morton • 2309 W. Main St., Suite 116, Morton, IL 62559 • (618) 993-7200

Page 2

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.

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 Catherine S. Elston of my staff at 217-785-9351.

Sincerely,



John Sherrill, Manager
Financial Management Unit
Bureau of Land

JS:CSE

ATTACHMENT

c: Benchmark Environmental Services, Inc.
Leaking UST Claims Unit
Cathy Elston

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
Accounting Deductions

Re: LPC #0970055059 – Lake County
Antioch / Antioch Mobil
1180 South Main Street
Incident-Claim No.: 20080287 – 57571
Queue Date: October 8, 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. None of the costs incurred from May 3, 2008 to July 16, 2008 are eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). 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.

Based upon the above deduction, a deduction of \$8,722.40 was made.

Analytical costs from Environmental Monitoring invoice # 125676 - \$ 240.00
Remediation costs from Stenstrom Petroleum invoice #167100004 - \$8,482.40

2. \$4,680.50, deduction for costs that are based on mathematical errors. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(bb). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

The costs broken down for Stenstrom Petroleum invoice # 167100003 on April 14, 2008 do not add up correctly.

2. \$5,382.10, deduction for early action costs for remediation 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(cc).

Handling charges of 10-15% were added to the Stenstrom Petroleum invoices according to the breakdown provided and then handling charges were requested on the total for Stenstrom Petroleum.

4. \$33,412.17, deduction for costs for remediation, 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.

The cost breakdown provided for Stenstrom Petroleum invoice #167100003 only added up to \$ 39,427.50.

5. \$1,674.93, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

Handling charges on ineligible analytical costs from Environmental Monitoring and remediation costs from Stenstrom Petroleum.

cse

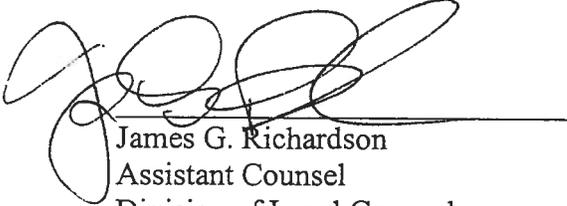
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on February 22, 2010 I served true and correct copies of a REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD by first class mail of the United States Postal Service upon the persons as follows:

John Therriault
Assistant Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, Illinois 60601-3218

James E. Mitchell
Brown, Udell, Pomerantz & Delrahim, Ltd.
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