

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TEXACO INC.)
)
 Petitioner,)
)
 v.)
)
 ILLINOIS ENVIRONMENTAL)
 PROTECTION AGENCY)
)
 Respondent.)

RECEIVED
CLERK'S OFFICE
APR 19 2013
PCB No. 2013 - 037
LUST - Appeal
STATE OF ILLINOIS
Pollution Control Board

NOTICE OF FILING

 ORIGINAL

To: James G. Richardson
Kyle Nash Davis
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on April 19, 2013 we filed with the clerk of the Illinois Pollution Control Board an original and nine copies of (i) Texaco Inc.'s Petition For Review and (ii) Appearance, copies of which are attached hereto and herewith served upon you.

TEXACO INC.

Dated: April 19, 2013

By: 
One of its attorneys

Joseph A. Girardi
Douglas M. Grom
Henderson & Lyman
Attorneys for Texaco Inc.
175 W. Jackson Blvd., Suite 240
Chicago, Illinois 60604
(312) 986-6960

PROOF OF SERVICE BY MAIL

I, Courtney Brandt, a non-attorney on oath, state that I served a copy of Texaco Inc.'s Petition For Review and Appearance on:

James G. Richardson
Kyle Nash Davis
Division of Legal Counsel
Illinois Environmental Protection Agency
1021 N. Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

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by depositing the same in the U.S. Mail at 175 West Jackson Boulevard, Chicago, Illinois 60604 before 5:00 p.m. on April 19, 2013.

Courtney Brandt

Subscribed and sworn to before
me this 19th day of April, 2013.

Stephanie A. Demas
Notary Public



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STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

TEXACO INC.

Petitioner,

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY

Respondent.

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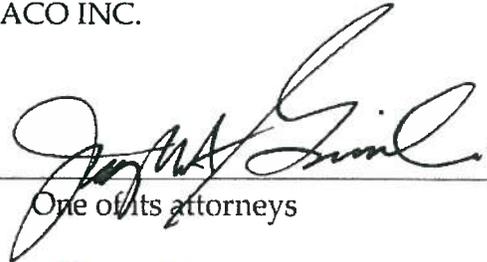
APPEARANCE

The undersigned, Joseph A. Girardi and Douglas M. Grom, of Henderson & Lyman, enter their appearance as counsel for Petitioner Texaco Inc.

TEXACO INC.

Dated: April 19, 2013

By:



One of its attorneys

By:



One of its attorneys

Joseph A. Girardi
Douglas M. Grom
Henderson & Lyman
Attorneys for Texaco Inc.
175 W. Jackson Blvd., Suite 240
Chicago, Illinois 60604
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ILLINOIS ENVIRONMENTAL)
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PETITION FOR REVIEW

Petitioner Texaco Inc. ("Texaco"), pursuant to Sections 40 and 57.7(c)(4) of the Illinois Environmental Protection Act ("Act"), 415 ILCS 5/40 and 5/57.7(c)(4), hereby appeals that part of the final decision made by Respondent Illinois Environmental Protection Agency ("Agency") on December 14, 2012 that modifies the early action budget by not approving for reimbursement \$119,987.22 in costs incurred in connection with Leaking UST Incident no. 20090361, LPC no. 0990855126. In support thereof Texaco states as follows:

1. Attached hereto as Exhibit 1 is a true and correct copy of the decision ("Decision") of Agency. The Decision was served on December 14, 2012.
2. A joint motion of the Agency and Texaco seeking a 90-day extension of the 35-day time to file a Petition For Review of the Decision was timely filed with the Board on January 14, 2013. On January 24, 2013 the Board issued an order granting the motion and extending the date for Texaco to file its Petition For Review to April 21, 2013.
3. In summary, the Decision approved a Corrective Action Plan ("CAP")

submitted to the Agency¹, but modified the early action budget contained in the CAP by not approving for reimbursement \$119,987.22 in costs incurred. Texaco appeals only from that part of the Decision that modifies the early action budget by denying approval of those costs.

4. Texaco's grounds for appeal are as follows:

(a) At Section 2.1 of Attachment B of the Decision, the Agency denies approval of \$3,958.50 in laboratory costs incurred because, according to the Agency, there is not sufficient documentation "to justify such costs, since Illinois EPA cannot determine if these costs exceed the minimum requirements of the Act." In fact, as will be demonstrated by the Agency Record required to be filed by the Agency pursuant to 35 IAC 105.410, Texaco submitted an early action budget that included the invoices for the laboratory costs in Appendix F of the CAP. Texaco also submitted the back-up information for the laboratory costs, consisting of sampling locations and rationale and copies of the laboratory reports, in Section 3 and Appendix B of the 45-day report submitted prior to submission of the CAP;

(b) At Section 2.2 of Attachment B, the Agency denies approval of \$96,048.72 in costs for excavation, transportation and disposal of soil and groundwater because, according to the Agency, there is not sufficient documentation "to justify such costs, since Illinois EPA cannot determine if these costs exceed the minimum requirements of the Act." In fact, as will be demonstrated by the Agency Record, Texaco submitted an early

¹ The Corrective Action Plan was submitted jointly by Texaco and Wendall Alleman, as the registered operators of the USTs; hence, the Decision was issued jointly to both parties.

action budget with the invoices for excavation, transportation and disposal of soil and groundwater in Appendix F of the CAP. Texaco also submitted the back-up information for these activities, consisting of a detailed report of the activities, the final size of the excavation and copies of manifests and weight tickets for the disposal of soil and groundwater, in Appendix B of the 45-day report submitted prior to submission of the CAP;

(c) At Section 2.3 of Attachment B, the Agency denies approval of \$19,980.00 in costs incurred for replacement of concrete because, according to the Agency, there is not sufficient documentation “to justify such costs, since Illinois EPA cannot determine if these costs exceed the minimum requirements of the Act.” In fact, as will be demonstrated by the Agency Record, Texaco submitted an early action budget with the invoice for the concrete replacement cost in Appendix F of the CAP. Texaco also submitted the back-up information for the concrete replacement cost in the form of the final size of the excavation that had to be covered with concrete in Appendix B of the 45-day report and Appendix B of the Site Investigation Completion Report, both of which were submitted prior to submission of the CAP;

(d) During the time the Agency was reviewing the CAP, Texaco responded, by an email dated October 22, 2012, to questions from the Agency regarding the costs; and

(e) During the time the Agency was reviewing the CAP, Texaco provided, at the request of the Agency, a timeline of events, in the form of a letter dated December 12, 2012, further explaining when and why each of the early action activities was performed.

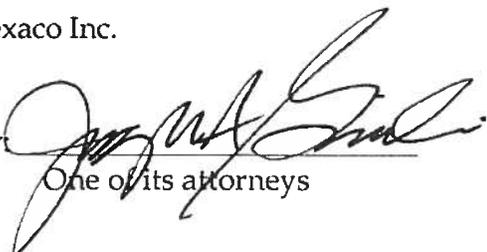
All of the foregoing information was sufficient under the Act to require the Agency to approve these costs.

Wherefore, for all of the foregoing reasons, Petitioner Texaco Inc. requests that the Board (i) reverse the Decision of Respondent Illinois Environmental Protection Agency in respect to the \$119,987.22 in costs that were not approved, (ii) approve for reimbursement the \$119,987.2 in costs, and (iii) grant such other or further relief as the Board may deem warranted.

Respectfully submitted,

Texaco Inc.

By



One of its attorneys

Dated: April 19, 2013

Joseph A. Girardi
Douglas M. Grom
Henderson & Lyman
Attorneys for Petitioner Texaco Inc.
175 W. Jackson Boulevard, Suite 240
Chicago, Illinois 60604
(312) 986-6960



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397
PAT QUINN, GOVERNOR JOHN J. KIM, INTERIM DIRECTOR

217/524-3300

CERTIFIED MAIL

DEC 14 2012

7010 2780 0002 1164 1381

Wendell Alleman and Texaco, Inc.
Attention: Chuck Alleman
329 North 25th Road
Peru, Illinois 61354

Re: LPC #0990855126 -- LaSalle County
Oglesby / Wendall Alleman and Texaco, Inc. #21216868
329 North 25th Road (Route 251 & R. Moyle Sr. Highway)
Leaking UST Incident No. #20090361
LUST Technical File

Dear Mr. Alleman:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated August 3, 2012, was received by the Illinois EPA on August 13, 2012. Citations in this letter are from the Environmental Protection Act (Act), as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Sections 57.7(b)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a), the plan is approved. The activities proposed in the plan are appropriate to demonstrate compliance with Title XVI of the Act. Please note that all activities associated with the remediation of this release proposed in the plan must be executed in accordance with all applicable regulatory and statutory requirements, including compliance with the proper permits.

The associated budget is approved for the amounts listed in Attachment A. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

In addition, the early action budget is modified pursuant to Sections 57.7(b)(3) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b). Based on the modifications listed in Section 2 of Attachment B, the amounts listed in Section 1 of Attachment B have been approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.7(c), 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

NOTE: Pursuant to Section 57.8(a)(5) of the Act, if payment from the Fund will be sought for any additional costs that may be incurred as a result of the Illinois EPA's modifications, an amended budget must be submitted. Amended plans and/or budgets must be submitted and

4302 N. Main St., Rockford, IL 61103 (815)987-7760
595 S. State, Elgin, IL 60123 (847)608-3131
2125 S. First St., Champaign, IL 61820 (217)278-5800
2009 Mall St., Collinsville, IL 62234 (618)346-5120

9511 Harrison St., Des Plaines, IL 60016 (847)294-4000
5407 N. University St., Arbor 113, Peoria, IL 61614 (309)693-5462
2309 W. Main St., Suite 116, Marion, IL 62959 (618)993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 60601 (312)814-6076

PLEASE PRINT ON RECYCLED PAPER

EXHIBIT

tabbler

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approved prior to the issuance of a No Further Remediation (NFR) Letter. Costs associated with a plan or budget that have not been approved prior to the issuance of an NFR Letter will not be paid from the Fund.

Pursuant to Sections 57.7(b)(5), 57.12(c), and 57.12 (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, the Illinois EPA requires that a Corrective Action Completion Report that achieves compliance with applicable remediation objectives be submitted within 30 days after completion of the plan to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

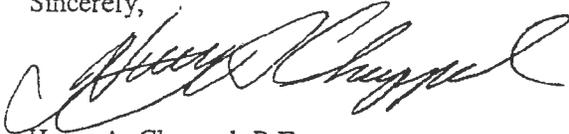
If within four years after the approval of this plan, compliance with the applicable remediation objectives has not been achieved and a Corrective Action Completion Report has not been submitted, the Illinois EPA requires the submission of a status report pursuant to Section 57.7(b)(6) of the Act.

Please be advised that, pursuant to Public Act 96-0908, effective June 8, 2010, all releases of petroleum from USTs are subject to Title XVI of the Act, as amended by Public Act 92-0554 on June 24, 2002, and Public Act 96-0908 on June 8, 2010, and 35 Ill. Adm. Code 734. The regulations at 35 Ill. Adm. Code 732 no longer exist, and the only releases subject to 35 Ill. Adm. Code 731 are those from hazardous substance USTs.

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 need further assistance, please contact the Illinois EPA project manager, Eric Kuhlman, at 217-785-5715.

Sincerely,



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

Page 3

HAC:EK:PV

Attachment: A, B, Appeal Rights

c: ARCADIS of Lexington, KY
Chevron Environmental management Company of Bellaire, TX
BOL File

Attachment A

Re: LPC #0990855126 -- LaSalle County
Oglesby / Wendall Alleman and Texaco, Inc. #21216868
329 North 25th Road (Route 251 & R. Moyle Sr. Highway)
Leaking UST Incident No. #20090361
LUST Technical File

SECTION 1

The following amounts are approved:

\$0.00	Drilling and Monitoring Well Costs
\$0.00	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$851.54	Paving, Demolition, and Well Abandonment Costs
\$5,637.74	Consulting Personnel Costs
\$314.00	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act and 35 Illinois Administrative Code 734.635.

SECTION 2

EK:P\

Attachment B

Re: LPC #0990855126 -- LaSalle County
Oglesby / Wendall Alleman and Texaco, Inc. #21216868
329 North 25th Road (Route 251 & R. Moyle Sr. Highway)
Leaking UST Incident No. #20090361
LUST Technical File

SECTION 1

As a result of Illinois EPA's modification(s) in Section 2 of this Attachment B, the following amounts are approved:

\$0.00	Drilling and Monitoring Well Costs
\$0.00	Analytical Costs
\$15,327.50	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$4,851.25	Consulting Personnel Costs
\$0.00	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

1. \$3,958.50 for costs for laboratory analysis, 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 costs associated with Test America for laboratory analysis needs additional documentation and explanation to justify such costs, since the Illinois EPA cannot determine if these costs exceed the minimum requirements of the Act. Therefore, the Illinois EPA requests that a list of the tests performed be submitted for review.

2. \$96,048.72 for costs for the excavation, transportation, and disposal, 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 costs associated with excavation, transportation, and disposal needs additional documentation and explanation to justify such costs, since the Illinois EPA cannot determine if these costs exceed the minimum requirements of the Act. Therefore, the Illinois EPA requests that the excavation dimensions and the amount of impacted soil excavated, transported, and disposed at a disposal facility be submitted for review.

3. \$19,980.00 for costs for concrete replacement, 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 costs associated with concrete replacement needs additional documentation and explanation to justify such costs, since the Illinois EPA cannot determine if these costs exceed the minimum requirements of the Act. Therefore, the Illinois EPA requests that the dimensions of the concrete destroyed by the excavation be submitted for review.

EK:PA

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