

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EVELYN M. PAGE TRUST, WAYNE A.)
PAGE, AND KENNARD PAGE,)
SUCESSOR TRUSTEES,)

Petitioners,)

v.)

ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)

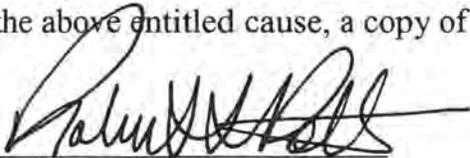
Respondent.

PCB 19-53
(UST Appeal)

NOTICE OF FILING

To: Division of Legal Counsel, IEPA and Carol Webb, Hearing Officer, Illinois Pollution Control Board

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board, the attached *Amended Appeal of Final Decision of the Illinois Environmental Protection Agency Petition for a Hearing* of the EVELYN M. PAGE TRUST, WAYNE A. PAGE and KENNARD PAGE, Successor Trustees, the Petitioners in the above entitled cause, a copy of which is herewith served upon you.



Robert L. Potts, Esq.
Attorney for the Petitioners

Date: September 25, 2018

Robert L. Potts, Esq.
Whitney & Potts, Ltd.
118 West Main Street
P.O. Box 368
Elmwood, Illinois 61529-0368
309/742-3611
megan@whitneyandpotts.com

CERTIFICATE OF SERVICE

I, the undersigned, CERTIFY that I have served on the date of September 25, 2018 the attached *Notice of Filing of the Amended Appeal of Final Decision of the Illinois Environmental Protection Agency Petition for a Hearing* of the EVELYN M. PAGE TRUST, WAYNE A. PAGE and KENNARD PAGE, Successor Trustees, the Petitioners in the above entitled cause, upon the following persons by depositing the document in U.S. Postal Service Mailbox by the time of 4:20 p.m., with proper postage or delivery charges prepaid:

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

Division of Legal Counsel
IEPA
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
P.O. Box 19274
Springfield, Illinois 62794-9274



Signature

Robert L. Potts, Esq.

Date: September 25, 2018

Robert L. Potts, Esq.
Whitney & Potts, Ltd.
118 West Main Street
P.O. Box 368
Elmwood, Illinois 61529-0368
309/742-3611
megan@whitneyandpotts.com

CERTIFICATE OF E-MAIL SERVICE

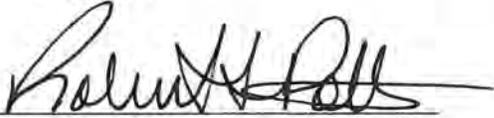
I, the undersigned, on oath STATE the following:

That I have served the attached *Notice of Filing of the Amended Appeal of Final Decision of the Illinois Environmental Protection Agency Petition for a Hearing of the EVELYN M. PAGE TRUST, WAYNE A. PAGE and KENNARD PAGE, Successor Trustees, the Petitioners in the above entitled cause, by e-mail upon: Don A. Brown, Clerk of the Illinois Pollution Control Board at the e-mail address of don.brown@illinois.gov, Carol Webb, Hearing Officer of the Illinois Pollution Control Board at e-mail address of carol.webb@illinois.gov and Division of Legal Counsel, IEPA at e-mail address of epa.dlc@illinois.gov.*

That my e-mail address is megan@whitneyandpotts.com.

That the number of pages in the e-mail transmission is 9.

That the e-mail transmission took place before 5:00 p.m. on the date of September 25, 2018.



Signature

Robert L. Potts, Esq.

Date: September 25, 2018

Robert L. Potts, Esq.
Whitney & Potts, Ltd.
118 West Main Street
P.O. Box 368
Elmwood, Illinois 61529-0368
309/742-3611
megan@whitneyandpotts.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EVELYN M. PAGE TRUST, WAYNE A.))	
PAGE, AND KENNARD PAGE,))	
SUCCESSOR TRUSTEES,))	
)	
Petitioners,))	
)	
v.))	PCB 19-53
)	(UST Appeal)
ILLINOIS ENVIRONMENTAL))	
PROTECTION AGENCY,))	
)	
Respondent.)	

AMENDED
APPEAL OF FINAL DECISION OF THE
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY
PETITION FOR A HEARING

The Petitioners, the EVELYN M. PAGE TRUST, WAYNE A. PAGE and KENNARD PAGE, Successor Trustees, by their attorneys WHITNEY & POTTS, LTD., do hereby Petition for a Hearing and Appeal the final decision of the Illinois Environmental Protection Agency rendered in the following case:

LPC #1438185006 -- Peoria County
Trivoli/ Evelyn M. Page Trust
23907 West Farmington Road
Incident- Claim No.: 20170100 – 69179
Queue Date: April 2, 2018
Leaking UST Fiscal File

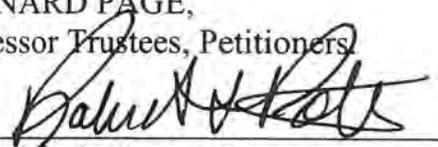
on July 25, 2018 by the Manager of the Leaking Underground Storage Tank Section, Division of Remediation Management, Bureau of Land, denying the Petitioner's request for full reimbursement, less the \$5,000.00 deductible, in connection with the removal of the underground fuel storage tank and remediation of the site located at 23907 West Farmington Road, Elmwood, Illinois 61529. A copy of such final decision is attached hereto as "EXHIBIT A" for your reference.

Petitioners specifically deny the factual, legal and substantive allegations as well as the reasons and basis for the denial of full reimbursement of Petitioners' claim as set forth in the final decision.

As a means of expediting a decision of the Illinois Pollution Control Board in the case, all responses and communications regarding Settlement Negotiations should be directed to Petitioners' Consultant, AL GREEN, of MIDWEST ENVIRONMENTAL CONSULTING & REMEDIATION SERVICES, INC., at 2200 Illinois Route 9, P.O. Box 614, Tremont, Illinois 61568, Phone: AC 309/925-5551.

Petitioners do therefore request that the Illinois Pollution Contract Board modify the Manager's final decision and grant full reimbursement less the deductible of the expenses incurred by the Petitioners in connection with the removal and disposition of the underground storage tank, remediation of the site as well as the engineering and other necessary costs submitted for reimbursement.

Respectfully Submitted,
EVELYN M. PAGE TRUST
WAYNE A. PAGE and
KENNARD PAGE,
Successor Trustees, Petitioners

By: 

Robert L. Potts, Esq.
WHITNEY & POTTS, LTD.,
Their attorneys

Robert L. Potts, Esq.
WHITNEY & POTTS, LTD.
Attorneys for the Petitioners
118 West Main Street
P.O. Box 368
Elmwood, Illinois 61529-0368
Telephone: (309) 742-3611
Email: megan@whitneyandpotts.com
cc: Wayne A. Page
cc: Al Green



Electronic Filing: Received, Clerk's Office 09/25/2018
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, DIRECTOR

217/524-3300

CERTIFIED MAIL #

7017 2680 0001 0214 8139

JUL 25 2018



Evelyn M. Page Trust
Attn: Midwest Environmental Consulting & Remediation Services, Inc.
22200 Illinois Route 9, P.O. Box 614
Tremont, IL 61568

Re: LPC #1438185006 -- Peoria County
Trivoli / Evelyn M. Page Trust
23907 West Farmington Road
Incident-Claim No.: 20170100 -- 69179
Queue Date: April 2, 2018
Leaking UST Fiscal File

Dear Mr. Page:

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 March 1, 2018 and was received by the Illinois EPA on April 2, 2018. The application for payment covers the period from February 7, 2017 to May 17, 2017. The amount requested is \$23,488.45.

On April 2, 2018, 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 \$7,691.40 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.

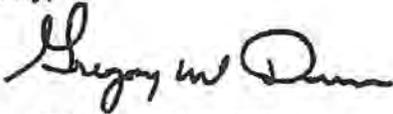
There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

Page 2

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 Melissa Owens 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:mao 

Attachments

c: Evelyn M. Page Trust
Leaking UST Claims Unit

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:

Clerk of the Board
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
Deductions

Re: LPC #1438185006 -- Peoria County
Trivoli / Evelyn M. Page Trust
23907 West Farmington Road
Incident-Claim No.: 20170100 -- 69179
Queue Date: April 2, 2018
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. \$2.97 for costs for vehicle charges, 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 rate requested for vehicle charges pursuant to 35 Ill. Adm. Code 734.505(a). The documentation was either not provided or fails to provide sufficient information for the Agency to make a site specific reasonableness determination.

In addition, without supporting documentation the rate requested for vehicle costs is 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).

The Illinois EPA will reimburse for mileage at a rate of \$0.535 when sufficient documentation has not been submitted for vehicle charges. 66 miles are being adjusted from \$0.58 per mile to \$0.535 per mile.

2. \$7.20, deduction for costs for Consultant', 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.

No documentation is provided for postage.

3. \$144.82, 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 Project Manager rate has been reduced to a Senior Account Technician rate of \$144.82 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).

2.75 hours for Fetterolf have been adjusted from the Project Manager rate of \$112.34 to the Senior Account Technician rate of \$68.83.

4. Costs incurred after April 7, 2017 are not reimbursable. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

Based upon the above, a deduction of \$774.39 was made for Consulting Personnel, which consists of 1.5 hours on April 10th for \$182.24, 1 hour on April 12th for \$121.49, 1 hour of April 10th for \$133.64, 2 hours on April 13th for \$224.68, and 1 hour on April 19th for \$112.34.

5. Costs incurred after April 7, 2017 are not eligible for reimbursement. To be considered for reimbursement, early action activities must be performed within 45 days after initial notification to the Illinois Emergency Management Agency of a release plus 14 days. The costs in question were not incurred within the time allowed for reimbursement. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.210(g). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not site investigation or corrective action costs.

Based upon the above, a deduction of \$915.00 was made for drum disposal.

6. \$8,951.81, deduction for costs for UST Removal, 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, 35 Ill. Adm. Code 734.800(a)(2) states that, as an alternative to using the amounts set forth in Sections 734.810 through 734.850 of this Part, the second method for determining the maximum amounts that can be paid for one or more tasks is bidding in accordance with Section 734.855 of this part. None of the guidelines for this method were followed. The owner/operator has failed to demonstrate that the bidding regulations of 35 Ill. Adm. Code 734.855 have been satisfied.

The subpart H rate for removal of a 10,000 gallon tank in the amount of \$3,942.33 plus backfill costs of 45.38 cubic yards at \$25.03 per cubic yard for a total of \$5,078.19 are being reimbursed.

7. \$0.86, deduction for handling charges for subcontractor costs when the contractor has not submitted proof of payment for subcontractor costs. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630 (ii). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Handling on postage is being cut because proof of payment was not provided.

LAW OFFICES

WHITNEY & POTTS, LTD.

118 WEST MAIN STREET

P.O. BOX 368

ELMWOOD, ILLINOIS 61529-0368

TELEPHONE (309) 742-3611 FAX (309) 742-8684

e-mail: law@whitneyandpotts.com

L. RICHARD WHITNEY
(1908-1965)

GEORGE I. WHITNEY
(1938-1987)

PARALEGALS:
REBECCA M. HENNENFENT
CORI MARTIN

ROBERT L. POTTS

STEPHANIE F. SCHMIEG
ASSOCIATE

ASHLEE E. STABLER
ASSOCIATE

September 25, 2018

Via First Class Mail and Email:

don.brown@illinois.gov

Mr. Don A. Brown

Clerk of the Board

Illinois Pollution Control Board

James R. Thompson Center

100 West Randolph, Suite 11-500

Chicago, Illinois 60601

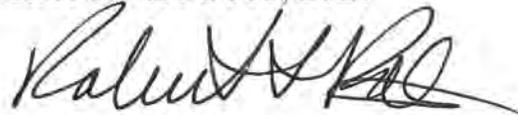
Re: Case No.: PCB 19-53 (UST Appeal)
LPC #1438185006 -- Peoria County
Trivoli/ Evelyn M. Page Trust
23907 West Farmington Road
Incident- Claim No.: 20170100 – 69179
Queue Date: April 2, 2018
Leaking UST Fiscal File

Dear Mr. Brown:

Pursuant to the Order entered by the Illinois Pollution Control Board on September 20, 2018 we are herewith filing our clients' Amended Appeal of Final Decision of the Illinois Environmental Protection Agency Petition for a Hearing with the appropriate Certificates of Service attached thereto. The Petitioners previously paid the \$75.00 filing fee. Please do not hesitate to contact us if you have any questions or further requirements.

Respectfully yours,

WHITNEY & POTTS, LTD.



Robert L. Potts

RLP/mt

Enclosures

cc: Wayne A. Page (via email)

cc: Al Green (via email)

X:\wp8\Trusts\Page, Evelyn\tr_sending_Amended Petition.wpd