

**ILLINOIS POLLUTION CONTROL BOARD**

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| <b>EMCO CHEMICAL DISTRIBUTORS, INC.,</b> | ) |                     |
| <b>An Illinois corporation,</b>          | ) |                     |
|  | ) |                     |
| <b>Petitioner,</b>                       | ) |                     |
|  | ) | <b>PCB 23-16</b>    |
| <b>v.</b>                                | ) | <b>(UST Appeal)</b> |
|  | ) |                     |
| <b>ILLINOIS ENVIRONMENTAL</b>            | ) |                     |
| <b>PROTECTION AGENCY,</b>                | ) |                     |
|  | ) |                     |
| <b>Respondent.</b>                       | ) |                     |

**NOTICE OF FILING**

To: Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield IL 62794-9276  
epa.dlc@illinois.gov

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Illinois Pollution Control Board by electronic filing this **Notice of Filing** and the **Amended Petition for Review of EMCO Chemical Distributors, Inc.**, copies of which are attached and herewith served upon you.

DATED: September 12, 2022

Respectfully submitted,

THOMPSON COBURN LLP

By:           /s/ Ryan R. Kemper            
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 Timothy B. Briscoe, Esq.  
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Attorneys for Petitioner EMCO Chemical Distributors, Inc.

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**AMENDED PETITION FOR REVIEW  
OF EMCO CHEMICAL DISTRIBUTORS, INC.**

Petitioner EMCO Chemical Distributors, Inc. (“EMCO”), through its undersigned counsel, submits its Amended Petition for Review 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, as follows:

1. EMCO is the owner of a site located at 2525 Greenfield Lane, North Chicago, Illinois (the “Site”).
2. On March 24, 2022, EMCO reported a release of heating oil from two 10,000-gallon and one 12,000-gallon underground storage tanks (“USTs”) to the Illinois Emergency Management Agency. The releases took place during the removal of the USTs, for which EMCO had retained EPS Environmental Services, Inc. (“EPS”).
3. Following the removal of the USTs and EMCO’s reporting of the release, EPS conducted soil remediation and sampling in the area of the removed USTs and prepared a 45-day Corrective Action Completion Report (“CACR”) for the Site.
4. On April 20, 2022, EPS submitted the CACR to the Illinois Environmental Protection Agency (“IEPA”) on EMCO’s behalf.

5. As outlined in the CACR, based on soil sample analytical results, no concentrations of contaminants associated with heating oil remain on-Site above Tier 1 soil remediation objectives for residential land use and Class I Groundwater as listed in 35 Ill. Adm. Code Part 742 (titled “Tiered Approach to Corrective Action Objectives”).

6. EMCO thus requested a No Further Remediation (“NFR”) letter from IEPA for leaking underground storage tank (“LUST”) incident #20220253.

7. In a June 16, 2022 letter (the “Decision”), the IEPA rejected the request for an NFR letter and required a Stage 1 groundwater investigation be conducted due to the “continued presence of groundwater in the excavation.” A copy of the Decision is submitted with this Petition. The Decision is a final determination of the agency for purposes of review under 35 Ill. Adm. Code 105.402.

8. As EPS has communicated to IEPA, the water that IEPA observed in the excavation area was a combination of rainwater, water from an adjacent building’s downspouts that discharged onto the Site, and water from a leaking water line near the excavation area.

9. Further, as reported in the CACR, a subsurface investigation on the Site did not encounter groundwater at depths below the excavation, indicating that groundwater could not have entered the tank pit.

10. In the Decision, the IEPA cited 35 Ill. Adm. Code 734.210(h)(4)(c), which provides that an owner or operator must continue with remediation if “[t]here is evidence that contaminated soils may be or may have been in contact with groundwater.”

11. Here, and contrary to IEPA’s Decision, the evidence demonstrates that the excavation soils were not in contact with groundwater.

12. Thus, because there is no evidence that contaminated soils may have been in contact with groundwater, a Stage 1 groundwater investigation is an unnecessary and burdensome expense that is not justified by the circumstances.

Wherefore, for the reasons set forth above, EMCO seeks an Order of the Board reversing IEPA's Decision, ordering IEPA to issue an acceptance of the CACR, and finding that EMCO is entitled to a NFR letter for the Site, in addition to any other relief that the Board finds reasonable and appropriate.

DATED: September 12, 2022

Respectfully submitted,

THOMPSON COBURN LLP

By: /s/ Ryan R. Kemper

Ryan R. Kemper, Esq.

*IL ARDC No. 6288297*

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Attorneys for Petitioner EMCO Chemical  
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**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that I have served the foregoing **Amended Petition for Review of EMCO Chemical Distributors, Inc.** upon the following persons by U.S. mail, by the time of 5:00 p.m., with proper postage or delivery charges prepaid:

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
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