

ILLINOIS POLLUTION CONTROL BOARD

JOHN D. WARSAW,)	
)	
Petitioner,)	
)	
v.)	PCB 18-83
)	(UST Appeal)
)	
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

BRIEF

Petitioner, John D. Warsaw, is the beneficial owner of a gasoline service station located on Route 122 in Minier, Illinois. As detailed in the Report of Early Action/Amended 45-Day Report dated August 31, 1999 and the Free Product Removal Report dated August 26, 1999, three underground storage tanks (1- 2,000 gallon, 2-500 gallon) used for gasoline were removed from the site on July 6, 1999, and new tanks installed.

Following physical soil classification borings, the site was classified on October 20, 2000, by IEPA approval. Groundwater samples indicated that groundwater contamination existed offsite.

Under a High Priority Corrective Action Plan dated January 28, 2008, a groundwater pump and aeration treating system, with a trench, was installed in October 2003, to remediate the contamination concentrations. This plan was unsuccessful.

After a revised plan was approved, in 2015, the motors and pipes associated with the prior corrective action plan were removed. Contaminated soil was removed and filled with clean sand. On September 27, 2017, the IEPA issued a letter requiring no further remediation at the site.

ISSUE

The issue on appeal is an invoice dated July 20, 2017 from Tazewell County Asphalt Co., Inc. in the amount of \$5,780.00 to excavate 64 square yards and 27square yards, for a total of 819 square feet, 3 inches in depth, removal of a drain and filling both with pea gravel, shaping and compacting the base, and installation of 3 inches of asphalt thereon to close the site. The cost per square foot is \$7.05. This invoice was submitted for reimbursement on February 12, 2018. It was denied by the IEPA on June 10, 2018 and such denial was appealed on June 26, 2018. The reason cited for denial of reimbursement of this invoice was that it was not included in a budget.

ARGUMENT

Even if it was mistakenly not included in a budget, Petitioner contends that it did not have to be in a budget because the site was opened in 1999 under Early Action, and left open during implementation of two corrective action plans until 2017. 35 IL Adm. Code 734.B It was an in-kind replacement to close the incident. Further, Petitioner was required to provide a dust-free surface under the B.O.C.A. Code.

After a lengthy process to successfully close a high priority LUST site, Petitioner appeals that an oversight of not including an absolutely necessary remediation expense for the site should not be denied.

Respectfully Submitted,

JOHN D. WARSAW,
Petitioner,
GARY E. SCHMIDT

BY:


GARY E. SCHMIDT

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