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JUL 9 2003

STATE OF ILLINOIS
Pollution Control Board

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

LINCOLN LAND FS, INC.

Petitioner

v.

ILLINOIS ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

PCB 04- 5
(UST Appeal)

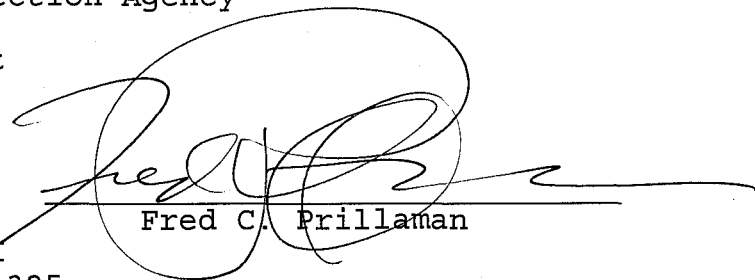
NOTICE OF FILING AND PROOF OF SERVICE

TO: Renee Cipriano, Director
Illinois Environmental
Protection Agency
1021 North Grand Avenue East
P.O. Box 19276
Springfield, IL 62794-9276

PLEASE TAKE NOTICE that on July 7, 2003, we sent to the Clerk of the Illinois Pollution Control Board the originals and nine (9) copies each, via U.S. Mail, of Petition for Review of Underground Storage Tank Fund Determination, for filing in the above-entitled cause, copies of which are attached hereto.

The undersigned hereby certifies that true and correct copies of the Notice of Filing, together with copies of the documents described above, were served upon the Respondent by enclosing same in envelopes addressed to said Respondent, certified mail, return receipt requested, and by depositing said envelopes in a United States Post Office Mail Box at Springfield, Illinois, with postage fully prepaid, on the 7th of July, 2003, and that courtesy copies of same were sent on same date, by U.S. Mail, postage fully prepaid, to the attorney of record for Respondent, to-wit:

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



Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza, Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

THIS FILING SUBMITTED ON RECYCLED PAPER

04-5

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BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

STATE OF ILLINOIS
Pollution Control Board

LINCOLN LAND FS, INC.)
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Petitioner,)
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v.)
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ILLINOIS ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)

PCB 04- 5
(UST Appeal)

PETITION FOR REVIEW OF
UNDERGROUND STORAGE TANK FUND DETERMINATION

NOW COMES Petitioner, LINCOLN LAND FS, INC., by its undersigned attorneys, and pursuant to 415 ILCS 5/40 and 57.7, and 35 Ill. Adm. Code 105.204, hereby petitions the Pollution Control Board for review of the final determination of Respondent, Illinois Environmental Protection Agency ("Agency"), with respect to the Agency's May 29, 2003, deductions from the Petitioner's reimbursement request for activities under the Illinois Underground Storage Tank Fund ("UST Fund"). In support, Petitioner states:

1. Petitioner is the owner of a gasoline service station located at 6th & Jefferson, Petersburg, Menard County, Illinois. This facility has been designated LPC #1290205006 by the Agency.

2. Petitioner notified the Illinois Emergency Management Agency ("IEMA") of a release of petroleum from an underground storage tank ("UST") at the facility, to which IEMA assigned Incident No. 900689.

3. On or about May 2, 2003, Petitioner filed an application for reimbursement for corrective action costs incurred to remediate the petroleum release.

4 On or about May 29, 2003, the Agency rendered its final determination on Petitioner's request for reimbursement. A true and correct copy of the subject Agency decision is attached hereto and made part hereof as Exhibit A.

5. Petitioner prays that the Board reverse the Agency's final determination with respect to the disallowed handling charges, and restore those cuts.

6. The Agency's rejection of such handling charges are contrary to both the law and Agency precedent, inasmuch as the handling charges are reasonable and necessary for the work to be performed.

7. Petitioner also appeals from the other portions of the May 29, 2003, determination letter, deducting costs that allegedly exceed approved budget amounts and deducting costs allegedly calculated in error.

8. Petitioner reserves the right to present additional grounds for reversal of the Agency's final reimbursement determination with respect to the disallowed handling charges, as they may appear during the course of this appeal.

WHEREFORE, Petitioner respectfully requests that this Board grant a hearing in this matter and reverse the Agency's May 29, 2003, deductions from the Petitioner's reimbursement request and remand this matter to the Agency with instructions to approve the

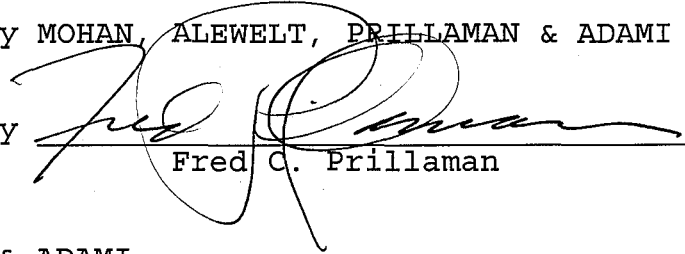
application for payment as submitted, and any other such relief as the Board deems appropriate.

Respectfully submitted,

LINCOLN LAND FS, INC., Petitioner

By MOHAN, ALEWELT, PRILLAMAN & ADAMI

By



Fred C. Prillaman

MOHAN, ALEWELT, PRILLAMAN & ADAMI
1 North Old Capitol Plaza
Suite 325
Springfield, IL 62701
Phone: (217) 528-2517

C:\MAPA\CDAVIS\Lincoln Land FS\Petition for Review.wpd sew 7/7/03



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 29 2003

Lincoln Land FS
 Attention: Ron Mowen
 701 Henry Street, Post Office Box 667
 Jacksonville, IL 62650

Re: LPC #1290205006 -- Menard County
 Petersburg/Lincoln Land FS Inc.
 6th & Jefferson
 LUST Incident No. 900689
 LUST FISCAL FILE

Dear Mr. Mowen:

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 May 2, 2003 and was received by the Agency on May 7, 2003. The application for payment covers the period from August 19, 2002 to March 6, 2003. The amount requested is \$76,014.93.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the Invoice Voucher dated March 22, 1991. Listed in Attachment A are the costs which are not being paid and the reasons these costs are not being paid.

On May 7, 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 \$69,218.97 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

Attachment A
Accounting Deductions

Re: LPC #1290205006 -- Menard County
Petersburg/Lincoln Land FS Inc.
6th & Jefferson
LUST Incident No. 900689
LUST Fiscal File

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

Item # Description of Deductions

1. \$2,718.32, deduction for costs associated with High Priority site activities. The billings submitted exceed the approved budget amounts. The Illinois EPA is unable to approve billings that exceed the approved budget amounts. (Section 57.8(a)(1) of the Act and 35 Ill. Adm. Code 732.601(f))

The amount requested for Investigation Costs (\$5,348.05) exceeds the balance of this line item in the Agency-approved High Priority Budget. The original amount approved for Investigation Costs was \$12,691.93. From the billing submittal received on October 2, 2002 for \$207,630.79, the amount applied to this line item was \$10,062.20, leaving a balance of \$2,629.73.

2. \$1,279.80, deduction for costs due to a mathematical error. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(ff))

The amount requested for Analysis Costs is being reduced. Pages F-1 and F-2 total only \$15,032.20, not \$16,312.00 as requested.

3. \$2,797.84, deduction for costs which are unreasonable as submitted. (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.606(hh))

Handling Charges are being reduced for the following reasons:

1. Costs on which handling charges are claimed must have accompanying receipts/invoices. There was no receipt for the UPS charge of \$3.25, billed on CSD Environmental Services Inc. Invoice #3728.
2. The handling charges associated with Heartland Drilling & Remediation Invoices #133 and #143 are disallowed due to the contractor (CSD) having a direct or indirect financial interest in the subcontractor (Heartland Drilling & Remediation). Since CSD Environmental Services Inc. and Heartland Drilling & Remediation are both owned by the same entity, it is the Agency's position that handling charges are not warranted.

MOHAN, ALEWELT, PRILLAMAN & ADAMI

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SPRINGFIELD, ILLINOIS 62701-1323

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JOEL A. BENOIT*

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*ALSO ADMITTED IN MISSOURI

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JUL 9 2003
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E-MAIL
mapa@family-net.net

July 7, 2003

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

Re: Lincoln Land FS, Inc. v. IEPA, PCB 04-5 (UST
Appeal)

Dear Dorothy:

Enclosed please find the original and nine (9) copies of
Petition for Review of Underground Storage Tank Fund
Determination, along with our check payable in the sum of \$75.00
for the filing fee. Kindly file the Petition on behalf of our
client, Lincoln Land FS, Inc.

Thank you.

Very truly yours,

MOHAN, ALEWELT, PRILLAMAN & ADAMI

By

Fred C. Prillaman
Fred C. Prillaman *by Kwd*

FCP/sew
Enclosure

cc: Renee Cipriano
John Kim