

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

BANK OF PONTIAC,)	
)	
Petitioner,)	
)	
vs.)	
)	PCB No. 20-52
ILLINOIS ENVIRONMENTAL)	(LUST Appeal – Petition for Review
PROTECTION AGENCY,)	and Hearing/Appeal)
)	
Respondent.)	

PETITION FOR REVIEW AND HEARING/Appeal

NOW COMES the Bank of Pontiac and Midwest Environmental Consulting & Remediation Services, Inc. (“Midwest”) by their attorneys, Robert M. Riffle, Esq. and Anne L. Mergen, Esq., of Riffle & Associates LLC, and as and for their Petition for Review and Hearing/Appeal of the Illinois Environmental Protection Agency’s final decision, state as follows:

INTRODUCTION

The Bank of Pontiac (and its Environmental consultant, Midwest) are appealing a variety of Final Orders, relating to ongoing Remediation efforts at a property located at 12 East Jackson Street, Morton, IL, in Tazewell County, (the Site) which are interrelated. Specifically, the Bank of Pontiac is appealing the denial of its Site Investigation Completion Report, two final orders denying Applications for Payment from the Underground Storage Tank (UST) Fund, and two orders modifying Midwest’s Stage 2 and Stage 3 Site Investigation Plan Budgets.

This appeal relates to the Illinois Environment Protection Agency’s (“IEPA’s”) significant modifications to the proposed Stage 3 Budget, which is attached hereto as Exhibit 5.

BACKGROUND

1. The Bank of Pontiac retained Midwest Environmental Consulting & Remediation Services, Inc. (“Midwest”) to remediate the property located at 12 East Jackson Street, Morton, IL, in

Tazewell County, IEPA Site ID # 1790505129, LUST Incident-Claim No. 20070406 (the “Property” or the “Project”).

2. The Bank of Pontiac (through Midwest) submitted the Site Investigation Completion Report (Report) on August 29, 2019.

3. Also, on August 29, 2019, the Bank of Pontiac (through Midwest) submitted an amended Stage 2 Site Investigation Plan Budget (Stage 2 Budget).

4. The Bank of Pontiac (through Midwest) also submitted an amended Stage 3 Site Investigation Plan Budget (Stage 3 Budget) on September 13, 2019.

5. On September 13, 2019, the Bank of Pontiac (through Midwest) also submitted two applications for payment from the Underground Storage Tank Fund. One of the Applications related to Stage 2 investigation costs (Stage 2 Application). The other application related to Stage 3 investigation costs (Stage 3 Application).

6. By letter dated December 13, 2019, the Illinois Environment Protection Agency (“IEPA”) rejected the Report for the reasons set out in Attachment A to the letter. (Exhibit 1, Attachment A) This denial letter is attached hereto as Exhibit 1. This letter was designated as a final and appealable order. (See Exhibit 1)

7. By two letters dated December 18, 2019, the IEPA denied both Payment Applications for reasons set out in Exhibit A of each letter. As to the Application for costs relating to the Stage 2 investigation, the IEPA deducted \$15,639.09 of the requested costs. (This letter is attached hereto as Exhibit 2.) This letter was designated as a final and appealable order.

8. As to the Application for costs relating to the Stage 3 investigation, the IEPA deducted \$22,417.61 of the requested costs. (This letter is attached hereto as Exhibit 3.) This letter was designated as a final and appealable order. (See Exhibit 3)

9. By letter dated December 23, 2019, the IEPA approved the proposed Stage 2 Budget with significant modifications. (This letter is attached hereto as Exhibit 4.) This letter was designated

as a final and appealable order. (See Exhibit 4) The reasons for the IEPA's modifications are set out in Attachment A to this letter. (See Exhibit 4, Attachment A)

10. On January 11, 2019 the IEPA approved the proposed Stage 3 Budget, also with significant modifications. (This letter is attached hereto as Exhibit 5.) This letter was designated as a final and appealable order. (See Exhibit 5). The reasons for the IEPA's modifications are set out in Attachment A to this letter. (See Exhibit 5, Attachment A)

ARGUMENT

The IEPA rejected the Site Investigation Completion Report (Report) Budget Request based upon the reasons stated on Attachment A to the Denial Letter (Exhibit 1). In denying the Report, the IEPA acted arbitrarily and without cause. Further, the IEPA's reasoning is inconsistent with past IEPA president. The Bank of Pontiac and Midwest also dispute the factual basis for the denial set out by the IEPA in Exhibit 1, Attachment A.

Also, the Bank of Pontiac and Midwest disagree with the IEPA's reasoning for its denial of the Applications for Payment on December 18, 2019. (Exhibits 2 and 3) Specifically, all of the costs listed on Attachment A to Exhibits 2 and 3 were actually and legitimately expended and performed. These expenditures, which were rejected by the IEPA, were reasonable and necessary under the circumstances.

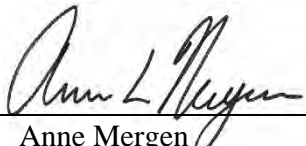
Lastly, the IEPA's modifications of the Stage 2 Site Investigation Plan Budget and the Stage 3 Site Investigation Plan (Exhibits 4 and 5) are unreasonable and arbitrary. The amounts that the Bank of Pontiac and Midwest have requested were supported by significant documentation. Further, the reimbursement amounts requested in these Budgets were reasonable, customary, and necessary for the proper completion of the project and site closure.

CONCLUSION

For all of the foregoing reasons, the Bank of Pontiac and Midwest respectfully request a hearing in this matter, which will provide the opportunity to establish that the Illinois Environment Protection

Agency erred in making significant modifications to the proposed Stage 3 Budget, which is attached hereto as Exhibit 5. The Bank of Pontiac and Midwest also respectfully request that the Final Decision in Exhibit 5 be reversed or modified, and for such other and further relief as is deemed necessary or appropriate in the circumstance.

Respectfully submitted,
Bank of Pontiac, Petitioner

By: 
Anne Mergen
One of Its Attorneys

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Monday, March 9, 2020 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

7015 0640 0004 7788 0061

DEC 13 2019

Mark Donovan
Bank of Pontiac
300 West Washington Street
Pontiac, IL 61764

Re: 1790505129—Tazewell County
Morton / Singh, Mukhtiar
12 East Jackson Street
Leaking UST Incident 20070406
Leaking UST Technical File

Dear Mr. Donovan:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Site Investigation Completion Report (report) submitted for the above-referenced incident. This report, dated August 15, 2019, was received by the Illinois EPA on August 29, 2019. 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 report is rejected for the reason(s) listed in Attachment A (Sections 57.7(a)(5) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 734.505(b) and 734.510(a)).

Pursuant to Sections 57.7(a)(5) and 57.12(c) and (d) of the Act and 35 Ill. Adm. Code 734.100 and 734.125, a Stage 3 Site Investigation Plan and Budget to delineate the off-site groundwater contamination must be submitted within 90 days of the date of this letter to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

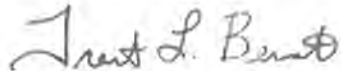
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

Page 2

If you have any questions or need further assistance, please contact Brad Dilbaitis at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,

A handwritten signature in cursive script that reads "Trent L. Benanti".

Trent L. Benanti, P.E.
Unit Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Penny Silzer, Midwest Environmental Consulting & Remediation Services, Inc. (electronic copy)
BOL File

Attachment A

Re: 1790505129—Tazewell County
Morton / Singh, Mukhtiar
12 East Jackson Street
Leaking UST Incident 20070406
Leaking UST Technical File

Citations in this attachment are from the Environmental Protection Act (415 ILCS 5) (Act) and Title 35 of the Illinois Administrative Code (35 Ill. Adm. Code).

1. Pursuant to Sections 57.1(a) and 57.7(a)(1) of the Act and 35 Ill. Adm. Code 734.325, the Stage 3 site investigation must be designed to identify the extent of off-site soil and groundwater contamination that, as a result of the release, exceeds the most stringent Tier 1 remediation objectives of 35 Ill. Adm. Code 742 for the applicable indicator contaminants.

Pursuant to Sections 57.1(a) and 57.7(a)(1) of the Act and 35 Ill. Adm. Code 734.325(d), upon completion of the Stage 3 site investigation the owner or operator must proceed with the submission of a site investigation completion report that meets the requirements of 35 Ill. Adm. Code 734.330.

The extent of the groundwater contamination from the release has not been defined to the north of TW-1 and TW-2, to the east of TW-1, or to the east and north of MW-8. Additional groundwater investigation is required to define the groundwater contamination.

2. Pursuant to Sections 57.1(a) and 57.7(a)(5)(D) of the Act and 35 Ill. Adm. Code 734.330(b)(5), a Site Investigation Completion Report must include soil boring logs and monitoring well construction diagrams meeting the requirements of 35 Ill. Adm. Code 734.425 and 35 Ill. Adm. Code 734.430 for all borings drilled and all groundwater monitoring wells installed as part of site investigation.

The report includes only the soil boring logs and monitoring well completion reports from the most recent site investigation field activities. The report must include the soil boring logs for all soil borings advanced for site investigation and monitoring well completion reports for all monitoring wells.

3. Pursuant to Sections 57.1(a) and 57.7(a)(5)(D) of the Act and 35 Ill. Adm. Code 734.330(b)(6), a Site Investigation Completion Report must include analytical results, chain of custody forms, and laboratory certifications for all samples analyzed for the applicable indicator contaminants as part of site investigation.

The report includes only the laboratory documentation from the most recent field activities. The report must include the required laboratory documentation for every soil and groundwater sample analyzed during site investigation.

4. Pursuant to Sections 57.1(a) and 57.7(a)(5)(D) of the Act and 35 Ill. Adm. Code 734.330(b)(2), the Site Investigation Completion Report must include one or more maps meeting the requirements of 35 Ill. Adm. Code 734.440 that show the locations of all borings and groundwater monitoring wells completed as part of site investigation.

Pursuant to Sections 57.1(a) and 57.7(a)(5)(D) of the Act and 35 Ill. Adm. Code 734.440(c)(3), site maps must show the locations of all current and former USTs at the site, and the contents of each UST.

Pursuant to Sections 57.1(a) and 57.7(a)(5)(D) of the Act and 35 Ill. Adm. Code 734.440(c)(4), site maps must show all structures, other improvements, and other features at the site, properties adjacent to the site, and other properties that are, or may be, adversely affected by the release, including but not limited to buildings, pump islands, canopies, roadways and other paved areas, utilities, easements, rights-of-way, and actual or potential natural or man-made pathways.

No site map in the report includes the location of the former USTs, the utilities, or sewers.

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



(217) 524-3300

CERTIFIED MAIL #

Exhibit 2

7015 0640 0004 7788 0313

DEC 18 2019

Bank of Pontiac
Attn: Midwest Environmental Consulting
PO Box 614
Tremont, IL 61568

Re: 1790505129 -- Tazwell County
Morton / Koenig Oil
12 E Jackson Street
Incident-Claim No.: 20070406 -- 70569
Queue Date: September 13, 2019
Leaking UST Fiscal File

Dear Mr. Donovan:

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 August 27, 2019 and was received by the Illinois EPA on September 13, 2019. The application for payment covers the period from December 2, 2014 to August 1, 2017. The amount requested is \$15,639.09.

On September 13, 2019, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date 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.

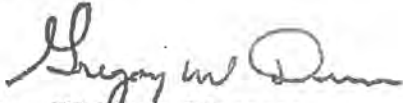
There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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 & Remediation
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: 1790505129 -- Tazwell County
Morton / Koenig Oil
12 E Jackson Street
Incident-Claim No.: 20070406 -- 70569
Queue Date: September 13, 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. \$15,639.09, deduction for costs 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 this claim were not approved in a budget and are, therefore, ineligible for payment.

The entire budget approved 7/5/17 has been exhausted. The costs in this claim have not been approved.



(217) 524-3300

CERTIFIED MAIL #

Exhibit 3

7015 0640 0004 7788 0320

DEC 18 2019

Bank of Pontiac
Attn: Midwest Environmental Consulting
PO Box 614
Tremont, IL 61568

Re: 1790505129 -- Tazwell County
Morton / Koenig Oil
12 E Jackson Street
Incident-Claim No.: 20070406 -- 70570
Queue Date: September 13, 2019
Leaking UST Fiscal File

Dear Mr. Donovan:

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 August 30, 2019 and was received by the Illinois EPA on September 13, 2019. The application for payment covers the period from March 16, 2016 to August 30, 2019. The amount requested is \$22,417.61.

On September 13, 2019, the Illinois EPA received your application for payment for this claim. As a result of the Illinois EPA's review of this application for payment, a voucher cannot be prepared for submission to the Comptroller's office for payment. Subsequent applications for payment that have been/are submitted will be processed based upon the date 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.

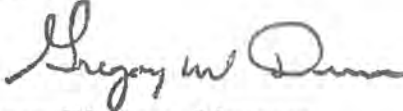
There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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 & Remediation
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: 1790505129 -- Tazwell County
Morton / Koenig Oil
12 E Jackson Street
Incident-Claim No.: 20070406 -- 70570
Queue Date: September 13, 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. \$22,417.61, deduction for costs associated with Stage 3 site investigation. An application for payment of costs associated with Stage 1, Stage 2, or Stage 3 site investigation may not be submitted prior to the approval or modification of a site investigation plan for the next stage of the site investigation or the site investigation completion report, which ever is applicable. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.605(h). 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.

There has been no site completion report or corrective action plan approved.



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 0696

DEC 23 2019

Mark Donovan
Bank of Pontiac
300 West Washington Street
Pontiac, IL 61764

Re: 1790505129—Tazewell County
Morton / Singh, Mukhtiar
12 East Jackson Street
Leaking UST Incident 20070406
Leaking UST Technical File

Dear Mr. Donovan:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Stage 2 Site Investigation Plan Budget (budget) submitted for the above-referenced incident. This budget, dated August 15, 2019, was received by the Illinois EPA on August 29, 2019. 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 budget is modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) or 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

All future correspondence must be submitted to:

Illinois Environmental Protection Agency
Bureau of Land -- #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

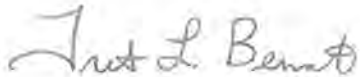
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760
595 S. State Street, Elgin, IL 60123 (847) 608-3131
2125 S. First Street, Champaign, IL 61820 (217) 278-5800
2009 Mall Street Collinsville, IL 62234 (618) 346-5120

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

If you have any questions or need further assistance, please contact Brad Dilbaitis at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,



Trent L. Benanti, P.E.
Unit Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Penny Silzer, Midwest Environmental Consulting & Remediation Services, Inc. (electronic copy)
BOL File

Attachment A

Re: 1790505129—Tazewell County
Morton / Singh, Mukhtiar
12 East Jackson Street
Leaking UST Incident 20070406
Leaking UST Technical File

SECTION 1

STAGE 2 Budget Amounts

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A, the following amounts are approved:

\$0.00	Drilling and Monitoring Well Costs
\$1,569.98	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$7,615.30	Consulting Personnel Costs
\$50.07	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

STAGE 2 Modifications

1. \$1,483.50 for Drilling Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the request, the Illinois EPA has determined that the costs are unreasonable. Therefore, the costs are not approved pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630 (dd) because they are unreasonable.

The Drilling Costs request \$1,483.50 in costs associated with the reinstallation of Stage 1 site investigation monitoring wells MW-2 and MW-4. The costs associated with the installation of MW-2 and MW-4 were approved on January 6, 2009 in the Illinois EPA decision letter for the Stage 1 Actual Costs Budget. The following requests are included in the cumulative deduction:

- a. \$863.70 for thirty feet of hollow-stem auger drilling at \$28.79 per foot;
- b. \$619.80 for thirty feet of well materials at \$20.66 per foot.

2. \$1,461.00 for Drilling Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the request, the Illinois EPA has determined that the costs are unreasonable. Therefore, the costs are not approved pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630 (dd) because they are unreasonable.

The Drilling Costs request \$1,461.00 in Drilling Costs for MW-6, MW-7, MW-8 and MW-9. The previous Stage 2 Actual Costs Budget approved Drilling Costs for GP-1 through GP-10 and monitoring well installation costs for MW-6, MW-7, MW-8, and MW-9. The soil boring logs for GP-6, GP-5, GP-8, and GP-1 indicate that they were used to install MW-6, MW-7, MW-8 and MW-9, respectively. The Drilling Costs associated with GP-6 / MW-6, GP-5 / MW-7, GP-8 / MW-8, and GP-1 / MW-9 were approved in the July 5, 2017 approval letter for the Stage 2 Actual Costs Budget.

3. \$1,739.50 for Consulting Personnel Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the requests, the Illinois EPA has determined that the costs are unreasonable and cannot determine whether they were used for activities exceeding those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, the costs are not approved pursuant to Section 57.7(a)(2) of the Act, 35 Ill. Adm. Code 734.630(dd) and 35 Ill. Adm. Code 734.630(o) because they are unreasonable and possibly for corrective action activities exceeding those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.850(b), owners and operators seeking payment must demonstrate to the Illinois EPA that the amounts requested in the budget are reasonable.

The Consulting Personnel Costs requests a total of 17.75 hours and \$1,739.50 for costs associated with the planning and preparation of the Stage 2 plan and budget submitted on February 10, 2015 and denied by the Illinois EPA on May 20, 2015, as well as correspondence with the Illinois EPA. Costs associated with the preparation of a plan, budget, or report denied by the Illinois EPA are not eligible for payment. In addition, the information in the Illinois EPA's possession does not indicate that any additional correspondence or telephone calls were made or received during the review of the plan and budget. Furthermore, the budget does not include any documentation concerning additional correspondence. The Illinois EPA Project Manager contacted the environmental consultant to discuss the requests pursuant to Section 57.7(b)(3) of the Act and 35 Ill. Adm. Code 734.505(a). The environmental consultant declined the opportunity to provide additional information to clarify the costs, opting instead to appeal the final decision. The following requests are included in the cumulative total:

- a. \$980.00 for a Geologist III for ten hours at \$98.00 per hour for Stage 2 planning, Stage 2 plan and budget, IEPA correspondence or phone calls;
- b. \$759.50 for a Senior Project Manager for seven and three-quarters hours at \$98.00 per hour for Stage 2 planning, Stage 2 plan and budget, IEPA correspondence or phone calls.

4. \$3,574.68 for Consulting Personnel Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the requests, the Illinois EPA has determined that the costs are unreasonable and cannot determine whether they were used for activities exceeding those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, the costs are not approved pursuant to Section 57.7(a)(2) of the Act, 35 Ill. Adm. Code 734.630(dd) and 35 Ill. Adm. Code 734.630(o) because they are unreasonable and possibly for corrective action activities exceeding those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.850(b), owners and operators seeking payment must demonstrate to the Illinois EPA that the amounts requested in the budget are reasonable.

The Consulting Personnel Costs requests a total of 33.25 hours and \$3,574.68 for costs associated with the planning and preparation of the Stage 2 report and Actual Costs Budget submitted on July 8, 2016 and denied by the Illinois EPA on October 31, 2016, as well as correspondence with the Illinois EPA. The time requested for correspondence to the Illinois EPA is after the previous Stage 2 plan was denied (May 20, 2015) but before the next plan was received (July 8, 2016). Costs associated with the preparation of a plan, budget, or report denied by the Illinois EPA are not eligible for payment. In addition, the budget does not include any documentation concerning additional correspondence. The Illinois EPA Project Manager contacted the environmental consultant to discuss the requests pursuant to Section 57.7(b)(3) of the Act and 35 Ill. Adm. Code 734.505(a). The environmental consultant declined the opportunity to provide additional information to clarify the requests, opting instead to appeal the final decision. The following requests are included in the cumulative total:

- a. *\$2,633.13 for a Geologist III for twenty-five and one-half hours at \$103.26 per hour for Stage 2 planning, Stage 2 plan and budget, IEPA correspondence or phone calls;*
- b. *\$941.55 for a Senior Project Manager for seven and three-quarters hours at \$121.49 per hour for Stage 2 planning, Stage 2 plan and budget, IEPA correspondence or phone calls.*

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



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

7018 1830 0000 5289 3603

JAN 10 2020

Mark Donovan
Bank of Pontiac
300 West Washington Street
Pontiac, IL 61764

Re: 1790505129—Tazewell County
Morton / Singh, Mukhtiar
12 East Jackson Street
Leaking UST Incident 20070406
Leaking UST Technical File

Dear Mr. Donovan:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the amended Stage 3 Site Investigation Plan Budget (budget) submitted for the above-referenced incident. This budget, dated September 11, 2019, was received by the Illinois EPA on September 13, 2019. 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 budget is modified pursuant to Sections 57.7(a)(2) and 57.7(c) of the Act and 35 Ill. Adm. Code 734.505(b) or 734.510(b). Based on the modifications listed in Section 2 of Attachment A, the amounts listed in Section 1 of Attachment A are approved. Please note that the costs must be incurred in accordance with the approved plan. Be aware that the amount of payment from the Fund may be limited by Sections 57.8(d), 57.8(e), and 57.8(g) of the Act, as well as 35 Ill. Adm. Code 734.630 and 734.655.

All future correspondence must be submitted to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

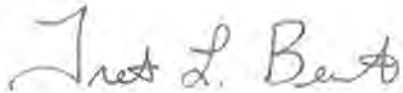
Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

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If you have any questions or need further assistance, please contact Brad Dilbaitis at (217) 785-8378 or Bradley.Dilbaitis@illinois.gov.

Sincerely,



Trent L. Benanti, P.E.
Unit Manager
Leaking Underground Storage Tank Program
Remedial Project Management Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Penny Silzer, Midwest Environmental Consulting & Remediation Services, Inc. (electronic copy)
BOL File

Attachment A

Re: 1790505129—Tazewell County
Morton / Singh, Mukhtiar
12 East Jackson Street
Leaking UST Incident 20070406
Leaking UST Technical File

SECTION 1

STAGE 3 Budget Amounts

As a result of the Illinois EPA's modifications in Section 2 of this Attachment A, the following amounts are approved:

\$0.00	Drilling and Monitoring Well Costs
\$426.78	Analytical Costs
\$0.00	Remediation and Disposal Costs
\$0.00	UST Removal and Abandonment Costs
\$0.00	Paving, Demolition, and Well Abandonment Costs
\$5,009.39	Consulting Personnel Costs
\$90.00	Consultant's Materials Costs

Handling charges will be determined at the time a billing package is reviewed by the Illinois EPA. The amount of allowable handling charges will be determined in accordance with Section 57.1(a) of the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.635.

SECTION 2

STAGE 3 Modifications

1. \$188.08 has been added to the Analytical Costs to approve the appropriate costs for the current Stage 3 activities. The following Stage 3 Analytical Costs are approved thus far:
 - a. \$608.22 for six BETX / MTBE groundwater samples at \$101.37 per sample (TW-1, TW-2, TW-3, TW-4, MW-10, AMW-5);
 - b. \$1,141.44 for six PNA groundwater samples at \$190.24 per sample (TW-1, TW-2, TW-3, TW-4, MW-10, AMW-5);
 - c. \$106.52 for the BETX / MTBE groundwater sample for MW-1;
 - d. \$199.90 for the PNA groundwater sample for MW-1;
 - e. \$120.00 for two sample shipping events at \$60.00 per event.

2. \$2,475.28 for Consulting Personnel Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the requests, the Illinois EPA has determined that the costs are unreasonable and cannot determine whether they were used for activities exceeding those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, the costs are not approved pursuant to Section 57.7(a)(2) of the Act, 35 Ill. Adm. Code 734.630(dd) and 35 Ill. Adm. Code 734.630(o) because they are unreasonable and possibly for corrective action activities exceeding those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.850(b), owners and operators seeking payment must demonstrate to the Illinois EPA that the amounts requested in the budget are reasonable.

The Consulting Personnel Costs requests a total of 22.25 hours and \$2,475.28 for Stage 3 Site Investigation planning, IEPA email and correspondence, in addition to the 15 hours approved for drilling design and planning approved in the previous Stage 3 budget. The Illinois EPA Project Manager contacted the environmental consultant to attempt to determine the tasks involved with the requests. The environmental consultant declined to clarify the Stage 3 budget, opting instead to appeal the final decision. The following requests are included in the cumulative deduction:

- a. \$567.93 for 5.5 hours for a Senior Project Manager at \$103.26 per hour;
 - b. \$1,184.53 for 9.75 hours for a Senior Project Manager at \$121.49 per hour;
 - c. \$722.82 for 7 hours for a Senior Project Manager at \$103.26 per hour.
3. \$6,819.94 for Consulting Personnel Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the requests, the Illinois EPA has determined that the costs are unreasonable and cannot determine whether they were used for activities exceeding those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, the costs are not approved pursuant to Section 57.7(a)(2) of the Act, 35 Ill. Adm. Code 734.630(dd) and 35 Ill. Adm. Code 734.630(o) because they are unreasonable and possibly for corrective action activities exceeding those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.850(b), owners and operators seeking payment must demonstrate to the Illinois EPA that the amounts requested in the budget are reasonable.

The Consulting Personnel Costs requests 64.25 hours for additional permitting costs for the Stage 3 borings, for which the Illinois EPA previously approved ten hours. The Illinois EPA contacted the environmental consultant to discuss the requests to determine why the additional hours were necessary to obtain the drilling permits. The environmental consultant declined to clarify the Stage 3 budget, opting instead to appeal the final decision. The following requests are included in the cumulative deduction:

- a. \$2,085.75 for 18.75 hours for a Geologist III at \$111.24 per hour;*
- b. \$789.69 for 6.5 hours for a Senior Project Manager at \$121.49 per hour;*
- c. \$1,421.00 for 14.5 hours for a Project Manager at \$98.00 per hour;*
- d. \$441.00 for 3.5 hours for a Senior Project Manager at \$126.00 per hour;*
- e. \$1,298.50 for 13.25 hours for a Project Manager at \$98.00 per hour;*
- f. \$784.00 for 8 hours for a Project Manager at \$98.00 per hour.*

4. \$1,709.00 for Consulting Personnel Costs that lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the requests, the Illinois EPA has determined that the costs are unreasonable and cannot determine whether they were used for activities exceeding those necessary to meet the minimum requirements of Title XVI of the Act. Therefore, the costs are not approved pursuant to Section 57.7(a)(2) of the Act, 35 Ill. Adm. Code 734.630(dd) and 35 Ill. Adm. Code 734.630(o) because they are unreasonable and possibly for corrective action activities exceeding those required to meet the minimum requirements of Title XVI of the Act.

Pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.850(b), owners and operators seeking payment must demonstrate to the Illinois EPA that the amounts requested in the budget are reasonable.

The Consulting Personnel Costs requests a total of 15.75 hours and \$1,709.00 for additional investigation and planning completed between July 2017 and June 2018. The Illinois EPA contacted the environmental consultant to attempt to determine whether these additionally requested hours were associated with the preparation of the Stage 3 plan and budget, the preparation for the proposed field activities, or the on-site field activities. The environmental consultant declined to clarify the Stage 3 budget, opting instead to appeal the final decision. The following requests are included in the cumulative deduction:

- a. \$1,390.50 for 12.5 hours for a Geologist III at \$111.24 per hour;*
- b. \$318.50 for 3.25 hours for a Project Manager at \$98.00 per hour.*

5. \$980.00 for Consulting Personnel Costs that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. 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).

In addition, the costs lack supporting documentation. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(cc). Since the documentation / information in the Illinois EPA's possession does not support the requests, the Illinois EPA has determined that the costs are unreasonable. Therefore, the costs are not approved pursuant to Section 57.7(c)(3) of the Act, 35 Ill. Adm. Code 734.630(aa) and 35 Ill. Adm. Code 734.630 (dd) because they are unreasonable.

Pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.850(b), owners and operators seeking payment must demonstrate to the Illinois EPA that the amounts requested in the budget are reasonable.

The Consulting Personnel Costs requests 20 hours for a Project Manager to prepare the Stage 2 and Stage 3 budget amendments at \$98.00 per hour for a total of \$1,960.00. The costs associated with the preparation of the Stage 2 budget amendment were approved in the Stage 2 budget amendment. The Illinois EPA Project Manager contacted the environmental consultant to determine how many hours were budgeted for the Stage 3 budget. The environmental consultant declined to clarify the Stage 3 budget, opting instead to appeal the final decision. The Illinois EPA approves the request for ten hours for the preparation of the Stage 3 budget.

6. \$1,084.80 for Consulting Personnel Costs that are inconsistent with the associated technical plan. One of the overall goals of the financial review is to assure that costs associated with materials, activities, and services are consistent with the associated technical plan. 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).

In addition, the costs are 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(aa) and 35 Ill. Adm. Code 734.360(dd).

The Consulting Personnel Costs requests 15 hours for a Senior Account Technician to prepare the Stage 2 reimbursement claim at \$72.32 per hour for a total of \$1,084.80. The costs associated with the preparation of the Stage 2 reimbursement claim were approved in the amended Stage 2 budget.

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.

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