

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

JUN 16 2003

STATE OF ILLINOIS  
Pollution Control Board

SWEARINGIN AMOCO )

Petitioner )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent )

PCB 03 - 158  
(UST Appeal)

NOTICE OF FILING

To: John Kim  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

Dorothy Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center  
Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on Monday, June 16, 2003, I filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of a Petition for Review of Illinois Environmental Protection Agency Decisions and Appearance for Carolyn S. Hesse.

Dated: June 16, 2003

Respectfully submitted,

By: Carolyn S. Hesse  
Carolyn S. Hesse

Carolyn S. Hesse, Esq.  
Barnes & Thornburg  
2600 Chase Plaza, 10 South LaSalle Street  
Chicago, Illinois 60603  
312-214-8301

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

**RECEIVED**  
CLERK'S OFFICE

JUN 16 2003

STATE OF ILLINOIS  
*Pollution Control Board*

SWEARINGIN AMOCO,	)	
	)	
Petitioner	)	
	)	
v.	)	PCB 03 - 158
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent	)	

**PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL  
PROTECTION AGENCY DECISIONS**

Swearingin Amoco by its attorney, Carolyn S. Hesse of Barnes & Thornburg, pursuant to the Illinois Environmental Protection Act, 415 ILCS 5/1 *et. seq.* (the "Act") and 35 Illinois Administrative Code Section 105.400 *et. seq.*, hereby appeals certain decisions by the Illinois Environmental Protection Agency (the "Agency").

1. Swearingin Services, Inc. does business as Swearingin Amoco ("Swearingin") and is the owner of property located at 503 South State Street, Jerseyville, Jersey County, Illinois. The site is a gasoline service station known as Swearingin Amoco that has underground storage tanks (USTs) on the property, which store gasoline and diesel fuel.
  
2. LUST Incident Number 830255015 was obtained following a site investigation.
  
3. On June 17, 2002, the Agency received Swearingin's request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the

periods from October 1, 1997 to October 31, 1998 and from March 1, 1995 to May 31, 1997, in the amount of \$90,317.86.

4. The Agency denied certain costs in the Request in a letter dated February 10, 2003, a copy of which is attached hereto as Exhibit A.
5. Swearingin is appealing this February 10, 2003 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that certain costs were reasonable.
6. Swearingin disagrees with the Agency's decision and believes that the costs submitted for reimbursement are corrective action costs, are reasonable and are the types of costs that are eligible for reimbursement under the Act and implementing regulations.
7. The Agency's letter denying reimbursement, Exhibit A, provides no further explanation of the Agency's reasons or bases for denial that could aid Petitioner in setting forth its grounds of appeal. Nevertheless, the Agency's denial is a final decision that Petitioner must appeal to the Board in order to preserve and enforce Petitioner's right to reimbursement under the UST Fund.
8. On March 20, 2003, the parties timely filed a joint notice to extend the appeal deadline. On April 3, 2003, the Board filed an order extending the appeal deadline until June 16, 2003, a copy of which is attached hereto as Exhibit B. Pursuant to the Board's April 3, 2003 order, this appeal is timely filed.

WHEREFORE, Swearingin Services, Inc., d/b/a Swearingin Amoco respectfully requests that the Board enter an order that will provide that it be reimbursed from the UST Fund for its submitted costs and for its attorneys fees and costs in bringing this appeal.

Respectfully submitted,

SWEARINGIN SERVICES, INC.,  
d/b/a SWEARINGIN AMOCO

By: Carolyn S Hesse  
One of Its Attorneys

Carolyn S. Hesse, Esq.  
Barnes & Thornburg  
2600 Chase Plaza  
10 South LaSalle Street  
Chicago, Illinois 60603  
312-214-8301

171299v1



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601
ROD R. BLAGOJEVICH, GOVERNOR RENEE CIPRIANO, DIRECTOR

217/782-6762

CERTIFIED MAIL

70022030000115788519

FEB 10 2003

Swearingin Services, Inc.
Attention: Ronald Swearingin
Post Office Box 571
Carlinville, IL 62626

Re: LPC #0830255015 -- Jersey County
Jerseyville/Swearingin Amoco
503 South State Street
LUST Incident #901084
LUST FISCAL FILE

Dear Mr. Swearingin:

The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the following periods and amounts requested:

Table with 2 columns: Period and Amount. Rows include October 1, 1997 to October 31, 1998 (\$46,467.99), March 1, 1995 to May 31, 1997 (\$43,849.87), and Total Amount Requested (\$90,317.86).

The deductible amount for this claim is \$10,000.00, which was previously deducted from the Invoice Voucher dated December 18, 1990. Listed in Attachment A are the costs which are not being reimbursed from this request and the reasons these costs are not being reimbursed.

On June 17, 2002, the Agency received your complete request for payment for this claim. As a result of the Agency's review of this claim, a voucher for \$88,144.19 will be prepared for submission to the Comptroller's Office for payment as funds become available based upon the date the Agency received your complete request for payment of this claim. Subsequent claims that have been/are submitted will be processed based upon the date complete subsequent billings requests are received by the Agency.

This constitutes the Agency's final action with regard to the above invoices. An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 22.18b(g) and Section 40 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 of time 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:

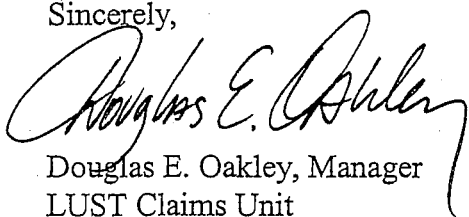
Dorothy Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, Illinois 60601  
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency  
Division of Legal Counsel  
1021 North Grand Avenue East  
Springfield, Illinois 62794-9276  
217/782-5544

**If you have any questions, please contact Kevin Mably of my staff or Karl Kaiser of Cliff Wheeler's staff at 217/782-6762.**

Sincerely,



Douglas E. Oakley, Manager  
LUST Claims Unit  
Planning & Reporting Section  
Bureau of Land

DEO:KLM:jk\033282.doc

Attachment

cc: CW3M Company

Attachment A  
Accounting Deductions

Re: LPC #0830255015 -- Jersey County  
Jerseyville/Swearingin Amoco  
503 South State Street  
LUST Incident #901084  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$430.15, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

CW3M Company-Invoice dated March 1997	\$19.00	Personnel
dated April 1997	\$20.00	Personnel
dated May 1997	\$17.00	Personnel
dated January 1998	\$34.00	Personnel
dated January 1998	\$65.15	Out of billing period-CIPS
dated February 1998	\$25.00	Personnel
dated March 1998	\$32.50	Personnel
dated April 1998	\$27.00	Personnel
dated May 1998	\$24.50	Personnel
dated June 1998	\$33.50	Personnel
dated July 1998	\$72.00	Personnel
dated August 1998	\$21.50	Personnel
dated September 1998	\$39.00	Personnel

\$430.15 Total Accounting Deductions

DEO:MLM:jk\033282.doc

Attachment A  
Technical Deductions

Re: LPC #0830255015 – Jersey County  
Jerseyville/Swearingin Amoco  
503 South State Street  
LUST Incident #901084  
LUST FISCAL FILE

Item #      Description of Deductions

1.            \$206.02, deduction in groundwater treatment system operation and maintenance costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).

DEO:KLM:jk\033282.doc



Attachment A  
Technical Deductions

Re: LPC #0830255015 -- Jersey County  
Jerseyville/Swearingin Amoco  
503 South State Street  
LUST Incident #901084  
LUST FISCAL FILE

Item #      Description of Deductions

1.      \$1,317.00, deduction in groundwater treatment system operation and maintenance personnel costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).
2.      \$220.50, deduction in groundwater treatment system operation and maintenance mileage costs that the owner/operator failed to demonstrate were reasonable (Section 2.18b(d)(4)(C) of the Environmental Protection Act).

DEO:KLM:jk\033282.doc

ILLINOIS POLLUTION CONTROL BOARD

April 3, 2003

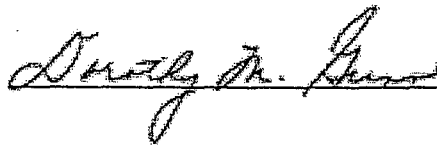
SWEARINGIN AMOCO,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03-158
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	(90-Day Extension)
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

ORDER OF THE BOARD (by T.E. Johnson):

On March 20, 2003, the parties timely filed a joint notice to extend the 35-day period within which Swearingin Amoco may appeal a February 10, 2003 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.206(c), 105.208(a), (c). Because the postmark date of the joint petition is within the time for filing, the petition was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. At issue is an Agency partial denial of reimbursement of corrective action costs regarding Swearingin Amoco's leaking underground petroleum storage tank facility located at 503 South State Street, Jerseyville, Jersey County. The Board extends the appeal period until June 16, 2003, the first business day following the date requested by the parties. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.208(a). If Swearingin Amoco fails to file an appeal on or before that date, the Board will dismiss this case and close the docket.

IT IS SO ORDERED.

I, Dorothy M. Gunn, Clerk of the Illinois Pollution Control Board, certify that the Board adopted the above order on April 3, 2003, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

**RECEIVED**  
CLERK'S OFFICE

JUN 16 2003

STATE OF ILLINOIS  
Pollution Control Board

**BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS**

SWEARINGIN AMOCO, )  
)  
Petitioner )  
)  
v. ) PCB 03 - 158  
)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent )

**APPEARANCE**

NOW COMES the undersigned, Carolyn S. Hesse, and enters an appearance for the  
Petitioner, SWEARINGIN AMOCO, in the above captioned matter.

Dated: June 16, 2003

Swearingin Services, Inc.,  
d/b/a Swearingin Amoco

By: Carolyn S. Hesse  
One of Its Attorneys

Carolyn S. Hesse  
Barnes & Thornburg  
10 S. LaSalle Street  
Suite 2600  
Chicago, Illinois 60603  
(312) 214-8301

CERTIFICATE OF SERVICE


I, on oath state that I have served the attached PETITION FOR REVIEW OF ILLINOIS ENVIRONMENTAL PROTECTION AGENCY DECISIONS and APPEARANCE for Carolyn S. Hesse by placing a copy in an envelope addressed to:

John Kim  
Special Assistant Attorney General  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East  
P.O. Box 19276  
Springfield, Illinois 62794-9276

via U.S. mail this 16th day of June, 2003.

Dorothy Gunn  
Clerk of the Board  
Illinois Pollution Control Board  
James R. Thompson Center, Suite 11-500  
100 West Randolph Street  
Chicago, Illinois 60601

via Hand Delivery this 16th day of June, 2003.

  
\_\_\_\_\_  
Carolyn S. Hesse