

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

CADY OIL COMPANY,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	PCB No.
ILLINOIS ENVIRONMENTAL	)	(LUST Appeal – Petition for Review
PROTECTION AGENCY,	)	and Hearing/Appeal)
	)	
Respondent.	)	

**PETITION FOR REVIEW AND HEARING/Appeal**

NOW COMES Cady Oil Company (Cady) by its attorneys, Robert M. Riffle, Esq. and Anne L. Mergen, Esq., of Riffle & Associates LLC, and as and for its Petition for Review and Hearing/Appeal of the Illinois Environmental Protection Agency’s final decision with respect to the Application for Payment regarding a certain leaking underground storage tank (LUST) site, states as follows:

**BACKGROUND**

1. Cady retained Midwest Environmental Consulting & Remediation Services, Inc. (“Midwest”) to remediate the property located at 206 West Jackson Street, Morton, Illinois, LPC #1790505042, LUST Incident-Claim No. 9000733 – 70482 (the “Property” or the “Project”).
2. On July 17, 2019, Cady submitted an Application for Payment to the Illinois Environment Protection Agency (“IEPA”). The Application for Payment was received by the IEPA on August 5, 2019.
3. Cady’s Application for Payment requested \$15,869.21, which was the amount that was reasonably and necessarily expended to complete the work on the Project, and for costs for work performed that was within the guidelines of the budget pre-approved by the IEPA.

6. By letter dated November 20, 2019, the IEPA rejected \$8,558.77 of the costs submitted in the Application for Payment. (the "Denial Letter").

7. The Denial Letter rejected payment of these costs as listed in Attachment A thereto, which states the reasons they were purportedly not paid. True and accurate copies of this letter and its attachment are attached hereto as Exhibits 1.

8. The Denial Letter was designated as a final and appealable order (the Final Decision).

### **ARGUMENT**

The IEPA rejected the Application based upon the reasons stated on Attachment A to the denial letter (Exhibit 1). Cady and Midwest disagree with these determinations, and affirmatively state that the reimbursement amounts submitted and expended were reasonable, customary, and necessary for the proper completion of the project and site closure. Specifically, all of the costs listed on that Attachment A to Exhibit 2 were actually and legitimately expended and performed. Additionally, the scope of the work performed was within the guidelines pre-approved by the IEPA.

### **CONCLUSION**

For all of the foregoing reasons, Cady respectfully requests a hearing in this matter, which will provide it the opportunity to establish the propriety of the costs. Cady also requests that the Final Decision be reversed or modified by requiring payment of the amounts denied in Attachment A to Exhibit 1, thereby requiring payment to Cady of the additional amount of \$8,558.77, and for such other and further relief as is deemed necessary or appropriate in the circumstance.

Respectfully submitted,  
Cady, Petitioner

By: s/ Anne L. Mergen  
Anne L. Mergen

Riffle & Associates LLC  
ROBERT M. RIFFLE, ESQ.  
ANNE L. MERGEN, ESQ.  
133A S. Main Street  
Morton, IL 61550  
(309) 321-8365

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on Wednesday, December 18, 2019 the foregoing document was electronically filed with the Illinois Pollution Control Board using the electronic filings system, which will send notification of such filing to the following:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
James R. Thompson Center  
100 W. Randolph Street  
Suite 11-500  
Chicago, IL 60601

James G. Richardson  
Deputy General Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
PO Box 19276  
Springfield, IL 62794-9276

s/ Anne L. Mergen  
Anne L. Mergen  
Riffle & Associates LLC  
133A S. Main Street  
Morton, IL 61550  
(309) 321-8365



**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 #

7017 2680 0001 0210 2872

NOV 20 2019

Cady Oil Company  
Attn: Midwest Environmental Consulting  
PO Box 614  
Tremont, IL 61568

Re: 1790505042 -- Tazewell County  
Morton / Cady Oil Company  
201 West Jackson  
Incident-Claim No.: 900733 -- 70482  
Queue Date: August 5, 2019  
Leaking UST Fiscal File

Dear Mr. Cady:

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 July 17, 2019 and was received by the Illinois EPA on August 5, 2019. The application for payment covers the period from April 25, 2013 to July 17, 2019. The amount requested is \$15,869.21.

On August 5, 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 \$7,310.44 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 \$10,000.00, 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.

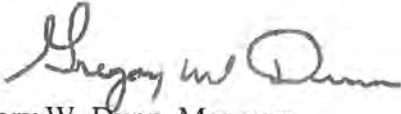
There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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 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: Midwest Environmental Consulting  
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: 1790505042 -- Tazewell County  
Morton / Cady Oil Company  
201 West Jackson  
Incident-Claim No.: 900733 -- 70482  
Queue Date: August 5, 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. \$15.00, deduction for costs for laboratory analysis that were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734.Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The costs associated with laboratory analysis were not approved in a budget and are, therefore, ineligible for payment.

The shipping cost for laboratory analysis was not approved in a budget.

2. \$8,304.10, deduction for costs for personnel that were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).



Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734.Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The costs associated with personnel were not approved in a budget and are, therefore, ineligible for payment.

Personnel hours that were previously denied for not being budget approved are still not approved in a budget.

3. \$239.67, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.

In addition, 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.

Only approved and paid portions of invoices are eligible for handling. Prairie Analytical is not eligible as part of a settlement. There was no proof of payment for Bruner Cooper and Zuck.