

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

EAST-WEST PROPERTIES, LLC,)	
)	
Petitioner,)	
)	
v.)	PCB No. 24-072
)	(LUST Fund Appeal)
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

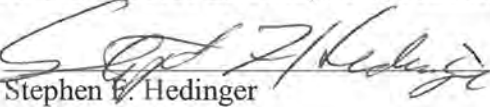
NOTICE OF FILING/PROOF OF SERVICE

Don Brown, Clerk
Illinois Pollution Control Board
100 West Randolph Street, Suite 11-500
Chicago, IL 60601-3218
E-mail: don.brown@illinois.gov

Melanie A. Jarvis
Deputy Chief Counsel – Land Enforcement
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276
E-mail: melanie.jarvis@illinois.gov

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board a Petition for Review of LUST Fund Determination, a copy of which is herewith served upon the above parties of record in this cause. The undersigned hereby certifies that a true and correct copy of this Notice of Filing/Proof of Service, together with a copy of the document described above, were today served on Respondent by electronic and/or physical mail to the addresses listed above, on this 8th day of August, 2024.

Respectfully submitted,
EAST-WEST PROPERTIES, LLC, Petitioner

By: 
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
Telephone: (217) 544-1144
Fax: (217) 522-3173
E-mail: sfhedinger@sorlinglaw.com

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

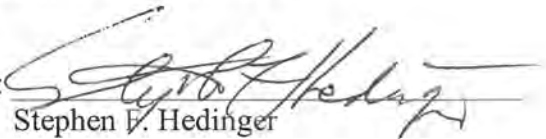
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Respondent.)	

ENTRY OF APPEARANCE

The undersigned, Stephen F. Hedinger and the firm Sorling Northrup, hereby enter their appearance as counsel of record in this proceeding for and on behalf of Petitioner, EAST-WEST PROPERTIES, LLC.

Date: August 8, 2024

Respectfully submitted,
SORLING NORTHRUP

By: 
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

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)	(LUST Fund Appeal)
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ILLINOIS ENVIRONMENTAL PROTECTION)	
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Respondent.)	

PETITION FOR REVIEW OF LUST FUND DETERMINATION

NOW COMES Petitioner, EAST-WEST PROPERTIES, LLC, through its undersigned attorneys, Sorling Northrup, Stephen F. Hedinger of counsel, and pursuant to Sections 40 and 57.8(i) of the Illinois Environmental Protection Act, 415 ILCS 5/40 and 5/57.8(i), hereby appeals the Illinois Environmental Protection Agency’s (“Illinois EPA”) April 4, 2024 final decision authorizing only partial payment of Petitioner’s request for reimbursement of early action costs.

In support, Petitioner states as follows:

1. Petitioner operates a gasoline service station located at 8100 S. Ashland Ave., Chicago, Illinois, and operates underground storage tanks (“USTs”) containing petroleum products at that location. The facility has been assigned Illinois EPA facility ID number 031715025.
2. On August 1, 2023, Petitioner duly reported to the Illinois Emergency Management Agency a release of petroleum products from one or more of the USTs at the property. The reported release was assigned Incident Number 20230615.
3. Petitioner thereafter performed early action at the property, including removal of the three USTs then present at the property and of contaminated soils surrounding the USTs.

4. By submittal on November 1, 2023 (hereinafter the “Reimbursement Request”), Petitioner requested reimbursement from the Leaking Underground Storage Tank Fund (“LUST Fund”) of costs incurred in conducting early action at the site.

5. By letter dated April 4, 2024 (hereinafter the “Final Action”), the Illinois EPA informed Petitioner of its final action with respect to the Reimbursement Request, which authorized only partial payment from the LUST Fund of the costs requested by Petitioner. A true and correct copy of the Final Action, including its “Attachment A – Accounting Deductions,” is attached hereto and incorporated herein as Ex. 1.

6. With this Petition, Petitioner appeals the following paragraphs of the Attachment A – Accounting Deductions, of the Final Action:

- A. Paragraph 2 deducted costs for removal of contaminated soils and replacement of those soils in excess of regulatory limits set forth in 35 Ill. Adm. Code 734 Appendix C, on the basis that only two USTs were associated with the early action, and as undocumented.
- B. Paragraph 3 deducted costs for removal of USTs as exceeding the maximum reimbursement rates established by 35 Ill. Adm. Code 734 Subpart H, and as undocumented.
- C. Paragraph 6 deducted personnel costs for early action activities on the basis that the requested amounts were in excess of the minimum personnel costs needed to comply with the Environmental Protection Act, and are associated with installation of new USTs, and as undocumented.
- D. Paragraph 9 deducted consultant’s materials costs associated with use of a PID as unreasonable and undocumented.

7. Petitioner disputes and appeals the following amounts associated with the above final decision:

- A. Petitioner requests reimbursement of an additional \$2,445.57 for removal of contaminated soils and replacement of those soils, because three USTs were removed from the site, not two, and Petitioner fully documented the expense.
- B. Petitioner requests reimbursement of an additional \$3,254.85 for costs for removal of USTs, because three USTs were removed, not two, and Petitioner fully documented the expense.
- C. Petitioner requests reimbursement of an additional \$8,913.99 for early action activities because all personnel were present and performing UST removal and early action requirements of the Environmental Protection Act at all times documented by the request, and the request was fully documented.
- D. Petitioner requests reimbursement of an additional \$450.00 for costs associated with PID usage, which was necessary and was fully documented.

8. Petitioner accordingly requests that this Board award Petitioner an additional total of \$15,064.41 for reimbursement from the LUST Fund for early action activities, and award to Petitioner its attorney fees incurred in seeking this additional reimbursement, and order and direct the Illinois EPA to promptly reimburse Petitioner for the challenged costs.

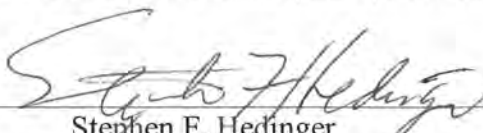
WHEREFORE Petitioner, EAST-WEST PROPERTIES, LLC, respectfully requests that this Board reverse the Illinois EPA's partial reimbursement denial, award to Petitioner the

additional reimbursement amounts detailed above, and grant to Petitioner all such other and further relief as the Board deems available and appropriate.

Dated: August 8, 2024

Respectfully submitted,

EAST-WEST PROPERTIES, LLC, Petitioner

By: 
Stephen F. Hedinger

Sorling Northrup
Stephen F. Hedinger, of Counsel
1 North Old State Capitol Plaza, Suite 200
P.O. Box 5131
Springfield, IL 62705
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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 #

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.

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

Exhibit 1

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.

Sincerely,

 *Brian P. Bauer*

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

