

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

EAST-WEST PROPERTIES, LLC,	)	
Petitioner,	)	
	)	
v.	)	PCB 24-
	)	(LUST – Ninety Day
ILLINOIS ENVIRONMENTAL PROTECTION	)	Extension)
AGENCY,	)	
Respondent.	)	

**NOTICE**

Don Brown, Clerk  
Illinois Pollution Control Board  
60 East Van Buren St., Suite 630  
Chicago, IL 60605  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)

East-West Properties, LLC  
c/o Perry Environmental  
Attn: Michael Keebler  
900 South Spring Street  
Springfield, IL 62704  
[mkeebler@perryenvironmental.net](mailto:mkeebler@perryenvironmental.net)

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  
Deputy Chief Counsel – Land Enforcement  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
[melanie.jarvis@illinois.gov](mailto:melanie.jarvis@illinois.gov)  
Dated: May 8, 2024

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**BEFORE THE ILLINOIS POLLUTION CONTROL BOARD**

EAST-WEST PROPERTIES, LLC,	)	
Petitioner,	)	
	)	
v.	)	PCB 24-
	)	(LUST – 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 August 11, 2024, 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 April 4, 2024, the Illinois EPA issued a final decision to the Petitioner.
2. On May 1, 2024, 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 April 8, 2024.

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



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Melanie A Jarvis  
Deputy Chief Counsel – Land Enforcement  
1021 North Grand Avenue, East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
866/273-5488 (TDD)  
[melanie.jarvis@illinois.gov](mailto:melanie.jarvis@illinois.gov)  
Dated: May 8, 2024

**THIS FILING IS SUBMITTED ON RECYCLED PAPER**

**CERTIFICATE OF SERVICE**

I, the undersigned attorney at law, hereby certify that on May 8, 2024, 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  
60 East Van Buren St., Suite 630  
Chicago, IL 60605  
[don.brown@illinois.gov](mailto:don.brown@illinois.gov)

East-West Properties, LLC  
c/o Perry Environmental  
Attn: Michael Keebler  
900 South Spring Street  
Springfield, IL 62704  
[mkeebler@perryenvironmental.net](mailto:mkeebler@perryenvironmental.net)

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY



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Melanie A. Jarvis  
Deputy Chief Counsel – Land Enforcement  
Division of Legal Counsel  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276  
217/782-5544  
866/273-5488 (TDD)  
[melanie.jarvis@illinois.gov](mailto:melanie.jarvis@illinois.gov)

**PEI** Perry Environmental, Inc.

Environmental Consultants

May 1, 2024

Illinois Environmental Protection Agency  
Bureau of Land - #24  
LUST Claims Unit  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Re: Incident-Claim No.: 20230615 – 74311  
90 Day Appeal Extension Request  
LPC# 0316715025 – Cook County  
Chicago / East West Properties, LLC  
8100 S Ashland Avenue  
LUST Incident No. 20230615

Dear Claims Unit:

On behalf of the owner, East-West Properties, LLC. of the existing and former underground storage tanks, we are requesting a 90 Day Extension for Appealing IEPA final decision for Early Action application for payment dated November 1, 2023 and approved with deductions by the IEPA letter dated April 4, 2024. This request of appeal to the Pollution Control Board pursuant to Sections 40 and 57.7©(4) of the Act.

We have attached a copy of the IEPA final decision as required under the Appeal Rights. There were numerous deductions, which need addressed and requires more time to reply. This request will allow time to address the deductions with the IEPA and/or appeal to the Pollution Control Board pursuant to Sections 40 and 57.7©(4) of the Act.

Perry Environmental, Inc., on behalf of the UST owner East-West Properties, LLC of the above-referenced facility, is pleased to submit the enclosed 90 Day Extension for addressing the deductions for LUST Billing Package for Early Action Activities completed for your approval. Thank you for your assistance. Should you have any questions or comments, please me at (217) 523-5446 or via email at [mkeebler@perryenvironmental.net](mailto:mkeebler@perryenvironmental.net).

Sincerely,



Michael R. Keebler, P.E.  
Senior Professional Engineer  
Perry Environmental, Inc.

900 South Spring Street • Springfield, Illinois 62704  
Ph: (217) 523-5446

**RECEIVED**

MAY 06 2024

**IEPA/BOL**



# 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 #

9589 0710 5270 1326 4522 35

APR 04 2024

East-West Properties, LLC  
C/O Perry Environmental, Inc.  
900 South Spring Street  
Springfield, IL 62704

Re: 0316715025 -- Cook County  
Chicago / East-West Properties, LLC  
8100 South Ashland Avenue  
Incident-Claim No.: 20230615 -- 74311  
Queue Date: November 6, 2023  
Leaking UST Fiscal File

Dear Mr. Khan:

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 November 1, 2023 and was received by the Illinois EPA on November 6, 2023. The application for payment covers the period from August 11, 2023 to October 18, 2023. The amount requested is \$143,078.97.

On November 6, 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 \$111,150.12 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.

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 or at [Nicole.Howland@illinois.gov](mailto:Nicole.Howland@illinois.gov).

Sincerely,

A handwritten signature in cursive script that reads "Brian P. Bauer". To the right of the signature, the words "for Brian Bauer" are written in a smaller, less cursive font.

Brian P. Bauer  
Interim Section Manager  
Leaking Underground Storage Tank Section  
Bureau of Land

Attachments: Attachment A  
Appeal Rights

c: Mr. Muhammad Khan  
Leaking UST Claims Unit

Attachment A  
Accounting Deductions

Re: 0316715025 -- Cook County  
Chicago / East-West Properties, LLC  
8100 South Ashland Avenue  
Incident-Claim No.: 20230615 -- 74311  
Queue Date: November 6, 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. \$116.90, deduction for costs of corrective action incurred before providing notification of the release of petroleum to Illinois Emergency Management Agency in accordance with 35 Ill. Adm. Code 734.210. 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(n).

In addition, deduction for early action costs for laboratory analysis 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(ee).

Costs of laboratory analysis prior to the IEMA date of August 1, 2023 are ineligible for reimbursement.

2. \$12,077.74, 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 for ET&D, 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 and 35 Ill. Adm. Code 734.630(o) 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.

Furthermore, deduction for early action costs for ET&D 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(ee).

The tanks associated with the above referenced Incident are one 6,000-gallon tank and one 20,000-gallon dual-compartment tank. The requested costs for excavation, transportation, and disposal exceed the maximum number of cubic yards allowed for the tanks removed, in accordance with 35 Ill. Adm. Code 734.Appendix C. Additionally, the costs are associated with the removal, excavation, and transportation of materials beyond four feet from the outside dimensions of the associated tanks.

3. \$3,254.85, deduction for tank removal costs that exceed the maximum payment amounts set forth in Subpart H 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 and 35 Ill. Adm. Code 734.630(ee) 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 and 35 Ill. Adm. Code 734.630(o) 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.

Additionally, deduction for early 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(ee).

The requested tank removal costs exceed the Subpart H maximum reimbursement rates for removal of the tanks associated with the above referenced Incident.

4. \$695.35, 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 and 35 Ill. Adm. Code 734.630(o) 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 early 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(ee).

Provided documentation did not support all the hours requested for reimbursement. The following time was deducted from reimbursement:

- a. Two hours for Senior Project Managers, because the provided documentation does not support the requested number of hours.
  - b. One hour for a Project Manager for "PID Reading Table." There is no documentation to support this task.
  - c. Two hours for a Project Manager to assist with preparing attachments.
5. None of the costs incurred from September 30, 2023, to October 5, 2023, 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, a deduction of \$769.32 was made.

6. \$8,913.99, deduction for costs for personnel, which exceed the minimum requirements necessary to comply with the Act. Costs associated with site investigation and corrective action activities and associated materials or services exceeding 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).

In addition, deduction for costs associated with the installation of new USTs, the repair of existing USTs, and/or removal and disposal of USTs determined to be ineligible by the Office of the State Fire Marshal. Such costs are ineligible for payment from the Fund pursuant to 35 Ill. Adm. Code 734.630(l). In addition, such costs are not approved pursuant to Section 57.7(c)(3) of the Act because they will 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 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 and 35 Ill. Adm. Code 734.630(o) 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.

Additionally, deduction for early 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(ee).

In total, 60.25 hours of Senior Project Manager time lacked documentation for reasonableness, exceeded the minimum requirements of the Illinois Environmental Protection Agency, and are associated with new tank installation.

The costs associated with the following are deducted because they lack documentation, are unreasonable, exceed requirements, and appear to be associated with installation of new tanks:

- a. 9.5 hours for a Senior Project Manager on September 11, 2023.
  - b. 5.5 hours for a Senior Project Manager on September 12, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 10:30 am.
  - c. 10.75 hours for a Senior Project Manager on September 12, 2023.
  - d. 3.5 hours for a Senior Project Manager on September 14, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 1:30 pm.
  - e. 11.5 hours for a Senior Project Manager on September 15, 2023. Based on provided documentation, Early Action sampling performed on this day was completed by 9:30 am.
  - f. 10.5 hours for a Senior Project Manager on September 26, 2023, to oversee backfill activities.
  - g. 9.5 hours for a Senior Project Manager on September 27, 2023 to oversee backfill activities.
7. \$0.50, deduction for costs for consultant's materials, 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 and 35 Ill. Adm. Code 734.630(o) 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 early action costs for consultant's materials 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(ee).

Provided documentation did not support the full amount of postage requested for reimbursement.

8. \$650.20, deduction for costs associated with any corrective action activities, services, or materials that exceed the maximum payment amounts set forth in Subpart H, Appendix D, and/or Appendix E of 35 Ill. Adm. Code 734. The costs associated with consultant's materials are included in the tank removal rate. The costs 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 and 35 Ill. Adm. Code 734.630(ee) because they are not reasonable.

In addition, deduction for costs for consultant's materials, 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 and 35 Ill. Adm. Code 734.630(o) 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.

Additionally, deduction for early action costs for consultant's materials 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(ee).

Hotel costs for laborers is included in the rates for tank removal, in addition to the Subpart H rates for ET&D and Backfill.

9. \$450.00, deduction for costs for consultant's materials, 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 and 35 Ill. Adm. Code 734.630(o) 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 early action costs for consultant's materials 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(ee).

There is insufficient documentation to support PID usage.

### 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