

**RECEIVED**  
CLERK'S OFFICE

JUL 2 2003

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS  
Pollution Control Board

FREEDOM OIL COMPANY, )  
Petitioner, )  
vs. )  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
Respondent. )

04-02  
PCB 03-\_\_\_

**NOTICE OF FILING**

TO:

Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board  
State of Illinois Center  
100 West Randolph, Suite 11-500  
Chicago, IL 60601-3218

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P. O. Box 19276  
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that I have today filed with the Office of the Clerk of the Pollution Control Board an original and nine (9) copies of Petition for Review of Underground Storage Tank Fund Reimbursement, a copy of which is herewith served upon you.

Dated: June 27<sup>th</sup>, 2003

Respectfully submitted,

FREEDOM OIL COMPANY

By: *Diana M. Jagiella*  
Diana M. Jagiella, Attorney for Petitioner

Diana M. Jagiella  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600, 211 Fulton Street  
Peoria, IL 61602-1350  
(309) 672-1483

cc: Hon. Carol Sudman, Hearing Officer, Illinois Pollution Control Board, 600 S. Second Street, Suite 402, Springfield, IL 62704

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STATE OF ILLINOIS  
Pollution Control Board

04-02  
PCB 03-\_\_\_\_\_

**PETITION FOR REVIEW OF  
UNDERGROUND STORAGE TANK FUND REIMBURSEMENT**

NOW COMES the Petitioner, Freedom Oil Company ("Freedom"), by and through its attorneys, Howard & Howard Attorneys, P.C., pursuant to Sections 40 and 57.8 of the Illinois Environmental Protection Act (the "Act"), and hereby requests review by the Illinois Pollution Control Board ("Board") of the final decision by the Respondent, the Illinois Environmental Protection Agency (the "Agency" or "IEPA"), denying \$22,559.71 of Petitioner's requested costs in its application for payment from the Underground Storage Tank Fund for a LUST Incident at its facility located in Paris, Illinois. In support of its Petition, the Petitioner states as follows:

1. Petitioner, Freedom Oil Company, an Illinois corporation, operates a service station facility located at the common address of 401 South Main Street, Paris, Edgar County, Illinois ("Facility").

2. On February 11, 2003, Petitioner filed with the IEPA its application for payment from the Underground Storage Tank Fund for a LUST Incident at its Paris, Illinois facility ("Reimbursement Application") associated with a tank liner failure at the Facility.

3. By letter dated May 28, 2003, Douglas E. Oakley, Manager of the LUST Claims Unit, Planning & Reporting Section, Bureau of Land for the IEPA, denied Petitioner's Reimbursement Application. A copy of Mr. Oakley's denial determination is attached to this Petition as Exhibit 1.

4. IEPA denied reimbursement of \$33.25 for VHS tapes. This cost was incurred based on activities ordered by IEPA-Office of Emergency Response as part of Early Action/Emergency Response activities and should be eligible for reimbursement. This is also a cost that should be reimbursed under the Act.

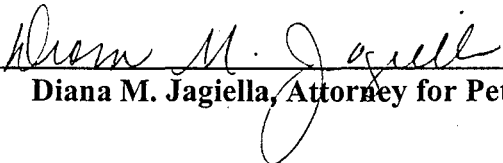
5. IEPA also denied \$22,189.00 of the requested costs based on the presence of tanks ineligible for reimbursement ("Old Tanks"). Denial of these costs is contrary to law. While Section 57.8(m)(1) of the Act allows the Agency to apportion reimbursement costs to eligible and ineligible tanks, this apportionment must be based on the corrective action actually necessitated by the Old Tanks and the owner's failure to justify the costs as related to the eligible tanks. In this case, there is no relationship between the costs incurred and the Old Tanks at the site. The presence of the Old Tanks did not necessitate any of the work conducted. All work conducted was related to eligible tanks. Finally, even if the Agency had some basis for apportionment based on the presence of Old Tanks, the methodology used to reach the deduction is mathematically and factually flawed.

6. Petitioner requests this appeal be consolidated with Case PCB 03-54, PCB 03-105, PCB 03-179 (UST Fund), PCB 03-56 (UST Appeal) (Consolidated), which is a consolidation of the other Freedom appeals. The factual and legal issues are similar and consolidation will conserve Board resources.

Underground Storage Tank Fund for the above-referenced LUST incident consistent with the Petitioner's request. Petitioner further requests that it be awarded all costs associated with this appeal, including attorneys' fees.

Respectfully submitted,

**FREEDOM OIL COMPANY, Petitioner**

By:   
**Diana M. Jagiella, Attorney for Petitioner**

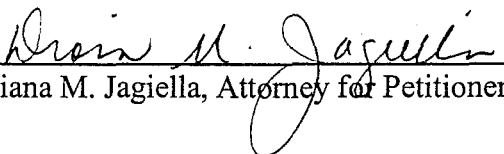
Date: June 21<sup>st</sup>, 2003

Diana M. Jagiella  
Howard & Howard Attorneys, P.C.  
One Technology Plaza, Suite 600  
211 Fulton Street  
Peoria, IL 61602-1350  
(309) 672-1483 / (309) 672-1568 Fax

**CERTIFICATE OF SERVICE**

I, the undersigned, certify that I have served the attached *Petition for Review of Underground Storage Tank Fund Reimbursement* on this 21<sup>st</sup> day of June, 2003, via first-class mail, postage fully prepaid, upon the following persons:

Division of Legal Counsel  
Illinois Environmental Protection Agency  
1021 North Grand Avenue East, P. O. Box 19276  
Springfield, IL 62794-9276

  
Diana M. Jagiella, Attorney for Petitioner

# Exhibit 1



# 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

MAY 28 2003

Freedom Oil Co.  
Attention: Gene Adams  
Post Office Box 3697  
Paris, IL 61944

Re: LPC #0450305043 -- Edgar County  
Paris/Freedom Oil  
401 South Main  
LUST Incident No. 20020433  
LUST FISCAL FILE

Dear Mr. Adams:

The Illinois Environmental Protection Agency has completed the review of your application for payment from the Underground Storage Tank Fund for the above-referenced LUST incident pursuant to Section 57.8(a) of the Illinois Environmental Protection Act (Act), and 35 Ill. Adm. Code 732, Subpart F. This information is dated February 11, 2003 and was received by the Agency on February 20, 2003. The application for payment covers the period from March 1, 2002 to January 24, 2003. The amount requested is \$116,848.37.

The deductible amount for this claim is \$20,000.00, which was previously deducted from the Invoice Voucher dated January 17, 2003. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On March 3, 2003, the Agency received your complete application for payment for this claim. As a result of the Agency's review of this application for payment, a voucher for \$94,288.66 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 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 Agency. This constitutes the Agency's final action with regard to the above application(s) for payment.

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board (Board) pursuant to Section 57.8(i) 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

ROCKFORD - 4302 North Main Street, Rockford, IL 61103 - (815) 987-7760 • DES PLAINES - 9511 W. Harrison St., Des Plaines, IL 60016 - (847) 294-4000  
ELGIN - 595 South State, Elgin, IL 60123 - (847) 608-3131 • PEORIA - 5415 N. University St., Peoria, IL 61614 - (309) 693-5463  
BUREAU OF LAND - PEORIA - 7620 N. University St., Peoria, IL 61614 - (309) 693-5462 • CHAMPAIGN - 2125 South First Street, Champaign, IL 61820 - (217) 278-5800  
SPRINGFIELD - 4500 S. Sixth Street Rd., Springfield, IL 62706 - (217) 786-6892 • COLLINSVILLE - 2009 Mall Street, Collinsville, IL 62234 - (618) 346-5120  
MARION - 2309 W. Main St., Suite 116, Marion, IL 62959 - (618) 993-7200

from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the applicant 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

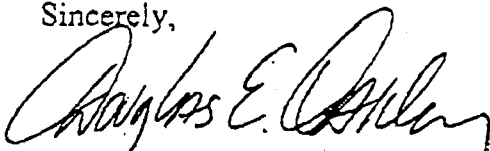
For information regarding the filing of an extension, please contact:

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

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If you have any questions or require further assistance, please contact Lieura Hackman of my staff or Michael Heaton of Michael Lowder's staff at 217/782-6762.

Sincerely,



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

DEO:LH:jk\032238.doc

Attachment

cc: Harding ESE

Attachment A  
Technical Deductions

Re: LPC# 0450305043 -- Edgar County  
Paris / Freedom Oil Company  
401 South Main Street  
LUST Incident No. 20020433, 20021122, and 20021420  
LUST File

Citations in this attachment are from the Environmental Protection Act (Act) and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Item # Description of Deductions

\$33.25 for VHS copies. This cost has been determined to not be related to Early Action activities, therefore is not reasonable (35 IAC 732.606(jj)).

\$22,189.00, for deductions for costs for corrective action activities for underground storage tanks for which the owner or operator was deemed ineligible to access the fund (Section 57.8(n)(1) of the Act and 35 IAC 732.608).

Specifically, there were ten tanks at the subject facility, each of which was determined by the Office of State Fire Marshal to have had a significant release. Tank Nos. 1, 2, 3, 4, and 6 were deemed eligible to access the LUST Fund for reimbursement purposes, Tanks 5, 7, 8, 9, and 10 have not been determined to be eligible to access the LUST Fund for reimbursement purposes. Since Tank 5 was addressed under IEMA Incident No. 930540, it is not included in the gallonage total for Tanks for which an eligibility determination has not been made by Illinois Office of State Fire Marshall (OSFM).

Tank #	Description
1	4,000-gallon diesel tank
2	4,000-gallon gasoline tank
3	4,000-gallon gasoline tank
4	4,000-gallon gasoline tank
5	1,000-gallon gasoline tank
6	1,000-gallon kerosene tank
7	500-gallon heating oil tank
8	1,000-gallon gasoline and/or diesel tank
9	1,000-gallon gasoline and/or diesel tank
10	1,000-gallon gasoline and/or diesel tank
11	500-gallon heating oil tank



The total gallonage of tanks eligible to access the LUST Fund as determined by OSFM is 17,000 gallons, the total gallonage of tanks not eligible to access the LUST Fund as determined by OSFM is 4,000 gallons. Therefore, 80.95% of costs are apportioned to the tanks eligible to access the LUST Fund, and 19.05% of costs are apportioned to the tanks not eligible to access the LUST Fund.

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