

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

ILLINOIS AYERS OIL CO.,            )  
                                  Petitioner,            )  
                                  v.                                    )  
  PCB 2017-59  
  (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 18<sup>th</sup> day of July, 2017.

Respectfully submitted,  
ILLINOIS AYERS OIL CO.,  
Petitioner,

BY:    LAW OFFICE OF PATRICK D. SHAW

BY:    /s/ Patrick D. Shaw

Patrick D. Shaw  
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ILLINOIS AYERS OIL CO.,	)	
Petitioner,	)	
	)	
v.	)	PCB 2017-59
	)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
Respondent.	)	

**PETITION FOR REVIEW OF AGENCY LUST DECISION**

NOW COMES Petitioner, ILLINOIS AYERS 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 plan and budget, stating as follows:

1. Petitioner is the owner or operator of an active service station known as Ayerco #6, in the City of Rushville, County of Schuyler, Illinois, which has been assigned LPC # 1690205047.

2. In March of 2013, the City of Rushville contacted Petitioner with complaints of vapors in sanitary sewers and/or residences. Petitioner engaged its consultant to conduct an investigation, and the facility’s tank system tested tight and was found to be functioning properly. A trench was subsequently excavated on property next to Ayerco #6 and free product was found entering the trench. On April 4, 2013, releases were reported from the underground storage tanks at the site, which were subsequently assigned Incident Number 2013-0327.

3. Subsequently, early action was performed, including removal of free product that measured sixteen inches in monitoring well #2. Given that free product was still present and heavy rains were making collection difficult, Petitioner’s consultants contacted the Illinois Environmental Protection Agency (hereinafter “the Agency”) to ascertain whether an extension

of the 45-day period for early action was available, and was informed that categorically, the Agency is not granting any extensions of the 45-day period at this time. Consequently, free product removal was suspended after 200 gallons of free product had been removed, and the results reported to the Agency, which approved the 45-Day report on June 12, 2013.

4. On July 12, 2013, Petitioner submitted its first free product removal plan and budget, which were approved on September 17, 2013.

5. Thereafter and in conjunction with Site Investigation activities, free product was removed until it no longer exceeded one-eighth of an inch.

6. During the course of performing Stage 2 Site Investigation, monitoring well #2 was found to contain two inches of free product. On November 25, 2014, a second free product removal plan and budget was submitted to the Agency, which was approved on December 30, 2014. On May 6, 2015, the results of the free product removal were reported to the Agency and free product removal was discontinued.

7. During the course of performing Stage 3 Site Investigation, monitoring well #2 was discovered to now contain one inch of free product. On October 27, 2015, a third free product removal plan and budget was submitted to the Agency, which was approved on January 14, 2016.

8. On May 11, 2016, a free product removal report was submitted to the Agency detailing removal activities to date, and at the same time submitting a plan and budget to continue free product removal activities as free product can still be measured in monitoring well #2 at a depth of one-half inch. The plan and budget was approved on June 8, 2016.

9. On December 22, 2016, a free product removal report was submitted to the

Agency, detailing free product removal activities to date. Furthermore, since free product was last measured in the same monitoring well at a depth of three-quarters of an inch, the report included a plan and budget to continue free product removal.

10. On March 16, 2017, the Agency rejected the plan and budget. A true and correct copy of which is attached hereto as Exhibit A.

11. Pursuant to the the Board's regulations, "[u]nder any circumstance in which conditions at a site indicate the presence of free product, owners or operators must remove, to the maximum extent practicable, free product exceeding one-eighth of an inch in depth as measured in a groundwater monitoring well . . . ." (35 Ill. Adm. Code § 734.215 (a))

12. The Agency decision must be reversed as it fails to specify any legal requirement that would be violated if the free product removal plan was approved. Specifically, the provisions cited in justification only relate to early action activities regulated under 35 Ill. Adm. Code § 734.210.

13. The Agency's rationale appears to originate from two faulty assumptions. One is that hand-bailing has not been effective, whereas the evidence submitted with the free product removal plan demonstrates that the overall trend has been a reduction in free product by as much as 95 percent since initial observations.

14. The other false assumption appears to be that free product is migrating to two additional wells. Since 2013, free product has only been observed in monitoring well #2 in excess of one-eighth of an inch. The most recent results indicate that two leak detection wells in the tank pit contain one-eighth of an inch of free product, which is not enough to trigger any regulatory requirements and given the location in the tank pit where the releases originated, it is

not evidence of spreading contamination.

15. For the above reasons, the budget should also be approved, particularly given that it requests amounts generally consistent with those previously approved for free product removal, and the importance of resuming free product removal activities.

16. The subject Illinois EPA letter was received by certified mail on March 20, 2017, and on April 7, 2017, the parties timely filed a joint notice to extend the 35-day period for appeal. On April 12, 2017, the Illinois Pollution Control Board extended the deadline to file a petition to review to July 23, 2017.

WHEREFORE, Petitioner, ILLINOIS AYERS 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 plan and budget, (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.

ILLINOIS AYERS OIL CO.,  
Petitioner

By its attorneys,  
LAW OFFICE OF PATRICK D. SHAW

By: /s/ Patrick D. Shaw

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# ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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BRUCE RAUNER, GOVERNOR ALEC MESSINA, DIRECTOR

217/524-3300

CERTIFIED MAIL

MAR 16 2017

7014 2120 0002 3292 3879

Illinois Ayers Oil Company, Inc.  
Carl Adams, Jr.  
P.O. Box 772  
Quincy, IL 62306

Re: LPC# 1690205047—Schuyler County  
Rushville/ IL Ayers Oil Company  
141 South Congress  
Leaking UST Incident No. 20130327  
Leaking UST Technical File

Dear Mr. Adams:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Free Product Removal Plan (plan) submitted for the above-referenced incident. The plan, dated December 20, 2016, was received by the Illinois EPA on December 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).

The plan is rejected for the reason(s) listed below (Section 57.7(c) of the Act and 35 Ill. Adm. Code Section 734.505(b) and 734.510(a)):

Pursuant to 35 Ill. Adm. Code 734.210(a)(1), owners or operators must conduct free product removal in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site. The owner must also use abatement of free product migration as a minimum objective for the design of the free product removal system [35 Ill. Adm. Code 734.210(a)(2)]. According to the documentation that has been submitted, hand bailing has not been shown to be an effective way to remediate the free product at this site. Three Free Product Removal Plans and Budgets have been approved for the hand bailing of MW-2 since December 2014. The thickness of the free product in MW-2 was higher when the well was last checked in September 2016 than it was when the hand bailing of MW-2 began in January 2015. The free product has also recently migrated to two additional wells. Other free product remediation options must be explored.

In addition, the corresponding free product removal budget is rejected for the reason listed below (Section 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(b)):

The Illinois EPA has not approved the plan with which the budget is associated. Until such time as the plan is approved, a determination regarding the associated budget— i.e., a determination as to whether costs associated with materials, activities, and services are reasonable; whether costs are consistent with the associated technical plan; whether costs will be incurred in the performance of corrective action activities; whether costs will not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and whether costs exceed the maximum payment



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amounts set forth in Subpart H of 35 Ill. Adm. Code 734—cannot be made (Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b)).

If, following approval of the free product removal plan or associated budget, it is determined that a revised removal plan or budget is necessary in order to complete free product removal, an amended free product removal plan or budget, as applicable, must be submitted to the Illinois EPA for review (35 Ill. Adm. Code 734.215(g)). Any such plan and budget shall be submitted to the Illinois EPA for review and approval, rejection, or modification prior to payment for any related costs or the issuance of a No Further Remediation Letter (35 Ill. Adm. Code 734.215(f)).

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 Brad Dilbaitis at (217) 785-8378 or [Bradley.Dilbaitis@illinois.gov](mailto:Bradley.Dilbaitis@illinois.gov).

Sincerely,



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

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Attachment: Appeal Rights

c: Shane Thorpe, CSD Environmental Services, (electronic copy), [sthorpe@csdenviro.com](mailto:sthorpe@csdenviro.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