

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ALBANY & FULTON OIL, INC.,	)	
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 15<sup>th</sup> day of May, 2017.

Respectfully submitted,  
ALBANY & FULTON OIL, INC.,  
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

ALBANY & FULTON OIL, INC.,	)	
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, ALBANY & FULTON OIL, 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 final decision, authorizing partial payment for early action activities, stating as follows:

1. Petitioner is the owner or operator of a former service station in the City of Fulton, County of Whiteside, Illinois, which has been assigned LPC # 1950255004.
2. On September 8, 2016, releases from were reported from underground storage tanks on the premises, which were assigned Incident Number 2016-0820.
3. Thereafter, the tanks were removed, contaminated soil was removed from the vicinity of the tank pit, and soil samples were taken and analyzed.
4. On November 9, 2016, Petitioner's consultant filed a 45-Day report detailing this activity, as well as analytical results from sampling that confirmed the presence of soil and groundwater contamination.
5. On November 18, 2016, the Agency approved the 45-Day Report.
6. On December 23, 2016, the Petitioner's consultant submitted the application for payment, seeking reimbursement for \$94,873.21, subject to a \$5,000 deductible.
7. On April 5, 2017, the Illinois EPA made its determination, cutting \$4,717.36 in

costs. A true and correct copy of the Agency decision is attached hereto as Exhibit A.

8. All of the deductions purport to be justified by Section 57.7(c)(3) of the Act, which states in relevant part:

**In approving any plan submitted pursuant to subsection (a) [site investigation] or (b) [corrective action] of this Section, the Agency shall determine, by a procedure promulgated by the Board under Section 57.14, that the costs associated with the plan are reasonable, will be incurred in the performance of site investigation or corrective action, and will not be used for site investigation or corrective action activities in excess of those required to meet the minimum requirements of this Title.**

(415 ILCS 5/57.7(c)(3))

9. Section 57.7(c)(3) applies to plans and budgets submitted for site investigation and corrective action. It does not apply to early action activities, which do not require any plan.

(415 ILCS 5/57.6(b); 415 ILCS 5/57.8(a))

10. Similarly, most of the deductions rely on a related Board regulations only applicable to budgets. 35 Ill. Adm. Code § 807.630(dd) (“costs proposed as part of a budget that are unreasonable”); 35 Ill. Adm. Code § 807.505(a) (“Review of Plans, Budgets, or Reports”)

11. In general, these citations to inappropriate legal authorities demonstrate that the Agency erroneously sought to treat the payment application as a budget.

12. In addition to the legal issues identified, each of the deductions are erroneous for the following reasons:

- (a) Cuts to consulting personnel were not appropriate on the basis of an alleged lack of “supporting documentation,” because the payment application was complete as a matter of law (415 ILCS 5/57.8(a)(6)), documentation is not required or appropriate to perform site-specific rate-

making for early action activities, and the costs were otherwise reasonable.

- (b) Cuts to the number of copies were not appropriate on the basis of an alleged lack of “supporting documentation,” because the payment application was complete as a matter of law (415 ILCS 5/57.8(a)(6)), the number of copies did not exceed any legal requirement, and the number of copies was otherwise reasonable.
- (c) Cuts to measuring wheels, camera, and water level indicator as indirect costs were contrary to the Board’s rulings in Abel Investments v. IEPA, PCB 16-108, slip op. at 10-11 (Dec. 15, 2016) (measuring wheel is a direct cost); Knapp Oil Company v. IEPA, PCB 16-103, slip op. at 6-7 (Sept. 22, 2016) (camera is a direct cost).
- (d) Eliminating all reimbursement for use of a PID was inappropriate on the basis of an alleged lack of “supporting documentation,” because the payment application was complete as a matter of law (415 ILCS 5/57.8(a)(6)), the submittal was supported by a rental quote that demonstrated that the costs were reasonable, and further documentation was not required to set a site-specific rate for early action use of a PID.
- (e) Reducing the mileage and per diem rates based upon inapplicable rates was inappropriate and the rates charged were reasonable.
- (f) Eliminating reimbursement for ice used to store samples on site was inappropriate because ice for sample storage is a field purchase, separate and distinct from ice used for shipping samples at a later date.

(g) Hotel costs are field purchases eligible for handling charges.

13. Petitioner does not appeal deduction numbers 9 and 11 in the in the Agency decision letter.

14. The subject Illinois EPA letter was received by certified mail on April 10, 2017, which is 35 days from the date this appeal is being filed, and therefore timely.

WHEREFORE, Petitioner, ALBANY & FULTON OIL, 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 payment of the above-referenced deductions, (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.

ALBANY & FULTON OIL, INC.,  
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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pdshaw1law@gmail.com



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BRUCE RAUNER, GOVERNOR ALEC MESSINA, DIRECTOR

217/524-3300

APR 05 2017

CERTIFIED MAIL #

7014 2120 0002 3285 1813

Albany & Fulton Oil, Inc.  
Attn: CWM Company, Inc.  
PO Box 571  
Carlinville, IL. 62626

RECEIVED  
APR 12 2017  
BY: *CM*

Re: LPC #1950255004 -- Whiteside County  
Fulton / Albany & Fulton Oil, Inc.  
1615 4<sup>th</sup> Street  
Incident-Claim No.: 20160820 -- 67981  
Queue Date: December 23, 2016  
Leaking UST Fiscal File

Dear Mr. Ghuman:

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 Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated December 23, 2016 and was received by the Illinois EPA on December 23, 2016. The application for payment covers the period from September 1, 2016 to December 31, 2016. The amount requested is \$94,873.21.

On December 23, 2016, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$85,155.85 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Illinois EPA received your complete request for payment of this application for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date complete 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 of \$5,000.00 was withheld from your payment. 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 invoice paid to an eligible owner or operator.

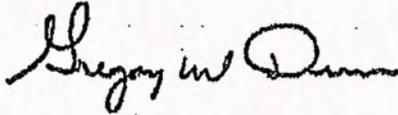


There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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.

Sincerely,



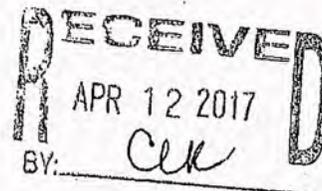
Gregory W. Dunn, Manager  
Leaking Underground Storage Tank Section  
Division of Remediation Management  
Bureau of Land

GWD:CSE 

ATTACHMENT

c: Albany & Fulton Oil, Inc.  
Leaking UST Claims Unit  
Cathy Elston

Attachment A  
Accounting Deductions



Re: LPC #1950255004 -- Whiteside County  
Fulton / Albany & Fulton Oil, Inc.  
1615 4<sup>th</sup> Street  
Incident-Claim No.: 20160820 -- 67981  
Queue Date: December 23, 2016  
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. \$2,420.48, deduction for early action costs for consulting personnel that 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(ee).

The consulting personnel costs 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.

Pursuant to 35 Ill. Adm. Code 734.850(b) costs associated with activities that do not have a maximum payment amount set forth pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The Agency has requested additional documentation to support the costs requested for consulting personnel pursuant to 35 Ill. Adm. Code 734.505(a). The documentation proved fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

2. \$67.50, deduction for early action costs for copies that 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(ee).

The copy costs 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).

The copy costs 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 number of copies was reduced from 723 copies to 273 copies.

3. \$199.50, deduction for indirect corrective action costs for a measuring wheel charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

A measuring wheel is an indirect cost billed as a direct cost.

4. \$238.00, deduction for indirect corrective action costs for a water level indicator charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

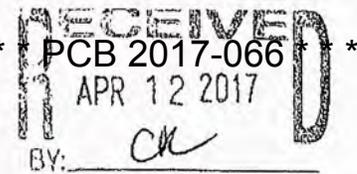
A water level indicator is an indirect cost billed as a direct cost.

5. \$77.00, deduction for indirect corrective action costs for a camera charged as direct costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(v). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable

A camera is an indirect cost billed as a direct cost.

6. \$1,258.00, deduction for costs for the PID, 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.

Pursuant to 35 Ill. Adm. Code 734.850(b) costs associated with activities that do not have a maximum payment amount set forth pursuant to 35 Ill. Adm. Code 734 Subpart H must be determined on a site specific basis and the owner/operator must demonstrate to the Agency the amounts sought for reimbursement are reasonable. The



Agency has requested additional documentation to support the costs requested for consulting personnel pursuant to 35 Ill. Adm. Code 734.505(a). The documentation proved fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

In addition, without supporting documentation for the rate requested the PID 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).

An invoice was not provided for the rental of the PID. The consultant's material form stated the costs requested were for a PID rental. The documentation provided stated it was a quote and the rate would be \$368.00 per week. According to the costs broken down the PID was used for a total of 8 ½ days, September 8, and 25, October 10-14 and October 17-18, 2016.

7. \$128.15, deduction for early action costs for mileage that 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(ee).

Mileage rate was reduced from \$.65 per mile to \$.54 per mile with the agreement of the consultant, CWM Company, Inc.

8. \$42.00, deduction for early action costs for per diem that 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(ee).

The rate for per diem was reduced from \$42.00 per day to the state rate of \$36.00 per day for 7 days.

9. \$42.00, deduction for per diem, 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.

Per diem was requested twice for October 17, 2016 but Matthew Rives for the only employee that had an overnight stay. Carol Rowe and Vince Smith had personnel hours on October 17, 2016 which did not include an overnight stay so they would not be eligible for per diem.

10. \$16.00, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with

the purchase of ice are included in the sample shipping rate, for which a maximum rate has been applied. 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.

Ice is included in the subpart H rate for sample shipping.

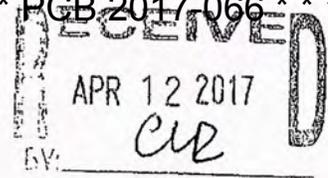
11. \$200.00, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with the LEL meter are included in the UST removal rate, for which a maximum rate has been applied. 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.

The LEL meter is included in the subpart H rate for UST removal.

12. \$28.73, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

Hotel charges are not eligible for handling charges.

cse



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)(D) 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:

Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph  
Suite 11-500  
Chicago, Illinois 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