

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GBL Properties, Inc.,)	
)	
Petitioner,)	
)	
v.)	PCB 19-_____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING

TO: Don Brown	
Clerk of the Board	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
James R. Thompson Center	1021 North Grand Avenue East
100 West Randolph, Suite 11-500	Post Office Box 19276
Chicago, Illinois 60601	Springfield, Illinois 62794-9276
(VIA ELECTRONIC MAIL)	(VIA FIRST CLASS MAIL)

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board an **ENTRY OF APPEARANCE OF JENNIFER M. MARTIN, and PETITION FOR REVIEW OF AGENCY DETERMINATION**, copies of which are herewith served upon you.

Respectfully submitted,

GBL Properties, Inc.
Petitioner,

DATE: August 6, 2019

By: /s/ Jennifer M. Martin
One of Its Attorneys

Jennifer M. Martin
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, IL 62711
Jennifer.Martin@heplerbroom.com
(217) 528-3674

CERTIFICATE OF SERVICE

I, Jennifer M. Martin, the undersigned, hereby certify that I have served the attached
ENTRY OF APPEARANCE OF JENNIFER M. MARTIN and PETITION FOR REVIEW OF
AGENCY DETERMINATION upon:

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

via electronic mail, on August 6, 2019; and upon:

Division of Legal Counsel
Illinois Environmental Protection Agency
1021 North Grand Avenue East
Post Office Box 19276
Springfield, Illinois 62794-9276

by depositing said documents in the United States Mail, postage prepaid, in Springfield, Illinois
on August 6, 2019.

/s/ Jennifer M. Martin
Jennifer M. Martin

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GBL Properties, Inc.,)	
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v.)	PCB 19-_____
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ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

ENTRY OF APPEARANCE OF JENNIFER M. MARTIN

NOW COMES Jennifer M. Martin, of the law firm HEPLERBROOM, LLC, and hereby enters her appearance in this matter on behalf of Petitioner, GBL Properties, Inc.

Respectfully submitted,

DATE: August 6, 2019

By: /s/ Jennifer M. Martin
Jennifer M. Martin

Jennifer M. Martin
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, IL 62711
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)	
Respondent.)	

PETITION FOR REVIEW OF AGENCY DETERMINATION

NOW COMES Petitioner, GBL PROPERTIES, INC., by and through its attorneys, HEPLERBROOM, LLC, and, pursuant to Section 40(a) of the Illinois Environmental Protection Act (“Act”), 415 ILCS 5/40(a), and Part 105 of Title 35 of the Illinois Administrative Code, 35 Ill. Admin. Code Part 105, hereby petitions the Illinois Pollution Control Board (“Board”) for review of the Illinois Environmental Protection Agency’s (“IEPA” or “Agency”) July 5, 2019 decision regarding Petitioner’s Application for payment from the Underground Storage Tank (“UST”) Fund. In support of its Petition, Petitioner states as follows:

1. Petitioner was the owner of two (2) 6,000 gallon gasoline underground storage tanks (“USTs”), formerly located at 6020 State St., East St. Louis, St. Clair County, Illinois. The site has been assigned IEPA Bureau of Land Identification Number 1630455417. The USTs were removed on October 31, 2012.

2. A notification of release from the above-listed USTs was made to the Illinois Emergency Management Agency (“IEMA”) on October 1, 2012 (Incident No. 12-1030). The Office of the Illinois State Fire Marshal (“OSFM”) issued an Eligibility and Deductibility Determination on December 4, 2012, that the incident was eligible for reimbursement from the LUST Fund with a \$5,000 deductible.

3. Petitioner submitted an Application for Payment from the Underground Storage Tank Fund for the Stage 3 Site Investigation Activities, dated March 7, 2019, to the Agency for approval. According to the Agency, this submittal was received on March 7, 2019.

4. By letter dated July 5, 2019, the Agency issued its decision on the March 7, 2019 submittal. *See Exhibit A, Letter from Gregory W. Dunn to GBL Properties, Inc., dated July 5, 2019.* The Agency's decision approved a portion of the March 7, 2019 Application for Payment, and denied a portion of the March 7, 2019 Application for Payment.

5. This Petition for Review is filed timely in accordance with Section 40 of the Act and 35 Ill. Admin. Code § 105.406.

6. Attachment A of the Agency's July 5, 2019 decision includes the following bases for the Agency's denial of the Consulting Personnel Costs and costs for postage sought in the March 7, 2019 Application for Payment:

2. \$30.65, deduction for costs for postage, 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.

Postage receipts were not included in the reimbursement packet to meet the totals listed.

3. \$2,825.02, deduction for costs for personnel cost that exceed those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).
4. \$27,383.14, deduction for costs for personnel costs, 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 whether the costs will 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.

Based on information provided to the Agency there appears to be duplicate personnel titles being billed on the same day at different sites. To clarify this the IEPA is requiring that the Personnel Weekly Work Sheet be completed for all personnel costs requested. This information must include actual times worked not just the number of hours worked each day. This form can be found at the following web site <https://www2.illinois.gov/epa/Documents/epa.state.il.us/land/lust/forms/budget-forms/forms-1/personnel-work-sheet.pdf>.

Exhibit A, Att. A.

7. The supporting documentation and justification included in the March 7, 2019 Application for Payment demonstrate that the Consulting Personnel Costs identified in the Application for Payment had been approved by the Agency in prior budget decisions and were essential to completion of the minimum corrective requirements of the Act and 35 Ill. Admin. Code Part 734.

8. The Agency's denial of all personnel costs and postage costs was arbitrary and capricious and not supported by statutory or regulatory authority.

WHEREFORE, for the above reasons, Petitioner, GBL Properties, Inc., respectfully requests that the Illinois Pollution Control Board grant the following:

- a. Find that the Agency's July 5, 2019 final decision denying payment of costs is arbitrary, capricious and not supported by statutory or regulatory authority;
- b. Reverse the Agency's rejection of all personnel costs and postage costs sought in the application for payment and approve Petitioner's requests for personnel costs and postage costs;

- c. Award Petitioner reasonable attorney's fees and expenses incurred in bringing this action; and
- d. Award such other relief as the Board deems appropriate.

Respectfully submitted,

GBL Properties, Inc.,
Petitioner,

DATE: August 6, 2019

By: /s/Jennifer M. Martin
One of Its Attorneys

Jennifer M. Martin
HEPLERBROOM, LLC
4340 Acer Grove Drive
Springfield, Illinois 62711
Jennifer.Martin@heplerbroom.com
(217) 528-3674



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 • (217) 782-3397

JB PRITZKER, GOVERNOR

JOHN J. KIM, DIRECTOR

(217) 524-3300

CERTIFIED MAIL #

7015 0640 0004 7788 2744

JUL 05 2019

GBL Properties, Inc.
Attn: Ms. Julie Keebler
522 Worthington Chase
Sherman, IL 62684

Re: 1630455417 -- St. Clair County
East St. Louis / GBL Properties, Inc.
6020 State Street
Incident-Claim No.: 20121030 -- 70060
Queue Date: March 7, 2019
Leaking UST Fiscal File

Dear Ms. Keebler:

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 7, 2019 and was received by the Illinois EPA on March 7, 2019. The application for payment covers the period from June 28, 2013 to February 28, 2019. The amount requested is \$50,915.37.

On March 7, 2019, 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 \$23,500.45 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 for this claim is \$5,000.00, which was previously withheld from your payment(s). 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.

4302 N. Main Street, Rockford, IL 61103 (815) 987-7760
595 S. State Street, Elgin, IL 60123 (847) 608-3131
2125 S. First Street, Champaign, IL 61820 (217) 278-5800
2009 Mall Street Collinsville, IL 62234 (618) 346-5120

9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
100 W. Randolph Street, Suite 4-500, Chicago, IL 60601

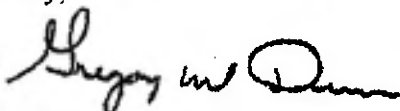
Page 2

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 Nicole Howland of my staff at (217) 524-0435.

Sincerely,



Gregory W. Dunn, Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachment: A

c: Perry Environmental, Inc.
Fuhrmann Engineering, Inc.
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 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
PO Box 19276
Springfield, IL 62794-9276
(217) 782-5544

Attachment A
Accounting Deductions

Re: 1630455417 – St. Clair County
East St. Louis / GBL Properties, Inc.
6020 State Street
Incident-Claim No.: 20121030 -- 70060
Queue Date: March 7, 2019
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. \$1.13, deduction for personnel costs that 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.

Personnel rate per hour exceeded the maximum reimbursement rate.
2. \$30.65, deduction for costs for postage, 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.

Postage receipts were not included in the reimbursement packet to meet the totals listed.
3. \$2,825.02, deduction for costs for personnel cost that exceed those contained in a budget or amended budget approved by the Illinois EPA. The cost included in the application for payment exceeds the approved budget amount and, as such, is ineligible for payment from the Fund pursuant to Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 734.605(g) and 734.630(m).
4. \$27,383.14, deduction for costs for personnel costs, 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.

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