

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS RAILWAY, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB 17-54
)	(Permit Appeal - Land)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	
)	
)	

NOTICE OF FILING

PLEASE TAKE NOTICE that defendant ILLINOIS RAILWAY, LLC (“Illinois Railway”) filed the attached Petition for Review before the Illinois Pollution Control Board.

Dated: June 12, 2017

Respectfully submitted,

ILLINOIS RAILWAY, LLC,

By: /s/ David L. Rieser

One of its attorneys

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)	(Permit Appeal - Land)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
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PETITION FOR REVIEW

Petitioner, Illinois Railway, LLC pursuant to Section 40(a) of the Illinois Environmental Protection Act (4115 ILCS 5/40(a), "Act") and 35 Ill. Adm. Code Part 105, Subpart D files this petition to seek review of the Illinois Environmental Protection Agency's ("Agency") decision to require additional investigation of conditions associated with an underground storage tank ("UST") located in Wedron, Illinois. In support, Petitioner states as follows:

1. Petitioner owns and operates a short line railroad which includes property and operations in LaSalle County. It owns a right of way and associated tracks which run west of the Fox River and immediately east of LaSalle County Highway 21 adjacent to the unincorporated community of Wedron. Wedron is located approximately 15 miles north east of Ottawa.

2. Since 2012, the U.S. Environmental Protection Agency ("USEPA") has conducted an investigation of groundwater contamination observed in the private wells of homes in Wedron. Petitioner (and other local industrial operations) has participated in that investigation by conducting several evaluations of soil and groundwater on its own property. One of those investigations was voluntary and one was pursuant to a consent order with USEPA.

3. Heavy rains during April of 2013 eroded soil on Petitioner's property and

uncovered an abandoned UST immediately east of LaSalle County Highway 21 which was denoted as UST#2. (Another UST had been previously identified on Petitioner's property during rail work which was identified as UST#1). Petitioner registered this UST with the Office of the State Fire Marshall ("OSFM") and removed it under their supervision on April 29, 2013. During the excavation, it was observed that the tank had been previously closed in place by removing the top and filling it with sand. Although only very minor traces of contamination were observed when it was removed, the OSFM determined that a release had occurred.

4. Although Petitioner took ownership of the railroad and property in 2005, it determined, based on historical records and other information, that UST #2 had been taken out of service prior to January 1, 1974. Because of the age of UST#2, the Agency determined that the release was not subject to mandatory corrective action under the Act in a letter dated July 8, 2013.

5. Despite this determination, the Agency sent another letter, dated August 7, 2013, demanding that Petitioner submit a Site Investigation Completion Report ("SICR"). In light of the July 8, 2013 letter, Petitioner took no action. The Agency followed up with another letter dated May 26, 2015 again demanding that Petitioner submit an SICR

6. After discussions with the Agency, Petitioner submitted an SICR on September 22, 2015 ("2015 SICR"). This report summarized Petitioner's activities in removing UST#2 and summarized data from its prior investigations relating to the area where UST#2 was located to document that further investigation and corrective action was not necessary. Petitioner stated that it submitted this report to cooperate with the Agency's demand but that it was not required to do so in light of the Agency's finding that no corrective action was warranted due to the age of the UST.

7. The Agency rejected the 2015 SICR in a letter dated January 19, 2016, claiming that the prior investigations failed to adequately delineate potential soil and groundwater contamination. Petitioner met with the Agency and agreed to perform an additional investigation to

respond to the Agency's concerns, again noting that its actions were voluntary and not required.

8. Petitioner's technical consultant worked with the Agency to develop the work plan for the investigation including the placement of soil borings and groundwater wells to ensure that the information developed from that investigation would respond to the issues raised by the Agency. The Agency issued a conditional approval of the work plan dated June 17, 2017, which specified the locations of soil borings and monitoring wells. Petitioner agreed to the changes.

9. Petitioner performed this investigation and submitted a Site Investigation and Completion Report on August 17, 2016 (2016 SICR).

10. In a letter dated February 2, 2017, the Agency rejected the 2016 SICR claiming that Petitioner had failed to adequately delineate soil contamination. The Agency provided minimal and confusing grounds for its decision. In contrast to its rejection of the 2016 SICR, however, the Agency did not state that further groundwater investigation was warranted.

11. As discussed in more detail below, Petitioner now challenges the Agency's determination of February 2, 2017. A copy of this letter is attached hereto and incorporated herein as Exhibit A. This was served on Petitioner on February 6, 2017.

12. Petitioner and the Agency agreed that additional time was necessary to discuss this issue further and agreed to submit a request to extend the time for filing this appeal. The Board determined that the request was timely and granted this extension on March 23, 2017. The Board required that any petition to challenge the Agency's decision be submitted by June 12, 2017.

13. After the extension was granted, Petitioner submitted a detailed response to the Agency's rejection letter describing specific data and reasoning as to why the Agency's rejection of the 2016 SICR was unwarranted. At the time of this Petition, the Agency has not formally responded to this response letter.

14. Petitioner challenges the Agency's February 2, 2017 on numerous grounds,

including but not limited to the following:

- a. The Agency has no statutory authority under the Act to demand any investigation or corrective action of UST#2 based on its initial determination that the UST was taken out of service prior to January 1, 1974.
- b. The Agency's determination to reject the 2016 SICR and to demand a Stage 3 site investigation plan is arbitrary capricious and not supported by information in the record before the Agency.
- c. The Agency's February 2, 2017 rejection letter fails to describe the basis for its determination with sufficient specificity to meet the requirements of Sections 40(a) and 57.7(c)(4) of the Act.

WHEREFORE, Petitioner requests that the Board provide the following alternative relief:

A. Determine that the Agency has no authority to require any further investigation or corrective action based on the Agency's determination that the UST was taken out of operation prior to January 1, 1974; or, in the alternative,

B. Reverse the Agency's determination rejecting the 2016 SICR and requiring additional investigation and direct the Agency to issue a No Further Remediation Letter as requested in the 2016 SICR; or,

C. Such other relief as the Board deems appropriate.

Respectfully Submitted

ILLINOIS RAILWAY LLC

By: /s/David L. Rieser

One of its Attorneys

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ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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BRUCE RAUNER, GOVERNOR ALEC MESSINA, ACTING DIRECTOR

217/524-3300

CERTIFIED MAIL

7014 2120 0002 3290 6759

FEB 02 2017

Illinois Railway, LLC
Attention: Ken Rose
430 West Madison Street
Ottawa, Illinois 61350

Re: LPC #0998995017 -- LaSalle County
Wedron / Illinois Railway -- Right of Way
County Highway 21 and Walnut Street
Leaking UST Incident No. #20130463
Leaking UST Technical File

Dear Mr. Rose:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated August 17, 2016, was received by the Illinois EPA on August 23, 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 report is rejected for the reason(s) listed in Attachment A (Sections 57.7(a)(5) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)).

Pursuant to Sections 57.7(a)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, a revised report must be submitted within 120 days of 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 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.

Attachment A

Re: LPC #0998995017 -- LaSalle County
Wedron / Illinois Railway – Right of Way
County Highway 21 and Walnut Street
Leaking UST Incident No. #20130463
Leaking UST Technical File

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

- I. If the results of a Stage 2 site investigation indicate that none of the applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, upon completion of the Stage 2 site investigation the owner or operator must cease site investigation and proceed with the submission of a site investigation completion report in accordance with 35 Ill. Adm. Code 734.330. If the results of the Stage 2 site investigation indicate that applicable indicator contaminants that exceed the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 as a result of the release extend beyond the site's property boundaries, within 30 days after the completion of the Stage 2 site investigation the owner or operator must submit to the Illinois EPA for review a Stage 3 site investigation plan in accordance with 35 Ill. Adm. Code 734.325. (Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.320(d))

A Stage 3 site investigation plan needs to be submitted to the Illinois EPA for technical review in accordance with 35 Ill. Adm. Code 734.325 since the results of the Stage 2 site investigation from SB-22 and SB-23 indicate that the applicable contaminants, benzene and total xylenes, exceed the most stringent Tier I remediation objectives as a result of this release extend beyond the site's western property boundary.

EK:P

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

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2017, I filed the foregoing Petition for Review with the Illinois Pollution Control Board, copies of which are served upon you:

**ILLINOIS ENVIRONMENTAL PROTECTION
AGENCY**

James G. Richardson
Deputy General Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276

/s/ David L. Rieser

June 13, 2017

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Don A. Brown
Clerk of the Board
Illinois Pollution Control Board
James R. Thompson Center
100 W. Randolph
Suite 11-500
Chicago, Illinois 60601

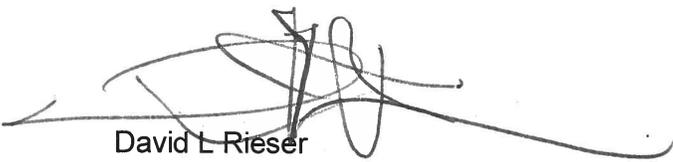
Re: **Payment for Filing**

Don:

Enclosed please find a check in the amount of \$75.00 as payment of the filing fee for a Petition for Review in the matter of Illinois Railway LLC v IEPA, PCB No. 17-54, which was filed on June 12, 2017.

Let me know if you have any questions.

Sincerely,


David L Rieser

Enclosures