

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

PIA AVCENTER LLC d/b/a BYERLY)	
AVIATION)	
)	
Petitioner,)	
v.)	PCB No. _____
)	(UST 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 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 18th day of June, 2024.

PIA AVCENTER LLC d/b/a
BYERLY AVIATION,

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
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PIA AVCENTER LLC d/b/a BYERLY AVIATION,))
Petitioner,))
v.) PCB No. _____)
(UST Appeal))
ILLINOIS ENVIRONMENTAL))
PROTECTION AGENCY,))
Respondent.))

PETITION FOR REVIEW OF ILLINOIS EPA LUST DECISION

NOW COMES Petitioner, PIA AVCENTER LLC d/b/a BYERLY AVIATION, 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 for corrective action costs, stating as follows:

1. Petitioner previously owned underground storage tanks at the Peoria International Airport in the City of Peoria, County of Peoria, Illinois, which was assigned LPC#1430653027.
2. On August 4, 2023, Petitioner reported releases from four underground storage tanks, specifically one 17,500 gallon aviation fuel tank, one 15,000 gallon jet fuel tank, one 15,000 gallon aviation fuel tank and one 20,000 gallon gasoline tank.
3. The Illinois Emergency Management Agency assigned the releases as Incident Number 2023-0623.
4. On August 7, 2023, Petitioner applied for a permit to remove the tanks from the Office of the State Fire Marshal, which issued the permit on the same date.
5. The tanks were removed from August 23, 2023 to August 24, 2023.
6. On September 29, 2023, Petitioner filed its 45-Day Report with the Illinois EPA, which approved the report on December 18, 2023, as well as site investigation activities.

7. On October 18, 2023, Petitioner applied for an eligibility and deductible determination from the Office of the State Fire Marshal, which issued a determination approving payment of costs in excess of \$5,000 on October 25, 2023.

8. On January 12, 2024, Petitioner submitted an application for payment of early action costs in the amount of \$224,349.27.

9. On May 10, 2024, the Illinois EPA issued its decision cutting \$37,5736.31 from the application. A true and correct copy of the decision is attached hereto as Exhibit A.

10. The Illinois EPA erroneously cut \$31,864.63 for the costs of removal of the underground storage tanks, contaminated backfill and remaining product by asserting a permit for removal of underground storage tanks was “originally issued to Byerly Aviation on July 14, 2015, prior to IEMA reporting on August 4, 2023.” The July 14, 2015 permit is not associated with Incident Number 2023-0623, which was the first reported release at the facility. The July 14, 2015 permit expired on January 14, 2016 without removal of any tanks and the fueling operations continued thereafter. The application herein sought reimbursement for early action costs incurred after notification and thus are eligible for payment. (415 ILCS 5/57.9(a)(5)) (“Costs of corrective action or indemnification incurred before providing [IEMA] notification shall not be eligible for payment.”)

11. The Illinois EPA erroneously cut \$2,843.78 for lab analysis and field activities related to “[p]H analysis for determination of lead clean up objectives,” believing for reasons not given that it “must be done in the same boring and same interval as the lead sample.” This would defeat the purpose as the ph sample is taken to establish background characteristics of the soil and must be taken from an uncontaminated location on site. Illinois EPA technical guidance

supports this understanding. To the extent the objection is for a “planned pull,” there is no legal basis for a deduction and as stated above, reimbursement was only sought for costs incurred after notification and thus are eligible for payment. (415 ILCS 5/57.9(a)(5)) ("Costs of corrective action or indemnification incurred before providing [IEMA] notification shall not be eligible for payment.")

12. The Illinois EPA erroneously cut \$710.15 for consulting personnel costs associated with preparing the reimbursement package. While there is a statement that the costs lacks documentation, costs are documented with the same invoice as all of the other consulting personnel work and the Illinois EPA is required to specify what documents it needed to be perform its review in the decision letter. The Illinois EPA cut all three hours for a professional engineer to review and certify the reimbursement request (\$576.99). Board regulations require the professional engineer to certify that the work for which payment was sought was performed in accordance with Board regulations. (35 Ill. Adm. Code § 734.605(b)(1)) This is an ongoing obligation, and a billing for work two months prior to certification assumes incorrectly that the only work is signing the certificate, which is merely the final step. Similarly, the administrative assistant’s obligations are also ongoing and the \$133.16 for assembling and distributing the reimbursement claim should not be cut under the misperception that the required work could only have happened two months later.

13. The fourth deduction is for \$2,157.75 in handling charges, which should be restored to the extent the deduction relates to cuts ultimately reversed by the Board herein.

14. The Illinois EPA’s decision letter was received on May 16, 2024, which is less than thirty-five days from the date this appeal is filed.

WHEREFORE, Petitioner PIA AVCENTER LLC d/b/a BYERLY AVIATION, 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 the amounts requested in its payment application, (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.

PIA AVCENTER LLC d/b/a BYERLY
AVIATION,
Petitioner,

BY: LAW OFFICE OF PATRICK D. SHAW

BY: /s/ Patrick D. Shaw

Patrick D. Shaw
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(217) 524-3300

CERTIFIED MAIL #

9589 0710 5270 1326 4427 86

MAY 10 2024

Byerly Aviation
C/O Green Wave Consulting LLC
4440 Ash Grove Drive
Suite A
Springfield, Illinois 62711

Re: 1430653027 -- Peoria County
Peoria / Byerly Aviation
6100 Dirksen Parkway
Incident-Claim No.: 20230623 -- 74461
Queue Date: January 12, 2024
Leaking UST Fiscal File

Dear Mr. McKune:

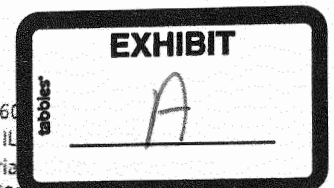
The Illinois Environmental Protection Agency (Illinois EPA) has completed the review of your application for payment from the Underground Storage Tank (UST) Fund for the above-referenced Leaking UST incident pursuant to Section 57.8(a) of the Environmental Protection Act (415 ILCS 5) (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code) 734.Subpart F.

This information is dated January 12, 2024, and was received by the Illinois EPA on January 12, 2024. The application for payment covers the period from August 7, 2023, to November 07, 2023. The amount requested is \$224,349.27.

On January 12, 2024, 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 \$181,772.96 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 Amanda Ausmus of my staff at (217) 524-3860 or at Amanda.Ausmus@illinois.gov.

Sincerely,



Jennifer Rossi
Interim Unit Manager
Special Projects and Financial Unit
Leaking Underground Storage Tank Section
Bureau of Land

Attachments: A
Appeal Rights

c: Timothy McKune, Byerly Aviation, Inc.
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 1430653027 -- Peoria County
Peoria / Byerly Aviation
6100 Dirksen Parkway
Incident-Claim No.: 20230623 -- 74461
Queue Date: January 12, 2024
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. \$31,864.63, deduction for costs for 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 of a release of petroleum. 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).

Deduction for costs 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 UST removal, Remediation, and Disposal 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).

Deduction for early action costs 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 addition, deduction for costs 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.

- A permit for removal of UST #'s 1-5 and associated piping was originally issued to Byerly Aviation on July 14, 2015, prior to IEMA reporting on August 4, 2023.
 - o \$24,260.00, UST removal costs.
 - o \$7,308.73 for 247 cubic yards of backfill that extends beyond the void from UST excavation.
 - o \$295.90 for 150 gallons of remaining product disposal associated with removal and disposal of UST tanks.

2. \$2,843.78, deduction for costs associated with field activities performed on August 22, 2023, 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).

Deduction for costs 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 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 associated with field work done on August 22, 2023.
 - o \$15.00 for H analysis for determination of lead clean up objectives must be done in the same boring and same interval as the lead sample; therefore this pH analysis exceeds the minimum requirements.
 - o \$1,849.37 for Senior Project Manager Buhlig 8.5 field hours. Oversight of professional services associated with planned pull and time associated with field activities exceed the minimum requirements.

- \$865.44 for Senior Project Manager Nowack 9 field hours. Oversight of professional services associated with planned pull and time associated with field activities exceed the minimum requirements.
 - \$113.97 for 1 round trip of 174 miles.
3. \$710.15, 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).

- \$133.16, D. Eggleston EA-pay task to assemble and distribute reimbursement claim, reduced from 2 hours to 0 hours. Based on the provided documentation, time for assembly and distribution of reimbursement claim occurred prior to PE review and certification and well as two months prior to actual distribution of reimbursement claim. Therefore, there is insufficient documentation to support the costs requested.
 - \$576.99, J. Wienhoff EA-pay task to review and certify claim, reduced from 3 hours to 0 hours. Based on the provided documentation time for PE review and certification occurred 2 months prior to the actual date of certification. Therefore, there is insufficient documentation to support the costs requested.
4. \$2,157.75, adjustment in the handling charges due to the deduction(s) of ineligible costs. Such costs are ineligible for payment from the Fund pursuant to Section 57.1(a) of the Act and 35 Ill. Adm. Code 734.635.
- Handling for costs on the following invoices are ineligible for reimbursement:
 - Teklab Inc., Invoice #294170 for ph test on 8/22/2023.
 - Earth Services, Invoice #20200905-41 for UST removal.
 - GFL Environmental, Invoice #P60005202063 for pumping and disposal of residual tank product.

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