

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

MOTHER HUBBARD'S CUPBOARD,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**NOTICE OF FILING AND PROOF OF SERVICE**

To:	John T. Therriault, Acting Clerk	Bill Ingersoll
	Illinois Pollution Control Board	Illinois Environmental Protection Agency
	100 West Randolph Street	1021 North Grand Avenue East
	State of Illinois Building, Suite 11-500	P.O. Box 19276
	Chicago, IL 60601	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (d), a PETITION FOR REVIEW OF THE AGENCY LUST DECISION, a copy of which is herewith served upon the attorneys 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 counsel of record of all parties to this cause by enclosing same in envelopes addressed to such attorneys with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 30th day of July, 2010.

Respectfully submitted,  
MOTHER HUBBARD'S CUPBOARD, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI,  
its attorneys

BY: /s/ Patrick D. Shaw

Patrick D. Shaw  
MOHAN, ALEWELT, PRILLAMAN & ADAMI  
1 North Old Capitol Plaza, Suite 325  
Springfield, IL 62701-1323  
Telephone: 217/528-2517  
Facsimile: 217/528-2553

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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Petitioner,	)	
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ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
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**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, Mother Hubbard's Cupboard, 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 on June 28, 2010, by Respondent Illinois Environmental Protection Agency ("Agency"), in which the Agency purportedly denied a plan and actual costs, and in support thereof states as follows:

1. Petitioner was or is the owner or operator of underground storage tanks located in Moline, Rock Island County, Illinois, and assigned LPC#1610455201.
2. One or more tanks located at the site were subject to a release in 1998 and issued an NFR letter in 1998.
3. The site has continued to be used as a gasoline service station.
4. During a recent environmental assessment, Petitioner's consultants found concentrations of benzene, ethylbenzene, and xylenes above remediation objectives.
5. The consultant reported these results to a LUST project manager for the Illinois EPA, including the fact that the tanks had passed monthly and annual tightness tests.
6. On January 26, 2010, the LUST project manager responded that the "COCs in monitoring wells may be due to a new release. Notification of IEMA would be appropriate."

7. On or about January 28, 2010, the Illinois Emergency Management Agency was notified and the notice was assigned Incident Number 20100089.

8. Thereafter, Petitioner's consultant performed corrective action work at the property pursuant to plans and budgets approved by the Illinois EPA, including various reports, site investigation plans and budgets. The Illinois EPA has approved reimbursement of early action costs.

9. On April 8, 2010, the Illinois EPA approved the stage one site investigation plan and budget.

10. Pursuant to the Agency's direction and approval of the site investigation plan, Petitioner performed said site investigation.

10. On May 11, 2010, Petitioner's consultant submitted the Stage 3 Site Investigation Plan & Stage 1 Actual Costs.

11. On June 28, 2010, the Illinois EPA issued a letter, attached hereto as Exhibit A, purporting to deny the plan and reimbursement for approved work, as well as retroactively removing the incident from the Leaking Underground Storage Tank program all together.

11. The Agency's decision is in violation of the Illinois Environmental Protection Act, which states that Agency approval of any plan and associated budget shall be considered final approval for purposes of seeking and obtaining payment from the Underground Storage Tank Fund. (415 ILCS 5/57.7(c)(1))

12. The Petitioner justifiably relied upon the various final approvals given by the Illinois EPA for performing corrective action at the site. Moreover, Petitioner also justifiably relied upon the direction of the Illinois EPA to treat it's initial findings as a new release and report it as such to the Illinois Emergency Management Agency. The Illinois Environmental

Protection Act requires Petitioner to conduct site investigation approved in any plan, “as well as otherwise directed by the Agency.” (415 ILCS 5/57.7(a)(3)) For the Illinois EPA to retroactively reverse its approvals and directions is in violation of not only the Act, but it is in violation of Petitioner’s Constitutional and statutory rights of due process.

13. If it is the position of the Illinois EPA that the site requires no further action, then the process for issuing a letter to that effect is set forth by law. It is illegal and arbitrary for the Illinois EPA to neither pay for the approved work performed to reach the point where no further action is required, nor issue the requisite letter to that effect.

WHEREFORE, Petitioner, Petitioners prays that: (a) the Agency timely produce the Record; (b) a hearing be held; (c) the Board find the Agency erred in its decision, (d) the Board direct the Agency to approve the Stage 3 Site Investigation Plan & Stage 1 Actual Costs budget, (e) the Board award payment of attorney’s fees; and (f) the Board grant Petitioner such other and further relief as it deems meet and just.

MOTHER HUBBARD’S CUPBOARD,  
Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI,  
its attorneys,

BY: /s/ Patrick D. Shaw

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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) 782-3029  
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

JUN 28 2010

7008 1830 0001 4713 6601

Mother Hubbard's Cupboard  
Attn: Greg Evans  
2326 53<sup>rd</sup> Street  
Moline, IL 61265

Re: LPC #1610455201 – Rock Island County  
Moline/ Mother Hubbard's Cupboard  
2930 16<sup>th</sup> Street  
Leaking UST Incident No. 20100089  
Leaking UST Technical File

Dear Mr. Evans:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Stage 3 Site Investigation Plan & Stage 1 Actual Costs budget submitted for the above-referenced incident. This Stage 3 Site Investigation Plan & Stage 1 Actual Costs budget, dated May 11, 2010, was received by the Illinois EPA on May 24, 2010. Citations in this letter 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).

Based on the information currently in the Illinois EPA's possession, this incident is not subject to Title XVI of the Act or 35 Ill. Adm. Code 734. Therefore, the Illinois EPA Leaking Underground Storage Tank Section has no reporting requirements regarding this incident.

From the information submitted to date, Incident #20100089 appears to be a re-reporting of Incidents #981033 & #982039, which were issued a NFR letter on May 4, 1998. Please note soil and groundwater contamination associated with Incidents #981033 & #982039 was addressed through the usage of Tier 2 Remediation Objectives and the City of Moline Groundwater Ordinance. Therefore, for the contamination that remains on-site appears to be residual contamination from Incidents #981033 & #982039.

This letter, however, does not address whether any remaining contamination at this site is being managed to protect human health or the environment. Any remaining contamination not the subject of this letter may be subject to other provisions of the Act.

Rockford • 4302 N. Main St., Rockford, IL 61103 • (815) 987-7760

Elgin • 595 S. State, Elgin, IL 60123 • (847) 608-3131

Bureau of Land – Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462

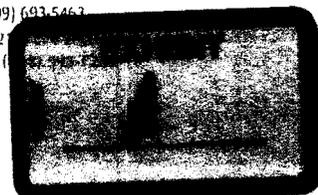
Collinsville • 2009 Mall Street, Collinsville, IL 62234 • (618) 346-5120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000

Peoria • 5415 N. University St., Peoria, IL 61614 • (309) 693-5462

Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 244-2444

Marion • 2309 W. Main St., Suite 116, Marion, IL 62959 • (618) 992-2444



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If you wish to address any remaining contamination, or portion thereof, at the site and want Illinois EPA concurrence that any cleanup measures taken are protective of human health, you may wish to consider participation in the Illinois EPA's Site Remediation Program. The Site Remediation Program has been developed to provide Illinois EPA guidance, assistance and determinations of successful completion for the voluntary conduct of remediation actions. The objectives of the program are as follows:

1. To provide Illinois EPA experience and assistance towards a timely, effective, and resource efficient cleanup of soil and/or groundwater contamination; and
2. To provide proper conclusion of participation in the program resulting in the issuance of either a No Further Remediation Letter or a Release of Responsibility Letter by the Illinois EPA.

Under the Site Remediation Program the Illinois EPA is authorized, and may agree, to provide review and evaluation services for actions at sites where hazardous substances, pesticides or petroleum may be present for which the owner or operator requested such services in writing. Any other person similarly may request review and evaluation services for actions at the site so long as that other person has provided the Illinois EPA with the written permission of the owner or operator to conduct those actions. Participants in the Program are required to reimburse the Illinois EPA for such services.

If you have any questions or require further assistance, please contact Jason Donnelly at (217) 557-8764

Sincerely,



Harry A. Chappel, P.E.  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

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c: LandTech, Inc., Ramona Cornea  
BOL File