

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

JUL 11 2003

STATE OF ILLINOIS  
Pollution Control Board

JIM'S SHELL & MARINE, )  
)  
Petitioner, )  
)  
v. ) PCB 03 - 193  
) (UST Appeal)  
ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )  
)  
Respondent. )

NOTICE OF FILING

TO: John Kim Dorothy Gunn  
Special Assistant Attorney General Clerk of the Board  
Illinois Environmental Protection Agency Illinois Pollution Control Board  
1021 North Grand Avenue East James R. Thompson Center  
P.O. Box 19276 Suite 11-500  
Springfield, Illinois 62794-9276 100 West Randolph Street  
Chicago, Illinois 60601

PLEASE TAKE NOTICE that on the Friday, July 11, 2003, filed with the Clerk of the Illinois Pollution Control Board of the State of Illinois an original, executed copy of one Petition for Review of Illinois Environmental Protection Agency Decisions and Appearance for Carolyn S. Hesse.

Dated: July 11, 2003.

Respectfully submitted,

Jim's Shell & Marine

By: Carolyn S Hesse  
One of Its Attorneys

Carolyn S. Hesse  
Barnes & Thornburg  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313  
174657v1

**CERTIFICATE OF SERVICE**

I, on oath state that I have served the attached Petition for Review and Appearance by placing a copy in an envelope addressed to:


**U.S. MAIL**

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

**HAND DELIVERY**

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

from One North Wacker Drive, Suite 4400, Chicago, Illinois, before the hour of 5:00 p.m., on this 11<sup>th</sup> Day of July, 2003.

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

BEFORE THE POLLUTION CONTROL BOARD  
OF THE STATE OF ILLINOIS

RECEIVED  
CLERK'S OFFICE

JUL 11 2003

STATE OF ILLINOIS  
Pollution Control Board

JIM'S SHELL & MARINE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03 - 193
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	

APPEARANCE

NOW COMES the undersigned, Carolyn S. Hesse, and enters an appearance for the  
Petitioner, Jim's Shell & Marine, in the above captioned matter.

Dated: July 11, 2003

Respectfully submitted,

Jim's Shell & Marine

By: Carolyn S Hesse  
One of Its Attorneys

Carolyn S. Hesse, Esq.  
Barnes & Thornburg  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313

174677v1

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

JIM'S SHELL & MARINE,	)	
	)	
Petitioner,	)	
	)	
v.	)	PCB 03 - 193
	)	(UST Appeal)
ILLINOIS ENVIRONMENTAL PROTECTION AGENCY,	)	
	)	
Respondent.	)	

**RECEIVED**  
CLERK'S OFFICE  
JUL 11 2003  
STATE OF ILLINOIS  
*Pollution Control Board*

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

Jim's Shell & Marine, 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. Jim's Shell & Marine ("Jim's Shell") is the owner of property located at 1122 North Springfield Street, Virden, Macoupin County, Illinois. The site was a gasoline service station that had underground storage tanks (USTs) on the property, which stored gasoline, diesel fuel, kerosene and used oil.
2. LUST Incident Number 911259 was obtained following a site investigation.
3. On March 7, 2002, the Agency received Owens' complete request for reimbursement of costs from the Illinois Underground Storage Tank Fund (the "Request") for the period from January 1, 1998 to September 30, 1998 in the amount of \$44,170.34.

4. The Agency denied certain costs in the Request in a letter dated March 7, 2003, a copy of which is attached hereto as Exhibit A.
5. Jim's Shell is appealing this March 7, 2003 denial because the Agency denied certain costs by claiming that the owner/operator failed to demonstrate that the costs were reasonable and a deduction for a bill that was not in the billing period for this claim.
6. Jim's Shell disagrees with the Agency's decision and believes that the costs submitted for reimbursement are reasonable corrective action costs 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 April 16, 2003, the parties timely filed a joint notice to extend the appeal deadline. On May 1, 2003, the Board filed an order extending the appeal deadline until July 11, 2003, a copy of which is attached hereto as Exhibit B. Pursuant to the Board's May 1, 2003 order, this appeal is timely filed.

WHEREFORE, Jim's Shell & Marine 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,

**Jim's Shell & Marine**

By: Carolyn S. Hesse  
One of Its Attorneys

Carolyn S. Hesse, Esq.  
Barnes & Thornburg  
One North Wacker Drive  
Suite 4400  
Chicago, Illinois 60606  
(312) 357-1313

174585v1

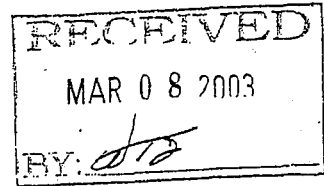


ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

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



MAR 07 2003

Jim's Shell & Marine  
Attention: James Lynch  
1122 North Springfield Street  
Virden, IL 62690

Re: LPC #1171105011 -- Macoupin County  
Virden/Jim's Shell & Marine  
1122 North Springfield Street  
LUST Incident #911259  
LUST FISCAL FILE

Dear Mr. Lynch:

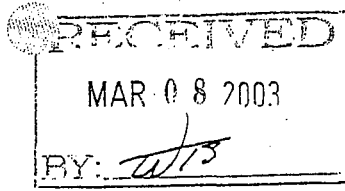
The Agency has completed the review of the request for reimbursement of corrective action costs from the Illinois Underground Storage Tank Fund for the above-referenced facility. The invoices reviewed covered the period from January 1, 1998 to September 30, 1998. The amount requested was \$44,170.34.

The deductible amount for this claim is \$15,000.00, which was previously deducted from the Invoice Voucher dated April 22, 1992. 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 March 7, 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 \$38,001.96 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

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



Page 2

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 Diana Gobelman of my staff or Jay Gaydosh of the LUST Section at 217/782-6762.

Sincerely,

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

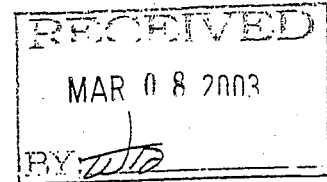
DEO:DLG;jk\0330111.doc

Attachment

cc: CW3M Company



Attachment A  
Accounting Deductions



Re: LPC #1171105011 -- Macoupin County  
Viriden/Jim's Shell & Marine  
1122 North Springfield Street  
LUST Incident #911259  
LUST FISCAL FILE

Item #      Description of Deductions

1.            \$277.37, deduction for a CIPS bill for service February 22, 1999 – March 22, 1999, which is not within the billing period of this claim..

DEO:DLG:jk\0330111.doc

Attachment A  
Technical Deductions

Re: LPC #1171105011 – Macoupin County  
Virden/Jim's Shell & Marine  
1122 North Springfield St.  
LUST Incident No. 911259  
LUST FISCAL FILE

- | <u>Item #</u> | <u>Description of Deductions</u>  |
|---------------|---|
| 1.            | \$5,891.01, deduction in costs that the owner/operator failed to demonstrate were reasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act).   |
| 2.            | The Illinois EPA has reviewed the lease agreement for equipment being used at the above-referenced site and has determined that a maximum of 27 months of additional lease payments would be eligible for reimbursement. Any requests for reimbursement of lease fees beyond 27 months will not be eligible for reimbursement. The Illinois EPA considers these costs unreasonable (Section 22.18b(d)(4)(C) of the Environmental Protection Act). |

JFG911259 LCU Attachment A

ILLINOIS POLLUTION CONTROL BOARD

May 1, 2003

JIM'S SHELL & MARINE, )

Petitioner, )

v. )

ILLINOIS ENVIRONMENTAL )  
PROTECTION AGENCY, )

Respondent. )

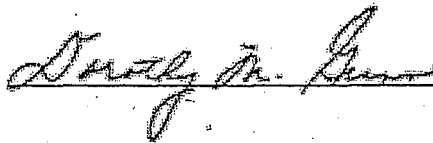
PCB 03-193  
(UST Appeal)  
(90-Day Extension)

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

On April 16, 2003, the parties timely filed a joint notice to extend the 35-day period within which Jim's Shell & Marine may appeal a March 7, 2003 determination of the Illinois Environmental Protection Agency (Agency). See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.402, 105.406. Because the postmark date of the joint request is within the time for filing, the joint request was timely filed. 35 Ill. Adm. Code 101.300(b)(2), 105.404. The Agency approved corrective action costs for reimbursement, with modifications, for Jim's Shell & Marine's leaking underground petroleum storage tank facility located at 1122 North Springfield Street, Virden, Macoupin County. The Board extends the appeal period until July 11, 2003, as the parties request. See 415 ILCS 5/40(a)(1) (2002); 35 Ill. Adm. Code 105.406. If Jim's Shell & Marine 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 May 1, 2003, by a vote of 7-0.



Dorothy M. Gunn, Clerk  
Illinois Pollution Control Board

