

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

KNAPP OIL COMPANY,)	
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 21st day of April, 2011.

Respectfully submitted,
KNAPP OIL COMPANY, Petitioner

BY: MOHAN, ALEWELT, PRILLAMAN & ADAMI

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

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

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, KNAPP OIL COMPANY (“Knapp”), 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 March 22, 2011, by Respondent Illinois Environmental Protection Agency (“Agency”), in which the Agency denied payment of certain early action costs, and in support thereof states as follows:

1. Knapp is the owner of service station property in Central City, Marion County, Illinois, and assigned LPC#1214225106.
2. On or about October 7, 2010, a release was reported to the Illinois Emergency Management Agency from underground storage tanks at the site, which was then assigned Incident Number 20101101.
3. Within 45 days of confirming the release, Knapp’s consultant performed early action activities in accordance with Subpart B of Part 734 of the Board’s regulations (35 Ill. Admin. Code 734.200 *et seq.*)
4. In order to perform early action activities, particularly removal of tanks and contaminated soils, Knapp’s consultant removed concrete measuring ten inches thick from the

area above the underground storage tank excavation area. After the excavation work was completed and the excavation pit backfilled, concrete measuring ten inches thick was installed in the same area that the concrete had previously been destroyed. Knapp's consultant oversaw the replacement of the concrete by the pavement contractor.

5. On or about January 5, 2011, Knapp applied for reimbursement of early action costs, including the costs of replacing the concrete.

6. On or about March 22, 2011, the Agency approved payment of all, but two of the items of early action. A true and correct copy of said decision is attached hereto as Exhibit A. Said decision was entered less than thirty-five days prior to this filing.

7. The Agency first denied full reimbursement of the cost of replacing the concrete, stating that the "concrete replacement rate has been reduced to \$2.70 per square foot . . ." (Ex. A) The Agency does not specify the basis for this rate, but its own updated figures for the Subpart H rates reveals that \$2.70 per square foot is the rate for replacing four-inch-thick asphalt. Attached hereto as Exhibit B are the Maximum Payment Amounts published by the Agency on it's website. Board regulations authorize the reimbursement of "the cost to install, in the same area and to the same depth, the same material that was destroyed (e.g., replacing four inches of concrete with four inches of concrete)." (35 Ill. Admin. Code § 734.625(a)(16)) There is no basis for reducing the rate for replacing ten-inch-thick concrete by using the rate for replacing four-inch-thick asphalt.

8 The Agency also appears to have reduced the total square feet for which concrete was replaced, but it provides no basis or explanation for doing so in clear violation of the legal requirement of a detailed statement of the specific reasons why the submittal would violate the

law if approved. (415 ILCS 5/57.7(c)(4)(D)) Only such concrete was removed as was necessary to remove tanks and contaminated soil, and only such concrete was restored as had been removed.

9. The Agency has also improperly refused to reimburse any costs associated with concrete replacement oversight. Such field oversight costs are authorized by the regulations (35 Ill. Admin. Code § 734.625(a)(2); 734.845) and are necessary to make sure the paving work was performed properly and in accordance with both the Board's and Agency's regulatory requirements.

WHEREFORE, Petitioner, KNAPP OIL COMPANY, prays that: (a) the Agency 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 application for payment in full, (e) the Board award payment of attorney's fees; and (f) the Board grant Knapp such other and further relief as it deems meet and just.

Knapp OIL COMPANY,
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

Patrick D. Shaw
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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

PAT QUINN, GOVERNOR

DOUGLAS P. SCOTT, DIRECTOR

217/782-6762

MAR 2 2 2011

CERTIFIED MAIL #

7009 2820 0001 7488 1030

Knapp Oil Company
c/o EMI
Attn: Bill Knapp
1154 North Bradfordton Road
Springfield, Illinois 62711

Re: LPC# 1214225106 -- Marion County
Central City/Knapp Oil Company (Citgo)
100 North Broadway
Incident-Claim No.: 20101101 -- 59708
Queue Date: 1/6/11
Leaking UST Fiscal File

Dear Mr. Knapp:

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 January 5, 2011 and was received by the Illinois EPA on January 6, 2011. The application for payment covers the period from October 7, 2010 to December 3, 2010. The amount requested is \$150,712.93.

On January 6, 2011, 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 \$129,322.43 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.

Rockford • 4301 N. Main St., Rockford, IL 61103 • (815) 967-7740
Alton • 595 S. State, Alton, IL 60123 • (847) 608-3131
Bureau of Land • Peoria • 7620 N. University St., Peoria, IL 61614 • (309) 693-5462
Collingsville • 2009 Mail Street, Collinsville, IL 62234 • (618) 344-3120

Des Plaines • 9511 W. Harrison St., Des Plaines, IL 60016 • (847) 294-4000
Peoria • 3415 N. University St., Peoria, IL 61614 • (309) 693-5462
Champaign • 2125 S. First St., Champaign, IL 61820 • (217) 244-2356
Marion • 2309 W. Main St., Suite 110, Marion, IL 62959 • (618) 397-2300



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The deductible amount of \$5,000.00 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 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 Valerie Davis of my staff at 217/785-7492.

Sincerely,



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

HAA::vad 

ATTACHMENT

c: Leaking UST Claims Unit

Maximum Payment Amounts July 1, 2010 through June 30, 2011

Maximum Total Amount

Drilling:

Hollow-stem auger	\$26.09 per foot
Direct-push platform for sampling or other non-injection	\$20.42 per foot
Direct-push platform for injection	\$17.02 per foot

If the costs associated with a round of drilling are less than \$1,361.47 for direct-push platform or \$1,701.83 for hollow-stem auger, a charge of \$1,361.47 or \$1,701.83, respectively, can be requested.

Monitoring / Recovery Wells:

Monitoring well installation via hollow-stem auger	\$18.72 per foot
Monitoring well installation via direct-push platform	\$14.18 per foot
4" or 6" recovery well installation	\$28.36 per foot
8" or greater recovery well installation	\$46.52 per foot
Monitoring well abandonment	\$11.35 per foot

Excavation, Transportation, and Disposal of Contaminated Soil: \$64.67 per cubic yard

Backfilling the Excavation: \$22.69 per cubic yard

Overburden Removal and Replacement: \$7.37 per cubic yard

Groundwater or Free Product Removal and Disposal (per round): \$0.77 per gallon

If the removal, transportation, and disposal costs associated with each round of free product removal via hand bailing or a vacuum truck are less than \$226.91, a charge of \$226.91 may be requested. If the removal, transportation, and disposal costs associated with each round of groundwater removal via hand bailing or a vacuum truck are less than \$226.91, a charge of \$226.91 may be requested.

Drum Disposal:

Purchase, transportation, and disposal of drum of solid waste	\$283.64 per drum
Purchase, transportation, and disposal of drum of liquid waste	\$170.18 per drum

If the costs associated with the purchase, transportation, and disposal of 55-gallon drums containing waste (solid and liquid) are less than \$567.28, a charge of \$567.28 may be requested.

UST Abandonment or Removal:

UST volume 110 to 999 gallons	\$2,382.57 per UST
UST volume 1,000 to 14,999 gallons	\$3,573.85 per UST
UST volume ≥15,000 gallons	\$4,651.68 per UST

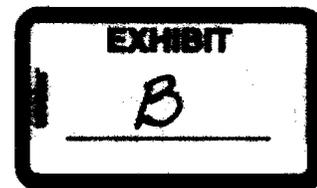
Replacement of Concrete, Asphalt, and Paving:

asphalt @ 2" depth: \$1.87 per square foot	asphalt @ 3" depth: \$2.11 per square foot
asphalt @ 4" depth: \$2.70 per square foot	asphalt @ 6" depth: \$3.49 per square foot
concrete @ 2" depth: \$2.78 per square foot	concrete @ 3" depth: \$3.32 per square foot
concrete @ 4" depth: \$3.87 per square foot	concrete @ 5" depth: \$4.41 per square foot
concrete @ 6" depth: \$4.95 per square foot	concrete @ 8" depth: \$6.02 per square foot

Concrete, Asphalt, and Paving Installed as of an Engineered Barrier:

asphalt @ 2" depth: \$1.87 per square foot	asphalt @ 3" depth: \$2.11 per square foot
asphalt @ 4" depth: \$2.70 per square foot	concrete @ any depth: \$2.70 per square foot

Destruction or Dismantling and Reassembly of Above Grade Structures: \$10,000.00 per site



Maximum Payment Amounts July 1, 2010 through June 30, 2011

Personnel Titles and Requirements

Title	Degree Required	Ill. License Required	Minimum Yrs. Experience	Maximum Hourly Rate
Engineer I	Bachelor's in Engineering	None	0	\$85.09
Engineer II	Bachelor's in Engineering	None	2	\$96.44
Engineer III	Bachelor's in Engineering	None	4	\$113.46
Professional Engineer	Bachelor's in Engineering	P.E.	4	\$124.80
Senior Prof. Engineer	Bachelor's in Engineering	P.E.	8	\$147.49
Geologist I	Bachelor's in Geology or Hydrogeology	None	0	\$79.42
Geologist II	Bachelor's in Geology or Hydrogeology	None	2	\$85.09
Geologist III	Bachelor's in Geology or Hydrogeology	None	4	\$99.84
Professional Geologist	Bachelor's in Geology or Hydrogeology	P.G.	4	\$104.38
Senior Prof. Geologist	Bachelor's in Geology or Hydrogeology	P.G.	8	\$124.80
Scientist I	Bachelor's in a Natural or Physical Science	None	0	\$68.07
Scientist II	Bachelor's in a Natural or Physical Science	None	2	\$73.75
Scientist III	Bachelor's in a Natural or Physical Science	None	4	\$79.42
Scientist IV	Bachelor's in a Natural or Physical Science	None	6	\$85.09
Senior Scientist	Bachelor's in a Natural or Physical Science	None	8	\$96.44
Project Manager	None	None	8 ¹	\$102.11
Senior Project Manager	None	None	12 ¹	\$113.46
Technician I	None	None	0	\$51.05
Technician II	None	None	2 ¹	\$56.73
Technician III	None	None	4 ¹	\$62.04
Technician IV	None	None	6 ¹	\$68.07
Senior Technician	None	None	8 ¹	\$73.75
Account Technician I	None	None	0	\$39.71
Account Technician II	None	None	2 ²	\$45.38
Account Technician III	None	None	4 ²	\$51.05
Account Technician IV	None	None	6 ²	\$56.73
Senior Acct. Technician	None	None	8 ²	\$62.40
Administrative Assistant I	None	None	0	\$28.36
Administrative Assistant II	None	None	2 ³	\$34.04
Administrative Assistant III	None	None	4 ³	\$39.71
Administrative Assistant IV	None	None	6 ³	\$45.38
Senior Admin. Assistant	None	None	8 ³	\$51.05
Draftperson/CAD I	None	None	0	\$45.38
Draftperson/CAD II	None	None	2 ⁴	\$51.05
Draftperson/CAD III	None	None	4 ⁴	\$56.73
Draftperson/CAD IV	None	None	6 ⁴	\$62.40
Senior Draftperson/CAD	None	None	8 ⁴	\$68.07

¹ Equivalent work-related or college level education with significant coursework in the physical, life, or environmental sciences can be substituted for all or part of the specified experience requirements.

² Equivalent work-related or college level education with significant coursework in accounting or business can be substituted for all or part of the specified experience requirements.

³ Equivalent work-related or college level education with significant coursework in administrative or secretarial services can be substituted for all or part of the specified experience requirements.

⁴ Equivalent work-related or college level education with significant coursework in drafting or computer aided design (CAD) can be substituted for all or part of the specified experience requirements.

Maximum Payment Amounts July 1, 2010 through June 30, 2011

Laboratory Rates Per Analysis Chemical	Maximum	Metals	Maximum
BETX Soil with MTBE	\$96.44	Soil preparation for Metals TCLP Soil (one fee per sample)	\$89.63
BETX Water with MTBE	\$91.90	Soil preparation for Metals Total Soil (one fee per sample)	\$18.15
COD (Chemical Oxygen Demand)	\$34.04	Water preparation for Metals Water (one fee per sample)	\$12.48
Corrosivity	\$17.02	Arsenic TCLP Soil	\$18.15
Flash Point or Ignitability Analysis EPA 1010	\$37.44	Arsenic Total Soil	\$18.15
FOC (Fraction Organic Carbon)	\$43.11	Arsenic Water	\$20.42
Fat, Oil, & Grease (FOG)	\$68.07	Barium TCLP Soil	\$11.35
LUST Pollutants Soil - analysis must include all volatile, base/neutral, polynuclear aromatic and metal parameters list in Section 732.Appendix B and 734.Appendix B	\$786.25	Barium Total Soil	\$11.35
Organic Carbon (ASTM-D 2974-87)	\$37.44	Barium Water	\$13.61
Dissolved Oxygen (DO)	\$27.23	Cadmium TCLP Soil	\$18.15
Paint Filter (Free Liquids)	\$15.88	Cadmium Total Soil	\$18.15
PCB / Pesticides (combination)	\$251.87	Cadmium Water	\$20.42
PCBs	\$125.94	Chromium TCLP Soil	\$11.35
Pesticides	\$158.84	Chromium Total Soil	\$11.35
pH	\$15.88	Chromium Water	\$13.61
Phenol	\$38.57	Cyanide TCLP Soil	\$31.77
Polynuclear Aromatics PNA, or PAH SOIL	\$172.45	Cyanide Total Soil	\$38.57
Polynuclear Aromatics PNA, or PAH WATER	\$172.45	Cyanide Water	\$38.57
Reactivity	\$77.15	Iron TCLP Soil	\$11.35
SVOC - Soil (Semi-Volatile Organic Compounds)	\$355.12	Iron Total Soil	\$11.35
SVOC - Water (Semi-Volatile Organic Compounds)	\$355.12	Iron Water	\$13.61
TKN (Total Kjeldahl) "nitrogen"	\$49.92	Lead TCLP Soil	\$18.15
TOC (Total Organic Carbon) EPA 9060A	\$35.17	Lead Total Soil	\$18.15
TPH (Total Petroleum Hydrocarbons)	\$138.42	Lead Water	\$20.42
VOC (Volatile Organic Compound) - Soil (Non-Aqueous)	\$198.55	Mercury TCLP Soil	\$21.56
VOC (Volatile Organic Compound) - Water	\$191.74	Mercury Total Soil	\$11.35
Geo-Technical		Mercury Water	\$29.50
Bulk Density ASTM D4292 / D2937	\$24.96	Selenium TCLP Soil	\$18.15
Ex-situ Hydraulic Conductivity / Permeability	\$289.31	Selenium Total Soil	\$18.15
Moisture Content ASTM D2216-90 / D4643-87	\$13.61	Selenium Water	\$17.02
Porosity	\$34.04	Silver TCLP Soil	\$11.35
Rock Hydraulic Conductivity Ex-situ	\$397.09	Silver Total Soil	\$11.35
Sieve / Particle Size Analysis ASTM D422-63 / D1140-54	\$164.51	Silver Water	\$13.61
Soil Classification ASTM D2488-90 / D2487-90	\$77.15	Metals TCLP Soil (a combination of all RCRA metals)	\$116.86
Other		Metals Total Soil (a combination of all RCRA metals)	\$106.65
EnCore® Sampler, purge-and-trap sampler, or equivalent sampling device	\$11.35	Metals Water (a combination of all RCRA metals)	\$135.01
Sample Shipping (*maximum total amount for shipping all samples collected in a calendar day)	*\$56.73		

Attachment A

Re: LPC# 1214225106 -- Marion County
Central City/Knapp Oil Company (Citgo)
100 North Broadway
Incident-Claim No.: 20101101 -- 59708
Queue Date: 1/6/11
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. \$15,505.50, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The concrete replacement rate has been reduced to \$ 2.70 per square foot for a maximum allowed 2135 square feet for 5-4000 gallon tanks. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.
2. \$ 885.00, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with concrete replacement oversight are included in the concrete replacement rate, as noted in item 1 above. The costs exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(zz). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable. No justification was provided as to why additional "oversight" was required.

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