

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PAK-AGS, INC.,)	
Petitioner,)	
)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, PAK-AGS, INC., pursuant to Section 57.8(I) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(I), and hereby appeals the Agency's decision on June 23, 2014, refusing to pay the approved amount, and in support thereof states as follows:

1. In early 2007, PAK-AGS, Inc. purchased a self-service gas station located in Granite City, Illinois, which had been assigned LPC #1190405073.
2. The facility contained a total of three 10,000 gallon gasoline tanks, all of which were timely registered in 1987.
3. In late 2008, the facility stopped selling gasoline.
4. On September 1, 2011, a gasoline release at the site was reported to the Illinois Emergency Management Agency and assigned Incident Number 20110945.
5. Thereafter, PAK-AGS, INC. applied for, and received, permission to remove all of the tanks in October of 2011.
6. PAK-AGS, INC. applied for, and received, from the Office of the State Fire Marshal a formal determination that it was eligible for reimbursement for corrective action costs

incurred remediating Incident Number 20110945 from the Underground Storage Tank Fund, subject to a \$5,000 deductible.

7. On March 28, 2012, PAK-AGS, INC. applied for reimbursement for \$117,391.39 in early action costs incurred, and the Illinois EPA approved reimbursement of \$106,886.62, including a reduction of \$5,000 for the deductible.

8. Thereafter, the Illinois approved the Stage 1 Site Investigation Plan and Budget, which was performed by PAK-AGS, INC.

9. After receiving the Illinois EPA's approval of the actual costs of the Stage 1 Site Investigation, PAK-AGS, INC. submitted its application for payment, with the requisite proofs attached.

10. On June 23, 2014, the Illinois EPA denied the application for payment, a true and correct copy of which is attached hereto as Exhibit A.

11. The reason given for denying payment is that the application materials did not include a an eligibility and deductible determination for a prior incident 20050545. The Illinois EPA's apparent purpose in this denial is to seek a second deductible determination, so that it can then "make the application determination concerning deductibles." (Ex. A (emphasis added))

12. Incident 20050545 occurred when the property was owned by Corner Liquor Store, who sold the property to N and S Service, who sold the property to PAK-AGS, INC.

13. Corner Liquor Store did not confirm there was a release in accordance with regulations promulgated by the Office of the State Fire Marshal, nor undertake to perform corrective action.

14. Petitioner was not required to submit an eligibility determination for Incident

20050545 because:

- a. Petitioner seeks payment for plans, budgets and actual costs approved by the Agency expressly for Incident 20110945;
- b. The Illinois EPA has not previously required submittals to be made for Incident 20050545;
- c. Petitioner submitted the only eligibility and deductibility determination made at the site and thus the documentation being demanded does not exist;
- d. Petitioner no longer has an ownership interest in the property, and thus cannot obtain an eligibility and deductibility determination for Incident 20050545;
- e. Incident 20050545 was never confirmed as a release and no corrective action was ever taken with respect to it, and therefore there is no relevance to this incident number under the Illinois Environmental Protection Agency, or regulations promulgated thereunder.

15. The Agency's determination was made on June 23, 2014, which is 32 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, PAK-AGS, INC., 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 PAK-AGS, INC. such other and further relief as it deems meet and just.

PAK-AGS, INC.,
Petitioner

By its attorneys,
MOHAN, ALEWELT, PRILLAMAN & ADAMI

By: /s/ Patrick D. Shaw

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) 782-2829

PAT QUINN, GOVERNOR

LISA BONNETT, DIRECTOR



217/524-3300

CERTIFIED MAIL #

JUN 23 2014

7012 0470 0001 3004 8032

PAK-AGS, Inc.
Attn: Environmental Management, Inc.
1154 North Bradfordton Road
Springfield, IL. 62711

Re: LPC #1190405073 -- Madison County
Granite City / PAK-AGS, Inc.
2526 Nameoki Road
Incident-Claim No.: 20110945 and 20050545 -- 64222
Queue Date: February 24, 2014
Leaking UST Fiscal File

Dear Sir:

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 February 24, 2014 and was received by the Illinois EPA on February 24, 2014. The application for payment covers the period from August 1, 2012 to February 3, 2014. The amount requested is \$17,562.48.

On February 24, 2014, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date 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 for just incident number 20110945 is \$5,000.00, which was previously withheld from your payment(s). 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

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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 or Brian Bauer of Harry Chappel's staff at 217-782-3335..

Sincerely,



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

HAA:CSE^{AB}

ATTACHMENT

c: Leaking UST Claims Unit
Cathy Elston

Attachment A
Deductions

Re: LPC #1190405073 -- Madison County
Granite City / PAK-AGS, Inc.
2526 Nameoki Road
Incident-Claim No.: 20110945 and 20050545 -- 64222
Queue Date: February 24, 2014
Leaking UST FISCAL FILE

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

1. \$17,562.48, deduction for costs for Stage 1 Site Investigation, 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.

An eligibility determination for incident 20050545 has not been submitted to the Agency.

Costs associated with any corrective action activities, services, or materials that were not accompanied by a copy of the eligibility and deductibility decision(s) made for the above-referenced occurrence(s) (20050545 and 20110945) for accessing the Fund pursuant to Section 57.8 of the Act and 35 Ill. Adm. Code 734.135(a), 734.605(b)(3), and 734.630(s) are not eligible for payment from the Fund.

The application for reimbursement is not complete, a complete application for payment consists a copy of the OSFM or Agency eligibility determination 35 Ill. Adm. Code 734.605(b)(3). An eligibility determination for 20050545 has not been submitted to the Agency.

The Agency cannot make the applicable determination concerning deductibles applicable to this occurrence pursuant to 35 Ill. Adm. Code 734.615(b).

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