

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GBL PROPERTIES, INC.,)	
)	
Petitioner,)	
)	
v.)	PCB No. 2025-042
)	(LUST Fund Appeal)
)	
ILLINOIS ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	

NOTICE OF CORRECTION/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

Carol Webb
Hearing Officer
Illinois Pollution Control Board
1021 North Grand Avenue East
Chicago, IL 62794-9274
Carol.Webb@illinois.gov

Rich Kim
Assistant Counsel – Land Enforcement
Illinois Environmental Protection Agency
2520 West Iles Avenue
P.O. Box 19276
Springfield, IL 62794-9276
E-mail: richard.kim@illinois.gov

PLEASE TAKE NOTICE that I have today electronically filed with the Office of the Clerk of the Illinois Pollution Control Board an Agreed Corrected Petition for Review of LUST Fund Determination, a copy of which is herewith served upon the above parties of record in this

cause, correcting the reference in paragraph 11 from paragraph 5 of the December 23, 2024 Final Action to paragraph 6, as agreed by the parties and the hearing officer and as directed and authorized by the hearing officer at the February 6, 2025 status conference in this case. The undersigned hereby certifies that a true and correct copy of this Notice of Correction/Notice of Filing/Proof of Service, together with a copy of the Agreed Corrected Petition for Review of LUST Fund Determination, were today served on Respondent by electronic and/or physical mail to the addresses listed above, on this 10th day of March, 2025.

Respectfully submitted,
GBL PROPERTIES, INC., 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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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

GBL PROPERTIES, INC,)	
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Petitioner,)	
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v.)	PCB No. 2025-042
)	(LUST Fund Appeal)
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ILLINOIS ENVIRONMENTAL PROTECTION)	
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CORRECTED PETITION FOR REVIEW OF LUST FUND DETERMINATION

NOW COMES Petitioner, GBL PROPERTIES, INC., 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") December 23, 2024, final decision denying payment of a part of Petitioner's July 22, 2024, request for reimbursement from the Leaking Underground Storage Tank Fund ("LUST Fund"). In support, Petitioner states as follows:

1. Petitioner owns a gasoline service station located at 901 North Vermilion Street, Danville, Illinois (hereinafter the "Facility"), upon which underground storage tanks ("USTs") containing petroleum products were previously operated. The Facility has been assigned Illinois EPA facility ID number 1830205196, and reported a Leaking Underground Storage Tank incident on October 28, 1999, given Incident Number 992440.

2. In 1999, the Facility was owned and operated by Petitioner's predecessor, Johnson Oil Company, which reported Incident 992240 to the Illinois Emergency Management Agency on October 28, 1999. Following the reported release, four USTs were removed from the Facility.

3. Between 1999 and 2022, Johnson Oil Company performed a number of activities at the Facility in an effort to remediate the reported release, but those efforts did not result in final remediation or issuance of a No Further Remediation letter.

4. In 2022, Petitioner, GBL Properties, Inc., purchased the Facility and the USTs from Johnson Oil Company and submitted its Election to Proceed as Owner, which Respondent, Illinois EPA, accepted on March 22, 2022.

5. On or about September 30, 2022, Petitioner submitted to the Illinois EPA, a Corrective Action Plan (“CAP”), with proposed budget, to address remaining contamination at the Facility. Among other things, the CAP proposed removing the existing UST system, consisting of USTs 5 through 7, as well as canopies, pump islands and piping, in order to reach and remove the contamination existing underneath those structures.

6. By letter dated January 18, 2024, the Illinois EPA approved the submitted CAP and budget with modifications, which Petitioner accepted. Attachment C of the CAP Approval Letter stated, among other things, that ‘the following amounts have been approved: ... \$378,024.64 Remediation and Disposal Costs ... \$13,981.05 UST Removal and Abandonment Costs.’

7. Following receipt of the Illinois EPA’s January 18, 2024 letter and its acceptance of the modifications included in that letter, Petitioner performed the approved remediation activities.

8. By submittal on July 22, 2024, (hereinafter the “Reimbursement Request”), Petitioner requested reimbursement of \$413,901.57 from the LUST Fund for costs incurred in conducting the remediation activities at the Facility which had been authorized and approved by the Illinois EPA’s January 18, 2024 letter.

9. By letter dated December 23, 2024, (hereinafter the “Final Action”), the Illinois EPA informed Petitioner of its final action with respect to the Reimbursement Request, which denied any payment from the LUST Fund of certain of the costs requested by Petitioner. A true and correct copy of the Final Action is attached hereto and incorporated herein as Exhibit 1.

10. With this Petition, Petitioner appeals the Final Action on the grounds that the remediation work addressed by the Reimbursement Request was fully authorized and budgeted by prior Illinois EPA action, and that the costs and expenses sought by the submittal were fully and adequately documented by Petitioner.

11. Specifically, Petitioner appeals the following denials of reimbursement included in paragraphs 1, 2 and 6 of Attachment A of the December 23, 2024 Final Action:

- A. The Final Action deducted \$13,981.05 on the basis that no eligibility or deductible determination had been made by the Office of the State Fire Marshal with regard to the USTs that were removed as part of the corrective action;
- B. The Final Action deducted \$5,195.00 for equipment rented by Petitioner for use in removing the USTs and other structures as a part of corrective action on the basis that the tank removals were early action activities that were beyond that required or allowed for early action, and that “the costs associated with the demolition permit (\$80.00) and excavator equipment rental (\$5,115.00) are associated with destruction of the canopy and have been deducted from payment;”

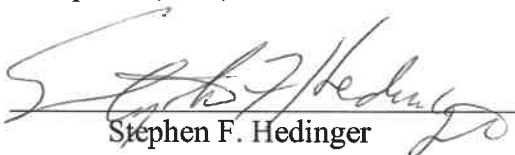
C. The Final Action deducted \$430.11 for “handling charges due to the deductions(s) of ineligible costs”, without identification or explanation of which ineligible costs were referenced.

11. Petitioner accordingly requests that this Board award Petitioner an additional total of \$19,606.16 for reimbursement from the LUST Fund, 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, GBL Properties, Inc., respectfully requests that this Board reverse the Illinois EPA’s reimbursement denial, award to Petitioner the reimbursement amounts in the Reimbursement Request, award Petitioner its attorney fees for pursuing this action, and grant to Petitioner all such other and further relief as the Board deems available and appropriate.

Dated: March 10, 2025

Respectfully submitted,
GBL Properties, Inc., Petitioner

By: 
Stephen F. Hedinger

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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

JAMES JENNINGS, ACTING DIRECTOR

(217) 524-3300

CERTIFIED MAIL #

9589 0710 5270 0389 6315 26

DEC 23 2024

GBL Properties, Inc.
C/O Perry Environmental, Inc.
900 South Spring Street
Springfield, IL 62704

Re: 1830205196 -- Vermilion County
Danville/Johnson Oil Company, LLC
901 North Vermilion
Incident-Claim No.: 992440 -- 74967
Queue Date: July 29, 2024
Leaking UST Fiscal File

Dear Ms. Keebler:

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 July 22, 2024 and was received by the Illinois EPA on July 29, 2024. The application for payment covers the period from March 11, 2024 to July 22, 2024. The amount requested is \$413,901.57.

On July 29, 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 \$392,935.36 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 \$10,000.00, 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.

2125 S. First Street, Champaign, IL 61820 (217) 278-5800
115 S. LaSalle Street, Suite 2203, Chicago, IL 60603
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) 993-9200
412 SW Washington Street, Suite D, Peoria, IL 61602 (309) 671-3022
4302 N. Main Street, Rockford, IL 61103 (815) 987-7760

PLEASE PRINT ON RECYCLED PAPER

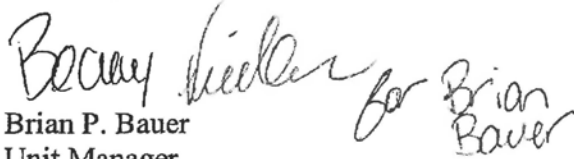


There are costs from this claim that are not being paid. Listed in Attachment A are the costs that are not being paid and the reasons these costs are not being paid.

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.

Sincerely,

for Brian
Bauer

Brian P. Bauer
Unit Manager
Special Projects and Financial Unit
Leaking Underground Storage Tank Section
Bureau of Land

Attachments: Attachment A
Appeal Rights

c: Ms. Julie Keebler
Leaking UST Claims Unit

Attachment A
Accounting Deductions

Re: 1830205196 -- Vermilion County
Danville/Johnson Oil Company, LLC
901 North Vermilion
Incident-Claim No.: 992440 -- 74967
Queue Date: July 29, 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
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- | | |
|----|--|
| 1. | <p>\$5,195.00, deduction for costs for ET&D that were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734.Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).</p> |
|----|--|

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734.Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The costs associated with ET&D were not approved in a budget and are, therefore, ineligible for payment.

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 costs for destruction or dismantling of an above grade structure or canopy, 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, costs for the destruction or dismantling of an above grade structure or canopy was not approved by the Illinois EPA in writing prior to the destruction or dismantling of the above grade structure or canopy in accordance with 35 Ill. Adm. Code 734.625(a)(17).

Additionally, deduction for site investigation or corrective 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(dd).

Costs submitted with ET&D are associated with canopy removal and disposal. These costs were not approved in a budget and therefore not eligible for reimbursement. The costs associated with the demolition permit (\$80.00) and excavator equipment rental (\$5,115.00) are associated with destruction of the canopy and have been deducted from payment. These costs and associated invoices were submitted as supporting documentation for canopy removal costs in the Corrective Action Budget received by the Illinois EPA on December 9, 2024. At the time of this reimbursement package submittal, costs associated with canopy demolition have not been approved.

2. \$13,981.05, deduction for costs associated with any corrective action activities, services, or materials that were not accompanied by a copy of the eligibility and deductibility decision(s) made for the above-referenced occurrence(s) for accessing the Fund pursuant to Section 57.8 of the Act and 35 Ill. Adm. Code 734.135(a), 734.605(b)(3), 734.630(l), and 734.630(s).

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 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).

Tanks that have not been deemed eligible by the Office of the Illinois State Fire Marshal are not eligible for costs associated with their removal. The associated *Reimbursement Eligibility and Deductible Application* letter indicates that Tanks #1 through #4 are eligible. However, reimbursement is being sought for removal of

Tanks #5, #6, and #7, none of which have been deemed eligible by the Office of the Illinois State Fire Marshal.

3. \$1,281.47, deduction for costs for personnel that were not approved in a budget. The overall goal of the financial review must be to assure that costs associated with materials, activities, and services must be reasonable, must be consistent with the associated technical plan, must be incurred in the performance of corrective action activities, must not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and must not exceed the maximum payment amounts set forth in 35 Ill. Adm. Code 734. Subpart H. Such costs are ineligible for payment from the Fund pursuant to Section 57.7(c)(3) of the Act and 35 Ill. Adm. Code 734.510(b) and 35 Ill. Adm. Code 734.605(a).

Pursuant to 35 Ill. Adm. Code 734.605(a), costs for which payment is sought must be approved in a budget, provided, however, that no budget must be required for early action activities conducted pursuant to 35 Ill. Adm. Code 734. Subpart B other than free product removal activities conducted more than 45 days after confirmation of the presence of free product. The costs associated with personnel were not approved in a budget and are, therefore, ineligible for payment.

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 site investigation or corrective 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(dd).

11 hours of Scientist I exceeded the number approved in the budget for field time. Additionally, 2.75 hours of Scientist IV exceeded the number of hours approved for "submitting samples, photos, and documentation."

4. \$66.58, 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 site investigation or corrective 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(dd).

Provided documentation did not support 1 hour of Senior Administrative Assistant time for billing.

5. \$12.00, 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 site investigation or corrective 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(dd).

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

6. \$430.11, 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.

Only invoices and portions of invoices that are reimbursed are eligible for handling charges.

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