

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ARROW ROAD CONSTRUCTION CO.)	
Petitioner,)	
)	
v.)	PCB 22-
)	(LUST Appeal – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION)	Extension)
AGENCY,)	
Respondent.)	

NOTICE


Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
don.brown@illinois.gov

Arrow Road Construction Company
Attn: John F. Healy, Esq.
1445 Oakton Street
Elk Grove Village, IL 60007
jhealy@arrowroad.com

Peterson Environmental
Attn: Brendan M. Peterson, P.E.
bmpeterson51@yahoo.com

PLEASE TAKE NOTICE that I have today caused to be filed a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** with the Illinois Pollution Control Board, copies of which are served upon you.

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A. Jarvis
Assistant Counsel
1021 North Grand Avenue East
P.O. Box 19276
Springfield, Illinois 62794-9276
217/782-5544
melanie.jarvis@illinois.gov

Dated: March 1, 2022

THIS FILING IS SUBMITTED ON RECYCLED PAPER

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

ARROW ROAD CONSTRUCTION CO.)	
Petitioner,)	
)	
v.)	PCB 22-
)	(LUST Appeal – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION)	Extension)
AGENCY,)	
Respondent.)	

**REQUEST FOR NINETY DAY EXTENSION
OF APPEAL PERIOD**

NOW COMES the Respondent, the Illinois Environmental Protection Agency (“Illinois EPA”), by one of its attorneys, Melanie A. Jarvis, Assistant Counsel, and, pursuant to Section 40(a)(1) of the Illinois Environmental Protection Act (415 ILCS 5/40(a)(1)) and 35 Ill. Adm. Code 105.208, hereby requests that the Illinois Pollution Control Board (“Board”) grant an extension of the thirty-five (35) day period for petitioning for a hearing to June 21, 2022, or any other date not more than a total of one hundred twenty-five (125) days from the date of receipt of the Illinois EPA’s final decision. In support thereof, the Illinois EPA respectfully states as follows:

1. On or about February 15, 2022, the Illinois EPA issued a final decision to the Petitioner.
2. On February 28, 2022, the Petitioner made a written request to the Illinois EPA for an extension of time by which to file a petition for review, asking the Illinois EPA to join in requesting that the Board extend the thirty-five day period for filing a petition by ninety days. Upon information and belief, Petitioner received the final decision on or about February 16, 2022.

3. The additional time requested by the parties may eliminate the need for a hearing in this matter or, in the alternative, allow the parties to identify issues and limit the scope of any hearing that may be necessary to resolve this matter.

WHEREFORE, for the reasons stated above, the parties request that the Board, in the interest of administrative and judicial economy, grant this request for a ninety-day extension of the thirty-five day period for petitioning for a hearing.

Respectfully submitted,

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



Melanie A Jarvis
Assistant Counsel
1021 North Grand Avenue, East
P.O. Box 19276
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217/782-5544
866/273-5488 (TDD)
melanie.jarvis@illinois.gov
Dated: March 1, 2022

THIS FILING IS SUBMITTED ON RECYCLED PAPER

CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that on March 1, 2022, I served true and correct copies of a **REQUEST FOR NINETY DAY EXTENSION OF APPEAL PERIOD** by the method(s) and to the persons identified below:

Electronic Service

Don Brown, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
don.brown@illinois.gov

Arrow Road Construction Company
Attn: John F. Healy, Esq.
1445 Oakton Street
Elk Grove Village, IL 60007
jhealy@arrowroad.com

Peterson Environmental
Attn: Brendan M. Peterson, P.E.
bmpeterson51@yahoo.com

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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Electronic Filing: Received, Clerk's Office 3/1/2022 **PCB 2022-047**
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 #

7011 1150 0001 0856 7081

FEB 15 2022

Arrow Road Construction Company
Attn: Mr. John F. Healy, Esq.
1445 Oakton Street
Elk Grove Village, IL 60007

Arrow Road Const.
RCVD

FEB 16 2022

Re: 0311980005 -- Cook County
Mt. Prospect / Arrow Road Construction Company
3401 South Busse Road
Incident-Claim No.: 20200528 -- 72480
Queue Date: October 29, 2021
Leaking UST Fiscal File

Copy To:

JFH ✓
D Bell

Dear Mr. Healy:

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 October 25, 2021 and was received by the Illinois EPA on October 29, 2021. The application for payment covers the period from June 22, 2020 to May 9, 2021. The amount requested is \$102,420.07.

On October 29, 2021, 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 \$64,200.73 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.

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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,

A handwritten signature in black ink that reads "Brian P. Bauer". The signature is written in a cursive style with a large, stylized initial "B".

Brian P. Bauer
Leaking UST Claims
Leaking Underground Storage Tank Section
Bureau of Land

Attachment: A

c: Peterson Environmental, Ltd.
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: 0311980005 -- Cook County
Mt. Prospect / Arrow Road Construction Company
3401 South Busse Road
Incident-Claim No.: 20200528 -- 72480
Queue Date: October 29, 2021
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. \$20,309.64, deduction for costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in 35 Ill. Adm. Code 734.Appendix C, during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f), and/or costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734.Appendix C during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f). Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.630(a).

Excavation amounts exceeded the maximum limitations.

2. \$5,372.14, deduction for costs for the removal, treatment, transportation, and disposal of more than four feet of fill material from the outside dimensions of the UST, as set forth in 35 Ill. Adm. Code 734.Appendix C, during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f), and/or costs for the replacement of contaminated fill materials with clean fill materials in excess of the amounts set forth in 35 Ill. Adm. Code 734.Appendix C during early action activities conducted pursuant to 35 Ill. Adm. Code 734.210(f). Such costs are ineligible for payment from the Fund pursuant to Section 57.6(b) of the Act and 35 Ill. Adm. Code 734.630(a).

Backfill amounts exceeded the maximum limitations.

3. \$2,216.16, deduction for costs for associated with removal, disposal, or abandonment of UST if the tank was removed or abandoned, or permitted for removal or abandonment, by the Office of the State Fire Marshal before the owner or operator provided notice to Illinois Emergency Management Agency (IEMA) of a release of petroleum. The costs for backfill are associated with the removal, disposal, or abandonment of an UST that was removed or abandoned, or permitted for removal or abandonment prior to IEMA notification. Such costs are ineligible for payment from

the Fund pursuant to Section 57.8(k) of the Act and 35 Ill. Adm. Code 734.630(k). In addition, these costs exceed the minimum requirements necessary to comply with the Act are not eligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.630(o).

Backfill associated with the planned tank pull is ineligible for reimbursement.

4. \$267.00, deduction for costs for groundwater 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, deduction for site investigation or corrective action costs for groundwater removal that 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(dd).

Provided documentation did not support the full amount of groundwater removal requested.

5. \$2,225.00, deduction for costs for personnel, 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, deduction for site investigation or corrective action costs for personnel that 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(dd).

Engineer III and Senior Professional Engineer time was not documented after a request for time sheets was requested.

6. None of the costs incurred from 8/21/20 to 11/16/20 are 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 deduction, a deduction of \$2,046.00 was made.

7. \$783.40, 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.

There was no proof of payment for GHD Services and some of the field costs.