



HERLACHER ANGLETON ASSOCIATES, LLC
ENVIRONMENTAL ENGINEERING SERVICES

July 5, 2013

Mr. John Therriault
Illinois Pollution Control Board
100 West Randolph Street
Suite 11-500
Chicago, IL 60601-3218



ORIGINAL

RECEIVED
CLERK'S OFFICE

JUL 08 2013

STATE OF ILLINOIS
Pollution Control Board

Appeal of Illinois EPA Reimbursement Apportionment Decision
Consolidated Ice Company
5300 Collinsville Road
Fairmont City, IL 62001
IEMA # 20120414 - LPC # 16342555017

PCB 13-56

Dear Mr. Therriault,

The purpose of this letter is to request that the Illinois Pollution Control Board (IPCB) review and rescind the Illinois EPA's leaking underground storage tank (LUST) reimbursement apportionment decision for the Consolidated Ice Company, 5300 Collinsville Road, Fairmont City, IL 62201. The IEMA LUST incident number for this site is 2012-0414 and the LPC number is 16342555017.

We are sending this letter to you on behalf of our client Mr. Roy Twillmann, co-owner of the Consolidated Ice Company, who requested that we assist him with this appeal. Our client is requesting that the IPCB consider the information contained in this letter and the attachments and issue a judgement based upon the facts that we have presented. We will provide additional information to the IPCB if necessary but we believe that the facts in this situation are clear, uncomplicated and can be easily reviewed and evaluated. We see no need to appear before the IPCB for an oral presentation or the need to hire an attorney at considerable cost to represent our client simply to reiterate the facts as they are stated below.

Herlacher Angleton Associates, LLC (HAA) provided professional oversight for the removal of USTs at this site in June 2012. Three registered USTs were permitted for removal and during the removal process a fourth, unregistered UST (UST #4) was discovered. UST #4 was located in a common excavation within a foot of the adjacent USTs. When UST #4 was removed, Mr. Twillmann told the representative from the Office of the Illinois State Fire Marshal (OSFM) who was on site that they had purchased this property in 1966. Mr. Twillmann provided a hand written letter to the OSFM representative with that information and a copy of that letter is included as an attachment. UST #4 was covered with asphalt at that time of the purchase and the property owners did not know that UST #4 was on the property. The owners discovered UST #4 only two days before when the other three USTs were uncovered for removal.

When UST #4 was removed the OSFM representative stated in his removal log that there were no holes in the UST. Additionally this 3,000 gallon UST contained 1,736 gallons of water that had to be removed before the UST could be lifted out of the ground. Many times tank operators in the 1950s and 1960s placed water into out-of-service USTs to prevent them from floating up out of the ground. We believe that was done as an abandonment technique to UST #4 and it had retained this 1,736 gallons of water in it for at least 46 years. For the above reasons we maintain that UST #4 did not leak. Because the UST had been out of use and abandoned since before Consolidated Ice Company purchased the property in 1966 it would qualify as a pre-1974 UST or merely a tank carcass of a previously abandoned tank.

In a letter from the Illinois EPA dated March 5, 2013 the Agency stated "Therefore, reimbursement of corrective action costs will be apportioned at an 86% rate based on the volume of the eligible tanks." The Illinois EPA had determined that 14% of the contamination on this site was due to a release from the pre-1974 UST that had been out of use since before 1966. This apportionment decision was apparently made because the pre-1974 UST was not registered and was not eligible for reimbursement of remediation costs from the LUST Fund. A copy of this Illinois EPA letter is included as an attachment.

We mailed a Pre-1974 UST Notification to the Illinois EPA on April 16, 2013. We did this so that the Illinois EPA would know that UST #4 would not require remediation in accordance with the Illinois Pollution Control Board's February 2, 2006 order. UST #4 was not removed under an order issued by the OSFM. Because UST #4 is not subject to mandatory corrective action under the LUST program the property owners do not intend to remediate the contamination from UST #4.

Subsequent to our filing of the Pre-1974 UST Notification form we received a reply letter from the Illinois EPA dated June 7, 2013 that stated "Therefore, at this time the release from the Pre-1974 UST is not subject to mandatory corrective action under the Leaking UST Program." This letter went on to state that the reimbursement of corrective action costs will be apportioned pursuant to Section 57.8(m) of the Act and 35 IAC 734.640 because the pre-1974 UST #4 was ineligible to access the UST Fund for payment of corrective action costs even though mandatory corrective action was not required and we did not plan to remediate any of the contamination from UST #4. A copy of this Illinois EPA letter is included as an attachment.

Because the Illinois EPA has determined that 14% of the contamination was caused by the pre-1974 UST and we are not required to remediate that contamination we do not plan to remediate 14% of the contamination on the property. Therefore, we believe that the property owner should be entitled to receive 100% of the remediation costs for the 86% of the contamination that does require remediation.

Furthermore, we believe that the apportionment method in 35 IAC 734.640 that the Illinois EPA has applied is a purely arbitrarily-defined amount based upon an unscientific method that has no factual basis. The size and number of USTs at a facility has no bearing at all upon the potential amount that might be released from any one UST. We are requesting that the IPCB annul the 35 IAC 734.640 regulation and require the Illinois EPA to develop and apply an apportionment method that is scientifically sound and does not rely upon their whimsical and arbitrary judgement.

We believe that the information presented above fairly and accurately describes the facts of this situation. We request that you consider our appeal and reverse the Illinois EPA's apportionment decision so our client will receive the 100% reimbursement of corrective action costs to which they are entitled and which they deserve. Please contact us at 618-939-2262 or by email at therlacher@gmail.com if you have any questions about the contents of this letter or if you require additional information.

Sincerely,

HERLACHER ANGLETON ASSOCIATES, LLC



Thomas L. Herlacher, PE
Principal Engineer

ATTACHMENTS

Handwritten letter from Roy Twillmann dated 6/6/12
IEPA apportionment decision dated Mar 05, 2013
IEPA Pre-1974 UST notification dated Jun 07, 2013

Consolidated Ice Company, Inc.

6/6/12

We purchased the local
in 1966 the 3000 gal
plant to the west was
not in use

Roy Trullman



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR

217/524-3300

CERTIFIED MAIL

JUN 07 2013

7012 0470 0001 2998 7168

Consolidated Ice Company
Attn: Roy Twillmann
5300 Collinsville Rd.
East St. Louis, IL 62201

Re: LPC # 1634255017 -- St. Clair County
East St. Louis/Consolidated Ice Co.
5300 Collinsville Rd.
Leaking UST Incident No. 20120414
Leaking UST Technical File

Dear Mr. Twillmann:

The Illinois Environmental Protection Agency (Illinois EPA) is in receipt of the Pre-1974 UST Notification form which you submitted for the above-referenced incident. This correspondence was dated April 15, 2013 and was received by the Illinois EPA on April 18, 2013. The Pre-1974 UST Notification form indicated that the underground storage tank (UST) containing diesel fuel identified as UST #4 was taken out of operation before January 2, 1974.

Pursuant to the Illinois Pollution Control Board's February 2, 2006, order in the case of Freedom Oil Company v. Illinois Environmental Protection Agency, PCB 03-54, PCB 03-56, PCB 03-105, PCB 03-179, and PCB 04-2 (consolidated), releases from underground storage tanks taken out of operation before January 2, 1974, are not subject to mandatory corrective action under the Leaking UST Program unless the Office of the State Fire Marshal issues an order under Section 57.5(g) of the Environmental Protection Act (Act) based on a current or potential threat to human health and the environment. Freedom Oil Company v. Illinois Environmental Protection Agency, PCB 03-54, PCB 03-56, PCB 03-105, PCB 03-179, and PCB 04-2 (consolidated), 2006 WL 381850 at *55 (Ill. Poll. Control Bd. February 2, 2006). The OSFM has not issued an order under Section 57.5(g) of the Act based on a current or potential threat to human health or the environment. Therefore, at this time the release from UST #4 is not subject to mandatory corrective action under the Leaking UST Program.

Please note that reimbursement of corrective action costs associated with Incident No. 20120414 will be apportioned pursuant to Section 57.8(m) of the Act and 35 Ill. Adm. Code 734.640. The Office of the State Fire Marshall Log of UST Removal/Piping Removal dated June 6, 2012 states that contamination was present in the tank floor below UST #4. The owner or operator was deemed eligible to access the UST und for payment of corrective action costs for USTs #1, #2 and #3. The owner or operator was deemed ineligible to access the UST Fund for payment of corrective action costs for UST #4. Therefore, reimbursement of corrective action costs will be apportioned at an 86% rate based on the volume of

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)814-6026

eligible tanks (which is more favorable than apportionment based upon the number of tanks) in accordance with 35 Ill. Adm. Code 734.640(b).

If you have any questions or need further assistance, please contact the Illinois EPA project manager, Steve Jones, at 217/524-1253 or Steve.Jones@illinois.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'TAH', followed by a horizontal line extending to the right.

Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH: SJ ↗ Consolidated Ice (20120414) Pre-74 UST #4.doc

c: Herlacher Angleton Associated, LLC
BOL File



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, DIRECTOR

217/524-3300

CERTIFIED MAIL

MAR 05 2013

7012 0470 0001 2997 9996

Consolidated Ice Company
Attn: Roy Twillmann
5300 Collinsville Rd.
East St. Louis, IL 62201

Re: LPC # 1634255017 -- St. Clair County
East St. Louis/Consolidated Ice Co.
5300 Collinsville Rd.
Leaking UST Incident No. 20120414
Leaking UST Technical File

Dear Mr. Twillmann:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the 45-Day Report (report), which included a Stage 1 Site Investigation Plan and Budget certification, for the above-referenced incident. The report, dated June 2012, was received by the Illinois EPA on February 6, 2013. 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).

The 45-Day Report is approved pursuant to 35 Ill. Adm. Code 734.505(b) and 734.510(a); therefore, the 45-day reporting requirements of Section 57.6 of the Act and 35 Ill. Adm. Code 734.210(d) have been satisfied.

Pursuant to your certification, the Stage 1 Site Investigation Plan is approved and must be conducted in accordance with 35 Ill. Adm. Code 734.315. The budget, if applicable, is approved, and costs must not exceed the amounts set forth in 35 Ill. Adm. Code 734.Subpart H, Appendix D, and Appendix E. Please be advised that, if you do not meet the eligibility requirements as determined by the Office of the State Fire Marshal, you may not be entitled to payment from the Underground Storage Tank Fund for costs incurred. You must proceed with the Stage 1 site investigation in accordance with 35 Ill. Adm. Code 734.315.

Reimbursement of corrective action costs will be apportioned pursuant to 35 Ill. Adm. Code 734.640. The Office of the State Fire Marshall Log of UST Removal/Piping Removal dated June 6, 2012 states that contamination was present in the tank floor below UST #4. The owner or operator was deemed eligible to access the Fund for payment of corrective action costs for USTs #1, #2 and #3. The owner or operator was deemed ineligible to access the Fund for payment of corrective action costs for UST #4. Therefore, reimbursement of corrective action costs will be apportioned at an 86% rate based on the volume of eligible tanks.

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2125 S. First St., Champaign, IL 61820 (217)278-5800
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2309 W. Main St., Suite 116, Marion, IL 629 59 (618)993-7200
100 W. Randolph, Suite 10-300, Chicago, IL 606 608(312)814-6026

The Illinois EPA requires that the owner or operator a site investigation plan and budget for the subsequent stage of investigation (including the results of the Stage 1 site investigation and a summary of actual costs) or a site investigation completion report (if the extent of contamination is defined) within 90 days of the date of this letter pursuant to Sections 57.7(a) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.305. Please note that the Illinois EPA does not require the submission of a budget if the owner or operator does not intend to seek payment from the Underground Storage Tank Fund.

This action does not constitute any decision or determination regarding the timeliness of the submittal of the report. This decision does not waive or otherwise preclude any enforcement action the Illinois EPA may initiate in response to any apparent violation of timely submittal requirements.

Further, pursuant to 35 Ill. Adm. Code 734.145, it is required that the Illinois EPA be notified of field activities prior to the date the field activities take place. This notice must include a description of the field activities to be conducted; the name of the person conducting the activities; and the date, time, and place the activities will be conducted. This notification of field activities may be done by telephone, facsimile, or electronic mail—and must be provided at least three (3) working days prior to the scheduled field activities. Besides providing at least three days' notice to Leaking UST Section staff in Springfield, notification must be provided to Rob Mileur either by telephone at (618) 993-7223 or by e-mail at Robert.Mileur@illinois.gov.

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, Steve Jones, at 217/524-1253 or Steve.Jones@illinois.gov.

Sincerely,



Thomas A. Henninger
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

TAH:SJConsolidated Ice (20120414) 45 Day Rpt June 2012.doc

Attachments: Appeal Rights

c: Herlacher Angleton Associated, LLC
BOL File

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 request for 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

For information regarding the filing of an appeal, please contact:

Illinois Pollution Control Board, Clerk
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620