

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

1441 KINGSHIGHWAY LLC,)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	

NOTICE OF FILING AND PROOF OF SERVICE

To: Don Brown, Clerk	Division of Legal Counsel
Illinois Pollution Control Board	Illinois Environmental Protection Agency
60 E. Van Buren St., Ste. 630	1021 North Grand Avenue East
Chicago, IL 60605	P.O. Box 19276
	Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board, pursuant to Board Procedural Rule 101.302 (h), a PETITION FOR REVIEW OF THE ILLINOIS EPA LUST DECISION, a copy of which is herewith served upon Respondent.

The undersigned hereby certifies that a true and correct copy of this Notice of Filing, together with a copy of the document described above, were today served upon Respondent by enclosing same in envelopes addressed as above with postage fully prepaid, and by depositing said envelopes in a U.S. Post Office Mailbox in Springfield, Illinois on the 3rd day of November, 2023.

1441 KINGSHIGHWAY LLC,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
Law Office of Patrick D. Shaw
80 Bellerive Road
Springfield, IL 62704
217-299-8484
pdshaw1law@gmail.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

1441 KINGSHIGHWAY LLC,)	
Petitioner,)	
)	
v.)	PCB No. _____
)	(LUST Permit Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
Respondent.)	

PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, 1441 KINGSHIGHWAY LLC, pursuant to Section 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/57.8(i), and hereby appeals the Illinois EPA’s final decision, refusing payment in full for early action costs, stating as follows:

1. Petitioner owns a former self-service fueling station in Washington Park, County of St. Clair, Illinois, commonly known as Tamers.
2. In 2003, three gasoline underground storage tanks were installed at the site pursuant to a permit from the Office of the State Fire Marshal (“OSFM”). The installed tanks were registered with OSFM and registration fees were paid for each tank.
3. On July 27, 2022, Petitioner reported a release from all three tanks at the site, and the Illinois Emergency Management Agency assigned Incident Number 2022-0668 to the releases.
4. On August 10, 2022, Petitioner’s consultant applied for a permit from OSFM to remove all three tanks, which was approved the same day.
5. From August 29, 2002 to September 1, 2022, all three tanks were removed.
6. In consultation with an OSFM Tank Specialist during the removal, it was determined that the release was a result of piping leaks from the tanks.
7. On September 21, 2022, Petitioner’s consultants submitted a 45-Day Report detailing

early action activities, including removal of all three tanks, associated piping, and contaminated backfill from the tank pit. The 45-Day Report was approved on October 18, 2022.

8. On December 13, 2022, OSFM issued an eligibility and deductible determination finding that all three tanks were eligible for costs of corrective action in excess of a \$5,000 deductible.

9. On February 8, 2023, Petitioner's consultant submitted an application for payment for early action costs in the amount of \$124,117.66.

10. On June 6, 2023, the Illinois EPA approved all but \$25,451.36 requested.

11. On June 13, 2023, Petitioner's consultant submitted a request for re-review of two of the cuts made from the reimbursement request by including additional information in the form of a waste disposal invoice inadvertently omitted previously, and a revised UST Removal form with the corrected Subpart H rates for the tanks. The total amount sought was \$24,919.25.

12. On October 18, 2023, the Illinois EPA issued its final decision herein, authorizing payment of \$13,895.65 and cutting \$11,023.60 from the amount sought. A true and correct copy of the letter is attached hereto as Exhibit A.

13. The gravaman of the Illinois EPA's decision is that it came to believe there are only two tanks, not three tanks:

Based on additional information received by the Illinois EPA, the 12,000-gallon tank (Tank 2) and 8,000-gallon tank (Tank 3) compromise one single 20,000-gallon compartment tank, not two separate tanks as was previously indic[a]ted in the reimbursement requests. Therefore, the maximum payment amounts are based on two 20,000-gallon USTs.

(Ex. A at pp. 2 & 3 (both deductions))

14. This claim is erroneous as a matter of law. The determination of the number of tanks

eligible for payment from the Underground Storage Tank Program is entrusted to OSFM, which has determined that there are three tanks. (415 ILCS 5/57.9(c) (“Eligibility and deductibility determinations shall be made by the Office of the State Fire Marshal.”))

15. Furthermore, none of the statutory or regulatory provisions cited in the Illinois EPA’s decision letter authorize the Illinois EPA to treat the number of tanks differently than the determination made by OSFM.

16. The Illinois EPA determination was received by Petitioner on October 19, 2023, and therefore this appeal is timely.

WHEREFORE, Petitioner 1441 KINGSHIGHWAY LLC, prays that: (a) the Illinois EPA produce the Record; (b) a hearing be held; (c) the Board find the Illinois EPA erred in its decision, (d) the Board direct the Illinois EPA to pay \$11,023.60 erroneously deducted from the submittal, (e) the Board award payment of attorney’s fees; and (f) the Board grant the Petitioner such other and further relief as it deems meet and just.

1441 KINGSHIGHWAY LLC,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

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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 #

7020 1290 0002 1666 3397

OCT 18 2023

1441 Kingshighway, LLC
Attn: CWM Company, Inc.
701 South Grand Avenue West
Springfield, IL 62704

Re: 1631455083 – St. Clair County
Washington Park / Tamers, Inc.
1441 Kings Highway
Incident-Claim No.: 20220668 -- 74015
Queue Date: June 20, 2023
Leaking UST Fiscal File

Dear Mr. Abusaid:

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 June 13, 2023 and was received by the Illinois EPA on June 20, 2023. The application for payment covers the period from July 1, 2022 to October 31, 2022. The amount requested is \$24,919.25.

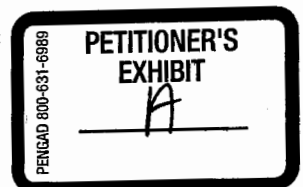
On June 20, 2023, the Illinois EPA received your application for payment for this claim. As a result of Illinois EPA's review of this application for payment, a voucher for \$13,895.65 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date 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.

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.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
1101 Eastport Plaza Dr., Suite 100, Collinsville, IL 62234 (618) 346-5120
9511 Harrison Street, Des Plaines, IL 60016 (847) 294-4000
595 S. State Street, Elgin, IL 60123 (847) 608-3131

2309 W. Main Street, Suite 116, Marion, IL 62959 (618) 993-7200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760



Attachment A
Accounting Deductions

Re: 1631455083 -- St. Clair County
Washington Park / Tamers, Inc.
1441 Kings Highway
Incident-Claim No.: 20220668 -- 74015
Queue Date: June 20, 2023
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. \$892.38, deduction for tank removal 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.

In addition, deduction for costs that are based on mathematical errors. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(bb). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

In addition, deduction for costs for tank 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 tank 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).

Based on additional information received by the Illinois EPA, the 12,000-gallon tank (Tank 2) and 8,000-gallon tank (Tank 3) comprise one single 20,000-gallon compartment tank, not two separate tanks as was previously indicated in the reimbursement requests. Therefore, the maximum payment amounts are based on two 20,000-gallon USTs.

2. \$10,131.22, 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).

In addition, deduction for costs that are based on mathematical errors. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(bb). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they are not reasonable.

Based on additional information received by the Illinois EPA, the 12,000-gallon tank (Tank 2) and 8,000-gallon tank (Tank 3) comprise one single 20,000-gallon compartment tank, not two separate tanks as was previously indicted in the reimbursement requests. Therefore, the maximum payment amounts are based on two 20,000-gallon USTs.

Excavation allowable	\$47,554.80
Excavation paid	<u>\$33,659.15</u>
Eligible	\$13,895.65

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
60 East Van Buren Street, Suite 630
Chicago, IL 60605
(312) 814-3461

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