

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

CITY OF MONMOUTH,)	
Petitioner,)	
v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

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 15th day of March, 2017.

Respectfully submitted,
CITY OF MONMOUTH,
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
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

CITY OF MONMOUTH,)	
Petitioner,)	
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v.)	PCB _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY LUST DECISION

NOW COMES Petitioner, CITY OF MONMOUTH, 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 budgets for site investigation activities, stating as follows:

1. Petitioner is the owner or operator of a former service station in Monmouth, County of Warren, Illinois, which has been assigned LPC #1870155032.
2. On May 5, 2014, releases from underground storage tanks were reported, and the tanks subsequently removed. Incident Number 2014-0510 was assigned to the releases.
3. After performing early action, and stage one and stage two site investigation, Petitioner submitted a Stage 3 Site Investigation Plan and Budget, which in all relevant respects was approved by the Agency on August 17, 2016.
4. This proposed budget set forth cost estimates for performing the associated plan, and the total amount of the proposed budget was \$42,008.40, including \$34,646.24 in consulting personnel costs.
5. In reliance upon this approval, the work was substantially completed and performed significantly under the amount approved in the budget.
6. Pursuant to Illinois EPA instructions for its forms, Stage Two and Stage Three site

investigation work must be approved through two rounds of budgets:

The actual costs for conducting the Stage 1 site investigation must be submitted on budget forms concurrently with the results of the Stage 1 site investigation and the next Site Investigation Plan and budget (submitted on its own budget forms) or with the Site Investigation Completion Report if the site investigation is complete. Likewise, the actual costs for conducting the Stages 2 and/or 3 site investigation must be submitted on budget forms concurrently with the results of the previous site investigation and the next Site Investigation Plan and budget (submitted on its own budget forms) or with the Site Investigation Completion Report if the site investigation is complete.

(Instructions for the Budget and Billing Forms, at p. 2)

7. Therefore, on November 7, 2016, Petitioner submitted a Site Investigation Completion Report with the Stage 3 Actual Cost Budget.

8. While the first budget was approved for \$34,646.24 in consulting personnel costs, the second budget proposed \$23,027.43, which is approximately one-third less.

9. On November 28, 2016, the Illinois EPA project manager sent an electronic-mail to the Petitioner's consultant under a claim of confidentiality, and while the claim is without merit, undersigned counsel believes it appropriate to make no comment as to its content until such time as the Illinois EPA may be represented by counsel in this matter.

10. Thereafter, further correspondence btw/ the parties ensued.

11. On February 2, 2017, the Agency issued its final decision in this matter, cutting \$11,175.86 from the actual cost budget for Stage 3 Site Investigation activities. A true and correct copy of this decision is attached hereto as Exhibit A.

12. Although actual costs were lower than in the initial budget, some of the work was ultimately performed by different individuals and some tasks took an hour more than anticipated, while others took less. The Agency cut hours arbitrarily and without legal basis, to wit:

- a. The initial proposed budget approved by the Agency anticipated that it would take 42 hours to prepare and design the Stage 3 plan, with 10 hours assigned to an Engineer III and 32 hours assigned to an Engineer I. Available personnel at the time the work was performed resulted in an Engineer III performing the work in 45 hours, which the Agency cut to zero, even though ten hours were previously approved in the first budget, and instead the Agency substituted 32 hours for an Engineer I to do the work.
- b. The initial proposed budget approved by the Agency anticipated 36 hours of work for requesting, obtaining, and negotiating with neighbors for site access, as well as related correspondence. This was projected to be shared between a senior project manager (8 hours), Engineer III (16 hours), and Senior Administrative Assistant (12 hours). The actual cost budget indicated that the work was actually performed within a total of 21 hours by a senior project manager (6 hours), Engineer III (5 hours), and Engineer II (10 hours). Even though the overall number of hours was less, as well as the total costs, the Agency cut all Engineer III time to zero hours and converted the Engineer II time to that of a Senior Administrative Assistant.
- c. In the initial budget, it was estimated that it would take three hours for the Senior Professional Engineer to review and certify the budget, but it actually took four hours as submitted in the second budget. Particularly given the number of items in the proposed budget which ultimately took less time than anticipated or otherwise came under budget, an additional hour is not unreasonable and is permitted in subsequent budgets.

d. In the initial budget, \$7,646.58 were estimated for all work involving preparation of the Site Investigation Completion Report. For this work, the various tasks were actually performed by the people predicted, were within or below the hours approved in the initial budget, and the actual cost budget totaled \$7,383.78. While the Agency approved the Site Investigation Completion Report, it cut all reimbursement related to the report for the purported reason that the “[h]ours requested are inconsistent with the documentation provided.” These hours are consistent or less than those approved in the initial budget and it is wholly inappropriate for the Agency to approve a site investigation completion report without paying for it.

13. Furthermore, the Agency cut all \$22.50 for copying costs for corresponding with neighbors regarding off-site access, whereas the previous budget approved \$37.50. The Agency states that the copies are inconsistent with the documentation submitted, whereas these copies are consistent with amounts approved in the previous budget, and were required in order to seek access to the neighboring property or demonstrate attempts were made.

14. Overall the purpose of a financial review is to make sure that the costs are “reasonable” (35 Ill. Adm. Code § 734.510(b)), and where the actual costs budget is far below the approved proposed budget, the appropriate purpose of a financial review is not to eliminate a few items that were slightly higher than estimated when dozens of other items were significantly lower.

15. 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.

16. The subject Illinois EPA letter was received by certified mail on February 8, 2017, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, CITY OF MONMOUTH, 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.

CITY OF MONMOUTH,
Petitioner

By its attorneys,
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

Patrick D. Shaw
LAW OFFICE OF PATRICK D. SHAW
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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397
BRUCE RAUNER, GOVERNOR ALEC MESSINA, ACTING DIRECTOR

217/524-3300

CERTIFIED MAIL

7014 2120 0002 3290 6667

FEB 02 2017

City of Monmouth
Mr. Lowell Crow
100 E. Broadway
Monmouth, IL 61462

Re: LPC #1870155032 -- Warren County
Monmouth/ Monmouth, City of
1125 North Main Street
Leaking UST Incident No. 20140510
Leaking UST Technical File

Dear Mr. Crow:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated November 7, 2016, was received by the Illinois EPA on November 10, 2016. Supplemental information was received by electronic mail on December 5, 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).

The Illinois EPA has determined that the requirements of Title XVI of the Act have been satisfied (Sections 57.7(a)(5) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)). Therefore, the report is approved.

Evaluation of the site specific data indicates the indoor air route of exposure is incomplete and need not be addressed pursuant to 35 Ill. Adm. Code 742.900.

In addition, the actual costs budget for Stage 3 is modified pursuant to Sections 57.7(a)(2) 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 are approved. Be aware that the amount of payment from the Fund may be limited by Sections 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.

Pursuant to Sections 57.7(b)(2) and (3) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100, 734.125, and 734.335(a), the Illinois EPA requires submittal of a Corrective Action Plan and budget within 30 days from the date of this letter 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 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.

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

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 Dave Myers at 217/785-7491.

Sincerely,



Stephen A. Colantino
Acting Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

SAC: dm: \SICRappBUDmod.dot

Attachments: A, Appeal Rights

c: Matt Rives, CWM Company (electronic copy), matt@cwmcompany.com
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 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

Attachment A

Re: LPC #1870155032 -- Warren County
Monmouth/ Monmouth, City of
1125 North Main Street
Leaking UST Incident No. 20140510
Leaking UST Technical File

SECTION 1

STAGE 3 Actual Costs

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A, 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
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$11,851.57	Consulting Personnel Costs
\$367.50	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.

SECTION 2

STAGE 3 Modifications

1. \$2628.23 for costs for Consulting Personnel associated with Stage 3 Plan preparation by the Engineer III, which are unreasonable pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd) and inconsistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

32 hours of Engineer I time at \$93.32 per hour was approved August 17, 2016 in the Stage 3 Budget.

2. \$625.75 for costs for Consulting Personnel associated with off-site access request by the Engineer III, which are unreasonable pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd) and inconsistent with the associated technical plan. Such costs

are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

Costs associated with the Engineer III were approved August 17, 2016 in the Stage 3 Budget for off-site data analysis.

3. \$375.40, deduction for a reduction in the personnel title listed in Section 734.APPENDIX E Personnel Titles and Rates. Pursuant to Section 734.850(b) personnel costs must not exceed the amounts set forth in Appendix E and the personnel costs must be based on the work performed, regardless the title of the person performing the work. The Engineer II rate has been reduced to a Sr. Administrative Assistant rate of \$56.32 per hour.

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 and 35 Ill. Adm. Code 734.630(dd).

Clerical cost associated with off-site access correspondence was approved August 17, 2016 at the Sr. Administrative Assistant rate.

4. \$162.70 for costs for Consulting Personnel associated with Stage 3 Budget Certification by the Sr. Professional Engineer, which are unreasonable pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(dd) and inconsistent with the associated technical plan. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b).

3 hours of Sr. Professional Engineer time was approved August 17, 2016 in the Stage 3 Budget.

5. \$5006.00 for costs for Consulting Personnel associated with SICR development by the Engineer III, 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.

Hours requested are inconsistent with the documentation provided.

6. \$750.90 for costs for technical compliance/oversite by the Sr. Project Manager, 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.

Hours requested are inconsistent with the documentation provided.

7. \$650.80 for costs for SICR certification by the Sr. Professional Engineer, 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.

Hours requested are inconsistent with the documentation provided.

8. \$225.28 for costs for SICR compilation and distribution by the Sr. Administrative Assistant, 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.

Hours requested are inconsistent with the documentation provided.

9. \$750.80 for costs for Consulting Personnel associated with SICR maps by the Sr. Draftsperson, 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.

Hours requested are inconsistent with the documentation provided.

10. \$22.50 for costs for Consultant's Materials associated with off-site access correspondence copies, 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.

Copies requested are inconsistent with the documentation provided.

dm: \SICRappBUDmodA.dot
