

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

DAVIS & SONS OIL CO.,            )  
    Petitioner,                    )  
    v.                                )  
                                      )  
ILLINOIS ENVIRONMENTAL        )  
PROTECTION AGENCY,            )  
    Respondent.                  )

PCB \_\_\_\_\_  
(LUST Permit Appeal)

**NOTICE OF FILING AND PROOF OF SERVICE**

To:     John T. Therriault, Acting Clerk                    Division of Legal Counsel  
          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 29<sup>th</sup> day of November, 2016.

Respectfully submitted,

DAVIS & SONS OIL CO.,  
Petitioner,

BY:    LAW OFFICE OF PATRICK D. SHAW

BY:    /s/ Patrick D. Shaw

Patrick D. Shaw  
LAW OFFICE OF PATRICK D. SHAW  
80 Bellerive Road  
Springfield, IL 62704  
217-299-8484  
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

DAVIS & SONS OIL CO.,	)	
Petitioner,	)	
	)	
v.	)	PCB _____
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, DAVIS & SONS OIL CO., pursuant to Section 57.7(c)(4) of the Illinois Environmental Protection Act, 415 ILCS 5/57.7(c)(4), and hereby appeals the Agency's final decision, modifying a budget for corrective action, stating as follows:

1. Petitioner own a former service station in Fairfield, County of Wayne, Illinois, which has been assigned LPC # 1910100001.
2. On November 6, 2001, Petitioner reported releases of gasoline and diesel fuel from underground storage tanks at the site, which were subsequently removed. Incident Number 20011845 was assigned to the releases.
3. Thereafter, Petitioner engaged several consultants to respond to the releases and perform early action, site classification, and several rounds of corrective action.
4. On June 20, 2016, Petitioner's new consultants submitted a corrective action plan and budget, which hopes to constitute the final corrective action work.
5. On October 20, 2016, the Agency approved the plan, and modified the budget by striking out time estimated for the senior project manager and reducing the time estimated for the senior draftperson by a third. A true and correct copy of this decision letter is attached hereto as Exhibit A.

6. With respect to the senior project manager, the Agency cut a cumulative total of 46 hours for oversight, coordination and technical compliance for the corrective action plan, the corrective action plan budget, the corrective action completion report and corrective action reimbursement.

7. While the denial letter claims that the reason for this elimination is lack of supporting documentation and not reasonable as submitted, the denial letter fails to offer an explanation of "the specific type of information, if any, that the Agency needs to complete the review." (35 Ill. Adm. Code § 734.505(b)) The only explanation given is that "[i]t is noted that a Senior Professional Engineer has between three and six hours of certification time for each of the tasks listed above." (Ex. A) This is not true. The licensed professional engineer, which is a position billed at a higher rate than the senior project manager, is merely projected to do the minimum required to satisfy his or her professional duties in certifying the submittals to the Agency. If those duties to be performed by the Senior Project Manager must be reassigned to the Senior Professional Engineer, the budget would necessarily be higher.

8. As a point of comparison, the denial letter references previous corrective action plan budgets approved by the Agency. The December 2, 2010 corrective action plan budget approved \$27,381.60 in consulting personnel costs, which included 117 hours for the senior project manager totaling \$13,274.82, with a senior professional geologist having an additional two to eight hours of certification time for each submission. Since this was a different consulting firm, with different approach to staffing the job, differences are to be expected, but it is not unusual for a corrective action plan budget to require more hours from the senior project manager beyond those of the professional licensee's review and certification of submittals. This is a

normal practice and normally approved by the Agency.

9. With respect to the senior draftsman, all ten hours to update and complete maps for the corrective action completion report was cut, for the apparent reason that additional time would be needed beyond that associated with the correction action plan. It is for this reason that less time is estimated for the report than the plan, but these are estimates. The actual time expended for each item will be presented as part of the reimbursement request. Eliminating all map preparation for the corrective action completion report can only be justified if no new maps are required for such a report, which is absurd.

10. In all cases, the application was complete, containing all of the information required pursuant to Section 57.7(a)(2) of the Illinois Environmental Protection Act (415 ILCS 5/57.7(a)(2)), pursuant to Section 734.135 of the Board's regulations (35 Ill. Adm. Code § 734.135), and in accordance with Illinois EPA forms.

11. The subject Illinois EPA letter was received by certified mail on October 25, 2016, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, DAVIS & SONS OIL CO., 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 budget as submitted, (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.

DAVIS & SONS OIL CO.,  
Petitioner

By its attorneys,  
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw  
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BRUCE RAUNER, GOVERNOR ALEC MESSINA, ACTING DIRECTOR

217/524-3300

CERTIFIED MAIL

7014 2120 0002 3287 7257

OCT 20 2016

Davis & Sons Oil Company  
Attention: Mr. Todd Davis  
PO Box 444  
Fairfield, Illinois 62873

RECEIVED  
OCT 24 2016  
BY: *OK*

Re: LPC #1910100001 -- Wayne County  
Fairfield / Davis & Sons Oil Company  
301 West Main Street  
Leaking UST Incident No. 20011845  
Leaking UST Technical File

Dear Mr. Davis:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Corrective Action Plan (plan) submitted for the above-referenced incident. This plan, dated June 20, 2016, was received by the Illinois EPA on June 22, 2016. Citations in this letter are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the 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. In addition, the 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 A, the amounts listed in Section 1 of Attachment A 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 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.

EXHIBIT  
*A*

Page 2

Pursuant to Sections 57.7(b)(5) and 57.12(c) and (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.

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 Michael A. Heaton at 217/524-3312.

Sincerely,



Michael T. Lowder  
Unit Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

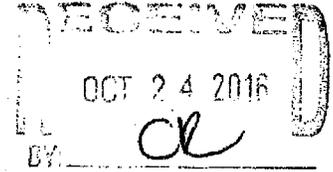
MTL:mh\011845fi.docx

Attachment: Attachment A (Corrective Action Budget)

cc: Ms. Carol Rowe, PG – CWM Company (Springfield, Illinois)  
BOL File

Attachment A

Re: LPC #1910100001 -- Wayne County  
Fairfield / Davis & Sons Oil Company  
301 West Main Street  
Leaking UST Incident No. 20011845  
Leaking UST Technical File



**SECTION 1**

On September 20, 2007, the Corrective Action budget was approved for:

\$6,605.61	Drilling and Monitoring Well Costs
\$9,972.76	Analytical Costs
\$1,514.68	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$1,350.00	Paving, Demolition, and Well Abandonment Costs
\$25,210.56	Consulting Personnel Costs
\$1,147.00	Consultant's Materials Costs

On September 19, 2008, the Corrective Action budget was approved for:

\$1,689.72	Drilling and Monitoring Well Costs
\$-0-	Analytical Costs
\$-0-	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$-0-	Paving, Demolition, and Well Abandonment Costs
\$11,881.00	Consulting Personnel Costs
\$356.20	Consultant's Materials Costs

On April 27, 2010, the Corrective Action budget was approved for:

\$1,334.77	Drilling and Monitoring Well Costs
\$3,485.97	Analytical Costs
\$-0-	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$-0-	Paving, Demolition, and Well Abandonment Costs
\$12,831.45	Consulting Personnel Costs
\$438.50	Consultant's Materials Costs

On December 2, 2010, the Corrective Action budget was approved for:

\$-0-	Drilling and Monitoring Well Costs
\$4,722.17	Analytical Costs
\$77,313.60	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs

Attachment A  
Page 2

\$12,285.00	Paving, Demolition, and Well Abandonment Costs
\$27,381.60	Consulting Personnel Costs
\$1,978.00	Consultant's Materials Costs

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

\$-0-	Drilling and Monitoring Well Costs
\$-0-	Analytical Costs
\$-0-	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$-0-	Paving, Demolition, and Well Abandonment Costs
\$25,996.65	Consulting Personnel Costs
\$711.50	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.

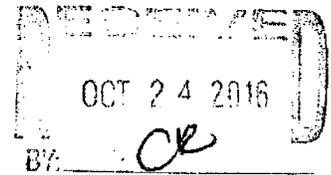
Therefore, the total cumulative budget is approved for:

\$9,630.10	Drilling and Monitoring Well Costs
\$18,180.90	Analytical Costs
\$78,828.28	Remediation and Disposal Costs
\$-0-	UST Removal and Abandonment Costs
\$13,635.00	Paving, Demolition, and Well Abandonment Costs
\$103,301.26	Consulting Personnel Costs
\$4,631.20	Consultant's Materials Costs

**SECTION 2**

1. \$6,433.26 for costs for Consulting Personnel Costs, 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. In addition, these costs are not reasonable as submitted. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd). In addition, these costs

Attachment A  
Page 3



exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

Specifically, these costs are for certain tasks associated with the Senior Project Manager and the Senior Draftsperson / CAD Operator.

a. Senior Project Manager

- i. Corrective Action Plan / Oversight / Coordination / Technical Compliance, 12 hours
- ii. Corrective Action Plan Budget / Oversight / Coordination / Technical Compliance, 8 hours
- iii. Corrective Action Completion Report Oversight / Technical Compliance, 10 hours
- iv. Corrective Action Reimbursement Oversight / Technical Compliance, 16 hours

It is noted that a Senior Professional Engineer has between three and six hours of certification time for each of the tasks listed above.

b. Senior Draftsperson / CAD Operator

- i. CACR Drafting / Update and Complete Maps, 10 hours

The Senior Draftsperson / CAD operator has fourteen hours allotted for work associated with the Corrective Action Plan and six hours for work associated with the Highway Authority Agreements. There was no explanation for why an additional ten hours would be necessary for the Corrective Action Completion Report.

mh

OCT 24 2016

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### 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:

John Therriault, Assistant Clerk  
Illinois Pollution Control Board  
James R. Thompson 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